

CRIMINAL LAW.

No. 119 of 1985.

AN ACT to amend The Criminal Code and the Justices Act 1902.

[Assented to 17 December 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 *Criminal Law Amendment Act 1985*. Short title.

2. The provisions of this Act shall come into operation on such day as is, or on such days as are respectively, fixed by proclamation. Commencement.

PART II—THE CRIMINAL CODE.

The Code.
Reprinted as
approved
13 December
1983 and
amended by
Acts Nos. 13,
52 and 121
of 1984 and
14 of 1985.

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 1
amended.

4. Section 1 of the Code is amended in subsection (1)—

- (a) by deleting the definition of the term “have in possession”;
- (b) by deleting the definition of the term “police officer”;
- (c) by inserting before the definition of the term “property” the following definition—

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

- (d) in the definition of the term “property”, by inserting after “includes” the following—
“ real and personal property and ”; and
- (e) by inserting before the definition of the term “railway” the following definition—

“ The term “public officer” means—

- (a) a police officer;
- (b) a person employed to execute any process of a Court;
- (c) an officer within the meaning of the Public Service Act 1978;

- (d) a member, officer or employee of any authority, board, corporation, commission, council or committee or similar body established under a written law; or
- (e) any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not; ”.

5. Section 5 of the Code is repealed.

Section 5
repealed.

6. Section 233 of the Code is repealed and the following section is substituted—

Section 233
substituted.

“ 233. (1) When any person is proceeding lawfully to arrest, with or without warrant, another person, and the person sought to be arrested takes to flight, or appears to be about to take to flight, in order to avoid arrest, it is lawful for the person seeking to make the arrest, and for any person lawfully assisting that person, to use such force as may be reasonably necessary to prevent the escape of the person sought to be arrested.

Preventing
escape from
arrest.

(2) Subsection (1) does not authorize the use of force that is intended or is likely to cause death or grievous bodily harm unless—

- (a) the person who uses that force is a police officer or a person assisting a police officer;
- (b) the person sought to be arrested is reasonably suspected of having committed an offence punishable with imprisonment for life; and
- (c) the person sought to be arrested is called on to surrender before that force is used. ”.

Section 234
repealed.

7. Section 234 of the Code is repealed.

Section 235
substituted.

8. Section 235 of the Code is repealed and the following section is substituted—

Preventing
escape or
rescue after
arrest.

“ 235. (1) When any person has lawfully arrested another person for any offence, it is lawful for him to use such force as may be reasonably necessary to prevent the escape or rescue of the person arrested.

(2) Subsection (1) does not authorize the use of force that is intended or is likely to cause death or grievous bodily harm unless the offence referred to in that subsection is punishable with imprisonment for 14 years or upwards, with or without any other punishment. ”.

Section 237
amended.

9. Section 237 of the Code is amended by repealing the second and third paragraphs.

Section 313
amended.

10. Section 313 of the Code is repealed and the following section is substituted—

Common
assaults.

“ 313. Any person who unlawfully assaults another is guilty of an offence, and is liable on summary conviction to imprisonment for 18 months or to a fine of \$3 000. ”.

Section 316
repealed.

11. Section 316 of the Code is repealed.

Section 317
substituted.

12. Section 317 of the Code is repealed and the following section is substituted—

Assaults
occasioning
bodily harm.

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

(2) Where a person is charged before a Court of Petty Sessions with an offence under subsection (1) and the Court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge as the Court may require from the prosecutor, considers that the charge can be adequately dealt with summarily, the charge may be dealt with summarily at the election of the person charged, and he is liable on summary conviction to imprisonment for 2 years or to a fine of \$4 000. ”.

13. Section 318 of the Code is repealed and the following section is substituted—

Section 318 substituted.

“ 318. (1) Any person who—

Serious assaults.

- (a) assaults another with intent to commit or facilitate the commission of a crime;
- (b) assaults another with intent to do grievous bodily harm to any person;
- (c) assaults another with intent to resist or prevent the lawful arrest or detention of any person;
- (d) assaults a public officer who is performing a function of his office or employment or on account of his performance of such a function;
- (e) assaults any person who is performing a function of a public nature conferred on him by law or on account of his performance of such a function; or
- (f) assaults any person who is acting in aid of a public officer or other person referred to in paragraph (d) or (e) or on account of his having so acted,

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

(2) Where a person is charged before a Court of Petty Sessions with an offence under subsection (1) and the Court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge as the Court may require from the prosecutor, considers that the charge can be adequately dealt with summarily, the charge may be dealt with summarily at the election of the person charged, and he is liable on summary conviction to imprisonment for 2 years or to a fine of \$4 000. ”.

Chapter
XXXI
repealed.

14. Chapter XXXI of the Code is repealed.

Section 427
amended.

15. Section 427 of the Code is amended in paragraph (b) by deleting subparagraph (i).

Section 434
amended.

16. Section 434 of the Code is amended by deleting “The justices are required to order the thing in question to be delivered up to the rightful owner.”.

Section 435
amended.

17. Section 435 of the Code is amended by deleting “If the accused person is convicted, the justices before whom the charge is tried are required to order the thing in question to be delivered up to the rightful owner thereof upon payment of a reasonable reward, to be ascertained by the justices, to the person who seized the same. ”.

Section 438
repealed.

18. Section 438 of the Code is repealed.

Section 464
repealed.

19. Section 464 of the Code is repealed.

Section 564
substituted.

20. Section 564 of the Code is repealed and the following section is substituted—

Arrest
without
warrant
generally.

“ 564. (1) In this section “arrestable offence” means an offence punishable with imprisonment, with or without any other punishment.

(2) It is lawful for any person to arrest without warrant any person who is, or whom he suspects, on reasonable grounds, to be, in the course of committing an arrestable offence.

(3) Where an arrestable offence has been committed, it is lawful for any person to arrest without warrant any person who has committed the offence or whom he suspects, on reasonable grounds, to have committed the offence.

(4) Where a police officer has reasonable grounds for suspecting that an arrestable offence has been committed, it is lawful for the police officer to arrest without warrant any person whom the police officer suspects, on reasonable grounds, to have committed the offence.

(5) Where it is lawful under this section for a police officer to arrest a person, it is lawful for the police officer, for the purpose of effecting the arrest, to enter upon any place where the person is or where the police officer suspects, on reasonable grounds, the person may be.

(6) Where any person is called upon by a person whom he believes, on reasonable grounds, to be a police officer to assist in effecting the arrest under this section of a third person, it is lawful for the first person to assist the second person in effecting the arrest unless the first person knows—

- (a) that the third person has not committed an arrestable offence; or
- (b) that there are no reasonable grounds for suspecting that the third person has committed an arrestable offence. ”.

Section 565A
amended.

22. Section 565A of the Code is amended—

(a) by inserting after “aircraft”, wherever it occurs, the following—

“ or vessel ”; and

(b) in paragraph (b) of subsection (2), by inserting after “flight” the following—

“ or voyage ”.

Sections 566
and 567
repealed.

23. Sections 566 and 567 of the Code are repealed.

Section 569
substituted.

24. Section 569 of the Code is repealed and the following section is substituted—

Arrest of
persons
offering
stolen
property for
sale, etc.

“ 569. It is lawful for any person to arrest without warrant any person who offers to sell, pawn or deliver any property to him, if the first person has reasonable grounds to suspect that the property has been acquired by means of the commission of an offence. ”.

Section 656
amended.

25. Section 656 of the Code is amended by deleting “The Court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.” and substituting the following—

“ Before passing sentence or otherwise disposing of the case according to law, the Court may inform itself in such manner as it thinks fit in order to decide upon the proper sentence to be passed, order to be made, or other disposition of the case. ”.

Section 669
amended.

26. Section 669 of the Code is amended in subsection (1)—

(a) in paragraph (a), by deleting “make restitution of any property in respect of which the offence was committed, or to pay

compensation for any injury done to such property, or compensation for any injury done to any person injured, as the case may be, and may assess the amount to be paid by the offender in any such case with” and substituting the following—

“ pay ”; and

- (b) in paragraph (b), by deleting “and either without payment of damages and costs as aforesaid, or subject to the payment of such damages and costs, or either of them, as the Court may think reasonable” and substituting the following—

“ and either without payment of costs as mentioned in paragraph (a), or subject to the payment of such costs as the Court may think reasonable ”.

27. Sections 671 and 672 of the Code are repealed. Sections 671 and 672 repealed.

28. Section 703 of the Code is amended by deleting the definition of the expression “sentence” and substituting the following definition— Section 703 amended.

“ The expression “sentence” means any punishment imposed or order made in respect of a convicted person, including an order made under section 669, an order for restitution or compensation, an order imposing a disqualification or disability following conviction, an order for the forfeiture or disposal of any property or thing, a probation order and a community service order; and the power of the Court of Criminal Appeal to pass a sentence includes the power to make any such order. ”.

Sections 717
to 719
repealed and
sections 716A
717, 717A,
718 and 719
substituted.

29. Sections 717, 718 and 719 of the Code are repealed and the following sections are substituted—

Definition.

“ 716A. In sections 717, 717A, 718 and 719—

“convicted” includes the incurring or award of—

- (a) a conviction in respect of which a probation order is made, notwithstanding section 20 of the Offenders Probation and Parole Act 1963 or sections 40 and 126A of the Child Welfare Act 1947;
- (b) a finding of guilt referred to in section 34 or 34B of the Child Welfare Act 1947 or a dismissal under section 26 (2) of that Act; and
- (c) a dismissal under section 669 (1) (a); and

“prosecutor” includes a complainant and, in the case of an offence for which the sentencing Court is not a Court of Petty Sessions, the Crown.

Restitution.

717. (1) Where a person is convicted of an offence, and it appears to the sentencing Court that there is in the possession of the offender or any other person—

- (a) any property to which the offence relates; or
- (b) any other property derived from any sale or disposition of any property to which the offence relates,

the Court may, at any time, whether or not any punishment is imposed on the offender for the offence, order—

- (c) that the offender, or any person in possession of the property to which the offence relates, transfer or deliver that property to the aggrieved person; or
- (d) where that property has been sold or disposed of and it is inexpedient that it be transferred or delivered to the aggrieved person, that the offender or any person transfer or deliver to the aggrieved person any other property derived from the sale or disposition.

(2) An order under subsection (1) may be made by the Court of its own motion or upon the application of the prosecutor or a person who appears to the Court to have an interest in the making of the order.

(3) Notice in writing of an application for, or a proposal by the Court to make, an order under subsection (1) shall, subject to subsection (4), be given to each of the prosecutor and the person for whose benefit an order is proposed to be made, if he is not the applicant, the offender and to such other persons as the Court may determine.

(4) The Court may dispense with the giving of notice in writing under subsection (3) to a person if it is satisfied that sufficient notice has been given orally to that person.

(5) The notice under subsection (3) shall be given by the applicant or, where the Court proposes of its own motion to make an order under subsection (1), by the Court.

(6) The Court may, in an order under subsection (1)—

- (a) specify the time within which and the manner in which property is to be transferred or delivered; and
- (b) direct the offender or any other person to whom the order applies, at his own expense, to do all such things and execute all such documents as may be necessary, or as may be specified in the order, for the purpose of giving effect to the object of the order.

(7) In this section—

“aggrieved person” means the person who appears to the Court to be entitled to the benefit of an order under this section;

“disposed of” includes given as security for money lent.

Enforcement
of orders
under
section 717.

717A. (1) Where the prosecutor or a person for whose benefit an order under section 717 (1) has been made considers that any person to whom the order is directed has failed to comply with the order, whether wholly or in part, he may apply to the Court that made the order for the matter to be determined under this section.

(2) An application under subsection (1)—

- (a) to a Court of Petty Sessions shall be made by way of a complaint under section 42 of the Justices Act 1902;
- (b) to any other Court shall be made in accordance with rules of court.

(3) Upon the hearing of an application under subsection (1) the Court may if it is satisfied that sufficient notice of the proceedings has been given to the person alleged to be in default—

- (a) vary, revoke or add to any of the terms of the order;
- (b) revoke the order, fix the value of any property to which that order applied, and order the person in default to pay that sum of money, or any part thereof, within such time as the Court may specify, to any person entitled under the revoked order; or
- (c) dismiss the application.

718. (1) Where a Court—

- (a) has convicted a person of the offence of stealing or any other offence whereby he has unlawfully acquired any property; and
- (b) has, under section 717 (1) (c) or (d), made an order whereby a purchaser or lender to whom this section applies is required to transfer or deliver property to another,

Compensation to innocent purchaser or lender.

the Court may, upon the application of such purchaser or lender, at any time after he has complied with the order, and whether or not any punishment has been imposed on the offender, order that the offender pay to the applicant, within such time as the Court may specify, a sum of money not exceeding the amount which the applicant paid or is owed by the offender.

(2) For the purposes of subsection (1) a person is a purchaser or lender to whom this section applies if he purchased the property in good faith from the offender, or lent money

in good faith to him on security of the property, in either case without notice, or having reasonable grounds to suspect, that the property had been stolen or unlawfully acquired or is derived from the sale or disposition of property that had been stolen or unlawfully acquired.

(3) Notice in writing of an application for an order under subsection (1) shall, subject to subsection (4), be given to the prosecutor, the offender and to such other persons as the Court may determine.

(4) The Court may dispense with the giving of notice in writing under subsection (3) to a person where it is satisfied that sufficient notice has been given orally to that person.

Compensation.

719. (1) Where a person is convicted of an offence and it appears to the sentencing Court that a person (in this section called "a person aggrieved") has suffered injury, loss or damage or incurred expense, whether directly or indirectly, as a result of the commission of the offence, the Court may, at any time and in addition to any punishment to which the offender is liable, order that the offender shall, within such time as it may specify, pay a sum of money to that person by way of compensation for that injury, loss, damage, or expense.

(2) For the purposes of subsection (1), any property to which an offence relates which is damaged following the commission of the offence while it is out of the possession of the person entitled to possession, and which is subsequently recovered, shall be deemed to have been damaged as a result of the commission of the offence no matter how and by whom the damage was caused.

(3) An order shall not be made under subsection (1) in respect of loss suffered by a dependant of a person in consequence of the death of that person.

(4) An order under subsection (1) may be made by the Court of its own motion or upon the application of the prosecutor or a person who considers that he is a person aggrieved.

(5) Notice in writing of an application for, or a proposal by the Court to make, an order under subsection (1) shall, subject to subsection (6), be given to each of the prosecutor and the person for whose benefit an order is proposed to be made, if he is not the applicant, to the offender, and to such other persons as the Court may determine.

(6) The Court may dispense with the giving of notice in writing under subsection (5) to a person where it is satisfied that sufficient notice has been given orally to that person.

(7) An award of compensation under subsection (1) is in addition to any other right or remedy to recover damages or compensation which a person may have against the offender or under the Criminal Injuries Compensation Act 1982, but—

- (a) any sum paid under the order shall be deducted from any such damages or compensation; or
- (b) any sum paid by way of such damages or compensation shall be deducted from any amount payable under the order.

(8) In this section “injury” means bodily harm, mental shock and nervous shock, and includes pregnancy. ”.

Miscellaneous
amendments
as to arrest
without
warrant.

30. The Code is amended—

- (a) in section 51 (2) by deleting the following—
“ The offender may be arrested without warrant. ”;
- (b) in sections 57, 60, 61, 82, 121, 122, 124, 127, 129, 130, 134, 135, 136, 169, 411, 417, 419, 420 and 484 by deleting the following in each case—
“ The offender cannot be arrested without warrant. ”;
- (c) in sections 92, 157, 158, 161, 162, 163, 164 and 411 by deleting the following in each case—
“ A person found committing the offence may be arrested without warrant. ”;
- (d) in sections 104 and 106 by deleting the following in each case—
“ A person found committing the offence may be arrested without warrant by direction of the presiding officer. ”;
- (e) in section 109 by deleting the following—
“ The offender may be arrested without warrant by direction of the presiding officer. ”;
- (f) in section 160 by deleting the following—
“ If found committing the offence, he may be arrested without warrant. ”;
- (g) in section 409 by repealing subsection (3); and
- (h) in section 410 by deleting the following—
“ The offender cannot be arrested without warrant unless found committing the offence. ”.

PART III.—JUSTICES ACT 1902.

31. Sections 131 and 132 of the Justices Act 1902 are repealed.

Sections 131
and 132
repealed.
Reprinted as
approved
9 November
1984 and
amended by
Act No. 69
of 1984 and
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