



Western Australia

Criminal Code Act Compilation Act 1913

Compare between:

[06 Dec 2012, 16-n0-02] and [15 Dec 2012, 16-o0-02]

Western Australia

Criminal Code Act Compilation Act 1913

An Act to enact a compilation of the *Criminal Code Act 1902*, with its amendments and portion of the *Secret Commissions Act 1905*, and for other related purposes.

Preamble

Whereas the Legislative Council and Legislative Assembly on 22 December 1911, directed the compilation with its amendments of the *Criminal Code Act 1902*; and a compilation of the said Act and the Acts amending the same was duly made in accordance with the *Statutes Compilation Act* (as amended): And whereas it is desirable to repeal the Acts so compiled: And whereas in order to carry out the purposes of the *Criminal Code Amendment Act 1913*, it is desirable to include in the compilation the further amendments authorised to be so included by that Act, and also the provisions of the *Secret Commissions Act 1905* (except section 19 thereof), and to repeal the last-mentioned Act and the portions of the *Criminal Code Amendment Act 1913*, containing the said further amendments: And whereas the Acts and the parts of an Act which it is desirable to repeal are set out in the Appendix A; and the compiled Act set out in Appendix B is a true compilation of the Acts and parts of Acts so directed to be compiled or authorised to be included in the compilation as aforesaid, and it is desirable to give such compilation the force of law. Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:

1. Short title and commencement

This Act may be cited as the *Criminal Code Act Compilation Act 1913*¹, and shall come into operation on 1 January 1914.

2. Repeal

The Acts and parts of an Act set out in Appendix “A” are hereby repealed, and the compiled Act set forth in Appendix “B” is hereby enacted under the title of the *Criminal Code Act 1913*.

3. Matters and things originated under repealed Acts to enure for the purposes of the compiled Act

- (1) All offices, appointments, regulations, rules, convictions, sentences, judgments, orders, registers, records, certificates, and instruments, and generally all acts of authority, which originated or were operative or subsisting under any enactment repealed by this Act and hereby re-enacted with or without modification, and which are subsisting or in force on or immediately prior to the commencement of the compiled Act shall, subject to that Act, enure for the purposes thereof as fully and effectually as if they had originated under the corresponding provisions of that Act, and accordingly shall, where necessary, be deemed to have so originated.
- (2) All offences committed against and all pending matters and proceedings commenced under any such enactment may be prosecuted, continued, and completed under and subject to the provisions of the compiled Act.

Appendix A

Appendix A
Acts and Parts of Act Repealed.

1 and 2 Edw. VII No. 14 — *The Criminal Code Act 1902*

2 Edw. VII No. 29 — *The Criminal Code Amendment Act 1902*

No. 13 of 1905 — *The Secret Commissions Act 1905*

No. 31 of 1906 — *The Criminal Code Amendment Act 1906*

No. 28 of 1911 — *The Criminal Code Amendment Act 1911*

No. 52 of 1911 — *The Criminal Code Amendment Act 1911*

Sections 2 to 29 (both inclusive) of Act No. 15 of 1913 —
The Criminal Code Amendment Act 1913

Appendix B

An Act to establish a Code of Criminal Law.

Preamble

Whereas it is desirable to declare and consolidate the Criminal Law: Be it enacted and declared by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:

1. Short title

This Act may be cited as the *Criminal Code Act 1913*¹.

2. The Criminal Code established

The provisions contained in the Code of Criminal Law set forth in the Schedule to this Act, and hereinafter called *the Code*, shall be the law of Western Australia with respect to the several matters therein dealt with.

The said Code may be cited as "*The Criminal Code*".

3. Construction of statutes, statutory rules, and other instruments

The following rules shall, unless the context otherwise indicates, apply with respect to the construction of statutes, statutory rules, local laws, by-laws, and other instruments, that is to say —

- (1) When in any statute, statutory rule, local law, by-law, or other instrument, public or private, the term "felony" is used, or reference is made to an offence by the name of felony, it shall be taken that reference is intended to an offence which is a crime under the provisions of the Code:

Appendix B

- (2) When in any statute, statutory rule, local law, by-law, or other instrument, public or private, the term “murder” is used, it shall be taken that reference is intended to 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*:
- (3) When in any statute, statutory rule, local law, by-law, or other instrument, public or private, the term “larceny” is used, it shall be taken that reference is intended to the crime of stealing:
- (4) When in any statute, statutory rule, local law, by-law, or other instrument, public or private, reference is made to any offence by any specific name, it shall be taken that reference is intended to the offence which, under the provisions of the Code, is constituted by the act or omission that would heretofore have constituted the offence referred to:
- (5) When in any statute, statutory rule, local law, by-law, or other instrument, public or private, reference is made to any of the statutory provisions hereby repealed, it shall be taken that reference is intended to the corresponding provisions or substituted provisions of the Code.

[Section 3 amended by No. 14 of 1996 s. 4; No. 57 of 1997 s. 45; No. 29 of 2008 s. 27.]

4. Provisions of Code exclusive, with certain exceptions

No person shall be liable to be tried or punished in Western Australia as for an offence, except under the express provisions of the Code, or some other statute law of Western Australia, or under the express provisions of some statute of the Commonwealth of Australia, or of the United Kingdom which is expressly applied to Western Australia, or which is in force in all parts of His Majesty’s dominions not expressly excepted from its operation, or which authorises the trial and punishment in Western Australia of offenders who have, at places not in

Western Australia, committed offences against the laws of the Commonwealth of Australia or of the United Kingdom.

[Section 4 amended by No. 4 of 2004 s. 58.]

5. Civil remedies and saving

When, by the Code, any act is declared to be lawful, no action can be brought in respect thereof.

Except as aforesaid, the provisions of this Act shall not affect any right of action which any person would have had against another if this Act had not been passed; nor shall the omission from the Code of any penal provision in respect of any act or omission, which before the time of the coming into operation of the Code constituted an actionable wrong, affect any right of action in respect thereof.

[6. Deleted by No. 78 of 1995 s. 22.]

7. Contempt of court

Nothing in this Act or in the Code shall affect the authority of courts of record to punish a person summarily for the offence commonly known as “contempt of court”; but so that a person cannot be so punished, and also punished under the provisions of the Code for the same act or omission.

[8. Deleted by No. 13 of 1984 s. 9.]

Criminal Code

Part I — Introductory

Interpretation: Application: General principles

Chapter I — Interpretation

1. Terms used

(1) In this Code, unless the context otherwise indicates —

The term *aircraft* includes any machine that can derive support in the atmosphere from the reactions of the air;

The term *assault* has the definition provided in section 222;

The term *Attorney General* includes where there is a vacancy in the office of Attorney General the person appointed by the Governor to be Minister for Justice;

The term *bodily harm* means any bodily injury which interferes with health or comfort;

The term *bribe* means any property or benefit of any kind, whether pecuniary or otherwise, sought, offered, promised, agreed upon, given or obtained for the person being or to be bribed or any other person, in respect of any act done or to be done, or any omission made or to be made, or any favour or disfavour shown or to be shown, in relation to the performance or discharge of the functions of any office or employment, or the affairs or business of a principal;

The term *child* means —

- (a) any boy or girl under the age of 18 years; and
- (b) in the absence of positive evidence as to age, any boy or girl apparently under the age of 18 years;

The term *circumstances of racial aggravation* has the meaning given to it in section 80I;

The terms *clerk* and *servant* include any person employed for any purpose as or in the capacity of a clerk or servant, or as a collector of money, although temporarily only, or although employed also by other persons than the person alleged to be his employer, or although employed to pay as well as receive money, and any person employed as or in the capacity of a commission agent for the collection or disbursement of money, or in any similar capacity, although he has no authority from his employer to receive money or other property on his account;

The term *company* means an incorporated company;

The term *conveyance* means a vehicle, vessel or aircraft made, adapted, used, or intended to be used for the carriage of persons or goods;

The term *court of summary jurisdiction* means the Children's Court when constituted so as not to consist of or include a judge of that court, the Magistrates Court, or any other court or any person that another written law says is a court of summary jurisdiction;

The term *criminally responsible* means liable to punishment as for an offence; and the term *criminal responsibility* means liability to punishment as for an offence;

The term *damage*, in relation to animate property, includes injure;

The term *damage* in relation to a record means to deal with the record so that —

- (a) information recorded or stored upon the record is obliterated or rendered illegible or irrecoverable; or
- (b) it can not convey a meaning in a visible or recoverable form;

The term *destroy*, in relation to animate property, means kill;

The term ***District Court*** means The District Court of Western Australia established under the *District Court of Western Australia Act 1969*;

The term ***dwelling*** means any building, structure, tent, vehicle or vessel, or part of any building, structure, tent, vehicle or vessel, that is ordinarily used for human habitation, and it is immaterial that it is from time to time uninhabited;

The term ***explosive substance*** includes a gaseous substance in such a state of compression as to be capable of explosion;

The term ***forge*** in relation to a record means to make, alter or deal with the record so that the whole of it or a material part of it —

- (a) purports to be what in fact it is not; or
- (b) purports to be made by a person who did not make it; or
- (c) purports to be made by authority of a person who did not give that authority;

The term ***grievous bodily harm*** means any bodily injury of such a nature as to endanger, or be likely to endanger life, or to cause, or be likely to cause, permanent injury to health;

The term ***incites*** includes solicits and endeavours to persuade;

The term ***indictment*** means a written charge of an indictable offence presented to the Supreme Court or District Court in order that the accused person be tried by that court;

The term ***liable***, used alone, means liable on conviction upon indictment;

The term ***member of the crew*** in relation to an aircraft means a person having duties or functions on board the aircraft;

The term ***mental illness*** means an underlying pathological infirmity of the mind, whether of short or long duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli;

The term **mental impairment** means intellectual disability, mental illness, brain damage or senility;

The term **money** includes bank notes, bank drafts, cheques, and any other orders, warrants, authorities, or requests for the payment of money;

The term **motor vehicle** has the same meaning as it has in the *Road Traffic Act 1974*;

The term **night** or **night-time** means the interval between 9 p.m. and 6 a.m.;

The term **obtains** includes obtains possession and, in relation to land, includes occupies or acquires the capacity to occupy;

The term **person** and **owner** and other like terms, when used with reference to property, include corporations of all kinds, and any other associations of persons capable of owning property: They also, when so used, include Her Majesty;

The term **person employed in the Public Service** includes members of the defence force and police officers, and persons employed to execute any process of a court of justice, and persons employed by the Commissioner of Railways;

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;

The term **property** includes real and personal property and everything, animate or inanimate, capable of being the subject of ownership;

The term **public officer** means any of the following —

- (a) a police officer;
- (aa) a Minister of the Crown;
- (ab) a Parliamentary Secretary appointed under section 44A of the *Constitution Acts Amendment Act 1899*;
- (ac) a member of either House of Parliament;

- (ad) a person exercising authority under a written law;
- (b) a person authorised under a written law to execute or serve any process of a court or tribunal;
- (c) a public service officer or employee within the meaning of the *Public Sector Management Act 1994*;
- (ca) a person who holds a permit to do high-level security work as defined in the *Court Security and Custodial Services Act 1999*;
- (cb) a person who holds a permit to do high-level security work as defined in the *Prisons Act 1981*;
- (d) a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law;
- (e) any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not;

The term **public place** includes —

- (a) a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or otherwise; and
- (b) a privately owned place to which the public has access with the express or implied approval of, or without interference from, the owner, occupier or person who has the control or management of the place; and
- (c) a school, university or other place of education, other than a part of it to which neither students nor the public usually have access;

The term **railway** includes every kind of way on which vehicles are borne upon a rail or rails, whatever may be the means of propulsion;

The term **receives** includes obtains possession and, in relation to land, includes occupies or acquires the capacity to occupy;

The term **record** means any thing or process —

- (a) upon or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

The terms **registered brand** and **registered mark** mean respectively a brand or mark which is registered under the authority of the laws relating to brands;

The term **serious disease** means a disease of such a nature as to —

- (a) endanger, or be likely to endanger, life; or
- (b) cause, or be likely to cause, permanent injury to health;

The term **ship** includes every kind of vessel used in navigation not propelled by oars;

The term **summarily** has the meaning given by subsection (5);

The term **summary conviction** means conviction otherwise than on indictment;

The term **thing sent by post** includes any letter, newspaper, packet, parcel, or other thing, authorised by law to be transmitted by post, which has been posted or received at a post office for delivery or transmission by post, and which is in course of transmission by post, and any movable receptacle which contains any such thing, and which is in course of transmission by post;

The term **utter** in relation to a forged record means use or deal with the record knowing that the record is forged;

The term **valuable security** includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property;

The term *vehicle* includes any thing made, adapted or intended to be propelled or drawn on wheels, tracks or rails by any means;

The term *vessel* includes a ship, a boat, and every other kind of vessel used in navigation.

- (2) For the purposes of this Code —
- (a) a flight of an aircraft shall be taken to commence —
 - (i) at the time of the closing of the external door of the aircraft last to be closed before the aircraft first moves for the purpose of taking off from any place; or
 - (ii) if subparagraph (i) is not applicable, at the time at which the aircraft first moves for the purpose of taking off from any place;

and

 - (b) a flight of an aircraft shall be taken to end —
 - (i) at the time of the opening of the external door of the aircraft first to be opened after the aircraft comes to rest after its next landing after the commencement of the flight; or
 - (ii) if subparagraph (i) is not applicable, at the time at which the aircraft comes to rest after its next landing after the commencement of the flight,

or, if the aircraft is destroyed, or the flight is abandoned, before either subparagraph (i) or subparagraph (ii) becomes applicable, at the time at which the aircraft is destroyed or the flight is abandoned, as the case may be.
- (3) Nothing in this Code empowering the detention in, or committal to, custody of any person (however the power may be expressed) shall be read as limiting the operation of section 4 of the *Bail Act 1982*.

- (4) In this Code, unless the context otherwise indicates —
- (a) a reference to causing or doing bodily harm to a person includes a reference to causing a person to have a disease which interferes with health or comfort; and
 - (b) a reference to intending to cause or intending to do bodily harm to a person includes a reference to intending to cause a person to have a disease which interferes with health or comfort; and
 - (c) a reference to causing or doing grievous bodily harm to a person includes a reference to causing a person to have a serious disease; and
 - (d) a reference to intending to cause or intending to do grievous bodily harm to a person includes a reference to intending to cause a person to have a serious disease.
- (5) In this Code, unless the context otherwise indicates, a reference to a charge being dealt with summarily is a reference to the charge being dealt with otherwise than on an indictment.
- (6) Nothing in this Code affects the operation of the *Children's Court of Western Australia Act 1988* and in particular the jurisdiction of the Children's Court to deal with indictable offences.

[Section 1 amended by No. 55 of 1953 s. 2; No. 53 of 1964 s. 2; No. 21 of 1972 s. 3; No. 38 of 1977 s. 3; No. 87 of 1982 s. 30; No. 119 of 1985 s. 4; No. 106 of 1987 s. 4; No. 70 of 1988 s. 4, 19(2) and 31; No. 101 of 1990 s. 4; No. 37 of 1991 s. 16; No. 14 of 1992 s. 4(1); No. 51 of 1992 s. 3; No. 32 of 1994 s. 10; No. 14 of 1996 s. 4; No. 34 of 1996 s. 4; No. 36 of 1996 s. 4; No. 69 of 1996 s. 6; No. 43 of 1999 s. 20; No. 47 of 1999 s. 10; No. 4 of 2004 s. 27; No. 59 of 2004 s. 80; No. 70 of 2004 s. 4; No. 80 of 2004 s. 4; No. 2 of 2008 s. 4.]

2. Term used: offence

An act or omission which renders the person doing the act or making the omission liable to punishment is called an offence.

3. Indictable offences, general provisions as to

- (1) This section applies to offences in this Code and in any other written law.
- (2) An indictable offence is triable only on indictment, unless this Code or another written law expressly provides otherwise.
- (3) A prosecution for an indictable offence, whether or not it may be tried summarily, may be commenced at any time, unless this Code or another written law expressly provides otherwise.

[(4) deleted]

- (5) If a person is convicted by a court of summary jurisdiction of an indictable offence, the conviction is to be regarded as being a conviction of a simple offence only, unless the person is convicted of the offence by the Children's Court under section 19B(4) of the *Children's Court of Western Australia Act 1988* or another written law provides otherwise.
- (6) A person may be convicted and punished for an offence on indictment notwithstanding that the person might have been convicted of and punished for that offence summarily.

[Section 3 inserted by No. 4 of 2004 s. 28; amended by No. 59 of 2004 s. 80; No. 70 of 2004 s. 36(1); No. 84 of 2004 s. 28.]

4. Term used: attempts to commit offences

When a person, intending to commit an offence, begins to put his intention into execution by doing an act that is more than merely preparatory to the commission of the offence but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.

It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances

independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

It is immaterial that by reason of circumstances not known to the offender, it is impossible in fact to commit the offence.

The same facts may constitute one offence and an attempt to commit another offence.

[Section 4 amended by No. 106 of 1987 s. 5.]

5. Summary conviction penalty, meaning and effect of

- (1) This section applies if —
 - (a) a provision of this Code, or another written law, provides a summary conviction penalty for an indictable offence; and
 - (b) a person (the **accused**) is charged before a court of summary jurisdiction (the **court**) with committing the indictable offence in circumstances where the summary conviction penalty applies to the offence (the **charge**).
- (2) Despite section 3(2), the court is to try the charge summarily unless —
 - (a) on an application made by the prosecutor or the accused before the accused pleads to the charge, the court decides under subsection (3) that the charge is to be tried on indictment; or
 - (b) this Code or another written law expressly provides to the contrary.
- (3) The court may decide the charge is to be tried on indictment if and only if it considers —
 - (a) that the circumstances in which the offence was allegedly committed are so serious that, if the accused were convicted of the offence, the court would not be able to adequately punish the accused; or

- (b) that the charge forms part of a course of conduct during which other offences were allegedly committed by the accused and the accused is to be tried on indictment for one or more of those other offences; or
 - (c) that a co-accused of the accused is to be tried on indictment; or
 - (d) that the charge forms part of a course of conduct during which other offences were allegedly committed by the accused and others and the accused or one of the others is to be tried on indictment for one or more of those other offences; or
 - (e) that the interests of justice require that the charge be dealt with on indictment.
- (4) For the purposes of making a decision under subsection (3) the court —
- (a) may require the prosecutor to provide any information the court needs and may hear submissions from both the prosecutor and the accused; and
 - (b) may adjourn the proceedings.
- (5) If under subsection (3) the court decides that the charge is to be tried on indictment the court shall —
- (a) give reasons for the decision; and
 - (b) deal with the accused in accordance with section 41 of the *Criminal Procedure Act 2004*.
- (6) A decision cannot be made under subsection (3) after the accused has pleaded to the charge.
- (7) A decision made under subsection (3) is final and cannot be appealed.
- (8) If the court convicts the accused of the offence charged (whether after a plea of guilty or otherwise), the accused is liable to the summary conviction penalty provided for the offence, unless the court commits the accused for sentence.

- (9) If the court —
- (a) convicts the accused of the offence charged after a plea of guilty or otherwise; and
 - (b) considers that any sentence the court could impose on the accused for the offence would not be commensurate with the seriousness of the offence,

the court may commit the accused to a court of competent jurisdiction for sentence.

- (10) An accused who is committed for sentence under subsection (9) is liable to the penalty with which the offence is punishable on indictment.
- (11) For the purposes of this section and of any summary trial of the charge, the court must be constituted by a magistrate alone.

[Section 5 inserted by No. 4 of 2004 s. 29; amended by No. 59 of 2004 s. 80; No. 84 of 2004 s. 28 and 82.]

6. Terms used: carnal knowledge, carnal connection

When the term *carnal knowledge* or the term *carnal connection* is used in defining an offence, it is implied that the offence, so far as regards that element of it, is complete upon penetration.

Penetration includes penetration of the anus of a female or male person.

[Section 6 amended by No. 32 of 1989 s. 4.]

Chapter II — Parties to offence

7. Principal offenders

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say —

- (a) Every person who actually does the act or makes the omission which constitutes the offence;
- (b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) Every person who aids another person in committing the offence;
- (d) Any person who counsels or procures any other person to commit the offence.

In the fourth case he may be charged either with himself committing the offence or with counselling or procuring its commission.

A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment as if he had himself done the act or made the omission; and he may be charged with himself doing the act or making the omission.

8. Offences committed in prosecution of common purpose

- (1) When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.
- (2) A person is not deemed under subsection (1) to have committed the offence if, before the commission of the offence, the person —

- (a) withdrew from the prosecution of the unlawful purpose;
and
- (b) by words or conduct, communicated the withdrawal to
each other person with whom the common intention to
prosecute the unlawful purpose was formed; and
- (c) having so withdrawn, took all reasonable steps to
prevent the commission of the offence.

[Section 8 amended by No. 89 of 1986 s. 4.]

9. Counselling offences, mode of execution immaterial

When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled, or in a different way, provided in either case that the acts constituting the offence actually committed are a probable consequence of carrying out the counsel.

In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.

10. Term used: accessory after the fact

- (1) A person who, knowing that another person has committed an offence, receives or assists that other person in order to enable that other person to escape punishment is said to become an accessory after the fact to the offence.
- (2) A person does not become an accessory after the fact to an offence committed by the person's spouse by receiving or assisting that spouse.

[Section 10 inserted by No. 89 of 1986 s. 5.]

Chapter IIA — Alternative offences

[Heading inserted by No. 70 of 2004 s. 36(2).]

10A. Conviction of alternative offence, when possible

- (1) A person charged with an offence cannot be convicted by the court dealing with the charge of any other offence instead of that offence unless —
 - (a) the accused is charged with the other offence as an alternative to that offence; or
 - (b) this Chapter provides otherwise.
- (2) This Chapter does not authorise the conviction of a person of an offence if the prosecution for the offence was not commenced within the time (if any) limited by law for commencing a prosecution for the offence.

[Section 10A inserted by No. 70 of 2004 s. 36(2).]

10B. Alternative offence, meaning and effect of

- (1) This section applies if a provision of this Code, or of another written law, that creates an offence (*offence A*) provides one or more alternative offences for offence A.
- (2) If a person is charged with an offence (*offence A*), whether or not on indictment, the person, instead of being convicted as charged, may be convicted of any alternative offence that is provided for offence A.
- (3) This section does not prevent —
 - (a) this Code, or another written law, from providing a simple offence as an alternative offence for an indictable offence; or
 - (b) a person charged in an indictment with an indictable offence from being found guilty by a jury, and convicted and punished by a superior court, for a simple offence that is an alternative offence for the indictable offence.

- (4) This section does not limit the operation of the other sections in this Chapter.

[Section 10B inserted by No. 70 of 2004 s. 36(2).]

10C. Conviction of alternative offence, consequences of

- (1) If a person is charged with an offence and, under this Code, is convicted by a court of some other offence, the person is liable to the penalty to which the person would be liable if the person had been charged before that court with the other offence.
- (2) If a person charged in an indictment with an indictable offence is convicted of a simple offence that is an alternative offence for the indictable offence, then, for the purposes of any appeal against the conviction, the person is to be taken to have been convicted of the simple offence on indictment.

[Section 10C inserted by No. 70 of 2004 s. 36(2).]

10D. Charge of offence, alternative convictions of attempt etc.

If a person is charged with committing an offence (the *principal offence*), the person, instead of being convicted as charged, may be convicted of —

- (a) attempting to commit; or
- (b) inciting another person to commit; or
- (c) becoming an accessory after the fact to,

the principal offence or any alternative offence of which a person might be convicted instead of the principal offence.

[Section 10D inserted by No. 70 of 2004 s. 36(2).]

10E. Charge of attempt, alternative convictions on

If a person is charged with attempting to commit an offence (the *principal offence*) other than an offence under section 283, the person, instead of being convicted as charged, may be convicted of —

- (a) committing the principal offence; or

- (b) committing, or attempting to commit, any alternative offence of which any person charged with the principal offence might be convicted instead of the principal offence,

but the person shall not be liable to a punishment greater than the greatest punishment to which the person would have been liable if convicted of attempting to commit the principal offence.

[Section 10E inserted by No. 70 of 2004 s. 36(2).]

10F. Charge of conspiracy, alternative convictions on

If a person is charged with conspiring to commit an offence (the *principal offence*), the person, instead of being convicted as charged, may be convicted of —

- (a) committing the principal offence; or
- (b) attempting to commit the principal offence; or
- (c) inciting another person to commit the principal offence,

but the person shall not be liable to a punishment greater than the greatest punishment to which the person would have been liable if convicted of conspiring to commit the principal offence.

[Section 10F inserted by No. 70 of 2004 s. 36(2).]

10G. Charge of procuring, alternative convictions on

- (1) If a person is charged with procuring the commission of an offence (the *principal offence*), the person, instead of being convicted as charged, may be convicted of —
 - (a) attempting to procure the commission of the principal offence; or
 - (b) procuring the commission of, or attempting to procure the commission of, any offence of which any person charged with the principal offence might be convicted instead of the principal offence.

- (2) If a person (the *accused*) is charged with procuring another person to do an act or make an omission of such a nature that if the accused had done the act or made the omission he or she would be guilty of an offence (the *principal offence*), the accused, instead of being convicted as charged, may be convicted of procuring the other person to do any other act or make any other omission that is of such a nature that if the accused had done the act or made the omission he or she would be guilty of an offence of which any person charged with the principal offence might be convicted instead of the principal offence.

[Section 10G inserted by No. 70 of 2004 s. 36(2).]

10H. Charge of attempting to procure, alternative convictions on

- (1) If a person is charged with attempting to procure the commission of an offence (the *principal offence*), the person, instead of being convicted as charged, may be convicted of attempting to procure the commission of any other offence of which any person charged with the principal offence might be convicted instead of the principal offence.
- (2) If a person (the *accused*) is charged with attempting to procure another person to do an act or make an omission of such a nature that if the act or omission had occurred an offence (the *principal offence*) would have been committed, the accused, instead of being convicted as charged, may be convicted of attempting to procure the other person to do any other act or make any other omission that is of such a nature that if the act or omission had occurred an offence would have been committed of such a nature that any person charged with the principal offence might be convicted of it instead of the principal offence.

[Section 10H inserted by No. 70 of 2004 s. 36(2).]

10I. Joined charges of receiving, verdicts on

If 2 or more persons are charged jointly with an offence of which the receiving of any property is an element and the

evidence establishes that any one or more of them separately received any part or parts of the property under such circumstances as to constitute an offence, one or more of the accused persons may be convicted of the offence or offences so established by the evidence.

[Section 10I inserted by No. 70 of 2004 s. 36(2).]

Chapter III — Application of criminal law

11. Effect of changes in law

A person cannot be punished for doing or omitting to do an act, unless the act or omission constituted an offence under the law in force when it occurred, nor unless doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when he is charged with the offence.

[Section 11 amended by No. 78 of 1995 s. 26.]

12. Territorial application of the criminal law

- (1) An offence under this Code or any other law of Western Australia is committed if —
 - (a) all elements necessary to constitute the offence exist; and
 - (b) at least one of the acts, omissions, events, circumstances or states of affairs that make up those elements occurs in Western Australia.
- (2) Without limiting the general operation of subsection (1), that subsection applies even if the only thing that occurs in Western Australia is an event, circumstance or state of affairs caused by an act or omission that occurs outside Western Australia.

- (3) This section does not apply to an offence if —
- (a) the law under which the offence is created explicitly or by necessary implication makes the place of commission an element of the offence; or
 - (b) the law under which the offence is created is a law of extraterritorial operation and explicitly or by necessary implication excludes the need for a territorial nexus between Western Australia and an element of the offence.

[Section 12 inserted by No. 36 of 1996 s. 5(1) ³.]

13. Offences aided, counselled or procured by persons out of Western Australia

When an offence under this Code or any other law of Western Australia is committed, section 7 of this Code applies to a person even if all the acts or omissions of the person in —

- (a) enabling or aiding another person to commit the offence; or
- (b) aiding another person in committing the offence; or
- (c) counselling or procuring another person to commit the offence,

occurred outside Western Australia.

[Section 13 inserted by No. 36 of 1996 s. 5(1) ³.]

14. Offences procured in Western Australia to be committed out of Western Australia

Any person who, while in Western Australia, procures another to do an act or make an omission at a place not in Western Australia of such a nature that, if he had himself done the act or made the omission in Western Australia, he would have been guilty of an offence, and that, if he had himself done the act or made the omission, he would have been guilty of an offence under the laws in force in the place where the act or omission is

done or made, is guilty of an offence of the same kind, and is liable to the same punishment, as if the act had been done or the omission had been made in Western Australia, but so that the punishment does not exceed that which he would have incurred under the laws in force in the place where the act was done or the omission was made, if he had himself done the act or made the omission.

[Section 14 amended by No. 36 of 1996 s. 6(1) ⁴.]

[14A. Deleted by No. 101 of 1990 s. 5.]

15. Defence force not exempt from Code

Members of the defence force are subject to the special laws relating to that force, but are not exempt from the provisions of this Code.

[Section 15 amended by No. 101 of 1990 s. 6.]

[16. Deleted by No. 78 of 1995 s. 26.]

17. Former conviction or acquittal a defence

- (1) It is a defence to a charge of any offence to show that the accused person has already been tried, and convicted or acquitted upon an indictment or prosecution notice on which he might have been convicted of the offence with which he is charged, or has already been convicted or acquitted of an offence of which he might be convicted upon the indictment or prosecution notice on which he is charged.
- (2) Subsection (1) is subject to the *Criminal Appeals Act 2004* section 46M(4)(b) and (c).

[Section 17 amended by No. 101 of 1990 s. 7; No. 84 of 2004 s. 80; No. 9 of 2012 s. 6.]

[Chapter IV (s. 17A-17D, 18, 19, 19A, 19B, 20, 21, 21A) deleted by No. 78 of 1995 s. 26.]

Chapter V — Criminal responsibility

22. Ignorance of law, honest claim of right

Ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by an offender is expressly declared to be an element of the offence.

But a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by him with respect to any property in the exercise of an honest claim of right and without intention to defraud.

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.

[Section 23 inserted by No. 29 of 2008 s. 4.]

23A. Unwilled acts and omissions

- (1) This section is subject to the provisions in Chapter XXVII and section 444A 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.

[Section 23A inserted by No. 29 of 2008 s. 4; amended by No. 43 of 2009 s. 6.]

23B. Accident

- (1) This section is subject to the provisions in Chapter XXVII and section 444A 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.

[Section 23B inserted by No. 29 of 2008 s. 4; amended by No. 43 of 2009 s. 7.]

24. Mistake of fact

A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

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.

[Section 25 inserted by No. 29 of 2008 s. 5.]

26. Presumption of sanity

Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

27. Insanity

- (1) A person is not criminally responsible for an act or omission on account of unsoundness of mind if at the time of doing the act or making the omission he is in such a state of mental impairment as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission.
- (2) A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of subsection (1), is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.

[Section 27 amended by No. 69 of 1996 s. 7; No. 44 of 2009 s. 9.]

28. Intoxication

- (1) Section 27 applies to the case of a person whose mind is disordered by intoxication or stupefaction caused without intention on his part by drugs or intoxicating liquor, or by any other means.
- (2) Section 27 does not apply to the case of a person who has intentionally caused himself to become intoxicated or stupefied, whether in order to afford excuse for the commission of an offence or not.
- (3) When an intention to cause a specific result is an element of an offence, intoxication whether complete or partial, and whether intentional or unintentional, may be regarded for the purpose of ascertaining whether such an intention in fact existed.

[Section 28 amended by No. 44 of 2009 s. 10.]

29. Immature age

A person under the age of 10 years is not criminally responsible for any act or omission.

A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

[Section 29 amended by No. 74 of 1985 s. 4; No. 49 of 1988 s. 44.]

30. Judicial officers

Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority, or although he is bound to do the act omitted to be done.

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.

[Section 31 inserted by No. 29 of 2008 s. 6.]

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.

[Section 32 inserted by No. 29 of 2008 s. 6.]

[33. Deleted by No. 106 of 1987 s. 6.]

34. Offences by partners and members of companies with respect to partnership or corporate property

A person who, being a member of a co-partnership, corporation, or joint stock company, does or omits to do any act with respect to the property of the co-partnership, corporation, or company, which, if he were not a member of the co-partnership, corporation, or company, would constitute an offence, is criminally responsible to the same extent as if he were not such member.

[35. Deleted by No. 28 of 2003 s. 118(3).]

36. Application of Chapter V

The provisions of this Chapter apply to all persons charged with any offence against the statute law of Western Australia.

Part II — Offences against public order

[Chapter VI (s. 37-43) deleted by No. 70 of 1988 s. 8(1).]

Chapter VII — Sedition

44. Term used: seditious intention

An intention to effect any of the following purposes, that is to say —

- (a) To bring the Sovereign into hatred or contempt;
- (b) To excite disaffection against the Sovereign, or the Government or Constitution of the United Kingdom, or of the Commonwealth of Australia, or of Western Australia as by law established, or against either House of Parliament of the United Kingdom, of the Commonwealth of Australia, or of Western Australia, or against the administration of justice;
- (c) To excite Her Majesty's subjects to attempt to procure the alteration of any matter in the State as by law established otherwise than by lawful means;
- (d) To raise discontent or disaffection amongst Her Majesty's subjects;
- (e) To promote feelings of ill-will and enmity between different classes of Her Majesty's subjects;

is a seditious intention, unless it is justified by section 45.

[Section 44 amended by No. 44 of 2009 s. 11.]

45. Innocent intentions

It is lawful for any person —

- (a) To endeavour in good faith to show that the Sovereign has been mistaken in any of Her counsels; or

- (b) To point out in good faith errors or defects in the Government or Constitution of the United Kingdom, or of the Commonwealth of Australia, or of Western Australia as by law established, or in legislation, or in the administration of justice, with a view to the reformation of such errors or defects; or
- (c) To excite in good faith Her Majesty's subjects to attempt to procure by lawful means the alteration of any matter in the State as by law established; or
- (d) To point out in good faith in order to their removal any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of Her Majesty's subjects.

46. Terms used: seditious enterprise, seditious words, seditious writing

A seditious enterprise is an enterprise which is undertaken in order to the carrying out of a seditious intention.

Seditious words are words expressive of a seditious intention.

The term *seditious writing* includes anything intended to be read, and any sign or visible representation, which is expressive of a seditious intention.

47. Unlawful oaths to kill a person

Any person who —

- (1) Administers or is present at and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to kill any person; or
- (2) Takes any such oath or engagement, not being compelled to do so; or

- (3) Attempts to induce any person to take any such oath or engagement;

is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 47 amended by No. 118 of 1981 s. 4; No. 52 of 1984 s. 10; No. 51 of 1992 s. 16(2); No. 29 of 2008 s. 16(1).]

48. Other unlawful oaths to commit offences

Any person who —

- (1) Administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath purporting to bind the person who takes it to act in any of the ways following, that is to say —
- (a) To engage in any seditious enterprise;
 - (b) To commit any indictable offence other than one entailing the killing of a person;
 - (c) To disturb the public peace;
 - (d) To be of any association, society, or confederacy formed for the purpose of doing any such act as aforesaid;
 - (e) To obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;
 - (f) Not to inform or give evidence against any associate, confederate, or other person;
 - (g) Not to reveal or discover any unlawful association, society, or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement;

or

- (2) Takes any such oath or engagement, not being compelled to do so; or
- (3) Attempts to induce any person to take any such oath or engagement;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 48 amended by No. 52 of 1984 s. 11; No. 70 of 1988 s. 8(2); No. 51 of 1992 s. 16(2); No. 29 of 2008 s. 16(2).]

49. Compulsion, how far a defence

A person who takes any such oath or engagement as is mentioned in sections 47 and 48 cannot set up as a defence that he was compelled to do so, unless within 14 days after taking it, or, if he is prevented by actual force or sickness, within 14 days after the termination of such prevention, he declares by information on oath before some member of the Executive Council or justice of the peace, or, if he is on actual service in Her Majesty's forces by sea or land, either by such information or by information to his commanding officer, the whole of what he knows concerning the matter, including the person or persons by whom and in whose presence, and the place where, and the time when, the oath or engagement was administered or taken.

[Section 49 amended by No. 44 of 2009 s. 12.]

[50. Deleted by No. 70 of 1988 s. 8(1).]

51. Unlawful military activities

- (1) Any person who —
 - (a) In contravention of the directions of a proclamation by the Governor in Council in that behalf trains or drills any other person to the use of arms or the practice of military exercise, movements, or evolutions; or

- (b) Is present at any meeting or assembly of persons held in contravention of the directions of any such proclamation, for the purpose of there training or drilling any other person to the use of arms or the practice of military exercise, movements, or evolutions;

is guilty of a crime, and is liable to imprisonment for 7 years.

- (2) Any person who, at any meeting or assembly held in contravention of the directions of a proclamation of the Governor in Council in that behalf, is trained or drilled to the use of arms or the practice of military exercise, movements, or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, is guilty of a crime, and is liable to imprisonment for 2 years.
- (3) A prosecution for any of the offences defined in this section must be begun within 6 months after the offence is committed.

[Section 51 amended by No. 119 of 1985 s. 30; No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

52. Sedition

Any person who —

- (1) Conspires with any person to carry into execution a seditious enterprise; or
- (2) Advisedly publishes any seditious words or writing;

is guilty of a crime, and is liable to imprisonment for 3 years.

A prosecution for any of the offences defined in this section must be begun within 6 months after the offence is committed.

[Section 52 amended by No. 70 of 1988 s. 31; No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1); No. 84 of 2004 s. 27(1).]

[53. Deleted by No. 44 of 2005 s. 47.]

Chapter VIII — Offences against the executive and legislative power

54. Interference with Governor or Ministers

Any person who —

- (1) Does any act calculated to interfere with the free exercise by the Governor of the duties or authority of his office; or
- (2) Does any act calculated to interfere with the free exercise by a member of the Executive Council of the duties or authority of his office as a member of the Executive Council or as a Minister of State;

is guilty of a crime, and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 54 amended by No. 70 of 1988 s. 9; No. 82 of 1994 s. 12; No. 70 of 2004 s. 34(1) and 35(2).]

55. Interference with the legislature

Any person who, by force or fraud, interferes or attempts to interfere with the free exercise by either House of Parliament of their authority, or with the free exercise by any member of either House of his duties or authority as such member or as a member of a committee of either House, or of a joint committee of both Houses, is guilty of a crime, and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 55 amended by No. 70 of 1988 s. 9; No. 82 of 1994 s. 12; No. 70 of 2004 s. 34(1) and 35(2).]

56. Disturbing Parliament

Any person who —

- (1) Does any act calculated to disturb either House of Parliament while in session; or
- (2) Commits any disorderly conduct in the immediate view and presence of either House of Parliament while in session, calculated and tending to interrupt its proceedings or to impair the respect due to its authority;

is guilty of a crime, and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 56 amended by No. 70 of 1988 s. 10; No. 70 of 2004 s. 34(1) and 35(1).]

57. False evidence before Parliament

Any person who in the course of an examination before either House of Parliament, or before a committee of either House, or before a joint committee of both Houses, knowingly gives a false answer to any lawful and relevant question put to him in the course of the examination, is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 57 amended by No. 119 of 1985 s. 30; No. 70 of 1988 s. 31; No. 51 of 1992 s. 16(2).]

58. Threatening witness before Parliament

Any person who —

- (1) Threatens to do any injury, or cause any detriment of any kind to another with intent to prevent or hinder that other person from giving evidence before either House of Parliament, or before a committee of either House, or before a joint committee of both Houses; or

- (2) Threatens, or in any way punishes, damnifies, or injures, or attempts to punish, damnify, or injure any other person for having given such evidence, or on account of the evidence which he has given, unless such evidence was given in bad faith;

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

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 58 amended by No. 70 of 1988 s. 11; No. 51 of 1992 s. 16(2); No. 82 of 1994 s. 12; No. 70 of 2004 s. 35(2).]

59. Witnesses refusing to attend or give evidence before Parliament

Any person who —

- (1) Being duly summoned to attend as a witness or to produce any book, document, or other thing, in his possession, before either House of Parliament, or before a committee of either House, or before a joint committee of both Houses, authorised to summon witnesses or to call for the production of such things, refuses or neglects without lawful excuse to attend pursuant to the summons or to produce anything which he is summoned to produce, and which is relevant and proper to be produced; or
- (2) Being present before either House of Parliament, or before a committee of either House, or before a joint committee of both Houses, authorised to summon witnesses, refuses to answer any lawful and relevant question;

is guilty of a simple offence, and is liable to imprisonment for 2 years and a fine of \$24 000.

[Section 59 amended by No. 70 of 1988 s. 12; No. 82 of 1994 s. 12; No. 70 of 2004 s. 35(4).]

60. Member of Parliament receiving bribes

Any person who, being a member of either House of Parliament, asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind, whether pecuniary or otherwise, for himself or any other person upon any understanding that his vote, opinion, judgment, or action, in the House of which he is a member, or in any committee thereof, or in any joint committee of both Houses, shall be influenced thereby, or shall be given in any particular manner or in favour of any particular side of any question or matter, is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 60 amended by No. 119 of 1985 s. 30; No. 70 of 1988 s. 13; No. 51 of 1992 s. 16(2).]

61. Bribery of member of Parliament

Any person who, —

- (1) In order to influence a member of either House of Parliament in his vote, opinion, judgment, or action, upon any question or matter arising in the House of which he is a member or in any committee thereof, or in any joint committee of both Houses, or in order to induce him to absent himself from the House or from any such committee, gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind, whether pecuniary or otherwise, to, upon, or for such member, or to, upon, or for, any other person; or
- (2) Attempts, directly or indirectly, by fraud, or by threats or intimidation of any kind, to influence a member of either House of Parliament in his vote, opinion, judgment, or action, upon any such question or matter, or to induce him to so absent himself;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 61 amended by No. 119 of 1985 s. 30; No. 70 of 1988 s. 14; No. 51 of 1992 s. 16(2).]

Chapter IX — Unlawful assemblies: Breaches of the peace

62. Terms used: unlawful assembly, riot, riotously assembled

- (1) When 3 or more persons, with intent to carry out some common purpose, assemble in such a manner, or, being assembled, conduct themselves in such a manner as to cause persons in the neighbourhood to fear, on reasonable grounds, that the persons so assembled will tumultuously disturb the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace, they are an unlawful assembly.
- (2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.
- (3) An assembly of 3 or more persons who assemble for the purpose of protecting the house of any one of them against persons threatening to enter the house in order to commit an indictable offence therein is not an unlawful assembly.
- (4) When an unlawful assembly has begun to act in so tumultuous a manner as to disturb the peace, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

[Section 62 amended by No. 4 of 2004 s. 7.]

63. Taking part in an unlawful assembly

Any person who takes part in an unlawful assembly is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

[Section 63 inserted by No. 70 of 2004 s. 5.]

64. Unlawful assembly may be ordered to disperse

- (1) If 3 or more persons form an unlawful assembly, a justice or a police officer may orally order them to disperse within a time that is reasonable and that is stated in the order.
- (2) Any person who does not disperse in accordance with an order given under subsection (1) is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 64 inserted by No. 70 of 2004 s. 5.]

65. Taking part in a riot

Any person who takes part in a riot is guilty of a crime and is liable to imprisonment for 5 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 65 inserted by No. 70 of 2004 s. 5.]

66. Rioters may be ordered to disperse

- (1) If 12 or more persons are riotously assembled, a justice or a police officer may orally order them to disperse within an hour and shall state so in the order.
- (2) Any person who does not disperse in accordance with an order given under subsection (1) is guilty of a crime.
- (3) Any person who forcibly prevents a person from giving an order under subsection (1) is guilty of a crime.
- (4) If 12 or more persons are riotously assembled, each person who continues to be so assembled knowing that a person has been forcibly prevented from ordering them to disperse is guilty of a crime.

- (5) A person who is guilty of a crime under this section is liable to imprisonment for 10 years.

[Section 66 inserted by No. 70 of 2004 s. 5.]

67. Rioters causing damage

- (1) If as a result of persons being riotously assembled any property is unlawfully destroyed or damaged, each person among those so assembled is guilty of a crime and is liable to imprisonment for 10 years.
- (2) If the property is destroyed or damaged by fire, each person is liable to imprisonment for 14 years.

[Section 67 inserted by No. 70 of 2004 s. 5.]

68A. Provisions about lawful excuses under s. 68B, 68C, 68D and 68E

- (1) In a prosecution for an offence under section 68B, 68C, 68D or 68E, the accused has the onus of proving that the accused had a lawful excuse.
- (2) In sections 68B, 68C and 68D, being armed for defence is not a lawful excuse unless the person —
- (a) has reasonable grounds to apprehend that circumstances necessitating defence may arise; and
 - (b) is armed only for defence; and
 - (c) is armed only —
 - (i) with a weapon or instrument the sole purpose of which is to spray oleoresin capsicum; or
 - (ii) with a briefcase or suitcase that is commercially designed and made to discharge an electric current so as to deter the theft of the case.
- (3) In sections 68B, 68C and 68D, lawful excuse includes the following —
- (a) being a police officer acting in the course of duty;

- (b) being a security officer, as defined in the *Public Transport Authority Act 2003* section 3, acting in the course of duty;
- (c) being a prison officer, as defined in the *Prisons Act 1981* section 3(1) and (2), acting in the course of duty;
- (d) being a person authorised to exercise a power set out in Division 1, 2 or 3 of Schedule 2 to the *Court Security and Custodial Services Act 1999*, or a power set out in Schedule 3 to that Act, acting in the course of duty;
- (e) being the holder of, and engaged in activities authorised by, a security officer's licence issued under the *Security and Related Activities (Control) Act 1996* while armed in accordance with Part 3 Division 3 of that Act.

[Section 68A inserted by No. 34 of 2009 s. 4.]

68B. Being armed in or near place of public entertainment

- (1) In this section —

lawful excuse has a meaning affected by section 68A;

place of public entertainment means —

- (a) a place where the public is present and where entertainment of any kind is about to be, is being, or has just been provided to the public, whether on payment or not; or
- (b) licensed premises, as defined by the *Liquor Control Act 1988* section 3(1);

prescribed place means —

- (a) a place of public entertainment; or
- (b) a public place within 50 metres of a place of public entertainment.

- (2) A person who, without lawful excuse, is armed with any dangerous or offensive weapon or instrument in, or with intent to enter, a prescribed place is guilty of a crime and is liable to imprisonment for 5 years.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

[Section 68B inserted by No. 34 of 2009 s. 4.]

68C. Being armed in public in company

(1) In this section —

lawful excuse has a meaning affected by section 68A.

(2) A person who, without lawful excuse, is armed with any dangerous or offensive weapon or instrument in a public place when in company with 2 or more other persons is guilty of a crime and is liable to imprisonment for 5 years.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

[Section 68C inserted by No. 34 of 2009 s. 4.]

68D. Having ready access to both weapons and cash

(1) In this section —

lawful excuse has a meaning affected by section 68A;

prescribed amount means the amount prescribed for the purposes of the *Firearms Act 1973* section 19(1ab)(a)(ii) ⁵.

(2) A person who, without lawful excuse, has ready access simultaneously to both —

- (a) a dangerous or offensive weapon or instrument; and
- (b) cash equal to or more than the prescribed amount,

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

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

[Section 68D inserted by No. 34 of 2009 s. 4.]

68E. Having ready access to both weapons and illegal drugs

(1) In this section, being armed for defence is not a lawful excuse.

- (2) A person who, without lawful excuse, has ready access simultaneously to both —
- (a) a dangerous or offensive weapon or instrument; and
 - (b) a prohibited drug or a prohibited plant, as those terms are defined by the *Misuse of Drugs Act 1981* section 3(1), that, under section 6 or 7 of that Act, the person is not authorised to possess,

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

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

[Section 68E inserted by No. 34 of 2009 s. 4.]

68. Being armed in a way that may cause fear

- (1) A person who is or pretends to be armed with any dangerous or offensive weapon or instrument in circumstances that are likely to cause fear to any person is guilty of a crime and is liable to imprisonment for 7 years.
- Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.
- (2) It is a defence to a charge under subsection (1) to prove that the accused person had lawful authority to be so armed in such circumstances.
- (3) A court that convicts a person of an offence under subsection (1) may make an order for the forfeiture to the Crown, or the destruction or disposal, of the thing in respect of which the offence was committed.

[Section 68 inserted by No. 4 of 2004 s. 8; amended by No. 70 of 2004 s. 35(3).]

69. Forcibly entering land

- (1) Any person who, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, enters on land which is in the actual and peaceable possession of another is guilty of a crime, and is liable to imprisonment for 2 years.

Summary conviction penalty: \$6 000.

- (2) It is immaterial whether he is entitled to enter on the land or not.

[Section 69 amended by No. 4 of 2004 s. 9.]

70. Forcibly keeping possession of land

Any person who, being in actual possession of land without colour of right holds possession of it in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person entitled by law to the possession of the land, is guilty of a crime, and is liable to imprisonment for 2 years.

Summary conviction penalty: \$6 000.

[Section 70 amended by No. 4 of 2004 s. 10.]

70A. Trespass

- (1) In this section —

person in authority, in relation to a place, means —

- (a) in the case of a place owned by the Crown, or an agency or instrumentality of the Crown — the occupier or person having control or management of the place or a police officer; or
- (b) in any other case —
- (i) the owner, occupier or person having control or management of the place; or

- (ii) a police officer acting on a request by a person referred to in subparagraph (i);

trespass on a place, means —

- (a) to enter or be in the place without the consent or licence of the owner, occupier or person having control or management of the place; or
- (b) to remain in the place after being requested by a person in authority to leave the place; or
- (c) to remain in a part of the place after being requested by a person in authority to leave that part of the place.
- (2) A person who, without lawful excuse, trespasses on a place is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- (3) In a prosecution for an offence under subsection (2), the accused has the onus of proving that the accused had a lawful excuse.

[Section 70A inserted by No. 70 of 2004 s. 6; amended by No. 59 of 2006 s. 17; No. 42 of 2009 s. 14.]

70B. Trespassers may be asked for name and address

- (1) In this section —
- enclosed land** means land that is visibly enclosed, whether by means of artificial structures alone or a combination of artificial structures and natural features, but does not include a road on the land that is open to or used by the public;
- owner**, in relation to land, includes the occupier and a person who has the control or management of the land.
- (2) If the owner of any enclosed land finds a person on the land who has entered the land without the owner's consent, the owner may request the person to give the person's name and address to the owner.
- (3) A person who does not comply with such a request is guilty of an offence and is liable to a fine of \$500.

- (4) A person who in response to such a request gives a name or address that is false is guilty of an offence and is liable to a fine of \$500.

[Section 70B inserted by No. 70 of 2004 s. 6.]

71. Fighting in public causing fear

A person who in, or in view of, a public place takes part in a fight with another person in circumstances that are likely to cause fear to any person is guilty of a crime, and is liable to imprisonment for 2 years.

Summary conviction penalty: \$6 000.

[Section 71 inserted by No. 4 of 2004 s. 11.]

72. Challenge to fight a duel

Any person who challenges another to fight a duel, or attempts to provoke another to fight a duel, or attempts to provoke any person to challenge another to fight a duel, is guilty of a crime, and liable to imprisonment for 2 years.

Summary conviction penalty: \$6 000.

[Section 72 amended by No. 51 of 1992 s. 16(2); No. 4 of 2004 s. 12.]

73. Prize fight

Any person who fights in a prize fight or subscribes to or promotes a prize fight, is guilty of a crime, and is liable to imprisonment for 2 years.

Summary conviction penalty: \$6 000.

[Section 73 amended by No. 4 of 2004 s. 13.]

74. Threatening violence

Any person who —

- (1) With intent to intimidate or annoy any person, threatens to enter or damage a dwelling; or
- (2) With intent to alarm any person in a dwelling, discharges loaded firearms or commits any other breach of the peace;

is guilty of a crime, and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 74 amended by No. 51 of 1992 s. 16(2); No. 36 of 1996 s. 7; No. 4 of 2004 s. 14; No. 70 of 2004 s. 35(1).]

74A. Disorderly behaviour in public

- (1) In this section —

behave in a disorderly manner includes —

- (a) to use insulting, offensive or threatening language; and
- (b) to behave in an insulting, offensive or threatening manner.

- (2) A person who behaves in a disorderly manner —

- (a) in a public place or in the sight or hearing of any person who is in a public place; or
- (b) in a police station or lock-up,

is guilty of an offence and is liable to a fine of \$6 000.

- (3) A person who has the control or management of a place where food or refreshments are sold to or consumed by the public and who permits a person to behave in a disorderly manner in that place is guilty of an offence and is liable to a fine of \$4 000.

[Section 74A inserted by No. 70 of 2004 s. 7; amended by No. 59 of 2006 s. 18.]

74B. Causing fear or alarm to people in conveyances and others

(1) In this section —

drive a conveyance, includes to pilot an aircraft and to navigate a vessel.

(2) A person who, without lawful excuse —

- (a) causes an object or substance to be directed at or near, or to be placed in or near the path of, a conveyance that a person is driving; or
- (b) uses a portable device to direct a visible laser or other narrow beam of visible light at or near a conveyance that a person is driving,

in circumstances that are likely to cause fear or alarm to any person commits a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

[Section 74B inserted by No. 44 of 2009 s. 4.]

75A. Term used: out-of-control gathering

(1) For the purposes of section 75B, a gathering of persons in a place or vehicle is an *out-of-control gathering* if —

(a) the gathering is a gathering of 12 or more persons; and

(b) 2 or more persons associated with the gathering engage in conduct of any of the following kinds —

(i) trespassing on a place (as defined in section 70A(1));

(ii) behaving in a disorderly manner (as defined in section 74A(1));

(iii) unlawfully destroying or damaging property or threatening to do so;

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(iv) assaulting or threatening to assault another person or taking part in a fight;

(v) doing an obscene act or indecent act in a public place or in the sight of any person who is in a public place;

(vi) emitting, or causing to be emitted, unreasonable noise (as defined in the *Environmental Protection Act 1986* section 3(1));

(vii) driving a motor vehicle so as to cause excessive noise or smoke in contravention of the *Road Traffic Act 1974* section 62A;

(viii) unlawfully lighting fires or unlawfully using fireworks;

(ix) throwing any object or releasing any material or thing in a manner that is likely to endanger the life, health or safety of any person;

(x) causing an obstruction to traffic or to the movement of pedestrians;

(xi) depositing litter or breaking glass or other material;

(xii) contravening the *Liquor Control Act 1988* or the *Misuse of Drugs Act 1981*;

(xiii) being intoxicated by liquor or an intoxicant (as defined in section 206(1)) in a public place;

(xiv) any other conduct prescribed by the regulations;

and

(c) the gathering, or the conduct of persons associated with the gathering (taken together), causes or is likely to cause —

(i) fear or alarm to any person who is not associated with the gathering; or

(ii) a substantial interference with the lawful activities of any person; or

(iii) a substantial interference with the peaceful passage through, or enjoyment of, a place by any person who has lawful access to that place;

and

(d) the gathering is not excluded under subsection (3).

(2) In subsection (1) —

vehicle has the meaning given in the *Criminal Investigation Act 2006* section 3(1).

(3) For the purposes of subsection (1)(d), a gathering of any of the following kinds is excluded —

(a) a gathering on licensed premises;

(b) a public meeting or procession for which a permit under the *Public Order in Streets Act 1984* has been issued;

(c) a gathering that is primarily for the purposes of political advocacy, protest or industrial action;

(d) a gathering of a kind prescribed by the regulations.

(4) In subsection (3) —

licensed premises has the meaning given in the *Liquor Control Act 1988* section 3(1), but does not include premises to which an occasional licence granted under section 59 of that Act relates.

(5) For the purposes of subsection (1), a person is associated with a gathering if the person —

(a) is attending the gathering; or

(b) is in the vicinity of the gathering and has attended or is proposing to attend the gathering.

[Section 75A inserted by No. 56 of 2012 s. 4.]

75B. Organising out-of-control gathering

(1) In this section —

organise, in relation to a gathering, means to have a substantial involvement in arranging, managing, advertising or promoting the gathering (whether or not any other organisers of the gathering know of or consent to that involvement);

responsible adult, in relation to a child, means a parent, guardian or other person having responsibility for the day-to-day care of the child but does not include a person who the regulations provide is not a responsible adult.

(2) A person —

(a) who organises a gathering that becomes an out-of-control gathering; or

(b) who —

(i) is a responsible adult in relation to a child who organises a gathering that becomes an out-of-control gathering; and

(ii) gives the child permission to organise the gathering or permits the gathering to occur,

is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

(3) It is a defence to a charge under subsection (2) to prove the accused person took such steps (if any) as were reasonable in the circumstances to ensure that the gathering did not become an out-of-control gathering.

(4) Without limiting subsection (3), the following are examples of steps that could be taken to ensure that a gathering does not become an out-of-control gathering —

(a) engaging persons to provide security services at the gathering;

(b) organising the gathering in a manner that indicates that only persons invited to the gathering may attend;

(c) giving notice of the gathering to the Commissioner of Police in a manner approved by the Commissioner of Police;

(d) taking steps to request the attendance of police officers at the gathering as soon as practicable after becoming aware that —

(i) the gathering is likely to become an out-of-control gathering; or

(ii) any person is trespassing on a place where the gathering is occurring.

(5) A court convicting a person of an offence under subsection (2) may order the person to pay some or all of the reasonable expenses of or incidental to any action that was reasonably taken by police officers in responding to the out-of-control gathering.

(6) The order must specify that the amount is to be paid to the Commissioner of Police.

(7) The *Sentencing Act 1995* Part 16 applies to and in respect of an order made under subsection (5) as if it were a compensation order made under that Part.

[Section 75B inserted by No. 56 of 2012 s. 4.]

Chapter X — Offences against political liberty

75. Interfering with political liberty

Any person who by violence, or by threats or intimidation of any kind, hinders or interferes with the free exercise of any political right by another person, is guilty of a crime, and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 75 amended by No. 70 of 1988 s. 15; No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1) and 35(1).]

Chapter XI — Racist harassment and incitement to racial hatred

[Heading inserted by No. 33 of 1990 s. 3.]

76. Terms used

In this Chapter —

animosity towards means hatred of or serious contempt for;

display means display in or within view of a public place;

distribute means distribute to the public or a section of the public;

harass includes to threaten, seriously and substantially abuse or severely ridicule;

member of a racial group includes a person associated with a racial group;

publish means publish to the public or a section of the public;

racial group means any group of persons defined by reference to race, colour or ethnic or national origins;

written or pictorial material means any poster, graffiti, sign, placard, book, magazine, newspaper, leaflet, handbill, writing, inscription, picture, drawing or other visible representation.

[Section 76 inserted by No. 33 of 1990 s. 3; amended by No. 80 of 2004 s. 5.]

77. Conduct intended to incite racial animosity or racist harassment

Any person who engages in any conduct, otherwise than in private, by which the person intends to create, promote or increase animosity towards, or harassment of, a racial group, or a person as a member of a racial group, is guilty of a crime and is liable to imprisonment for 14 years.

Alternative offence: s. 78, 80A or 80B.

[Section 77 inserted by No. 80 of 2004 s. 6; amended by No. 70 of 2004 s. 38(3).]

78. Conduct likely to incite racial animosity or racist harassment

Any person who engages in any conduct, otherwise than in private, that is likely to create, promote or increase animosity towards, or harassment of, a racial group, or a person as a member of a racial group, is guilty of a crime and is liable to imprisonment for 5 years.

Alternative offence: s. 80A or 80B.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 78 inserted by No. 80 of 2004 s. 6; amended by No. 70 of 2004 s. 38(1) and (3).]

79. Possession of material for dissemination with intent to incite racial animosity or racist harassment

Any person who —

- (a) possesses written or pictorial material that is threatening or abusive intending the material to be published, distributed or displayed whether by that person or another person; and
- (b) intends the publication, distribution or display of the material to create, promote or increase animosity towards, or harassment of, a racial group, or a person as a member of a racial group,

is guilty of a crime and is liable to imprisonment for 14 years.

Alternative offence: s. 80, 80C or 80D.

[Section 79 inserted by No. 80 of 2004 s. 6; amended by No. 70 of 2004 s. 38(3).]

80. Possession of material for dissemination if material likely to incite racial animosity or racist harassment

If —

- (a) any person possesses written or pictorial material that is threatening or abusive intending the material to be published, distributed or displayed whether by that person or another person; and
- (b) the publication, distribution or display of the material would be likely to create, promote or increase animosity towards, or harassment of, a racial group, or a person as a member of a racial group,

the person possessing the material is guilty of a crime and is liable to imprisonment for 5 years.

Alternative offence: s. 80C or 80D.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 80 inserted by No. 80 of 2004 s. 6; amended by No. 70 of 2004 s. 38(1) and (3).]

80A. Conduct intended to racially harass

Any person who engages in any conduct, otherwise than in private, by which the person intends to harass a racial group, or a person as a member of a racial group, is guilty of a crime and is liable to imprisonment for 5 years.

Alternative offence: s. 78 or 80B.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 80A inserted by No. 80 of 2004 s. 6; amended by No. 70 of 2004 s. 38(1) and (3).]

80B. Conduct likely to racially harass

Any person who engages in any conduct, otherwise than in private, that is likely to harass a racial group, or a person as a member of a racial group, is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 80B inserted by No. 80 of 2004 s. 6; amended by No. 70 of 2004 s. 38(2).]

80C. Possession of material for display with intent to racially harass

Any person who —

- (a) possesses written or pictorial material that is threatening or abusive intending the material to be displayed whether by that person or another person; and
- (b) intends the display of the material to harass a racial group, or a person as a member of a racial group,

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

Alternative offence: s. 80 or 80D.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 80C inserted by No. 80 of 2004 s. 6; amended by No. 70 of 2004 s. 38(1) and (3).]

80D. Possession of material for display if material likely to racially harass

If —

- (a) any person possesses written or pictorial material that is threatening or abusive intending the material to be displayed whether by that person or another person; and

- (b) the display of the material would be likely to harass a racial group, or a person as a member of a racial group,

the person possessing the material is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 80D inserted by No. 80 of 2004 s. 6; amended by No. 70 of 2004 s. 38(2).]

80E. Conduct and private conduct

- (1) A reference in section 77, 78, 80A or 80B to conduct includes a reference to conduct occurring on a number of occasions over a period of time.
- (2) For the purposes of sections 77, 78, 80A and 80B conduct is taken not to occur in private if it —
- (a) consists of any form of communication with the public or a section of the public; or
 - (b) occurs in a public place or in the sight or hearing of people who are in a public place.

[Section 80E inserted by No. 80 of 2004 s. 6.]

80F. Belief as to existence or membership of racial group

For the purposes of proceedings for an offence under section 77, 79, 80A, 80C, 313, 317, 317A, 338B or 444 it does not matter whether a group of persons was a racial group or whether a person was a member of a racial group as long as the accused person believed at the time of the alleged offence that the group was a racial group or that the person was a member of a racial group, as the case may be.

[Section 80F inserted by No. 80 of 2004 s. 6.]

80G. Defences

- (1) It is a defence to a charge under section 78 or 80B to prove that the accused person's conduct was engaged in reasonably and in good faith —
- (a) in the performance, exhibition or distribution of an artistic work; or
 - (b) in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for —
 - (i) any genuine academic, artistic, religious or scientific purpose; or
 - (ii) any purpose that is in the public interest;
- or
- (c) in making or publishing a fair and accurate report or analysis of any event or matter of public interest.
- (2) It is a defence to a charge under section 80 or 80D to prove that the accused person intended the material to be published, distributed or displayed (as the case may be) reasonably and in good faith —
- (a) in the performance, exhibition or distribution of an artistic work; or
 - (b) in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for —
 - (i) any genuine academic, artistic, religious or scientific purpose; or
 - (ii) any purpose that is in the public interest;
- or
- (c) in making or publishing a fair and accurate report or analysis of any event or matter of public interest.

[Section 80G inserted by No. 80 of 2004 s. 6.]

80H. Consent to prosecutions

A prosecution under section 77, 78, 79 or 80 must not be commenced without the consent of the Director of Public Prosecutions.

[Section 80H inserted by No. 80 of 2004 s. 6.]

80I. Term used: circumstances of racial aggravation

In sections 313, 317, 317A, 338B and 444 —

circumstances of racial aggravation means circumstances in which —

- (a) immediately before or during or immediately after the commission of the offence, the offender demonstrates hostility towards the victim based, in whole or part, on the victim being a member of a racial group; or
- (b) the offence is motivated, in whole or part, by hostility towards persons as members of a racial group.

[Section 80I inserted by No. 80 of 2004 s. 6.]

80J. Forfeiture of unlawful material

A court that convicts a person of an offence under section 79, 80, 80C or 80D may make an order for the forfeiture to the State, or the destruction or disposal, of any written or pictorial material in respect of which the offence was committed.

[Section 80J inserted by No. 59 of 2006 s. 19.]

Part III — Offences against the administration of law and justice and against public authority

Chapter XII — Disclosing official secrets

81. Disclosing official secrets

(1) In this section —

disclosure includes —

- (a) any publication or communication; and
- (b) in relation to information in a record, parting with possession of the record;

government contractor means a person who is not employed in the Public Service but who provides, or is employed in the provision of, goods or services for the purposes of —

- (a) the State of Western Australia; or
- (b) the Public Service; or
- (c) the Police Force of Western Australia;

information includes false information, opinions and reports of conversations;

official information means information, whether in a record or not, that comes to the knowledge of, or into the possession of, a person because the person is a public servant or government contractor;

public servant means a person employed in the Public Service;

unauthorised disclosure means —

- (a) the disclosure by a person who is a public servant or government contractor of official information in circumstances where the person is under a duty not to make the disclosure; or
- (b) the disclosure by a person who has been a public servant or government contractor of official information in circumstances where, were the person still a public

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servant or government contractor, the person would be under a duty not to make the disclosure.

- (2) A person who, without lawful authority, makes an unauthorised disclosure is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 81 inserted by No. 4 of 2004 s. 59; amended by No. 70 of 2004 s. 35(1).]

Chapter XIII — Corruption and abuse of office

[Heading inserted by No. 70 of 1988 s. 16.]

82. Bribery of public officer

Any public officer who obtains, or who seeks or agrees to receive, a bribe, and any person who gives, or who offers or promises to give, a bribe to a public officer, is guilty of a crime and is liable to imprisonment for 7 years.

[Section 82 inserted by No. 70 of 1988 s. 16.]

83. Corruption

Any public officer who, without lawful authority or a reasonable excuse —

- (a) acts upon any knowledge or information obtained by reason of his office or employment; or
- (b) acts in any matter, in the performance or discharge of the functions of his office or employment, in relation to which he has, directly or indirectly, any pecuniary interest; or

- (c) acts corruptly in the performance or discharge of the functions of his office or employment,

so as to gain a benefit, whether pecuniary or otherwise, for any person, or so as to cause a detriment, whether pecuniary or otherwise, to any person, is guilty of a crime and is liable to imprisonment for 7 years.

[Section 83 inserted by No. 70 of 1988 s. 16; amended by No. 8 of 2002 s. 4.]

84. Application of s. 121 to judicial corruption not affected

In sections 82 and 83 **public officer** does not include the holder of a judicial office within the meaning of section 121.

[Section 84 inserted by No. 70 of 1988 s. 16.]

85. Falsification of records by public officer

Any public officer who, in the performance or discharge of the functions of his office or employment, corruptly —

- (a) makes any false entry in any record; or
- (b) omits to make any entry in any record; or
- (c) gives any certificate or information which is false in a material particular; or
- (d) by act or omission falsifies, destroys, alters or damages any record; or
- (e) furnishes a return relating to any property or remuneration which is false in a material particular; or
- (f) omits to furnish any return relating to any property or remuneration, or to give any other information which he is required by law to give,

is guilty of a crime and is liable to imprisonment for 7 years.

[Section 85 inserted by No. 70 of 1988 s. 16; amended by No. 8 of 2002 s. 5; No. 70 of 2004 s. 8.]

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86. Administering extra judicial oaths

- (1) Any person who administers an oath or takes a declaration or affirmation without having lawful authority so to do is guilty of a crime and is liable to imprisonment for 2 years.
- (2) This section does not apply to an oath, declaration or affirmation administered or taken —
 - (a) as authorised or required by law of; or
 - (b) for purposes lawful in,
another country, State or Territory.

*[Section 86 inserted by No. 70 of 1988 s. 16; amended by
No. 70 of 2004 s. 34(1).]*

87. Impersonating a public officer

- (1) For the purposes of this section a person impersonates a public officer if the person —
 - (a) wears what is or purports to be the uniform of a public officer; or
 - (b) represents himself or herself by word or conduct to be a public officer,when the person is not such a public officer.
- (2) A person who impersonates a public officer and who —
 - (a) purports to do or exercise; or
 - (b) attends any place for the purposes of doing or exercising,any act or power of such a public officer is guilty of a crime and is liable to imprisonment for 2 years.
Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.
- (3) For the purposes of subsection (2) it is immaterial whether the power referred to exists at law.

- (4) An allegation in a charge of an offence under this section that at the material time the accused was not a public officer, or not a public officer of the kind that the accused is alleged to have impersonated, must be taken to be proved, unless the contrary is proved.

[Section 87 inserted by No. 70 of 2004 s. 9.]

88. Bargaining for public office

Any person who —

- (a) corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind, whether pecuniary or otherwise, for himself or any other person on account of anything already done or omitted to be done, by him or any other person with regard to the appointment of any person as a public officer, or with regard to any application by any person for employment as a public officer; or
- (b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure to, upon, or for any person any property or benefit of any kind, whether pecuniary or otherwise, on account of any such act or omission,

is guilty of a crime and is liable to imprisonment for 7 years.

[Section 88 inserted by No. 70 of 1988 s. 16; amended by No. 8 of 2002 s. 6.]

[89-92. Deleted by No. 70 of 1988 s. 16.]

Chapter XIV — Offences at elections

[Heading inserted by No. 70 of 2004 s. 10.]

93. Terms used

In this Chapter —

election includes an election held under a written law that provides for the choice of persons to fill a public office;

elector includes any person entitled to vote in an election;

electoral conduct means —

- (a) candidature in an election; or
- (b) withdrawal of candidature from an election; or
- (c) a vote, or an omission to vote, in an election; or
- (d) support of, or opposition to, a candidate in an election;
or
- (e) an application for a postal vote in an election;

electoral officer means a person who is authorised to conduct or assist in conducting an election.

[Section 93 inserted by No. 70 of 2004 s. 10.]

94. Application of this Chapter

This Chapter does not apply to or in respect of parliamentary or local government elections.

[Section 94 inserted by No. 70 of 2004 s. 10.]

95. Liability for acts of others

- (1) For the purposes of this Chapter, the act of a candidate's authorised agent is to be taken to be the act of the candidate unless the candidate proves —
 - (a) that the act was committed without the candidate's knowledge or consent; and
 - (b) that the candidate had neither directly nor indirectly authorised or approved the act.
- (2) For the purposes of this Chapter, a person is liable for an illegal act or omission committed directly or indirectly by the person, or by another person on the person's behalf, except as provided by subsection (1).

[Section 95 inserted by No. 70 of 2004 s. 10.]

96. Bribery

(1) In this section —

reward means a reward in the form of property or any kind of advantage, benefit, consideration or recompense.

(2) A person who —

- (a) promises, offers or suggests a reward for, or on account of, or to induce, electoral conduct or a promise of electoral conduct; or
- (b) gives, takes or seeks a reward for, or on account of, electoral conduct or a promise of electoral conduct,

is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.

(3) The making of a declaration of public policy or a promise of public action does not give rise to an offence under this section.

[Section 96 inserted by No. 70 of 2004 s. 10.]

97. Undue influence

(1) In this section —

detriment means violence, injury, punishment, damage, loss or disadvantage.

(2) A person who —

- (a) threatens, offers or suggests detriment for, or on account of, or to induce, electoral conduct or a promise of electoral conduct; or
- (b) uses, causes, inflicts or procures detriment for, or on account of, electoral conduct; or
- (c) interferes with the free exercise of the franchise of an elector,

is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

- (3) The making of a declaration of public policy or a promise of public action does not give rise to an offence under this section.

[Section 97 inserted by No. 70 of 2004 s. 10.]

98. Electoral material, printing and publication of

- (1) In this section —

electoral material means any advertisement, article, handbill, letter, notice, pamphlet, placard or poster the purpose of which is to influence voters in an election but does not include —

- (a) a newspaper advertisement announcing the holding of a meeting;
- (b) articles of apparel, lapel buttons, lapel badges, pens, pencils or balloons;
- (c) business or visiting cards that promote the candidacy of any person in an election;
- (d) letters or cards that —
 - (i) bear the name and address of the sender; and
 - (ii) do not contain a representation or purported representation of a ballot paper for use in an election;

print includes to photocopy and to reproduce by any means;

publish electoral material, includes to distribute it and to publish it by radio, television or electronic means.

- (2) A person who prints or publishes electoral material, or who causes electoral material to be printed or published, is guilty of an offence and is liable to a fine of \$2 000 unless there appears at the end of the material —

- (a) the name and address (not being a post office box or email address) of the person who authorised the material; and

- (b) the name and address (not being a post office box or email address) of the publisher.

[Section 98 inserted by No. 70 of 2004 s. 10.]

99. False or defamatory statements or deceptive material, publication of

- (1) In this section —

deceptive material means any matter or thing that is likely to mislead or deceive an elector about how to vote or for whom to vote in an election;

print includes to photocopy and to reproduce by any means;

publish any material or statement, includes to distribute it and to publish it by radio, television or electronic means;

relevant period of an election, means the period beginning when nominations for the election are first officially invited and ending when the entitlement to vote in the election ceases.

- (2) If during the relevant period of an election deceptive material is published, a person who made or who authorised the publishing of the material is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- (3) It is a defence to a charge of an offence under subsection (2) to prove the accused did not know, and could not reasonably have been expected to know, that the material was deceptive material.
- (4) If during the relevant period of an election a false or defamatory statement in relation to the personal character or conduct of a candidate in the election is published, a person who made or who authorised the publishing of the statement is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- (5) It is a defence to a charge of an offence under subsection (4) to prove the accused believed the statement to be true and had reasonable grounds for doing so.

[Section 99 inserted by No. 70 of 2004 s. 10.]

100. Postal voting, offences in connection with

A candidate in an election who —

- (a) interferes with an elector while the elector is applying for a postal vote in the election; or
- (b) communicates or interferes with or assists an elector in the process of completing and lodging a postal vote in the election; or
- (c) takes custody of, or causes any other person other than the elector to take custody of, an envelope in which there is an elector's postal vote in the election,

is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

[Section 100 inserted by No. 70 of 2004 s. 10.]

101. Polling place, offences at or near

- (1) A person who is in, or within 6 metres from an entrance to, a polling place on a polling day in an election and who —

- (a) canvasses for votes in the election; or
- (b) solicits the vote of an elector in the election; or
- (c) attempts to induce an elector not to vote in the election; or
- (d) attempts to induce an elector not to vote for a particular candidate in the election,

is guilty of an offence and is liable to a fine of \$2 000.

- (2) A person who, at a polling place or at a place where the votes cast in an election are being counted —

- (a) interrupts, disturbs or obstructs proceedings in the place; or

- (b) disobeys the reasonable instructions of an electoral officer; or
- (c) wilfully destroys, damages or removes a notice or other document that an electoral officer, acting within the scope of his or her authority, has displayed or caused to be displayed,

is guilty of an offence and is liable to a fine of \$2 000.

- (3) A person who, while an elector is in a compartment or booth for the purpose of marking a ballot paper —
- (a) unlawfully enters the compartment or booth; or
 - (b) unlawfully communicates with the elector; or
 - (c) unlawfully assists the elector in marking the ballot paper,

is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

- (4) Subsection (3) does not apply to a person who, with the permission of an electoral officer —
- (a) having been nominated by the elector to do so, assists an elector who is illiterate or who is so disabled as to be unable to vote without assistance; or
 - (b) is present to witness the person assisting the elector.

[Section 101 inserted by No. 70 of 2004 s. 10.]

102. Voting offences

- (1) A person who votes in an election in the knowledge that he or she is not entitled to vote in the election is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- (2) A person who, in the knowledge that another person is not entitled to vote in the election, procures that person to vote in the election, is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

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- (3) A person who personates an elector is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- (4) A person who votes more often in an election than the person is entitled is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- (5) A person who is entitled to cast more than one vote in an election and who casts more votes in the election than the person is entitled to cast is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

[Section 102 inserted by No. 70 of 2004 s. 10.]

103. Ballot paper and ballot box offences

- (1) A person who —
 - (a) forges a ballot paper; or
 - (b) fraudulently damages or destroys a ballot paper; or
 - (c) fraudulently puts a ballot paper in a ballot box; or
 - (d) wilfully and without authority destroys, takes, opens or otherwise interferes with a ballot paper or ballot box,

is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

- (2) A person who —
 - (a) supplies a ballot paper without authority; or
 - (b) is in possession of an unauthorised ballot paper; or
 - (c) marks a ballot paper without authority; or
 - (d) takes a ballot paper from a polling place without authority,

is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

[Section 103 inserted by No. 70 of 2004 s. 10.]

104. Secrecy offences

- (1) A person who without authority —
- (a) looks at the ballot paper of any particular elector; or
 - (b) ascertains how any particular elector voted in an election,
- is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.
- (2) A person who discloses the vote of any particular elector is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

[Section 104 inserted by No. 70 of 2004 s. 10.]

105. Electoral officer, offences by

An electoral officer who —

- (a) attempts to influence the vote of an elector; or
- (b) by any unauthorised act or omission attempts to influence the result of an election; or
- (c) discloses, except under compulsion of law, knowledge officially acquired concerning the vote of a particular elector,

is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

[Section 105 inserted by No. 70 of 2004 s. 10.]

106. False statements in connection with an election

- (1) A person who makes a statement that is false in a material particular —
- (a) in a nomination to be a candidate in an election; or
 - (b) in an application to be included on a list of electors in an election; or

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- (c) in any other application or in any declaration, form, certificate or other document that the person completes in connection with an election; or
- (d) in an answer to a question in connection with an election that is put by an electoral officer with authority to do so,

is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

- (2) A person who induces another person to commit an offence under subsection (1) is also guilty of an offence under that subsection.

[Section 106 inserted by No. 70 of 2004 s. 10.]

107. Evidentiary matters

In a prosecution for an offence under this Chapter in relation to an election, a certificate purporting to be signed by the officer responsible for conducting the election —

- (a) as to when nominations for the election were first officially invited and when the entitlement to vote in the election ceased; or
- (b) that a person named in the certificate was or was not a candidate in the election; or
- (c) that a person named in the certificate was or was not an elector in the election; or
- (d) that a place was or was not a polling place for the purpose of the election; or
- (e) that a day was or was not a polling day for the election; or
- (f) that the election was duly held,

is admissible without calling the officer and is proof of its contents in the absence of evidence to the contrary.

[Section 107 inserted by No. 70 of 2004 s. 10.]

[108-118. Deleted by No. 70 of 2004 s. 10.]

[Chapter XV (s. 119) deleted by No. 70 of 1988 s. 17.]

Chapter XVI — Offences relating to the administration of justice

120. Term used: judicial proceeding

In this Chapter the term *judicial proceeding* includes any proceeding had or taken in or before any court, tribunal, or person, in which evidence may be taken on oath.

121. Judicial corruption

Any person who —

- (1) Being the holder of a judicial office, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in his judicial capacity; or
- (2) Corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure to, upon, or for any person holding a judicial office, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person holding the judicial office;

is guilty of a crime, and is liable to imprisonment for 14 years.

The term *holder of a judicial office* in this section includes an arbitrator or umpire and any member of any board or court of conciliation or arbitration; but in the case of an offence committed by or with respect to any such person, the longest term of imprisonment is 7 years.

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A prosecution for an offence under paragraph (1) can not be begun except —

- (a) by a public officer acting in the course of his duties; or
- (b) by or with the consent of the Attorney General.

[Section 121 amended by No. 119 of 1985 s. 30; No. 101 of 1990 s. 8; No. 51 of 1992 s. 16(2); No. 73 of 1994 s. 4.]

122. Official corruption not judicial but relating to offences

Any person who —

- (1) Being a justice not acting judicially, or being a person employed in the Public Service in any capacity not judicial, for the prosecution or detention or punishment of offenders, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him, with a view to corrupt or improper interference with the due administration of justice, or the procurement or facilitation of the commission of any offence, or the protection of any offender or intending offender from detection or punishment; or
- (2) Corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for any such person, or to, upon, or for any other person, any property or benefit of any kind, on account of any such act or omission on the part of the justice or other person so employed;

is guilty of a crime, and is liable to imprisonment for 14 years.

[Section 122 amended by No. 119 of 1985 s. 30; No. 51 of 1992 s. 16(2); No. 73 of 1994 s. 4.]

123. Corrupting or threatening jurors

Any person who —

- (1) Attempts by threats or intimidation of any kind, or by benefits or promises of benefit of any kind, or by other corrupt means, to influence any person, whether a particular person or not, in his conduct as a juror in any judicial proceeding, whether he has been sworn as a juror or not; or
- (2) Threatens to do any injury or cause any detriment of any kind to any person on account of anything done by him as a juror in any judicial proceeding; or
- (3) Accepts any benefit or promise of benefit on account of anything to be done by him as a juror in any judicial proceeding, whether he has been sworn as a juror or not, or on account of anything already done by him as a juror in any judicial proceeding;

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

[Section 123 amended by No. 101 of 1990 s. 9; No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

124. Perjury

Any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding, or intended to be raised in that proceeding, is guilty of a crime which is called perjury.

It is immaterial whether the testimony is given on oath or under any other sanction authorised by law.

The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assents to the forms and ceremonies actually used.

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It is immaterial whether the false testimony is given orally or in writing.

It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place, or not, if it actually acts as a court or tribunal in the proceeding in which the testimony is given.

It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

[Section 124 amended by No. 119 of 1985 s. 30.]

125. Penalty for perjury

Any person who commits perjury is liable to imprisonment for 14 years.

If the offender commits the crime in order to procure the conviction of another person for a crime punishable with imprisonment for life, he is liable to imprisonment for life.

[Section 125 amended by No. 52 of 1984 s. 14; No. 51 of 1992 s. 16(2); No. 29 of 2008 s. 16(3).]

[126. Deleted by No. 70 of 1988 s. 31.]

127. False evidence before a Royal Commission

Any person who, in the course of an examination before a Royal Commission, knowingly gives a false answer to any lawful and relevant question put to him in the course of the examination is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 127 amended by No. 119 of 1985 s. 30; No. 70 of 1988 s. 31; No. 51 of 1992 s. 16(2).]

128. Threatening witness before Royal Commission etc.

Any person who —

- (1) Threatens to do any injury, or cause any detriment of any kind to another, with intent to prevent or hinder that other person from giving evidence before any Royal Commission or on other public inquiry; or
- (2) Threatens, or in any way punishes, damnifies, or injures, or attempts to punish, damnify, or injure any other person for having given such evidence, or on account of the evidence which he has given, unless such evidence was given in bad faith;

is guilty of a crime, and is liable to imprisonment for 2 years.

[Section 128 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

129. Fabricating evidence

Any person who, with intent to mislead any tribunal in any judicial proceeding —

- (1) Fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or
- (2) Knowingly makes use of such fabricated evidence;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 129 amended by No. 119 of 1985 s. 30; No. 51 of 1992 s. 16(2).]

130. Corruption of witnesses

Any person who —

- (1) Gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for any person, upon any agreement or understanding that any person called or to be called as a witness in any judicial proceeding shall give false testimony or withhold true testimony; or

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- (2) Attempts by any other means to induce a person called or to be called as a witness in any judicial proceeding to give false testimony or to withhold true testimony; or
- (3) Asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, upon any agreement or understanding that any person shall, as a witness in any judicial proceeding, give false testimony or withhold true testimony,

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 130 amended by No. 119 of 1985 s. 30; No. 51 of 1992 s. 16(2).]

131. Deceiving witnesses

Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 131 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

132. Destroying evidence

Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 132 amended by No. 51 of 1992 s. 16(2); No. 8 of 2002 s. 7.]

133. Preventing witnesses from attending

Any person who wilfully prevents or attempts to prevent any person who has been duly summoned to attend as a witness before any court or tribunal from attending as a witness, or from producing anything in evidence pursuant to the subpoena or summons, is guilty of a crime, and is liable to imprisonment for one year.

[Section 133 amended by No. 70 of 2004 s. 34(1).]

133A. False prosecution, commencing

Any person who knowingly signs a prosecution notice under the *Criminal Procedure Act 2004* which, in any material particular, is to his knowledge false, is guilty of a crime and is liable to imprisonment for 7 years.

[Section 133A inserted by No. 10 of 1999 s. 3; amended by No. 59 of 2004 s. 80; No. 84 of 2004 s. 28.]

134. Conspiracy to bring false accusation

Any person who conspires with another to charge any person or cause any person to be charged with any offence, whether alleged to have been committed in Western Australia, or elsewhere, knowing that such person is innocent of the alleged offence, or not believing him to be guilty of the alleged offence, is guilty of a crime.

If the offence is such that a person convicted of it is liable to be sentenced to imprisonment for life, the offender is liable to imprisonment for 20 years.

If the offence is such that a person convicted of it is liable to be sentenced to imprisonment, but for a term less than life, the offender is liable to imprisonment for 14 years.

In any other case the offender is liable to imprisonment for 7 years.

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[Section 134 amended by No. 118 of 1981 s. 5; No. 52 of 1984 s. 15; No. 119 of 1985 s. 30; No. 51 of 1992 s. 16(2); No. 29 of 2008 s. 16(4).]

135. Conspiring to defeat justice

Any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 135 amended by No. 119 of 1985 s. 30; No. 51 of 1992 s. 16(2).]

136. Compounding or concealing offences

(1) In this section —

compound, in relation to an offence, includes —

- (a) to abstain from, to discontinue, and to delay, prosecuting the offence; and
- (b) to withhold evidence in relation to the offence.

(2) A person who obtains, or who seeks or agrees to receive, any property or benefit, pecuniary or otherwise, for any person, upon an agreement or understanding that the person will compound or conceal an offence is guilty of a crime and is liable to imprisonment for 7 years.

[Section 136 inserted by No. 70 of 2004 s. 11.]

[137. Deleted by No. 70 of 2004 s. 11.]

138. Advertising reward etc. for stolen property

(1) A person who, in any public offer of a reward for the return of any stolen or lost property, uses any words to the effect that no questions will be asked of, or that no action will be taken against, the person returning the property is guilty of an offence and is liable to a fine of \$2 000.

- (2) A person who offers publicly to pay another person who may have purchased any stolen or lost property or advanced any money by way of loan on the security of any such property —
- (a) a refund of the purchase price or the money loaned; or
 - (b) a reward or any other sum of money for the return of any such property,

is guilty of an offence and is liable to a fine of \$2 000.

- (3) A person who prints or publishes an offer of the kind referred to in subsection (1) or (2) is guilty of an offence and is liable to a fine of \$2 000.

[Section 138 inserted by No. 70 of 2004 s. 12.]

139. Justices acting when personally interested

Any person who —

[(1) deleted]

- (2) Being a justice, wilfully and perversely exercises jurisdiction in any matter in which he has a personal interest;

is guilty of a crime, and is liable to imprisonment for 2 years.

[Section 139 amended by No. 87 of 1982 s. 31; No. 73 of 1994 s. 4; No. 70 of 2004 s. 34(1).]

[140. Deleted by No. 87 of 1982 s. 32.]

141. Bringing fictitious action on penal statute

Any person who, in the name of a fictitious plaintiff, or in the name of a real person, but without his authority, brings an action against another person upon a penal statute for the recovery of a penalty for any offence committed or alleged to have been committed by him, is guilty of a crime, and is liable to imprisonment for 2 years.

[Section 141 amended by No. 70 of 2004 s. 34(1).]

142. Inserting advertisement without authority of court

Any person who, without authority, or knowing the advertisement to be false in any material particular, inserts or causes to be inserted in the *Government Gazette*, or in any newspaper an advertisement purporting to be published under the authority of any court or tribunal, is guilty of a crime, and is liable to imprisonment for 2 years.

[Section 142 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

143. Attempting to pervert course of justice

Any person who attempts to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 143 inserted by No. 106 of 1987 s. 26.]

Chapter XVII — Escapes: Rescues: Obstructing officers of courts

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.

[Section 144 inserted by No. 29 of 2008 s. 15.]

145. Aiding a person to escape from lawful custody

(1) In this section —

prison includes any place where a person is or may be held in lawful custody.

(2) A person who conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a

person from that or another prison is guilty of a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

- (3) A person who aids a person in escaping or attempting to escape from lawful custody is guilty of a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

[Section 145 inserted by No. 70 of 2004 s. 13.]

146. Escaping from lawful custody

A person who escapes from lawful custody is guilty of a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

[Section 146 inserted by No. 70 of 2004 s. 13.]

147. Permitting escape

Any person who, being an officer of a prison or police officer, and being charged for the time being, with the custody of a prisoner or a person under arrest upon a charge of an offence, wilfully permits him to escape from custody, is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 147 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

148. Aiding an escapee

- (1) In this section —
aid includes to harbour, to maintain and to employ.

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- (2) A person who aids a person who is, to the person's knowledge, a person who has escaped from lawful custody is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 148 inserted by No. 70 of 2004 s. 14.]

149. Rescuing, permitting escape of or concealing a person subject to any law relating to mental disorder

Any person who —

- (a) rescues, or wilfully permits the escape of, a person who is in custody, or is detained, pursuant to the *Mental Health Act 1996* or any law relating to mental impairment; or
- (b) conceals a person who —
- (i) is rescued or escapes from that custody or detention; or
- (ii) is absent without leave, within the meaning of the *Mental Health Act 1996* or any law relating to mental impairment,

is guilty of a crime and is liable to imprisonment for 3 years.

[Section 149 inserted by No. 35 of 1962 s. 3; amended by No. 51 of 1992 s. 16(2); No. 69 of 1996 s. 8; No. 70 of 2004 s. 34(1).]

150. Removing etc. property under lawful seizure

Any person who, when any property has been attached or taken under the process or authority of any court of justice, knowingly, and with intent to hinder or defeat the attachment, or process, receives, removes, retains, conceals, or disposes of such property, is guilty of a crime, and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 150 amended by No. 51 of 1992 s. 16(2); No. 36 of 1996 s. 8; No. 70 of 2004 s. 34(1) and 35(1).]

151. Obstructing officers of courts of justice

Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court of justice is guilty of a crime, and is liable to imprisonment for 2 years.

Summary conviction penalty: \$6 000.

[Section 151 amended by No. 113 of 1965 s. 8(1); No. 21 of 1972 s. 6; No. 51 of 1992 s. 16(2); No. 36 of 1996 s. 9; No. 50 of 2003 s. 51(10); No. 70 of 2004 s. 34(1) and 35(4).]

[Chapter XVIII (s. 152-166) deleted by No. 70 of 1988 s. 18.]

[Chapter XIX (s. 167) deleted by No. 70 of 1988 s. 19(1).]

Chapter XX — Miscellaneous offences against public authority

[168. Deleted by No. 52 of 1984 s. 18.]

169. False statements on oath

- (1) Any person who, when under oath or any sanction that may be lawfully substituted for an oath, knowingly makes a statement, whether orally or in writing, that is false in a material particular is guilty of a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

- (2) Any person who knowingly makes a statement that is false in a material particular in a statutory declaration is guilty of a crime and is liable to imprisonment for 5 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

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Part III Offences against the administration of law and justice and against public authority

Chapter XX Miscellaneous offences against public authority

s. 170

[Section 169 inserted by No. 24 of 2005 s. 41.]

170. False information to officials etc.

- (1) Any person who, being required under a written law to give information, whether orally or in writing, to another person, knowingly gives information to the other person that is false in a material particular is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 18 months and a fine of \$18 000.

- (2) Subsection (1) does not apply if the person is required to give the information on oath or in a statutory declaration.

[Section 170 inserted by No. 24 of 2005 s. 42.]

171. Creating false belief

- (1) In this section —

belief means a belief or suspicion that —

- (a) an offence has been or is about to be committed;
- (b) human safety is or may be endangered;
- (c) human life has or may have been lost;
- (d) property is or may be endangered;
- (e) property has or may have been destroyed;
- (f) there is a fire that needs to be put out,

and that is of such a nature as would reasonably call for action by the Police Force or by emergency services.

- (2) A person who does or omits to do any act with the intention of creating a false belief is guilty of a crime and is liable to imprisonment for 2 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

- (3) A court convicting a person of an offence under this section may order the person to pay all or some of the reasonable expenses of or incidental to any action that was reasonably taken as a result of the offence, whether or not by the Police Force or emergency services.
- (4) The order must specify the person or persons to whom the amount is to be paid.
- (5) Part 16 of the *Sentencing Act 1995* applies to and in respect of an order made under subsection (3) as if it were a compensation order made under that Part.

[Section 171 inserted by No. 70 of 2004 s. 15.]

172. Obstructing public officers

- (1) In this section —
obstruct includes to prevent, to hinder and to resist.
- (2) A person who obstructs a public officer, or a person lawfully assisting a public officer, in the performance of the officer's functions is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 18 months and a fine of \$18 000.

[Section 172 inserted by No. 70 of 2004 s. 16.]

173. Refusal by public officer to perform duty

Any person who, being employed in the Public Service, or as an officer of any court or tribunal, perversely and without lawful excuse omits or refuses to do any act which it is his duty to do by virtue of his employment, is guilty of a crime, and is liable to imprisonment for 2 years.

[Section 173 amended by No. 73 of 1994 s. 4; No. 70 of 2004 s. 34(1).]

[174, 175. Deleted by No. 4 of 2004 s. 15.]

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s. 176

176. Neglect to aid in arresting offenders

Any person who, having reasonable notice that he is required to assist any sheriff, under sheriff, justice, mayor, or police officer, in arresting any person, or in preserving the peace, without reasonable excuse omits to do so, is guilty of a crime, and is liable to imprisonment for one year.

[Section 176 amended by No. 70 of 2004 s. 34(1).]

177. Disobedience to statute law

Any person who, without lawful excuse, the proof of which lies on him, does any act which he is, by the provisions of any public statute in force in Western Australia, forbidden to do or omits to do any act which he is, by the provisions of any such statute, required to do, is guilty of a crime, unless some mode of proceeding against him for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.

The offender is liable to imprisonment for one year.

[Section 177 amended by No. 70 of 2004 s. 34(1).]

178. Disobedience to lawful order issued by statutory authority

Any person who, without lawful excuse, the proof of which lies on him, disobeys any lawful order issued by any court of justice, or by any person authorised by any public statute in force in Western Australia to make the order, is guilty of a crime, unless some mode of proceeding against him for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.

The offender is liable to imprisonment for one year.

[Section 178 amended by No. 70 of 2004 s. 34(1).]

Part IV — Acts injurious to the public in general

[Chapter XXI (s. 179, 180) deleted by No. 70 of 1988 s. 20.]

Chapter XXII — Offences against morality

181. Carnal knowledge of animal

Any person who has carnal knowledge of an animal is guilty of a crime and is liable to imprisonment for 7 years.

[Section 181 inserted by No. 32 of 1989 s. 5.]

[182. Deleted by No. 106 of 1987 s. 14(5).]

[183. Deleted by No. 32 of 1989 s. 6.]

[184. Deleted by No. 3 of 2002 s. 35(1).]

[185. Deleted by No. 14 of 1992 s. 6(2).]

186. Occupier or owner allowing young persons to be on premises for unlawful carnal knowledge

- (1) Any person who, being the owner or occupier of any premises, or having or acting or assisting in the management or control of any premises, induces or knowingly permits any child of such age as in this section is mentioned to resort to or be in or upon such premises for the purpose of being unlawfully carnally known by any person, whether a particular person or not is guilty of a crime, and;
 - (a) if the child is under the age of 16 years, is liable to imprisonment for 2 years; and
 - (b) if the child is under the age of 13 years, is liable to imprisonment for 20 years.

Alternative offence: s. 191(1).

- (2) It is a defence to a charge under subsection (1) to prove the accused person believed on reasonable grounds that the child was of or above the age of 16 years.
- (3) It is no defence to a charge of an offence against this section that the act of the accused person by which the offence was committed was done with the consent of the person with respect to whom the act was done.

[Section 186 inserted by No. 32 of 1989 s. 9; amended by No. 3 of 2002 s. 36; No. 70 of 2004 s. 17 and 36(3).]

187. Facilitating sexual offences against children outside Western Australia

- (1) In this section —
prohibited conduct means —
- (a) the doing of an act in a place outside Western Australia in respect of a child under the age of 16 years which if done in Western Australia would constitute an offence under Chapter XXXI; or
 - (b) the commission of an offence under Part IIIA Division 2 of the *Crimes Act 1914* of the Commonwealth.
- (2) A person —
- (a) who does any act for the purpose of enabling or aiding another person; or
 - (b) who aids another person; or
 - (c) who counsels or procures another person,

to engage in prohibited conduct is guilty of a crime and is liable to imprisonment for 20 years.

[Section 187 inserted by No. 4 of 2004 s. 4.]

[188, 189.] Deleted by No. 14 of 1992 s. 6(2).]

190. Being involved with prostitution

- (1) Any person who —
- (a) keeps or manages, or acts, or assists in the management of any premises for purposes of prostitution; or
 - (b) being the tenant, lessee, or occupier of any premises, permits such premises, or any part thereof, to be used for purposes of prostitution; or
 - (c) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same, or any part thereof, or collects the rent with the knowledge that such premises, or some part thereof, are or is to be used for purposes of prostitution, or is a party to the continued use of such premises, or any part thereof, for purposes of prostitution,

is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

- (2) For the purposes of subsection (1)(a), a person who appears, acts, or behaves as the person having control of, or the care or management of, any premises is to be taken to be keeping the premises, whether the person is or is not the real keeper.
- (3) Any person who lives wholly or partly on earnings that the person knows are the earnings of prostitution is guilty of a crime and is liable to imprisonment for 3 years.
- Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.
- (4) For the purposes of subsection (3), if a person lives with, or is habitually in the company of a prostitute, and has no visible means of subsistence, the person shall, unless he or she can satisfy the court to the contrary, be taken to be living on earnings that the person knows are the earnings of prostitution.

[Section 190 inserted by No. 70 of 2004 s. 18.]

191. Procuring person to be prostitute etc.

(1) Any person who —

- (a) Procures a girl or woman who is under the age of 21 years, and is not a common prostitute or of known immoral character to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or
- (b) Procures a woman or girl to become a common prostitute either in Western Australia or elsewhere; or
- (c) Procures a woman or girl to leave Western Australia, with intent that she may become an inmate of a brothel, elsewhere; or
- (d) Procures a woman or girl to leave her usual place of abode in Western Australia, such place not being a brothel, with intent that she may, for the purposes of prostitution, become an inmate of a brothel, either in Western Australia or elsewhere; or
- (e) Procures a man or boy for any of the above purposes;

is guilty of a crime, and is liable to imprisonment for 2 years.

Alternative offence for a charge of an offence under subsection (1)(a): s. 186(1).

(2) It is no defence to a charge of an offence against this section that the act of the accused person by which the offence was committed was done with the consent of the person with respect to whom the act was done.

[Section 191 amended by No. 70 of 1988 s. 31; No. 32 of 1989 s. 12; No. 48 of 1991 s. 12(7); No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 19(1), 19(2), 34(1) and 36(4).]

192. Procuring person to have unlawful carnal knowledge by threats, fraud or administering drugs

- (1) Any person who —
- (a) By threats or intimidation of any kind procures a woman or girl to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or
 - (b) By any false pretence procures a woman or girl, who is not a common prostitute or of known immoral character, to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or
 - (c) Administers to a woman or girl, or causes a woman or girl to take, any drug or other thing with intent to stupefy or overpower her in order to enable any man, whether a particular man or not, to have unlawful carnal knowledge of her; or
 - (d) Does any of the foregoing acts with respect to a man or boy;

is guilty of a crime, and is liable to imprisonment for 2 years.

- (2) It is no defence to a charge of an offence against this section that the act of the accused person by which the offence was committed was done with the consent of the person with respect to whom the act was done.

[Section 192 amended by No. 70 of 1988 s. 31; No. 32 of 1989 s. 13; No. 48 of 1991 s. 12(7); No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 20 and 34(1).]

[193, 194. Deleted by No. 101 of 1990 s. 10.]

[195. Deleted by No. 17 of 2000 s. 64.]

[196-198. Deleted by No. 14 of 1992 s. 6(2).]

199. Abortion

- (1) It is unlawful to perform an abortion unless —
 - (a) the abortion is performed by a medical practitioner in good faith and with reasonable care and skill; and
 - (b) the performance of the abortion is justified under section 334 of the *Health Act 1911*.
- (2) A person who unlawfully performs an abortion is guilty of an offence.
Penalty: \$50 000.
- (3) Subject to section 259, if a person who is not a medical practitioner performs an abortion that person is guilty of a crime and is liable to imprisonment for 5 years.
- (4) In this section —
medical practitioner has the same meaning as it has in the *Health Act 1911*.
- (5) A reference in this section to performing an abortion includes a reference to —
 - (a) attempting to perform an abortion; and
 - (b) doing any act with intent to procure an abortion,whether or not the woman concerned is pregnant.

[Section 199 inserted by No. 15 of 1998 s. 4.]

[200, 201. Deleted by No. 15 of 1998 s. 4.]

202. Obscene acts in public

- (1) A person who does an obscene act —
 - (a) in a public place or in the sight of any person who is in a public place; or

- (b) in a police station or lock-up,
is guilty of a crime and is liable to imprisonment for 3 years.
Alternative offence: s. 203(1).
Summary conviction penalty: imprisonment for 12 months and a
fine of \$12 000.
- (2) A person who owns, or has the control or management of, a
place to which the public is admitted, whether on payment of
consideration or not, and who permits a person to do an obscene
act in that place is guilty of a crime and is liable to
imprisonment for 3 years.
Alternative offence: s. 203(2).
Summary conviction penalty: imprisonment for 12 months and a
fine of \$12 000.
- (3) It is a defence to a charge of an offence under this section to
prove that it was for the public benefit that the act complained
of should be done.
- (4) Whether the doing of any such act is or is not for the public
benefit is a question of fact.

[Section 202 inserted by No. 70 of 2004 s. 21.]

203. Indecent acts in public

- (1) A person who does an indecent act —
- (a) in a public place or in the sight of any person who is in a
public place; or
- (b) in a police station or lock-up,
- is guilty of a crime and is liable to imprisonment for 2 years.
Summary conviction penalty: imprisonment for 9 months and a
fine of \$9 000.
- (2) A person who owns, or has the control or management of, a
place to which the public is admitted, whether on payment of
consideration or not, and who permits a person to do an indecent

act in that place is guilty of a crime and is liable to imprisonment for 2 years.

Summary conviction penalty: imprisonment for 9 months and a fine of \$9 000.

- (3) It is a defence to a charge of an offence under this section to prove that it was for the public benefit that the act complained of should be done.
- (4) Whether the doing of any such act is or is not for the public benefit is a question of fact.

[Section 203 inserted by No. 70 of 2004 s. 21.]

204. Indecent act with intent to offend

A person who does an indecent act in any place with intent to insult or offend any person is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 204 inserted by No. 70 of 2004 s. 21.]

204A. Showing offensive material to children under 16

- (1) In this section, unless the contrary intention appears —
material includes —
 - (a) an object;
 - (b) a still visual image of any kind, whether a drawing, painting, photograph, or other representation on a surface of any kind, and whether printed or not;
 - (c) a moving visual image of any kind, whether produced from a cinematographic film, video tape, or other medium;
 - (d) a hologram;

offensive material means material that —

- (a) describes, depicts, expresses, or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner that is likely to cause offence to a reasonable adult; or
- (b) depicts a person (whether engaged in sexual activity or otherwise) who is, or who is apparently, a child under the age of 16 years in a manner that is likely to cause offence to a reasonable adult; or
- (c) describes, depicts, expresses, or otherwise deals with sexual activity of any kind between a human being and an animal; or
- (d) promotes, incites, or instructs in matters of crime or violence,

and includes —

- (e) a publication, within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, that has been classified RC, Category 1 restricted or Category 2 restricted under that Act; and
 - (f) a film, within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, that has been classified RC or X under that Act; and
 - (g) a computer game, within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, that has been classified RC under that Act.
- (2) A person who, with intent to commit a crime, shows offensive material to a child under the age of 16 years is guilty of a crime and is liable to imprisonment for 5 years.

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Chapter XXII Offences against morality

s. 204B

- (3) Upon an indictment charging a person with an offence under subsection (2), a certificate issued under an Act referred to in the definition of *offensive material* in subsection (1) as to the status of any material under that Act is, in the absence of evidence to the contrary, proof of the matters in the certificate.
- (4) It is a defence to a charge under subsection (2) to prove the accused person —
- (a) believed on reasonable grounds that the child was of or over the age of 16 years; and
 - (b) was not more than 3 years older than the child.

[Section 204A inserted by No. 14 of 1992 s. 5; amended by No. 40 of 1996 s. 152; No. 3 of 2002 s. 37; No. 30 of 2003 s. 42.]

204B. Using electronic communication to procure, or expose to indecent matter, children under 16

- (1) In this section —

computer generated image means electronically recorded data capable, by way of an electronic device, of being produced on a computer monitor, television screen, liquid crystal display or similar medium as an image, whether or not the image is in the form of text;

electronic communication has the meaning given to that term in the *Electronic Transactions Act 2011* section 5(1);

indecent matter includes an indecent film, videotape, audiotape, picture, photograph, or printed or written matter;

picture includes an image, whether or not it is a computer generated image;

victim means a person whom an adult, contrary to subsection (2) or (3), intends to —

- (a) procure to engage in sexual activity; or
- (b) expose to any indecent matter.

- (2) An adult who uses electronic communication —
- (a) with intent to —
 - (i) procure a person under the age of 16 years to engage in sexual activity; or
 - (ii) expose a person under the age of 16 years to any indecent matter,either in Western Australia or elsewhere; or
 - (b) with intent to —
 - (i) procure a person the offender believes is under the age of 16 years to engage in sexual activity; or
 - (ii) expose a person the offender believes is under the age of 16 years to any indecent matter,either in Western Australia or elsewhere,
- is guilty of a crime and is liable to imprisonment for 5 years.
- (3) An adult who uses electronic communication —
- (a) with intent to —
 - (i) procure a person under the age of 13 years to engage in sexual activity; or
 - (ii) expose a person under the age of 13 years to any indecent matter,either in Western Australia or elsewhere; or
 - (b) with intent to —
 - (i) procure a person the offender believes is under the age of 13 years to engage in sexual activity; or
 - (ii) expose a person the offender believes is under the age of 13 years to any indecent matter,either in Western Australia or elsewhere,
- is guilty of a crime and is liable to imprisonment for 10 years.

Alternative offence: subsection (2).

- (4) For the purpose of subsection (2)(a)(i) or (b)(i) or (3)(a)(i) or (b)(i), a person engages in sexual activity if the person —
 - (a) allows a sexual act to be done to the person's body; or
 - (b) does a sexual act to the person's own body or the body of another person; or
 - (c) otherwise engages in an act of an indecent nature.
- (5) The acts referred to in subsection (4) are not limited to penetration or acts involving physical contact.
- (6) For the purpose of subsection (2)(a)(i) or (b)(i) or (3)(a)(i) or (b)(i), it is not necessary to prove that the accused person intended to procure the victim to engage in any particular sexual activity.
- (7) If, despite subsection (6), an intention to procure the victim to engage in any particular sexual activity is alleged, it does not matter that, because of circumstances not known to the accused person, it is impossible in fact for the victim to engage in the sexual activity.
- (8) For the purposes of subsection (2) or (3), it does not matter that the victim is a fictitious person represented to the accused person as a real person.
- (9) Evidence that the victim was represented to the accused person as being under the age of 16 years, or 13 years, as the case may be, is, in the absence of evidence to the contrary, proof that the accused person believed the victim was under that age.
- (10) It is a defence to a charge under subsection (2)(a) to prove the accused person believed on reasonable grounds that the victim was of or over the age of 16 years.
- (11) It is a defence to a charge under subsection (3)(a) to prove the accused person believed on reasonable grounds that the victim

was of or over the age of 13 years, but that does not prevent the person from being convicted of an offence under subsection (2).

[Section 204B inserted by No. 3 of 2006 s. 4; amended by No. 46 of 2011 s. 25.]

205. Ignorance of age no defence

Except as otherwise expressly stated, it is immaterial, in the case of any of the offences defined in this Chapter committed with respect to a person or child under the specified age, that the accused person did not know that the person or child was under that age, or believed that he or she was not under that age.

[Section 205 inserted by No. 32 of 1989 s. 19.]

[205A. Deleted by No. 74 of 1985 s. 5.]

206. Supplying intoxicants to people likely to abuse them

(1) In this section —

intoxicant means a drug, or a volatile or other substance, capable of intoxicating a person, but does not include liquor as defined in the *Liquor Control Act 1988*;

volatile substance means a substance that produces a vapour at room temperature.

(2) A person who sells or supplies an intoxicant to another person in circumstances where the person knows, or where it is reasonable to suspect, that that or another person will use it to become intoxicated is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

[Section 206 inserted by No. 70 of 2004 s. 22; amended by No. 73 of 2006 s. 114.]

Chapter XXIII — Misconduct relating to corpses

[Heading amended by No. 70 of 2004 s. 23(2).]

The Criminal Code

Part IV Acts injurious to the public in general

Chapter XXIII Misconduct relating to corpses

s. 214

[207. Deleted by No. 70 of 1988 s. 23.]

[208. Deleted by No. 4 of 2004 s. 17.]

[209. Deleted by No. 70 of 2004 s. 23(1).]

[210, 211. Deleted by No. 108 of 1982 s. 27.]

[212. Deleted by No. 74 of 1987 s. 64.]

[213. Deleted by No. 70 of 2004 s. 23(1).]

214. Misconduct with regard to corpses

Any person who, without lawful justification or excuse, the proof of which lies on him —

- (1) Neglects to perform any duty imposed upon him by law, or undertaken by him, whether for reward or otherwise, touching the burial or other disposition of a human body or human remains; or
- (2) Improperly or indecently interferes with, or offers any indignity to, any dead human body or human remains, whether buried or not;

is guilty of a crime, and is liable to imprisonment for 2 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 214 amended by No. 70 of 1988 s. 25; No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1) and 35(1).]

215. Interfering with corpse to hinder inquiry

- (1) In this section a person interferes with the corpse of a person if he or she —
 - (a) conceals the corpse, whether by burying or destroying it or otherwise; or
 - (b) damages or mutilates or otherwise interferes with the corpse.

- (2) Any person who, without lawful justification or excuse, the proof of which lies on him or her, interferes with the corpse of a person with intent to prevent or prejudice any investigation into the circumstances surrounding the death of the person is guilty of a crime and is liable to imprisonment for 10 years.

[Section 215 inserted by No. 4 of 2004 s. 60.]

Chapter XXIV — Miscellaneous offences

[Heading inserted by No. 26 of 2009 s. 4.]

216. Selling graffiti implements to children

- (1) In this section —
graffiti implement means any of these —
- (a) a can of spray paint;
 - (b) a pen, marker pen, or similar implement, that —
 - (i) has a tip over 6 mm wide; and
 - (ii) contains a fluid that is not water soluble and that is capable of marking a surface.
- (2) A person who sells a graffiti implement to a child commits an offence and is liable —
- (a) for a first offence, to a fine of \$6 000;
 - (b) for a subsequent offence, to a fine of \$12 000.
- (3) It is a defence to a charge of an offence under subsection (2) to prove the accused, or a person acting on behalf of the accused, believed on reasonable grounds that the person to whom the implement was sold had reached 18 years of age.

[Section 216 inserted by No. 26 of 2009 s. 4.]

Chapter XXV — Child exploitation material

[Heading⁶ inserted as Ch. XXIV by No. 21 of 2010 s. 4.]

217A. Terms used

In this Chapter —

child means a person under 16 years of age;

child exploitation material means —

- (a) child pornography; or
- (b) material that, in a way likely to offend a reasonable person, describes, depicts or represents a person, or part of a person, who is, or appears to be, a child —
 - (i) in an offensive or demeaning context; or
 - (ii) being subjected to abuse, cruelty or torture (whether or not in a sexual context);

child pornography means material that, in a way likely to offend a reasonable person, describes, depicts or represents a person, or part of a person, who is, or appears to be a child —

- (a) engaging in sexual activity; or
- (b) in a sexual context;

material includes —

- (a) any object, picture, film, written or printed matter, data or other thing; and
- (b) any thing from which text, pictures, sound or data can be produced or reproduced, with or without the aid of anything else;

picture has the meaning given in section 204B.

[Section 217A⁶ inserted as section 216 by No. 21 of 2010 s. 4.]

217. Involving child in child exploitation

- (1) For the purposes of this section, a person involves a child in child exploitation if the person —
 - (a) invites a child to be in any way involved in the production of child exploitation material; or

- (b) causes a child to be in any way involved in the production of child exploitation material; or
 - (c) procures a child for the purpose of the production of child exploitation material; or
 - (d) offers a child for the purpose of the production of child exploitation material.
- (2) A person who involves a child in child exploitation is guilty of a crime and is liable to imprisonment for 10 years.

[Section 217 inserted by No. 21 of 2010 s. 4.]

218. Production of child exploitation material

A person who produces child exploitation material is guilty of a crime and is liable to imprisonment for 10 years.

[Section 218 inserted by No. 21 of 2010 s. 4.]

219. Distribution of child exploitation material

- (1) In this section —
distribute child exploitation material, includes —
- (a) communicate, exhibit, sell, send, supply, offer or transmit child exploitation material to another person, or enter into an agreement or arrangement to do so; or
 - (b) make child exploitation material available for access by electronic or other means by another person, or enter into an agreement or arrangement to do so.
- (2) A person who distributes child exploitation material is guilty of a crime and is liable to imprisonment for 10 years.
- (3) A person who has possession of child exploitation material with the intention of distributing the material is guilty of a crime and is liable to imprisonment for 10 years.

[Section 219 inserted by No. 21 of 2010 s. 4.]

220. Possession of child exploitation material

A person who has possession of child exploitation material is guilty of a crime and is liable to imprisonment for 7 years.

[Section 220 inserted by No. 21 of 2010 s. 4.]

221A. Defences and exclusions for s. 217, 218, 219 or 220

- (1A) It is no defence to a charge of an offence under section 217, 218, 219 or 220 to prove that the accused person did not know the age of the child to whom the charge relates, or the age of the child described, depicted or represented in the material to which the charge relates, or believed that the child was of or over 16 years of age.
- (1) It is a defence to a charge of an offence under section 217, 218, 219 or 220 to prove that —
- (a) the material to which the charge relates was classified (whether before or after the commission of the alleged offence) under the *Classification (Publications, Films and Computer Games) Act 1995* (Commonwealth), other than as refused classification (RC); or
 - (b) the accused person did not know, and could not reasonably be expected to have known, that the material to which the charge relates describes, depicts or represents a person or part of a person in a way likely to offend a reasonable person; or
 - (c) the material to which the charge relates was —
 - (i) of recognised literary, artistic or scientific merit; or
 - (ii) of a genuine medical character,and that the act to which the charge relates is justified as being for the public good; or
 - (d) the accused person was acting for a genuine child protection or legal purpose, and that the person's conduct was reasonable for that purpose.

- (2) It is a defence to a charge of an offence under section 220 to prove that —
- (a) the material to which the charge relates came into the accused person's possession unsolicited; and
 - (b) as soon as the accused person became aware of the nature of the material the accused person took reasonable steps to get rid of it.
- (3) Nothing in section 219 or 220 makes it an offence —
- (a) for a member or officer of a law enforcement agency to possess or distribute child exploitation material when acting in the course of his or her official duties; or
 - (b) for a person to possess or distribute child exploitation material in the exercise of a function relating to the classification of such material conferred or imposed on the person under the *Classification (Publications, Films and Computer Games) Act 1995* (Commonwealth).
- (4) In subsection (3)(a) —
- law enforcement agency** means —
- (a) the Police Force of the State; or
 - (b) the Police Service of the State; or
 - (c) the Office of the Director of Public Prosecutions of the State; or
 - (d) the Corruption and Crime Commission; or
 - (e) any entity of another State or a Territory, the Commonwealth or another country that has functions similar to functions of an entity referred to in paragraph (a), (b), (c) or (d).

[Section 221A inserted by No. 21 of 2010 s. 4.]

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Chapter XXV Child exploitation material

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221B. Forfeiture

- (1) If a person is charged with an offence against section 217, 218, 219 or 220, the court may order the material to which the charge relates be forfeited to the State.
- (2) The court may make an order under subsection (1) whether or not the person is convicted of the offence.
- (3) This section does not limit the court's powers under section 731 or under the *Criminal Property Confiscation Act 2000*.

[Section 221B inserted by No. 21 of 2010 s. 4.]

**Part V — Offences against the person and relating to
parental rights and duties and against the reputation
of individuals**

[Heading amended by No. 5 of 2008 s. 129(2).]

**Chapter XXVI — Assaults and violence to the person
generally: Justification, excuse and circumstances of
aggravation**

[Heading amended by No. 38 of 2004 s. 63.]

221. Circumstances of aggravation for offences in this Part

(1) In this Part —

circumstances of aggravation means circumstances in which —

- (a) the offender is in a family and domestic relationship with the victim of the offence; or
- (b) a child was present when the offence was committed; or
- (c) the conduct of the offender in committing the offence constituted a breach of an order made or registered under the *Restraining Orders Act 1997* or to which that Act applies; or
- (d) the victim is of or over the age of 60 years.

(2) In this section —

family and domestic relationship has the same meaning as it has in section 4 of the *Restraining Orders Act 1997*.

[Section 221 inserted by No. 38 of 2004 s. 64.]

222. Term used: assault

A person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent if the consent is obtained by fraud, or who by any bodily act or gesture

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attempts or threatens to apply force of any kind to the person of another without his consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.

The term *applies force* includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.

223. Assaults unlawful

An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.

The application of force by one person to the person of another may be unlawful, although it is done with the consent of that other person.

224. Execution of sentence

It is lawful for a person who is charged by law with the duty of executing or giving effect to the lawful sentence of a court to execute or give effect to that sentence.

225. Execution of process

It is lawful for a person who is charged by law with the duty of executing the lawful process of a court, and who is required to arrest or detain another person under such process, and for every person lawfully assisting a person so charged, to arrest or detain that other person according to the terms of the process.

226. Execution of warrants

It is lawful for a person who is charged by law with the duty of executing a lawful warrant issued by any court or justice or other person having jurisdiction to issue it, and who is required

to arrest or detain another person under such warrant, and for every person lawfully assisting a person so charged, to arrest or detain that other person according to the directions of the warrant.

227. Erroneous sentence or process or warrant

If the sentence was passed, or the process was issued, by a court having jurisdiction under any circumstances to pass such a sentence, or to issue such process, or if the warrant was issued by a court or justice or other person having authority under any circumstances to issue such a warrant, it is immaterial whether the court or justice or person had or had not authority to pass the sentence or issue the process or warrant in the particular case; unless the person executing the same knows that the sentence or process or warrant was in fact passed or issued without authority.

228. Sentence or process or warrant without jurisdiction

A person who executes or assists in executing any sentence, process, or warrant which purports to be passed or issued by a court, justice, or other person, and who would be justified, under section 224, 225, 226 or 227, in executing the same if it had been passed or issued by a court, justice, or person having authority to pass or issue it, is not criminally responsible for any act done in such execution, notwithstanding that the court, justice, or person had no authority to pass the sentence or issue the process or warrant, if in such execution he acted in good faith and in the belief that the sentence, process, or warrant was that of a court, justice, or other person having such authority.

[Section 228 amended by No. 44 of 2009 s. 13.]

229. Arrest of wrong person

A person who, being duly authorised to execute a warrant to arrest one person, arrests another person, believing in good faith and on reasonable grounds that the person arrested is the person

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named in the warrant, is not criminally responsible for doing so to any greater extent than if the person arrested had been the person named in the warrant.

Any person who lawfully assists in making such an arrest, believing that the person arrested is the person named in the warrant, or who, being required by the warrant to receive and detain the person named in it, receives and detains the person so arrested, is not criminally responsible for doing so to any greater extent than if the person arrested had been the person named in the warrant.

230. Irregular process or warrant

When any process or warrant is bad in law by reason of some defect in substance or in form apparent on the face of it, a person who, in good faith and believing that it is good in law, acts in the execution of the process or warrant, is not criminally responsible for anything done in such execution to any greater extent than if the process or warrant were good in law.

231. Force used in executing process or in arrest

- (1) It is lawful for a person who is engaged in the lawful execution of any sentence, process, or warrant, or in making any arrest, and for any person lawfully assisting him, to use such force as may be reasonably necessary to overcome any force used in resisting such execution or arrest.
- (2) In determining whether any process or warrant might have been executed, or any arrest made, in a less forcible manner, the following shall be taken into account —
 - (a) whether the person executing the process or warrant had it with him or her and produced it at the time;
 - (b) if it was practicable to do so at the time, whether the person making an arrest, whether with or without a warrant, gave notice of the process or warrant under which the person was acting or of the cause of the arrest.

[Section 231 amended by No. 59 of 2006 s. 20.]

[232. Deleted by No. 59 of 2006 s. 21.]

233. Preventing escape from arrest

- (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.
- (2) Subsection (1) does not authorise 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; and
 - (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 233 inserted by No. 119 of 1985 s. 6.]

[234. Deleted by No. 119 of 1985 s. 7.]

235. Preventing escape or rescue after arrest

- (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 authorise 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

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with imprisonment for 14 years or upwards, with or without any other punishment.

[Section 235 inserted by No. 119 of 1985 s. 8.]

[236, 237. Deleted by No. 59 of 2006 s. 22.]

238. Suppression of riot

It is lawful for any person to use such force as is necessary to suppress a riot, and is reasonably proportioned to the danger to be apprehended from its continuance.

239. Riot may be suppressed by justices and police officers

It is lawful for a justice to use or order to be used, and for a police officer to use, such force as he believes, on reasonable grounds, to be necessary in order to suppress a riot, and as is reasonably proportioned to the danger which he believes, on reasonable grounds, is to be apprehended from its continuance.

240. Suppression of riot by person acting under lawful orders

It is lawful for any person acting in good faith in obedience to orders, not manifestly unlawful, given by a justice for the suppression of a riot, to use such force as he believes, on reasonable grounds, to be necessary for carrying such orders into effect.

Whether any particular order so given is or is not manifestly unlawful is a question of law.

241. Suppression of riot by person acting without order in case of emergency

When any person, whether subject to military law or not, believes, on reasonable grounds, that serious mischief will arise from a riot before there is time to procure the intervention of a justice, it is lawful for him to use such force as he believes, on reasonable grounds, to be necessary for the suppression of the

riot, and as is reasonably proportioned to the danger which he believes, on reasonable grounds, is to be apprehended from its continuance.

242. Suppression of riot by military personnel

It is lawful for a person who is bound by military law to obey the lawful commands of his superior officer to obey any command given him by his superior officer in order to the suppression of a riot, unless the command is manifestly unlawful.

Whether any particular command is or is not manifestly unlawful is a question of law.

243. Prevention of violence by mentally impaired person

It is lawful for any person to use such force as is reasonably necessary in order to prevent a person whom he believes, on reasonable grounds, to be mentally impaired from doing violence to any person or property.

[Section 243 inserted by No. 59 of 2006 s. 23.]

244. Defence against home invasion

(1) It is lawful for a person (the *occupant*) who is in peaceable possession of a dwelling to use any force or do anything else that the occupant believes, on reasonable grounds, to be necessary —

- (a) to prevent a home invader from wrongfully entering the dwelling or an associated place; or
- (b) to cause a home invader who is wrongfully in the dwelling or on or in an associated place to leave the dwelling or place; or

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- (c) to make effectual defence against violence used or threatened in relation to a person by a home invader who is —
 - (i) attempting to wrongfully enter the dwelling or an associated place; or
 - (ii) wrongfully in the dwelling or on or in an associated place;or
 - (d) to prevent a home invader from committing, or make a home invader stop committing, an offence in the dwelling or on or in an associated place.
- (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) A person is a **home invader** for the purposes of subsection (1) if the occupant believes, on reasonable grounds, that the person —
- (a) intends to commit an offence; or
 - (b) is committing or has committed an offence,
- in the dwelling or on or in an associated place.
- (3) The authorisation conferred by subsection (1)(a), (b) or (d) extends to a person assisting the occupant or acting by the occupant's authority.
- (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.
- (5) This section has effect even if the conduct it authorises would not otherwise be authorised under this Chapter.

(6) In this section —

associated place means —

- (a) any place that is used exclusively in connection with, or for purposes ancillary to, the occupation of the dwelling; and
- (b) if the dwelling is one of 2 or more dwellings in one building or group of buildings, a place that occupants of the dwellings use in common with one another;

offence means an offence in addition to any wrongful entry;

place means any land, building or structure, or a part of any land, building or structure.

[Section 244 inserted by No. 45 of 2000 s. 4; amended by No. 29 of 2008 s. 7.]

245. Term used: provocation

The term *provocation* used with reference to an offence of which an assault is an element, means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal relation, to deprive him of the power of self control, and to induce him to assault the person by whom the act or insult is done or offered.

When such an act or insult is done or offered by one person to another, or in the presence of another, to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

A lawful act is not provocation to any person for an assault.

An act which a person does in consequence of incitement given by another person in order to induce him to do the act and

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thereby to furnish an excuse for committing an assault, is not provocation to that other person for an assault.

An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

[Section 245 amended by No. 4 of 2004 s. 61(1).]

246. Defence of provocation

A person is not criminally responsible for an assault committed upon a person who gives him provocation for the assault, if he is in fact deprived by the provocation of the power of self-control, and acts upon it on the sudden and before there is time for his passion to cool; provided that the force used is not disproportionate to the provocation, and is not intended, and is not such as is likely to cause death or grievous bodily harm.

Whether any particular act or insult is such as to be likely to deprive an ordinary person of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered, and whether, in any particular case, the person provoked was actually deprived by the provocation of the power of self-control, and whether any force used is or is not disproportionate to the provocation, are questions of fact.

247. Prevention of repetition of insult

It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to him for an assault; provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

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).
- (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.

[Section 248 inserted by No. 29 of 2008 s. 8.]

[249, 250. Deleted by No. 29 of 2008 s. 8.]

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251. Defence of movable property against trespassers

It is lawful for any person who is in peaceable possession of any movable property, and for any person acting by his authority, to use such force as is reasonably necessary in order to resist the taking of such property by a trespasser, or in order to retake it from a trespasser, provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the trespasser.

[Section 251 amended by No. 37 of 1991 s. 8.]

252. Defence of movable property with claim of right

When a person is in peaceable possession of any movable property under a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession of the property, even against a person who is entitled by law to possession of the property, provided that he does not do bodily harm to such other person.

253. Defence of movable property without claim of right

When a person who is entitled by law to the possession of movable property attempts to take it from a person who is in possession of the property, but who neither claims right to it nor acts by the authority of a person who claims right, and the person in possession resists him, it is lawful for the person so entitled to possession to use such force as is reasonably necessary in order to obtain possession of the property; provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the person in possession.

[Section 253 amended by No. 37 of 1991 s. 9.]

254. Defence of property against trespassers, removal of disorderly persons

- (1) For the purposes of this section and section 255, the term *place* means any land, building, structure, tent, or conveyance, or a part of any land, building, structure, tent, or conveyance.
- (2) It is lawful for a person (the *occupant*) who is in peaceable possession of any place, or who is entitled to the control or management of any place, to use such force as is reasonably necessary —
 - (a) to prevent a person from wrongfully entering the place; or
 - (b) to remove a person who wrongfully remains on or in the place; or
 - (c) to remove a person behaving in a disorderly manner on or in the place;

provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the person.

- (3) The authorisation conferred by subsection (2), as limited by the proviso to that subsection, extends to a person acting by the occupant's authority except that if that person's duties as an employee consist of or include any of the matters referred to in subsection (2)(a), (b) or (c) that person is not authorised to use force that is intended, or is likely, to cause bodily harm.

[Section 254 inserted by No. 37 of 1991 s. 10.]

255. Defence of possession of a place with claim of right

When a person is in peaceable possession of any place with a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession, even against a person who is entitled by law to the possession of the place, provided that he does not do bodily harm to such person.

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[Section 255 amended by No. 37 of 1991 s. 11.]

256. Exercise of right-of-way or easement

When a person who is lawfully entitled to enter upon land for the exercise of a right-of-way or other easement or profit enters upon the land for the purpose of exercising such right-of-way, easement, or profit, after notice that his right to use such way or easement or to take such profit is disputed by the person in possession of the land, or having entered persists in his entry after such notice, it is lawful for the person in possession, and for any person acting by his authority, to use such force as is reasonably necessary for the purpose of making the person so entering desist from the entry, provided that he does not do him bodily harm.

257. Discipline of children

It is lawful for a parent or a person in the place of a parent, or for a schoolmaster, to use, by way of correction, towards a child or pupil under his care, such force as is reasonable under the circumstances.

[Section 257 amended by No. 4 of 2004 s. 61(2).]

258. Discipline on ship or aircraft

It is lawful for the master or other person in command of —

- (a) a vessel on a voyage; or
- (b) an aircraft on a flight;

and for any person acting under his instructions to use, for the purpose of maintaining good order and discipline on board the vessel or aircraft, such force as he believes, on reasonable grounds, to be necessary, and as is reasonable under the circumstances.

[Section 258 inserted by No. 53 of 1964 s. 3.]

259. Surgical and medical treatment

- (1) A person is not criminally responsible for administering, in good faith and with reasonable care and skill, surgical or medical treatment (including palliative care) —
- (a) to another person for that other person's benefit; or
 - (b) to an unborn child for the preservation of the mother's life,

if the administration of the treatment is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

- (2) A person is not criminally responsible for not administering or ceasing to administer, in good faith and with reasonable care and skill, surgical or medical treatment (including palliative care) if not administering or ceasing to administer the treatment is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

[Section 259 inserted by No. 15 of 1998 s. 5; amended by No. 25 of 2008 s. 18.]

259A. Inoculation procedures

A person is not criminally responsible for performing, in good faith and with reasonable care and skill, a procedure that involves causing a person to have a disease, if that procedure is performed for inoculation purposes.

[Section 259A inserted by No. 51 of 1992 s. 4.]

260. Excessive force

In any case in which the use of force by one person to another is lawful, the use of more force than is justified by law under the circumstances is unlawful.

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s. 261

261. Consent to death immaterial

Consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused.

Chapter XXVII — Duties relating to the preservation of human life

262. Duty to provide necessaries of life

It is the duty of every person having charge of another who is unable by reason of age, sickness, mental impairment, detention, or any other cause, to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he is held to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty.

[Section 262 amended by No. 69 of 1996 s. 10.]

263. Duty of head of family

It is the duty of every person who, as head of a family, has the charge of a child under the age of 16 years, being a member of his household, to provide the necessaries of life for such child, and he is held to have caused any consequences which result to the life or health of the child by reason of any omission to perform that duty whether the child is helpless or not.

[264. Deleted by No. 4 of 2004 s. 61(3).]

265. Duty of persons doing dangerous acts

It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment (including palliative care) to any other person, or to do any other

lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to observe or perform that duty.

[Section 265 amended by No. 25 of 2008 s. 19.]

266. Duty of persons in charge of dangerous things

(1) In this section —

anything includes a source of ignition and a fire.

(2) It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

[Section 266 amended by No. 43 of 2009 s. 8.]

267. Duty to do certain acts

When a person undertakes to do any act the omission to do which is or may be dangerous to human life or health, it is his duty to do that act; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

Chapter XXVIII — Homicide: Suicide: Concealment of birth

268. Killing of a human being unlawful

It is unlawful to kill any person unless such killing is authorised or justified or excused by law.

269. When a child becomes a human being

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

270. Term used: kill

Any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person.

[Section 270 amended by No. 37 of 1991 s. 5.]

271. Death by acts done at childbirth

When a child dies in consequence of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do such act is deemed to have killed the child.

272. Causing death by threats

A person who, by threats or intimidation of any kind, or by deceit, causes another person to do an act or make an omission which results in the death of that other person, is deemed to have killed him.

273. Acceleration of death

A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.

274. When injury or death might be prevented by proper precaution

When a person causes a bodily injury to another from which death results, it is immaterial that the injury might have been

avoided by proper precaution on the part of the person injured, or that his death from that injury might have been prevented by proper care or treatment.

275. Injuries causing death in consequence of subsequent treatment

When a person does grievous bodily harm to another and such other person has recourse to surgical or medical treatment (including palliative care), and death results either from the injury or the treatment, he is deemed to have killed that other person, although the immediate cause of death was the surgical or medical treatment; provided that the treatment was reasonably proper under the circumstances, and was applied in good faith.

[Section 275 amended by No. 25 of 2008 s. 20.]

[276. Deleted by No. 37 of 1991 s. 6.]

277. Unlawful homicide

Any person who unlawfully kills another is guilty of a crime which, according to the circumstances of the case, may be murder or manslaughter.

[Section 277 inserted by No. 21 of 1972 s. 9; amended by No. 58 of 1974 s. 4; No. 89 of 1986 s. 6; No. 29 of 2008 s. 16(5).]

[278. Deleted by No. 29 of 2008 s. 10.]

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

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- (c) the death is caused by means of an act done in the prosecution of an unlawful purpose, which 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.

[Section 279 inserted by No. 29 of 2008 s. 10.]

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 life.

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

[Section 280 inserted by No. 29 of 2008 s. 11; amended by No. 58 of 2011 s. 4.]

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.

[Section 281 inserted by No. 29 of 2008 s. 12.]

[281A. Deleted by No. 29 of 2008 s. 13.]

[282. Deleted by No. 29 of 2008 s. 10.]

283. Attempt to murder

Any person who —

- (1) Attempts unlawfully to kill another; or
- (2) With intent unlawfully to kill another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life;

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

Alternative offence: s. 292, 294, 297, 304, 305 or 317.

[Section 283 amended by No. 106 of 1987 s. 7; No. 51 of 1992 s. 16(2); No. 4 of 2004 s. 16; No. 70 of 2004 s. 36(3); No. 29 of 2008 s. 16(6).]

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.

(5) It is a defence to a charge of an offence under subsection (3) to prove the death or grievous bodily harm caused by the incident was not in any way attributable (as relevant) to the manner (including the speed) in which the conveyance was driven.

[Section 284 inserted by No. 29 of 2008 s. 14; amended by No. 44 of 2009 s. 5.]

[285. Deleted by No. 101 of 1990 s. 12.]

[286. Deleted by No. 106 of 1987 s. 14(5).]

[287. Deleted by No. 29 of 2008 s. 11.]

[287A. Deleted by No. 29 of 2008 s. 13.]

288. Aiding suicide

Any person who —

- (1) Procures another to kill himself; or
- (2) Counsels another to kill himself and thereby induces him to do so; or
- (3) Aids another in killing himself;

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

[Section 288 amended by No. 51 of 1992 s. 16(2).]

[289. Deleted by No. 21 of 1972 s. 10.]

290. Killing unborn child

Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a crime, and is liable to imprisonment for life.

Alternative offence: s. 291.

[Section 290 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 36(3).]

291. Concealing birth of children

Any person who, when a woman is delivered of a child endeavours, by any secret disposition of the dead body of the child, to conceal its birth, whether the child died before, at, or

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after its birth, is guilty of a crime, and is liable to imprisonment for 2 years.

[Section 291 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

[291A. Deleted by No. 58 of 1974 s. 5.]

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292. Disabling in order to commit indictable offence etc.

Any person who, by means of violence of any kind and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance, is guilty of a crime, and is liable to imprisonment for 20 years.

Alternative offence: s. 301 or 317A.

[Section 292 amended by No. 118 of 1981 s. 4; No. 51 of 1992 s. 16(1) and (2); No. 70 of 2004 s. 36(3).]

293. Stupefying in order to commit indictable offence

Any person who, with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, administers, or attempts to administer any stupefying or overpowering drug or thing to any person, is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 293 amended by No. 118 of 1981 s. 4; No. 51 of 1992 s. 16(2).]

294. Acts intended to cause grievous bodily harm or prevent arrest

Any person who, with intent to maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, or to resist or prevent the lawful arrest or detention of any person —

- (1) unlawfully wounds or does any grievous bodily harm to any person by any means whatever; or
- (2) unlawfully attempts in any manner to strike any person with any kind of projectile; or
- (3) unlawfully causes any explosive substance to explode; or
- (4) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or
- (5) causes any such substance or thing to be taken or received by any person; or
- (6) puts any corrosive fluid or any destructive or explosive substance in any place; or
- (7) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person; or
- (8) does any act that is likely to result in a person having a serious disease;

is guilty of a crime, and is liable to imprisonment for 20 years.

Alternative offence: s. 297, 304, 317 or 317A.

[Section 294 amended by No. 118 of 1981 s. 4; No. 51 of 1992 s. 5 and 16(2); No. 70 of 2004 s. 36(3).]

294A. Dangerous goods on aircraft

- (1) Subject to this section, any person who —
 - (a) carries or places dangerous goods on board an aircraft; or

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- (b) delivers dangerous goods to another person for the purpose of those goods being placed on board an aircraft; or
- (c) has dangerous goods in his possession on board an aircraft,

is guilty of a crime and is liable to imprisonment for 7 years.

Alternative offence: s. 68 or 451A.

- (2) It is a defence to a charge of any offence defined in subsection (1) to prove that —
 - (a) the act constituting the offence was consented to by the owner or operator of the aircraft with knowledge by him of the nature of the goods concerned; or
 - (b) the act was done by authority or permission of or under a law of the Commonwealth or of the State.
- (3) In this section, **dangerous goods** means —
 - (a) firearms, ammunition, weapons and explosive substances; and
 - (b) substances or things that, by reason of their nature or condition, may endanger the safety of an aircraft or of a person on board an aircraft.

[Section 294A inserted by No. 53 of 1964 s. 4; amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 36(3).]

295. Preventing escape from wreck

Any person who unlawfully —

- (1) Prevents or obstructs any person who is on board of or is escaping from a vessel which is in distress or wrecked or cast ashore, in his endeavours to save his life; or
- (2) Obstructs any person in his endeavours to save the life of any person so situated;

is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 295 amended by No. 118 of 1981 s. 4; No. 51 of 1992 s. 16(2).]

[296, 296A. Deleted by No. 4 of 2004 s. 18.]

297. Grievous bodily harm

- (1) Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 10 years.

Alternative offence: s. 304, 313 or 317 or *Road Traffic Act 1974* s. 59.

- (2) If the offence is committed in the course of conduct that, under section 371 or 371A, constitutes the stealing of a motor vehicle, the offender is liable to imprisonment for 14 years.
- (3) If the offence is committed in circumstances of aggravation, the offender is liable to imprisonment for 14 years.
- (4) If —
- (a) the victim of the offence is a public officer who is performing a function of his office or employment; or
 - (b) the offence is committed against a public officer on account of his being such an officer or his performance of a function of his office or employment; or
 - (c) the victim of the offence is the driver or person operating or in charge of —
 - (i) a vehicle travelling on a railway; or
 - (ii) a ferry; or
 - (iii) a passenger vehicle as defined in paragraph (a) of the definition of *passenger vehicle* in section 5(1) of the *Road Traffic Act 1974*;
- or
- (d) the victim of the offence is —
 - (i) an ambulance officer; or

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- (ii) a member of a FES Unit, SES Unit or VMRS Group (within the meaning given to those terms by the *Fire and Emergency Services Act 1998*); or
- or
- (iii) a member or officer of a private fire brigade or volunteer fire brigade (within the meaning given to those terms by the *Fire Brigades Act 1942*), who is performing his or her duties as such; or
- (e) the victim of the offence is a person who —
 - (i) is working in a hospital; or
 - (ii) is in the course of providing a health service to the public;
- or
- (f) the victim of the offence is a contract worker (within the meaning given to that term by the *Court Security and Custodial Services Act 1999*) who is providing court security services or custodial services under that Act; or
- (g) the victim of the offence is a contract worker (within the meaning given to that term by section 15A of the *Prisons Act 1981*) who is performing functions under Part IIIA of that Act,

the offender is liable to imprisonment for 14 years.

- (5) If the offence is committed in prescribed circumstances by a person who has reached 16 but not 18 years of age, then, notwithstanding the *Young Offenders Act 1994* and in particular section 46(5a) of it, the court sentencing the offender —
 - (a) must sentence the offender either —
 - (i) to a term of imprisonment of at least 3 months, notwithstanding the *Sentencing Act 1995* section 86; or
 - (ii) to a term of detention (as defined in the *Young Offenders Act 1994* section 3) of at least 3 months,

- as the court thinks fit; and
- (b) must not suspend any term of imprisonment imposed under paragraph (a)(i); and
 - (c) must record a conviction against the offender.
- (6) Subsection (5) does not prevent a court from making a direction under the *Young Offenders Act 1994* section 118(4) or a special order under Part 7 Division 9 of that Act.
- (7) If the offence is committed in prescribed circumstances by a person who has reached 18 years of age, then, notwithstanding any other written law, the court sentencing the offender —
- (a) must sentence the offender to a term of imprisonment of at least 12 months; and
 - (b) must not suspend the term of imprisonment imposed under paragraph (a).
- (8) In subsections (5) and (7) —
- prescribed circumstances*** means any of these circumstances —
- (a) where the offence is committed in the circumstances set out in subsection (4)(a) or (b) and the public officer is —
 - (i) a police officer; or
 - (ii) a prison officer as defined in the *Prisons Act 1981* section 3(1); or
 - (iii) a security officer as defined in the *Public Transport Authority Act 2003* section 3;
 - (b) where the offence is committed in the circumstances set out in subsection (4)(d)(i), (f) or (g).

[Section 297 amended by No. 1 of 1992 s. 4; No. 51 of 1992 s. 16(2); No. 29 of 1998 s. 3; No. 23 of 2001 s. 3; No. 38 of 2004 s. 65; No. 70 of 2004 s. 36(6); No. 2 of 2008 s. 5; No. 21 of 2009 s. 4; No. 22 of 2012 s. 115.]

[298-300. Deleted by No. 4 of 2004 s. 19.]

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301. Wounding and similar acts

Any person who —

- (1) Unlawfully wounds another; or
- (2) Unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to or taken by any person;

is guilty of a crime, and is liable —

- (a) if the offence is committed in circumstances of aggravation, to imprisonment for 7 years; or
- (b) in any other case, to imprisonment for 5 years.

Summary conviction penalty:

- (a) in a case to which paragraph (a) above applies: imprisonment for 3 years and a fine of \$36 000; or
- (b) in a case to which paragraph (b) above applies: imprisonment for 2 years and a fine of \$24 000.

[Section 301 amended by No. 51 of 1992 s. 16(2); No. 82 of 1994 s. 6; No. 23 of 2001 s. 4; No. 38 of 2004 s. 66; No. 70 of 2004 s. 35(4).]

[302. Deleted by No. 4 of 2004 s. 20.]

[303. Deleted by No. 4 of 2004 s. 61(4).]

304. Acts or omissions causing bodily harm or danger

- (1) If a person omits to do any act that it is the person's duty to do, or unlawfully does any act, as a result of which —
 - (a) bodily harm is caused to any person; or
 - (b) the life, health or safety of any person is or is likely to be endangered,

the person is guilty of a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

- (2) If a person, with an intent to harm, omits to do any act that it is the person's duty to do, or does any act, as a result of which —
- (a) bodily harm is caused to any person; or
 - (b) the life, health or safety of any person is or is likely to be endangered,

the person is guilty of a crime and is liable to imprisonment for 20 years.

- (3) For the purposes of subsection (2) an intent to harm is an intent to —
- (a) unlawfully cause bodily harm to any person; or
 - (b) unlawfully endanger the life, health or safety of, any person; or
 - (c) induce any person to deliver property to another person; or
 - (d) gain a benefit, pecuniary or otherwise, for any person; or
 - (e) cause a detriment, pecuniary or otherwise, to any person; or
 - (f) prevent or hinder the doing of an act by a person who is lawfully entitled to do that act; or
 - (g) compel the doing of an act by a person who is lawfully entitled to abstain from doing that act.

[Section 304 inserted by No. 4 of 2004 s. 21; amended by No. 70 of 2004 s. 35(2); No. 44 of 2009 s. 6.]

305. Setting dangerous things for people

- (1) In this section —
- dangerous thing*** means any article, device, substance, or thing, that by reason of its nature (whether chemical, electrical, electronic, mechanical, or otherwise), situation, operation or

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condition, may endanger the life, health or safety of a person (whether a particular person or not);

set includes construct and place.

- (2) For the purposes of subsections (3) and (4), a person wilfully sets a dangerous thing if the person sets the thing —
- (a) intending that the thing will kill or cause grievous bodily harm to a person; or
 - (b) knowing or believing that the thing is likely to kill or cause grievous bodily harm to a person.

- (3) A person who wilfully sets a dangerous thing is guilty of a crime and is liable to imprisonment for 3 years.

Alternative offence: s. 305(4)

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

- (4) A person who, knowing that a dangerous thing has been wilfully set by another person, does not take reasonable measures to make the thing harmless is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

- (5) A person is not criminally responsible under this section for an act or omission in respect of a dangerous thing set at night in a dwelling for the protection of the occupants of the dwelling.

[Section 305 inserted by No. 4 of 2004 s. 21; amended by No. 70 of 2004 s. 35(1) and 36(3).]

305A. Intoxication by deception

- (1) In this section —

harm includes an impairment of the senses or understanding of a person that the person might reasonably be expected to object to in the circumstances;

impair includes further impair and temporarily impair;

intoxicating substance includes any substance that affects a person's senses or understanding.

- (2) For the purposes of this section giving a person drink or food includes preparing the drink or food for the person or making it available for consumption by the person.
- (3) This section applies if a person (the *provider*) causes another person to be given or to consume drink or food —
- (a) containing an intoxicating substance that other person is not aware that it contains; or
 - (b) containing more of an intoxicating substance than that other person would reasonably expect it to contain.
- (4) Where this section applies and the provider —
- (a) intends a person to be harmed by the consumption of the drink or food; or
 - (b) knows or believes that consumption of the drink or food is likely to harm a person,

the provider is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

- (5) It is a defence to a charge under subsection (4) to prove that the accused person had reasonable cause to believe that each person who was likely to consume the drink or food would not have objected to consuming the drink or food if the person had been aware of the presence and quantity of the intoxicating substance in the drink or food.

[Section 305A inserted by No. 31 of 2007 s. 4.]

306. Female genital mutilation

- (1) In this section —

child means a person under the age of 18 years;

female genital mutilation means —

- (a) the excision or mutilation of the whole or a part of the clitoris, the labia minora, the labia majora, or any other part of the female genital organs; or
- (b) infibulation or any procedure that involves the sealing or suturing together of the labia minora or the labia majora; or
- (c) any procedure to narrow or close the vaginal opening,

but does not include —

- (d) a reassignment procedure within the meaning of the *Gender Reassignment Act 2000* carried out on a person's genitals by a medical practitioner within the meaning of the *Health Act 1911*; or
 - (e) a medical procedure carried out for proper medical purposes.
- (2) A person who performs female genital mutilation on another person is guilty of a crime and is liable to imprisonment for 20 years.
 - (3) It is not a defence to a charge under subsection (2) that the other person, or a parent or guardian of the other person, consented to the mutilation.
 - (4) A person who takes a child from Western Australia, or arranges for a child to be taken from Western Australia, with the intention of having the child subjected to female genital mutilation is guilty of a crime and is liable to imprisonment for 10 years.
 - (5) In proceedings for an offence under subsection (4), proof that —
 - (a) the accused person took a child, or arranged for a child to be taken from Western Australia; and
 - (b) the child, while out of Western Australia, was subjected to female genital mutilation,

is proof, in the absence of evidence to the contrary, that the accused person took the child, or arranged for the child to be taken, from Western Australia, as the case may be, with the intention of having the child subjected to female genital mutilation.

[Section 306 inserted by No. 4 of 2004 s. 22.]

[307-312. Deleted by No. 4 of 2004 s. 21.]

Chapter XXX — Assaults

313. Common assaults

- (1) Any person who unlawfully assaults another is guilty of a simple offence and is liable —
 - (a) if the offence is committed in circumstances of aggravation or in circumstances of racial aggravation, to imprisonment for 3 years and a fine of \$36 000; or
 - (b) in any other case, to imprisonment for 18 months and a fine of \$18 000.
- (2) A prosecution for an offence under subsection (1) may be commenced at any time.

[Section 313 inserted by No. 106 of 1987 s. 15; amended by No. 23 of 2001 s. 5; No. 38 of 2004 s. 67; No. 70 of 2004 s. 35(4); No. 2 of 2008 s. 6(1).]

[314, 315. Deleted by No. 74 of 1985 s. 7.]

[316. Deleted by No. 119 of 1985 s. 11.]

317. Assaults occasioning bodily harm

- (1) Any person who unlawfully assaults another and thereby does that other person bodily harm is guilty of a crime, and is liable —

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- (a) if the offence is committed in circumstances of aggravation or in circumstances of racial aggravation, to imprisonment for 7 years; or
- (b) in any other case, to imprisonment for 5 years.

Alternative offence: s. 313.

Summary conviction penalty:

- (a) in a case to which paragraph (a) above applies: imprisonment for 3 years and a fine of \$36 000; or
- (b) in a case to which paragraph (b) above applies: imprisonment for 2 years and a fine of \$24 000.

[(2) deleted]

[Section 317 inserted by No. 119 of 1985 s. 12; amended by No. 106 of 1987 s. 24; No. 70 of 1988 s. 28; No. 82 of 1994 s. 12; No. 23 of 2001 s. 6; No. 38 of 2004 s. 68; No. 70 of 2004 s. 35(4) and 36(3); No. 2 of 2008 s. 7(1).]

317A. Assaults with intent

Any person who —

- (a) assaults another with intent to commit or facilitate the commission of a crime; or
- (b) assaults another with intent to do grievous bodily harm to any person; or
- (c) assaults another with intent to resist or prevent the lawful arrest or detention of any person,

is guilty of a crime, and is liable —

- (d) if the offence is committed in circumstances of aggravation or in circumstances of racial aggravation, to imprisonment for 7 years; or
- (e) in any other case, to imprisonment for 5 years.

Alternative offence: s. 313 or 317.

Summary conviction penalty:

- (a) in a case to which paragraph (d) above applies:
imprisonment for 3 years and a fine of \$36 000; or
- (b) in a case to which paragraph (e) above applies:
imprisonment for 2 years and a fine of \$24 000.

*[Section 317A inserted by No. 82 of 1994 s. 7; amended by
No. 23 of 2001 s. 7; No. 38 of 2004 s. 69; No. 70 of 2004
s. 35(4) and 36(3); No. 2 of 2008 s. 8(1).]*

318. Serious assaults

- (1) Any person who —

[(a)-(c) deleted]

- (d) assaults a public officer who is performing a function of
his office or employment or on account of his being such
an officer or his performance of such a function; or
 - (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; or
 - (g) assaults the driver or person operating or in charge of —
 - (i) a vehicle travelling on a railway; or
 - (ii) a ferry; or
 - (iii) a passenger vehicle as defined in paragraph (a) of
the definition of ***passenger vehicle*** in
section 5(1) of the *Road Traffic Act 1974*;
- or
- (h) assaults —
 - (i) an ambulance officer; or
 - (ii) a member of a FES Unit, SES Unit or VMRS
Group (within the meaning given to those terms

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by the *Fire and Emergency Services Act 1998*);
or

(iii) a member or officer of a private fire brigade or volunteer fire brigade (within the meaning given to those terms by the *Fire Brigades Act 1942*), who is performing his or her duties as such; or

(i) assaults a person who —

(i) is working in a hospital; or

(ii) is in the course of providing a health service to the public;

or

(j) assaults a contract worker (within the meaning given to that term by the *Court Security and Custodial Services Act 1999*) who is providing court security services or custodial services under that Act; or

(k) assaults a contract worker (within the meaning given to that term by section 15A of the *Prisons Act 1981*) who is performing functions under Part IIIA of that Act,

is guilty of a crime and is liable —

(l) if at or immediately before or immediately after the commission of the offence —

(i) the offender is armed with any dangerous or offensive weapon or instrument; or

(ii) the offender is in company with another person or persons,

to imprisonment for 10 years; or

(m) in any other case, to imprisonment for 7 years.

Summary conviction penalty: in a case to which subsection (1)(m) applies: imprisonment for 3 years and a fine of \$36 000.

- (2) If a person is convicted of an offence against this section committed in prescribed circumstances at a time when the person had reached 16 but not 18 years of age, then, notwithstanding the *Young Offenders Act 1994* and in particular section 46(5a) of it, the court sentencing the person —
- (a) must sentence the offender to either —
 - (i) a term of imprisonment of at least 3 months, notwithstanding the *Sentencing Act 1995* section 86; or
 - (ii) to a term of detention (as defined in the *Young Offenders Act 1994* section 3) of at least 3 months,as the court thinks fit; and
 - (b) must not suspend any term of imprisonment imposed under paragraph (a)(i); and
 - (c) must record a conviction against the person.
- (3) Subsection (2) does not prevent a court from making a direction under the *Young Offenders Act 1994* section 118(4) or a special order under Part 7 Division 9 of that Act.
- (4) If a person is convicted of an offence against this section committed in prescribed circumstances at a time when the person had reached 18 years of age, then, notwithstanding any other written law, the court sentencing the person —
- (a) if the offence is committed in the circumstances set out in subsection (1)(l) — must sentence the person to a term of imprisonment of at least 9 months;
 - (b) if the offence is not committed in the circumstances set out in subsection (1)(l) — must sentence the person to a term of imprisonment of at least 6 months,
- and must not suspend the term of imprisonment imposed under paragraph (a) or (b).
- (5) In subsections (2) and (4) —

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prescribed circumstances means any of these circumstances —

- (a) where the offence is committed under subsection (1)(d) or (e) against a public officer who is —
 - (i) a police officer; or
 - (ii) a prison officer as defined in the *Prisons Act 1981* section 3(1); or
 - (iii) a security officer as defined in the *Public Transport Authority Act 2003* section 3, and the officer suffers bodily harm;
- (b) where the offence is committed under subsection (1)(h)(i), (j) or (k) and the person assaulted suffers bodily harm.

[Section 318 inserted by No. 119 of 1985 s. 13; amended by No. 106 of 1987 s. 24; No. 70 of 1988 s. 29; No. 82 of 1994 s. 8; No. 70 of 2004 s. 35(3); No. 2 of 2008 s. 9; No. 21 of 2009 s. 5; No. 22 of 2012 s. 116.]

318A. Assaults on aircraft's crew

Any person who unlawfully assaults a member of the crew of an aircraft or threatens with violence a member of the crew of an aircraft so as to interfere with the performance by the member of his functions or duties connected with the operation of the aircraft or so as to lessen his ability to perform those functions or duties, is guilty of a crime and is liable to imprisonment for 14 years.

Alternative offence: s. 294A, 297, 304, 313, 317 or 317A.

[Section 318A inserted by No. 53 of 1964 s. 6; amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 36(3); No. 44 of 2009 s. 7.]

Chapter XXXI — Sexual offences

[Heading inserted by No. 14 of 1992 s. 6(1).]

319. Terms used

(1) In this Chapter —

circumstances of aggravation, without limiting the definition of that expression in section 221, includes circumstances in which —

- (a) at or immediately before or immediately after the commission of the offence —
 - (i) the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; or
 - (ii) the offender is in company with another person or persons; or
 - (iii) the offender does bodily harm to any person; or
 - (iv) the offender does an act which is likely seriously and substantially to degrade or humiliate the victim; or
 - (v) the offender threatens to kill the victim;

or

- (b) the victim is of or over the age of 13 years and under the age of 16 years;

deals with includes doing any act which, if done without consent, would constitute an assault;

indecent act means an indecent act which is —

- (a) committed in the presence of or viewed by any person;
or
- (b) photographed, videotaped, or recorded in any manner;

to indecently record means to take, or permit to be taken, or make, or permit to be made, an indecent photograph, film, video tape, or other recording (including a sound recording);

to sexually penetrate means —

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- (a) to penetrate the vagina (which term includes the *labia majora*), the anus, or the urethra 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; or
 - (b) to manipulate any part of the body of another person so as to cause penetration of the vagina (which term includes the *labia majora*), the anus, or the urethra of the offender by part of the other person's body; or
 - (c) to introduce any part of the penis of a person into the mouth of another person; or
 - (d) to engage in cunnilingus or fellatio; or
 - (e) to continue sexual penetration as defined in paragraph (a), (b), (c) or (d).
- (2) For the purposes of this Chapter —
- (a) **consent** means a consent freely and voluntarily given and, without in any way affecting the meaning attributable to those words, a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, deceit, or any fraudulent means;
 - (b) where an act would be an offence if done without the consent of a person, a failure by that person to offer physical resistance does not of itself constitute consent to the act;
 - (c) a child under the age of 13 years is incapable of consenting to an act which constitutes an offence against the child.

- (3) For the purposes of this Chapter, a reference to a person indecently dealing with a child or an incapable person includes a reference to the person —
- (a) procuring or permitting the child or incapable person to deal indecently with the person; or
 - (b) procuring the child or incapable person to deal indecently with another person; or
 - (c) committing an indecent act in the presence of the child or incapable person.
- (4) For the purposes of this Chapter, a person is said to engage in sexual behaviour if the person —
- (a) sexually penetrates any person; or
 - (b) has carnal knowledge of an animal; or
 - (c) penetrates the person's own vagina (which term includes the *labia majora*), anus, or urethra with any object or any part of the person's body for other than proper medical purposes.

[Section 319 inserted by No. 14 of 1992 s. 6(1); amended by No. 38 of 2004 s. 70.]

320. Child under 13, sexual offences against

- (1) In this section *child* means a child under the age of 13 years.
- (2) A person who sexually penetrates a child is guilty of a crime and is liable to imprisonment for 20 years.
Alternative offence: s. 320(4), 321(2) or (4) or 322(2) or (4).
- (3) A person who procures, incites, or encourages a child to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 20 years.
Alternative offence: s. 320(4) or (5), 321(3), (4) or (5) or 322(3), (4) or (5).

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- (4) A person who indecently deals with a child is guilty of a crime and is liable to imprisonment for 10 years.
Alternative offence: s. 321(4) or 322(4).
- (5) A person who procures, incites, or encourages a child to do an indecent act is guilty of a crime and is liable to imprisonment for 10 years.
Alternative offence: s. 321(5) or 322(5).
- (6) A person who indecently records a child is guilty of a crime and is liable to imprisonment for 10 years.
Alternative offence: s. 321(6) or 322(6).
- [Section 320 inserted by No. 14 of 1992 s. 6(1); amended by No. 70 of 2004 s. 36(3).]*

321. Child of or over 13 and under 16, sexual offences against

- (1) In this section, *child* means a child of or over the age of 13 years and under the age of 16 years.
- (2) A person who sexually penetrates a child is guilty of a crime and is liable to the punishment in subsection (7).
Alternative offence: s. 321(4) or 322(2) or (4).
- (3) A person who procures, incites, or encourages a child to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (7).
Alternative offence: s. 321(4) or (5) or 322(3), (4) or (5).
- (4) A person who indecently deals with a child is guilty of a crime and is liable to the punishment in subsection (8).
Alternative offence: s. 322(4).
- (5) A person who procures, incites, or encourages a child to do an indecent act is guilty of a crime and is liable to the punishment in subsection (8).
Alternative offence: s. 322(5).

- (6) A person who indecently records a child is guilty of a crime and is liable to the punishment in subsection (8).
Alternative offence: s. 322(6).
- (7) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —
- (a) 14 years; or
 - (b) where the child is under the care, supervision, or authority of the offender, 20 years; or
 - (c) where the offender is under the age of 18 years and the child is not under the care, supervision, or authority of the offender, 7 years.
- (8) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —
- (a) 7 years; or
 - (b) where the child is under the care, supervision, or authority of the offender, 10 years; or
 - (c) where the offender is under the age of 18 years and the child is not under the care, supervision, or authority of the offender, 4 years.
- (9) Subject to subsection (9a) it is a defence to a charge under this section to prove the accused person —
- (a) believed on reasonable grounds that the child was of or over the age of 16 years; and
 - (b) was not more than 3 years older than the child.
- (9a) Where the child is under the care, supervision, or authority of the accused person it is immaterial that the accused person —
- (a) believed on reasonable grounds that the child was of or over the age of 16 years; and
 - (b) was not more than 3 years older than the child.
- (10) It is a defence to a charge under subsection (2), (3) or (4) to prove the accused person was lawfully married to the child.

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- (11) It is a defence to a charge under subsection (5) to prove —
- (a) that the indecent act was a private conjugal act; or
 - (b) that the accused person intended the indecent act to be a private conjugal act.
- (12) For the purposes of subsection (11) an indecent act is a private conjugal act if —
- (a) it is not committed in the presence of, or viewed by, any person other than a person lawfully married to the child; and
 - (b) no photograph, film, videotape or other recording is made of it other than for the exclusive and private use of the child and a person lawfully married to the child.
- (13) It is a defence to a charge under subsection (6) to prove —
- (a) that the accused person was lawfully married to the child; and
 - (b) that the indecent recording was made for the exclusive and private use of the child and the accused person.

[Section 321 inserted by No. 14 of 1992 s. 6(1); amended by No. 3 of 2002 s. 38; No. 4 of 2004 s. 62; No. 70 of 2004 s. 36(3).]

321A. Child under 16, persistent sexual conduct with

- (1) In this section —

prescribed offence means —

- (a) an offence under section 320(2) or (4) or 321(2) or (4) or an attempt to commit such an offence; or
- (b) an offence under section 320(3) or 321(3) where the child in fact engages in sexual behaviour;

sexual act means an act that would constitute a prescribed offence.

- (2) For the purposes of this section a person persistently engages in sexual conduct with a child if that person does a sexual act in

- relation to the child on 3 or more occasions each of which is on a different day.
- (3) For the purposes of subsection (2) —
- (a) the sexual acts need not all constitute the same prescribed offence; and
 - (b) the sexual acts need not all have occurred in this State as long as at least one of them did.
- (4) A person who persistently engages in sexual conduct with a child under the age of 16 years is guilty of a crime and is liable to imprisonment for 20 years.
- (5) A charge of an offence under subsection (4) —
- (a) must specify the period during which it is alleged that the sexual conduct occurred; and
 - (b) need not specify the dates, or in any other way particularise the circumstances, of the sexual acts alleged to constitute the sexual conduct.
- (6) A person charged with an offence under subsection (4) may also be charged, either in the same or a separate indictment, with a prescribed offence that is alleged to have been committed in the period during which it is alleged that the sexual conduct constituting the offence under subsection (4) occurred.
- (7) An indictment containing a charge of an offence under subsection (4) must be signed by the Director of Public Prosecutions or the Deputy Director of Public Prosecutions.
- (8) A court cannot order the prosecutor to give a person charged with an offence under subsection (4) particulars of the sexual acts alleged to constitute the offence, despite section 131 of the *Criminal Procedure Act 2004*.
- (9) It is a defence to a charge of an offence under subsection (4) to prove the accused person —

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- (a) believed on reasonable grounds that the child was of or over the age of 16 years; and
 - (b) was not more than 3 years older than the child.
- (10) It is a defence to a charge of an offence under subsection (4) to prove the accused person was lawfully married to the child.
- (11) If in a trial by jury of a charge of an offence under subsection (4), there is evidence of sexual acts on 4 or more occasions, the jury members need not all be satisfied that the same sexual acts occurred on the same occasions as long as the jury is satisfied that the accused person persistently engaged in sexual conduct in the period specified.
- (12) If an accused person is found not guilty of a charge of an offence under subsection (4), he or she may nevertheless be found guilty of one or more prescribed offences committed in the period specified in the charge if the offence or offences are established by the evidence, despite section 10A.
- (13) If a person is sentenced, whether on one or more than one indictment, to —
- (a) a term of imprisonment for an offence under subsection (4); and
 - (b) a term of imprisonment for a prescribed offence committed in the period during which the offence under subsection (4) was committed,

the court must not order the terms to be served wholly or partly cumulatively.

[Section 321A inserted by No. 2 of 2008 s. 10.]

322. Child of or over 16, sexual offences against by person in authority etc.

- (1) In this section *child* means a child of or over the age of 16 years.
- (2) A person who sexually penetrates a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 10 years.
Alternative offence: s. 322(4).
- (3) A person who procures, incites, or encourages a child who is under his or her care, supervision, or authority to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 10 years.
Alternative offence: s. 322(4) or (5).
- (4) A person who indecently deals with a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 5 years.
- (5) A person who procures, incites, or encourages a child who is under his or her care, supervision, or authority to do an indecent act is guilty of a crime and is liable to imprisonment for 5 years.
- (6) A person who indecently records a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 5 years.
- (7) It is no defence to a charge under this section to prove the accused believed on reasonable grounds that the child was of or over the age of 18 years.
- (8) It is a defence to a charge under this section to prove the accused person was lawfully married to the child.

[Section 322 inserted by No. 14 of 1992 s. 6(1); amended by No. 3 of 2002 s. 40; No. 70 of 2004 s. 36(3).]

[322A. Deleted by No. 3 of 2002 s. 41(1).]

323. Indecent assault

A person who unlawfully and indecently assaults another person is guilty of a crime and liable to imprisonment for 5 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 323 inserted by No. 14 of 1992 s. 6(1); amended by No. 36 of 1996 s. 17; No. 70 of 2004 s. 35(2).]

324. Aggravated indecent assault

A person who unlawfully and indecently assaults another person in circumstances of aggravation is guilty of a crime and is liable to imprisonment for 7 years.

Alternative offence: s. 321(4), 322(4) or 323.

Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

[Section 324 inserted by No. 14 of 1992 s. 6(1); amended by No. 36 of 1996 s. 18; No. 70 of 2004 s. 35(3) and 36(3).]

325. Sexual penetration without consent

A 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.

Alternative offence: s. 322(2) or (4), 323 or 324.

[Section 325 inserted by No. 14 of 1992 s. 6(1); amended by No. 70 of 2004 s. 36(3).]

326. Aggravated sexual penetration without consent

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

Alternative offence: s. 321(2) or (4), 322(2) or (4), 323, 324 or 325.

*[Section 326 inserted by No. 14 of 1992 s. 6(1); amended by
No. 70 of 2004 s. 36(3).]*

327. Sexual coercion

A person who compels another person to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 14 years.

Alternative offence: s. 322(3), (4) or (5).

*[Section 327 inserted by No. 14 of 1992 s. 6(1); amended by
No. 70 of 2004 s. 36(3).]*

328. Aggravated sexual coercion

A person who compels another person to engage in sexual behaviour in circumstances of aggravation is guilty of a crime and is liable to imprisonment for 20 years.

Alternative offence: s. 321(3), (4) or (5), 322(3), (4) or (5)
or 327.

*[Section 328 inserted by No. 14 of 1992 s. 6(1); amended by
No. 70 of 2004 s. 36(3).]*

329. Relatives and the like, sexual offences by

(1) In this section —

de facto child means a step-child of the offender or a child or step-child of a de facto partner of the offender;

lineal relative means a person who is a lineal ancestor, lineal descendant, brother, or sister, whether the relationship is of the whole blood or half-blood, whether or not the relationship is traced through, or to, a person whose parents were not married to each other at the time of the person's birth, or subsequently, and whether the relationship is a natural relationship or a relationship established by a written law.

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- (2) A person who sexually penetrates a child who the offender knows is his or her lineal relative or a de facto child is guilty of a crime and is liable to the punishment in subsection (9).
Alternative offence: s. 321(2) or (4), 322(2) or (4) or 329(4).
- (3) A person who procures, incites, or encourages a child who the offender knows is his or her lineal relative or a de facto child to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (9).
Alternative offence: s. 321(3), (4) or (5), 322(3), (4) or (5) or 329(4) or (5).
- (4) A person who indecently deals with a child who the offender knows is his or her lineal relative or a de facto child is guilty of a crime and is liable to the punishment in subsection (10).
Alternative offence: s. 321(4) or 322(4).
- (5) A person who procures, incites, or encourages a child who the offender knows is his or her lineal relative or a de facto child to do an indecent act is guilty of a crime and is liable to the punishment in subsection (10).
Alternative offence: s. 321(5) or 322(5).
- (6) A person who indecently records a child who the offender knows is his or her lineal relative or a de facto child is guilty of a crime and is liable to the punishment in subsection (10).
Alternative offence: s. 321(6) or 322(6).
- (7) A person who sexually penetrates a person of or over the age of 18 years who the offender knows is his or her lineal relative is guilty of a crime and is liable to imprisonment for 3 years.

- (8) A person of or over the age of 18 years who consents to being sexually penetrated by a person who he or she knows is his or her lineal relative is guilty of a crime and is liable to imprisonment for 3 years.
- (9) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —
- (a) where the child is under the age of 16 years, 20 years; or
 - (b) where the child is of or over the age of 16 years, 10 years.
- (10) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —
- (a) where the child is under the age of 16 years, 10 years; or
 - (b) where the child is of or over the age of 16 years, 5 years.
- (11) On a charge under this section it shall be presumed in the absence of evidence to the contrary —
- (a) that the accused knew that he or she was related (whether lineally or as otherwise referred to in this section) to the other person; and
 - (b) that people who are reputed to be related to each other in a particular way (whether lineally or as otherwise referred to in this section) are in fact related in that way.

[Section 329 inserted by No. 14 of 1992 s. 6(1); amended by No. 3 of 2002 s. 42; No. 70 of 2004 s. 36(3).]

330. Incapable person, sexual offences against

- (1) In this section a reference to an incapable person is a reference to a person who is so mentally impaired as to be incapable —
- (a) of understanding the nature of the act the subject of the charge against the accused person; or
 - (b) of guarding himself or herself against sexual exploitation.

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- (2) A person who sexually penetrates a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (7).
Alternative offence: s. 322(2) or (4), 323, 324, 325, 326 or 330(4).
- (3) A person who procures, incites, or encourages a person who the offender knows or ought to know is an incapable person to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (7).
Alternative offence: s. 322(3), 322(4), 322(5), 327, 328 or 330(4) or (5).
- (4) A person who indecently deals with a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (8).
Alternative offence: s. 322(4), 323 or 324.
- (5) A person who procures, incites, or encourages a person who the offender knows or ought to know is an incapable person to do an indecent act is guilty of a crime and is liable to the punishment in subsection (8).
Alternative offence: s. 322(5).
- (6) A person who indecently records a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (8).
Alternative offence: s. 322(6).
- (7) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —
- (a) 14 years; or
 - (b) where the incapable person is under the care, supervision, or authority of the offender, 20 years.
- (8) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —

- (a) 7 years; or
 - (b) where the incapable person is under the care, supervision, or authority of the offender, 10 years.
- (9) It is a defence to a charge under this section to prove the accused person was lawfully married to the incapable person.
- [Section 330 inserted by No. 14 of 1992 s. 6(1); amended by No. 69 of 1996 s. 11; No. 70 of 2004 s. 36(3).]*

331. Ignorance of age no defence

It is no defence to a charge of a crime under section 320 or 329 in respect of which the age of the victim is relevant that the accused person did not know the age of the victim or believed the victim was of or over that age.

[Section 331 inserted by No. 14 of 1992 s. 6(1).]

331A. Terms used in s. 331B to 331D

In sections 331B to 331D —

child means a person under the age of 18 years;

incapable person has the meaning given by section 330(1);

sexual service means the use or display of the body of the person providing the service for the sexual arousal or sexual gratification of others.

[Section 331A inserted by No. 4 of 2004 s. 25.]

331B. Sexual servitude

A person who compels another person to provide or to continue to provide a sexual service is guilty of a crime and is liable —

- (a) if the other person is a child or an incapable person, to imprisonment for 20 years; or
- (b) otherwise, to imprisonment for 14 years.

[Section 331B inserted by No. 4 of 2004 s. 25.]

331C. Conducting business involving sexual servitude

- (1) In this section —
conducting a business includes —
- (a) taking part in the management of the business; and
 - (b) exercising control or direction over the business; and
 - (c) providing finance for the business.
- (2) A person who conducts a business that involves any other person being compelled to provide or to continue to provide a sexual service is guilty of a crime and is liable —
- (a) if the other person is a child or an incapable person, to imprisonment for 20 years; or
 - (b) otherwise, to imprisonment for 14 years.

[Section 331C inserted by No. 4 of 2004 s. 25.]

331D. Deceptive recruiting for commercial sexual services

- (1) A person who —
- (a) offers a person who is neither a child nor an incapable person (the *victim*) employment or some other form of engagement to provide personal services; and
 - (b) at the time of making the offer knows —
 - (i) that the victim will in the course of or in connection with the employment or engagement be asked or expected to provide a commercial sexual service; and
 - (ii) that the continuation of the employment or engagement, or the victim's advancement in the employment or engagement, will be dependent on the victim's preparedness to provide a commercial sexual service;
- and

- (c) does not disclose that knowledge to the victim at the time of making the offer,

is guilty of a crime and is liable to imprisonment for 7 years.

- (2) A person who —

- (a) offers a child or an incapable person (the *victim*) employment or some other form of engagement to provide personal services; and
- (b) at the time of making the offer knows —
 - (i) that the victim will in the course of or in connection with the employment or engagement be asked or expected to provide a sexual service; and
 - (ii) that the continuation of the employment or engagement, or the victim's advancement in the employment or engagement, will be dependent on the victim's preparedness to provide a sexual service,

is guilty of a crime and is liable to imprisonment for 20 years.

[Section 331D inserted by No. 4 of 2004 s. 25.]

[Chapter XXXIA deleted by No. 14 of 1992 s. 6(4).]

[Chapter XXXII deleted by No. 48 of 1991 s. 12(9).]

Chapter XXXIII — Offences against liberty

332. Kidnapping

- (1) For the purposes of this section and section 333, a person who deprives another person of personal liberty —
 - (a) by taking the other person away or enticing the other person away; or

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(b) by confining or detaining the other person in any place;
or

(c) in any other manner,

is said to detain that other person.

(2) Any person who detains another person with intent to —

(a) gain a benefit, pecuniary or otherwise, for any person; or

(b) cause a detriment, pecuniary or otherwise, to any person;
or

(c) prevent or hinder the doing of an act by a person who is lawfully entitled to do that act; or

(d) compel the doing of an act by a person who is lawfully entitled to abstain from doing that act,

by a threat, or by a demand, or by a threat and a demand, is guilty of a crime and is liable to imprisonment for 20 years.

Alternative offence: s. 333.

(3) In proceedings for an offence against this section it is not necessary to allege or prove that a threat or demand was actually made.

(4) In this section **threat** means a threat to kill, injure, endanger or cause harm or detriment to any person.

[Section 332 inserted by No. 101 of 1990 s. 14; amended by No. 70 of 2004 s. 36(3).]

333. Deprivation of liberty

Any person who unlawfully detains another person is guilty of a crime and is liable to imprisonment for 10 years.

[Section 333 inserted by No. 101 of 1990 s. 14.]

[334, 335. Deleted by No. 101 of 1990 s. 15.]

336. Procuring apprehension or detention of persons not suffering from mental illness or impairment

Any person who, by the production of a false certificate or other document, knowingly and wilfully, procures any person, not suffering from mental illness (as defined in the *Mental Health Act 1996*) or mental impairment, to be apprehended or detained, pursuant to that Act or any law relating to mental impairment, upon insufficient or unreasonable grounds, is guilty of a crime and is liable to imprisonment for 3 years.

[Section 336 inserted by No. 69 of 1996 s. 12; amended by No. 70 of 2004 s. 34(1).]

337. Unlawful detention or custody of persons who are mentally ill or impaired

Any person who detains, or assumes the custody of, a person suffering from mental illness (as defined in the *Mental Health Act 1996*) or mental impairment, contrary to that Act or any law relating to mental impairment, is guilty of a crime and is liable to imprisonment for 2 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 337 inserted by No. 69 of 1996 s. 13; amended by No. 70 of 2004 s. 34(1) and 35(1).]

Chapter XXXIIIA — Threats

[Heading inserted by No. 101 of 1990 s. 17.]

338. Term used: threat

In this Chapter a reference to a threat is a reference to a statement or behaviour that expressly constitutes, or may reasonably be regarded as constituting, a threat to —

- (a) kill, injure, endanger or harm any person, whether a particular person or not; or

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- (b) destroy, damage, endanger or harm any property, whether particular property or not; or
- (c) take or exercise control of a building, structure or conveyance by force or violence; or
- (d) cause a detriment of any kind to any person, whether a particular person or not.

[Section 338 inserted by No. 101 of 1990 s. 17.]

338A. Threats with intent to influence

Any person who makes a threat with intent to —

- (a) gain a benefit, pecuniary or otherwise, for any person; or
- (b) cause a detriment, pecuniary or otherwise, to any person; or
- (c) prevent or hinder the doing of an act by a person who is lawfully entitled to do that act; or
- (d) compel the doing of an act by a person who is lawfully entitled to abstain from doing that act,

is guilty of a crime and is liable —

- (e) where the threat is to kill a person, to imprisonment for 10 years;
- (f) in any other case, to imprisonment for 7 years.

Alternative offence: s. 338B.

[Section 338A inserted by No. 101 of 1990 s. 17; amended by No. 70 of 2004 s. 36(3).]

338B. Threats

Any person who makes a threat to unlawfully do anything mentioned in section 338(a), (b), (c) or (d) is guilty of a crime and is liable —

- (a) where the threat is to kill a person, to imprisonment for 7 years or, if the offence is committed in circumstances of racial aggravation, to imprisonment for 14 years;
- (b) in the case of any other threat, to imprisonment for 3 years or, if the offence is committed in circumstances of racial aggravation, to imprisonment for 6 years.

Summary conviction penalty in a case to which paragraph (b) applies: imprisonment for 18 months and a fine of \$18 000.

[Section 338B inserted by No. 101 of 1990 s. 17; amended by No. 70 of 2004 s. 35(5); No. 80 of 2004 s. 10.]

338C. Statements or acts creating false apprehension as to existence of threats or danger

- (1) Any person who makes a statement or conveys information which that person knows to be false and which expressly indicates, or may reasonably be construed as indicating —
 - (a) that a threat to unlawfully do anything mentioned in section 338(a), (b), (c) or (d) has been made; or
 - (b) that there has been, is, or is to be an intention, proposal, plan or conspiracy to unlawfully do anything mentioned in section 338(a), (b), (c) or (d),

is guilty of a crime.

- (2) Any person who —
 - (a) does any act with the intention of creating a belief, suspicion or fear that anything mentioned in section 338(a), (b), (c) or (d) is being, or has been, unlawfully done or attempted; and
 - (b) knows, at the time of doing that act, that the circumstance with respect to which the belief, suspicion or fear is intended to be created does not exist,

is guilty of a crime.

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- (3) A person who commits a crime under this section is liable to —
- (a) imprisonment for 10 years if the —
 - (i) threat referred to in subsection (1)(a); or
 - (ii) intention, proposal, plan or conspiracy referred to in subsection (1)(b); or
 - (iii) belief, suspicion or fear referred to in subsection (2)(a),
relates to something mentioned in section 338(a), (b) or (c); or
 - (b) imprisonment for 3 years in any other case.
- Summary conviction penalty:
- (a) in a case to which subsection (3)(a) applies:
imprisonment for 3 years and a fine of \$36 000; or
 - (b) in a case to which subsection (3)(b) applies:
imprisonment for 18 months and a fine of \$18 000.
- (4) A court convicting a person of a crime under this section may, in addition to, or without, imposing any penalty, order that person to pay the amount of any wages attributable to, or expenses reasonably incurred with respect to, any investigation, inquiry or search made, whether by a member of the Police Force or otherwise, as a result of the statement, information or act by reason of which the person is convicted.
- (5) An order made under subsection (4) —
- (a) must specify to whom and in what manner the amount is to be paid; and
 - (b) may be enforced as though the amount so ordered to be paid were a penalty imposed under this section.

[Section 338C inserted by No. 34 of 2001 s. 3; amended by No. 70 of 2004 s. 35(6); No. 2 of 2008 s. 11.]

Chapter XXXIIIB — Stalking

[Heading inserted by No. 38 of 1998 s. 4.]

338D. Terms used

(1) In this Chapter —

circumstances of aggravation, without limiting the definition of that expression in section 221, includes circumstances in which —

- (a) immediately before or during or immediately after the commission of the offence, the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; or
- (b) the conduct of the offender in committing the offence constituted a breach of a condition on which bail has been granted to the offender;

intimidate, in relation to a person, includes —

- (a) to cause physical or mental harm to the person;
- (b) to cause apprehension or fear in the person;
- (c) to prevent the person from doing an act that the person is lawfully entitled to do, or to hinder the person in doing such an act;
- (d) to compel the person to do an act that the person is lawfully entitled to abstain from doing;

pursue, in relation to a person, includes —

- (a) to repeatedly communicate with the person, whether directly or indirectly and whether in words or otherwise;
- (b) to repeatedly follow the person;
- (c) to repeatedly cause the person to receive unsolicited items;
- (d) to watch or beset the place where the person lives or works or happens to be, or the approaches to such a place;

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s. 338E

- (e) whether or not repeatedly, to do any of the foregoing in breach of a restraining order or bail condition.
- (2) For the purpose of deciding whether an accused person has pursued another person —
 - (a) the accused is not to be regarded as having communicated with or followed that person on a particular occasion if it is proved by or on behalf of the accused that on that occasion the accused did not intend to communicate with or follow that person;
 - (b) an act by the accused on a particular occasion is not to be taken into account for the purpose of deciding whether the accused watched or beset a place where that person lived, worked or happened to be, or the approaches to such a place, if it is proved by or on behalf of the accused that on that occasion the accused did not know it was such a place.

[Section 338D inserted by No. 38 of 1998 s. 4(1); amended by No. 38 of 2004 s. 71.]

338E. Stalking

- (1) A person who pursues another person with intent to intimidate that person or a third person, is guilty of a crime and is liable —
 - (a) where the offence is committed in circumstances of aggravation, to imprisonment for 8 years; and
 - (b) in any other case, to imprisonment for 3 years.

Alternative offence: s. 338E(2).

Summary conviction penalty:

- (a) in a case to which subsection (1)(a) applies: imprisonment for 2 years and a fine of \$24 000;
- (b) in a case to which subsection (1)(b) applies: imprisonment for 18 months and a fine of \$18 000.

- (2) A person who pursues another person in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, that person or a third person is guilty of a simple offence.

Penalty: imprisonment for 12 months and a fine of \$12 000.

- (3) It is a defence to a charge under this section to prove that the accused person acted with lawful authority.

[Section 338E inserted by No. 38 of 1998 s. 4(1); amended by No. 70 of 2004 s. 35(7), 35(8) and 36(3); No. 2 of 2008 s. 12.]

Chapter XXXIV — Offences relating to parental rights and duties

[Heading amended by No. 70 of 2004 s. 24(2).]

[339-342. Deleted by No. 70 of 2004 s. 24(1).]

343. Child stealing

Any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of 16 years, of the possession of such child, or with intent to steal any article upon or about the person of any such child —

- (1) Forcibly or fraudulently takes or entices away, or detains the child; or
- (2) Receives or harbours the child, knowing it to have been so taken or enticed away or detained;

is guilty of a crime, and is liable to imprisonment for 20 years.

Alternative offence for a charge of an offence under paragraph (1): an offence under paragraph (2).

It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed a right to the possession of the child, or, in the case of an illegitimate child, is

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its mother or claimed to be its father or parent under section 6A of the *Artificial Conception Act 1985*.

[Section 343 amended by No. 25 of 1960 s. 3; No. 118 of 1981 s. 4; No. 51 of 1992 s. 16(2); No. 3 of 2002 s. 43; No. 70 of 2004 s. 36(7).]

343A. Publication of report of child-stealing unlawful unless approved

- (1) Any person who —
- (a) prints or publishes any report of an offence committed or alleged to have been committed under section 343 of this Code in any newspaper or other periodical, radio broadcast or telecast; or
 - (b) so prints or so publishes any matter that has reference to the commission of the offence or the allegation that the offence has been committed; or
 - (c) transmits any such report or matter to any person for the purpose of it being so printed or so published,

before the expiration of 7 days from the date on which the offence was committed or alleged to have been committed or before the child in respect of whom the offence was committed or alleged to have been committed, is returned to the parent, guardian, or other person who has the lawful care or charge of the child, whichever event first happens, without the report or matter being first approved by the Commissioner of Police of the State is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

- (2) In this section the term *periodical* includes any review, magazine, or other writing or print published periodically.

- (3) A prosecution for any of the offences defined in this section shall not be commenced unless authorised by the Attorney General in writing.

[Section 343A inserted by No. 25 of 1960 s. 4; amended by No. 113 of 1965 s. 8; No. 73 of 1994 s. 4; No. 70 of 2004 s. 35(9).]

344. Desertion of children under 16

Any person who, being the parent of a child under the age of 16 years, and being able to maintain such child, wilfully and without lawful or reasonable cause deserts the child and leaves it without means of support, is guilty of a crime, and is liable to imprisonment for one year.

[Section 344 amended by No. 70 of 2004 s. 34(1).]

Chapter XXXV — Criminal defamation

[Heading inserted by No. 44 of 2005 s. 47.]

345. Criminal defamation

- (1) A person who, without lawful excuse, publishes matter defamatory of another living person (the *victim*) —
- (a) knowing the matter to be false or without having regard to whether the matter is true or false; and
 - (b) intending to cause serious harm to the victim or any other person or without having regard to whether such harm is caused,

is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

- (2) In proceedings for an offence under this section the accused person has a lawful excuse for the publication of defamatory matter about the victim if, and only if, subsection (3) applies.

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- (3) This subsection applies if the accused person would, having regard only to the circumstances happening before or at the time of the publication, have had a defence for the publication if the victim had brought civil proceedings for defamation against the accused person.
- (4) The prosecutor bears the onus of negating the existence of a lawful excuse if, and only if, evidence directed to establishing the excuse is first adduced by or on behalf of the accused person.
- (5) On a trial before a jury for an offence under this section —
 - (a) the question of whether the matter complained of is capable of bearing a defamatory meaning is a question for determination by the judge; and
 - (b) the question of whether the matter complained of does bear a defamatory meaning is a question for the jury; and
 - (c) the jury may give a general verdict of guilty or not guilty on the issues as a whole.
- (6) A prosecution under this section must not be commenced without the consent of the Director of Public Prosecutions.
- (7) In this section —

publish and ***defamatory*** have the meanings that those terms have in the law of tort (as modified by the *Defamation Act 2005*) relating to defamation.

[Section 345 inserted by No. 44 of 2005 s. 47.]

[346-369. Deleted by No. 44 of 2005 s. 47.]

Part VI — Offences relating to property and contracts

Division I — Stealing and like offences

Chapter XXXVI — Stealing

370. Things capable of being stolen

Every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

Every inanimate thing which is the property of any person, and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

Every tame animal, whether tame by nature or wild by nature and tamed, which is the property of any person, is capable of being stolen; but tame pigeons are not capable of being stolen except while they are in a pigeon-house or on their owner's land.

Animals wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in Western Australia, which are the property of any person, and which are usually kept in a state of confinement, are capable of being stolen, whether they are actually in confinement or have escaped from confinement.

Animals wild by nature, of a kind which is ordinarily found in a condition of natural liberty in Western Australia which are the property of any person, are capable of being stolen while they are in confinement and while they are being actually pursued after escaping from confinement, but not at any other time.

An animal wild by nature is deemed to be in a state of confinement so long as it is in a den, cage, sty, tank, or other small enclosure, or is otherwise so placed that it cannot escape and that its owner can take possession of it at pleasure.

Animals, which are the property of any person, are capable of being stolen while they are being reared by aquaculture in a place that is the property of, or under the control of, any person.

The term *animal* includes any living creature and any living aquatic organism other than mankind.

Wild animals in the enjoyment of their natural liberty are not capable of being stolen, but their dead bodies are capable of being stolen.

Everything produced by or forming part of the body of an animal capable of being stolen is capable of being stolen.

[Section 370 amended by No. 4 of 2004 s. 64.]

371. Term used: steal

- (1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person any property, is said to steal that thing or that property.
- (2) A person who takes anything capable of being stolen or converts any property is deemed to do so fraudulently if he does so with any of the following intents, that is to say —
 - (a) An intent to permanently deprive the owner of the thing or property of it or any part of it;
 - (b) An intent to permanently deprive any person who has any special property in the thing or property of such special property;
 - (c) An intent to use the thing or property as a pledge or security;
 - (d) An intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;
 - (e) An intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;

- (f) In the case of money, an intent to use it at the will of the person who takes or converts it although he may intend to afterwards repay the amount to the owner.

The term *special property* includes any charge or lien upon the thing or property in question, and any right arising from or dependent upon holding possession of the thing or property in question, whether by the person entitled to such right or by some other person for his benefit.

- (3) The taking or conversion may be fraudulent, although it is effected without secrecy or attempt at concealment.
- (4) In the case of conversion, it is immaterial whether the property converted is taken for the purpose of conversion or whether it is at the time of the conversion in the possession, control or management of the person who converts it. It is also immaterial that the person who converts the property is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of the property.
- (5) When the property converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the property does not know who is the owner, and believes, on reasonable grounds, that the owner cannot be discovered.
- (6) The act of stealing is not complete until the person taking or converting the thing actually moves it or otherwise actually deals with it by some physical act.
- (7) In this section, *property* includes any description of real and personal property, money, debts, bank credits, and legacies and all deeds and instruments relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods and also includes not only such property as has been originally in the possession or in the control of any person but also any property in which or for which it has been

converted or exchanged and anything acquired by the conversion or exchange, whether immediately or otherwise.

[Section 371 amended by No. 20 of 1954 s. 2.]

371A. Special case: motor vehicles

- (1) A person who unlawfully —
- (a) uses a motor vehicle; or
 - (b) takes a motor vehicle for the purposes of using it; or
 - (c) drives or otherwise assumes control of a motor vehicle,

without the consent of the owner or the person in charge of that motor vehicle, is said to steal that motor vehicle.

- (2) This section has effect in addition to section 371 and does not prevent section 371 from applying to motor vehicles.

[Section 371A inserted by No. 37 of 1991 s. 17.]

372. Special cases

- (1) When a wild animal in the enjoyment of its natural liberty has been killed by any person, the taking of the dead body of the animal by that person, or by any person acting under his orders, before it has been reduced into actual possession by the owner of the land on which the animal was killed or on which it died, is not deemed to be stealing.
- (2) When a factor or agent pledges or gives a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal, such dealing with the goods or document of title is not deemed to be stealing.

[Section 372 amended by No. 4 of 2004 s. 61(5).]

373. Funds etc. held under direction

When a person receives, either alone or jointly with another person, any money or valuable security, or a power of attorney for the sale, mortgage, pledge, or other disposition, of any property, whether capable of being stolen or not, with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security, or of such mortgage, pledge, or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person from whom the money, security, or power of attorney was received, until the direction has been complied with:

Provided that if the person receiving the money, security, or power of attorney, and the person from whom he receives it ordinarily deal with each other on such terms that in the absence of any special direction all money paid to the former on account of the latter would be properly treated as an item in a debtor and creditor account between them, the former cannot be charged with stealing the money or any such proceeds unless the direction is in writing.

374. Funds etc. received by agents for sale

When a person receives, either alone or jointly with another person, any property from another on terms authorising or requiring him to sell it or otherwise dispose of it, and requiring him to pay or account for the proceeds of the property, or any part of such proceeds, or to deliver anything received in exchange for the property, to the person from whom it is received, or some other person, then the proceeds of the property, and anything so received in exchange for it are deemed to be the property of the person from whom the property was so received, until they have been disposed of in accordance with the terms on which the property was received, unless it is a part of those terms that the proceeds, if any, shall

form an item in a debtor and creditor account between him and the person to whom he is to pay them or account for them, and that the relation of debtor and creditor only shall exist between them in respect thereof.

375. Money received for another

When a person receives, either alone or jointly with another person, any money on behalf of another, the money is deemed to be the property of the person on whose behalf it is received, unless the money is received on the terms that it shall form an item in a debtor and creditor account, and that the relation of debtor and creditor only shall exist between the parties in respect of it.

376. Stealing by persons having an interest in the thing stolen

When any person takes or converts anything capable of being stolen, under such circumstances as would otherwise amount to stealing, it is immaterial that he himself has a special property or interest therein, or that he himself is the owner of the thing taken or converted subject to some special property or interest of some other person therein; or that he is lessee of the thing; or that he himself is one of 2 or more joint owners of the thing; or that he is a director or officer of a corporation or company or society who are the owners of it.

[377. Deleted by No. 28 of 2003 s. 118(4).]

378. Penalty for stealing

Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 7 years.

Alternative offence: s. 382, 383, 388, 390A, 409, 414, 428 or 429.

Punishment in special cases

- (1) If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for 10 years.
- (2) If the thing stolen is a motor vehicle and the offender —
 - (a) wilfully drives the motor vehicle in a manner that constitutes an offence under section 60 of the *Road Traffic Act 1974* (i.e. the offence known as reckless driving); or
 - (b) drives the motor vehicle in a manner that constitutes an offence under section 61 of the *Road Traffic Act 1974* (i.e. the offence known as dangerous driving),the offender is liable to imprisonment for 8 years.

[(3), (4) deleted]

- (4a) If the thing stolen is an aircraft the offender is liable to imprisonment for 10 years.
- (5) If the offence is committed under any of the circumstances following, that is to say —
 - (a) If the thing is stolen from the person of another;
 - (b) If the thing is stolen in a dwelling, and its value exceeds \$10 000, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling;
 - (c) If the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;
 - (d) If the thing is stolen from a vessel which is in distress or wrecked or stranded;
 - (e) If the thing is stolen from a public office in which it is deposited or kept;

- (f) If the offender, in order to commit the offence, opens any locked room, box, or other receptacle by means of a key or other instrument;

the offender is liable to imprisonment for 14 years.

- (6) If the offender is a person employed in the Public Service, and the thing stolen is the property of Her Majesty, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for 10 years.
- (7) If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for 10 years.
- (8) If the offender is a director or officer of a corporation or company, and the thing stolen is the property of the corporation or company, he is liable to imprisonment for 10 years.
- (9) If the thing stolen is any of the things following, that is to say —
- (a) Property which has been received by the offender with a power of attorney for the disposition thereof;
 - (b) Money received by the offender with a direction that the same should be applied to any purpose or paid to any person specified in the direction;
 - (c) The whole or part of the proceeds of any valuable security which has been received by the offender with a direction that the proceeds thereof should be applied to any purpose or paid to any person specified in the direction;
 - (d) The whole or part of the proceeds arising from any disposition of any property which have been received by the offender by virtue of a power of attorney for such disposition, such power of attorney having been received by the offender with a direction that such proceeds should be applied to any purpose or paid to any person specified in the direction;

the offender is liable to imprisonment for 10 years.

[Section 378 amended by No. 53 of 1964 s. 7; No. 113 of 1965 s. 8(1); No. 1 of 1969 s. 2; No. 106 of 1987 s. 24; No. 101 of 1990 s. 18; No. 1 of 1992 s. 5; No. 51 of 1992 s. 16(2); No. 36 of 1996 s. 20; No. 70 of 2004 s. 36(8); No. 84 of 2004 s. 27(2).]

[378A. Deleted by No. 101 of 1990 s. 19.]

Chapter XXXVII — Offences analogous to stealing

379. Concealing registers

Any person who, with intent to defraud, conceals or takes from its place of deposit any register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths, or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, is guilty of a crime, and is liable to imprisonment for 14 years.

Alternative offence: s. 424.

[Section 379 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 36(3).]

380. Concealing wills

Any person who, with intent to defraud, conceals any testamentary instrument, whether the testator is living or dead, is guilty of a crime, and is liable to imprisonment for 14 years.

[Section 380 amended by No. 51 of 1992 s. 16(2).]

381. Concealing deeds

Any person who, with intent to defraud, conceals the whole or part of any document which is evidence of title to any land or estate in land is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 381 amended by No. 51 of 1992 s. 16(2).]

382. Killing animals with intent to steal

Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of a crime, and is liable to the same punishment as if he had stolen the animal.

383. Severing with intent to steal

Any person who makes anything movable with intent to steal it is guilty of a crime, and is liable to the same punishment as if he had stolen the thing after it became movable.

384. Using registered brands with criminal intention

Any person who, with intent to facilitate the commission of a crime, brands or marks any animal with a registered brand or registered mark without the permission of the owner of the brand or mark is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 384 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

385. Fraudulently dealing with minerals in mines

Any person who takes, conceals, or otherwise disposes of any ore of any metal or mineral in or about a mine, with intent to defraud any person, is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 385 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

386. Concealing royalty

Any person who, being the holder of any lease issued under any Act relating to mining —

- (a) By any device or contrivance defrauds, or attempts to defraud, any person of any royalty or money payable under any such lease; or

- (b) Conceals or makes a false statement as to any produce of the mine with intent to defraud;

is guilty of a crime, and is liable to imprisonment for 2 years.

[Section 386 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

387. Removing guano without licence

Any person who collects or removes guano on or from any part of the territorial dominions of Western Australia without lawful authority is guilty of a crime, and is liable to imprisonment for one year.

[Section 387 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

388. Bringing stolen goods into Western Australia

Any person who, having at any place, not in Western Australia, obtained any property by any act which, if it had been done in Western Australia, would have constituted the crime of stealing, and which is an offence under the laws in force in the place where it was done, brings such property into Western Australia, or has it in his possession in Western Australia, is guilty of a crime, and is liable to the same punishment as if he had stolen it in Western Australia; but so that the punishment does not exceed that which would be incurred for the same act under the laws in force in the place where the act by which he obtained the property was done.

Alternative offence: s. 378.

[Section 388 amended by No. 70 of 2004 s. 36(3).]

389. Fraudulent disposition of mortgaged goods

Any person who, being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the

mortgagee and with intent to defraud, is guilty of a crime, and is liable to imprisonment for 3 years.

Any person (being such a mortgagor as aforesaid) who shall destroy, break, injure, kill, or otherwise damage any mortgaged goods with intent to deprive the mortgagee of his security or any part thereof, or to defeat or anywise impair the security, is guilty of a crime and liable to imprisonment for 2 years.

The term *mortgaged goods* includes any goods and chattels of any kind, and any live animals, and any progeny of any animals and any fixtures, and any crops or produce of the earth, whether growing or severed, which are subject for the time being to the provisions of any written instrument by which a valid charge or lien is created upon them by way of security for any debt or obligation.

The consent of the mortgagee may be either express or implied from the nature of the property mortgaged.

The shearing of sheep, and the sale and disposal of the wool in the ordinary course of business before default is made and possession taken, or demand for payment made, under the instrument by which the charge or lien is created is not an offence under this section.

[Section 389 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

390. Fraudulent appropriation of electricity etc.

Any person who fraudulently abstracts or diverts to his own use or to the use of any other person any mechanical, illuminating, or electrical power derived from any machine, apparatus, or substance, the property of another person, is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 390 amended by No. 51 of 1992 s. 16(2).]

390A. Unlawful use of conveyance

- (1) In this section —
conveyance does not include a motor vehicle;
use a conveyance, includes —
- (a) to take the conveyance for the purpose of using it; and
 - (b) to assume control of the conveyance in any way.
- (2) A person who unlawfully uses a conveyance without the consent of the owner or the person in charge of it is guilty of a crime and is liable —
- (a) if during the commission of the offence, a person who is not an accomplice of the offender is in the conveyance, to imprisonment for 10 years;
 - (b) if immediately before or during or immediately after the commission of the offence, the offender —
 - (i) is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; or
 - (ii) is in company with another person or persons; or
 - (iii) does bodily harm to any person,to imprisonment for 10 years;
 - (c) in any other case, to imprisonment for 7 years.

Summary conviction penalty in a case to which paragraph (c) applies: imprisonment for 3 years and a fine of \$36 000.

[Section 390A inserted by No. 70 of 2004 s. 25.]

[390B. Deleted by No. 70 of 2004 s. 26.]

Chapter XXXVIII — Robbery: Extortion by threats

[Heading amended by No. 23 of 2001 s. 8.]

391. Term used: circumstances of aggravation

In sections 392 and 393 —

circumstances of aggravation means circumstances in which —

- (a) immediately before or at or immediately after the commission of the offence —
 - (i) the offender is in company with another person or persons; or
 - (ii) the offender does bodily harm to any person; or
 - (iii) the offender threatens to kill any person;or
- (b) the person to whom violence is used or threatened is of or over the age of 60 years.

[Section 391 inserted by No. 23 of 2001 s. 9.]

392. Robbery

A person who steals a thing and, immediately before or at the time of or immediately after doing so, uses or threatens to use violence to any person or property in order —

- (a) to obtain the thing stolen; or
- (b) to prevent or overcome resistance to its being stolen,

is guilty of a crime and is liable —

- (c) if immediately before or at or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed, to imprisonment for life; or
- (d) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years; or

(e) in any other case, to imprisonment for 14 years.

Alternative offence: s. 68, 297, 313, 317, 317A, 378 or 393.

[Section 392 inserted by No. 23 of 2001 s. 9; amended by No. 70 of 2004 s. 36(3).]

393. Assault with intent to rob

A person who, with intent to steal a thing, uses or threatens to use violence to any person or property in order —

- (a) to obtain the thing intended to be stolen; or
- (b) to prevent or overcome resistance to its being stolen,

is guilty of a crime and is liable —

- (c) if —
 - (i) immediately before or at or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; and
 - (ii) the offence is committed in circumstances of aggravation,

to imprisonment for life; or

- (d) if —
 - (i) immediately before or at or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; or
 - (ii) the offence is committed in circumstances of aggravation,

to imprisonment for 14 years; or

(e) in any other case, to imprisonment for 10 years.

Alternative offence: s. 68, 297, 313, 317 or 317A.

[Section 393 inserted by No. 23 of 2001 s. 9; amended by No. 70 of 2004 s. 36(3).]

[394. Deleted by No. 23 of 2001 s. 9.]

[395. Deleted by No. 36 of 1996 s. 21.]

396. Demanding property with threats with intent to steal

Any person who, with intent to steal anything, demands it from any person with threats of any injury or detriment of any kind to be caused to him, either by the offender or by any other person, if the demand is not complied with, is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 396 amended by No. 51 of 1992 s. 16(2).]

397. Demanding property with threats with intent to extort or gain

Any person who, with intent to extort or gain anything from any person, —

- (1) Knowing the contents of the writing, causes any person to receive any writing demanding anything from, or that anything be procured to be done or omitted to be done by any person, without reasonable cause, and containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with; or
- (2) Orally demands anything from, or that anything be procured to be done or omitted to be done by, any person, without reasonable cause, with threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with,

is guilty of a crime, and is liable to imprisonment for 14 years.

Alternative offence: s. 338A or 338B.

The term **writing** includes any gramophone record, wire, tape, or other thing by which words or sounds are recorded and from which they are capable of being reproduced.

[Section 397 inserted by No. 1 of 1969 s. 3; amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 36(9).]

398. Attempts at extortion by threats

Any person who, with intent to extort or gain anything from any person —

- (1) Accuses or threatens to accuse any person of committing any indictable offence, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any indictable offence; or
- (2) Threatens that any person shall be accused by any other person of any indictable offence or of any such act; or
- (3) Knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid;

is guilty of a crime.

If the accusation or threat of accusation is of —

- (a) An offence for which the punishment of imprisonment for life may be inflicted; or
- (b) An offence under Chapter XXII or XXXI, or an attempt to commit such an offence; or
- (c) An assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person; or
- [(d) deleted]*
- (e) A solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid;

the offender is liable to imprisonment for 20 years.

In any other case the offender is liable to imprisonment for 14 years.

It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.

[Section 398 amended by No. 118 of 1981 s. 4; No. 52 of 1984 s. 21; No. 74 of 1985 s. 11; No. 101 of 1990 s. 22; No. 14 of 1992 s. 6(6); No. 51 of 1992 s. 16(2).]

399. Procuring execution of deeds etc. by threats

Any person who, with intent to defraud, and by means of any unlawful violence to, or restraint of, the person of another, or by means of any threat of violence or restraint to be used to the person of another, or by means of accusing or threatening to accuse any person of committing any indictable offence, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of an indictable offence, compels or induces any person —

- (a) To execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security; or
- (b) To write, impress, or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security;

is guilty of a crime, and is liable to imprisonment for 14 years.

[Section 399 amended by No. 51 of 1992 s. 16(2).]

[399A. Deleted by No. 4 of 2004 s. 65.]

Chapter XXXIX — Offences in or in respect of buildings etc.

[Heading inserted by No. 37 of 1991 s. 12.]

400. Terms used

- (1) In this Chapter —
circumstances of aggravation means circumstances in which —

- (a) immediately before or during or immediately after the commission of the offence the offender —
 - (i) is or pretends to be armed with a dangerous or offensive weapon or instrument; or
 - (ii) is or pretends to be in possession of an explosive substance; or
 - (iii) is in company with another person or other persons; or
 - (iv) does bodily harm to any person; or
 - (v) threatens to kill or injure any person; or
 - (vi) detains any person (within the meaning of section 332(1));

or

- (b) immediately before the commission of the offence the offender knew or ought to have known that there was another person (other than a co-offender) in the place;

place means a building, structure, tent, or conveyance, or a part of a building, structure, tent, or conveyance, and includes —

- (a) a conveyance that at the time of an offence is immovable; or
- (b) a place that is from time to time uninhabited or empty of property.

- (2) For the purposes of this Chapter a person enters or is in a place as soon as —

- (a) any part of the person's body; or
- (b) any part of anything in the person's possession or under the person's control,

is in the place.

- (3) For the purposes of this Chapter a person is a repeat offender if it is proved to the satisfaction of the court that the offender —
- (a) committed and was convicted of a relevant offence committed in respect of a place ordinarily used for human habitation; and
 - (b) subsequent to that conviction again committed and was convicted of a relevant offence committed in respect of such a place,

and it does not matter that the sequence described in paragraphs (a) and (b) has occurred more than once.

- (4) For the purposes of subsection (3) —
- (a) a relevant offence is an offence against this Chapter (as enacted at any time) other than an offence against section 407; and
 - (b) a conviction includes a finding or admission of guilt that led to a punishment being imposed on the offender, or an order being made in respect of the offender, whether or not a conviction was recorded; and
 - (c) a conviction that has been set aside or quashed is to be disregarded.

[Section 400 inserted by No. 37 of 1991 s. 13; amended by No. 60 of 1996 s. 4⁷; No. 29 of 1998 s. 6.]

401. Burglary

- (1) A person who enters or is in the place of another person, without that other person's consent, with intent to commit an offence in that place is guilty of a crime and is liable —
- (a) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years; or
 - (b) if the place is ordinarily used for human habitation but the offence is not committed in circumstances of aggravation, to imprisonment for 18 years; or

(c) in any other case, to imprisonment for 14 years.

Summary conviction penalty:

- (a) in a case to which paragraph (a) applies where the only circumstance of aggravation is that the offender is in company with another person or other persons — imprisonment for 3 years and a fine of \$36 000; or
- (b) in a case to which paragraph (b) applies — imprisonment for 3 years and a fine of \$36 000; or
- (c) in a case to which paragraph (c) applies — imprisonment for 2 years and a fine of \$24 000.

(2) A person who commits an offence in the place of another person, when in that place without that other person's consent, is guilty of a crime and is liable —

- (a) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years; or
- (b) if the place is ordinarily used for human habitation but the offence is not committed in circumstances of aggravation, to imprisonment for 18 years; or
- (c) in any other case, to imprisonment for 14 years.

Summary conviction penalty (subject to subsection (3)):

- (a) in a case to which paragraph (a) applies where the only circumstance of aggravation is that the offender is in company with another person or other persons — imprisonment for 3 years and a fine of \$36 000; or
- (b) in a case to which paragraph (b) applies — imprisonment for 3 years and a fine of \$36 000; or
- (c) in a case to which paragraph (c) applies — imprisonment for 2 years and a fine of \$24 000.

- (3) If the offence committed in the place is an offence against property and the value of the property is more than \$10 000 the offence is not to be dealt with summarily.
- (4) If a person convicted of an offence against subsection (1) or (2) committed in respect of a place ordinarily used for human habitation was a repeat offender at the time of committing that offence, the court sentencing the person shall sentence the offender —
- (a) to at least 12 months imprisonment notwithstanding any other written law; or
 - (b) if the offender is a young person (as defined in the *Young Offenders Act 1994*) either to at least 12 months imprisonment or to a term of at least 12 months detention (as defined in that Act), as the court thinks fit, notwithstanding section 46(5a) of that Act.
- (5) A court shall not suspend a term of imprisonment imposed under subsection (4).
- (6) Subsection (4)(b) does not prevent a court from making a direction under section 118(4) of the *Young Offenders Act 1994* or a special order under Division 9 of Part 7 of that Act.

[Section 401 inserted by No. 60 of 1996 s. 5; amended by No. 4 of 2004 s. 66; No. 70 of 2004 s. 35(4).]

[402-404. Deleted by No. 37 of 1991 s. 13.]

[405, 406. Deleted by No. 1 of 1969 s. 7.]

407. Persons found armed etc. with intent to commit crime

Any person who is found under any of the circumstances following, that is to say —

- (a) Being armed with any dangerous or offensive weapon or instrument, and being so armed with intent to enter a place, and to commit an offence therein; or

[(b) deleted]

- (c) Having in his possession by night without lawful excuse, the proof of which lies on him, any instrument of housebreaking; or
- (d) Having in his possession by day any such instrument with intent to commit an offence; or
- (e) Having his face masked or blackened or being otherwise disguised, with intent to commit an offence;

is guilty of a crime, and is liable to imprisonment for 3 years.
Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 407 amended by No. 37 of 1991 s. 13(2); No. 51 of 1992 s. 16(2); No. 4 of 2004 s. 67; No. 70 of 2004 s. 35(2); No. 84 of 2004 s. 27(3).]

[407A. Deleted by No. 106 of 1987 s. 17.]

Chapter XL — Fraud

[Heading inserted by No. 101 of 1990 s. 24.]

[408. Deleted by No. 101 of 1990 s. 24.]

409. Fraud

- (1) Any person who, with intent to defraud, by deceit or any fraudulent means —
 - (a) obtains property from any person; or
 - (b) induces any person to deliver property to another person; or
 - (c) gains a benefit, pecuniary or otherwise, for any person; or
 - (d) causes a detriment, pecuniary or otherwise, to any person; or

- (e) induces any person to do any act that the person is lawfully entitled to abstain from doing; or
- (f) induces any person to abstain from doing any act that the person is lawfully entitled to do,

is guilty of a crime and is liable —

- (g) if the person deceived is of or over the age of 60 years, to imprisonment for 10 years; or
- (h) in any other case, to imprisonment for 7 years.

Alternative offence: s. 378, 414 or 428.

Summary conviction penalty (subject to subsection (2)):

- (a) in a case to which paragraph (g) applies: imprisonment for 3 years and a fine of \$36 000; or
- (b) in a case to which paragraph (h) applies: imprisonment for 2 years and a fine of \$24 000.

(2) If the value of —

- (a) property obtained or delivered; or
- (b) a benefit gained or a detriment caused;

is more than \$10 000 the charge is not to be dealt with summarily.

(3) It is immaterial that the accused person intended to give value for the property obtained or delivered, or the benefit gained, or the detriment caused.

[Section 409 inserted by No. 101 of 1990 s. 24; amended by No. 36 of 1996 s. 23; No. 23 of 2001 s. 11; No. 70 of 2004 s. 35(4) and 36(3).]

[410-413. Deleted by No. 101 of 1990 s. 24.]

Chapter XLI — Receiving property stolen or fraudulently obtained and like offences

414. Receiving stolen property etc.

Any person who receives any property which has been obtained by means of any act constituting an indictable offence, or by means of any act done at a place not in Western Australia which if it had been done in Western Australia would have constituted an indictable offence, and which is an offence under the laws in force in the place where it was done, knowing the same to have been so obtained, is guilty of a crime.

Alternative offence: s. 378, 409 or 428.

The offender is liable —

- (a) if the court is satisfied as to the act by means of which the property was obtained, to the penalty provided for the offence constituted by that act, or to imprisonment for 14 years, whichever is the lesser;
- (b) otherwise, to imprisonment for 14 years.

For the purpose of proving the receiving of anything, it is sufficient to show that the accused person has, either alone or jointly with some other person, had the thing in his possession, or has aided in concealing it or disposing of it.

In this section *property* as well as having the same meaning as that expression has in section 1 of this Code, includes not only such property as has been originally in the possession or under the control of any person, but also any property into or for which it has been converted or exchanged and anything acquired by the conversion or exchange whether immediately or otherwise.

[Section 414 amended by No. 20 of 1954 s. 3; No. 51 of 1992 s. 10; No. 73 of 1994 s. 4; No. 4 of 2004 s. 68; No. 70 of 2004 s. 36(10).]

415. Receiving after change of ownership

When a thing has been obtained by means of any act constituting an indictable offence, or by means of an act done at a place not in Western Australia, which if it had been done in Western Australia would have constituted an indictable offence, and which is an offence under the laws in force in the place where it was done, and another person has acquired a lawful title to it, a subsequent receiving of the thing is not an offence although the receiver knows that the thing had previously been so obtained.

416. Taking reward for recovery of property obtained by means of indictable offences

Any person who corruptly receives or obtains, or corruptly agrees to receive or obtain, any property or benefit of any kind upon an agreement or understanding that he will help any person to recover anything which has been obtained by means of any act constituting an indictable offence, or by means of any act done at a place not in Western Australia which if it had been done in Western Australia would have constituted an indictable offence, and which is an offence under the laws in force in the place where it was done, is, unless he has used all due diligence to cause the offender to be brought to trial for the offence, guilty of a crime, and is liable to imprisonment for 7 years.

[Section 416 amended by No. 51 of 1992 s. 16(2).]

Chapter XLII — Frauds by trustees and officers of companies and corporations: False accounting

[417. Deleted by No. 101 of 1990 s. 25.]

418. False statement relating to companies

Any person who signs any memorandum of association, or any statement, abstract, or document, required by any Act or law relating to companies, containing any particulars false to the

knowledge of such person, is guilty of a crime, and is liable to imprisonment for one year and a fine of \$12 000.

[Section 418 amended by No. 113 of 1965 s. 8(1); No. 10 of 1982 s. 28; No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1) and 35(4).]

419. Fraud by company directors etc. as to accounts

Any person who —

- (1) Being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or
- (2) Being a director, officer, or member of a corporation or company, does any of the following acts with intent to defraud, that is to say —
 - (a) Destroys, alters, mutilates, or falsifies, any book, document, valuable security, or account, which belongs to the corporation or company, or any entry in any such book, document, or account or is privy to any such act; or
 - (b) Makes or is privy to making any false entry in any such book, document, or account; or
 - (c) Omits or is privy to omitting any material particular from any such book, document, or account;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 419 amended by No. 119 of 1985 s. 30; No. 51 of 1992 s. 16(2).]

420. False statements by officials of companies

Any person who, being a promoter, director, officer, or auditor of a corporation or company, either existing or intended to be formed, makes, circulates, or publishes, or concurs in making, circulating, or publishing any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the purposes following, that is to say —

- (a) To deceive or defraud any member, shareholder, or creditor of the corporation or company, whether a particular person or not;
- (b) To induce any person, whether a particular person or not, to become a member of, or to intrust or advance any property to the corporation or company, or to enter into any security for the benefit thereof;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 420 amended by No. 119 of 1985 s. 30; No. 51 of 1992 s. 16(2).]

421. False statements by officials of companies with intent to affect price of shares

Any person who, being a director, officer, or agent of a company having its share capital listed for dealings on any stock exchange in Western Australia or elsewhere, wilfully makes or is privy to making in any prospectus, return, report, certificate, account, statement of operations, or prospectus, or other document, any statement relating to the business of the company false in any material particular, knowing it to be false with intent to produce or give or having a tendency to produce or give to the stock or shares of the company a greater or less market value than such stock or shares possess, is guilty of a crime, and is liable to imprisonment for 2 years and a fine of \$24 000.

[Section 421 amended by No. 113 of 1965 s. 8(1); No. 101 of 1990 s. 26; No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1) and 35(4).]

422. Defence

It is a defence to a charge of any of the offences hereinbefore in this Chapter defined to prove that the accused person, before being charged with the offence, and in consequence of the compulsory process of a court of justice in an action or proceeding instituted in good faith by a party aggrieved, or in a compulsory examination or deposition before a court of justice, disclosed on oath the act alleged to constitute the offence.

A person is not entitled to refuse to answer any question or interrogatory in any civil proceeding in any court, on the ground that his doing so might tend to show that he had committed any such offence.

[423. Deleted by No. 101 of 1990 s. 25.]

424. Fraudulent falsification of records

Any person who with intent to defraud —

- (a) makes a false entry in any record; or
- (b) omits to make an entry in any record; or
- (c) gives any certificate or information which is false in a material particular; or
- (d) by act or omission falsifies, destroys, alters or damages any record; or
- (e) knowingly produces or makes use of any record which is false in a material particular,

is guilty of a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 424 inserted by No. 101 of 1990 s. 27; amended by No. 70 of 2004 s. 35(2).]

[425. Deleted by No. 101 of 1990 s. 28.]

Chapter XLIII — Summary conviction for stealing and like indictable offences

[Heading amended by No. 106 of 1987 s. 18; No. 37 of 1991 s. 13(3).]

426. Summary conviction penalty for certain stealing and like offences

- (1) Subsection (2) applies to the following indictable offences —
 - (a) an offence under section 378, 382, 383 or 388 in respect of which the greatest term of imprisonment to which an offender convicted of the offence is liable does not exceed 7 years;
 - (b) an offence under section 378 to which Item (5)(a), (6), or (7) of that section applies;
 - [(c) deleted]
 - (d) attempting to commit, or inciting another person to commit any of the offences mentioned in paragraph (a) or (b);
 - (e) receiving anything that has been obtained by means of an indictable offence of such a nature, or committed under such circumstances, that the offender who committed the indictable offence might be summarily convicted under this Code.
- (2) Summary conviction penalty: for an offence to which this subsection applies where the value of the property in question does not exceed \$10 000, unless subsection (4) applies — imprisonment for 2 years and a fine of \$24 000.
- (3) Summary conviction penalty: for an offence —
 - (a) under section 378 or 414; or
 - (b) of attempting to commit, or inciting another person to commit, an offence under section 378 or 414,

where the property in question is a motor vehicle, unless subsection (4) applies — imprisonment for 2 years and a fine of \$24 000.

- (4) Summary conviction penalty: for an offence —
- (a) under section 378, 382, 383, 388 or 414; or
 - (b) of attempting to commit, or inciting another person to commit, an offence under section 378, 382, 383, 388 or 414,

where the value of the property in question does not exceed \$1 000 — a fine of \$6 000.

[Section 426 inserted by No. 106 of 1987 s. 19; amended by No. 101 of 1990 s. 29; No. 37 of 1991 s. 19; No. 36 of 1996 s. 24; No. 50 of 2003 s. 51(12); No. 4 of 2004 s. 33; No. 70 of 2004 s. 35(4).]

[426A. Deleted by No. 4 of 2004 s. 34.]

427. Summary conviction penalty for certain offences of fraudulent nature

Summary conviction penalty: for an offence under section 381, 384, 385, 386, 387, 389 or 390 —

- (a) if the offence is punishable on indictment with imprisonment for one year or less — a fine of \$6 000;
- (b) if the offence is punishable on indictment with imprisonment for over one year but not more than 2 years — imprisonment for 12 months and a fine of \$12 000;
- (c) if the offence is punishable on indictment with imprisonment for more than 2 years — imprisonment for 2 years and a fine of \$24 000.

[Section 427 inserted by No. 4 of 2004 s. 35; amended by No. 70 of 2004 s. 35(4) and (10).]

[427A. Deleted by No. 101 of 1990 s. 32.]

Chapter XLIV — Simple offences analogous to stealing

[Heading inserted by No. 70 of 2004 s. 27.]

428. Possessing stolen or unlawfully obtained property

- (1) A person who is in possession of any thing capable of being stolen that is reasonably suspected to be stolen or otherwise unlawfully obtained is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.
- (2) It is a defence to a charge of an offence under subsection (1) to prove that at the time the accused was allegedly in possession of the thing, the accused had no reasonable grounds for suspecting that the thing was stolen or unlawfully obtained.

[Section 428 inserted by No. 70 of 2004 s. 28.]

429. Unlawfully using another person's animal

A person who —

- (a) unlawfully uses, or unlawfully takes for the purpose of using, any animal that is the property of another person without the consent of the owner or the person in lawful possession of the animal; or
- (b) takes any animal that is the property of another person for the purpose of secreting it or obtaining a reward for the return or pretended finding of it or for any fraudulent purpose,

is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.

[Section 429 inserted by No. 70 of 2004 s. 28.]

[430-432. Deleted by No. 70 of 2004 s. 28.]

[433. Deleted by No. 4 of 2004 s. 36.]

[434, 435. Deleted by No. 70 of 2004 s. 28.]

436. Unlawful fishing

Any person who unlawfully uses any article or substance for the purpose of taking any aquatic organism that is being reared by aquaculture in a place that is the property of, or under the control of, any person is guilty of a simple offence and is liable to imprisonment for 2 years and a fine of \$24 000.

[Section 436 inserted by No. 4 of 2004 s. 69; amended by No. 70 of 2004 s. 35(4).]

437. Unlawfully taking fish etc.

Any person who unlawfully takes or destroys, or attempts to take or destroy, any aquatic organism that is —

- (a) being reared by aquaculture in a place that is the property of, or under the control of, any person; or
- (b) in any water that is private property or in which there is a private right of fishery,

is guilty of a simple offence and is liable to imprisonment for 2 years and a fine of \$24 000.

[Section 437 inserted by No. 4 of 2004 s. 69; amended by No. 70 of 2004 s. 35(4).]

[438. Deleted by No. 119 of 1985 s. 18.]

[439, 440. Deleted by No. 70 of 2004 s. 29.]

Chapter XLIVA — Unauthorised use of computer systems

[Heading inserted by No. 101 of 1990 s. 33.]

440A. Unlawful use of computers

- (1) In this section —
- computer system* includes —
- (a) a part of a computer system;
 - (b) an application of a computer system;

password includes a code, or set of codes, of electronic impulses;

restricted-access computer system means a computer system in respect of which —

- (a) the use of a password is necessary in order to obtain access to information stored in the system or to operate the system in some other way; and
- (b) the person who is entitled to control the use of the system —
 - (i) has withheld knowledge of the password, or the means of producing it, from all other persons; or
 - (ii) has taken steps to restrict knowledge of the password, or the means of producing it, to a particular authorised person or class of authorised person;

use a computer system means —

- (a) to gain access to information stored in the system; or
 - (b) to operate the system in some other way.
- (2) For the purposes of this section a person unlawfully uses a restricted-access computer system —
- (a) if the person uses it when he or she is not properly authorised to do so; or
 - (b) if the person, being authorised to use it, uses it other than in accordance with his or her authorisation.
- (3) A person who unlawfully uses a restricted-access computer system is guilty of a crime and is liable —
- (a) if by doing so the person —
 - (i) gains a benefit, pecuniary or otherwise, for any person; or

- (ii) causes a detriment, pecuniary or otherwise, to any person,
of a value of more than \$5 000, to imprisonment for 10 years;
- (b) if by doing so the person —
 - (i) gains or intends to gain a benefit, pecuniary or otherwise, for any person; or
 - (ii) causes or intends to cause a detriment, pecuniary or otherwise, to any person,
to imprisonment for 5 years;
- (c) in any other case, to imprisonment for 2 years.

Summary conviction penalty in a case to which paragraph (c) applies: imprisonment for 12 months and a fine of \$12 000.

[Section 440A inserted by No. 70 of 2004 s. 30.]

Division II — Injuries to property

Chapter XLV — Preliminary matters

[Heading amended by No. 43 of 2009 s. 9.]

441. Unlawful acts

- (1) An act which causes injury to the property of another, and which is done without his consent, is unlawful unless it is authorised, or justified, or excused by law.
- (2) It is immaterial that the person who does the injury is in possession of the property injured, or has a partial interest in it.
- (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.

[Section 441 amended by No. 29 of 2008 s. 9.]

442. Acts done with intent to defraud

When an act which causes injury to property, and which would be otherwise lawful, is done with intent to defraud any person, it is unlawful.

When an act which causes injury to property is done with intent to defraud any person, it is immaterial that the property in question is the property of the offender himself.

443. Term used: wilfully destroy or damage

Where a person does an act or omits to do an act —

- (a) intending to destroy or damage property; or
- (b) knowing or believing that the act or omission is likely to result in the destruction of or damage to property,

and the act or omission results in the destruction of or damage to property, the person is regarded for the purposes of this division as having wilfully destroyed or damaged property.

[Section 443 inserted by No. 101 of 1990 s. 34.]

444A. Duty of person in control of ignition source or fire

- (1) It is the duty of a person who has charge of or is in control of a source of ignition to use reasonable care and take reasonable precautions to avoid lighting a fire that destroys or may destroy or cause damage to property that the person is not entitled to damage or destroy; and the person is held to have caused any destruction or damage to that property by reason of any omission to perform that duty.

- (2) It is the duty of a person who has charge of or is in control of a fire to use reasonable care and take reasonable precautions to contain that fire so that it does not destroy or damage property that the person is not entitled to damage or destroy; and the person is held to have caused any destruction or damage to that property by reason of any omission to perform that duty.
- (3) A person does not breach a duty imposed by this section if the fire does not spread beyond the capacity of the person to extinguish it.
- (4) Property that is capable of being destroyed or damaged by fire includes vegetation.

[Section 444A inserted by No. 43 of 2009 s. 10.]

Chapter XLVI — Offences

444. Criminal damage

- (1) Any person who wilfully and unlawfully destroys or damages any property is guilty of a crime and is liable —
 - (a) if the property is destroyed or damaged by fire, to life imprisonment; or
 - (b) if the property is not destroyed or damaged by fire, to imprisonment for 10 years or, if the offence is committed in circumstances of racial aggravation, to imprisonment for 14 years.

Alternative offence: s. 445.

Summary conviction penalty: for an offence where —

- (a) the property is not destroyed or damaged by fire; and
 - (b) the amount of the injury done does not exceed \$25 000,
- imprisonment for 3 years and a fine of \$36 000.

- (2) Property that is capable of being destroyed or damaged by fire includes vegetation.

[Section 444 inserted by No. 4 of 2004 s. 37; amended by No. 70 of 2004 s. 35(4) and 36(3); No. 80 of 2004 s. 11; No. 43 of 2009 s. 11.]

445A. Breach of duty under s. 444A

A person who unlawfully omits or refuses to do any act which it is the person's duty to do under section 444A is guilty of a crime, and is liable to imprisonment for 15 years.

[Section 445A inserted by No. 43 of 2009 s. 12.]

445. Damaging property

A person who unlawfully destroys or damages the property of another person without that other person's consent is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.

[Section 445 inserted by No. 70 of 2004 s. 31; amended by No. 26 of 2009 s. 5.]

446. Costs of cleaning graffiti

- (1) In this section —

offender means a person who is guilty of an offence under section 444 or 445 where the damage consists of —

- (a) graffiti that are visible to the public; or
- (b) graffiti applied to public property;

public property means property owned by, vested in, or under the control or management of —

- (a) the State; or
- (b) the Crown, or an agent or instrumentality of the Crown; or
- (c) a body corporate established by a written law; or
- (d) a local government or regional local government.

- (2) A court convicting an offender may order the offender to pay to any person who has obliterated the graffiti, or caused it to be obliterated, a reasonable amount for doing so.
- (3) Such an order is in addition to any penalty imposed for the offence and may be in addition to a compensation order made under Part 16 of the *Sentencing Act 1995*.

[Section 446 inserted by No. 70 of 2004 s. 31.]

[447. Deleted by No. 101 of 1990 s. 35.]

[448. Deleted by No. 106 of 1987 s. 14(5).]

449. Casting away ships

Any person who —

- (1) Wilfully and unlawfully casts away or destroys any vessel, whether complete or not; or
- (2) Wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or
- (3) With intent to bring a vessel into danger interferes with any light, beacon, mark, or signal, used for purposes of navigation, or for the guidance of seamen, or exhibits any false light or signal;

is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 449 amended by No. 118 of 1981 s. 4; No. 51 of 1992 s. 16(2).]

[450. Deleted by No. 106 of 1987 s. 14(5).]

451. Obstructing and injuring railways

Any person who unlawfully, and with intent to obstruct the use of a railway or to injure any property upon a railway —

- (1) Deals with the railway or with anything whatever on or near the railway in such a manner as to endanger the free and safe use of the railway; or

- (2) Unlawfully shows any light or signal, or deals with any existing light or signal upon or near the railway; or
- (3) By any omission to do any act which it is his duty to do causes the free and safe use of the railway to be endangered;

is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 451 amended by No. 118 of 1981 s. 4; No. 51 of 1992 s. 16(2).]

451A. Endangering safe use of an aircraft

- (1) Any person who with intent to prejudice the safe use of an aircraft or to injure any property on board an aircraft —
 - (a) deals with the aircraft or with anything whatever on board or near the aircraft or with anything whatever either directly or indirectly connected with the navigation, control or operation of the aircraft in such a manner as to endanger the free and safe use of the aircraft; or
 - (ba) does any act that endangers the free and safe use of the aircraft; or
 - (b) by any omission to do any act that it is his duty to do causes the free and safe use of the aircraft to be endangered,

is guilty of a crime and is liable to imprisonment for 20 years.

- (2) Any person who does any act or makes any omission whereby to his knowledge the safety of an aircraft is or is likely to be endangered is guilty of a crime and is liable to imprisonment for 7 years.

[Section 451A inserted by No. 53 of 1964 s. 9; amended by No. 118 of 1981 s. 4; No. 51 of 1992 s. 16(2); No. 44 of 2009 s. 8.]

451B. Unlawfully interfering with aircraft

Any person who unlawfully interferes with the mechanism or parts of any aircraft is guilty of a crime and is liable to imprisonment for 5 years.

[Section 451B inserted by No. 41 of 1972 s. 5; amended by No. 51 of 1992 s. 16(2).]

[452, 453. Deleted by No. 101 of 1990 s. 36.]

454. Causing explosion likely to do serious injury to property

Any person who wilfully and unlawfully causes by any explosive substance, an explosion of a nature likely to cause serious injury to property, whether any injury to property has been actually caused or not, is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 454 amended by No. 118 of 1981 s. 4; No. 51 of 1992 s. 16(2).]

455. Attempting to cause explosion likely to do serious injury to property

Any person who wilfully and unlawfully —

- (1) Does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in Western Australia of a nature likely to cause serious injury to property; or
- (2) Makes or has in his possession or under his control, any explosive substance with intent by means thereof to cause serious injury to property in Western Australia, or to enable any other person by means thereof to cause serious injury to property in Western Australia; or
- (3) Puts any explosive substance in any place whatever with intent to destroy or damage any property,

whether any explosion does or does not take place, and whether any injury to property has been actually caused or not, is guilty of a crime, and is liable to imprisonment for 14 years, and to forfeiture of the explosive substance.

The term *explosive substance* in this section includes any materials for making any explosive substance; also any apparatus, machine, implement, or materials, used or intended to be used or adapted for causing or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

[Section 455 amended by No. 51 of 1992 s. 16(2).]

456. Attempts to injure mines

Any person who, with intent to injure a mine or to obstruct the working of a mine —

- (1) Unlawfully, and otherwise than by an act done underground in the course of working an adjoining mine, —
 - (a) Causes water to run into the mine or into any subterranean passage communicating with the mine; or
 - (b) Obstructs any shaft or passage of the mine;or
- (2) Unlawfully obstructs the working of any machine, appliance, or apparatus, appertaining to or used with the mine, whether the thing in question is completed or not; or
- (3) Unlawfully, and with intent to render it useless, injures or unfastens a rope, chain, or tackle, of whatever material which is used in the mine or upon any way or work appertaining to or used with the mine;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 456 amended by No. 51 of 1992 s. 16(2).]

457. Interfering with marine signals

Any person who wilfully and unlawfully removes, defaces, or renders invisible, any light, beacon, buoy, mark, or signal, used for purposes of navigation, or for the guidance of seamen, or unlawfully attempts to remove, deface, or render invisible, any such thing, is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 457 amended by No. 51 of 1992 s. 16(2).]

458. Interfering with navigation works

Any person who —

- (1) Wilfully and unlawfully removes or disturbs any fixed object or materials used for securing a bank or wall of the sea, or of a river, canal, aqueduct, reservoir, or inland water, or for securing any work which appertains to a port, harbour, dock, canal, aqueduct, reservoir, or inland water, or which is used for purposes of navigation, or lading or unlading goods; or
- (2) Unlawfully does any act with intent to obstruct the carrying on, completion, or maintenance, of the navigation of a navigable river or canal, and thereby obstructs such carrying on, completion or maintenance;

is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 458 amended by No. 51 of 1992 s. 16(2).]

459. Communicating infectious diseases to animals

Any person who wilfully and unlawfully causes or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen, is guilty of a crime, and is liable to imprisonment for 7 years.

[Section 459 amended by No. 51 of 1992 s. 16(2).]

460. Travelling with infected animals

Any person who causes any four-footed animal which is infected with an infectious disease to travel, or, being the owner or one of 2 or more joint owners of any four-footed animal which is infected with an infectious disease, permits or connives at the travelling of any such animal, contrary to the provisions of any statute relating to infected animals of that kind, is guilty of a crime, and is liable to imprisonment for 2 years.

[Section 460 amended by No. 70 of 2004 s. 34(1).]

461. Removing boundary marks

Any person who, wilfully and unlawfully and with intent to defraud, removes or defaces any object or mark which has been lawfully erected or made as an indication of the boundary of any land, is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 461 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

462. Obstructing railways

Any person who, by any unlawful act, or by any intentional omission to do any act which it is his duty to do, causes any engine or vehicle in use upon a railway to be obstructed in its passage on the railway, is guilty of a crime, and is liable to imprisonment for 2 years.

[Section 462 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

[463-463B. Deleted by No. 101 of 1990 s. 37.]

[464. Deleted by No. 119 of 1985 s. 19.]

[Chapter XLVII:

s. 465, 466 deleted by No. 4 of 2004 s. 38;

*s. 467 deleted by No. 78 of 1995 s. 26;
s. 468 deleted by No. 1 of 1969 s. 16.]*

**Division III — Forgery and like offences: Identity crime:
Personation**

[Heading inserted by No. 16 of 2010 s. 4.]

[Chapter XLVIII (s. 469-472) deleted by No. 101 of 1990 s. 40.]

Chapter XLIX — Forgery and uttering

[Heading inserted by No. 101 of 1990 s. 41.]

473. Forgery and uttering

- (1) Any person who with intent to defraud —
- (a) forges a record; or
 - (b) utters a forged record,

is guilty of a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

- (2) It is immaterial that the record is incomplete or that it is not, or does not purport to be, binding in law.
- (3) A court that convicts a person of an offence under this section may make an order for the forfeiture to the State, or the destruction or disposal, of any record in respect of which the offence was committed.

*[Section 473 inserted by No. 101 of 1990 s. 41; amended by
No. 70 of 2004 s. 35(2); No. 59 of 2006 s. 24.]*

474. Preparation for forgery etc.

- (1) Any person who makes, adapts or knowingly has possession of any thing under such circumstances as to give rise to a reasonable suspicion that it has been, or is being, made, adapted

or possessed for a purpose that is unlawful under section 473 is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 18 months and a fine of \$18 000.

- (2) If a person is convicted of an offence under this section the court may make an order for the forfeiture to the Crown, or the destruction or disposal, of the thing in respect of which the offence was committed.

[Section 474 inserted by No. 29 of 1998 s. 4; amended by No. 70 of 2004 s. 35(11).]

[475-487. Deleted by No. 101 of 1990 s. 41.]

Chapter L — False representations as to status

[Heading inserted by No. 101 of 1990 s. 41.]

488. Procuring or claiming unauthorised status

Any person who —

- (a) by any false representation procures any authority authorised by any written law to issue certificates testifying that the holders thereof are entitled to any right or privilege, or to enjoy any rank or status, to issue to himself or any other person such a certificate; or
- (b) falsely represents to any person that he has obtained such a certificate; or
- (c) by any false representation procures himself or any other person to be registered on any register kept by lawful authority as a person entitled to such a certificate, or as a person entitled to any right or privilege, or to enjoy any rank or status; or

- (d) falsely advertises or publishes himself as having obtained such a certificate, or as having been so registered,

is guilty of a crime, and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 488 inserted by No. 101 of 1990 s. 41; amended by No. 70 of 2004 s. 35(1).]

Chapter LI — Identity crime

[Heading inserted by No. 16 of 2010 s. 5.]

489. Terms used

In this Chapter —

digital signature means encrypted electronic data intended for the exclusive use of a particular person as a means of identifying the person as the sender of an electronic communication;

electronic communication has the meaning given in the *Electronic Transactions Act 2011* section 5(1);

identification information means information relating to a person, whether living or dead or whether real or fictitious, that is capable of being used, whether alone or in conjunction with other information, to identify or purportedly identify the person and includes —

- (a) a name, address, date of birth or place of birth;
- (b) information about a person's marital status;
- (c) information that identifies a person as another person's relative;
- (d) a driver's licence number;
- (e) a passport number;
- (f) biometric data;
- (g) a voice print;

- (h) information stored on a credit card or debit card;
- (i) a financial account number, user name or password;
- (j) a digital signature;
- (k) a series of numbers or letters, or both numbers and letters, intended for use as a means of personal identification;
- (l) an Australian Business Number, as defined in the *A New Tax System (Australian Business Number) Act 1999* (Commonwealth);

identification material means —

- (a) identification information; or
- (b) a record that contains identification information;

voice print means electronic data recording the unique characteristics of a person's voice.

[Section 489 inserted by No. 16 of 2010 s. 5; amended by No. 46 of 2011 s. 26.]

490. Making, using or supplying identification material with intent to commit indictable offence

- (1) A person who makes, uses or supplies identification material with the intention that the material will be used, by the person or some other person, to commit an indictable offence or to facilitate the commission of an indictable offence is guilty of a crime and is liable to the penalty that is the greater of —
 - (a) imprisonment for 7 years; or
 - (b) the penalty to which the person would have been liable if convicted of attempting to commit the indictable offence.

Alternative offence: s. 491(1).

- (2) For the purposes of subsection (1), it does not matter that it is impossible in fact to commit the indictable offence.

- (3) It is not a defence to a charge of an offence under subsection (1) involving identification material relating to a person other than the accused person that the other person consented to the making, use or supply of the identification material by the accused person.

[Section 490 inserted by No. 16 of 2010 s. 5.]

491. Possession of identification material with intent to commit indictable offence

- (1) A person who is in possession of identification material with the intention that the material will be used, by the person or some other person, to commit an indictable offence or to facilitate the commission of an indictable offence is guilty of a crime and is liable to imprisonment for 5 years.

Summary conviction penalty: imprisonment for 24 months and a fine of \$24 000.

- (2) For the purposes of subsection (1), it does not matter that it is impossible in fact to commit the indictable offence.
- (3) It is not a defence to a charge of an offence under subsection (1) involving identification material relating to a person other than the accused person that the other person consented to the possession of the identification material by the accused person.

[Section 491 inserted by No. 16 of 2010 s. 5.]

492. Possession of identification equipment with intent that it be used to commit indictable offence

- (1) In this section —
identification equipment means any thing capable of being used to make, use, supply or retain identification material.
- (2) A person who is in possession of identification equipment with the intention that the equipment will be used, by the person or some other person, to commit an indictable offence or to

facilitate the commission of an indictable offence is guilty of a crime and is liable to imprisonment for 5 years.

Summary conviction penalty: imprisonment for 24 months and a fine of \$24 000.

- (3) For the purposes of subsection (2), it does not matter that it is impossible in fact to commit the indictable offence.

[Section 492 inserted by No. 16 of 2010 s. 5.]

493. Attempt offences do not apply

Section 552(1) does not apply to an offence against section 490, 491 or 492.

[Section 493 inserted by No. 16 of 2010 s. 5.]

494. Court may grant certificate to victim of identity offence

- (1) In this section —

identification material, of a victim, means identification material relating to the victim;

identity offence means an offence against this Division;

victim, of an identity offence, means a person whose identification material has been used, without the person's consent, in connection with the commission of the offence.

- (2) If a court convicts a person of an identity offence, the court may issue a certificate to a victim of the offence setting out —
- (a) the identity offence to which the certificate relates; and
 - (b) the name of the victim; and
 - (c) any matter prescribed by regulations made under subsection (7); and
 - (d) any other matter the court considers relevant.
- (3) The court may issue the certificate on its own initiative or on an application made by the prosecutor or the victim.

- (4) Unless the offender is convicted of the identity offence on a plea of guilty, the certificate must not be issued to the victim until —
- (a) the end of any period allowed for an appeal against conviction; or
 - (b) if an appeal is commenced — the end of any proceedings on the appeal.
- (5) A certificate issued under this section is, in the absence of evidence to the contrary, evidence of its contents.
- (6) A court, for good reason and either on its own initiative or on an application made by the prosecutor, may cancel a certificate it has issued under this section.
- (7) The Governor may make regulations providing for any matter to be set out in certificates issued under this section.

[Section 494 inserted by No. 16 of 2010 s. 5.]

[495. Deleted by No. 101 of 1990 s. 42.]

[Chapter LII (s. 496-509) deleted by No. 101 of 1990 s. 42.]

Chapter LIII — Personation

510. Personation in general

Any person who, with intent to defraud any person, falsely represents himself to be some other person living or dead, is guilty of an offence which unless otherwise stated, is a crime; and he is liable to imprisonment for 3 years.

If the representation is that the offender is a person entitled by will or operation of law to any specific property, and he commits the offence with intent to obtain such property, or possession thereof, he is guilty of a crime, and is liable to imprisonment for 14 years.

[Section 510 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

511. Personation of owner of shares

Any person who falsely and deceitfully personates any owner of any share or interest in any company, or of any share certificate or coupon issued under any Act or law relating to companies, and thereby obtains, or endeavours to obtain any such share or interest, or share certificate or coupon or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, is guilty of a crime, and is liable to imprisonment for 20 years.

[Section 511 amended by No. 118 of 1981 s. 4; No. 10 of 1982 s. 28; No. 51 of 1992 s. 16(2).]

512. Falsely acknowledging deeds, recognisances etc.

Any person who, without lawful authority or excuse, the proof of which lies on him, makes, in the name of any other person, before any court or person lawfully authorised to take such an acknowledgement, an acknowledgement of liability of any kind, or an acknowledgement of a deed or other instrument, is guilty of a crime, and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

[Section 512 amended by No. 51 of 1992 s. 16(2); No. 36 of 1996 s. 27; No. 70 of 2004 s. 35(2).]

513. Personation of a person named in a certificate

Any person who utters any document which has been issued by lawful authority to another person, and whereby that other person is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document, is guilty of an offence of the

same kind, and is liable to the same punishment as if he had forged the document.

514. Lending certificate for personation

Any person who, being a person to whom any document has been issued by lawful authority, whereby he is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, lends the document to another person with intent that that other may represent himself to be the person named therein, is guilty of a crime, and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 18 months and a fine of \$18 000.

[Section 514 amended by No. 51 of 1992 s. 16(2); No. 36 of 1996 s. 28; No. 70 of 2004 s. 34(1) and 35(11).]

Division IV — Offences connected with trade and breach of contract, and corruption of agents, trustees, and others

Chapter LIV — Fraudulent debtors

[515-526. Deleted by No. 51 of 1992 s. 11.]

527. Fraudulent dealing by judgment debtors

- (1) Any person who, with intent to defraud the person's creditors or any of them, conceals or removes any property —
- (a) before a judgment or order for payment of money is obtained against the person; or
 - (b) while a judgment or order for payment of money obtained against the person remains unsatisfied,
- is guilty of a crime, and is liable to imprisonment for 7 years.

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Summary conviction penalty (subject to subsection (2)):
imprisonment for 2 years and a fine of \$24 000.

- (2) If the value of the property concealed or removed is more than \$10 000 the charge is not to be dealt with summarily.

[Section 527 inserted by No. 51 of 1992 s. 12; amended by No. 36 of 1996 s. 29; No. 70 of 2004 s. 35(12).]

[528. Deleted by No. 51 of 1992 s. 11.]

Chapter LV — Corruption of agents, trustees, and others in whom confidence is reposed

529. Receipt or solicitation of secret commission by an agent

If any agent corruptly receives or solicits from any person, for himself or for any other person, any valuable consideration —

- (a) as an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or
- (b) the receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business,

he shall be guilty of a crime.

[Section 529 amended by No. 101 of 1990 s. 43.]

530. Gift or offer of secret commission to an agent

If any person corruptly gives or offers to any agent any valuable consideration —

- (a) as an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or

- (b) the receipt or any expectation of which would in any way tend to influence him to show or forbear to show favour or disfavour to any person in relation to his principal's affairs or business,

he shall be guilty of a crime.

[Section 530 amended by No. 101 of 1990 s. 43.]

531. Secret gifts to parent etc. of agent deemed gifts to agent

- (1) Any valuable consideration given or offered to any parent, husband, wife, de facto partner, or child of any agent, or to his partner, clerk or employee, or at the agent's request to any person by any person having business relations with the principal of such agent, shall be deemed to have been given or offered to the agent.
- (2) Any valuable consideration received or solicited by any parent, husband, wife, de facto partner, or child of any agent, or by his partner, clerk, or employee, from any person having business relations with the principal of such agent shall be deemed to have been received or solicited by the agent, unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.

[Section 531 amended by No. 28 of 2003 s. 33.]

532. Giving to agent false or misleading receipt or account

If, with intent to deceive or defraud the principal, any person gives to any agent, or if any agent receives or uses or gives to the principal, any receipt, invoice, account, or document in respect of which or in relation to a dealing, transaction, or matter in which the principal is interested and which —

- (a) contains any statement which is false or erroneous or defective in any important particular, or is in any way likely to mislead the principal; or

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- (b) omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed or agreed to be made, given, or allowed,

he shall be guilty of a crime.

[Section 532 amended by No. 101 of 1990 s. 43.]

533. Gift or receipt of secret commission in return for advice given

Whenever any advice is given by one person to another, and such advice is in any way likely or intended to induce or influence the person advised —

- (a) to enter into a contract with any third person; or
- (b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of any third person as trustee,

and any valuable consideration is given by such third person to the person giving the advice without the assent of the person advised, the gift or receipt of the valuable consideration shall be a crime, but this section shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice.

[Section 533 amended by No. 101 of 1990 s. 43.]

534. Offer or solicitation of secret commission in return for advice given

Any offer or solicitation of a valuable consideration in respect of any advice given or to be given by one person to another with a view to induce or influence the person advised —

- (a) to enter into a contract with the person offering or solicited; or
- (b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of the person offering or solicited as trustee,

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised, shall be a crime, but this section shall not apply when such first-mentioned person is the agent of the person offering or solicited.

[Section 534 amended by No. 101 of 1990 s. 43.]

535. Secret commission to trustee in return for substituted appointment

If any person offers or gives any valuable consideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself or for any other person, without the assent of the persons beneficially entitled to the estate, or of a Judge of the Supreme Court, as an inducement or reward for appointing or having appointed or for joining or having joined with another in appointing, or for authorising or having authorised or for joining or having joined with another in authorising any person to be appointed in his stead or instead of him and any other person as trustee he shall be guilty of a crime.

[Section 535 amended by No. 101 of 1990 s. 43.]

536. Aiding etc. Chapter LV offences within or outside Western Australia

Any person who, being within Western Australia, knowingly aids, abets, counsels, or procures, or who attempts or takes part in or is in any way privy to —

- (a) doing any act or thing in contravention of this Chapter;
- (b) doing any act or thing outside Western Australia, or partly within and partly outside Western Australia, which if done within Western Australia, would be in contravention of this Chapter;

shall be guilty of a crime.

[Section 536 amended by No. 101 of 1990 s. 43.]

537. Liability of directors etc. acting without authority

Any director, manager, or officer of a company, or any person acting for another, who knowingly takes part in or is in any way privy to doing or who attempts to do any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this Chapter shall be guilty of a crime.

[Section 537 amended by No. 101 of 1990 s. 43.]

538. Penalty for Chapter LV offences

Any person, on conviction of a crime under any of the provisions of this Chapter, shall —

- (a) be liable, in the case of a corporation, to a fine of \$250 000 and in any other case to imprisonment for 7 years; and
- (b) in addition, be liable to be ordered to pay to such person, and in such manner as the court directs, the amount or value, according to the estimation of the court, of any valuable consideration received or given by him or any part thereof; and such order shall be enforceable in the same manner as a judgment of the court.

[Section 538 amended by No. 113 of 1965 s. 8(1); No. 101 of 1990 s. 43 and 44.]

539. Court may order withdrawal of trifling or technical cases

Upon the trial of a person for any offence under this Chapter, if it appears to the court that the offence charged is in the particular case of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the court may in its discretion, and for reasons stated on the application of the accused, withdraw the case from the jury, and this shall have the same force and effect as if the jury had returned a verdict of not guilty, except that the court may, if it think fit, make the order mentioned in section 538.

[Section 539 amended by No. 44 of 2009 s. 14.]

540. Protection of witness giving answers criminating himself

A person who is called as a witness in any proceedings before a court shall not be excused from answering any question relating to any offence under this Chapter on the ground that the answer thereto may criminate or tend to criminate him:

Provided that —

- (a) a witness who, in the judgment of the court, answers truly all questions which he is required by the court to answer shall be entitled to receive a certificate from the court stating that such witness has so answered; and
- (b) an answer by a person to a question put by or before the court in any proceeding under this Chapter shall not, except in the case of any criminal proceedings for perjury in respect of such evidence, be in any proceeding civil or criminal admissible in evidence against him.

[Section 540 amended by No. 59 of 2004 s. 80.]

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541. Stay of proceedings against such witness

When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness, the court dealing with the case shall, on proof of the certificate and of the identity of the offence in question in the 2 cases, stay the proceedings.

[Section 541 amended by No. 59 of 2004 s. 80.]

542. Custom of itself no defence

In any prosecution under this Chapter it shall not amount to a defence to show that any such valuable consideration as is mentioned in this Chapter is customary in any trade or calling.

543. Burden of proof that gift not secret commission

For the purposes of this Chapter, where it is shown that any valuable consideration has been received or solicited by an agent from or given or offered to any agent by any person having business relations with the principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this Chapter shall be on the accused.

[544. Deleted by No. 101 of 1990 s. 45.]

[545. Deleted by No. 101 of 1990 s. 46.]

546. Terms used

In the construction of this Chapter, the following provisions shall apply —

- (1) The word **agent** shall include any corporation or other person acting or having been acting or desirous or intending to act for or on behalf of any corporation or

other person, whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, engineer, solicitor, surveyor, buyer, salesman, foreman, trustee, executor, administrator, liquidator, trustee in bankruptcy or of a personal insolvency agreement, receiver, director, manager or other officer or member of committee or governing body of any corporation, club, partnership, or association, or in any other capacity, either alone or jointly with any other person, and whether in his own name or in the name of his principal, or otherwise; and a person serving under the Crown is an agent within the meaning of this Chapter: and

- (2) The word *principal* shall include a corporation or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act: and
- (3) The word *trustee* shall include trustee, executor, administrator, liquidator, trustee in bankruptcy or of a personal insolvency agreement, receiver, director, committee of the estate of an insane person having power to appoint a trustee or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person: and
- (4) The words *valuable consideration* shall include any money, loan, office, place, employment, agreement to give employment, benefit, or advantage whatsoever, and any commission or rebate, deduction, or percentage, bonus, or discount, or any forbearance to demand any money or money's worth or valuable thing; and the acceptance of any of the said things shall be deemed the receipt of a valuable consideration: and
- (5) The words *valuable consideration*, when used in connection with the offer thereof, shall include any offer of any agreement or promise to give, and every holding out of any expectation of valuable consideration: and

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- (6) The words *valuable consideration*, when used in connection with the receipt thereof, shall include any acceptance of any agreement, promise, or offer to give, and of any holding out of any expectation of valuable consideration: and
- (7) The word *contract* shall include contract of sale or of employment or any other contract whatever: and
- (8) Any act or thing prohibited by this Chapter is prohibited whether done directly or indirectly by the person mentioned or by or through any other person: and
- (9) The words *solicit any valuable consideration*, and *valuable consideration solicited*, and words to the like effect shall be construed with the following direction, namely: — That every agent who shall divert, obstruct, or interfere with the proper course of business or manufacture, or shall impede or obstruct, or shall fail to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any person interested in the said negotiation or business or with intent to injure any such person shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent: and
- (10) The words *person having business relations with the principal* shall include every corporation or other person, whether as principal or agent, carrying on or having carried on or desirous or intending to carry on any negotiation or business with or engaged or having been engaged or desirous or intending to be engaged in the performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal, and shall also include any agent of such corporation or other person: and
- (11) The words *in relation to his principal's affairs or business* shall imply the additional words “whether

within the scope of his authority or course of his employment as agent or not”: and

- (12) The words *advice given* and words to the like effect shall include every report, certificate, statement, and suggestion intended to influence the person to whom the same may be made or given, and every influence exercised by one person over another.

[Section 546 amended by No. 18 of 2009 s. 26.]

Chapter LVI — Other offences

547. Concealment by officers of companies on reduction of capital

Any person who, being a director or officer of a joint stock company, the capital of which is proposed to be reduced —

- (1) Conceals the name of any creditor of the company who is entitled to object to the proposed reduction; or
- (2) Knowingly misrepresents the nature or amount of the debt or claim of any creditor of the company; or
- (3) Is privy to any such concealment or misrepresentation as aforesaid;

is guilty of a crime, and is liable to imprisonment for 3 years.

[Section 547 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

548. Falsification of books of companies

Any person who, being a director, officer, or contributory of a company which is in course of being wound up, under the provisions of the laws relating to companies, does any of the following acts with intent to deceive or defraud, or to cause or enable another person to deceive or defraud, that is to say —

- (1) Conceals, destroys, alters, mutilates, or falsifies any book, document, valuable security, or account relating to the affairs of the company, or any entry in any such

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book, document, or account, or is privy to any such act;
or

- (2) Makes or is privy to making any false entry in any book, document, or account, belonging to the company;

is guilty of a crime, and is liable to imprisonment for 2 years.

[Section 548 amended by No. 10 of 1982 s. 28; No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1).]

549. Mixing uncertified with certified articles

When a mark has been attached to any article, or a certificate has been given with respect to any article, under the authority of any statute, for the purpose of denoting the quality of the article, or the fact that it has been examined or approved by or under the authority of some public body or public officer, any person who mixes with the article so marked or certified any other article which has not been so examined or approved, is guilty of a crime, and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 549 amended by No. 51 of 1992 s. 16(2); No. 36 of 1996 s. 30; No. 70 of 2004 s. 34(1) and 35(1).]

[550, 551. Deleted by No. 82 of 1994 s. 9(2).]

**Part VII — Preparation to commit offences:
Conspiracy: Accessories after the fact**

Chapter LVII — Attempts and preparation to commit offences

552. Attempts to commit indictable offences

- (1) Any person who attempts to commit an indictable offence (the *principal offence*) is guilty of a crime.
- (2) A person guilty of a crime under subsection (1) is liable —
 - (a) if the principal offence is punishable on indictment with imprisonment for life — to imprisonment for 14 years;
 - (b) in any other case — to half of the penalty with which the principal offence is punishable on indictment.

Summary conviction penalty: for an offence where the principal offence may be dealt with summarily, the lesser of —

- (a) the penalty with which the principal offence is punishable on summary conviction; or
 - (b) the penalty that is half of the penalty with which the principal offence is punishable on indictment.
- (3) The summary conviction penalty in subsection (2) does not apply to an offence to which section 426 applies.

[Section 552 inserted by No. 4 of 2004 s. 39; amended by No. 70 of 2004 s. 34(2) and (3).]

553. Incitement to commit indictable offences

- (1) Any person who, intending that an indictable offence (the *principal offence*) be committed, incites another person to commit the principal offence, is guilty of a crime.
- (2) A person guilty of a crime under subsection (1) is liable —
 - (a) if the principal offence is punishable on indictment with imprisonment for life — to imprisonment for 14 years;

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- (b) in any other case — to half of the penalty with which the principal offence is punishable on indictment.

Summary conviction penalty: for an offence where the principal offence may be dealt with summarily, the lesser of —

- (a) the penalty with which the principal offence is punishable on summary conviction; or
- (b) the penalty that is half of the penalty with which the principal offence is punishable on indictment.
- (3) The summary conviction penalty in subsection (2) does not apply to an offence to which section 426 applies.

[Section 553 inserted by No. 4 of 2004 s. 40; amended by No. 70 of 2004 s. 34(4) and (5).]

[554, 555. Deleted by No. 4 of 2004 s. 41.]

555A. Attempts and incitement to commit simple offences under this Code

- (1) Any person who attempts to commit a simple offence under this Code is guilty of a simple offence and is liable to the punishment to which a person convicted of the first-mentioned offence is liable.
- (2) Any person who, intending that a simple offence under this Code be committed, incites another person to commit the offence, is guilty of a simple offence and is liable to the punishment to which a person convicted of the first-mentioned offence is liable.
- (3) A prosecution for an offence under subsection (1) or (2) may be commenced at any time if the offence alleged to have been attempted or incited is one for which prosecutions may be commenced at any time.

[Section 555A inserted by No. 101 of 1990 s. 47.]

556. Attempts to procure commission of criminal acts

Any person who attempts to procure another to do any act or make any omission, whether in Western Australia or elsewhere, of such a nature that, if the act were done or the omission were made, an offence would thereby be committed under the laws of Western Australia, or the laws in force in the place where the act or omission is proposed to be done or made, whether by himself or by that other person, is guilty of an offence of the same kind, and is liable to the same punishment as if he had himself attempted to do the same act or make the same omission in Western Australia.

Provided that if the act or omission is proposed to be done or made at a place not in Western Australia, the punishment cannot exceed that which he would have incurred under the laws in force where the act or omission was proposed to be done or made, if he had himself attempted to do the proposed act or make the proposed omission.

Provided also, that in the last-mentioned case, a prosecution cannot be instituted except at the request of the Government of the State having jurisdiction in the place where the act or omission was proposed to be done or made.

557. Making or possession of explosives under suspicious circumstances

- (1) Any person who makes, or knowingly has in his possession or under his control, any dangerous or explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it, or does not have it in his possession or under his control for a lawful object, unless he can show that he made it, or had it in his possession or under his control for a lawful purpose, is guilty of a crime, and is liable to imprisonment for 14 years, and forfeiture of the dangerous or explosive substance.

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Summary conviction penalty: imprisonment for 3 years and a fine of \$36 000.

- (2) In this section *explosive substance* includes any materials for making any explosive substance; also any apparatus, machine, implement, or materials used or intended to be used or adapted for causing or aiding in causing any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

[Section 557 amended by No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 32.]

Chapter LVIIA — Offences to do with preparing to commit offences

[Heading inserted by No. 70 of 2004 s. 33.]

557A. Presumptions

A person is presumed to have an intention referred to in this Chapter in relation to a thing in the person's possession if —

- (a) the person is in possession of the thing in circumstances that give rise to a reasonable suspicion that the person has the intention; and
- (b) the contrary is not proved.

[Section 557A inserted by No. 70 of 2004 s. 33.]

[557B. Deleted by No. 59 of 2006 s. 25.]

557C. Forfeiture

A court that convicts a person of an offence under this Chapter may order that the thing giving rise to the offence be forfeited to the State.

[Section 557C inserted by No. 70 of 2004 s. 33.]

557D. Possessing stupefying or overpowering drug or thing

A person who is in possession of a stupefying or overpowering drug or thing with the intention of using it to facilitate —

- (a) the commission of an offence; or
- (b) the flight of an offender after the commission or attempted commission of an offence,

is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.

[Section 557D inserted by No. 70 of 2004 s. 33.]

557E. Possessing things to assist unlawful entry to places

A person who is in possession of a thing with the intention of using it to facilitate the unlawful entry of any place is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

[Section 557E inserted by No. 70 of 2004 s. 33.]

557F. Possessing things to assist unlawful use of conveyances

A person who is in possession of a thing with the intention of using it to facilitate the unlawful use of a conveyance is guilty of an offence and is liable to a fine of \$6 000.

[Section 557F inserted by No. 70 of 2004 s. 33.]

557G. Possessing things for applying graffiti

A person who is in possession of a thing with the intention of using it to cause damage consisting of graffiti is guilty of an offence and is liable to a fine of \$6 000.

[Section 557G inserted by No. 70 of 2004 s. 33.]

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557H. Possessing a disguise

A person who is in possession of a thing with the intention of using it as a disguise in connection with committing an offence is guilty of an offence and is liable to a fine of \$6 000.

[Section 557H inserted by No. 70 of 2004 s. 33.]

557I. Possessing bulletproof clothing

(1) In this section —

bulletproof clothing means a protective jacket, vest, or other article of clothing, designed to resist the penetration of bullets or other missiles discharged from firearms;

Commissioner means the Commissioner of Police appointed under the *Police Act 1892*.

(2) A person who is in possession of bulletproof clothing is guilty of an offence and is liable to a fine of \$6 000.

(3) Subsection (2) does not apply to —

(a) a person who —

(i) holds an appointment under Part I, III or IIIA of the *Police Act 1892*, other than a police cadet;

(ii) is employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*;

(iii) is a prison officer within the meaning of the *Prisons Act 1981*;

(iv) is employed or appointed under an Act of the Commonwealth, another State or a Territory,

and who is lawfully in possession of bulletproof clothing in the course of duty;

(b) a person who is in possession of bulletproof clothing in accordance with a permit given under subsection (4);

- (c) a person who is in possession of bulletproof clothing in the course of and for the purpose of supplying it to a person referred to in paragraph (a) or (b) to fulfil a request previously made for its supply.
- (4) The Commissioner, by a written permit, may permit a person or a class of persons to possess bulletproof clothing on any conditions (to be specified in the permit) that the Commissioner thinks fit.
- (5) The Commissioner may at any time amend or cancel such a permit.

[Section 557I inserted by No. 70 of 2004 s. 33.]

557J. Declared drug traffickers, consorting by

- (1) In this section, unless the contrary intention appears —
consort includes to communicate in any manner;
declared drug trafficker means a person who is declared to be a drug trafficker under section 32A(1) of the *Misuse of Drugs Act 1981*.
- (2) A person who is a declared drug trafficker and who, having been warned by a police officer —
 - (a) that another person is also a declared drug trafficker; and
 - (b) that consorting with the other person may lead to the person being charged with an offence under this section,habitually consorts with the other person is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.
- (3) It is a defence to a charge of an offence under subsection (2) to prove that the accused person —
 - (a) was the spouse or de facto partner of the other person; or
 - (b) was a de facto child or a lineal relative (as those terms are defined in section 329(1)) of the other person.

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[Section 557J inserted by No. 70 of 2004 s. 33.]

557K. Child sex offenders, offences by

(1) In this section, unless the contrary intention appears —

child means a person under 18 years of age;

child care centre means a place where —

- (a) an education and care service as defined in the *Education and Care Services National Law (Western Australia)* section 5(1) operates; or
- (b) a child care service as defined in the *Child Care Services Act 2007* section 4 is provided;

child sex offender means a person who has been convicted of —

- (a) an offence under any of these Chapters of this Code that was committed against, in respect of, or in the sight of, a child —
 - (i) Chapter XXII — Offences against morality;
 - (iia) Chapter XXV⁶ — Child exploitation material;
 - (ii) Chapter XXXI — Sexual offences;
 - (iii) Chapter XXXIII — Offences against liberty;or
- (b) an offence under Chapter XXXIIIB that was committed against or in respect of a child; or
- (c) an offence under any of these repealed enactments of this Code that was committed against a child —
 - (i) section 315 (Indecent assault on males);
 - (ii) Chapter XXXIA — Sexual assaults;
 - (iii) Chapter XXXII — Assaults on females: Abduction;or
- (d) an offence under section 59 of the *Classification (Publications, Films and Computer Games)*

Enforcement Act 1996 that was committed in circumstances in which an indecent or obscene article was sold, supplied or offered to a child; or

- (e) an offence under the deleted section 60 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*; or
- (f) an offence under section 101 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* that was committed in circumstances in which —
 - (i) objectionable material was transmitted or demonstrated to a child; or
 - (ii) the objectionable material was child exploitation material (as defined in section 217A⁶);

or

- (g) an offence under section 102 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*; or
- (h) an offence committed under section 5(1), 6(1), 15, 16, 17 or 18 of the *Prostitution Act 2000* committed against or in respect of a child; or
- (i) an offence under this section; or
- (j) an offence under the repealed section 66(11) of the *Police Act 1892* committed in the sight of a child; or
- (k) an offence against a law of a jurisdiction other than Western Australia that is substantially similar to an offence referred to in any of paragraphs (a) to (j);

consort includes to communicate in any manner.

- (2) A reference in paragraph (a) or (b) of the definition of **child sex offender** in subsection (1) to a Chapter of this Code includes a reference to the Chapter as enacted at any time.

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- (3) A reference in paragraph (c) of the definition of *child sex offender* in subsection (1) to an enactment of this Code includes a reference to the enactment as enacted at any time before it was repealed.
- (4) A person who is a child sex offender and who, having been warned by a police officer —
- (a) that another person is also a child sex offender; and
 - (b) that consorting with the other person may lead to the person being charged with an offence under this section,
- habitually consorts with the other person is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.
- (5) It is a defence to a charge of an offence under subsection (4) to prove that the accused person —
- (a) was the spouse or de facto partner of the other person; or
 - (b) was a de facto child or a lineal relative (as those terms are defined in section 329(1)) of the other person.
- (6) A child sex offender who, without reasonable excuse, is in or near a place that is —
- (a) a school, kindergarten or child care centre; or
 - (b) a public place where children are regularly present,
- and where children are at the time is guilty of an offence and is liable to imprisonment for 2 years and a fine of \$24 000.

[Section 557K inserted by No. 70 of 2004 s. 33; amended by No. 10 of 2006 Sch. 1 cl. 2; No. 21 of 2010 s. 5; No. 11 of 2012 s. 31.]

Chapter LVIII — Conspiracy

558. Conspiracy to commit indictable offence

- (1) Any person who conspires with another person —

- (a) to commit an indictable offence (the *principal offence*);
or
- (b) to do any act or make any omission in any part of the world which, if done or made in Western Australia, would be an indictable offence (the *principal offence*) and which is an offence under the laws in force in the place where it is proposed to be done or made,

is guilty of a crime.

- (2) A person guilty of a crime under subsection (1) is liable —
 - (a) if the principal offence is punishable on indictment with imprisonment for life — to imprisonment for 14 years;
 - (b) in any other case — to half of the penalty with which the principal offence is punishable on indictment.

Summary conviction penalty: for an offence where the principal offence may be dealt with summarily — the penalty with which the principal offence is punishable on summary conviction.

- (3) Without limiting subsection (1), the application of subsection (1) extends to a conspiracy under which an offence is to be committed, or an act or omission done or made, by a person other than the persons conspiring with each other.

[Section 558 inserted by No. 4 of 2004 s. 42; amended by No. 70 of 2004 s. 34(6) and (7).]

[559. Deleted by No. 4 of 2004 s. 43.]

560. Conspiracy to commit simple offence

- (1) Any person who conspires with another person —
 - (a) to commit any simple offence; or
 - (b) to do any act or make any omission in any part of the world which, if done or made in Western Australia, would be a simple offence and which is an offence under

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the laws in force in the place where it is proposed to be done or made,

is guilty of a simple offence and is liable to a punishment equal to the greatest punishment to which a person convicted of the offence referred to in paragraph (a) or (b) is liable.

- (2) Without limiting subsection (1) the application of that subsection extends to a conspiracy under which an offence is to be committed, or an act or omission done or made, by a person other than the persons conspiring with each other.
- (3) A prosecution for an offence under subsection (1) may be commenced at any time.

[Section 560 inserted by No. 106 of 1987 s. 9.]

[561. Deleted by No. 106 of 1987 s. 10.]

Chapter LIX — Accessories after the fact and property laundering

[Heading amended by No. 15 of 1992 s. 10.]

562. Accessories after the fact to indictable offence

- (1) Any person who becomes an accessory after the fact to an indictable offence (the *principal offence*) is guilty of a crime.
- (2) A person guilty of a crime under subsection (1) is liable —
 - (a) if the principal offence is punishable on indictment with imprisonment for life — to imprisonment for 14 years;
 - (b) in any other case — to half of the penalty with which the principal offence is punishable on indictment.

Summary conviction penalty: for an offence where the principal offence may be dealt with summarily, the lesser of —

- (a) the penalty with which the principal offence is punishable on summary conviction; or

- (b) the penalty that is half of the penalty with which the principal offence is punishable on indictment.

[Section 562 inserted by No. 4 of 2004 s. 44; amended by No. 70 of 2004 s. 34(8) and (9).]

[563. Deleted by No. 4 of 2004 s. 45.]

563A. Property laundering

- (1) A person who —
- (a) in Western Australia engages, directly or indirectly, in a transaction that involves; or
 - (b) brings into Western Australia, or in Western Australia receives, possesses, conceals, disposes of or deals with,
- any money or other property that is the proceeds of an offence is guilty of a crime and is liable to imprisonment for 20 years.
- (1a) For the purpose of deciding whether money or other property is proceeds of an offence, the money or other property does not cease to be proceeds of an offence only as a result of —
- (a) being credited to an account; or
 - (b) being given away, or exchanged for other property that is not proceeds of an offence.
- (2) It is a defence in proceedings for a crime under subsection (1) —
- (a) to prove that the accused —
 - (i) did not know; and
 - (ii) did not believe or suspect; and
 - (iii) did not have reasonable grounds to believe or suspect,that the relevant money or other property was the proceeds of an offence; or
 - (b) to prove that the accused engaged in the act or omission alleged to constitute that crime in order to assist the

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enforcement of a law of the Commonwealth or of a State or Territory.

(3) In this section —

offence means an offence against a law of Western Australia, the Commonwealth, another State or a Territory;

proceeds, in relation to an offence, means money or other property that is derived or realized, directly or indirectly, by any person from the commission of the offence;

transaction includes the receiving or making of a gift.

[Section 563A inserted by No. 15 of 1992 s. 11; amended by No. 26 of 2004 s. 4; No. 84 of 2004 s. 82.]

563B. Dealing with property used in connection with an offence

(1) A person who deals with any money or other property that is being used, or is intended to be used, in connection with an offence is guilty of a crime and is liable to imprisonment for 20 years.

(2) A person may be convicted of a crime under subsection (1) regardless of whether —

(a) the person does anything to facilitate or procure the commission of the offence; or

(b) the person does or omits to do anything that constitutes all or part of the offence; or

(c) anyone who does or omits to do, or who intended or intends to do or omit, anything that constitutes all or part of the offence is identified; or

(d) anyone is charged with or convicted of the offence; or

(e) the offence is subsequently committed.

(3) It is a defence in proceedings for a crime under subsection (1) —

(a) to prove that the accused —

(i) did not know; and

- (ii) did not believe or suspect; and
 - (iii) did not have reasonable grounds to believe or suspect,
that the money or other property was being used or was intended to be used in connection with the offence; or
 - (b) to prove that the accused engaged in the act or omission alleged to constitute the crime in order to assist the enforcement of a law of Western Australia, the Commonwealth, another State or a Territory.
- (4) A prosecution under this section must not be commenced without the consent of the Director of Public Prosecutions.
- (5) In this section —
- deals with***, in relation to money or other property, means —
- (a) receives or has possession or control of the money or other property; or
 - (b) conceals or attempts to conceal the money or other property; or
 - (c) passes the money or other property to another person; or
 - (d) disposes of the money or other property in any other way;
- offence*** means an offence against a law of Western Australia, the Commonwealth, another State or a Territory;
- used in connection with an offence*** means used in or in connection with —
- (a) the commission of an offence; or
 - (b) facilitating or procuring an offence.
- [Section 563B inserted by No. 26 of 2004 s. 5; amended by No. 5 of 2008 s. 129(3).]*

Part VIII — Miscellaneous

[Heading inserted by No. 84 of 2004 s. 21.]

[Chapter LX:

Heading deleted by No. 59 of 2006 s. 26;
s. 564 deleted by No. 59 of 2006 s. 26;
s. 565 deleted by No. 119 of 1985 s. 21;
s. 565A deleted by No. 59 of 2006 s. 26;
s. 566, 567 deleted by No. 119 of 1985 s. 23;
s. 568, 569 deleted by No. 59 of 2006 s. 26.]

[Chapter LXA:

Heading deleted by No. 59 of 2006 s. 26;
s. 570-570H deleted by No. 59 of 2006 s. 26.]

[Chapter LXI:

s. 571 deleted by No. 84 of 2004 s. 22;
s. 572 deleted by No. 4 of 2004 s. 47;
s. 573 deleted by No. 87 of 1982 s. 32;
s. 574 deleted by No. 4 of 2004 s. 48;
s. 575-577 deleted by No. 84 of 2004 s. 22.]

[Chapter LXII:

s. 578-588 deleted by No. 84 of 2004 s. 22;
s. 589 deleted by No. 32 of 1918 s. 23;
s. 590-593 deleted by No. 84 of 2004 s. 22.]

[Chapter LXIII:

s. 594-596 deleted by No. 70 of 2004 s. 36(11);
s. 596A, 596AA-596AC deleted by No. 14 of 1992 s. 7;
s. 596AD deleted by No. 32 of 1989 s. 22;
s. 597-607B deleted by No. 70 of 2004 s. 36(11).]

[Chapter LXIV:

s. 608-628 deleted by No. 84 of 2004 s. 24;
s. 629 deleted by No. 50 of 1957 s. 2;
s. 630 deleted by No. 84 of 2004 s. 24;

- s. 631 deleted by No. 69 of 1996 s. 16;*
- s. 632-648 deleted by No. 84 of 2004 s. 24;*
- s. 649 deleted by No. 32 of 1918 s. 23;*
- s. 650, 651 deleted by No. 84 of 2004 s. 24.]*

[Chapter LXIVA (s. 651A-651C) deleted by No. 84 of 2004 s. 24.]

[Chapter LXV:

- s. 652-656 deleted by No. 84 of 2004 s. 24;*
- s. 656A deleted by No. 78 of 1995 s. 26;*
- s. 657, 658 deleted by No. 52 of 1984 s. 23;*
- s. 659 deleted by No. 51 of 1992 s. 16(4);*
- s. 660 deleted by No. 84 of 2004 s. 24;*
- s. 661-666 deleted by No. 78 of 1995 s. 26;*
- s. 667 deleted by No. 21 of 1963 s. 4;*
- s. 668 deleted by No. 21 of 1963 s. 5;*
- s. 668A deleted by No. 58 of 1974 s. 8;*
- s. 669 deleted by No. 78 of 1995 s. 26;*
- s. 669A deleted by No. 63 of 1963 s. 17;*
- s. 670 deleted by No. 51 of 1992 s. 16(4);*
- s. 671, 672 deleted by No. 119 of 1985 s. 27;*
- s. 673 deleted by No. 4 of 2004 s. 50.]*

[Chapter LXVI (s. 674-677) deleted by No. 84 of 2004 s. 24.]

[Chapter LXVII:

- s. 678 deleted by No. 52 of 1984 s. 26;*
- s. 679 deleted by No. 78 of 1995 s. 26;*
- s. 680 deleted by No. 51 of 1992 s. 16(4);*
- s. 681, 682 deleted by No. 84 of 2004 s. 24;*
- s. 682A deleted by No. 92 of 1994 s. 11.]*

[Chapter LXVIII (s. 683-686) deleted by No. 84 of 2004 s. 24.]

[Chapter LXIX:

- s. 687-697 deleted by No. 84 of 2004 s. 24;*
- s. 698 deleted by No. 101 of 1990 s. 52;*
- s. 699-701 deleted by No. 84 of 2004 s. 24;*

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Part VIII Miscellaneous

Chapter LXXIV Miscellaneous provisions

s. 730

- s. 702 deleted by No. 45 of 2004 s. 30(4);*
- s. 703, 704 deleted by No. 84 of 2004 s. 24;*
- s. 705, 706 deleted by No. 78 of 1995 s. 26;*
- s. 706A deleted by No. 91 of 1965 s. 9;*
- s. 707 deleted by No. 78 of 1995 s. 26.]*

[Chapter LXX (s. 708) deleted by No. 91 of 1965 s. 10.]

[Chapter LXXI (s. 709-710) deleted by No. 91 of 1965 s. 10.]

[Chapter LXXII:

- Heading deleted by No. 59 of 2006 s. 27;*
- s. 711-712 deleted by No. 59 of 2006 s. 27;*
- s. 713 deleted by No. 70 of 1988 s. 8(1);*
- s. 714-716 deleted by No. 59 of 2006 s. 27;*
- s. 716A-719 deleted by No. 78 of 1997 s. 26.]*

[Chapter LXXIII (s. 720-729) deleted by No. 84 of 2004 s. 25.]

Chapter LXXIV — Miscellaneous provisions

730. Forfeitures, escheats etc. abolished

Forfeitures (except under a written law), escheats, attainders and corruptions of blood on account of crime or conviction stand abolished.

[Section 730 inserted by No. 84 of 2004 s. 26.]

731. Forfeiture etc. of property used to commit offences

- (1) A court that convicts a person of an offence under this Code may make an order for the forfeiture to the State, or the destruction or disposal, of any thing that was used in or in connection with the commission of the offence.
- (2) A court must not make an order under subsection (1) in respect of any property unless the owner or any person who claims to be the owner of it has been afforded the opportunity to show cause why the order should not be made.

[Section 731 inserted by No. 59 of 2006 s. 28.]

[732. Deleted by No. 59 of 2004 s. 80.]

[733. Deleted by No. 84 of 2004 s. 28.]

[734. Deleted by No. 101 of 1990 s. 55.]

[735. Deleted by No. 55 of 1963 s. 5.]

[736. Deleted by No. 14 of 1992 s. 9.]

737. Saving of civil remedies

Except when expressly so provided, the prosecution or conviction of a person for an offence does not affect any civil remedy which any person aggrieved by the offence may have against the offender.

738. Incriminating answers and discovery

No person shall in any civil or criminal proceeding be excused from answering any question put either *viva voce* or by interrogatory or from making any discovery of documents on the ground that the answer or discovery may criminate or tend to criminate him in respect of any offence against Chapter XXXV or Chapter LV:

Provided that his answer shall not be admissible in evidence against him in any criminal proceedings other than a prosecution for perjury.

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.

[Section 739 inserted by No. 29 of 2008 s. 17.]

740A. Review of certain amendments to s. 297 and 318

- (1) The Minister shall carry out a review of the operation and effectiveness of the amendments made to this Code by the *Criminal Code Amendment Act 2009* as soon as practicable after the third anniversary of the day on which those amendments came into operation.

- (2) The Minister shall prepare a report based on the review made under subsection (1), and shall, as soon as is practicable after that preparation, cause the report to be laid before each House of Parliament.

[Section 740A inserted by No. 21 of 2009 s. 6]

740. Transitional provisions (Sch. 1)

Schedule 1 sets out transitional provisions.

[Section 740 inserted by No. 29 of 2008 s. 17.]

[741. Deleted by No. 84 of 2004 s. 28.]

[742, 743. Deleted by No. 59 of 2004 s. 80.]

[744-746, 746A, 747. Deleted by No. 84 of 2004 s. 28.]

[748. Deleted by No. 32 of 1918 s. 34.]

Schedule 1 — Transitional provisions

[s. 740]

[Heading inserted by No. 29 of 2008 s. 17.]

1. Terms used

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.

[Clause 1 inserted by No. 29 of 2008 s. 17.]

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.

[Clause 2 inserted by No. 29 of 2008 s. 17.]

3. Offenders serving life term at commencement

cl. 3

- (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.
- (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.

[Clause 3 inserted by No. 29 of 2008 s. 17.]

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Notes

¹ This is a compilation of the *Criminal Code* and includes the amendments made by the other written laws referred to in the following table ^{1a, 2}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Code Act Compilation Act 1913</i> ⁸	28 of 1913 (4 Geo. V No. 28)	30 Dec 1913	1 Jan 1914 (see s. 1)
<i>Criminal Code Amendment Act 1918</i>	32 of 1918 (9 Geo. V No. 22)	24 Dec 1918	24 Dec 1918
<i>Criminal Code (Chapter XXXVII) Amendment Act 1932</i>	51 of 1932 (23 Geo. V No. 51)	30 Dec 1932	30 Dec 1932
<i>Criminal Code Amendment Act 1942</i>	15 of 1942 (6 Geo. VI No. 15)	26 Nov 1942	26 Nov 1942
<i>Criminal Code Amendment Act 1945</i>	40 of 1945 (9 & 10 Geo. VI No. 40)	30 Jan 1946	30 Jan 1946
<i>Criminal Code Amendment Act 1952</i>	27 of 1952 (1 Eliz. II No. 27)	28 Nov 1952	28 Nov 1952
<i>Criminal Code Amendment Act 1953</i>	55 of 1953 (2 Eliz. II No. 55)	9 Jan 1954	9 Jan 1954
<i>Criminal Code Amendment Act 1954</i>	20 of 1954 (3 Eliz. II No. 20)	28 Sep 1954	28 Sep 1954
<i>Betting Control Act 1954</i> s. 5	63 of 1954 (3 Eliz. II No. 63)	30 Dec 1954	1 Aug 1955 (see s. 2(1) and <i>Gazette</i> 29 Jul 1955 p. 1767)
<i>Limitation Act 1935</i> s. 48A(1)	35 of 1935 (26 Geo. V No. 35) (as amended by No. 73 of 1954 s. 8)	14 Jan 1955	Relevant amendments (see s. 48A and Second Sch. ⁹) took effect on 1 Mar 1955 (see No. 73 of 1954 s. 2 and <i>Gazette</i> 18 Feb 1955 p. 343)

Short title	Number and year	Assent	Commencement
Reprint of the <i>Criminal Code Act Compilation Act 1913</i> approved 29 Jun 1955 in Vol. 8 of Reprinted Acts (includes amendments listed above)			
<i>Criminal Code Amendment Act 1956</i>	11 of 1956 (5 Eliz. II No. 11)	11 Oct 1956	11 Oct 1956
<i>Criminal Code Amendment Act (No. 2) 1956</i>	43 of 1956 (5 Eliz. II No. 43)	18 Dec 1956	18 Dec 1956
<i>Traffic Act Amendment Act (No. 3) 1956</i> s. 25(2)	74 of 1956 (5 Eliz. II No. 74)	14 Jan 1957	14 Jan 1957
<i>Juries Act 1957</i> s. 2	50 of 1957 (6 Eliz. II No. 50)	9 Dec 1957	1 Jul 1960 (see s. 1(2) and <i>Gazette</i> 6 Mar 1959 p. 539)
<i>Criminal Code Amendment Act 1960</i>	25 of 1960 (9 Eliz. II No. 25)	21 Oct 1960	21 Oct 1960
<i>Criminal Code Amendment Act 1961</i>	28 of 1961 (10 Eliz. II No. 28)	23 May 1962	29 Jun 1962 (see <i>Interpretation Act 1918</i> s. 8 and <i>Gazette</i> 29 Jun 1962 p. 1657) Reserved for Royal Assent 31 Oct 1961
<i>Criminal Code Amendment Act 1962</i> ¹⁰	35 of 1962 (11 Eliz. II No. 35)	29 Oct 1962	1 Jul 1966 (see s. 2 and <i>Gazette</i> 11 Mar 1966 p. 701)
<i>Criminal Code Amendment Act 1963</i>	21 of 1963 (12 Eliz. II No. 21)	13 Nov 1963	1 Jan 1965 (see s. 2 and <i>Gazette</i> 11 Dec 1964 p. 3995)
<i>Criminal Code Amendment Act (No. 2) 1963</i>	55 of 1963 (12 Eliz. II No. 55)	17 Dec 1963	1 Jul 1964 (see s. 2 and <i>Gazette</i> 26 Jun 1964 p. 2525)
<i>Convicted Inebriates' Rehabilitation Act 1963</i> s. 17	63 of 1963 (12 Eliz. II No. 63)	18 Dec 1963	1 Jul 1966 (see s. 2 and <i>Gazette</i> 11 Mar 1966 p. 702)
<i>Traffic Act Amendment Act (No. 3) 1963</i> s. 8	74 of 1963 (12 Eliz. II No. 74)	19 Dec 1963	1 Mar 1964 (see s. 2 and <i>Gazette</i> 28 Feb 1964 p. 906)

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Short title	Number and year	Assent	Commencement
<i>Criminal Code Amendment Act 1964</i>	53 of 1964 (13 Eliz. II No. 53)	30 Nov 1964	30 Nov 1964
<i>Criminal Code Amendment Act 1965</i>	91 of 1965	8 Dec 1965	8 Dec 1965
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Criminal Code Amendment Act 1966</i>	89 of 1966	12 Dec 1966	12 Dec 1966
<i>Criminal Code Amendment Act 1969</i>	1 of 1969	21 Apr 1969	21 Apr 1969
Reprint of the <i>Criminal Code Act Compilation Act 1913</i> approved 9 Jul 1969 (includes amendments listed above)			
<i>Criminal Code Amendment Act 1972</i>	21 of 1972	26 May 1972	1 Jul 1972 (see s. 2 and <i>Gazette</i> 30 Jun 1972 p. 2097)
<i>Criminal Code Amendment Act (No. 2) 1972</i>	41 of 1972	16 Jun 1972	1 Jul 1972 (see s. 2 and <i>Gazette</i> 30 Jun 1972 p. 2098)
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19 and 83 of 1973 and 42 of 1975)	4 Dec 1972	Relevant amendments (see Second Sch. ¹¹) took effect on 1 Jan 1974 (see s. 4(2) and <i>Gazette</i> 2 Nov 1973 p. 4109)
Reprint of the <i>Criminal Code Act Compilation Act 1913</i> approved 9 Jul 1974 (includes amendments listed above)			
<i>Acts Amendment (Road Traffic) Act 1974 Pt. I</i>	58 of 1974	3 Dec 1974	29 Aug 1975 (see s. 2 and <i>Gazette</i> 29 Aug 1975 p. 3085)
<i>Criminal Code Amendment Act 1975</i>	49 of 1975	18 Sep 1975	18 Sep 1975
<i>Criminal Code Amendment Act 1976</i>	35 of 1976	9 Jun 1976	3 Sep 1976 (see s. 2 and <i>Gazette</i> 3 Sep 1976 p. 3271)
<i>Criminal Code Amendment Act (No. 2) 1976</i> ¹²	62 of 1976	16 Sep 1976	16 Sep 1976
<i>Criminal Code Amendment Act (No. 3) 1976</i>	133 of 1976	9 Dec 1976	9 Dec 1976
<i>Criminal Code Amendment Act 1977</i>	38 of 1977	7 Nov 1977	7 Nov 1977

Short title	Number and year	Assent	Commencement
<i>Criminal Code Amendment Act (No. 3) 1977</i>	71 of 1977	28 Nov 1977	28 Nov 1977
Reprint of the Criminal Code Act Compilation Act 1913 approved 8 Dec 1978 (includes amendments listed above)			
<i>Acts Amendment (Master, Supreme Court) Act 1979 Pt. XVIII</i>	67 of 1979	21 Nov 1979	11 Feb 1980 (see s. 2 and <i>Gazette</i> 8 Feb 1980 p. 383)
<i>Criminal Code Amendment Act 1979</i>	68 of 1979	21 Nov 1979	21 Nov 1979
<i>Criminal Code Amendment Act (No. 2) 1979</i>	107 of 1979	17 Dec 1979	17 Dec 1979
<i>Acts Amendment (Strict Security Life Imprisonment) Act 1980 Pt. I</i>	96 of 1980	9 Dec 1980	9 Dec 1980
<i>Acts Amendment (Lotto) Act 1981 Pt. II</i>	103 of 1981	2 Dec 1981	18 Dec 1981 (see s. 2 and <i>Gazette</i> 18 Dec 1981 p. 5163)
<i>Acts Amendment (Prisons) Act 1981 Pt. I</i>	116 of 1981	14 Dec 1981	1 Aug 1982 (see s. 2 and <i>Gazette</i> 23 Jul 1982 p. 2841)
<i>Acts Amendment (Jurisdiction of Courts) Act 1981 Pt. I</i>	118 of 1981	14 Dec 1981	1 Feb 1982 (see s. 2 and <i>Gazette</i> 22 Jan 1982 p. 175)
<i>Companies (Consequential Amendments) Act 1982 s. 28</i>	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Acts Amendment (Criminal Penalties and Procedure) Act 1982 Pt. II</i>	20 of 1982	27 May 1982	27 May 1982
<i>Acts Amendment (Bail) Act 1982 Pt. III</i>	87 of 1982	17 Nov 1982	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Acts Amendment (Betting and Gaming) Act 1982 Pt. III</i>	108 of 1982	7 Dec 1982	31 Dec 1982 (see s. 2 and <i>Gazette</i> 31 Dec 1982 p. 4968)
<i>Acts Amendment (Trade Promotion Lotteries) Act 1983 Pt. II</i>	21 of 1983	22 Nov 1983	22 Nov 1983
Reprint of the Criminal Code Act Compilation Act 1913 approved 13 Dec 1983 (includes amendments listed above except those in the <i>Acts Amendment (Bail) Act 1982</i>)			

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Short title	Number and year	Assent	Commencement
<i>Criminal Code Amendment Act 1983</i>	77 of 1983	22 Dec 1983	22 Dec 1983
<i>Reprints Act 1984 s. 9(2)</i>	13 of 1984	31 May 1984	1 Feb 1985 (see s. 2 and <i>Gazette</i> 11 Jan 1985 p. 175)
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984 Pt. I</i>	52 of 1984	5 Sep 1984	3 Oct 1984
<i>Acts Amendment (Department for Community Services) Act 1984 Pt. XI</i>	121 of 1984	19 Dec 1984	1 Jan 1985 (see s. 2 and <i>Gazette</i> 28 Dec 1984 p. 4197)
<i>Artificial Conception Act 1985 s. 8</i>	14 of 1985	12 Apr 1985	1 Jul 1985 (see s. 2 and <i>Gazette</i> 28 Jun 1985 p. 2291)
<i>Acts Amendment (Sexual Assaults) Act 1985 Pt. II</i>	74 of 1985	20 Nov 1985	1 Apr 1986 (see s. 2 and <i>Gazette</i> 28 Feb 1986 p. 605)
<i>Criminal Law Amendment Act 1985 Pt. II</i>	119 of 1985	17 Dec 1985	1 Sep 1986 (see s. 2 and <i>Gazette</i> 8 Aug 1986 p. 2815)
<i>Criminal Law Amendment Act 1986 Pt. II</i> ¹³	89 of 1986	10 Dec 1986	s. 3-9: 14 Mar 1988 (see s. 2 and <i>Gazette</i> 11 Mar 1988 p. 781); s. 11 and 12: 1 Jan 1989 (see s. 2 and <i>Gazette</i> 2 Dec 1988 p. 4781)
<i>Acts Amendment (Corrective Services) Act 1987 Pt. V</i>	47 of 1987	3 Oct 1987	11 Dec 1987 (see s. 2 and <i>Gazette</i> 11 Dec 1987 p. 4363)
<i>Acts Amendment and Repeal (Gaming) Act 1987 Pt. IX</i>	74 of 1987	26 Nov 1987	2 May 1988 (see s. 2 and <i>Gazette</i> 29 Apr 1988 p. 1292)
<i>Criminal Code Amendment Act (No. 2) 1987</i> ¹⁴	106 of 1987	16 Dec 1987	s. 1 and 2: 16 Dec 1987; Act other than s. 1 and 2: 14 Mar 1988 (see s. 2 and <i>Gazette</i> 11 Mar 1988 p. 781)
<i>Acts Amendment (Imprisonment and Parole) Act 1987 Pt. IV</i>	129 of 1987	21 Jan 1988	15 Jun 1988 (see s. 2 and <i>Gazette</i> 20 May 1988 p. 1664)

Short title	Number and year	Assent	Commencement
<i>Criminal Law Amendment Act 1988 Pt. 2 (s. 3-33)</i> ¹⁵	70 of 1988	15 Dec 1988	s. 3, 32 and 33: 15 Dec 1988 (see s. 2(3)); Pt. 2 other than s. 3, 32 and 33: 1 Feb 1989 (see s. 2(1) and <i>Gazette</i> 20 Jan 1989 p. 110)
<i>Acts Amendment (Children's Court) Act 1988 Pt. 4</i>	49 of 1988	22 Dec 1988	1 Dec 1989 (see s. 2 and <i>Gazette</i> 24 Nov 1989 p. 4327)
<i>Law Reform (Decriminalization of Sodomy) Act 1989 Pt. 1</i>	32 of 1989	19 Dec 1989	23 Mar 1990 (see s. 2 and <i>Gazette</i> 23 Mar 1990 p. 1469)
<i>Criminal Code Amendment (Racist harassment and incitement to racial hatred) Act 1990</i>	33 of 1990	9 Oct 1990	6 Nov 1990
<i>Criminal Law Amendment Act 1990 Pt. 2 (s. 3-55)</i>	101 of 1990	20 Dec 1990	s. 51: 20 Dec 1990 (see s. 2(2)); Pt. 2 other than s. 51: 14 Feb 1991 (see s. 2(1))
Reprint of the Criminal Code Act Compilation Act 1913 as at 31 May 1991 (includes amendments listed above)			
<i>Criminal Law Amendment Act 1991</i> ¹⁶	37 of 1991	12 Dec 1991	Act other than s. 4 and 7 and Pt. 4-5: 12 Dec 1991 (see s. 2(1)); s. 4 and 7 and Pt. 4-5: 10 Feb 1992 (see s. 2(2) and <i>Gazette</i> 31 Jan 1992 p. 477)
<i>Acts Amendment (Evidence) Act 1991 Pt. 3</i> ¹⁷	48 of 1991	17 Dec 1991	31 Mar 1992 (see s. 2 and <i>Gazette</i> 24 Mar 1992 p. 1317)
<i>Criminal Law Amendment Act 1992 Pt. 2</i>	1 of 1992	7 Feb 1992	9 Mar 1992 (see s. 2)
<i>Acts Amendment (Confiscation of Criminal Profits) Act 1992 Pt. 3</i>	15 of 1992	16 Jun 1992	16 Jun 1992 (see s. 2)
<i>Acts Amendment (Sexual Offences) Act 1992 Pt. 2</i> ¹⁸	14 of 1992	17 Jun 1992	1 Aug 1992 (see s. 2 and <i>Gazette</i> 28 Jul 1992 p. 3671)
<i>Criminal Law Amendment Act (No. 2) 1992</i>	51 of 1992	9 Dec 1992	6 Jan 1993

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Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992 Pt. 2</i>	53 of 1992	9 Dec 1992	s. 3, 4, 6 and 7: 1 Mar 1993 (see s. 2(1) and <i>Gazette</i> 26 Jan 1993 p. 823); s. 5: 4 Nov 1996 (see s. 2(1) and <i>Gazette</i> 25 Oct 1996 p. 5631)
<i>Acts Amendment (Ministry of Justice) Act 1993 Pt. 6</i> ¹⁹	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)
Reprint of the Criminal Code Act Compilation Act 1913 as at 17 Dec 1993 (includes amendments listed above except those in the <i>Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992 s. 5</i>)			
<i>Acts Amendment (Public Sector Management) Act 1994 s. 10</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Criminal Law Amendment Act 1994 Pt. 2-4</i>	82 of 1994	23 Dec 1994	20 Jan 1995 (see s. 2(2))
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 5</i>	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 19, 20 and s. 147</i> ²⁰	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Criminal Code Amendment Act 1996</i>	34 of 1996	27 Sep 1996	27 Sep 1996 (see s. 2)
<i>Criminal Law Amendment Act 1996 Pt. 2</i> ^{3,4}	36 of 1996	10 Oct 1996	10 Oct 1996 (see s. 2)
<i>Censorship Act 1996 s. 152(1) and (2)</i>	40 of 1996	10 Oct 1996	5 Nov 1996 (see s. 2 and <i>Gazette</i> 5 Nov 1996 p. 5845)
<i>Criminal Code Amendment Act (No. 2) 1996</i> ⁷	60 of 1996	11 Nov 1996	s. 1 and 2: 11 Nov 1996; Act other than s. 1 and 2: 14 Nov 1996 (see s. 2 and <i>Gazette</i> 13 Nov 1996 p. 6439)

Short title	Number and year	Assent	Commencement
<i>Mental Health (Consequential Provisions) Act 1996 Pt. 4</i> ²¹	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
Reprint of the Criminal Code Act Compilation Act 1913 as at 21 Apr 1997 (includes amendments listed above except those in the <i>Mental Health (Consequential Provisions) Act 1996</i>)			
<i>Restraining Orders Act 1997 s. 83</i>	19 of 1997	28 Aug 1997	15 Sep 1997 (see s. 2 and <i>Gazette</i> 12 Sep 1997 p. 5149)
<i>Sunday Observance Laws Amendment and Repeal Act 1997 s. 5</i>	49 of 1997	10 Dec 1997	10 Dec 1997 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 45</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Acts Amendment (Abortion) Act 1998 Pt. 2</i>	15 of 1998	26 May 1998	26 May 1998 (see s. 2)
<i>Criminal Law Amendment Act (No. 2) 1998 Pt. 2</i>	29 of 1998	6 Jul 1998	3 Aug 1998
<i>Criminal Law Amendment Act (No. 1) 1998 Pt. 2</i>	38 of 1998	25 Sep 1998	23 Oct 1998
<i>Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998 s. 10</i>	40 of 1998	30 Oct 1998	14 Apr 1999 (see s. 2 and <i>Gazette</i> 9 Apr 1999 p. 1433)
<i>Acts Amendment (Video and Audio Links) Act 1998 Pt. 2</i>	48 of 1998	19 Nov 1998	18 Jan 1999 (see s. 2 and <i>Gazette</i> 15 Jan 1999 p. 109)
<i>Acts Amendment (Criminal Procedure) Act 1999 Pt. 2</i>	10 of 1999	5 May 1999	1 Oct 1999 (see s. 2 and <i>Gazette</i> 17 Sep 1999 p. 4557)
Reprint of the Criminal Code Act Compilation Act 1913 as at 2 Oct 1999 (includes amendments listed above)			
<i>Criminal Code Amendment Act 1999</i>	35 of 1999	18 Oct 1999	15 Nov 1999
<i>Prisons Amendment Act 1999 s. 20</i>	43 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2(2) and <i>Gazette</i> 17 Dec 1999 p. 6175)

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Short title	Number and year	Assent	Commencement
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999 Pt. 5</i>	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)
<i>Prostitution Act 2000 s. 64</i>	17 of 2000	22 Jun 2000	29 Jul 2000 (see s. 2 and <i>Gazette</i> 28 Jul 2000 p. 3987)
<i>Criminal Code Amendment (Home Invasion) Act 2000</i>	45 of 2000	17 Nov 2000	17 Nov 2000 (see s. 2)
<i>Acts Amendment (Evidence) Act 2000 Pt. 5</i>	71 of 2000	6 Dec 2000	3 Jan 2001
Reprint of the Criminal Code Act Compilation Act 1913 as at 9 Feb 2001 (includes amendments listed above)			
<i>Criminal Law Amendment Act 2001 s. 2-9 and 11</i>	23 of 2001	26 Nov 2001	24 Dec 2001
<i>Criminal Code Amendment Act 2001</i>	34 of 2001	7 Jan 2002	7 Jan 2002 (see s. 2)
<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002 Pt. 7</i>	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)
<i>Criminal Investigation (Identifying People) Act 2002 Sch. 2 cl. 3</i>	6 of 2002	4 Jun 2002	20 Nov 2002 (see s. 2 and <i>Gazette</i> 19 Nov 2002 p. 5505)
<i>Criminal Code Amendment (Corruption Penalties) Act 2002</i>	8 of 2002	28 Jun 2002	28 Jun 2002 (see s. 2)
<i>Criminal Law (Procedure) Amendment Act 2002 Pt. 3</i>	27 of 2002	25 Sep 2002	27 Sep 2002 (see s. 2 and <i>Gazette</i> 27 Sep 2002 p. 4875)
Reprint 10²: The Criminal Code Act Compilation Act 1913 as at 7 Feb 2003 (includes amendments listed above)			
<i>Juries Amendment Act 2003 s. 24</i>	25 of 2003	16 May 2003	18 Jun 2003 (see s. 2 and <i>Gazette</i> 17 Jun 2003 p. 2201)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 12 and s. 118</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Censorship Amendment Act 2003 s. 42</i>	30 of 2003	26 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)

Short title	Number and year	Assent	Commencement
<i>Corruption and Crime Commission Act 2003</i> s. 62 ²²	48 of 2003	3 Jul 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 51	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 26, 89, 123	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 150(2)	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Corruption and Crime Commission Amendment and Repeal Act 2003</i> s. 74(2)	78 of 2003	22 Dec 2003	7 Jul 2004 (see s. 2 and <i>Gazette</i> 6 Jul 2004 p. 2697)
<i>Criminal Code Amendment Act 2004</i>	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
Reprint 11²: The Criminal Code Act Compilation Act 1913 as at 3 Sep 2004 (includes amendments listed above)			
<i>Criminal Law Amendment (Criminal Property) Act 2004</i> Pt. 2	26 of 2004	7 Oct 2004	7 Oct 2004 (see s. 2(1))
<i>Acts Amendment (Family and Domestic Violence) Act 2004</i> Pt. 4	38 of 2004	9 Nov 2004	1 Dec 2004 (see s. 2 and <i>Gazette</i> 26 Nov 2004 p. 5309)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 30	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Law Amendment (Sexual Assault and Other Matters) Act 2004</i> Pt. 2	46 of 2004	9 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Courts Legislation Amendment and Repeal Act 2004</i> Pt. 9	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

The Criminal Code

Short title	Number and year	Assent	Commencement
<i>Criminal Law Amendment (Simple Offences) Act 2004</i> Pt. 2 (s. 3-39) ^{23, 24, 25}	70 of 2004 (as amended by No. 24 of 2005 s. 63; No. 2 of 2008 s. 76(2))	8 Dec 2004	Pt. 2 other than s. 37 and 39: 31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Code Amendment (Racial Vilification) Act 2004</i> ²⁶	80 of 2004 (as amended by No. 2 of 2008 s. 6(2), 7(2) and 8(2))	8 Dec 2004	8 Dec 2004 (see s. 2)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> Pt. 5, s. 80 and 82 ^{27, 28}	84 of 2004 (as amended by No. 2 of 2008 s. 78(7))	16 Dec 2004	Pt. 5, s. 80 (Sch. 2 cl. 36 (the amendments to s. 17, 711 and 716)) and s. 82: 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 12²: The Criminal Code Act Compilation Act 1913 as at 1 Jun 2005 (includes amendments listed above)			
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> Pt. 11	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2(1) and <i>Gazette</i> 23 Dec 2005 p. 6244)
<i>Defamation Act 2005</i> s. 47	44 of 2005	19 Dec 2005	1 Jan 2006 (see s. 2)
<i>Criminal Code Amendment (Cyber Predators) Act 2006</i> s. 3-6	3 of 2006	30 Mar 2006	s. 3-5: 30 Mar 2006 (see s. 2(1)); s. 6: 7 Apr 2006 (see s. 2(2) and <i>Gazette</i> 7 Apr 2006 p. 1489)
<i>Censorship Amendment Act 2006</i> Sch. 1 cl. 2	10 of 2006	8 May 2006	10 Jun 2006 (see s. 2 and <i>Gazette</i> 9 Jun 2006 p. 2029)
<i>Nurses and Midwives Act 2006</i> Sch. 3 cl. 6 ²⁹	50 of 2006	6 Oct 2006	19 Sep 2007 (see s. 2 and <i>Gazette</i> 18 Sep 2007 p. 4711)
<i>Criminal Investigation (Consequential Provisions) Act 2006</i> Pt. 5 ³⁰	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and <i>Gazette</i> 22 Jun 2007 p. 2838)
<i>Liquor and Gaming Legislation Amendment</i>	73 of 2006	13 Dec 2006	7 May 2007 (see s. 2(2) and <i>Gazette</i> 1 May 2007 p. 1893)

Short title	Number and year	Assent	Commencement
<i>Act 2006</i> s. 114			
<i>Criminal Code Amendment (Drink and Food Spiking) Act 2007</i>	31 of 2007	21 Dec 2007	s. 1 and 2: 21 Dec 2007 (see s. 2(a)); Act other than s. 1 and 2: 22 Dec 2007 (see s. 2(b))
Reprint 13²: The Criminal Code Act Compilation Act 1913 as at 18 Jan 2008 (includes amendments listed above)			
<i>Criminal Law and Evidence Amendment Act 2008</i> Pt. 2	2 of 2008	12 Mar 2008	27 Apr 2008 (see s. 2 and <i>Gazette</i> 24 Apr 2008 p. 1559)
<i>Acts Amendment (Justice) Act 2008</i> s. 129	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and <i>Gazette</i> 11 Jul 2008 p. 3253)
<i>Acts Amendment (Consent to Medical Treatment) Act 2008</i> Pt. 4	25 of 2008	19 Jun 2008	27 Jun 2009 (see s. 2 and <i>Gazette</i> 26 Jun 2009 p. 2565)
<i>Criminal Law Amendment (Homicide) Act 2008</i> Pt. 2 and s. 27	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(d) and <i>Gazette</i> 22 Jul 2008 p. 3353)
Reprint 14²: The Criminal Code Act Compilation Act 1913 as at 3 Oct 2008 (includes amendments listed above except those in the <i>Acts Amendment (Consent to Medical Treatment) Act 2008</i>)			
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 26	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Criminal Code Amendment Act 2009</i>	21 of 2009	21 Sep 2009	s. 1 and 2: 21 Sep 2009 (see s. 2(a)); Act other than s. 1 and 2: 22 Sep 2009 (see s. 2(b))
<i>Criminal Code Amendment (Graffiti) Act 2009</i>	26 of 2009	17 Nov 2009	s. 1 and 2: 17 Nov 2009 (see s. 2(a)); Act other than s. 1 and 2: 1 Jan 2010 (see s. 2(b) and <i>Gazette</i> 31 Dec 2009 p. 5317)
<i>Acts Amendment (Weapons) Act 2009</i> Pt. 2	34 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(c))
<i>Police Amendment Act 2009</i> s. 14	42 of 2009	3 Dec 2009	13 Mar 2010 (see s. 2(b) and <i>Gazette</i> 12 Mar 2010 p. 941)
<i>Arson Legislation Amendment Act 2009</i> Pt. 3	43 of 2009	3 Dec 2009	19 Dec 2009 (see s. 2(b) and <i>Gazette</i> 18 Dec 2009 p. 5167)

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Short title	Number and year	Assent	Commencement
<i>Criminal Code Amendment Act (No. 2) 2009</i>	44 of 2009	3 Dec 2009	Pt. 1: 3 Dec 2009 (see s. 2(a)); Act other than Pt. 1: 4 Dec 2009 (see s. 2(b))
Reprint 15²: The Criminal Code Act Compilation Act 1913 as at 19 Feb 2010 (includes amendments listed above except those in the <i>Police Amendment Act 2009</i>)			
<i>Criminal Code Amendment (Identity Crime) Act 2010</i>	16 of 2010	25 Jun 2010	s. 1 and 2: 25 Jun 2010 (see s. 2(a)); Act other than s. 1 and 2: 21 Apr 2012 (see s. 2(b) and <i>Gazette</i> 20 Apr 2012 p. 1695)
<i>Child Pornography and Exploitation Material and Classification Legislation Amendment Act 2010</i> Pt. 2 Div. 1	21 of 2010	7 Jul 2010	28 Aug 2010 (see s. 2(b) and <i>Gazette</i> 27 Aug 2010 p. 4105)
Reprint 16²: The Criminal Code Act Compilation Act 1913 as at 15 Oct 2010 (includes amendments listed above except those in the <i>Criminal Code Amendment (Identity Crime) Act 2010</i>)			
<i>Electronic Transactions Act 2011</i> s. 25 and 26	46 of 2011	25 Oct 2011	s. 25: 1 Aug 2012 (see s. 2(c) and <i>Gazette</i> 31 Jul 2012 p. 3683); s. 26: 1 Aug 2012 (see s. 2(b)(i) and <i>Gazette</i> 31 Jul 2012 p. 3683)
<i>Manslaughter Legislation Amendment Act 2011</i> Pt. 2	58 of 2011	30 Nov 2011	17 Mar 2012 (see s. 2(b) and <i>Gazette</i> 16 Mar 2012 p. 1245)
<i>Criminal Appeals Amendment (Double Jeopardy) Act 2012</i> s. 6	9 of 2012	21 May 2012	26 Sep 2012 (see s. 2(b) and <i>Gazette</i> 25 Sep 2012 p. 4499)
<i>Education and Care Services National Law (WA) Act 2012</i> Pt. 4 Div. 4	11 of 2012	20 Jun 2012	1 Aug 2012 (see s. 2(c) and <i>Gazette</i> 25 Jul 2012 p. 3411)
<i>Fire and Emergency Services Legislation Amendment Act 2012</i> Pt. 7 Div. 3	22 of 2012	29 Aug 2012	1 Nov 2012 (see s. 2(b) and <i>Gazette</i> 31 Oct 2012 p. 5255)
<u><i>Criminal Law Amendment (Out-of-Control Gatherings) Act 2012</i> Pt. 2</u>	<u>56 of 2012</u>	<u>6 Dec 2012</u>	<u>15 Dec 2012 (see s. 2(b) and <i>Gazette</i> 14 Dec 2012 p. 6196)</u>

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Prostitution Amendment Act 2008</i> s. 30 ³¹	13 of 2008	14 Apr 2008	To be proclaimed (see s. 2(b))
<i>Criminal Code Amendment (Infringement Notices) Act 2011</i> s. 3 and 4 ³³	10 of 2011	2 May 2011	To be proclaimed (see s. 2(b))
<i>Road Traffic Legislation Amendment Act 2012</i> Pt. 4 Div. 50 ³⁵	8 of 2012	21 May 2012	Operative on commencement of the <i>Road Traffic (Administration) Act 2008</i> (see s. 2(d))
<i>Criminal Organisations Control Act 2012</i> s. 173 ³⁶	49 of 2012	29 Nov 2012	To be proclaimed (see s. 2(b))
<i>Criminal Law Amendment (Out of Control Gatherings) Act 2012</i> Pt. 2³²	56 of 2012	6 Dec 2012	To be proclaimed (see s. 2(b))

- ² Reprints before Reprint 10 are not numbered. Reprint 10 and subsequent reprints are numbered consecutively but are out by one number.
- ³ The *Criminal Law Amendment Act 1996* s. 5(2) is a transitional provision.
- ⁴ The *Criminal Law Amendment Act 1996* s. 6(2) is a transitional provision.
- ⁵ See *Firearms Regulations 1974* r. 2B.
- ⁶ Renumbered under the *Reprints Act 1984* s. 7(5)(c)(ii).
- ⁷ The *Criminal Code Amendment Act (No. 2) 1996* s. 4(3) is a transitional provision.
- ⁸ The *Criminal Code* is the Schedule to the *Criminal Code Act 1913* which is Appendix B to the *Criminal Code Act Compilation Act 1913*.
- ⁹ The *Limitation Act 1935* s. 48A and the Second Schedule were inserted by No. 73 of 1954 s. 8.
- ¹⁰ The *Criminal Code Amendment Act 1962* s. 8 was repealed by No. 63 of 1963 s. 17.

- ¹¹ The *Metric Conversion Act 1972* Second Schedule was inserted by the *Metric Conversion Act Amendment Act 1973*.
- ¹² The *Criminal Code Amendment Act (No. 2) 1976* s. 3 is a validation provision.
- ¹³ The *Criminal Law Amendment Act 1986* s. 10 was repealed by No. 106 of 1987 s. 14(7).
- ¹⁴ The *Criminal Code Amendment Act (No. 2) 1987* s. 25 is a savings provision.
- ¹⁵ The *Criminal Law Amendment Act 1988* s. 50 deletes Schedule 2 item 8 of the *Acts Amendment (Public Service) Act 1987* which had purported to amend *The Criminal Code* s. 384(1). Item 8 was ineffective and never took effect.
- ¹⁶ The *Criminal Law Amendment Act 1991* s. 6(3) and (4) are savings provisions.
- ¹⁷ The *Acts Amendment (Evidence) Act 1991* s. 3 is a transitional provision.
- ¹⁸ The *Acts Amendment (Sexual Offences) Act 1992* s. 6(7) and Sch. 1 are transitional and savings provisions.
- ¹⁹ The *Acts Amendment (Ministry of Justice) Act 1993* s. 68 and 69 are savings and transitional provisions respectively.
- ²⁰ The *Sentencing (Consequential Provisions) Act 1995* s. 27 is a transitional provision.
- ²¹ The *Mental Health (Consequential Provisions) Act 1996* s. 20 is a transitional provision.
- ²² The *Corruption and Crime Commission Act 2003* Sch. 3 was renumbered as Sch. 4 by the *Corruption and Crime Commission Amendment and Repeal Act 2003* s. 35(12) and the reference to it in s. 62 was amended by the *Corruption and Crime Commission Amendment and Repeal Act 2003* s. 35(13).
- ²³ The *Criminal Law Amendment (Simple Offences) Act 2004* s. 37 did not come into operation and was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 76(2).
- ²⁴ The amendment in the *Criminal Law Amendment (Simple Offences) Act 2004* s. 35(4) to *The Criminal Code* s. 635A(5) is not included because s. 635A was deleted by the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 24 before s. 35(4) commenced.
- ²⁵ The *Criminal Law Amendment (Simple Offences) Act 2004* s. 39 did not come into operation and was repealed by the *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005* Sch. 1 item 7.
- ²⁶ The *Criminal Code Amendment (Racial Vilification) Act 2004* s. 7-9 did not have any effect as, before the Act received the Royal Assent, the provisions they would have amended were amended by the *Acts Amendment (Family and Domestic Violence) Act 2004* s. 67-69. They were repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 6(2), 7(2) and 8(2).

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- ²⁷ The amendment in the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 82 to *The Criminal Code* s. 5(11) is not included because s. 5(11) was amended by the *Courts Legislation Amendment and Repeal Act 2004* s. 80 before s. 82 commenced.
- ²⁸ The *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* Sch. 2 cl. 36, which proposed to amend s. 133A, was amended by the *Criminal Law and Evidence Amendment Act 2008* s. 78(7).
- ²⁹ The amendment in the *Nurses and Midwives Act 2006* s. 114 is not included because the section it sought to amend had been deleted by the *Criminal Investigation (Consequential Provisions) Act 2006* s. 22 before the amendment purported to come into operation.
- ³⁰ The *Criminal Investigation (Consequential Provisions) Act 2006* Pt. 5 Div. 2 reads as follows:

Division 2 — Transitional provisions

29. Search warrants and related matters

- (1) In this section —
repeal day means the day on which section 27 comes into operation.
- (2) This section does not limit the operation of the *Interpretation Act 1984* Part V.
- (3) If immediately before repeal day a warrant issued under *The Criminal Code* section 711 is in force but not executed, then, subject to the terms of the warrant, the warrant may be executed on or after repeal day and, if any thing is seized under it —
 - (a) despite section 711 and the warrant, the thing must not be taken before a justice to be dealt with according to law; and
 - (b) the *Criminal and Found Property Disposal Act 2006* applies to and in respect of the thing.
- (4) If immediately before repeal day a warrant issued under *The Criminal Code* section 716 is in force but not executed, then, subject to the terms of the warrant, the warrant may be executed on or after repeal day and, if any person is found under it, then, despite section 716 and the warrant, the person must be released unless another written law provides to the contrary.
- (5) If immediately before repeal day a person is in possession of any thing seized or taken under *The Criminal Code*, then on repeal day, subject to any order previously made in respect of the thing under *The Criminal Code* section 714, the thing is to be taken to

be seized property for the purposes of the *Criminal and Found Property Disposal Act 2006* and that Act applies to and in respect of it accordingly.

- (6) If immediately before repeal day proceedings under *The Criminal Code* section 714A in respect of any property are pending in the Magistrates Court, then section 714A operates in respect of the property on and after repeal day despite its repeal on repeal day.

³¹ On the date as at which this compilation was prepared, the *Prostitution Amendment Act 2008* s. 30 had not come into operation. It reads as follows:

30. The Criminal Code amended

- (1) The amendments in this section are to *The Criminal Code*.
- (2) Section 190 is repealed.
- (3) Section 191 is repealed.
- (4) Section 557K(1) paragraph (h) of the definition of **child sex offender** is amended by deleting “*Prostitution Act 2000*” and inserting instead —
“ *Sexual Services Act 2000* ”.

³² ~~On the date as at which this compilation was prepared, the *Criminal Law Amendment (Out of Control Gatherings) Act 2012 Pt. 2* had not come into operation. It reads as follows:~~

~~**Part 2 — The Criminal Code amended**~~

~~**3. Act amended**~~

~~— This Part amends *The Criminal Code*.~~

~~**4. Sections 75A and 75B inserted**~~

~~— At the end of Part II Chapter IX insert:~~

~~**75A. Term used: out of control gathering**~~

- ~~(1) For the purposes of section 75B, a gathering of persons in a place or vehicle is an **out of control gathering** if —~~
- ~~(a) the gathering is a gathering of 12 or more persons; and~~
 - ~~(b) 2 or more persons associated with the gathering engage in conduct of any of the following kinds —~~

- ~~— (i) — trespassing on a place (as defined in section 70A(1));~~
- ~~— (ii) — behaving in a disorderly manner (as defined in section 74A(1));~~
- ~~— (iii) — unlawfully destroying or damaging property or threatening to do so;~~
- ~~— (iv) — assaulting or threatening to assault another person or taking part in a fight;~~
- ~~— (v) — doing an obscene act or indecent act in a public place or in the sight of any person who is in a public place;~~
- ~~— (vi) — emitting, or causing to be emitted, unreasonable noise (as defined in the *Environmental Protection Act 1986* section 3(1));~~
- ~~— (vii) — driving a motor vehicle so as to cause excessive noise or smoke in contravention of the *Road Traffic Act 1974* section 62A;~~
- ~~— (viii) — unlawfully lighting fires or unlawfully using fireworks;~~
- ~~— (ix) — throwing any object or releasing any material or thing in a manner that is likely to endanger the life, health or safety of any person;~~
- ~~— (x) — causing an obstruction to traffic or to the movement of pedestrians;~~
- ~~— (xi) — depositing litter or breaking glass or other material;~~
- ~~— (xii) — contravening the *Liquor Control Act 1988* or the *Misuse of Drugs Act 1981*;~~
- ~~— (xiii) — being intoxicated by liquor or an intoxicant (as defined in section 206(1)) in a public place;~~
- ~~— (xiv) — any other conduct prescribed by the regulations;~~
- ~~— and~~
- ~~— (c) — the gathering, or the conduct of persons associated with the gathering (taken together), causes or is likely to cause —~~
 - ~~— (i) — fear or alarm to any person who is not associated with the gathering; or~~
 - ~~— (ii) — a substantial interference with the lawful activities of any person; or~~

- ~~— (iii) — a substantial interference with the peaceful passage through, or enjoyment of, a place by any person who has lawful access to that place;~~
 - ~~— and~~
 - ~~— (d) — the gathering is not excluded under subsection (3).~~
 - ~~— (2) — In subsection (1) —~~
 - ~~— *vehicle* has the meaning given in the *Criminal Investigation Act 2006* section 3(1).~~
 - ~~— (3) — For the purposes of subsection (1)(d), a gathering of any of the following kinds is excluded —~~
 - ~~— (a) — a gathering on licensed premises;~~
 - ~~— (b) — a public meeting or procession for which a permit under the *Public Order in Streets Act 1984* has been issued;~~
 - ~~— (c) — a gathering that is primarily for the purposes of political advocacy, protest or industrial action;~~
 - ~~— (d) — a gathering of a kind prescribed by the regulations.~~
 - ~~— (4) — In subsection (3) —~~
 - ~~— *licensed premises* has the meaning given in the *Liquor Control Act 1988* section 3(1), but does not include premises to which an occasional licence granted under section 59 of that Act relates.~~
 - ~~— (5) — For the purposes of subsection (1), a person is associated with a gathering if the person —~~
 - ~~— (a) — is attending the gathering; or~~
 - ~~— (b) — is in the vicinity of the gathering and has attended or is proposing to attend the gathering.~~
- 75B. Organising out of control gathering**
- ~~— (1) — In this section —~~
 - ~~— *organise*, in relation to a gathering, means to have a substantial involvement in arranging, managing, advertising or promoting the gathering (whether or not any other organisers of the gathering know of or consent to that involvement);~~
 - ~~— *responsible adult*, in relation to a child, means a parent, guardian or other person having responsibility for the day-to-day care of the child but does not include a person who the regulations provide is not a responsible adult.~~
 - ~~— (2) — A person —~~
 - ~~— (a) — who organises a gathering that becomes an out of control gathering; or~~
 - ~~— (b) — who —~~

- ~~— (i) — is a responsible adult in relation to a child who organises a gathering that becomes an out-of-control gathering; and~~
 - ~~— (ii) — gives the child permission to organise the gathering or permits the gathering to occur;~~
- ~~— is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.~~
- ~~— (3) — It is a defence to a charge under subsection (2) to prove the accused person took such steps (if any) as were reasonable in the circumstances to ensure that the gathering did not become an out-of-control gathering.~~
- ~~— (4) — Without limiting subsection (3), the following are examples of steps that could be taken to ensure that a gathering does not become an out-of-control gathering —~~
 - ~~— (a) — engaging persons to provide security services at the gathering;~~
 - ~~— (b) — organising the gathering in a manner that indicates that only persons invited to the gathering may attend;~~
 - ~~— (c) — giving notice of the gathering to the Commissioner of Police in a manner approved by the Commissioner of Police;~~
 - ~~— (d) — taking steps to request the attendance of police officers at the gathering as soon as practicable after becoming aware that —~~
 - ~~— (i) — the gathering is likely to become an out-of-control gathering; or~~
 - ~~— (ii) — any person is trespassing on a place where the gathering is occurring.~~
- ~~— (5) — A court convicting a person of an offence under subsection (2) may order the person to pay some or all of the reasonable expenses of or incidental to any action that was reasonably taken by police officers in responding to the out-of-control gathering.~~
- ~~— (6) — The order must specify that the amount is to be paid to the Commissioner of Police.~~
- ~~— (7) — The *Sentencing Act 1995* Part 16 applies to and in respect of an order made under subsection (5) as if it were a compensation order made under that Part.~~

³² [Footnote no longer applicable.](#)

³³ On the date as at which this compilation was prepared, the *Criminal Code Amendment (Infringement Notices) Act 2011* s. 3 and 4 had not come into operation. They read as follows:

3. **The Criminal Code amended**
This Act amends *The Criminal Code*.

4. **Chapter LXXIII inserted**
At the beginning of Part VIII insert:

Chapter LXXIII — Infringement notices

720. **Term used: CP Act**

In this Chapter —

CP Act means the *Criminal Procedure Act 2004*.

721. **Regulations to allow infringement notices to be issued for Code offences**

- (1) This Code is taken to be a prescribed Act for the purposes of the CP Act Part 2.
- (2) The Governor may make regulations under this Code prescribing all matters that may or must be prescribed under the CP Act Part 2 to enable the CP Act Part 2 to apply to and in relation to offences under this Code.
- (3) Regulations made under subsection (2) —
 - (a) may, despite the CP Act section 5(2), prescribe any offence under this Code to be a prescribed offence for Part 2 of the CP Act; and
 - (b) may prescribe classes of person to whom an infringement notice cannot be issued for an alleged offence under this Code; and
 - (c) may prescribe circumstances in which an infringement notice cannot be issued for an alleged offence under this Code.

722. **Alleged offenders taken to be charged suspects for purposes of Criminal Investigation (Identifying People) Act 2002**

If under the CP Act an infringement notice is issued to an alleged offender for an alleged offence under this Code, then —

- (a) for the purposes of the *Criminal Investigation (Identifying People) Act 2002* Part 7 and section 67 the alleged offender is taken —
 - (i) to be a charged suspect; and
 - (ii) to have been charged with the alleged offence;and
- (b) without limiting the operation of section 67 of that Act, identifying information obtained under Part 7 of that Act from the alleged offender must be destroyed if —
 - (i) the alleged offender pays the modified penalty prescribed for the offence; and
 - (ii) destruction is requested under section 69 of that Act by or on behalf of the alleged offender;and
- (c) that Act, with any necessary changes, applies accordingly.

723. Monitoring of Chapter by Ombudsman

- (1) For the period of 12 months after the commencement of this section, the Ombudsman is to keep under scrutiny the operation of the provisions of this Chapter and the regulations made under this Chapter and the *Criminal Investigation (Identifying People) Act 2002* Part 7 and section 67.
- (2) The scrutiny referred to in subsection (1) is to include review of the impact of the operation of the provisions referred to in that subsection on Aboriginal and Torres Strait Islander communities.
- (3) For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about police or the public authority's participation in the operation of the provisions referred to in subsection (1).
- (4) The Ombudsman must, as soon as practicable after the expiration of that 12 month period, prepare a report on the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister for Police and the Commissioner of Police.
- (5) The Ombudsman may identify, and include recommendations in the report to be considered by the Minister about, amendments that might appropriately be made to this Act with respect to the operation of the provisions referred to in subsection (1).
- (6) The Minister is to lay (or cause to be laid) a copy of the report furnished to the Minister under this section before both Houses of

Parliament as soon as practicable after the Minister receives the report.

³⁴ Footnote no longer applicable.

³⁵ On the date as at which this compilation was prepared, the *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 50 had not come into operation. It reads as follows:

Division 50 — *The Criminal Code* amended

182. Act amended

This Division amends *The Criminal Code*.

183. Section 1 amended

In section 1(1) in the definition of *motor vehicle* delete “*Road Traffic Act 1974*,” and insert:

Road Traffic (Administration) Act 2008 section 4;

184. Section 297 amended

Delete section 297(4)(c)(iii) and insert:

- (iii) a taxi as defined in the *Taxi Act 1994* section 3(1) or an omnibus as defined in the *Transport Co-ordination Act 1966* section 4(1);

185. Section 318 amended

Delete section 318(1)(g)(iii) and insert:

- (iii) a taxi as defined in the *Taxi Act 1994* section 3(1) or an omnibus as defined in the *Transport Co-ordination Act 1966* section 4(1);

³⁶ On the date as at which this compilation was prepared, the *Criminal Organisations Control Act 2012* s. 173 had not come into operation. It reads as follows:

173. *The Criminal Code* amended

- (1) This section amends *The Criminal Code*.

- (2) After section 5(3)(a) insert:
 - (ba) that the circumstances in which the offence was allegedly committed are such that, if the accused were convicted of the offence, the *Sentencing Act 1995* Part 2 Division 2A would apply to the sentencing of the accused for that offence; or
- (3) In Part IV after section 221B insert:

Chapter XXVIA — Facilitating activities of criminal organisations

221C. Terms used

- (1) In this Chapter —
COC Act means the *Criminal Organisations Control Act 2012*;
criminal organisation has the meaning given in section 221D;
declared criminal organisation has the meaning given in the *Criminal Organisations Control Act 2012* section 3(1);
indictable offence includes conduct engaged in outside this State (including outside Australia) that, if it occurred in this State, would constitute an indictable offence.
- (2) A term used in this Chapter and also in the COC Act has the same meaning in this Chapter as it has in that Act, unless the term is defined in this Code or the context requires otherwise.

221D. Term used: criminal organisation

- (1) For the purposes of this Chapter, an entity is a *criminal organisation* if —
 - (a) the entity is a declared criminal organisation; or
 - (b) all of the following apply to the entity —
 - (i) the entity is an organisation;
 - (ii) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity;
 - (iii) the organisation represents a risk to public safety and order in this State.
- (2) In determining whether an entity is a criminal organisation for the purposes of subsection (1)(b) —
 - (a) a court may have regard to any of the matters that a designated authority is entitled to have regard to under

the COC Act section 13(2) (other than paragraph (e)) in considering whether or not to make a declaration under that Act; and

- (b) section 13(3) of that Act applies with all necessary changes for the purposes of the court satisfying itself that subsection (1)(b)(ii) of this section applies to the entity.

221E. Participating in activities of criminal organisation

- (1) A person who, for the purpose of enhancing the ability of a criminal organisation to facilitate or commit an indictable offence, by act or omission, participates in or contributes to any activity of the criminal organisation is guilty of a crime, and is liable to imprisonment for 5 years.
Summary conviction penalty: imprisonment for 2 years.
- (2) For the purposes of subsection (1), facilitation of an offence does not require knowledge of a particular offence the commission of which is facilitated, or that an offence actually be committed.
- (3) In a prosecution for an offence under subsection (1), it is not necessary to prove that —
 - (a) the criminal organisation actually facilitated or committed an indictable offence; or
 - (b) the participation or contribution of the accused actually enhanced the ability of the criminal organisation to facilitate or commit an indictable offence; or
 - (c) the accused knew the specific nature of any indictable offence that may have been facilitated or committed by the criminal organisation; or
 - (d) the accused knew the identity of any of the persons who are members of the criminal organisation.
- (4) In determining whether an accused participates in or contributes to any activity of a criminal organisation, the court may consider, among other factors, whether the accused —
 - (a) uses a name, word, symbol or other representation that identifies, or is associated with, the criminal organisation; or
 - (b) frequently associates with members of the criminal organisation; or
 - (c) receives any benefit from the criminal organisation; or
 - (d) repeatedly engages in activities at the instruction of any of the members of the criminal organisation.

221F. Instructing commission of offence for benefit of criminal organisation

- (1) A person who is a member of a criminal organisation and who instructs, directly or indirectly, any person to commit an offence under this Code or any other written law, or an offence against a law of a jurisdiction other than Western Australia, for the benefit of, at the direction of, or in association with, the criminal organisation is guilty of a crime, and is liable to imprisonment for 20 years.
- (2) In a prosecution for an offence under subsection (1), it is not necessary to prove that —
 - (a) an offence other than the offence under subsection (1) was actually committed; or
 - (b) the accused instructed a particular person to commit an offence; or
 - (c) the accused knew the identity of all of the persons who are members of the criminal organisation.

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