

WESTERN AUSTRALIA

CRIMINAL LAW AMENDMENT ACT 1991

No. 37 of 1991

AN ACT to amend *The Criminal Code* and the *Road Traffic Act 1974*.

[Assented to 12 December 1991]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Criminal Law Amendment Act 1991*.

Commencement

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

(2) Sections 4 and 7 and Parts 4 and 5 shall come into operation on such day as is fixed by proclamation.

The Code

3. In this Act “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 Compilation Act 1913.*]

PART 2 — GENERAL AMENDMENTS

Section 19 amended

4. Section 19 of the Code is amended by deleting paragraph (3) and substituting the following paragraph —

“ (3) A person liable to imprisonment, either with or without hard labour, may be sentenced to pay a fine of any amount in addition to or instead of being sentenced to imprisonment; ”.

Section 270 amended

5. Section 270 of the Code is amended by deleting “Except as hereinafter set forth, any” and substituting the following —

“ Any ”.

**Section 276 repealed,
consequential amendments to the *Road Traffic Act 1974*
and transitional provisions**

6. (1) Section 276 of the Code is repealed.

(2) Part A of the Schedule has effect.

(3) Notwithstanding subsection (1), section 276 of the Code continues to apply in relation to —

- (a) any death that occurred before the commencement of this section; and
- (b) any death that occurs after the commencement of this section if the relevant day was not less than a year and a day before the commencement of this section.

(4) In subsection (3) (b) “relevant day” means —

- (a) the day on which the last unlawful act contributing to the cause of death was done; or
- (b) when the cause of death is an omission to observe or perform a duty, the day on which the omission ceased; or
- (c) when the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later.

Section 611A inserted

7. After section 611 of the Code the following section is inserted —

Matters may be dealt with before trial

“ **611A.** (1) Before an indictment has been presented to a court against a person committed to the court for trial or after an indictment (including an *ex officio* indictment) has been presented to a court against a person and before a jury is sworn, the court may —

- (a) determine any question of law or procedure if it considers it is convenient to do so to facilitate the preparation for, or the conduct of, the trial, or is otherwise desirable;
- (b) determine any question of fact which in a trial may be determined lawfully by a judge alone without a jury;

- (c) permit the person committed or indicted to make admissions under section 32 of the *Evidence Act 1906*, notwithstanding that the person's trial has not begun.

(2) The judge constituting the court which deals with any matter under subsection (1) need not be the judge who constitutes the court when the trial of the person committed or indicted takes place before a jury.

(3) Any proceedings under subsection (1) occurring before the trial of the person committed or indicted has begun are to be taken as being part of the trial.

(4) The powers in subsection (1) (a) and (b) may be exercised where a person has been committed to a court for sentence.

”.

PART 3 — DEFENCE OF PROPERTY**Section 251 amended**

8. Section 251 of the Code is amended by deleting “provided that he does not do bodily harm to the trespasser.” and substituting the following —

“ provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the trespasser. ”.

Section 253 amended

9. Section 253 of the Code is amended by deleting “force in order to obtain possession of the property; provided that he does not do bodily harm to the person in possession.” and substituting the following —

“ such force as is reasonably necessary in order to obtain possession of the property; provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the person in possession. ”.

Section 254 repealed and a section substituted

10. Section 254 of the Code is repealed and the following section is substituted —

**Defence of property against trespassers:
Removal of disorderly persons**

“ 254. (1) For the purposes of this section and section 255, the term “**place**” means any land, building, structure, tent, or conveyance, or a part of any land, building, structure, tent, or conveyance.

(2) It is lawful for a person (“the occupant”) who is in peaceable possession of any place, or who is entitled to the control or management of any place, to use such force as is reasonably necessary —

- (a) to prevent a person from wrongfully entering the place;
- (b) to remove a person who wrongfully remains on or in the place; or
- (c) to remove a person behaving in a disorderly manner on or in the place;

provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the person.

(3) The authorization conferred by subsection (2), as limited by the proviso to that subsection, extends to a person acting by the occupant’s authority except that if that person’s duties as an employee consist of or include any of the matters referred to in subsection (2) (a), (b) or (c) that person is not authorized to use force that is intended, or is likely, to cause bodily harm. ”.

Section 255 amended

11. Section 255 of the Code is amended—

- (a) by deleting “land, structure, or vessel,” and substituting the following —
“ place ”; and
- (b) by deleting “property” and substituting the following—
“ place ”.

PART 4 — OFFENCES IN PLACES**Heading to Chapter XXXIX repealed and a heading substituted**

12. The heading to Chapter XXXIX of the Code is repealed and the following heading is substituted —

“ **CHAPTER XXXIX — OFFENCES IN
OR IN RESPECT OF BUILDINGS ETC.** ”.

Sections 400 to 404 repealed and sections 400 and 401 substituted and consequential amendments

13. (1) Sections 400, 401, 402, 403 and 404 of the Code are repealed and the following sections are substituted —

Definitions

“ **400.** (1) For the purposes of this chapter the term “**place**” means a building, structure, tent, or conveyance, or a part of a building, structure, tent, or conveyance, and it is immaterial that —

(a) at the time of an offence a conveyance is immovable; or

(b) a place is from time to time uninhabited or empty of property.

(2) For the purposes of this chapter a person enters or is in a place as soon as —

(a) any part of the person’s body; or

(b) any part of anything in the person’s possession or under the person’s control,

is in the place.

Burglary

401. (1) A person who enters or is in the place of another person, without that other person's consent, with intent to commit an offence therein is guilty of a crime and is liable to imprisonment for 14 years.

Summary conviction penalty:

- (a) If the place is ordinarily used for human habitation, imprisonment for 3 years or a fine of \$12 000; or
- (b) in any other case, imprisonment for 2 years or a fine of \$8 000.

(2) A person who commits an offence in the place of another person, when in that place without that other person's consent, is guilty of a crime and is liable to imprisonment for 14 years.

Summary conviction penalty

(subject to subsection (3)):

- (a) If the place is ordinarily used for human habitation, imprisonment for 3 years or a fine of \$12 000; or
- (b) in any other case, imprisonment for 2 years or a fine of \$8 000.

(3) If the offence committed in the place is an offence against property and the value of the property is more than \$4 000 the charge is not to be dealt with summarily.

”.

(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. 244	Delete “breaking and”. Delete “break and”.
s. 407 (a)	Delete “break or enter a dwelling house” and substitute the following — “ enter a place ”.
s. 407 (b)	Delete the paragraph.
s. 407 (d)	Insert after the paragraph the following — “ or ”.
s. 407 (e)	Delete “or” after the paragraph.
s. 407 (f)	Delete the paragraph.
s. 407	At the foot of the section insert the following — “ Summary conviction penalty: Imprisonment for 2 years, or a fine of \$8 000. ”.
s. 426A (1) (a)	Delete the paragraph and “or” after it.
s. 426A (1) (b)	Delete “390, 390A, 404, or 407,” and substitute the following — “ or 390, ”.
s. 426A (2)	Repeal the subsection.
s. 427 (1)	Delete “or 426A (2) (a)”.

(3) The heading to Chapter XLIII of the Code is amended by deleting “, BURGLARY”.

Section 586 amended

14. Section 586 (4a) of the Code is repealed and the following subsections are substituted —

“ (4a) In an indictment against a person alleging an offence under section 401 (2), where the offence alleged to have been committed is stealing any property, the accused person may also be charged with receiving the same property or any part thereof knowing it to have been stolen; and the accused person may, according to the evidence, be convicted of either of the offences charged.

(4b) When an indictment of the kind referred to in subsection (4a) is preferred against 2 or more persons, all or any of the accused persons may, according to the evidence, be convicted either of the charge under section 401 (2) or of the charge of receiving, or according to the evidence, one or more of them may be convicted of the charge under section 401 (2) and the other or others of them of the charge of receiving.

”.

Section 598B inserted

15. After section 598A of the Code the following section is inserted —

Burglary; alternative verdict

“ **598B.** Upon an indictment charging a person with an offence under section 401 (2) the person may be convicted of an offence under section 401 (1).

”.

PART 5 — STEALING MOTOR VEHICLES**Section 1 amended**

16. Section 1 (1) of the Code is amended by inserting after the definition of the term “money” the following definition —

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

Section 371A inserted

17. After section 371 of the Code the following section is inserted —

Special case: Motor vehicles

“ **371A.** (1) A person who unlawfully —

- (a) uses a motor vehicle; or
- (b) takes a motor vehicle for the purposes of using it; or
- (c) drives or otherwise assumes control of a motor vehicle,

without the consent of the owner or the person in charge of that motor vehicle, is said to steal that motor vehicle.

(2) This section has effect in addition to section 371 and does not prevent section 371 from applying to motor vehicles. ”.

Section 390A repealed

18. Section 390A of the Code is repealed.

Section 426 amended

19. Section 426 of the Code is amended —

- (a) in subsection (1) by deleting “This section” and substituting the following —

“ Subsection (2) ”;

- (b) in subsection (2) by deleting “this section” and substituting the following —

“ this subsection ”;

- (c) by inserting after subsection (2) the following subsection —

“ (2a) If —

- (a) a person is charged before a court of petty sessions with an offence under section 378 or 414, or with attempting to commit, or inciting another person to commit, an offence under section 378 or 414;

and

- (b) the property in question is a motor vehicle,

the prosecutor may request the court to deal with the charge summarily and, if that request is made, the court shall deal with the charge and, subject to subsection (4), the person is liable on summary conviction to imprisonment for 2 years or to a fine of \$8 000.

”;

and

- (d) in subsection (4) (c) by inserting after “(2)” the following —

“ , (2a) ”.

Section 427 amended

20. Section 427 (3) of the Code is amended by deleting “426 (3)” and substituting the following —

“ 426 (2a) or (3) ”.

Consequential amendments to the *Road Traffic Act 1974*

21. Part B of the Schedule has effect.

SCHEDULE

AMENDMENTS TO ROAD TRAFFIC ACT 1974

PART A

[s. 6 (2)]

Section 59 amended and transitional provision

1. (1) Section 59 (2) (a) of the *Road Traffic Act 1974* is amended by deleting “and, in the case of death, where the death occurs within a year and a day of the driving”.

(2) Notwithstanding subclause (1), section 59 (2), as it was immediately before the commencement of this clause, continues to apply in relation to —

- (a) any death that occurred before the commencement of this clause; and
- (b) any death that occurs after the commencement of this clause if the driving which directly or indirectly causes the death occurs not less than a year and a day before the commencement of this clause.

PART B

[s. 21]

Section 51 amended

1. Section 51 (1) (a) (ii) of the *Road Traffic Act 1974* is deleted and the following subparagraph is substituted —

- “ (ii) under section 378 of *The Criminal Code* where the property in question was a motor vehicle; ”.

Section 89 amended

2. Section 89 (1) of the *Road Traffic Act 1974* is repealed.
