

WESTERN AUSTRALIA

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**CRIMINAL LAW AMENDMENT  
ACT 1996**

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**No. 36 of 1996**

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**AN ACT to amend —**

- ***The Criminal Code;***
- ***the District Court of Western Australia Act 1969;***
- ***the Justices Act 1902;***
- ***the Offenders Community Corrections Act 1963;***
- **and**
- ***the Young Offenders Act 1994.***

[Assented to 10 October 1996.]

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Criminal Law Amendment Act 1996*.

**Commencement**

2. (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.

(2) Sections 34, 39, 40 and 42 come into operation on such day as is, or days as are respectively, fixed by proclamation.

**PART 2 — THE CRIMINAL CODE**

**The Code**

3. In this Part —

“**the Code**” means *The Criminal Code*\*.

[\* *Reprinted as at 17 December 1993 as the Schedule to the Criminal Code Act 1913 appearing in Appendix B to the Criminal Code Compilation Act 1913. For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, pp. 51-3.*]

**Section 1 amended**

4. Section 1 (1) of the Code is amended by deleting the definition of the term “dwelling-house” and the paragraph following it and substituting the following definition —

“

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;

”.

**Sections 12 and 13 repealed and sections substituted; transitional provision**

5. (1) Sections 12 and 13 of the Code are repealed and the following sections are substituted —

“

**Territorial application of the criminal law**

**12.** (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.

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

**13.** 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;
- (b) aiding another person in committing the offence; or

- (c) counselling or procuring another person to commit the offence,

occurred outside Western Australia.

”.

(2) Sections 12 and 13 of the Code as enacted by this section apply to acts, omissions, events, circumstances and states of affairs that occurred before the commencement of this section as well as to those that occur after that commencement.

### **Section 14 amended; transitional provision**

**6.** (1) Section 14 of the Code is amended by repealing the final paragraph.

(2) Section 14 of the Code as amended by this section applies to acts and omissions that occurred before the commencement of this section as well as to those that occur after that commencement.

### **Section 74 amended**

**7.** Section 74 of the Code is amended —

- (a) in paragraph (1) by deleting “break or injure a dwelling-house;” and substituting the following —

“ enter or damage a dwelling; ”; and

- (b) in paragraph (2) by deleting “dwelling-house,” and substituting the following —

“ dwelling, ”.

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**Section 150 amended**

**8.** Section 150 of the Code is amended by inserting at the foot of the section the following —

“  
Summary conviction penalty: Imprisonment for one  
year or a fine of \$4 000.  
”.

**Section 151 amended**

**9.** Section 151 of the Code is amended —

(a) in the first paragraph by deleting “one year, or to a fine of \$200.” and substituting the following —

“ 2 years. ”; and

(b) by deleting the second paragraph and substituting the following —

“  
Summary conviction penalty: Imprisonment  
for 6 months or a fine of \$2 000.  
”.

**Section 172 amended**

**10.** Section 172 of the Code is amended —

(a) by deleting “misdemeanour” and substituting the following —

“ crime ”;

(b) by deleting “2 years.” and substituting the following —

“ 3 years. ”; and

(c) by inserting at the foot of the section the following —

“  
Summary conviction penalty: Imprisonment  
for 18 months or a fine of \$6 000.  
”.

**Section 184 amended**

**11.** Section 184 of the Code is amended by inserting at the foot of the section the following —

“  
Summary conviction penalty: Imprisonment for one  
year or a fine of \$4 000.  
”.

**Section 203 amended**

**12.** Section 203 of the Code is amended by inserting at the foot of the section the following —

“  
Summary conviction penalty: Imprisonment for one  
year or a fine of \$4 000.  
”.

**Section 243 amended**

**13.** Section 243 of the Code is amended —

(a) by deleting “which is such that the offender may be arrested without warrant”; and

(b) by deleting “any such” and substituting the following —

“ an ”.

**s. 14**

**Section 244 amended**

**14.** Section 244 of the Code is amended —

- (a) by deleting “dwelling-house” in the 3 places where it occurs and substituting the following —

“ dwelling ”; and

- (b) by deleting “any indictable” and substituting the following —

“ an ”.

**Section 305 amended**

**15.** Section 305 of the Code is amended in the third paragraph by deleting “dwelling-house” in the 2 places where it occurs and substituting the following —

“ dwelling ”.

**Section 322A amended**

**16.** Section 322A of the Code is amended —

- (a) by inserting at the foot of subsection (2) the following —

“  
Summary conviction penalty: Imprisonment  
for 2 years or a fine of \$8 000.  
”;

and



- (b) by inserting at the foot of subsection (3) the following —

“

Summary conviction penalty: Imprisonment  
for 2 years or a fine of \$8 000.

”.

**Section 323 amended**

- 17.** Section 323 of the Code is amended by inserting at the foot of the section the following —

“

Summary conviction penalty: Imprisonment for 2  
years or a fine of \$8 000.

”.

**Section 324 amended**

- 18.** Section 324 of the Code is amended by inserting at the foot of the section the following —

“

Summary conviction penalty: Imprisonment for 3  
years or a fine of \$12 000.

”.

**Section 338E amended**

- 19.** Section 338E (1) (c) of the Code is amended by deleting “dwelling-house,” and substituting the following —

“ dwelling, ”.

**Section 378 amended**

**20.** Section 378 (5) (b) of the Code is amended —

(a) by deleting “dwelling-house” in the 2 places where it occurs and substituting the following —

“ dwelling ”; and

(b) by deleting “\$4 000” and substituting the following —

“ \$10 000 ”.

**Section 395 repealed**

**21.** Section 395 of the Code is repealed.

**Section 401 amended**

**22.** Section 401 (3) of the Code is amended by deleting “\$4 000” and substituting the following —

“ \$10 000 ”.

**Section 409 amended**

**23.** Section 409 (2) of the Code is amended by deleting “\$4 000” and substituting the following —

“ \$10 000 ”.

**Section 426 amended**

**24.** Section 426 of the Code is amended —

(a) in subsection (1) (a) by deleting “or 383” and substituting the following —

“ 383 or 388 ”;

- (b) in subsection (2) (a) by deleting “\$4 000” and substituting the following —  
“ \$10 000 ”;
- (c) in subsection (3) (a) by inserting after “378” in both places it occurs the following —  
“ , 382, 383, 388 ”;
- (d) in subsection (3) (b) by deleting “\$400” and substituting the following —  
“ \$1 000 ”;
- (e) in subsection (4) (a) by inserting after “378” in both places it occurs the following —  
“ , 382, 383, 388 ”; and
- (f) in subsection (4) (b) by deleting “\$400” and substituting the following —  
“ \$1 000 ”.

**Section 437 amended**

**25.** Section 437 of the Code is amended —

- (a) by inserting after “fish” where it first occurs the following —  
“ (which term includes crustacean) ”; and

- (b) by deleting “a fine of an amount equal to the value of the fish taken or destroyed, if any, and \$10 in addition.” and substituting the following —

“ imprisonment for 2 years or a fine of \$8 000. ”;

**Section 465 amended**

**26.** Section 465 (2) of the Code is amended —

- (a) in paragraph (a) by deleting “\$4 000” and substituting the following —

“ \$10 000 ”; and

- (b) in paragraph (b) by deleting “\$10 000” and substituting the following —

“ \$25 000 ”.

**Section 512 amended**

**27.** Section 512 of the Code is amended by inserting at the foot of the section the following —

“  
Summary conviction penalty: Imprisonment for 2  
years or a fine of \$8 000.  
”.

**Section 514 amended**

**28.** Section 514 of the Code is amended by inserting at the foot of the section the following —

“  
Summary conviction penalty: Imprisonment for 18  
months or a fine of \$6 000.  
”.

**Section 527 amended**

**29.** Section 527 (2) of the Code is amended by deleting “\$4 000” and substituting the following —

“ \$10 000 ”.

**Section 549 amended**

**30.** Section 549 of the Code is amended by inserting at the foot of the section the following —

“  
Summary conviction penalty: Imprisonment for one  
year or a fine of \$4 000.  
”.

**PART 3 — *DISTRICT COURT OF WESTERN AUSTRALIA  
ACT 1969***

**Principal Act**

**31.** In this Part the *District Court of Western Australia Act 1969\** is referred to as the principal Act.

[\* *Reprinted as at 20 February 1996.*]

**Section 42 amended and consequential repeal**

**32.** (1) Section 42 (2a) of the principal Act is repealed.

(2) Schedule 2 to the principal Act is repealed.

**PART 4 — JUSTICES ACT 1902**

**Principal Act**

**33.** In this Part, the *Justices Act 1902*\* is referred to as the principal Act.

[\* *Reprinted as at 21 June 1995.*]

**Section 4 amended**

**34.** Section 4 of the principal Act is amended in the definition of “decision” —

- (a) by deleting paragraph (b); and
- (b) in paragraph (e) by deleting “committal”.

**Section 56A amended**

**35.** (1) Section 56A (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) Notwithstanding section 56, a summons requiring a person to appear before justices at a stated time and place to answer the complaint for —

- (a) an offence under a written law, or under a code or similar provision adopted or enacted by a written law, which is not an indictable offence; or
- (b) an offence under a law, or under a code or similar provision adopted or enacted by a law, of the Commonwealth that is a summary offence,

may be served upon the person by posting by prepaid registered post, not less than 14 days before the date

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stated in the summons for his appearance, a true copy of the summons in an envelope addressed to that person at his last known place of residence or business.

”.

(2) Section 56A (2) of the principal Act is amended by deleting paragraph (c) and substituting the following paragraph —

“

(c) is an offence of a type set out in subsection (1) (a) or (b), the address appearing as the address of that person, or of any premises of which he is the owner or occupier, in any licence, permit or similar document issued and in force under —

(i) the law under which the offence is alleged to have been committed; or

(ii) a law connected with the law under which the offence is alleged to have been committed,

(whether a law of this State or of the Commonwealth),

”.

(3) Section 56A of the principal Act is amended by inserting after subsection (2) the following subsection —

“

(2a) For the purposes of subsection (2) (c), a law is connected with the law under which the offence is alleged to have been committed if —

(a) it is subsidiary legislation made under that law;



- (b) it is the law empowering the making of that law as subsidiary legislation;
- (c) it is a code or similar provision adopted or enacted by that law; or
- (d) it is the law that adopted or enacted that law as a code or similar provision.

”.

**Section 57A inserted**

**36.** After section 57 of the principal Act the following section is inserted —

“

**Summons, amendment of time following non-service**

**57A.** (1) If a summons issued under this Act on the making of a complaint is not served before the time stated in the summons for the appearance of the defendant, any justice or clerk of petty sessions, on being satisfied that the complaint was made, may amend the summons by substituting a later time for the appearance of the defendant.

(2) An amendment under subsection (1) must be initialled by the justice or clerk of petty sessions making the amendment.

(3) An amendment of the time mentioned in a summons under subsection (1) does not recommence proceedings.

”.

**Section 97A repealed and a section substituted**

**37.** Section 97A of the principal Act is repealed and the following section substituted —

“

**Defendant not appearing may be arrested**

**97A.** (1) If a defendant —

- (a) is served with a summons; and
- (b) does not appear before justices at the time and place stated in the summons,

the justices, if satisfied the summons was served a reasonable time before that time, may issue —

- (c) another summons, and if that is not obeyed, a warrant to apprehend the defendant; or
- (d) a warrant to apprehend the defendant.

(2) A summons issued under subsection (1) (c) may be served by post on the defendant.

”.

**Section 135 amended**

**38.** Section 135 of the principal Act is amended —

- (a) in subsection (1) (b) by deleting “and may issue their warrant” and substituting the following —

“

and may issue —

- (i) a summons and, if it is not obeyed, their warrant; or
- (ii) their warrant,

”;

and

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

“

(1c) A summons issued under subsection (1) (b) (i) may be served by post on the defendant.

”.

**Section 184 amended**

**39.** After section 184 (2) of the principal Act the following subsection is inserted —

“

(3) A decision by justices to commit a defendant for trial may not be the subject of an appeal under this Part.

”.

**PART 5 — OFFENDERS COMMUNITY CORRECTIONS  
ACT 1963**

**Section 20SB amended**

**40.** The *Offenders Community Corrections Act 1963*\* is amended in section 20SB (7) by deleting “section 119 (1)” and substituting the following —

“ section 119 (2) (a) ”.

[\* *Reprinted as at 10 October 1991.*  
*For subsequent amendments see 1994 Index to  
Legislation of Western Australia, Table 1, pp. 150-1.*]

**PART 6 — YOUNG OFFENDERS ACT 1994**

**Principal Act**

**41.** In this Part the *Young Offenders Act 1994*\* is referred to as the principal Act.

[\* *Act No. 104 of 1994.*

*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 240.]*

**Section 119 amended**

**42.** (1) Section 119 (1) of the principal Act is amended by deleting “for a prescribed offence”.

(2) After section 119 (1) of the principal Act the following subsection is inserted —

“

(1a) A direction under subsection (1) cannot be made unless —

- (a) the offender has reached the age of 16 years when the sentence is imposed; and
- (b) the offender consents to it.

”.

(3) Section 119 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) Unless the court sentencing the offender is the Supreme Court, the District Court, or the Children’s Court constituted by or so as to include a judge, a direction under subsection (1) may only be made if —

- (a) the offence for which the term of detention is being imposed is an offence prescribed for the purposes of this paragraph; and

- (b) the offender —
- (i) has not been previously convicted of an offence prescribed for the purposes of this paragraph; and
  - (ii) has not previously served all or any of a sentence of imprisonment or detention.

”.