

POLICE (No. 2).

No. 85 of 1970.

AN ACT to amend the Police Act, 1892-1970.*[Assented to 30th November, 1970.]*

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:—

Short title
and citation.

1. (1) This Act may be cited as the *Police Act Amendment Act (No. 2), 1970.*

Vol. 21 Re-
printed Acts
approved for
reprint 15th
December,
1967 as
amended by
Acts Nos. 26
of 1968,
24 of 1969
and 1 of
1970.

(2) In this Act the Police Act, 1892-1970, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Police Act, 1892-1970.

2. This Act or any provision thereof shall come into operation on a date or dates to be fixed by proclamation.

Commence-
ment.

3. The principal Act is amended by adding after section 54 a section as follows—

S. 54A added.

54A. (1) A disorderly assembly is an assembly of three or more persons who assemble in such a manner or who so conduct themselves when they are assembled as to give persons in the neighbourhood of the assembly reasonable grounds to apprehend that the persons so assembled—

Disorderly
assembly.

(a) will disturb the peace; or

(b) will by that assembly needlessly provoke other persons to disturb the peace.

(2) Persons lawfully assembled may become a disorderly assembly if being assembled they conduct themselves in such a manner as is referred to in subsection (1) of this section.

(3) Any member of a disorderly assembly who, after being warned by a member of the Police Force to disperse immediately and go peaceably to his home or his lawful business, neglects or refuses to do so, commits an offence.

Penalty: One hundred dollars or a term of imprisonment not exceeding six months or both.

4. Section 58 of the principal Act is repealed.

S. 58 re-
pealed.
(Injuring
public
property.)

5. Section 58A of the principal Act is amended by substituting for the passage “, and liable, on summary conviction, to a penalty not exceeding fifty dollars, or to imprisonment, with or without hard labour, not exceeding six months” in lines twelve to

S. 58A
amended.
(Damage to
animals,
plants, etc.
in gardens.)

sixteen inclusive, the passage "Penalty: A fine not exceeding three hundred dollars or imprisonment for a term not exceeding six months or both".

Amendment
to s. 69.
(Persons sus-
pected of
having or
conveying
stolen
goods.)

6. Section 69 of the principal Act is amended—

- (a) by substituting for the words "one hundred" in line eight the words "four hundred"; and
- (b) by substituting for the words "six calendar months" in the last line the words "two years".

S. 80 re-
pealed and
re-enacted.
(Malicious
injury to
property.)

7. Section 80 of the principal Act is repealed and re-enacted as follows—

Wilful dam-
age to
property.

80. (1) Every person who wilfully or maliciously destroys or damages any real or personal property of any kind, whether owned by Her Majesty or any public or local authority or by any other person, is guilty of an offence.

Penalty: A fine not exceeding three hundred dollars or imprisonment for any term not exceeding six months or both.

(2) Subsection (1) of this section does not apply—

- (a) where the alleged offender acted under a fair and reasonable supposition that he had a right to do the act complained of; or
- (b) where the act complained of was done in the course of hunting or fishing, or in the pursuit of game and was not done with an intention to destroy or damage the property.

Vide s. 135
post.

(3) On the conviction of a person for an offence against this section, the Justices may, in addition to any penalty imposed under subsection (1) of this section, order him to pay to any person such sum as they think fit by

way of compensation for any damage to, or loss of, property suffered by that person through or by means of the offence.

(4) An order for payment under this section does not affect the right of any person to recover by civil proceedings any sum in excess of the amount paid pursuant to the order. .

8. Section 94B of the principal Act is amended—

Amendment
to s. 94B.
(Cannabis or
prepared
opium.)

- (a) by substituting for the passage “, sells, or otherwise deals in” in line one of paragraph (a) of subsection (1) the words “or prepares”;
- (b) by deleting the passage “(b) has in his possession any cannabis or prepared opium; or” in lines four and five of subsection (1);
- (c) by repealing and re-enacting subsection (2) as follows—

(2) If any person—

- (a) has in his possession any drug to which this Part of this Act applies;
- (b) sells or supplies or offers to sell or supply to another any drug to which this Part of this Act applies; or
- (c) has in his possession any drug to which this Part of this Act applies with intent to sell or supply it to another,

he is guilty of an offence against this Part of this Act, unless—

- (d) in the case of an offence against paragraph (a) of this subsection—

- (i) he is authorised under the Poisons Act, 1964, or the

regulations made thereunder to be in possession of the drug; or

- (ii) the drug was sold or supplied or requested to be sold or supplied to him by a medical practitioner or veterinary surgeon or on and in accordance with a prescription complying with that Act or those regulations;
- (e) in the case of an offence against paragraph (b) or (c) of this subsection he is authorised under the provisions of the Poisons Act, 1964 or the regulations made thereunder to manufacture, prepare, sell, distribute or supply the drug and the sale, supply, offer to sell or supply or intended sale or supply of the drug is or was in all respects in accordance with such authority. ; and
- (d) by adding after subsection (3), subsections as follows—

(4) A person is not guilty of an offence under subsection (2) of this section by virtue of his having in his possession or attempting to obtain possession of, a drug to which this Part of this Act applies, if he proves that—

- (a) he had possession, or attempted to obtain possession thereof only for the purpose of delivering it to a person referred to in paragraph (d) or (e) of that subsection;
- (b) he had possession or attempted to obtain possession thereof pursuant to the prior written authority of such person, except

in the case of a person to whom subparagraph (ii) of paragraph (d) of that subsection applies; and

- (c) after taking possession thereof, he took all such steps as were reasonably open to him to deliver it into the custody of such person.

(5) A person who is convicted of an offence—

- (a) against paragraph (a) of subsection (2) of this section, is liable on summary conviction to a fine not exceeding two thousand dollars and to imprisonment for a term not exceeding three years or both;

- (b) against paragraph (b) or (c) of subsection (2) of this section, is liable on summary conviction to a fine not exceeding four thousand dollars or to imprisonment for a term not exceeding ten years or both, but the court convicting the person for the offence—

- (i) shall commit him for sentence before The District Court of Western Australia which may pass sentence for the offence in accordance with this section and may make such other orders in relation to the convicted person as might be made by a court of summary jurisdiction convicting a person of an offence;

- (ii) by warrant shall commit the convicted person to gaol until the sittings of

the court by which he is to be sentenced or admit him to bail to appear before that court for sentence.

(6) For the purposes of paragraph (c) of subsection (2) of ~~this section, a person~~ shall, until the contrary is proved, be deemed to be in possession of a drug to which this Part of this Act applies with intent to sell or supply it to another if he is in possession of a prescribed quantity or more of such drug.

(7) If, on the hearing of a complaint for an offence against paragraph (b) or (c) of subsection (2) of this section, the evidence does not establish that the defendant is guilty of that offence but is guilty of some other offence against this Part of this Act, the defendant may be convicted of that other offence and is liable to be punished accordingly. .

Amendment
to s. 94E.
(Penalties.)

9. Section 94E of the principal Act is amended—

(a) by repealing subsection (1) and re-enacting it as follows—

(1) A person who is guilty of an offence against this Part of this Act, not being an offence for which a penalty is otherwise in this Part of this Act expressly provided, is liable on summary conviction for the offence to a penalty of a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding three years or both. ;

(b) by adding subsections as follows—

(1a) Subject to subsection (1b) of this section, the court by which a person is convicted of an offence against this Part of this Act may order anything shown to the satisfaction of the court to relate to the offence, to be forfeited and either destroyed or dealt with in such other manner as the court may order.

(1b) The court shall not order anything to be forfeited under this section, where a person claiming to be the owner of, or otherwise interested in it, applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made. ;

(c) by repealing and re-enacting subsection (3) as follows—

(3) It is an offence for a person to attempt to commit or to incite another to commit an offence against this Part of this Act and the person is liable on summary conviction to the same penalty and forfeiture and to be dealt with as if he had been convicted of the last mentioned offence. ; and

(d) by adding a subsection as follows—

(8) A complaint for an offence against paragraph (b) or (c) of subsection (2) of section ninety-four B of this Act shall be heard by a court of summary jurisdiction constituted by a stipendiary magistrate sitting alone. .

10. Section 94F of the principal Act is amended by deleting the definition "to sell".

Amendment to s. 94F. (Interpretation.)

11. Section 94G of the principal Act is repealed and the following section substituted—

S. 94G repealed and section substituted. (Prohibition.)

94G. (1) If a person—

Offences and penalties.

- (a) manufactures, prepares or uses the drug;
- (b) has in his possession the drug;
- (c) sells or supplies or offers to sell or supply the drug to another;
- (d) has in his possession the drug with intent to sell or supply it to another,

Vide s. 41 Act No. 70 of 1964 as amended.

he is guilty of an offence unless he is authorised by the Poisons Act, 1964 or the regulations made thereunder, so to do.

(2) A person who is convicted of an offence—

(a) against paragraph (a) or (b) of subsection (1) of this section, is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding three years or both;

(b) against paragraph (c) or (d) of subsection (1) of this section, is liable on summary conviction to a fine not exceeding four thousand dollars or to imprisonment for a term not exceeding ten years or both, but the court convicting the person for the offence—

(i) shall commit him for sentence before The District Court of Western Australia which may pass sentence for the offence in accordance with this section and may make such other orders in relation to the convicted person as might be made by a court of summary jurisdiction convicting a person of an offence;

(ii) by warrant shall commit the convicted person to gaol until the sittings of the court by which he is to be sentenced or admit him to bail to appear before that court for sentence.

(3) For the purposes of paragraph (d) of subsection (1) of this section, a person shall, until the contrary is proved, be deemed to be in possession of the drug with intent to sell or supply it to another, if he is in possession of a prescribed quantity or more of the drug.

(4) If, on the hearing of a complaint for an offence against paragraph (c) or (d) of subsection (1) of this section the evidence

does not establish that the defendant is guilty of that offence but is guilty of some other offence against that subsection, the defendant may be convicted of that offence and is liable to be punished accordingly. .

12. Section 94H of the principal Act is repealed and the following section substituted—

S. 94H repealed and section substituted. (Penalties.)

94H. (1) If a Justice is satisfied by information on oath that there is reasonable grounds for suspecting that the drug is in the possession of any person on any premises, the Justice may grant a search warrant authorising any member of the Police Force named in the warrant, at any time or times within one month from the date of the warrant, to enter, if need be by force, the premises named in the warrant, and to search the premises and any persons found therein.

Search warrant and application of s. 94E.

(2) Where a member of the Police Force finds the drug in the possession of any person he may seize the drug and deliver it into the custody of a person authorised by the Minister to receive it.

(3) If any person wilfully delays or obstructs any member of the Police Force in the exercise of his powers under this section, he is guilty of an offence and is liable on summary conviction to a fine not exceeding fifteen hundred dollars or to imprisonment for a term not exceeding three years or both.

(4) Where a person is convicted of an offence against section ninety-four G of this Act, the provisions of subsections (1a), (1b), (3), (4), (5), (6) and (7) of section ninety-four E of this Act apply to the person, the offence, and any proceedings against the person for the offence, with such adaptations as the circumstances require, and for the purposes of giving effect to subsection (7) of that section as so applied, the Governor may make regulations providing for the analysing of any drug or substance by an analyst as defined in the Health Act, 1911.

(5) A complaint for an offence against paragraph (c) or (d) of subsection (1) of section ninety-four G of this Act shall be heard by a court of summary jurisdiction constituted by a stipendiary magistrate sitting alone. .

S. 138A
added.

13. The principal Act is amended by adding after section 138 a section as follows—

Regulations.

138A. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that by this Act, are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may impose penalties not exceeding in any case one hundred dollars, in respect of the contravention of any provision thereof. .