

WESTERN AUSTRALIA

ACTS AMENDMENT (SEXUAL OFFENCES) ACT 1992

No. 14 of 1992

**AN ACT to amend *The Criminal Code* and the —
Bail Act 1982;
Evidence Act 1906;
Indecent Publications and Articles Act 1902;
Justices Act 1902; and
Video Tapes Classification and Control Act 1987,
in relation to sexual offences against children and
others and for related matters.**

[Assented to 17 June 1992.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Sexual Offences) Act 1992*.

Commencement

2. This Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

PART 2 — THE CRIMINAL CODE

The Code

3. In this Part “the Code” means *The Criminal Code**.

[* *Reprinted as at 31 May 1991 as the Schedule to the Criminal Code Act 1913 appearing in Appendix B to the Criminal Code Act Compilation Act 1913.*]

Section 1 amended and consequential amendments

4. (1) Section 1 (1) of the Code is amended by inserting in the appropriate alphabetical positions the following definitions —

“ The term “assault” has the definition provided in section 222;

The term “child” means —

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

(2) The provisions of the Code referred to in Column 1 of the Table to this subsection are amended in the manner set out opposite them in Column 2.

TABLE

<u>Column 1</u>	<u>Column 2</u>
s. 18	Delete “or young person under the age of 18 years”.

s. 282 Delete “or young person under the age of 18 years” in both places where it occurs.

Delete “or young person” in both places where it occurs.

(3) Part A of Schedule 2 has effect.

Section 204A inserted

5. After section 204 of the Code the following section is inserted —

Showing offensive material to children under 16

“ **204A.** (1) In this section, unless the contrary intention appears —

“**material**” includes —

- (a) an object;
- (b) a still visual image of any kind, whether a drawing, painting, photograph, or other representation on a surface of any kind, and whether printed or not;
- (c) a moving visual image of any kind, whether produced from a cinematographic film, video tape, or other medium;
- (d) a hologram;

“**offensive material**” means material that —

- (a) describes, depicts, expresses, or otherwise deals with matters of sex,

drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner that is likely to cause offence to a reasonable adult;

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

and includes —

- (e) a film that has been refused approval by the censor under section 12 of the *Censorship of Films Act 1947*;
- (f) a restricted publication as defined in section 6 (1) of the *Indecent Publications and Articles Act 1902*;
- (g) a video tape that has been refused classification under section 9 (2) of the *Video Tapes Classification and Control Act 1987*.

(2) A person who, with intent to commit a crime, shows offensive material to a child under the age of 16 years is guilty of a crime and is liable to imprisonment for 5 years.

(3) Upon an indictment charging a person with an offence under subsection (2), a certificate issued under an Act referred to in the definition of “**offensive material**” in subsection (1) as to the status of any material under that Act is, in the absence of evidence to the contrary, proof of the matters in the certificate.

(4) It is a defence to a charge under subsection (2) to prove the accused believed on reasonable grounds that the child was of or over the age of 16 years.

”.

Chapter XXXI inserted and consequential amendments

6. (1) After section 318A of the Code the following chapter is inserted —

“ CHAPTER XXXI — SEXUAL OFFENCES

Interpretation

319. (1) In this chapter —

“**circumstances of aggravation**” means
circumstances in which —

(a) at or immediately before or
immediately after the commission of
the offence —

(i) the offender is armed with any
dangerous or offensive weapon
or instrument or pretends to be
so armed;

(ii) the offender is in company with
another person or persons;

(iii) the offender does bodily harm to any person;

(iv) the offender does an act which is likely seriously and substantially to degrade or humiliate the victim; or

(v) the offender threatens to kill the victim;

or

(b) the victim is —

(i) of or over the age of 13 years and under the age of 16 years; or

(ii) of or over the age of 60 years;

“deals with” includes doing any act which, if done without consent, would constitute an assault;

“indecent act” means an indecent act which is —

(a) committed in the presence of or viewed by any person; or

(b) photographed, videotaped, or recorded in any manner;

“to indecently record” means to take, or permit to be taken, or make, or permit to be made, an indecent photograph, film, video tape, or other recording (including a sound recording);

“to sexually penetrate” means —

(a) to penetrate the vagina (which term includes the *labia majora*), the anus, or the urethra of any person with —

(i) any part of the body of another person; or

(ii) an object manipulated by another person,

except where the penetration is carried out for proper medical purposes;

(b) to manipulate any part of the body of another person so as to cause penetration of the vagina (which term includes the *labia majora*), the anus, or the urethra of the offender by part of the other person's body;

(c) to introduce any part of the penis of a person into the mouth of another person;

(d) to engage in cunnilingus or fellatio; or

(e) to continue sexual penetration as defined in paragraph (a), (b), (c) or (d).

(2) For the purposes of this chapter —

(a) **“consent”** means a consent freely and voluntarily given and, without in any way affecting the meaning attributable to those words, a consent is not freely and voluntarily given if it is obtained by force,

threat, intimidation, deceit, or any fraudulent means;

- (b) where an act would be an offence if done without the consent of a person, a failure by that person to offer physical resistance does not of itself constitute consent to the act;
- (c) a child under the age of 13 years is incapable of consenting to an act which constitutes an offence against the child.

(3) For the purposes of this chapter, a reference to a person indecently dealing with a child or an incapable person includes a reference to the person —

- (a) procuring or permitting the child or incapable person to deal indecently with the person;
- (b) procuring the child or incapable person to deal indecently with another person; or
- (c) committing an indecent act in the presence of the child or incapable person.

(4) For the purposes of this chapter, a person is said to engage in sexual behaviour if the person —

- (a) sexually penetrates any person;
- (b) has carnal knowledge of an animal; or
- (c) penetrates the person's own vagina (which term includes the *labia majora*), anus, or urethra with any object or any part of the person's body for other than proper medical purposes.

Child under 13: Sexual offences against

320. (1) In this section “child” means a child under the age of 13 years.

(2) A person who sexually penetrates a child is guilty of a crime and is liable to imprisonment for 20 years.

(3) A person who procures, incites, or encourages a child to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 20 years.

(4) A person who indecently deals with a child is guilty of a crime and is liable to imprisonment for 10 years.

(5) A person who procures, incites, or encourages a child to do an indecent act is guilty of a crime and is liable to imprisonment for 10 years.

(6) A person who indecently records a child is guilty of a crime and is liable to imprisonment for 10 years.

**Child of or over 13 and under 16:
Sexual offences against**

321. (1) In this section, “child” means a child of or over the age of 13 years and under the age of 16 years.

(2) A person who sexually penetrates a child is guilty of a crime and is liable to the punishment in subsection (7).

(3) A person who procures, incites, or encourages a child to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (7).

(4) A person who indecently deals with a child is guilty of a crime and is liable to the punishment in subsection (8).

(5) A person who procures, incites, or encourages a child to do an indecent act, other than an indecent act that is committed in the presence of or viewed by the spouse of that child, is guilty of a crime and is liable to the punishment in subsection (8).

(6) A person who indecently records a child is guilty of a crime and is liable to the punishment in subsection (8).

(7) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —

- (a) 14 years;
- (b) where the child is under the care, supervision, or authority of the offender, 20 years; or
- (c) where the offender is under the age of 18 years and the child is not under the care, supervision, or authority of the offender, 7 years.

(8) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —

- (a) 7 years;

- (b) where the child is under the care, supervision, or authority of the offender, 10 years; or
- (c) where the offender is under the age of 18 years and the child is not under the care, supervision, or authority of the offender, 4 years.

(9) It is a defence to a charge under this section to prove the accused person believed on reasonable grounds that the child was of or over the age of 16 years.

(10) It is a defence to a charge under subsection (2), (3), (4) or (6) to prove the accused person was lawfully married to the child.

Child under 16: Sexual relationship with

321A. (1) For the purposes of this section a person has a sexual relationship with a child under the age of 16 years if that person, on 3 or more occasions each of which is on a different day, does an act in relation to the child which would constitute a prescribed offence.

(2) In subsection (1) the act referred to need not be the same act, or constitute the same offence on each of the 3 or more occasions.

(3) A person who has a sexual relationship with a child under the age of 16 years is guilty of a crime and is liable to imprisonment for 20 years.

(4) An indictment under subsection (3) shall specify the period during which it is alleged that the sexual relationship occurred and the accused shall not be charged in the same indictment with any other

offence under this chapter alleged to have been committed against the child during that period.

(5) In proceedings on an indictment charging an offence under subsection (3) it is not necessary to specify the dates, or in any other way to particularize the circumstances, of the alleged acts.

(6) An indictment for an offence under this section is to be signed by the Director of Public Prosecutions or the Deputy Director of Public Prosecutions.

(7) It is a defence to a charge under subsection (3) to prove the accused person believed on reasonable grounds that the child was of or over the age of 16 years.

(8) It is a defence to a charge under subsection (3) to prove the accused person was lawfully married to the child.

(9) Upon an indictment charging a person with an offence under subsection (3), if the jury is not satisfied the accused person is guilty of that offence, the accused person may be convicted of one or more prescribed offences if the offence or offences are established by the evidence.

(10) If a person has been tried and convicted or acquitted on an indictment alleging the commission of an offence under subsection (3), that fact is a defence to any charge of an offence under this chapter alleged to have been committed against the same child during the period when it was alleged the sexual relationship with the child occurred.

(11) In this section, “**prescribed offence**” means —

- (a) an offence under section 320 (2) or (4) or 321 (2) or (4); or
- (b) an offence under section 320 (3) or 321 (3) where the child in fact engages in sexual behaviour.

Child of or over 16: Sexual offences against by person in authority etc.

322. (1) In this section “**child**” means a child of or over the age of 16 years.

(2) A person who sexually penetrates a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 10 years.

(3) A person who procures, incites, or encourages a child who is under his or her care, supervision, or authority to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 10 years.

(4) A person who indecently deals with a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 5 years.

(5) A person who procures, incites, or encourages a child who is under his or her care, supervision, or authority to do an indecent act is guilty of a crime and is liable to imprisonment for 5 years.

(6) A person who indecently records a child who is under his or her care, supervision, or authority is guilty of a crime and is liable to imprisonment for 5 years.

(7) It is a defence to a charge under this section to prove the accused believed on reasonable grounds that the child was of or over the age of 18 years.

(8) It is a defence to a charge under this section to prove the accused person was lawfully married to the child.

Juvenile male: Offences against

322A. (1) In this section “juvenile male” means a male person of or over the age of 16 years and under the age of 21 years.

(2) A male person who sexually penetrates a juvenile male or who procures or permits a juvenile male to sexually penetrate him is guilty of a crime and is liable to imprisonment for 5 years.

(3) A male person who indecently deals with a juvenile male or who procures a juvenile male to indecently deal with him or another male or who permits a juvenile male to indecently deal with him is guilty of a crime and is liable to imprisonment for 4 years.

(4) It is a defence to a charge under this section to prove the accused person believed on reasonable grounds that the juvenile male was of or over the age of 21 years.

Indecent assault

323. A person who unlawfully and indecently assaults another person is guilty of a crime and liable to imprisonment for 5 years.

Aggravated indecent assault

324. A person who unlawfully and indecently assaults another person in circumstances of aggravation is guilty of a crime and is liable to imprisonment for 7 years.

Sexual penetration without consent

325. A person who sexually penetrates another person without the consent of that person is guilty of a crime and is liable to imprisonment for 14 years.

Aggravated sexual penetration without consent

326. A person who sexually penetrates another person without the consent of that person in circumstances of aggravation is guilty of a crime and liable to imprisonment for 20 years.

Sexual coercion

327. A person who compels another person to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 14 years.

Aggravated sexual coercion

328. A person who compels another person to engage in sexual behaviour in circumstances of aggravation is guilty of a crime and is liable to imprisonment for 20 years.

Relatives and the like: Sexual offences by

329. (1) In this section —

“*de facto* child” means a step-child of the offender or a child or step-child of a person (whether or not of the same sex as the offender) who lives with the offender as if they are married;

“lineal relative” means a person who is a lineal ancestor, lineal descendant, brother, or sister, whether the relationship is of the whole blood or half-blood, whether or not the relationship is traced through, or to, a person whose parents were not married to each other at the time of the person’s birth, or subsequently, and whether the relationship is a natural relationship or a relationship established by a written law.

(2) A person who sexually penetrates a child who the offender knows is his or her lineal relative or a *de facto* child is guilty of a crime and is liable to the punishment in subsection (9).

(3) A person who procures, incites, or encourages a child who the offender knows is his or her lineal relative or a *de facto* child to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (9).

(4) A person who indecently deals with a child who the offender knows is his or her lineal relative or a *de facto* child is guilty of a crime and is liable to the punishment in subsection (10).

(5) A person who procures, incites, or encourages a child who the offender knows is his or her lineal relative or a *de facto* child to do an indecent act is guilty of a crime and is liable to the punishment in subsection (10).

(6) A person who indecently records a child who the offender knows is his or her lineal relative or a *de facto* child is guilty of a crime and is liable to the punishment in subsection (10).

(7) A person who sexually penetrates a person of or over the age of 18 years who the offender knows is his or her lineal relative is guilty of a crime and is liable to imprisonment for 3 years.

(8) A person of or over the age of 18 years who consents to being sexually penetrated by a person who he or she knows is his or her lineal relative is guilty of a crime and is liable to imprisonment for 3 years.

(9) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —

(a) where the child is under the age of 16 years, 20 years; or

(b) where the child is of or over the age of 16 years, 10 years.

(10) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —

- (a) where the child is under the age of 16 years, 10 years; or
- (b) where the child is of or over the age of 16 years, 5 years.

(11) On a charge under this section it shall be presumed in the absence of evidence to the contrary —

- (a) that the accused knew that he or she was related (whether lineally or as otherwise referred to in this section) to the other person; and
- (b) that people who are reputed to be related to each other in a particular way (whether lineally or as otherwise referred to in this section) are in fact related in that way.

Incapable person: Sexual offences against

330. (1) In this section a reference to an incapable person is a reference to a person who is so mentally disabled or intellectually handicapped as to be incapable —

- (a) of understanding the nature of the act the subject of the charge against the accused person; or
- (b) of guarding himself or herself against sexual exploitation.

(2) A person who sexually penetrates a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (7).

(3) A person who procures, incites, or encourages a person who the offender knows or ought to know is an incapable person to engage in sexual behaviour is guilty of a crime and is liable to the punishment in subsection (7).

(4) A person who indecently deals with a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (8).

(5) A person who procures, incites, or encourages a person who the offender knows or ought to know is an incapable person to do an indecent act is guilty of a crime and is liable to the punishment in subsection (8).

(6) A person who indecently records a person who the offender knows or ought to know is an incapable person is guilty of a crime and is liable to the punishment in subsection (8).

(7) A person who is guilty of a crime under subsection (2) or (3) is liable to imprisonment for —

(a) 14 years; or

(b) where the incapable person is under the care, supervision, or authority of the offender, 20 years.

(8) A person who is guilty of a crime under subsection (4), (5) or (6) is liable to imprisonment for —

(a) 7 years; or

- (b) where the incapable person is under the care, supervision, or authority of the offender, 10 years.

(9) It is a defence to a charge under this section to prove the accused person was lawfully married to the incapable person.

Ignorance of age no defence

331. It is no defence to a charge of a crime under section 320 or 329 in respect of which the age of the victim is relevant that the accused person did not know the age of the victim or believed the victim was of or over that age. ”.

(2) Sections 185, 187, 188, 189, 190, 196, 197, 198 and 206 of the Code are repealed.

(3) Section 202 of the Code is amended by deleting “sections 185 to 193” and substituting the following —

“ section 186, 191 or 192 ”.

(4) Chapter XXXIA of the Code is repealed.

(5) If this Act comes into operation before the *Acts Amendment (Evidence) Act 1991* comes into operation —

- (a) Chapter XXXII of the Code is repealed; and
- (b) the *Acts Amendment (Evidence) Act 1991* is amended in section 12 (9) by deleting “and Chapter XXXII”.

(6) Section 398 of the Code is amended by —

(a) deleting paragraph (b) and substituting the following paragraph —

“ (b) An offence under Chapter XXII or XXXI, or an attempt to commit such an offence; or ”;

and

(b) deleting paragraph (d).

(7) Schedule 1 has effect.

(8) Without in any way affecting the generality of the operation of Schedule 1, Part B of Schedule 2 has effect.

Sections 596 to 596AC repealed and a section substituted

7. Sections 596, 596A, 596AA, 596AB and 596AC of the Code are repealed and the following section is substituted —

Charges of sexual offences; alternative verdicts

“ **596.** Upon an indictment charging a person with a crime under a section in Column 1 of the Table to this section, the person may be convicted of a crime under a section opposite that section in Column 2 if that crime is established by the evidence.

TABLE

<u>Column 1</u> (section)	<u>Column 2</u> (section)
320 (2)	320 (4), 321 (2), 321 (4), 322 (2), 322 (4), 322A (2), 322A (3).
320 (3)	320 (4), 320 (5), 321 (3), 321 (4), 321 (5), 322 (3), 322 (4), 322 (5), 322A (2), 322A (3).
320 (4)	321 (4), 322 (4), 322A (3).
320 (5)	321 (5), 322 (5).
320 (6)	321 (6), 322 (6).
321 (2)	321 (4), 322 (2), 322 (4), 322A (2), 322A (3).
321 (3)	321 (4), 321 (5), 322 (3), 322 (4), 322 (5), 322A (2), 322A (3).
321 (4)	322 (4), 322A (3).
321 (5)	322 (5).
321 (6)	322 (6).
322 (2)	322 (4), 322A (2), 322A (3).
322 (3)	322 (4), 322 (5), 322A (2), 322A (3).

322 (4)	322A (3)
324	321 (4), 322 (4), 322A (3), 323.
325	322 (2), 322 (4), 322A (2), 322A (3), 323, 324.
326	321 (2), 321 (4), 322 (2), 322 (4), 322A (2), 322A (3), 323, 324, 325.
327	322 (3), 322 (4), 322 (5), 322A (2), 322A (3).
328	321 (3), 321 (4), 321 (5), 322 (3), 322 (4), 322 (5), 322A (2), 322A (3), 327.
329 (2)	321 (2), 321 (4), 322 (2), 322 (4), 322A (2), 322A (3), 329 (4).
329 (3)	321 (3), 321 (4), 321 (5), 322 (3), 322 (4), 322 (5), 322A (2), 322A (3), 329 (4), 329 (5).
329 (4)	321 (4), 322 (4), 322A (3).
329 (5)	321 (5), 322 (5).
329 (6)	321 (6), 322 (6).

- | | |
|---------|---|
| 330 (2) | 322 (2), 322 (4),
322A (2), 322A (3),
323, 324, 325, 326,
330 (4). |
| 330 (3) | 322 (3), 322 (4), 322 (5),
322A (2), 322A (3),
327, 328,
330 (4), 330 (5). |
| 330 (4) | 322 (4), 322A (3), 323, 324. |
| 330 (5) | 322 (5). |
| 330 (6) | 322 (6). |

”.

Section 635A repealed and a section substituted

8. Section 635A of the Code is repealed and the following section is substituted —

Court to be open: Publicity

“ **635A.** (1) Unless expressly provided otherwise, the court-room or place of hearing where a trial or other criminal proceeding is conducted is an open and public court to which all persons may have access so far as is practicable.

(2) If satisfied that it is necessary for the proper administration of justice to do so, a court may —

- (a) order any or all persons or any class of persons to be excluded from the court-room or place of hearing during the whole or any part of the trial or other criminal proceeding;

- (b) make an order prohibiting the publication outside the court-room or place of hearing of the whole or any part of the evidence or proceedings;
- (c) make an order prohibiting the publication outside the court-room or place of hearing of the whole or any part of the evidence or proceedings except in accordance with directions by the court.

(3) On an application by the prosecution or an accused person a court may order any person who may be called as a witness in the trial or other criminal proceeding to leave the court-room or place of hearing and to remain outside and beyond the hearing of the court until called to give evidence.

(4) Counsel or a solicitor engaged in the trial or other criminal proceeding shall not be excluded from the court-room or place of hearing under this section.

(5) A person who contravenes or fails to comply with an order made under this section commits an offence punishable —

- (a) by the Supreme Court as for contempt; or
- (b) after summary conviction, by imprisonment for 12 months or a fine of \$10 000.

(6) Only the Attorney General or a person on his behalf may take proceedings for a contravention of or a failure to comply with an order made under this section.

”.

Section 736 repealed

9. Section 736 of the Code is repealed.

PART 3 — BAIL ACT 1982

Principal Act

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

[* *Reprinted under section 21 of the Bail Amendment Act 1988.*

For subsequent amendments see 1990 Index to Legislation of Western Australia, p. 12 and Acts Nos. 33 of 1989, 61 and 83 of 1990 and 15 of 1991.]

Schedule, Part C amended

11. The Schedule to the principal Act is amended in Part C by deleting the full stop at the end of clause 1 (e) and substituting a semi-colon and inserting after clause 1 (e) the following paragraph —

- “ (f) where the defendant is charged with an offence that is alleged to have been committed in respect of a child, whether a condition should be imposed under Part D requiring the defendant to reside at a place other than the place where the child resides. ”.

PART 4 — EVIDENCE ACT 1906

Principal Act

12. In this Part, the *Evidence Act 1906** is referred to as the principal Act.

[* *Reprinted as at 14 August 1986.*

For subsequent amendments see 1990 Index to Legislation of Western Australia, p. 52 and Acts Nos. 66 of 1987, 34 of 1989, 47 of 1990 and 15 of 1991.]

Section 36A amended and consequential amendments

13. (1) Section 36A (1) of the principal Act is amended —

- (a) in the definitions of “complainant” and “defendant” by deleting “sexual assault offence” wherever it occurs and substituting in each case the following —

“ sexual offence ”; and

- (b) deleting the definition of “sexual assault offence” and substituting the following definition —

“ “sexual offence” means an offence —

- (a) under section 186, 191 (1) or 195 of *The Criminal Code*;
- (b) under Chapter XXXI of *The Criminal Code*;
- (c) of attempting to commit any of the offences under paragraph (a) or (b); or

- (d) of conspiring to commit any of the offences under paragraph (a) or (b). ”.

(2) The principal Act is amended by deleting “sexual assault offence” wherever it occurs in the provisions referred to in the Table to this subsection and substituting in each case the following —

“ sexual offence ”.

TABLE

s. 36A (2)	s. 36BA	s. 36BD
s. 36B	s. 36BC (1)	s. 36C

Section 38 repealed

14. Section 38 of the principal Act is repealed.

Second Schedule amended

15. (1) If this Act comes into operation before the *Acts Amendment (Evidence) Act 1991* comes into operation —

- (a) sections 9 (2) and (3) of the principal Act are repealed;
- (b) the Second Schedule to the principal Act is amended in Part I by deleting “193, 194, and Chapters XXXIA and XXXII” and substituting the following —

“ and Chapter XXXI ”;

- (c) the Second Schedule to the principal Act is amended by deleting Parts II and III; and
- (d) the *Acts Amendment (Evidence) Act 1991* is amended in section 10 by deleting from Part 1 of the Schedule

being substituted the references to offences under sections 185, 187, 188, 189, 190, 197, 198, 324B, 324C, 324D and 324E of *The Criminal Code* and inserting in the appropriate positions the material to be inserted by subsection (2) of this section.

(2) If this Act does not come into operation before the *Acts Amendment (Evidence) Act 1991* comes into operation, the Second Schedule to the principal Act as amended by that Act is amended in Part 1 by deleting the reference to offences under sections 185, 187, 188, 189, 190, 197, 198, 324B, 324C, 324D and 324E of *The Criminal Code* and inserting in the appropriate positions the following —

“

- | | |
|---------|--|
| s. 320 | Child under 13: Sexual offences against |
| s. 321 | Child of or over 13 and under 16: Sexual offences against |
| s. 321A | Child under 16: Sexual relationship with |
| s. 322 | Child of or over 16: Sexual offences against by person in authority etc. |
| s. 322A | Juvenile male: Sexual offences against |
| s. 323 | Indecent assault |
| s. 324 | Aggravated indecent assault |
| s. 325 | Sexual penetration without consent |
| s. 326 | Aggravated sexual penetration without consent |
| s. 327 | Sexual coercion |

- s. 328 Aggravated sexual coercion
- s. 329 Relatives and the like: Sexual
 offences by
- s. 330 Incapable person: Sexual offences
 against
- ”.

**PART 5 — INDECENT PUBLICATIONS AND ARTICLES
ACT 1902**

Principal Act

16. In this Part the *Indecent Publications and Articles Act 1902** is referred to as the principal Act.

[* *Reprinted as approved 1 September 1975.*
For subsequent amendments see 1990 Index to
Legislation of Western Australia, p. 75.]

Section 2A inserted and consequential amendments

17. (1) After section 2 of the principal Act the following section is inserted —

Child pornography

“ 2A. (1) For the purposes of this section —

- (a) unless the context otherwise requires
“**child pornography**” means an indecent
or obscene article, picture, photograph,
lithograph, drawing, or representation
which depicts a person (whether engaged in
sexual activity or otherwise) who is, or who
is apparently, a child under the age of 16
years;

and

- (b) a reference to the exhibiting of child
pornography includes, in relation to a film,
the screening of the film.

(2) A person who publishes, or causes to be published, an advertisement likely to be understood as conveying that the advertiser sells or supplies or exhibits child pornography commits an offence and is liable —

- (a) in the case of a corporation, to a fine not exceeding \$15 000; or
- (b) in any other case, to a fine not exceeding \$4 000 or imprisonment for a term not exceeding 12 months.

(3) A person who exhibits child pornography in a public place or a school, or who causes child pornography to be so exhibited commits an offence and is liable —

- (a) in the case of a corporation, to a fine of \$15 000; or
- (b) in any other case, to a fine of \$4 000 or imprisonment for a term not exceeding 12 months.

(4) A person who has possession of child pornography commits an offence and is liable —

- (a) in the case of a corporation, to a fine not exceeding \$15 000; or
- (b) in any other case, to a fine not exceeding \$4 000 or imprisonment for a term not exceeding 12 months.

(5) A person who —

- (a) with intent to sell or supply it to another, has possession of; or

- (b) sells or supplies, or offers to sell or supply, to another,

child pornography, or who causes or permits child pornography to be sold, supplied or so offered, commits an offence and is liable —

- (c) in the case of a corporation, to a fine not exceeding \$100 000; or
- (d) in any other case, to a fine not exceeding \$25 000 or imprisonment for a term not exceeding 5 years.

(6) A complaint for an offence against this section may be made at any time. ”.

(2) Section 9 (1) (b) of the principal Act is amended by deleting “section 2” and substituting the following —

“ section 2 or 2A ”.

(3) Section 13 (2) of the principal Act is amended by deleting “section 11” and substituting the following —

“ section 2A or 11 ”.

(4) Section 14 of the principal Act is amended —

- (a) by deleting “or” after paragraph (b);
- (b) by deleting the full stop at the end of paragraph (c) and substituting the following —

“ ; or ”; and

- (c) by inserting after paragraph (c) the following paragraph —

“ (d) an officer of the Department for Community Services under section 2A (3), (4) or (5) in respect of any act done or omitted to be done in good faith by the officer in the course of the officer’s duties. ”.

PART 6 — JUSTICES ACT 1902

Principal Act

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

[* *Reprinted as approved 9 November 1984.*
For subsequent amendments see 1990 Index to
Legislation of Western Australia, pp. 81-2 and Acts
Nos. 33 of 1989 and 61 of 1990.]

Section 65 and heading repealed and a section substituted

19. Section 65 of the principal Act and the heading "*Publicity.*" preceding the section are repealed and the following section is substituted —

Court to be open: Publicity

" 65. (1) Unless expressly provided otherwise, the court-room or place of hearing where justices sit to hear and determine any complaint is an open and public court to which all persons may have access so far as is practicable.

(2) If satisfied that it is necessary for the proper administration of justice to do so, justices may —

- (a) order any or all persons or any class of persons to be excluded from the court-room or place of hearing during the whole or any part of the trial or other criminal proceeding;
- (b) make an order prohibiting the publication outside the court-room or place of hearing

of the whole or any part of the evidence or proceedings;

- (c) make an order prohibiting the publication outside the court-room or place of hearing of the whole or any part of the evidence or proceedings except in accordance with directions by the justices.

(3) On an application by the prosecution or an accused person justices may order any person who may be called as a witness in the trial or other criminal proceeding to leave the court-room or place of hearing and to remain outside and beyond the hearing of the court until called to give evidence.

(4) Counsel or a solicitor engaged in the trial or other criminal proceeding shall not be excluded from the court-room or place of hearing under this section.

(5) A person who contravenes or fails to comply with an order made under this section commits an offence punishable —

- (a) by the Supreme Court as for contempt; or
- (b) after summary conviction, by imprisonment for 12 months or a fine of \$10 000.

(6) Only the Attorney General or a person on his behalf may take proceedings for a contravention of or a failure to comply with an order made under this section.

”.

**PART 7 — VIDEO TAPES CLASSIFICATION AND
CONTROL ACT 1987**

Principal Act

20. In this Part the *Video Tapes Classification and Control Act 1987** is referred to as the principal Act.

[* *Act No. 73 of 1987.*

For subsequent amendments see Act No. 19 of 1991.]

Section 35 amended

21. Section 35 (1) of the principal Act is amended by deleting “a whole” and substituting the following —

“ the whole ”.

Section 36 repealed and consequential amendment

22. (1) Section 36 of the principal Act is repealed.

(2) Section 46A of the principal Act is amended by deleting “, 36”.

Section 38 amended

23. Section 38 of the principal Act is amended by inserting after “Act” the following —

“ or to an officer of the Department for Community Services in respect of any act done or omitted to be done in good faith by the officer in the course of the officer’s duties. ”.

SCHEDULE 1

[s. 6 (7)]

TRANSITIONAL AND SAVING

References to Chapter XXII of *The Criminal Code*

1. Unless the context requires otherwise, a reference in a written law enacted before this Act comes into operation to Chapter XXII of *The Criminal Code* is to be taken as including a reference to sections 320, 321, 322, 322A, 329 and 330 of *The Criminal Code* (as amended by this Act).

References to repealed sections of *The Criminal Code*

2. Unless the context otherwise requires, a reference in a written law enacted before this Act comes into operation to a section of *The Criminal Code* repealed by section 6 (2) of this Act is to be taken as a reference to the section or sections in Chapter XXXI of *The Criminal Code* (as amended by this Act) that correspond to the repealed section.

References to Chapter XXXIA of *The Criminal Code*

3. Unless the context otherwise requires, a reference in a written law enacted before this Act comes into operation to Chapter XXXIA of *The Criminal Code* (repealed by section 6 (4) of this Act) is to be taken as a reference to sections 323, 324, 325 and 326 of *The Criminal Code* (as amended by this Act).

References to sections 324B to 324H of *The Criminal Code*

4. Unless the context otherwise requires, a reference in a written law enacted before this Act comes into operation to section 324B, 324C, 324D, 324E, 324F, 324G or 324H of *The Criminal Code* (repealed by section 6 (4) of this Act) is to be taken as a reference to the section in Chapter XXXI of *The Criminal Code* (as amended by this Act) that corresponds to the repealed section.

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

PART A

[s. 4 (3)]

Children's Court of Western Australia Act 1988 amended

1. The *Children's Court of Western Australia Act 1988* is amended in section 3 in paragraph (b) of the definition of "child" by deleting "under the apparent" and substituting the following —

" apparently under the ".

Child Welfare Act 1947 amended

2. The *Child Welfare Act 1947* is amended in section 4 (1) in the definition of "child" by deleting "under the apparent" and substituting the following —

" apparently under the ".

PART B

[s. 6 (8)]

Children's Court of Western Australia Act 1988 amended

1. The *Children's Court of Western Australia Act 1988* is amended in section 35 (3) by deleting "XXXIA" and substituting the following —

" XXXI ".

Child Welfare Act 1947 amended

2. The *Child Welfare Act 1947* is amended —

- (a) in Division A of Part I of the Fourth Schedule by deleting the items relating to sections 185, 197, 324D and 324E of *The*

Criminal Code and inserting in the appropriate position the following items —

- “
- s. 320 (2) Sexually penetrating a child under 13
 - s. 320 (3) Procuring etc. a child under 13 to engage in sexual behaviour
 - s. 321 (2) Sexually penetrating a child of or over 13 and under 16, where the child is under the care, supervision, or authority of the offender
 - s. 321 (3) Procuring etc. a child of or over 13 and under 16 to engage in sexual behaviour, where the child is under the care, supervision, or authority of the offender
 - s. 325 Sexual penetration without consent
 - s. 326 Aggravated sexual penetration without consent
 - s. 329 (2) Sexually penetrating a child relative or a *de facto* child, where the child is under 16
 - s. 329 (3) Procuring etc. a child relative or a *de facto* child to engage in sexual behaviour, where the child is under 16
 - s. 330 (2) Sexually penetrating an incapable person, where the incapable person is under the care, supervision, or authority of the offender
 - s. 330 (3) Procuring etc. an incapable person to engage in sexual behaviour, where the incapable person is under the care, supervision, or authority of the offender”.

(b) in Division A of Part I of the Fourth Schedule, in the item relating to section 398 of *The Criminal Code* —

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

- “
- (b) an offence under Chapter XXII or XXXI of *The Criminal Code*, or an attempt to commit such an offence; or
- ”;

and

(b) by deleting paragraph (d).

District Court of Western Australia Act 1969 amended

3. The *District Court of Western Australia Act 1969* is amended in section 42 by repealing subsection (2a) and substituting the following subsection —

“ (2a) The Court has no jurisdiction to try an accused person charged with an offence against section 320 (2) or (3), 321A, 325, 326, 327 or 328 of *The Criminal Code*. ”.