

Western Australia

**Criminal Code Amendment (Racial Vilification)
Act 2004**

As at 08 Dec 2004

No. 80 of 2004

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Criminal Code Amendment (Racial Vilification) Act 2004

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Western Australia

Criminal Code Amendment (Racial Vilification) Act 2004

No. 80 of 2004

An Act to amend *The Criminal Code*.

[Assented to 8 December 2004]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Criminal Code Amendment (Racial Vilification) Act 2004*.

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2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. *The Criminal Code* amended

The amendments in this Act are to *The Criminal Code**.

[* *Reprint 10 as at 7 February 2003 (see the Schedule to the Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Compilation Act 1913).*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 95 and Acts Nos. 50 and 78 of 2003 and 4 of 2004.]

4. Section 1 amended

Section 1(1) is amended by inserting in the appropriate alphabetical position —

“

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

”.

5. Section 76 amended

- (1) Section 76 is amended by inserting in the appropriate alphabetical positions —

“

“**animosity towards**” means hatred of or serious contempt for;

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

“**member**” of a racial group includes a person associated with a racial group;

”.

- (2) Section 76 is amended in the definition of “written or pictorial material” by inserting before “newspaper” —

“ book, magazine, ”.

6. Sections 77 to 80 replaced by sections 77 to 80H

Sections 77, 78, 79 and 80 are repealed and the following sections are inserted instead —

“

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.

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.

Summary conviction penalty: Imprisonment for 2 years or a fine of \$24 000.

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.

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.

Summary conviction penalty: Imprisonment for 2 years or a fine of \$24 000.

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.

Summary conviction penalty: Imprisonment for 2 years or a fine of \$24 000.

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 one year or a fine of \$12 000.

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.

Summary conviction penalty: Imprisonment for 2 years or a fine of \$24 000.

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 one year or a fine of \$12 000.

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.

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.

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;
 - (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;
 - (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.

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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.

80I. Meaning of “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.

”.

7. Section 313 amended

Section 313(1)(a) is amended by inserting after “60 years” —

“

or the offence is committed in circumstances of racial aggravation

”.

8. Section 317 amended

Section 317(1)(a) (being the first provision so designated) is amended by inserting after “60 years” —

“

or the offence is committed in circumstances of racial aggravation

”.

9. Section 317A amended

Section 317A(a) (being the second provision so designated) is amended by inserting after “60 years” —

“
or the offence is committed in circumstances of racial
aggravation
”.

10. Section 338B amended

- (1) Section 338B(a) is amended by inserting after “years” —

“
or, if the offence is committed in circumstances of
racial aggravation, to imprisonment for 14 years
”.

- (2) Section 338B(b) is amended as follows:

- (a) by deleting “any other case” and inserting instead —

“ the case of any other threat ”;

- (b) by inserting after “years” —

“
or, if the offence is committed in circumstances of
racial aggravation, to imprisonment for 6 years
”.

11. Section 444 amended

- (1) Section 444(a) (being the first provision so designated) is amended by inserting after “years” —

“
or, if the offence is committed in circumstances of
racial aggravation, to imprisonment for 20 years
”.

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- (2) Section 444(b) (being the first provision so designated) is amended as follows:
- (a) by deleting “in any other case” and inserting instead —
“
if the property is not destroyed or damaged by
fire
”;
 - (b) by inserting after “years” —
“
or, if the offence is committed in circumstances
of racial aggravation, to imprisonment for
14 years
”.

12. Section 597A replaced

Section 597A is repealed and the following section is inserted instead —

“

597A. Incitement to racial animosity or racist harassment; alternative verdicts

- (1) Upon an indictment charging a person with an offence under section 77 the person may be convicted of an offence under section 78, 80A or 80B.
- (2) Upon an indictment charging a person with an offence under section 78 or 80A the person may be convicted of an offence under the other of those sections or under section 80B.
- (3) Upon an indictment charging a person with an offence under section 79 the person may be convicted of an offence under section 80, 80C or 80D.

- (4) Upon an indictment charging a person with an offence under section 80 or 80C the person may be convicted of an offence under the other of those sections or under section 80D.

”.
