

WESTERN AUSTRALIA

SENTENCING (CONSEQUENTIAL PROVISIONS) ACT 1995

No. 78 of 1995

AN ACT —

- to amend various Acts;
- to repeal the *Offenders Community Corrections Act 1963*, the *Fines and Penalties Appropriation Act 1909* and various Imperial Acts adopted in this State; and
- to enact transitional provisions,

as a consequence of the enactment of the *Sentencing Act 1995* and the *Sentence Administration Act 1995*.

[Assented to 16 January 1996]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Sentencing (Consequential Provisions) Act 1995*.

Commencement

2. (1) The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

(2) For the purposes of subsection (1) each item in a table to a section of this Act is to be taken to be a separate provision.

PART 2 — ABORIGINAL COMMUNITIES ACT 1979

Section 12 amended

3. Section 12 of the *Aboriginal Communities Act 1979** is amended by deleting “notwithstanding anything to the contrary contained in the Fines and Penalties Appropriation Act, 1909 or any other Act,”.

[* *Act No. 8 of 1979.*]

[*Note: The above Act is also amended by Part 88.*]

PART 3 — ABORIGINAL HERITAGE ACT 1972

Section 57 amended

4. Section 57 (3) of the *Aboriginal Heritage Act 1972** is repealed and the following subsections are substituted —

“

(3) If a person is convicted of an offence against this Act in relation to any object, place or thing, the object, place or thing is to be taken as being the property of the Minister for the purposes of making a reparation order under Part 16 of the *Sentencing Act 1995*.

(4) If under Part 16 of the *Sentencing Act 1995* a compensation order is made in favour of the Minister, any money received by the Minister under the order is to be credited to the Consolidated Fund.

”.

[* *Reprint approved 24 June 1981.*
For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 3 and Act No. 32 of 1994.]

[*Note: The above Act is also amended by Part 88.*]

PART 4 — ARTIFICIAL BREEDING OF STOCK ACT 1965

Section 12 amended

5. Section 12 of the *Artificial Breeding of Stock Act 1965** is amended —

- (a) in subsection (1) by deleting “, and the provisions of section 11 of *The Criminal Code* shall not apply thereto notwithstanding that such condition, restriction or limitation is subsequently varied”; and
- (b) by inserting after subsection (2) the following subsection —

“

(3) The variation of a condition, restriction or limitation referred to in subsection (1) does not affect any penalty or punishment incurred, imposed, or liable to be incurred or imposed, prior to that variation, or any investigation or legal proceedings in respect of such a penalty or punishment, notwithstanding any other enactment.

”.

[* Reprinted as at 5 February 1990.]

PART 5 — BAIL ACT 1982

Principal Act

6. In this Part the *Bail Act 1982** is referred to as the principal Act.

[* Reprinted as at 17 October 1991.
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 16 and
Acts Nos. 82 and 92 of 1994.]

Section 3 amended

7. (1) Section 3 (1) of the principal Act is amended —

- (a) in the definition of “CEO (Justice)” by deleting
“*Prisons Act 1981*” and substituting the following —

“ *Sentence Administration Act 1995* ”;

- (b) in the definition of “community corrections officer” by
deleting “*Offenders Community Corrections Act 1963*”
and substituting the following —

“ *Sentence Administration Act 1995* ”; and

- (c) by deleting the definition of “trial” and substituting
the following definition —

“
 “trial” means all proceedings for an offence
 between —

- (a) the time when the defendant is
 called upon to plead to the
 complaint or the indictment; and

- (b) the time when the defendant is found not guilty or is sentenced.

”.

(2) Section 3 (4) of the principal Act is repealed and the following subsection is substituted —

“

(4) If a person is arrested under a warrant issued —

- (a) under section 50, 79 or 129 of the *Sentencing Act 1995* in connection with a possible breach of a conditional release order, a sentence of suspended imprisonment, or a community order imposed under that Act; or
- (b) under section 43 of the *Young Offenders Act 1994* in respect of an alleged breach of a youth community based order, an intensive youth supervision order or a conditional release order made under that Act,

then —

- (c) the person is to be taken as having been arrested and to be in custody awaiting an appearance in court for the offence for which the sentence was imposed;
- (d) the first appearance in court after the arrest is to be taken, for the purposes of sections 5 (1) and 8 (1) and clause 1 of Part A and clause 7 of Part C of Schedule 1, to be the initial appearance for that offence; and
- (e) the proceedings following the arrest are to be taken to be proceedings for that offence and to be a trial for the purpose of the definition in subsection (1) of “trial”.

”.

Other amendments

8. The principal Act is amended as set out in the Table to this section.

TABLE

s. 49 (1) (e)	Delete “section 170 of the <i>Justices Act 1902</i> ” and substitute the following — “ section 139 of the <i>Sentencing Act 1995</i> ”.
s. 49 (4)	Repeal the subsection and substitute the following subsection — “ (4) If under this section the Supreme Court or the District Court makes an order requiring the payment of money, the court may make an order under section 59 of the <i>Sentencing Act 1995</i> in respect of the amount payable and for that purpose that section, with any necessary changes, applies as if the amount were a fine imposed on the surety. ”.
s. 50B	Repeal the section.
s. 50K	Repeal the section and substitute the following section — “ Retrieval of monitoring equipment 50K. If under rules made under section 50L any device or equipment has been installed at the place where a defendant is required by a home detention condition to remain, section 117 of the <i>Sentence Administration Act 1995</i> applies. ”.
s. 52 (5)	Repeal the subsection and substitute the following subsection — “ (5) If under section 51 (6) or (7) the Supreme Court or the District Court imposes a pecuniary penalty the court may make an order under section 59 of the <i>Sentencing Act 1995</i> in respect of the amount payable. ”.
s. 57 (4)	Repeal the subsection and substitute the following subsection — “ (4) If under this section the Supreme Court or the District Court makes an order requiring the payment of money, the court may

make an order under section 59 of the *Sentencing Act 1995* in respect of the amount payable and for that purpose that section, with any necessary changes, applies as if the amount were a fine imposed on the defendant. ”.

Schedule 1 In Part A delete clause 7 (a) (iii) and substitute the following subparagraph —

“ (iii) proceedings on the re-appearance of an offender under section 50 of the *Sentencing Act 1995*; ”.

In Part A delete clause 7 (c) and substitute the following paragraph —

“ (c) a person who under section 580 or 645 (2) of *The Criminal Code* is required to appear in the Supreme Court or the District Court to be tried is deemed to have been committed thereto for the purposes of clause 3. ”.

In Part C delete clause 6 and substitute the following clause —

“ **Bail of people on community orders, etc.**

6. For the purpose of determining whether clause 4 applies, a person in custody —

(a) under section 50, 79, 128, 129 or 132 of the *Sentencing Act 1995* in connection with a possible breach of a conditional release order, a sentence of suspended imprisonment or a community order imposed under that Act; or

(b) under section 43 of the *Young Offenders Act 1994* in respect of an alleged breach of a youth community based order, an intensive youth supervision order or a conditional release order made under that Act,

is to be taken as not having been convicted of the offence for which the sentence was imposed. ”.

PART 6 — *BUSH FIRES ACT 1954*

Section 55 repealed and a section substituted

9. Section 55 of the *Bush Fires Act 1954** is repealed and the following section is substituted —

“

Application of penalties

55. A pecuniary penalty recovered in respect of an offence against this Act is to be paid to the Board unless the offence was prosecuted by or at the direction of a local authority in which case it is to be paid to the local authority.

”.

[* *Reprinted as at 27 February 1992.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 24-25
and Acts Nos. 32, 52 and 84 of 1994.]

[*Note: The above Act is also amended by Part 88.*]

**PART 7 — CATTLE INDUSTRY COMPENSATION
ACT 1965**

Consequential amendments

10. The *Cattle Industry Compensation Act 1965** is amended as set out in the Table to this section.

TABLE

- | | |
|-----------|---|
| s. 30 | Delete “section eleven of the Criminal Code.” and substitute the following —

“ any other enactment. ”. |
| s. 34 (3) | Delete “section eleven of the Criminal Code.” and substitute the following —

“ any other enactment. ”. |

[* *Reprint approved 30 March 1971.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 27.]

PART 8 — *CHILD WELFARE ACT 1947*

Section 148 repealed

11. Section 148 of the *Child Welfare Act 1947** is repealed.

[* *Reprinted as at 23 May 1990.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 29-31
and Acts Nos. 9, 82 and 104 of 1994.]

[*Note: The above Act is also amended by Part 88.*]

**PART 9 — CHILDREN'S COURT OF WESTERN
AUSTRALIA ACT 1988**

Consequential amendments

12. The *Children's Court of Western Australia Act 1988** is amended as set out in the Table to this section.

TABLE

- s. 19 (1) Delete “, to section 17 of the *Offenders Community Corrections Act 1963*,” and substitute the following —
- “ , to sections 78, 128 and 132 of the *Sentencing Act 1995*, ”.
- s. 19 (3) Repeal the subsection.
- s. 19 (9) Repeal the subsection and substitute the following subsection —
- “ (9) Where a child is before the Supreme Court or the District Court, that court has all the powers of the Children's Court of Western Australia in all respects as if the child had been before that Court. ”.
- s. 21 (1) Repeal the subsection.

[* *Act No 69 of 1988.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 31 and Act No. 104 of 1994.]

PART 10 — CHIROPRACTORS ACT 1964

Section 26 repealed and a section substituted

13. Section 26 of the *Chiropractors Act 1964** is repealed and the following section is substituted —

“

Proceedings for offences

26. Proceedings for an offence against this Act, the rules or the regulations shall be dealt with summarily in a court of summary jurisdiction.

”.

[* *Reprint approved 26 March 1971.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 31-2.]

**PART 11 — CITY OF PERTH PARKING FACILITIES
ACT 1956**

Section 5 amended

14. Section 5 (4) of the *City of Perth Parking Facilities Act 1956** is amended by deleting “the provisions of section eleven of The Criminal Code.” and substituting the following —

“ any other enactment. ”.

[* *Reprint approved 17 March 1983.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 33.*]

PART 12 — COLLEGES ACT 1978

Section 29 amended

15. Section 29 (6) of the *Colleges Act 1978** is amended by deleting “, notwithstanding anything to the contrary contained in the Fines and Penalties Appropriation Act, 1909 or any other Act,”.

[* *Act No. 100 of 1978.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 36 and
Act No. 91 of 1994.]*

**PART 13 — CONSTITUTION ACTS AMENDMENT
ACT 1899**

Schedule V amended

16. Schedule V to the *Constitution Acts Amendment Act 1899** is amended in Part 3, in the item relating to “The Parole Board”, by deleting “*Offenders Community Corrections Act 1963*” and substituting the following —

“ *Sentence Administration Act 1995* ”.

[* *Reprinted as at 6 April 1993.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 44-46 and Acts Nos. 26, 40 and 53 of 1993 and 6, 9, 32, 35, 36, 45, 73, 83, 89, 96, 103 and 104 of 1994.]

PART 14 — *CONTROL OF VEHICLES (OFF-ROAD AREAS)*
ACT 1978

Consequential amendments

17. The *Control of Vehicles (Off-road areas) Act 1978** is amended as set out in the table to this section.

TABLE

- s. 41 (2) Repeal the subsection.
s. 43 (4) Repeal the subsection.

[* *Act No. 117 of 1978.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 47-48
and Acts Nos. 32 and 84 of 1994.]

**PART 15 — CO-OPERATIVE AND PROVIDENT SOCIETIES
ACT 1903**

Section 58 repealed and a section substituted

18. Section 58 of the *Co-operative and Provident Societies Act 1903** is repealed and the following section is substituted —

“

Proceedings for offences

58. (1) Proceedings for an offence against this Act may be taken by the Registrar or any other person.

(2) Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

”.

[* *Reprint approved 30 September 1969.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 48.*]

PART 16 — COUNTRY AREAS WATER SUPPLY ACT 1947

Section 115 repealed and a section substituted

19. Section 115 of the *Country Areas Water Supply Act 1947** is repealed and the following section is substituted —

“

Proceedings for offences

115. (1) Proceedings for an offence against this Act may be taken by the Authority or an officer or servant of the Authority.

(2) A complaint for an offence against this Act must be made within 2 years after the commission of the offence.

(3) Subject to sections 46, 71 and 113, proceedings for an offence against this Act are to be dealt with summarily in a court of summary jurisdiction.

”.

[* *Reprint approved 18 April 1980.*
For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 49-50 and Act No. 6 of 1994.]

[*Note: The above Act is also amended by Part 88.*]

PART 17 — COUNTRY TOWNS SEWERAGE ACT 1948

Section 113 repealed and a section substituted

20. Section 113 of the *Country Towns Sewerage Act 1948** is repealed and the following section is substituted —

“

Prosecution of offences

113. (1) Proceedings for an offence against this Act may be taken by the Authority or an officer or servant of the Authority.

(2) Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

(3) Any penalty or forfeiture incurred under this Act may be recovered in a court of summary jurisdiction on the complaint of the Authority or an officer or servant of the Authority.

”.

[* *Reprint approved 11 March 1980.*
For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 50-51 and Act No. 6 of 1994.]

PART 18 — *CRIMES (CONFISCATION OF PROFITS)*
ACT 1988

Section 3 amended

21. Section 3 (2) of the *Crimes (Confiscation of Profits) Act 1988** is amended by deleting paragraph (a) and substituting the following paragraph —

- “
- (a) the person has been convicted of the offence, whether or not —
 - (i) a spent conviction order is made under section 39 of the *Sentencing Act 1995* in respect of the conviction; or
 - (ii) the conviction was deemed not to be a conviction by section 20 of the *Offenders Community Corrections Act 1963*;
- ”.

[* *Act No. 47 of 1988.*
For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 52.]

PART 19 — *CRIMINAL CODE ACT 1913*

Section 6 repealed

22. Section 6 of the *Criminal Code Act 1913** is repealed.

[* *Reprinted as at 17 December 1993.*]

PART 20 — THE CRIMINAL CODE

The Code

23. In this Part *The Criminal Code** is referred to as “**the 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 1993 Index to Legislation of Western Australia, Table 1, pp. 52-53 and Acts Nos. 32, 73, 82 and 92 of 1994.]

Section 682 repealed and a section substituted

24. Section 682 of the Code is repealed and the following section is substituted —

“

Enforcing the payment of money, other than fines etc.

682. (1) In this section —

“**payment order**” means an order requiring a person to pay money, other than —

- (a) a fine as defined in section 28 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;
- (b) compensation to be paid under a compensation order made under Part 16 of the *Sentencing Act 1995*; or

- (c) the amount to be paid on the forfeiture of a recognizance under section 746A.

(2) This section applies where the Supreme Court or the District Court makes a payment order in connection with a criminal cause or matter.

(3) A court that makes a payment order may also make an order under section 59 of the *Sentencing Act 1995* and for that purpose that section, with any necessary changes, applies as if the money to be paid were a fine imposed on the person.

(4) If a court does not make an order under section 59 of the *Sentencing Act 1995* and if the money is not paid within 28 days after the date of a payment order, the money may be recovered as a judgment debt in a court of competent jurisdiction.

(5) For the purposes of subsection (4), a Registrar of the court may issue a certified copy of a payment order and that copy may be registered as a judgment in a court of competent jurisdiction.

(6) Subsection (4) does not prejudice the recovery of the money by means expressly provided by a written law.

”.

Section 746A repealed a section substituted

25. Section 746A of the Code is repealed and the following section is substituted —

“

Enforcing recognizances

746A. (1) If a person bound by a recognizance to appear before the Supreme Court or the District Court

fails in any condition of the recognizance, that court may, on the application of the prosecution and on the production of the recognizance, order that the recognizance be forfeited and that any person bound by the recognizance (including any surety) pay the amount that he or she is so bound to pay to the Crown.

(2) A court that makes orders under subsection (1) may also make an order under section 59 of the *Sentencing Act 1995* and for that purpose that section, with any necessary changes, applies as if the amount to be paid were a fine imposed on the person concerned.

(3) If a court does not make an order under section 59 of the *Sentencing Act 1995*, the amount to be paid must be paid, and its payment may be enforced, under Part 5 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

(4) Subsection (3) does not prejudice the recovery of the amount as a civil debt due to the Crown.

”.

Other amendments

26. The Code is amended as set out in the Table to this section.

TABLE

s. 11	Delete the second paragraph.
s. 16	Repeal the section.
Ch. IV	Repeal Chapter IV.
s. 467	Repeal the section.

- s. 635 Insert after the third paragraph the following paragraph —
- “ In this section “**trial**” includes proceedings under the *Sentencing Act 1995*. ”.
- s. 656 Repeal the section and substitute the following section —
- “ **Sentence**
656. If a motion to arrest the judgment is not made or is dismissed, the court may sentence and make other orders in respect of the offender under the *Sentencing Act 1995*. ”.
- s. 656A Repeal the section.
- s. 661 Repeal the section.
- s. 662 Repeal the section.
- s. 663 Repeal the section.
- s. 664 Repeal the section.
- s. 665 Repeal the section.
- s. 666 Repeal the section.
- s. 669 Repeal the section.
- s. 679 Repeal the section.
- Ch. LXIX In the heading to Chapter LXIX, delete “:PARDON”.
- s. 688 (1a) Delete paragraph (a) and substitute the following paragraph —
- “ (a) against a sentence of indefinite imprisonment passed under Part 14 of the *Sentencing Act 1995*; ”.
- s. 694 (3) Repeal the subsection.
- s. 695 (2) Repeal the subsection.
- s. 703 Delete the definition of the expression “sentence” and substitute the following definition —
- “ The expression “**sentence**” means a sentence under the *Sentencing Act 1995* and includes —
- (a) any other order under that Act; and

- (b) an order for the forfeiture or disposal of any property or thing. ”.

- s. 705 Repeal the section.
s. 706 Repeal the section.
s. 707 Repeal the section.
s. 716A Repeal the section.
s. 717 Repeal the section.
s. 717A Repeal the section.
s. 718 Repeal the section.
s. 719 Repeal the section.
Schedule 1 Repeal the Schedule.

Transitional provisions

27. (1) In this section, “**commencement**” means the commencement of the *Sentencing Act 1995*.

(2) If immediately before commencement a person is subject to an indeterminate sentence to which section 665 of the Code applies, then on and after commencement that section continues to operate in respect of the person, despite its repeal.

(3) If immediately before commencement a person is subject to a direction under section 666 of the Code, then on and after commencement that section continues to operate in respect of that person, despite its repeal.

(4) If immediately before commencement a person is bound by a recognizance to which section 746A of the Code applies but to which that section as re-enacted by section 24 would not apply on and after commencement, then on and after commencement —

- (a) section 746A (1) of the Code as it was immediately before commencement continues to operate in respect of that person in respect of the recognizance; and
(b) section 746A (2), (3) and (4) as re-enacted apply to and in respect of any order made under section 746A (1) as it was immediately before commencement.

[Note: The Code is also amended by Part 88.]

**PART 21 — CRIMINAL INJURIES COMPENSATION
ACT 1985**

Principal Act

28. In this Part the *Criminal Injuries Compensation Act 1985** is referred to as the principal Act.

[* *Act No. 73 of 1985.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 54 and
Acts Nos. 32 and 73 of 1994.]*

Section 3 amended

29. (1) Section 3 (1) of the principal Act is amended by deleting the definition of “conviction”.

(2) Section 3 of the principal Act is amended by inserting after subsection (1) the following subsection —

“

(1a) For the purposes of this Act a person is convicted of an offence notwithstanding that —

- (a) a spent conviction order is made under section 39 of the *Sentencing Act 1995* in respect of the conviction;
- (b) having been found guilty of the offence, a conviction is not recorded under section 55 of the *Young Offenders Act 1994*;
- (c) having been found guilty of the offence, the indictment or complaint was dismissed under repealed section 669 (1) (a) of *The Criminal Code*;

- (d) having been found guilty of the offence, the charge was dismissed or the person was discharged under repealed section 34 or 34B of the *Child Welfare Act 1947*;
- (e) repealed section 20 of the *Offenders Community Corrections Act 1963* or repealed section 40 or 126A of the *Child Welfare Act 1947* applies to the conviction;
- (f) having been found guilty of the offence, the complaint for the offence was dismissed under repealed section 24 of the *Children's Court of Western Australia Act 1988*.

”.

Section 14 amended

30. Section 14 (4) of the principal Act is amended by deleting “under section 669 (1) (a) of The Criminal Code or section 24 of the *Children's Court of Western Australia Act 1988*” and substituting the following —

“

under a provision referred to in section 3 (1a) (c), (d) or (f)

”.

**PART 22 — CURTIN UNIVERSITY OF TECHNOLOGY
ACT 1966**

Section 20A amended

31. Section 20A (4) of the *Curtin University of Technology Act 1966** is amended by deleting “, notwithstanding anything to the contrary contained in the *Fines and Penalties Appropriation Act 1909* or any other Act,”.

[* *Reprinted as at 24 August 1988.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 54-55
and Act No. 91 of 1994.*]

PART 23 — DENTAL ACT 1939

Consequential amendments

32. The *Dental Act 1939** is amended as set out in the Table to this section.

TABLE

- s. 59 Repeal the section and substitute the following section —
- “ **Proceedings for offences**
- 59.** Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction. ”.
- s. 63 Repeal the section and substitute the following section —
- “ **Fines etc. payable to Board**
- 63.** All fines and penalties imposed for offences against this Act are to be paid to the Board. ”.

[* *Reprint approved 11 January 1979.*
For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 59 and Acts Nos. 32 and 103 of 1994.]

**PART 24 — *DIAMOND (ARGYLE DIAMOND MINES JOINT
VENTURE) AGREEMENT ACT 1981***

Section 27 amended

33. Section 27 of the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981** is amended by deleting “Subject to sections 16 and 17 of *The Criminal Code* and section 45 of the *Interpretation Act 1918*” and substituting the following —

“

Subject to section 17 of *The Criminal Code* and section 11 of the *Sentencing Act 1995*,

”.

[* *Act No. 108 of 1981.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 60.]

PART 25 — *EDITH COWAN UNIVERSITY ACT 1984*

Section 29 amended

34. Section 29 (6) of the *Edith Cowan University Act 1984** is amended by deleting “, notwithstanding anything to the contrary contained in the *Fines and Penalties Appropriation Act 1909* or any other Act,”.

[* *Reprinted as at 16 May 1991.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 64 and Act No. 91 of 1994.]

PART 26 — ELECTORAL ACT 1907

Section 18 amended

35. Section 18 of the *Electoral Act 1907** is amended by deleting paragraph (c) and substituting the following paragraphs —

“

- (b) has been attainted of treason;
- (c) is serving or is yet to serve a sentence or sentences of detention (imposed under the *Young Offenders Act 1994* or the *Child Welfare Act 1947*), or imprisonment, totalling one year or longer;
- (ca) is serving or is yet to serve indefinite imprisonment imposed under Part 14 of the *Sentencing Act 1995*;
- (cb) is subject to an order under section 282 (c) (iii) or (d) (ii), 631, 652, 653 or 693 (4) of *The Criminal Code*;
- (cc) is subject to an order under repealed section 19 (6a) (a), 661 or 662 of *The Criminal Code*;
- (cd) is subject to a direction to be detained in an approved hospital under section 47 (1) of the *Mental Health Act 1962*; or

”.

[* Reprinted as at 1 January 1989.
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 66-7 and
Act No. 32 of 1994.]

[Note: The above Act is also amended by Part 88.]

PART 27 — *ELECTRICITY ACT 1945*

Section 45 amended

36. Section 45 of the *Electricity Act 1945** is amended by deleting “summarily before any two justices, and the justices dealing with the matter shall assess and determine the sum payable and the provisions of the Justices Act 1902-1942, shall apply in relation to any such assessment and the enforcement of the payment of the amount thereof.” and substituting the following —

“ in a court of petty sessions. ”.

[* *Reprint approved 26 June 1984.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 68 and
Act No. 89 of 1994.]*

**PART 28 — *ENERGY CORPORATIONS (POWERS)*
*ACT 1979***

Section 57 amended

37. Section 57 (7) of the *Energy Corporations (Powers) Act 1979** is amended by deleting “section 11 of *The Criminal Code*.” and substituting the following —

“ any other enactment. ”.

[* *Reprinted as at 21 May 1987.*
(Previously State Energy Commission Act 1979.)
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 199 and
Acts Nos. 60, 84 and 89 of 1994.]

PART 29 — FAIR TRADING ACT 1987

Section 73 amended

38. Section 73 (9) of the *Fair Trading Act 1987** is repealed and the following subsection is substituted —

“

(9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (7), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

[* *Act No. 108 of 1987.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 73 and Act No. 32 of 1994.]

PART 30 — FAMILY COURT ACT 1975

Section 73B amended

39. Section 73B (2) of the *Family Court Act 1975** is amended by deleting “section 719 of The Criminal Code, ordered the first-mentioned person to make reparation to the Commonwealth or the State Government, to the Commonwealth or State instrumentality or to that other person,” and substituting the following —

“

Part 16 of the *Sentencing Act 1995* made a reparation order against the first-mentioned person in favour of the Commonwealth or the State Government, the Commonwealth or State instrumentality or that other person,

”.

[* *Reprinted as at 1 March 1988.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 74 and Act No. 32 of 1994.]

[*Note: The above Act is also amended by Part 88.*]

**PART 31 — *FINES, PENALTIES AND INFRINGEMENT*
*NOTICES ENFORCEMENT ACT 1994***

Principal Act

40. In this Part the *Fines, Penalties and Infringement Notices Enforcement Act 1994** is referred to as the principal Act.

[* *Act No. 93 of 1994.*]

Section 28 amended

41. Section 28 (1) of the principal Act is amended by deleting the definitions of “community corrections centre”, “community corrections programme” and “community corrections officer” and inserting the following definitions —

“
 “community corrections activities” has the same definition as in the *Sentence Administration Act 1995*;
 “community corrections centre” has the same definition as in the *Sentence Administration Act 1995*;
 “community corrections officer” (“CCO”) has the same definition as in the *Sentence Administration Act 1995*;
”.

Sections 49 and 50 repealed and sections substituted

42. Sections 49 and 50 of the principal Act are repealed and the following sections are substituted —

“
 WDO: nature of
49. A WDO is an order that the offender must comply with —
 (a) section 76 of the *Sentence Administration Act 1995*; and
 (b) the primary requirements in section 50.

WDO: primary requirements

50. (1) The primary requirements of a WDO are that the offender —

- (a) must do community corrections activities for a number of hours specified in the WDO (the “**required hours**”);
- (b) in each period of 7 days must do the prescribed number of the required hours;
- (c) must not leave the State without the prior written permission of the supervisor of a community corrections centre; and
- (d) must notify a CCO of any change of address or employment within 2 clear working days after the change.

(2) The required hours in a WDO are to be calculated under the regulations by reference to the amount owed; but must be at least 6 hours.

(3) The required hours in a WDO are cumulative on —

- (a) the required hours in any other WDO;
- (b) any hours of community work that the offender is required to do under a community service requirement in a community order imposed under the *Sentencing Act 1995*; and
- (c) any hours of community corrections activities that the offender is required to do under the *Sentence Administration Act 1995*.

”.

Sections 56, 57 and 58 repealed and sections substituted

43. Sections 56, 57 and 58 of the principal Act are repealed and the following sections are substituted —

“

Amounts payable by defendants and offenders

56. In respect of the payment of, or the enforcement of the payment of —

- (a) any amount of a bail undertaking that is ordered to be forfeited to the Crown under section 57 of the *Bail Act 1982*;
- (b) the amount of a recognizance entered into by a person convicted of an offence that is ordered to be forfeited to the Crown under section 746A of *The Criminal Code* or section 154A of the *Justices Act 1902* or any other law; or
- (c) an amount that is ordered to be paid to the Crown by an offender, under section 52 (2) of the *Sentencing Act 1995*,

Part 4, with any necessary changes, applies in respect of the payment of, and the enforcement of the payment of, the amount as if the amount were a fine imposed on the person liable to pay the amount.

Amounts payable by sureties

57. In respect of the payment of, or the enforcement of the payment of —

- (a) any amount of a surety undertaking that is ordered to be forfeited to the Crown under section 49 of the *Bail Act 1982*;

- (b) the amount of a recognizance entered into by a person as a surety for a person charged with or convicted of an offence that is ordered to be forfeited to the Crown; or
- (c) an amount that is ordered to be paid to the Crown by a surety under section 52 (2) of the *Sentencing Act 1995*,

Part 4 (other than sections 46 to 53), with any necessary changes, applies in respect of the payment of, and the enforcement of the payment of, the amount as if the amount were a fine imposed on the surety.

Amounts payable by witnesses

58. If the amount of a recognizance entered into by a person for the purpose of securing his or her attendance as a witness in criminal proceedings is ordered to be forfeited, Part 4, with any necessary changes, applies in respect of the payment of, and the enforcement of the payment of, the amount as if the amount were a fine imposed on the person.

”.

Other amendments

44. The principal Act is amended as set out in the Table to this section.

TABLE

s. 27 (1) Repeal the subsection and substitute the following subsection —

“ (1) A modified penalty received by the Registrar is to be dealt with —

- (a) in accordance with section 60 of the *Sentencing Act 1995* as if it were a fine; or

- (b) if the principal enactment under which the infringement notice was issued provides otherwise, in accordance with the principal enactment. ”.
- s. 29 (1) Delete paragraph (a) and substitute the following paragraph —
- “ (a) a fine in respect of which an order is made under section 58 or 59 of the *Sentencing Act 1995*; ”.
- s. 31 Delete paragraph (a) and substitute the following paragraph —
- “ (a) to a fine that under section 60 of the *Sentencing Act 1995*, or any other written law, is to be credited to the Consolidated Fund or that under section 56 of that Act is ordered to be paid to a person who has been assaulted; and ”.
- s. 39 (2) Repeal the subsection and substitute the following subsection —
- “ (2) In subsection (1) “**prosecuting authority**” means —
- (a) if the fine was imposed under an Act of the State — the person that is to be paid the fine, or that administers the fund that is to be credited with the fine, under section 60 (2) or (3) of the *Sentencing Act 1995*;
- (b) if the fine was imposed under a law of the Commonwealth — a person that administers proceedings in relation to offences under that law. ”.
- s. 55 (1) Repeal the subsection and substitute the following subsection —
- “ (1) A fine received by the Registrar is to be dealt with in accordance with section 60 of the *Sentencing Act 1995*. ”.
- s. 100 Repeal the section.

PART 32 — *FINES AND PENALTIES APPROPRIATION*
ACT 1909

Act repealed

45. The *Fines and Penalties Appropriation Act 1909* is repealed.

PART 33 — FIREARMS ACT 1973

Section 27 repealed

46. Section 27 of the *Firearms Act 1973** is repealed.

[* *Reprint approved 22 April 1983.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 77 and
Acts Nos. 73 and 90 of 1994.]

PART 34 — *FISH RESOURCES MANAGEMENT ACT 1994*

Section 232 amended

47. Section 232 (2) of the *Fish Resources Management Act 1994** is repealed and the following subsection is substituted —

“

(2) An amount paid as a modified penalty is, subject to section 231 (2), to be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

[* *Act No. 53 of 1994.*]

**PART 35 — *THE FREMANTLE GAS AND COKE
COMPANY'S ACT 1886***

Section 53 repealed and a section substituted

48. Section 53 of *The Fremantle Gas and Coke Company's Act 1886** is repealed and the following section is substituted —

“

Application of other penalties

53. A penalty imposed or recovered under this Act shall be paid to the local authority unless this Act provides otherwise.

”.

[* *Act No. 34 of 50 Vict.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 82-3.*]

PART 36 — FRIENDLY SOCIETIES ACT 1894

Section 28 amended

49. Section 28 of the *Friendly Societies Act 1894** is amended by deleting paragraph (3) and substituting the following paragraph —

“

- (3) Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

”.

[* *Reprint authorized 5 August 1974.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 84-85.*]

[*Note: The above Act is also amended by Part 88.*]

PART 37 — *FRUIT GROWING INDUSTRY (TRUST FUND)*
ACT 1941

Section 15 amended

50. Section 15 (3) of the *Fruit Growing Industry (Trust Fund) Act 1941** is amended by deleting “, notwithstanding the Fines and Penalties Appropriation Act, 1909,”.

[* *Reprint approved 8 January 1970.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 85.]

PART 38 — GOVERNMENT RAILWAYS ACT 1904

Section 53A amended

51. Section 53A (9) of the *Government Railways Act 1904** is repealed and the following subsection is substituted —

“

(9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (8), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

[* *Reprint approved 27 October 1982.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 91-2 and Acts Nos. 32 and 64 of 1994.]

[*Note: The above Act is also amended by Part 88.*]

**PART 39 — HERITAGE OF WESTERN AUSTRALIA
ACT 1990**

Section 70 amended

52. Section 70 (9) of the *Heritage of Western Australia Act 1990** is repealed and the following subsection is substituted —

“

(9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (7), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

[* *Act No. 103 of 1990.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 97 and Acts Nos. 32 and 84 of 1994.]

PART 40 — INDUSTRIAL RELATIONS ACT 1979

Section 96F amended

53. Section 96F (1) of the *Industrial Relations Act 1979** is amended by deleting “the *Justices Act 1902*, *The Criminal Code* and the *Offenders Community Corrections Act 1963*.” and substituting the following —

“ the *Sentencing Act 1995* or any other Act. ”.

[* *Reprinted as at 11 May 1994.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 103 and
Acts Nos. 32, 83, 92 and 103 of 1994.*]

PART 41 — INTERPRETATION ACT 1984

Principal Act

54. In this Part the *Interpretation Act 1984** is referred to as the principal Act.

[* *Reprinted as at 4 November 1992.
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 104-5
and Acts Nos. 32, 73, 85 and 92 of 1994.*]

Section 72 repealed and a section substituted

55. Section 72 of the principal Act is repealed and the following section is substituted —

“

Statutory penalties

- 72.** (1) Where in an Act a penalty —
- (a) is specified without qualification at the foot of a section of the Act;
 - (b) is specified at the foot of a subsection of a section of the Act, but not at the foot of the section; or
 - (c) is specified at the foot of a section of the Act and expressed to apply to a specified subsection or specified subsections of the section,

then, unless the contrary is expressly provided, a contravention of the section or subsection, or, as the case may be, of any of the subsections, is an offence

the penalty on conviction for which is the penalty specified.

(2) Where in an Act a penalty is specified as described in subsection (1) in respect of a section or subsection that expressly creates an offence, the penalty for that offence on conviction is the penalty specified.

(3) Subsections (1) and (2) apply to regulations, rules and by-laws subject to necessary modification.

”.

Other amendments

56. The principal Act is amended as set out in the Table to this section.

TABLE

- | | |
|-----------|---|
| s. 37 (1) | In paragraph (e), after “ <i>Code</i> ” insert the following —
“ and section 10 of the <i>Sentencing Act 1995</i> ”. |
| s. 68 | Repeal the section. |
| s. 69 (3) | Repeal the subsection. |
| s. 70 | Repeal the section. |

PART 42 — JURIES ACT 1957

Consequential amendments

57. The *Juries Act 1957** is amended as set out in the Table to this section.

TABLE

- s. 5 In paragraph (b) (i) (II), after “section” insert the following —
“ 282 or ”.
- Delete paragraph (b) (ii) (III) and substitute the following item —
“ (III) been the subject of a probation order, a community order (as defined in the *Sentencing Act 1995*), or an order having a similar effect, made by any court; ”.
- s. 56 (1) Delete “why execution should not issue for the fine.” and substitute the following —
“ why payment of the fine should not be enforced. ”.
- s. 59 Repeal the section and substitute the following section —
“ **Enforcement of fines**
59. (1) A fine imposed under this Act is to be paid, and its payment may be enforced, under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* as if the fine were a fine imposed for an offence.
(2) For the purposes of section 32 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, a fine imposed under this Act is taken to be imposed on the day specified in the summons issued under section 56 (1), or on the day when an order is made under section 56 (3), whichever is the later.
(3) A fine imposed under this Act is to be credited to the Consolidated Fund.

2nd In clause 2 of Part I, delete paragraph (m) and substitute
Schedule the following paragraph —

- “ (m) Member of the Parole Board or honorary
 community corrections officer under the
 Sentence Administration Act 1995. ”.

[* *Reprinted as at 2 December 1987.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 109 and
Acts Nos. 73 and 104 of 1994.]*

PART 43 — JUSTICES ACT 1902

Principal Act

58. In this Part the *Justices Act 1902** is referred to as the principal Act.

[* *Reprinted as at 1 April 1992.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 110-11
and Acts Nos. 73, 77, 82 and 92 of 1994.]

Section 154A repealed and a section substituted

59. Section 154A of the principal Act is repealed and the following section is substituted —

“

Enforcing recognizances

154A. (1) If a person bound by —

- (a) a recognizance to appear before a court of petty sessions;
- (b) a recognizance entered into pursuant to an order made under a written law by a magistrate or a justice; or
- (c) a recognizance entered into in respect of any matter cognizable by a court of summary jurisdiction,

fails in any condition of the recognizance, justices may, on the application of the Crown and on the production of the recognizance, order that the recognizance be forfeited and that any person bound by the recognizance (including any surety) pay the amount that he or she is so bound to pay to the Crown.

(2) The amount to be paid must be paid, and its payment may be enforced, under Part 5 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

(3) Subsection (2) does not prejudice the recovery of the amount as a civil debt due to the Crown.

”.

Section 155 repealed and a section substituted

60. Section 155 of the principal Act is repealed and the following section is substituted —

“

Enforcing the payment of money, other than fines etc.

155. (1) In this section —

“**payment order**” means an order requiring a person to pay money, other than —

- (a) a fine as defined in section 28 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;
- (b) compensation to be paid under a compensation order made under Part 16 of the *Sentencing Act 1995*; or
- (c) the sum to be paid on the forfeiture of a recognizance under section 154A.

(2) This section applies where justices make a payment order.

(3) If the money is not paid within 28 days after the date of a payment order, the money may be recovered as a judgment debt in a court of competent jurisdiction.

(4) For the purposes of subsection (3), a clerk of petty sessions may issue a certified copy of a payment order and that copy may be registered as a judgment in a court of competent jurisdiction.

(5) Subsection (3) does not prejudice the recovery of the money by means expressly provided by a written law.

”.

Other amendments

61. The principal Act is amended as set out in the Table to this section.

TABLE

- | | |
|------------|--|
| s. 4 | In paragraph (e) of the definition of “decision”, delete “penalty” and substitute the following —

“ sentence ”. |
| s. 56A (4) | Repeal the subsection and substitute the following subsection —

“ (4) The justices hearing the complaint to which the summons relates may accept as proof of service a certificate of the officer or any person referred to in subsection (3) (a) or (b) of the due posting by him of the summons in accordance with this section. ”. |
| s. 135 (1) | Delete “but shall not impose a sentence of imprisonment until the defendant is before them, in person, for which purpose they may issue their warrant”. |
| s. 135 (2) | Delete “; and” after paragraph (a) and substitute a full stop.

Delete paragraph (b). |
| s. 136 (5) | Delete “; and” after paragraph (b) (ii) and substitute a full stop.

Delete paragraph (c). |
| s. 145 | Repeal the section. |
| s. 146 (2) | Delete “section 150A.” and substitute the following —

“ the <i>Sentencing Act 1995</i> . ”. |

- s. 149 Repeal the section and the heading “*Imprisonment*” before it.
- s. 150 Repeal the section and substitute the following section —
- “ **Sentence**
150. If justices convict a person, whether after a plea of guilty or otherwise, the justices may sentence and make other orders in respect of the offender under the *Sentencing Act 1995*. ”.
- s. 150A Repeal the section.
- s. 166 Repeal the section and the heading “*Punishment*” before it.
- s. 166A Repeal the section.
- s. 166B Repeal the section.
- s. 170 Repeal the section and the heading “*Remissions*” before it.
- s. 171 Repeal the section.
- s. 172 (2) Delete “or” after paragraph (a).
- Delete the full stop after paragraph (b) and substitute the following —
- “ ; or ”.
- After paragraph (b) insert the following paragraph —
- “ (c) subject to Part 17 of the *Sentencing Act 1995*, by a court sentencing an offender. ”.
- s. 186 (1) Delete “penalty” and substitute the following —
- (a) (iii) “ sentence ”.
- s. 193 (1) Delete “penalty” and substitute the following —
- “ sentence ”.
- s. 193 (5) Repeal the subsection.

- s. 194 (3) In paragraph (a), after “*Road Traffic Act 1974*” insert the following —
“ , or under Part 15 of the *Sentencing Act 1995*, ”.
- s. 194 (4) Repeal the subsection and substitute the following subsection —
“ (4) Subject to subsection (5) and section 101B of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, any sentence imposed, or any other order made, under the *Sentencing Act 1995*, the *Young Offenders Act 1994*, or any other law, is suspended until the appeal is disposed of. ”.
- s. 194 (5) Repeal the subsection and substitute the following subsection —
“ (5) Subsection (4) does not apply to —
(a) a sentence of imprisonment, whether or not it is suspended under Part 11 or subject to a direction under Part 12, or whether or not it is indefinite imprisonment imposed under Part 14, of the *Sentencing Act 1995*;
(b) a sentence of detention under the *Young Offenders Act 1994*; and
(c) an order of forfeiture. ”.

Transitional provisions

62. (1) In this section “**commencement**” means the commencement of the *Sentencing Act 1995*.

(2) If immediately before commencement a person is bound by a recognizance to which section 154A of the principal Act applies but to which that section as re-enacted by section 53 would not apply on and after commencement, then on and after commencement section 154A of the principal Act as it was immediately before commencement continues to apply to that person in respect of the recognizance.

PART 44 — LAND BOUNDARIES ACT 1841

Section 9 repealed

63. Section 9 of the *Land Boundaries Act 1841** is repealed.

[* *Act No. 20 of 4 & 5 Vict.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 114.]*

PART 45 — *LICENSED SURVEYORS ACT 1909*

Section 30 repealed and a section substituted

64. Section 30 of the *Licensed Surveyors Act 1909** is repealed and the following section is substituted —

“

Proceedings for offences

30. Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

”.

[* *Reprint approved 1 September 1975.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 120 and
Act No. 32 of 1994.]

PART 46 — LIQUID PETROLEUM GAS ACT 1956

Section 6 amended

65. Section 6 (4) of the *Liquid Petroleum Gas Act 1956** is amended by deleting “section eleven of the Criminal Code.” and substituting the following —

“ any other enactment. ”.

[* *Act No. 58 of 1956.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 121 and Act No. 89 of 1994.]

PART 47 — LIQUOR LICENSING ACT 1988

Section 167 amended

66. Section 167 (8) of the *Liquor Licensing Act 1988** is repealed and the following subsection is substituted —

“

(8) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (6), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

[* *Act No. 54 of 1988.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 121 and Acts Nos. 32, 73 and 92 of 1994.]

PART 48 — *LITTER ACT 1979*

Section 4 amended

67. Section 4 (3) of the *Litter Act 1979** is repealed and the following subsection is substituted —

“

(3) Nothing in this section affects the operation of section 11 of the *Sentencing Act 1995*.

”.

[* *Reprint approved 20 July 1983.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 122 and
Acts Nos. 32 and 92 of 1994.*]

PART 49 — LOCAL GOVERNMENT ACT 1960

Consequential amendments

68. The *Local Government Act 1960** is amended as set out in the Table to this section.

TABLE

- s. 399 (3) In paragraph (b) delete “and it is not competent or convenient to the council to enforce payment of the amount under the Justices Act 1902,”.
- s. 523 (1) In paragraph (g), delete “, excepting so much as is by Act made payable to an informer”.
- s. 672 Repeal the section and substitute the following section —
- “ **Proceedings for offences**
- 672.** Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction. ”.

[* *Reprint approved 24 June 1983.*
For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 123-5 and Acts Nos. 40 of 1993 and 6, 27, 60, 69, 70, 73, 84, 89 and 92 of 1994.]

[*Note: The above Act is also amended by Part 88.*]

PART 50 — MARINE AND HARBOURS ACT 1981

Section 18A amended

69. Section 18A (9) of the *Marine and Harbours Act 1981** is repealed and the following subsection is substituted —

“

(9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (8), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

[* *Act No. 21 of 1981.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 128 and Acts Nos. 32 and 78 of 1994.]

**PART 51 — *METROPOLITAN (PERTH) PASSENGER
TRANSPORT TRUST ACT 1957***

Section 78B amended

70. Section 78B (5) of the *Metropolitan (Perth) Passenger Transport Trust Act 1957** is repealed and the following subsection is substituted —

“

(5) The amount of any prescribed penalty paid pursuant to an infringement notice shall, subject to subsection (3), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

[* *Reprint approved 3 March 1975.*
For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 134 and Acts Nos. 32, 64 and 73 of 1994.]

**PART 52 — METROPOLITAN WATER SUPPLY,
SEWERAGE, AND DRAINAGE ACT 1909**

Principal Act

71. In this Part the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909** is referred to as the principal Act.

[* *Reprint approved 13 December 1977.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 135-7.]

Section 147A amended

72. Section 147A (5) of the principal Act is amended by deleting “the provisions of section eleven of The Criminal Code.” and substituting the following —

“ any other enactment. ”.

Section 159 repealed and a section substituted

73. Section 159 of the principal Act is repealed and the following section is substituted —

“

Proceedings for offences etc.

159. (1) Proceedings for an offence against this Act or the *Metropolitan Water Authority Act 1982* may be taken by the Authority or an officer of the Authority or a person authorized in that behalf pursuant to a delegation or authorization given by the Authority.

(2) Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

(3) Any penalty or forfeiture incurred under this Act may be recovered in a court of summary jurisdiction on the complaint of the Authority or an officer of the Authority or a person authorized in that behalf pursuant to a delegation or authorization given by the Authority.

”.

**PART 53 — *MOTOR VEHICLE (THIRD PARTY
INSURANCE) ACT 1943***

Section 18 amended

74. Section 18 (3) of the *Motor Vehicle (Third Party Insurance) Act 1943** is repealed and the following subsection is substituted —

“

(3) This section is supplementary to section 105 of the *Sentencing Act 1995*.

”.

[* Reprinted as at 11 March 1992.

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 142-3 and Acts Nos. 13 and 17 of 1994.]

PART 54 — MURDOCH UNIVERSITY ACT 1973

Section 24 amended

75. Section 24 (9) of the *Murdoch University Act 1973** is amended by deleting “, notwithstanding anything to the contrary contained in the Fines and Penalties Appropriation Act 1909, or any other Act,”.

[* *Act No. 20 of 1973.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 144 and Act No. 91 of 1994.]

**PART 55 — OCCUPATIONAL SAFETY AND HEALTH
ACT 1984**

Section 54AA inserted

76. The *Occupational Safety and Health Act 1984** is amended by inserting after section 54 the following section —

“

Penalties for bodies corporate

54AA. Despite section 40 (5) of the *Sentencing Act 1995*, the penalty for a body corporate convicted of an offence under this Act is the penalty provided by this Act.

”.

[* Reprinted as at 23 January 1989.
For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 150 and
Act No. 30 of 1995.]

**PART 56 — OFFENDERS COMMUNITY CORRECTIONS
ACT 1963**

Division 1 — Repeal

Act repealed

77. The *Offenders Community Corrections Act 1963* is repealed.

Division 2 — Transitional provisions

Interpretation

78. (1) In this Division —

“**commencement**” means the commencement of the
Sentencing Act 1995;

“**repealed Act**” means the *Offenders Community
Corrections Act 1963*.

(2) For the purposes of this Division a person is in custody even if at the relevant time he or she is at large or if under Part VIII of the *Prisons Act 1981* he or she is absent from a prison.

Probation orders (repealed Act Part II)

79. (1) If immediately before commencement a person is subject to a probation order made under Part II of the repealed Act, then on and after commencement —

- (a) the order remains in force subject to that Part; and
- (b) that Part continues to operate in respect of the person and the order.

(2) The repeal of the repealed Act does not affect the operation of the repealed Act, and in particular section 12 of it, in respect of a probation order made under the repealed Act the probation period of which elapsed before commencement.

(3) If on or after commencement a court is dealing with a person under section 16 (3) (b) or (6) of the repealed Act for the offence in respect of which the probation order was made, the court is to impose a sentence under the *Sentencing Act 1995* or the *Young Offenders Act 1994* (as the case requires).

(4) If on or after commencement a court is dealing with a person under section 17 (6), (7) or (8) of the repealed Act for the offence for which the probation order was made, the court is to impose a sentence under the *Sentencing Act 1995* or the *Young Offenders Act 1994* (as the case requires).

Community service orders (repealed Act Part IIA)

80. (1) If immediately before commencement a person is subject to a community service order made under Part IIA of the repealed Act, then on and after commencement —

- (a) the order remains in force subject to that Part;
- (b) that Part continues to operate in respect of the person and the order.

(2) If on or after commencement a court is dealing with a person under section 20H (4) (c) or (8) or 20K (2) (a) or (4) of the repealed Act for the offence in respect of which the community service order was made, the court is to impose a sentence under the *Sentencing Act 1995* or the *Young Offenders Act 1994* (as the case requires).

Young adult detention (repealed Act Part IIB)

81. If immediately before commencement an offender is subject to a direction under section 20SB of the repealed Act, then on and after commencement Part 12 of the *Sentencing Act 1995* applies to the offender as if the direction had been made under section 83 of that Act.

Imprisonment without parole eligibility

82. If immediately before commencement a person is in custody and subject to a sentence of imprisonment in respect of which neither an order under section 37A (1) of the repealed Act was made nor a minimum term (as defined in section 4 of the repealed Act) was fixed, then on and after commencement —

- (a) for the purposes of Part 13 of the *Sentencing Act 1995*, the term of imprisonment imposed is to be treated as if it were a fixed term that is neither a prescribed term nor a parole term under that Part, except that for the purposes of calculating when the person is to be released under section 95 of that Act, any loss of remission ordered under the *Prisons Act 1981* before commencement is to be disregarded; and
- (b) the *Sentencing Act 1995* and the *Sentence Administration Act 1995* otherwise apply accordingly.

Imprisonment with minimum term

83. If immediately before commencement a person is in custody and subject to a sentence of imprisonment in respect of which a minimum term (as defined in section 4 of the repealed Act) was fixed, then on and after commencement the repealed Act, and in particular sections 34, 37, 38, 39 and 40 of it, continue to operate in respect of that sentence, but —

- (a) any release of the person on parole in accordance with the repealed Act is to be by means of a parole order made under Division 6 of Part 3 of the *Sentence Administration Act 1995*;
- (b) the parole period for the parole order is that provided by section 41 of the repealed Act; and
- (c) Divisions 6, 7 and 8 of Part 3 and Parts 4 to 11 of the *Sentence Administration Act 1995* apply to and in respect of the person and the parole order.

Imprisonment with parole eligibility

84. If immediately before commencement a person is in custody and subject to a sentence of imprisonment in respect of which an order was made under section 37A (1) of the repealed Act, then on and after commencement —

- (a) for the purposes of Part 13 of the *Sentencing Act 1995*, the term of imprisonment imposed is to be treated as if it were a parole term under that Part except that for the purposes of calculating the date when the person is eligible for parole under section 93 of the *Sentencing Act 1995*, any loss of remission ordered under the *Prisons Act 1981* before commencement is to be disregarded; and
- (b) the *Sentencing Act 1995* and the *Sentence Administration Act 1995* otherwise apply accordingly.

Special terms (repealed Act s. 40B)

85. (1) If immediately before commencement a person is subject to a sentence of imprisonment and the term imposed is a special term as defined in section 40B of the repealed Act, then on and after commencement the term is a special term for the purposes of section 19 of the *Sentence Administration Act 1995*.

(2) If immediately before commencement a person is subject to a sentence of imprisonment and the term imposed is not a special term as defined in section 40B of the repealed Act, then on and after commencement the term is not a special term for the purposes of section 19 of the *Sentence Administration Act 1995*.

Life imprisonment

86. If immediately before commencement a person is in custody and subject to a sentence of life imprisonment, then on and after

commencement the repealed Act, and in particular sections 34 and 40D of it, continue to operate in respect of the person and the sentence, but —

- (a) any release of the person on parole in accordance with the repealed Act is to be by means of a parole order made by the Governor under Division 6 of Part 3 of the *Sentence Administration Act 1995*;
- (b) the parole period for the parole order is that provided by section 23 (3) of the *Sentence Administration Act 1995*; and
- (c) Divisions 6, 7 and 8 of Part 3 and Parts 4 to 11 of the *Sentence Administration Act 1995* apply to and in respect of the person and the parole order.

Strict security life imprisonment

87. If immediately before commencement a person is in custody and subject to a sentence of strict security life imprisonment, then on and after commencement the repealed Act, and in particular sections 34 and 40D of it, continue to operate in respect of the person and the sentence, but —

- (a) any release of the person on parole in accordance with the repealed Act is to be by means of a parole order made by the Governor under Division 6 of Part 3 of the *Sentence Administration Act 1995*;
- (b) the parole period for the parole order is that provided by section 24 (3) of the *Sentence Administration Act 1995*; and
- (c) Divisions 6, 7 and 8 of Part 3 and Parts 4 to 11 of the *Sentence Administration Act 1995* apply to and in respect of the person and the parole order.

Detention under Criminal Code, s. 19 (6a) (a)

88. (1) If immediately before commencement a person is in custody and subject to an order made under section 19 (6a) (a) of *The Criminal Code*, then on and after commencement and for the purposes of the *Sentence Administration Act 1995* —

- (a) the person is to be treated as if he or she were a person in strict or safe custody by virtue of an order made under section 282 of *The Criminal Code*; and
- (b) the *Sentence Administration Act 1995* applies accordingly.

(2) If immediately before commencement an order of the Governor containing conditions under section 34AA of the *Offenders Probation and Parole Act 1963** is in effect in respect of a person in respect of whom an order was made under section 19 (6a) (a) of *The Criminal Code*, then on and after commencement —

- (a) section 34AA continues to operate in respect of that person; but
- (b) if under that section the person is returned to custody, subsection (1) applies to the person.

[* The short title of this Act was changed to the *Offenders Community Corrections Act 1963* after section 34AA was repealed.]

Detention under Criminal Code, s. 653 or 693 (4)

89. (1) If immediately before commencement a person is in custody and subject to an order made under section 653 or 693 (4) of *The Criminal Code*, then on and after commencement the *Sentence Administration Act 1995* applies to and in respect of the person.

(2) If immediately before commencement an order of the Governor containing conditions under section 34A of the repealed Act is in effect in respect of a person to whom that section applies, then on and after commencement —

- (a) that section continues to operate in respect of that person; but
- (b) if under that section the person is returned to custody, subsection (1) applies to the person.

Detention under Criminal Code, s. 282 etc.

90. (1) If immediately before commencement a person is in custody and subject to an order made under a section of *The Criminal Code* referred to in section 34AB (3) of the repealed Act, then on and after commencement and for the purposes of the *Sentence Administration Act 1995* —

- (a) the person is to be treated as if he or she were a person in strict or safe custody by virtue of an order made under section 282 of *The Criminal Code*; and
- (b) the *Sentence Administration Act 1995* applies accordingly.

(2) If immediately before commencement an order of the Governor under section 34AB of the repealed Act is in effect in respect of a person to whom that section applies, then on and after commencement —

- (a) that section continues to operate in respect of that person; but
- (b) if under that section the person is returned to custody, subsection (1) applies to the person.

Indeterminate sentence under Criminal Code, s. 661 or 662

91. (1) If immediately before commencement a person is in custody and subject to a direction or sentence under section 661 or 662 of *The Criminal Code*, then on and after commencement the repealed Act, and in particular sections 34 and 40C of it, continue to operate in respect of the person and the direction or sentence, but —

- (a) any release of the person on parole in accordance with the repealed Act is to be by means of a parole order made by the Governor under Division 6 of Part 3 of the *Sentence Administration Act 1995*;
- (b) the parole period for the parole order is that provided by section 25 (5) of the *Sentence Administration Act 1995*; and
- (c) Divisions 6, 7 and 8 of Part 3 and Parts 4 to 11 of the *Sentence Administration Act 1995* apply to and in respect of the person and the parole order.

(2) Subsection (1) does not affect the operation of section 665 of *The Criminal Code*.

(3) If immediately before commencement a parole order is in effect in respect of a person subject to a direction or sentence under section 661 or 662 of *The Criminal Code*, then if, on or after commencement, the person is returned to custody, subsection (1) applies to the person.

Parole orders

92. (1) The repeal of the repealed Act does not affect the operation of the repealed Act, and in particular sections 43 and 44 of it, in respect of a parole order made under the repealed Act the parole period of which elapsed before commencement.

(2) Subject to subsection (3), if immediately before commencement a parole order made under the repealed Act that has not been suspended or cancelled under that Act is in effect in respect of a person, then on and after commencement the parole order is to be treated as if it had been made under the *Sentence Administration Act 1995*.

(3) If the cancellation under section 70 of the *Sentence Administration Act 1995* of a parole order in respect of a person to whom subsection (2) applies occurs on or after commencement, but under section 73 (4) of that Act the day when the parole order is cancelled was before commencement, then despite section 73 of that Act section 44 (4a) and (4b) of the repealed Act continue to operate in respect of the term.

Home detention orders

93. (1) The repeal of the repealed Act does not affect the operation of the repealed Act, and in particular sections 50F and 50G of it, in respect of a home detention order made under the repealed Act which had ceased to be current before commencement.

(2) Subject to subsection (3), if immediately before commencement a home detention order made under the repealed Act that has not been suspended or cancelled under that Act is in effect in respect of a person, then on and after commencement the home detention order is to be treated as if it had been made under the *Sentence Administration Act 1995*.

(3) If the cancellation under section 70 of the *Sentence Administration Act 1995* of a home detention order in respect of a person to whom subsection (2) applies occurs on or after commencement, but under section 73 (4) of that Act the day when the home detention order is cancelled was before commencement, then section 72 (1) and (2) of that Act do not apply.

Work release orders

94. (1) The repeal of the repealed Act does not affect the operation of the repealed Act, and in particular sections 50Y and 50ZE of it, in respect of a work release order made under the repealed Act which had ceased to be current before commencement.

(2) Subject to subsection (3), if immediately before commencement a work release order made under the repealed Act that has not been suspended or cancelled under that Act is in effect in respect of a person, then on and after commencement the work release order is to be treated as if it had been made under the *Sentence Administration Act 1995*.

(3) If the cancellation under section 70 of the *Sentence Administration Act 1995* of a work release order in respect of a person to whom subsection (2) applies occurs on or after commencement, but under section 73 (4) of that Act the day when the work release order is cancelled was before commencement, then despite section 73 of that Act section 50ZE (2) and (3) of the repealed Act continue to operate in respect of the term.

Warrants in force at commencement

95. A warrant issued under the repealed Act and in force immediately before commencement remains in force despite the repeal of the repealed Act.

**PART 57 — OFFICIAL PROSECUTIONS (DEFENDANTS'
COSTS) ACT 1973**

Section 6 amended

96. Section 6 of the *Official Prosecutions (Defendants' Costs) Act 1973** is amended by deleting paragraph (a) and substituting the following paragraph —

“

- (a) the Court, having found the defendant guilty, disposes of the charge without recording a conviction;

”.

[* *Reprinted as approved 23 May 1983.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 149.]

PART 58 — OPTOMETRISTS ACT 1940

Section 45 repealed and a section substituted

97. Section 45 of the *Optometrists Act 1940** is repealed and the following section is substituted —

“

Proceedings for offences

45. Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

”.

[* *Reprint approved 8 May 1980.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 150.*]

PART 59 — *PARKS AND RESERVES ACT 1895*

Section 8 amended

98. Section 8 (3) of the *Parks and Reserves Act 1895** is amended by deleting “, except such portion thereof as may go to the use of the informer or prosecutor,”.

[* *Reprint approved 31 January 1979.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 152 and
Act No. 73 of 1994.]

PART 60 — PAROLE ORDERS (TRANSFER) ACT 1984

Principal Act

99. In this Part the *Parole Orders (Transfer) Act 1984** is referred to as the principal Act.

[* *Act No. 45 of 1984.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 155 and
Act No. 32 of 1994.]*

Section 9 amended

100. (1) Section 9 (8) of the principal Act is repealed and the following subsection is substituted —

“

(8) The period to be served under subsection (7)
(c) shall be reduced by the period beginning on the day
on which the parole order was registered under this
Act and ending —

- (a) where the parole order was cancelled under
section 37 of the *Sentence Administration
Act 1995* — on the day on which the
cancellation took effect; or
- (b) where the parole order was cancelled by
operation of section 70 of the *Sentence
Administration Act 1995* —
 - (i) on the day on which the offence that
brought about the cancellation
occurred; or
 - (ii) where the chief executive officer
under that Act cannot ascertain the

day referred to in subparagraph (i),
on the latest day on which the offence
that brought about the cancellation
could have occurred.

”.

(2) Section 9 (10) of the principal Act is amended by deleting
“one-half ” and substituting —

“ the whole ”.

Other amendments

101. The principal Act is amended as set out in the Table to
this section.

TABLE

- | | |
|----------|--|
| s. 3 | In the definition of “Parole Board” delete “ <i>Offenders Probation and Parole Act 1963</i> ” and substitute the following —

“ <i>Sentence Administration Act 1995</i> ”.

In the definition of “parole order” delete “ <i>Offenders Probation and Parole Act 1963</i> ” and substitute the following —

“ <i>Sentence Administration Act 1995</i> ”. |
| s. 8 (2) | In paragraph (a) delete “Chairman” and substitute the following —

“ chairperson ”. |

**PART 61 — PAWNBROKERS AND SECOND-HAND
DEALERS ACT 1994**

Section 90 amended

102. Section 90 (9) of the *Pawnbrokers and Second-hand Dealers Act 1994** is repealed and the following subsection is substituted —

“

(9) An amount paid as a modified penalty, subject to subsection (8), is to be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

[* *Act No. 88 of 1994.*]

PART 62 — PEARLING ACT 1990

Consequential amendments

103. The *Pearling Act 1990** is amended as set out in the Table to this section.

TABLE

- | | |
|-----------|---|
| s. 7 (2) | In paragraph (b), delete “penalty irreducible notwithstanding section 70 of the <i>Interpretation Act 1984</i> ” and substitute the following —

“ mandatory penalty ”. |
| s. 10 | In paragraph (b), delete “penalty irreducible notwithstanding section 70 of the <i>Interpretation Act 1984</i> ” and substitute the following —

“ mandatory penalty ”. |
| s. 12 (4) | In paragraph (b), delete “penalty irreducible notwithstanding section 70 of the <i>Interpretation Act 1984</i> ” and substitute the following —

“ mandatory penalty ”. |

[* *Act No. 88 of 1990.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 157 and Act No. 23 of 1994.]

PART 63 — *PERTH MARKET ACT 1926*

Section 13B amended

104. Section 13B (5) of the *Perth Market Act 1926** is repealed and the following subsection is substituted —

“

(5) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (3), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

[* *Reprinted as at 25 September 1991.*]

PART 64 — *PIG INDUSTRY COMPENSATION ACT 1942*

Section 14 amended

105. Section 14 (2) of the *Pig Industry Compensation Act 1942** is amended by deleting “section eleven of The Criminal Code.” and substituting the following —

“ any other enactment. ”.

[* *Reprint approved 28 February 1975.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 161.]

PART 65 — POLICE ACT 1892

Consequential amendments

106. The *Police Act 1892** is amended as set out in the Table to this section.

TABLE

- | | |
|------------|--|
| s. 80 (3) | Repeal the subsection. |
| s. 80 (4) | Repeal the subsection. |
| s. 80A (3) | Delete “any order under section 719 of <i>The Criminal Code</i> ,” and substitute the following —

“ a compensation order under Part 16 of the <i>Sentencing Act 1995</i> , ”. |
| s. 80A (4) | Repeal the subsection and substitute the following subsection —

“ (4) An order under subsection (3) is to be treated as if it were a compensation order made under Part 16 of the <i>Sentencing Act 1995</i> . ”. |
| s. 129 | Repeal the section. |
| s. 134 | Delete “, and so much of every pecuniary penalty as shall not be awarded to the informer or party prosecuting shall be appropriated to the use of the Crown for the public uses of the State”. |
| s. 135 | Repeal the section. |
| s. 137 | Repeal the section. |

[* *Reprinted as at 24 April 1992.*
For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 164-65 and Acts Nos. 2, 73, 92 and 103 of 1994.]

[*Note: The above Act is also amended by Part 88.*]

**PART 66 — *POTATO GROWING INDUSTRY TRUST FUND*
*ACT 1947***

Section 19 amended

107. Section 19 (3) (b) of the *Potato Growing Industry Trust Fund Act 1947** is amended by deleting “, notwithstanding the Fines and Penalties Appropriation Act, 1909,”.

[* *Reprint approved 17 August 1975.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 167 and
Act No. 73 of 1994.]

**PART 67 — POULTRY INDUSTRY (TRUST FUND)
ACT 1948**

Section 15 amended

108. Section 15 (3) (c) of the *Poultry Industry (Trust Fund) Act 1948** is amended by deleting “, notwithstanding the Fines and Penalties Appropriation Act, 1909,”.

[* *Act No. 28 of 1948.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 167.]*

PART 68 — PRISONERS (RELEASE FOR DEPORTATION)
ACT 1989

Consequential amendments

109. The *Prisoners (Release for Deportation) Act 1989** is amended as set out in the Table to this section.

TABLE

- | | |
|----------|--|
| s. 3 (1) | In the definition of “prison” delete paragraph (c) and substitute the following paragraph —

“ (c) a detention centre as defined in section 3 of <i>Young Offenders Act 1994</i> ; ”.

In the definition of “the Parole Board” delete “ <i>Offenders Community Corrections Act 1963</i> ” and substitute the following —

“ <i>Sentence Administration Act 1995</i> ”. |
| s. 4 (2) | Delete “ <i>Offenders Community Corrections Act 1963</i> .” and substitute the following —

“ <i>Sentence Administration Act 1995</i> . ”. |
| s. 4 (6) | Delete “section 40A (1) of the <i>Offenders Community Corrections Act 1963</i> ” and substitute the following —

“ section 21 of the <i>Sentence Administration Act 1995</i> , ”. |

[* *Act No. 15 of 1989.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 168.]

PART 69 — PRISONS ACT 1981

Consequential amendments

110. The *Prisons Act 1981** is amended as set out in the Table to this section.

TABLE

- | | |
|-----------|---|
| s. 3 | Delete the definition of “extended service period”.

Delete the definition of “non-parole period”. |
| s. 26 (2) | Delete paragraph (b) (ii) and substitute the following subparagraph —

“ (ii) in the case of a prisoner subject to an order made under section 653 or 693 (4) of <i>The Criminal Code</i> — the parole order of the prisoner is suspended or cancelled and he or she is returned to custody under Part 6 of the <i>Sentence Administration Act 1995</i> and the chief executive officer is of the opinion that it would be impracticable or unsuitable for the prisoner to be detained at the place where the Governor ordered the prisoner to be confined.”. |
| s. 29 | Repeal the section. |
| s. 30 | Repeal the section. |
| s. 77 (1) | Delete paragraph (c) and substitute the following paragraph —

“ (c) forfeiture of not more than 3 days’ remission; ”. |
| s. 78 (1) | Delete paragraph (d) and substitute the following paragraph —

“ (d) forfeiture of not more than 28 days’ remission; ”. |
| s. 79 (1) | In paragraph (a) (i) delete “and not subject to remission under section 29 or to any other law providing for the remission or reduction of sentences”. |

In paragraph (b) delete “and not subject to remission under section 29 or to any other law providing for the remission or reduction of sentences”.

s. 87 (6) Delete “probation, parole,” and substitute the following —

“ a community order (as defined in the
 Sentencing Act 1995) or probation or parole or
 of a home detention order or work release ”.

s. 92 (6) Delete paragraph (b) and substitute the following paragraph —

“ (b) has been released on parole under the
 Sentence Administration Act 1995 but
 whose parole has been cancelled for any
 reason. ”.

[* *Reprinted as at 9 July 1992.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 168-69
and Acts Nos. 32 and 92 of 1994.]*

Transitional provisions

111. (1) In this section —

“**commencement**” means the commencement of the
Sentencing Act 1995.

(2) For the purposes of this section a person is in custody even if at the relevant time he or she is at large or if under Part VIII of the *Prisons Act 1981* he or she is absent from a prison.

(3) If immediately before commencement a person is in custody and subject to a sentence of imprisonment in respect of which he or she is not entitled to remission under section 29 of the *Prisons Act 1981* by virtue of section 29 or section 30 of that Act (as those sections were immediately before commencement) then on and after commencement, for the purposes of Part 13 of the *Sentencing Act 1995*, the term of imprisonment is to be treated as if it were a prescribed term under that Part.

**PART 70 — *RIGHTS IN WATER AND IRRIGATION*
*ACT 1914***

Section 74 repealed and a section substituted

112. Section 74 of the *Rights in Water and Irrigation Act 1914** is repealed and the following section is substituted —

“

Proceedings for offences

74. Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

”.

[* *Reprinted as at 23 October 1986.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 181-2.*]

PART 71 — ROAD TRAFFIC ACT 1974

Principal Act

113. In this Part, the *Road Traffic Act 1974** is referred to as the principal Act to this section.

[* *Reprinted as at 4 April 1991.*
For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 182-3 and Acts Nos. 13, 83 and 92 of 1994.]

Section 74 repealed

114. Section 74 of the principal Act is repealed.

Section 75 amended

115. Section 75 (4) of the principal Act is repealed.

Section 106 repealed and a section substituted

116. Section 106 of the principal Act is repealed and the following section is substituted —

“

Minimum penalties

106. (1) In this section —

“**minimum penalty**” means a penalty provided for or in relation to an offence that is expressed to be a minimum penalty (including a minimum period of disqualification from holding or obtaining a driver’s licence), whether by use of the expression “minimum penalty” or “not less than” or by any other like expression.

(2) Subject to subsection (3), a minimum penalty in this Act is irreducible in mitigation despite the *Sentencing Act 1995* and the *Young Offenders Act 1994*.

(3) Despite subsection (2) and Part 5 of the *Sentencing Act 1995*, a court sentencing a person who has been convicted of —

- (a) a first or second offence against section 63 or 67; or
- (b) an offence against 64 or 67A,

may, instead of imposing a fine —

- (c) order the release of the offender and impose a community based order under Part 9 of the *Sentencing Act 1995* with at least the community service requirement as a primary requirement of the order; or
- (d) if the offender is a young person under the *Young Offenders Act 1994*, subject to sections 50, 50A and 50B of that Act, make a youth community based order under that Act imposing at least community work conditions on the offender.

(4) If a court deals with a person under subsection (3), it must also disqualify the offender from holding or obtaining a driver's licence for a period not less than the minimum period provided in relation to the offence concerned.

”.

[Note: The above Act is also amended by Part 88.]

PART 72 — *ROTTNEST ISLAND AUTHORITY ACT 1987*

Section 43 repealed and a section substituted

117. Section 43 of the *Rottnest Island Authority Act 1987** is repealed and the following section is substituted —

“

Fines etc. to be paid to the Authority

43. All fines and penalties imposed for offences against this Act, including modified penalties under section 42, are to be paid to the Authority.

”.

[* *Act No. 91 of 1987.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 185 and Act No. 32 of 1994.]

**PART 73 — *SECRET HARBOUR MANAGEMENT TRUST*
*ACT 1984***

Section 33 amended

118. Section 33 (4) of the *Secret Harbour Management Trust Act 1984** is repealed and the following subsection is substituted —

“

(4) Any penalty recovered in respect of a breach of a by-law made under this Act shall be paid to the Management Trust.

”.

[* *Act No. 105 of 1984.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 189.]

PART 74 — SPENT CONVICTIONS ACT 1988

Principal Act

119. In this Part the *Spent Convictions Act 1988** is referred to as the principal Act.

[* *Reprinted as at 4 November 1992.*
Amended by Acts Nos. 9 and 104 of 1994 and Gazette
12 July 1994.]

Section 3 amended

120. (1) Section 3 (1) of the principal Act is amended in the definition of “spent conviction” by deleting the full stop and inserting the following —

“
or that is spent by virtue of a spent conviction order
made under section 39 of the *Sentencing Act 1995*.
”.

(2) Section 3 (2) of the principal Act is amended by deleting paragraphs (a) and (b) and substituting the following paragraphs —

- “
(a) references to imprisonment do not include —
(i) imprisonment until a fine is paid, ordered under section 58 of the *Sentencing Act 1995*; or
(ii) a sentence of imprisonment until a fine is paid or a recognizance is entered into, that was imposed under section 19 (5) or (6) of *The Criminal Code*;

- (b) references to imprisonment for an indeterminate period include —
 - (i) indefinite imprisonment imposed under Part 14 of the *Sentencing Act 1995*;
 - (ii) detention that was ordered under section 19 (6a) (a), 661 or 662 of *The Criminal Code*;

”.

Section 4 amended

121. Section 4 (1) of the principal Act is repealed and the following subsection is substituted —

“

- (1) Sections 6 and 7 do not apply to —
 - (a) a conviction to which section 189 of the *Young Offenders Act 1994* applies;
 - (b) a conviction that under section 20 of the *Offenders Community Corrections Act 1963* was deemed not to be a conviction;
 - (c) a conviction that under section 40 (2) of the *Child Welfare Act 1947* was deemed not to be a conviction.

”.

Section 12 amended

122. Section 12 of the principal Act is amended by deleting paragraph (a) and substituting the following paragraphs —

“

- (a) a dismissal under —
 - (i) section 669 (1) (a) of *The Criminal Code*;

- (ii) section 34 or 34B of the *Child Welfare Act 1947*; and
- (iii) section 24 of the *Children's Court of Western Australia Act 1988*;
- (ab) a conviction that under section 20 of the *Offenders Community Corrections Act 1963* was deemed not to be a conviction;
- (ac) a conviction that under section 40 (2) of the *Child Welfare Act 1947* was deemed not to be a conviction; and

”.

Section 30 repealed and a section substituted

123. Section 30 of the principal Act is repealed and the following section is substituted —

“

Revival of sentence after parole etc.

30. If a conviction of a person has become spent under this Act, it is not revived by reason of the fact that the person is subsequently held not to have been discharged from the sentence of imprisonment imposed in respect of that conviction by reason of —

- (a) section 70 of the *Sentence Administration Act 1995*; or
- (b) section 44 (2) of the *Offenders Community Corrections Act 1963*.

”.

Schedule 3 amended

124. Item 1 in the Table to clause 1 of Schedule 3 to the principal Act is amended by deleting “*Offenders Community Corrections Act 1963*” and substituting the following —

“ *Sentence Administration Act 1995* ”.

PART 75 — STREET ALIGNMENT ACT 1844

Section 15 repealed and a section substituted

125. Section 15 of the *Street Alignment Act 1844** is repealed and the following section is substituted —

“

Recovery of penalties and forfeitures

15. (1) Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.

(2) Any penalty or forfeiture imposed under this Act shall be paid to the Town Trust of the town in which the offence was committed.

”.

[* *Act No. 8 of 8 Vict.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 203.]

PART 76 — TAXI ACT 1994

Section 39 amended

126. Section 39 (8) of the *Taxi Act 1994** is repealed and the following subsection is substituted —

“

(8) An amount paid as a modified penalty shall, subject to subsection (7), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

[* *Act No. 83 of 1994.*]

**PART 77 — TOTALISATOR AGENCY BOARD BETTING
ACT 1960**

Section 46 amended

127. Section 46 (2) of the *Totalisator Agency Board Betting Act 1960** is amended by deleting “provisions of the *Justices Act 1902*, and substituting the following —

“ *Sentencing Act 1995*, ”.

[* *Reprinted as at 27 September 1991.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 209-10
and Acts Nos. 24, 32 and 73 of 1994.]

[*Note: The above Act is also amended by Part 88.*]

**PART 78 — UNIVERSITY OF WESTERN AUSTRALIA
ACT 1911**

Section 16C amended

128. Section 16C of the *University of Western Australia Act 1911** is amended by deleting “, notwithstanding anything to the contrary contained in the *Fines and Penalties Appropriation Act 1909*, or any other Act,”.

[* *Reprinted as at 31 March 1993.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 218-19
and Act No. 91 of 1994.]

PART 79 — VICTIMS OF CRIME ACT 1994

Sections 4 and 5 repealed

129. Sections 4 and 5 of the *Victims of Crime Act 1994** are repealed.

[* *Act No. 81 of 1994.*]

PART 80 — WATER AUTHORITY ACT 1984

Section 103 amended

130. Section 103 (9) of the *Water Authority Act 1984** is repealed and the following section is substituted —

“

(9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (7), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

[* *Act No. 3 of 1984.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 222 and Acts Nos. 32, 34, 73 and 84 of 1994.]

PART 81 — WATER BOARDS ACT 1904

Principal Act

131. In this Part, the *Water Boards Act 1904** is referred to as the principal Act.

[* *Reprint approved 18 August 1971.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 222-3
and Act No. 6 of 1994.]

Section 154 amended

132. Section 154 of the principal Act is repealed and the following section is substituted —

“

Recovery of penalties and forfeitures

154. (1) Proceedings for an offence against this Act may be taken by the Water Board or an officer or servant of the Water Board.

(2) A penalty or forfeiture incurred under this Act may be recovered in a court of summary jurisdiction on the complaint of the Water Board or an officer or servant of the Water Board.

”.

Section 162 amended

133. Section 162 (9) of the principal Act is repealed and the following section is substituted —

“

(9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (7), be dealt with as if it were a fine imposed by a court as a penalty for an offence.

”.

PART 82 — WATERWAYS CONSERVATION ACT 1976

Principal Act

134. In this Part the *Waterways Conservation Act 1976** is referred to as the principal Act.

[* *Act No. 131 of 1976.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 224 and
Acts Nos. 32 and 84 of 1994.]

Section 46 amended

135. (1) Section 46 (10) (a) of the principal Act is amended by deleting “(and the provisions of section eleven of The Criminal Code shall not apply thereto notwithstanding that the condition is subsequently varied)”.

(2) Section 46 of the principal Act is amended by inserting after subsection (10) the following subsection —

“
 (10a) The variation of a condition of a licence does not affect any penalty or punishment incurred, imposed, or liable to be incurred or imposed, prior to that variation, or any investigation or legal proceedings in respect of such a penalty or punishment, notwithstanding any other enactment.
”.

Section 67 amended

136. Section 67 of the principal Act is amended by deleting “, notwithstanding anything to the contrary contained in the *Fines and Penalties Appropriation Act 1909*, or any other Act,”.

PART 83 — WESTERN AUSTRALIAN MARINE ACT 1982

Section 66 amended

137. Section 66 (4) of the *Western Australian Marine Act 1982** is amended by deleting “section 11 of The Criminal Code.” and substituting the following —

“ any other enactment. ”

[* *Act No. 55 of 1982.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 227 and Acts Nos. 32 and 92 of 1994.]

[*Note: The above Act is also amended by Part 88.*]

**PART 84 — *WORKERS' COMPENSATION AND
REHABILITATION ACT 1981***

Section 190 amended

138. Section 190 of the *Workers' Compensation and Rehabilitation Act 1981** is amended by deleting “, notwithstanding the *Fines and Penalties Appropriation Act 1909*,”.

[* *Reprinted as at 14 March 1994.*
Amended by Acts Nos. 32 and 103 of 1994.]

PART 85 — WORKPLACE AGREEMENTS ACT 1993

Section 72 amended

139. Section 72 of the *Workplace Agreements Act 1993** is amended by deleting “the *Justices Act 1902*, *The Criminal Code* and the *Offenders Community Corrections Act 1963*.” and substituting the following —

“ the *Sentencing Act 1995* or any other Act. ”.

[* *Act No. 13 of 1993.*]

PART 86 — YOUNG OFFENDERS ACT 1994

Principal Act

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

[* *Act No. 104 of 1994.*
Amended by Acts Nos. 82 and 92 of 1994.]

Section 46A inserted

141. After section 46 of the principal Act the following section is inserted —

“

Application of *Sentencing Act 1995*

46A. (1) The *Sentencing Act 1995* applies to and in respect of the sentencing of a young person —

- (a) in a case to which section 50B applies;
- (b) to the extent that section 50A or 118 provides for it to apply; or
- (c) subject to subsection (2), to the extent that this Act does not provide for a matter that is provided for in the *Sentencing Act 1995*.

(2) Part 5 of the *Sentencing Act 1995* does not apply to and in respect of the sentencing of a young person except —

- (a) for the purposes of deciding whether a community order can be imposed under section 50A; or
- (b) in a case to which section 50B applies.

”.

Section 50 repealed and sections substituted

142. Section 50 of the principal Act is repealed and the following sections are substituted —

“

**Offender aged under 17 at time of sentence:
options**

50. (1) This section applies to and in respect of a young person found guilty of an offence who at the time of being sentenced is under 17 years old (“**the offender**”).

(2) The court dealing with the offender must dispose of the matter in one of the ways provided for in this Part.

(3) If the court dealing with the offender is the Children’s Court, subsection (2) is subject to section 21 of the *Children’s Court of Western Australia Act 1988*.

**Offender aged 17 or over but under 18 at time of
sentence: options**

50A. (1) This section applies to and in respect of a young person found guilty of an offence who at the time of being sentenced is at least 17 years old but under 18 years old (“**the offender**”).

(2) The court dealing with the offender —

- (a) may dispose of the matter in one of the ways provided for in this Part; or
- (b) may impose a community order under the *Sentencing Act 1995* on the offender, but only if under Part 5 of that Act it would be lawful to impose a community order in

respect of the offence were the offender not a young person.

(3) If the court dealing with the offender is the Children's Court, subsection (2) is subject to section 21 of the *Children's Court of Western Australia Act 1988*.

(4) The court must not impose a community order under the *Sentencing Act 1995* on the offender unless under that Act the court has received a pre-sentence report under that Act about the offender.

(5) If the court imposes a community order on the offender under the *Sentencing Act 1995* it is not prevented from making any order under this Division.

(6) If the court imposes a community order on the offender under the *Sentencing Act 1995*, that Act and the *Sentence Administration Act 1995* apply to and in respect of the order imposed.

Offender aged 18 or over at time of sentence: options

50B. (1) This section applies to and in respect of a young person found guilty of an offence who at the time of being sentenced is 18 years old or older ("**the offender**").

(2) Subject to the *Sentencing Act 1995* the court dealing with the offender must dispose of the matter by sentencing the offender under that Act, and that Act and the *Sentence Administration Act 1995* apply to and in respect of the sentence imposed.

(3) In sentencing the offender under the *Sentencing Act 1995*, the court must make a spent conviction order under that Act if, under section 55 of

this Act, it would be required to not record a conviction were it disposing of the matter under this Act.

(4) If the court dealing with the offender is the Children's Court, subsection (2) is subject to section 21 of the *Children's Court of Western Australia Act 1988*.

(5) Despite subsection (2), section 46 applies to the court dealing with an offender.

”.

Section 118 repealed and sections substituted

143. Section 118 of the principal Act is repealed and the following sections are substituted —

“

Offences punishable by imprisonment: options

118. (1) If the statutory penalty for an offence is or includes imprisonment and the court dealing with the offender decides to impose a custodial sentence, the court may —

- (a) impose a term of imprisonment under Part 13 of the *Sentencing Act 1995* but may not impose suspended imprisonment under Part 11 or make a direction for the detention of the offender under Part 12 of that Act; or
- (b) sentence the offender to a term of detention that is not longer than the term of imprisonment to which the offender would have been liable if the offender were not a young person.

(2) Despite section 86 of the *Sentencing Act 1995* the court sentencing a young person to a term of detention may impose a term of 3 months or less.

(3) If the court sentences an offender to imprisonment it may, subject to Part 14 of the *Sentencing Act 1995*, also sentence the offender to indefinite imprisonment.

(4) If the court sentences an offender to imprisonment it may, if the offender is at least 16 and under 18 years old and having regard to the matters in section 178 (4) (a), direct that the offender serve the sentence in a prison under the *Prisons Act 1981*.

(5) If the court sentences the offender to a term of imprisonment, the *Sentencing Act 1995* and the *Sentence Administration Act 1995*, with any necessary changes, apply to and in respect of the sentence imposed.

Where sentence of imprisonment to be served

118A. (1) If —

- (a) as a result of a sentence imposed by a court a young person is to be imprisoned; and
- (b) the young person is under 18 years old at the time when under that sentence he or she is to be imprisoned,

then, unless a direction has been made under section 118 (4), the young person is to serve that sentence in a detention centre and not in a prison until a direction is made under section 178.

(2) If —

- (a) as a result of a sentence imposed by a court a young person is to be imprisoned; and
- (b) the young person has reached the age of 18 years at the time when under that sentence he or she is to be imprisoned,

then the young person is to serve that sentence in a prison.

(3) If it is not practicable to immediately transport a young person to a detention centre in accordance with subsection (1), the offender may be held in a prison or a police lock-up until transport to a detention centre is practicable.

”.

Section 178 amended

144. Section 178 of the principal Act is repealed and the following section is substituted —

“

Transfer of offender from detention centre to prison

178. (1) If an offender is in a detention centre serving a sentence of detention or a sentence of imprisonment, the chief executive officer may apply to the Children’s Court, constituted so as to consist of or include a judge, for a direction under subsection (3).

(2) An application under subsection (1) cannot be made in respect of an offender who is under 16 years old.

(3) On an application under subsection (1), the Court may direct that the offender be transferred to a prison under the *Prisons Act 1981* to serve the unserved portion of the sentence in a prison.

(4) A direction under subsection (3) can only be made —

(a) in the case of an offender who is under 18 years old, if the Court is satisfied that the offender should be transferred to a prison because —

(i) the offender's behaviour in the detention centre (including when serving a previous sentence) is or has been a significant risk to the safety or welfare of other people in custody in, or of the staff of, the centre;

(ii) of the offender's antecedents; or

(iii) of any other reason the Court thinks is relevant;

(b) in the case of an offender who has reached the age of 18 years and is serving a sentence of detention —

(i) if the offender has a substantial period of the sentence of detention to serve; or

(ii) if the court is satisfied that the offender should be transferred to a prison because of any of the factors referred to in paragraph (a);

or

(c) in the case of an offender who has reached the age of 18 years and is serving a

sentence of imprisonment, if the court thinks fit.

(5) If a direction is made under subsection (3) in respect of an offender serving a sentence of detention —

- (a) the *Prisons Act 1981* applies to and in respect of the offender while in prison; and
- (b) Part 8 and Division 8 of Part 7 continue to apply to the sentence of detention.

”.

Other amendments

145. The principal Act is amended as set out in the Table to this section.

TABLE

- | | |
|------------|--|
| s. 7 | In paragraph (i) (ii) delete “section 20SB of the <i>Offenders Community Corrections Act 1963</i> ,” and substitute the following —

“ Part 12 of the <i>Sentencing Act 1995</i> ; ”. |
| s. 46 | After subsection (5) insert the following subsection —

“ (5a) Subject to section 106 of the <i>Road Traffic Act 1974</i> but despite any other enactment, where a written law provides that a mandatory penalty or that a minimum penalty shall be imposed in relation to an offence, the court dealing with a young person for the offence is not obliged to impose such a penalty. ”. |
| s. 53 | Repeal the section. |
| s. 116 (5) | Repeal the subsection and substitute the following subsection —

“ (5) If the offender has reached the age of 18 years when the order is cancelled, the balance of the term of detention is to be served in a prison, and while in a prison the <i>Prisons</i> |

Act 1981 applies to and in respect of the offender. ”.

s. 126 (4) Repeal the subsection and substitute the following subsection —

“ (4) If the court makes a special order and the custodial sentence referred to in subsection (1) is a term of imprisonment, the court cannot make a parole eligibility order under Part 13 of the *Sentencing Act 1995* in respect of that term. ”.

s. 150 Repeal the section and substitute the following section —

“ **Cancellation of order after offender reaches 18**

150. If the offender has reached the age of 18 years when the order is suspended or cancelled, the custody into which the offender is to be placed upon the suspension or cancellation of the order is to be a prison, and while in a prison the *Prisons Act 1981* applies to and in respect of the offender. ”.

s. 177 Repeal the section.

PART 87 — REPEAL OF IMPERIAL ENACTMENTS

Repeal of Imperial enactments

146. (1) Each Imperial enactment listed in the Table is repealed in so far as it is part of the law of Western Australia.

(2) In respect of an Imperial enactment listed in the Table, Part V of the *Interpretation Act 1984* applies as if a reference in that Part to the repeal of a written law or to the repeal of an enactment were a reference to the repeal of the Imperial enactment.

TABLE

1. 4 & 5 Will. IV, c. 26 (1834)
An Act to abolish the Practice of hanging the Bodies of Criminals
in Chains.
[Adopted by 7 Vict., No. 13 (1844)]
2. 5 & 6 Will. IV, c. 81 (1835)
An Act for abolishing Capital Punishments in Cases of Letter
Stealing and Sacrilege.
[Adopted by 7 Vict., No. 13 (1844)]
3. 6 & 7 Will. IV, c. 4 (1836)
An Act to amend an Act of the last Session for abolishing Capital
Punishments in Cases of Letter Stealing and Sacrilege.
[Adopted by 7 Vict., No. 13 (1844)]
4. 7 Will. IV & 1 Vict., c. 84 (1837)
An Act to abolish the Punishment of Death in Cases of Forgery.
[Adopted by 2 Vict., No. 1 (1839)]
5. 7 Will. IV & 1 Vict., c. 90 (1837)
An Act to amend the Law relative to Offences punishable by
Transportation for Life.
[Adopted by 2 Vict., No. 1 (1839)]
6. 7 Will. IV & 1 Vict., c. 91 (1837)
An Act for abolishing the Punishment of Death in certain Cases.
[Adopted by 2 Vict., No. 1 (1839)]

**PART 88 — AMENDMENT OF STATUTORY PENALTIES
IN VARIOUS ACTS**

Various Acts amended

147. The Acts set out in the first column of the Table to this section are amended in the provisions set out in the second column, and in the manner set out in the third column.

TABLE

<i>Short title of Act</i>	<i>Provision amended</i>	<i>Amendment</i>
<i>Aboriginal Affairs Planning Authority Act 1972</i>	s. 51 (3) (a)	Delete “3 months” and substitute the following — “ 4 months ”.
<i>Aboriginal Communities Act 1979</i>	s. 7 (2) (d)	Delete “, or a term of imprisonment, or both, but no fine so imposed shall exceed one hundred dollars and no term of imprisonment so imposed shall exceed three months;” and substitute the following — “ not exceeding \$5 000; ”.
<i>Aboriginal Heritage Act 1972</i>	s. 57 (1) (a)	In subparagraph (ii), delete “three” and substitute the following — “ 4 ”.
<i>Anatomy Act 1930</i>	s. 22 (2)	Delete “to imprisonment for a term not exceeding three months, or to a fine not exceeding one hundred dollars.” and substitute the following — “ to a fine of \$1 000. ”.
	s. 22 (3)	At the foot of the subsection, delete “One hundred dollars.” and substitute the following — “ \$1 000. ”.

<i>Architects Act 1921</i>	s. 30	Delete “or to imprisonment for three months”.
<i>Building Societies Act 1976</i>	s. 60 (1)	At the foot of the subsection, delete “or imprisonment for 3 months, or both”.
	s. 60 (5)	At the foot of the subsection, delete “or imprisonment for 3 months, or both”.
<i>Bush Fires Act 1954</i>	s. 46 (2)	At the foot of the subsection, delete “or 3 months’ imprisonment or both”.
	s. 57	At the foot of the section, delete “or 3 months’ imprisonment or both”.
<i>Business Names Act 1962</i>	s. 17	At the foot of the section, delete “Two hundred dollars or imprisonment for three months or both.” and substitute the following — “ \$1 000. ”.
<i>Casino Control Act 1984</i>	s. 26 (6)	At the foot of the subsection, delete “3 months” and substitute the following — “ 6 months ”.
	s. 26 (7)	At the foot of the subsection, delete “3 months” and substitute the following — “ 6 months ”.
	s. 27 (1)	At the foot of the subsection, delete “3 months” and substitute the following — “ 6 months ”.
	s. 27 (3)	At the foot of the subsection, delete “3 months” and substitute the following — “ 6 months ”.
<i>Change of Names Regulation Act 1923</i>	s. 2 (2)	At the foot of the subsection, delete “\$50 or imprisonment for 3 months.” and substitute the following — “ \$1 000. ”.

No. 78] *Sentencing (Consequential Provisions)*
s. 147 *Act 1995*

<i>Child Welfare Act 1947</i>	s. 113 (1)	Delete “\$100 or to imprisonment for not exceeding 3 months.” and substitute the following — “ \$1 000. ”.
	s. 125	At the foot of the section, delete “\$2 000 or imprisonment for 3 months.” and substitute the following — “ \$4 000 or imprisonment for 12 months. ”.
	s. 142 (2)	Delete “or imprisonment for 3 months”.
<i>Conspiracy and Protection of Property Act 1900</i>	s. 3	Delete “either to pay a penalty not exceeding twenty dollars or to be imprisoned for a term not exceeding one month.” and substitute the following — “ to a penalty of \$300. ”.
	s. 4	Delete “either to pay a penalty not exceeding twenty dollars or to be imprisoned for a term not exceeding one month.” and substitute the following — “ to a penalty of \$300. ”.
<i>Country Areas Water Supply Act 1947</i>	s. 71 (2)	At the foot of the subsection, delete “or imprisonment for three months or both”.

<i>The Criminal Code</i>	s. 79	At the foot of the section, delete “Imprisonment for 3 months or a fine of ”.
	s. 80	At the foot of the section, delete “Imprisonment for 3 months or a fine of ”.
	s. 96	Delete “3 months, or to a fine of \$40.” and substitute the following — “ 12 months, or to a fine of \$4 000. ”.
	s. 100	Delete “imprisonment for 2 months, or to a fine of \$40.” and substitute the following — “ a fine of \$600. ”.
	s. 104	Delete “imprisonment for 3 months, or to a fine of \$50.” and substitute the following — “ a fine of \$1 000. ”.
	s. 436	Delete “imprisonment for 3 months.” and substitute the following — “ a fine of \$1 000. ”.
<i>Disposal of Uncollected Goods Act 1970</i>	s. 34	Delete “two hundred dollars or to imprisonment for a term of three months or to both the fine and imprisonment.” and substitute the following — “ \$1 000. ”.

<i>Electoral Act 1907</i>	s. 90 (10)	At the foot of the subsection, delete “\$200 or 3 months imprisonment.” and substitute the following — “ \$4 000 or 12 months imprisonment. ”.
	s. 92 (5) (c)	At the foot of the paragraph, delete “A fine of \$200 or 3 months’ imprisonment.” and substitute the following — “ \$1 000. ”.
	s. 92 (5) (d)	At the foot of the paragraph, delete “A fine of \$200 or 3 months’ imprisonment.” and substitute the following — “ \$1 000. ”.
	s. 95 (10)	Delete “\$200 or to imprisonment for 3 months.” and substitute the following — “ \$1 000. ”.
	s. 190	In the Table to that section, delete “Penalty not exceeding \$100, or imprisonment not exceeding one month.” in the 2 places it occurs and substitute the following — “ Penalty not exceeding \$300. ”.
<i>Equal Opportunity Act 1984</i>	s. 159	At the foot of the section, in paragraph (a), delete “or imprisonment for 3 months, or both”.
	s. 167 (1)	At the foot of the subsection, delete “or imprisonment for 3 months, or both”.
<i>Family Court Act 1975</i>	s. 28A (2) (b)	Delete “, or order him to be imprisoned until he enters into such a recognizance or until the expiration of 3 months, whichever first occurs”.
	s. 53 (2) (b)	Delete “, or order that person to be imprisoned until that person enters into such a recognizance or until the expiration of 3 months, whichever first occurs”.

<i>Fire Brigades Act 1942</i>	s. 42 (3)	Delete “, or to imprisonment for not more than 3 months”.
<i>Friendly Societies Act 1894</i>	s. 25 (9)	Delete “, or to be committed to the nearest or most convenient gaol for any term not exceeding three months”.
<i>Fruit-Growing Reconstruction Scheme Act 1972</i>	s. 14 (1)	At the foot of the subsection, delete “or three months’ imprisonment”.
	s. 14 (2)	At the foot of the subsection, delete “or three months’ imprisonment”.
<i>Gaming Commission Act 1987</i>	s. 35 (a)	Delete “3 months” and substitute the following — “ 6 months ”.
<i>Government Railways Act 1904</i>	s. 43	Delete “imprisonment for any period not exceeding two months, or to a penalty not exceeding two hundred dollars.” and substitute the following — “ a penalty of \$600. ”.
<i>Growers Charge Act 1940</i>	s. 7 (a)	Delete “fifty pounds or imprisonment for a period not exceeding three months” and substitute the following — “ \$1 000 ”.
<i>Health Act 1911</i>	s. 360 (1) (d) (i)	Delete “or imprisonment for a period of 3 months”.
<i>Hire Purchase Act 1959</i>	s. 32	Delete “or to imprisonment for a term of 3 months”.
	s. 34	Delete “\$400 or to imprisonment for a term of 3 months.” and substitute the following — “ \$1 000. ”.
<i>Human Reproductive Technology Act 1991</i>	Schedule, cl. 6 (5)	At the foot of the subclause, delete “or imprisonment for 3 months or both”.

<i>Human Tissue and Transplant Act 1982</i>	s. 30	At the foot of the section, delete “\$500 or imprisonment for 3 months or both.” and substitute the following — “ \$1 000. ”.
<i>Indecent Publications and Articles Act 1902</i>	s. 2 (2)	Delete the subsection and substitute the following subsection — “ (2) Any person convicted of an offence against this section shall be liable to a penalty not exceeding \$1000 for a first offence, and to a penalty not exceeding \$2 000 or to imprisonment for a term not exceeding 6 months for a second or subsequent offence. ”.
	s. 11 (6)	Delete the subsection and substitute the following subsection — “ (6) Any person convicted of an offence against this section shall be liable to a penalty not exceeding \$1000 for a first offence, and to a penalty not exceeding \$2 000 or to imprisonment for a term not exceeding 6 months for a second or subsequent offence. ”.
<i>Legal Aid Commission Act 1976</i>	s. 64 (2)	At the foot of the subsection, delete “or imprisonment for 3 months”.
<i>Listening Devices Act 1978</i>	s. 6	At the foot of the section, delete “three months.” and substitute the following — “ 6 months. ”.
<i>Local Government Act 1960</i>	s. 174 (11)	At the foot of the subsection, delete “3 months” and substitute the following — “ 6 months ”.

<i>Maritime Archaeology Act 1973</i>	s. 19 (2)	At the foot of the subsection, delete “Two hundred dollars or imprisonment for three months or both the fine and imprisonment.” and substitute the following — “ \$1 000. ”.
<i>Mining Act 1978</i>	s. 154 (2)	Delete “or to imprisonment for a period of 3 months or to both the fine and imprisonment”.
	s. 155 (6)	Delete “1 months’ imprisonment” and substitute the following — “ \$500 ”.
<i>Museum Act 1969</i>	s. 45 (4)	At the foot of the subsection, delete “Two hundred dollars or imprisonment for three months or both the fine and imprisonment.” and substitute the following — “ \$1 000. ”.
<i>Oil Refinery (Kwinana) Agreement Act 1952</i>	s. 7 (1)	At the foot of the subsection, delete “Fifty pounds or imprisonment for one month.” and substitute the following — “ \$300. ”.
<i>Pawnbrokers Act 1860</i>	s. 24	Delete “ three calendar” and substitute the following — “ 4 calendar ”.
	s. 27A	Repeal the section.

Police Act 1892

- s. 13 Delete "\$100, in addition to the value of the property not so delivered, or to imprisonment for any time not exceeding one month;" and substitute the following —
- " \$300, in addition to the value of the property not so delivered; ".
- s. 42 Delete "\$100, or imprisonment for a term not exceeding one month." and substitute the following —
- " \$300. ".
- s. 44 Delete "\$100, or imprisonment for a term not exceeding one month." and substitute the following —
- " \$300. ".
- s. 50 Delete "\$100, or at the discretion of the convicting Justice be committed to any gaol or lock-up for any term not exceeding 3 calendar months." and substitute the following —
- " \$300, or at the discretion of the convicting Justice be committed to any gaol or lock-up for any term not exceeding 6 calendar months. ".
- s. 59 Delete "\$40, or may be committed to gaol for any period not exceeding one calendar month." and substitute the following —
- " \$300, or may be committed to gaol for any period not exceeding 6 calendar months. ".
- s. 64 Delete "\$250, or may be imprisoned for any term not exceeding 3 calendar months;" and substitute the following —
- " \$1 000 ".

- s. 82 (1) Delete "\$100, or to be imprisoned for a term not exceeding one calendar month:" and substitute the following —

" \$300: ".

- s. 82 (2) Delete "\$100, or to be imprisoned for any term not exceeding one calendar month:" and substitute the following —

" \$300: ".

- s. 82 (3) Delete "\$250, or to be imprisoned for a term not exceeding 3 calendar months;" and substitute the following —

" \$1 000; ".

- s. 83 (1) Delete "\$200, or be imprisoned for a term not exceeding 2 calendar months;" and substitute the following —

" \$600. ".

- s. 83 (2) Delete "\$200 or to be imprisoned for any term not exceeding 2 calendar months;" and substitute the following —

" \$600; ".

- s. 84 (1) Delete "\$250, or imprisonment for a term not exceeding 3 months;" and substitute the following —

" \$1 000: ".

- s. 84 (2) Delete "\$100, or imprisonment for a term not exceeding one month." and substitute the following —

" \$300. ".

- s. 102 Delete "\$100, or to be imprisoned for any term not exceeding one month." and substitute the following —

" \$300. ".

	s. 109	Delete "\$100 or to imprisonment for any term not exceeding one calendar month;" and substitute the following — " \$300: ".
	s. 124	Delete "\$100 or to be imprisoned for any term not exceeding one calendar month" and substitute the following — " \$300 or to be imprisoned for any term not exceeding 6 calendar months ".
<i>Police Assistance Compensation Act 1964</i>	s. 10	At the foot of the section, delete "Fifty pounds or imprisonment for three months or both." and substitute the following — " \$1 000. ".
<i>Psychologists Registration Act 1976</i>	s. 52 (1)	At the foot of the subsection, delete "Five hundred dollars or imprisonment for a term not exceeding three months." and substitute the following — " \$1 000. ".
	s. 53 (1)	At the foot of the subsection, delete "five hundred dollars or imprisonment for a term not exceeding three months." and substitute the following — " \$1 000. ".
<i>Road Traffic Act 1974</i>	s. 20 (3)	At the foot of the subsection, delete "or imprisonment not exceeding 30 days".
	s. 44 (2)	At the foot of the subsection, delete "or imprisonment for 3 months".
	s. 49 (1)	At the foot of the subsection, delete "or imprisonment for 3 months".
	s. 53 (1)	At the foot of the subsection, delete "or imprisonment for one month".

- | | | |
|---|---------------|--|
| | s. 56 (1) | At the foot of the subsection, delete “3 months” and substitute the following —

“ 12 months ”. |
| | s. 60 (3) (a) | Delete “3 months” and substitute the following —

“ 6 months ”. |
| | s. 61 (3) (b) | Delete “3 months” and substitute the following —

“ 6 months ”. |
| | s. 79 (4) | Delete “ or imprisonment for 3 months”. |
| | s. 80 (4) | Delete “or imprisonment for 3 months”. |
| | s. 83 (5) | At the foot of the subsection, delete “or imprisonment for 30 days”. |
| | s. 90 | At the foot of the section, delete “or imprisonment for 3 months”. |
| <i>Taxation
(Reciprocal Powers)
Act 1989</i> | s. 13 (1) | At the foot of the subsection, delete “or imprisonment for 3 months, or both”. |
| <i>Totalisator Agency
Board Betting
Act 1960</i> | s. 45 (1) | At the foot of the subsection —
(a) delete “or imprisonment for 3 months”; and
(b) delete “or imprisonment for one month”. |
| | s. 46 (1) | At the foot of the subsection —
(a) delete “or imprisonment for 3 months”; and
(b) delete “or imprisonment for one month”. |
| <i>Veterinary
Preparations and
Animal Feeding
Stuffs Act 1976</i> | s. 63 (2) (a) | Delete subparagraph (ii) and the “or” following that subparagraph. |
| | s. 68 (3) (d) | Delete “or imprisonment for three months”. |

<i>Weights and Measures Act 1915</i>	s. 42	Delete "penalty, to be imprisoned for a term not exceeding three months." and substitute the following — " other penalty, to a fine not exceeding \$1 000. ".
<i>Welfare and Assistance Act 1961</i>	s. 21 (1)	At the foot of the subsection, delete "Fifty pounds, or imprisonment for three months." and substitute the following — " \$3 000. ".
	s. 22	At the foot of the section, delete "Fifty pounds, or imprisonment for three months." and substitute the following — " \$1 000. ".
<i>Western Australian Coastal Shipping Act 1965</i>	s. 38 (g)	Delete "fifty pounds or imprisonment for a period not exceeding three months" and substitute the following — " \$1 000 ".
	s. 39	Delete "fifty pounds or imprisonment for a period not exceeding three months, or both" and substitute the following — " \$1 000 ".
<i>Western Australian Marine Act 1982</i>	s. 77 (1)	Delete "\$500 or imprisonment for 3 months, or both," and substitute the following — " \$1 000 ".
<i>Whaling Act 1937</i>	s. 9 (3)	At the foot of the proviso to that subsection, delete "Two hundred pounds or imprisonment for three months or both" and substitute the following — " \$1 000 ".