

WESTERN AUSTRALIA.

ACTS AMENDMENT
(CRIMINAL PENALTIES
AND PROCEDURE).

No. 20 of 1982.

AN ACT to amend The Criminal Code, the Child Welfare Act 1947-1979 and the Justices Act 1902-1980.

[Assented to 27 May 1982.]

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.—CITATION.

1. This Act may be cited as the *Acts Amendment (Criminal Penalties and Procedure) Act 1982.* Short title.

PART II.—THE CRIMINAL CODE.

Interpretation.
Reprinted as approved 3 December 1978 and amended by Acts Nos. 67, 68 and 107 of 1979, 96 of 1980 and 103 and 118 of 1981.

2. 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, as amended from time to time.

Section 19 amended.

3. Section 19 of the Code is amended in paragraph (3) by deleting “One thousand dollars” and substituting the following—

“ \$50 000 ” .

Section 20 amended.

4. Section 20 of the Code is amended by inserting after “Judgments involving deprivation of liberty pronounced upon any convicted person on the same occasion may be directed to take effect concurrently or cumulatively.” the following—

“ A court may exercise the powers conferred by the preceding provisions of this section whether or not the punishment, or any of the punishments, that the person is undergoing, or is under sentence to undergo, or is directed to undergo, as the case may be, is a punishment inflicted for an offence against the law of Western Australia. ” .

Section 582 amended.

5. Section 582 of the Code is amended by deleting “If any circumstance of aggravation is intended to be relied upon, it must be charged in the indictment.”.

Section 585 amended.

6. Section 585 of the Code is amended by deleting “This section does not authorise the joinder of a charge of wilful murder, murder, or manslaughter, with a charge of any other offence.”.

7. Section 586 of the Code is amended—

Section 586
amended.

- (a) by repealing subsection (1) and substituting the following subsection—

“ (1) In an indictment against a person for stealing any property the accused person may be charged and proceeded against for the amount of a general deficiency, notwithstanding that such general deficiency is made up of—

(a) any number of specific sums of money; or

(b) any number of specific articles or items of property,

the taking or conversion of which extended over any space of time. ” ;

and

- (b) by repealing subsections (2) and (3).

8. Section 618 of the Code is amended—

Section 618
amended.

- (a) in the first paragraph by inserting after “an offence” the following—

“ in respect of which he has not already been summarily convicted ” ;

- (b) in the second paragraph by deleting “was duly convicted of the offence charged in the indictment or that he duly admitted” and substituting the following—

“ pleaded, or otherwise duly admitted, ” ;

- (c) in the third paragraph by inserting after “witnesses” the following—

“ , if any, and the written statements tendered in evidence under section 69 of the Justices Act 1902, if any, ” ;

and

(d) in the final paragraph by deleting “the last preceding section but one” and substituting the following—

“ section 616 of this Code ” .

Section 636A
inserted.

9. After section 636 of the Code the following section is inserted—

Notice of
alibi.

“ 636A. (1) Where, on a trial on indictment, an accused person adduces evidence in support of an alibi without having given the prescribed details of the alibi to the prosecution not later than 10 days before the date appointed for the commencement of the trial, the Court shall, on application being made by the prosecution for an adjournment of the trial,—

- (a) adjourn the trial for such period as the Judge considers sufficient to enable the prosecution to complete a proper investigation of the alibi; or
- (b) if, in the circumstances, the Judge thinks fit, adjourn the trial and discharge the jury.

(2) Where the prescribed details of an alibi have been given not later than 10 days before the date appointed for the commencement of a trial on indictment, nothing in subsection (1) limits or otherwise affects the discretion of the Court to adjourn the trial if the Judge considers that, in the circumstances, the prosecution has not had sufficient time to complete a proper investigation of the alibi, or for any other reason.

(3) On the resumption of a trial on indictment that has been adjourned to enable the prosecution to investigate an alibi, evidence in support of which has been adduced by an accused person, the prosecution—

- (a) may require any person, including an accused person, who has given

evidence to the Court in support of the alibi to be recalled as a witness and may cross-examine or further cross-examine any such person; and

- (b) may adduce evidence in rebuttal of the evidence so adduced.

(4) In this section—

“evidence in support of an alibi” means evidence tending to show that an accused person was not present when an offence in the indictment is alleged to have been committed or an act or omission material to that offence is alleged to have occurred;

“prescribed details”, in relation to an alibi, means—

- (a) details of the nature of the alibi; and
- (b) details of the name and address of each person called to give evidence in support of the alibi, or other information sufficient to enable each such person to be located. ” .

10. Section 639 of the Code is amended in the proviso by deleting “other than a crime punishable with death or the indictable offence of murder,”.

Section 639
amended.

11. Section 656 of the Code is amended by inserting below “as to the sentence proper to be passed.” the following—

Section 656
amended.

“ When considering the sentence proper to be passed the Court may have regard to a circumstance of aggravation whether or not that circumstance has been charged in the indictment but, notwithstanding any other provision of this Code, if the circumstance has not been charged in the indictment the Court shall not impose on the offender a punishment

that is greater than that to which he would have been liable if the offence had been committed without the existence of that circumstance. ” .

Section 693 amended.

12. Section 693 of the Code is amended by repealing subsection (1) and substituting the following subsection—

“ (1) Where the Court of Criminal Appeal—

(a) allows an appeal against the conviction of an appellant for an offence; or

(b) passes a sentence in substitution for the sentence passed on an appellant on his conviction for an offence,

and, at the time when the Court allows the appeal or passes the sentence, as the case may be, the appellant is undergoing, or under sentence to undergo, a sentence passed for another offence of which he was convicted on or after the occasion on which he was convicted of the first-mentioned offence, the Court may pass such sentence in substitution for the sentence passed for that other offence as they think proper, and as may be warranted in law for that other offence. ” .

PART III—CHILD WELFARE ACT 1947-1979.

Citation.
Reprinted as approved 11 November 1977 and amended by Act No. 77 of 1979.

13. (1) In this Part the Child Welfare Act 1947-1979 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Child Welfare Act 1947-1982.

Section 20 amended.

14. Section 20 of the principal Act is amended—

(a) in subsection (4) by deleting “A court” and substituting the following—

“ Subject to subsection (4a) of this section a court ” ;

(b) by inserting after subsection (4) the following subsection—

“ (4a) When hearing a complaint referred to in subsection (4) (b) of this section a Children’s Court shall not accept a plea of guilty entered by a child unless—

(a) the child is represented at the hearing by counsel or solicitor;

or

(b) the court is satisfied that the child received legal advice before entering the plea. ” ;

(c) in subsection (5)—

(i) by deleting “subsection (6)” and substituting the following—

“ subsections (5a) and (6) ” ;

and

(ii) by inserting at the end of the subsection the following—

“ in respect of which he had not already been summarily convicted ” ;

and

(d) by inserting after subsection (5) the following subsection—

“ (5a) For the purposes of subsection (5) of this section the passage “pleaded, or otherwise duly admitted, before the justice that he was guilty” in the second paragraph of section 618 of The Criminal Code shall, in any case to which subsection (4) (b) (ii) of this section applies, be deemed to be replaced by the words “was duly found guilty”. ” .

PART IV—JUSTICES ACT 1902-1980.

Citation.
Reprinted as
approved 30
November
1977 and
amended by
Acts Nos.
6 and 67 of
1979 and 67
of 1980.

15. (1) In this Part the Justices Act 1902-1980 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Justices Act 1902-1982.

Section 150
amended.

16. Section 150 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “, or is adjudged at the same petty sessions to be imprisoned for any other offence,”; and

(ii) by deleting “, or of any term of imprisonment to which he is sentenced at the same petty sessions”;

(b) by inserting after subsection (1) the following subsections—

“ (1a) Where Justices, upon making a conviction for a simple offence, adjudge the defendant to be imprisoned and the defendant is adjudged at the same petty sessions to be imprisoned for any other simple offence, the Justices may, if they think fit, adjudge that the imprisonment for one offence shall commence at the expiration of the term of imprisonment to which he is sentenced in respect of the other offence.

(1b) Justices may exercise the powers conferred by subsection (1) or (1a) of this section whether or not the term of imprisonment at the expiration of which another term of imprisonment is adjudged to commence is a term of imprisonment imposed for an offence against the law of Western Australia. ” ; and

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(c) in subsection (2) by inserting after “subsection (1)” the following—

“ or (1a) ” .

17. Section 167 of the principal Act is amended by inserting after subsection (7) the following subsection—

Section 167
amended.

“ (8) Justices or a Justice, as the case may be, may exercise the powers conferred by subsection (6) or (7) of this section whether or not the term or period of imprisonment at the expiration of which another term or period of imprisonment is directed to commence to run, is a term or period of imprisonment, imposed for an offence against the law of Western Australia or on default of payment of a monetary penalty imposed for an offence against the law of Western Australia. ” .
