

WESTERN AUSTRALIA

CRIMINAL LAW AMENDMENT ACT

No. 70 of 1988

AN ACT to amend *The Criminal Code*, the *Evidence Act 1906*, the *Bail Act 1982*, the *Child Welfare Act 1947*, the *Offenders Probation and Parole Act 1963*, the *Acts Amendment (Public Service) Act 1987* and the *Justices Act 1902*.

[Assented to 15 December 1988]

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 1988*.

Commencement

2. (1) Subject to subsections (2) and (3) the provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

(2) Part 4 shall come into operation—

(a) when section 8 comes into operation; or

(b) immediately after the *Bail Act 1982* and the *Bail Amendment Act 1984* come into operation,

whichever is later.

(3) Sections 3, 32 and 33, Part 6 (other than section 48 (1)), and Part 7 shall come into operation on the day on which this Act receives the Royal Assent.

PART 2—THE CRIMINAL CODE

The Code

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

[*Reprinted as approved 13 December 1983 as the Schedule to the *Criminal Code Act 1913* appearing in Appendix B to the *Criminal Code Act Compilation Act 1913*, and amended by Acts Nos. 13, 52 and 121 of 1984, 14, 74 and 119 of 1985, 89 of 1986 and 47, 74, 106 and 129 of 1987.]

Section 1 amended

4. Section 1 of the Code is amended in subsection (1)—

(a) by inserting after the definition of the term “bodily harm” the following definition—

“ The term “bribe” means any property or benefit of any kind, whether pecuniary or otherwise, sought, offered, promised, agreed upon, given or obtained for the person being or to be bribed or any other person, in respect of any act done or to be done, or any omission made or to be made, or any favour or disfavour shown or to be shown, in relation to the performance or discharge of the functions of any office or employment, or the affairs or business of a principal; ”; and

(b) in the definition of the term “public officer”—

(i) by inserting after “means” the following

“ a person exercising authority under a written law, and includes ”;

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

“ (b) a person authorized under a written law to execute or serve any process of a Court or tribunal; ”and

(iii) in paragraph (d) by inserting before “council” the following—

“ municipality, ”.

Section 5 inserted

5. After section 4 of the Code the following section is inserted—

Summary conviction of indictable offences

“ 5. The words “Summary conviction penalty” appearing after a provision of this Code mean that where a person is charged before a Court of Petty Sessions with an offence under that provision and the Court, having regard to the nature and particulars of the offence, and to such particulars of the circumstances relating to the charge and the antecedents of the person charged as the Court may require from the prosecutor, considers that the charge can be adequately dealt with summarily, the charge may be dealt with summarily at the election of the person charged, and the person is liable on summary conviction to the penalty set out after the words “Summary conviction penalty”. ”.

Section 19 amended

6. Section 19 of the Code is amended in subsection (3) by deleting “\$50 000” and substituting the following—

“ \$250 000 ”.

Section 19A inserted

7. After section 19 of the Code the following section is inserted—

Imprisonment as sentence of last resort

“ 19A. (1) Where a person is convicted of an offence punishable by imprisonment and the court has an option whether or not to imprison the offender the court shall consider—

- (a) the seriousness of the offence;
- (b) the circumstances of the commission of the offence;
- (c) the circumstances personal to the offender; and
- (d) any special circumstances of the case,

and shall not imprison the offender unless it considers that no other form of punishment or disposition available to the court in the case is appropriate.

(2) The failure of a court to comply with subsection (1) does not invalidate any sentence or order imposed or made by the court. ”.

Chapters VI and XI and sections 50, 713 and 730 repealed and sections 48 and 584 amended

8. (1) Chapters VI and XI and sections 50, 713 and 730 of the Code are repealed.

(2) Section 48 of the Code is amended in paragraph (1) (a) by deleting “mutinous or ”.

(3) Section 584 of the Code is amended by repealing subsection (1).

Sections 54 and 55 amended

9. Sections 54 and 55 of the Code are each amended—

- (a) by deleting “advisedly”; and
- (b) by inserting after the section the following—

“ Summary conviction penalty: Imprisonment for 2 years or a fine of \$7 500. ”.

Section 56 amended

10. Section 56 of the Code is amended—

- (a) by deleting “advisedly”;
- (b) in paragraph (1) by deleting “Disturbs” and substituting the following—

“ Does any act calculated to disturb ”;
- (c) in paragraph (2) by inserting before “tending” the following—

“ calculated and ”; and
- (d) by inserting after the section the following—

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

Section 58 amended

11. Section 58 of the Code is amended—

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

“ crime ”;
- (b) by deleting “two” and substituting the following—

“ 5 ”; and
- (c) by inserting after the section the following—

“ Summary conviction penalty: Imprisonment for 2 years or a fine of \$7 500. ”.

Section 59 amended

12. Section 59 of the Code is amended by deleting “misdemeanour, and is liable to imprisonment for two years” and substituting the following—

- “ simple offence, and is liable to imprisonment for 2 years or to a fine of \$7 500 ”.

Section 60 amended

13. Section 60 of the Code is amended—

(a) by inserting after “benefit of any kind” the following—

“ , whether pecuniary or otherwise, ”; and

(b) by deleting “; and is disqualified from sitting or voting as a member of either House of Parliament for seven years”.

Section 61 amended

14. Section 61 of the Code is amended, in paragraph (1), by inserting after “benefit of any kind” the following—

“ , whether pecuniary or otherwise, ”.

Section 75 amended

15. Section 75 of the Code is amended—

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

“ 3 ”; and

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

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

Chapter XIII repealed and a Chapter substituted

16. Chapter XIII of the Code is repealed and the following Chapter is substituted—

“ CHAPTER XIII—CORRUPTION AND ABUSE OF OFFICE

Bribery of public officer

82. Any public officer who obtains, or who seeks or agrees to receive, a bribe, and any person who gives, or who offers or promises to give, a bribe to a public officer, is guilty of a crime and is liable to imprisonment for 7 years.

Corruption

83. Any public officer who, without lawful authority or a reasonable excuse—

- (a) acts upon any knowledge or information obtained by reason of his office or employment;
- (b) acts in any matter, in the performance or discharge of the functions of his office or employment, in relation to which he has, directly or indirectly, any pecuniary interest; or
- (c) acts corruptly in the performance or discharge of the functions of his office or employment,

so as to gain a benefit, whether pecuniary or otherwise, for any person, or so as to cause a detriment, whether pecuniary or otherwise, to any person, is guilty of a crime and is liable to imprisonment for 3 years.

Section 121 applies to judicial corruption

84. In sections 82 and 83 “public officer” does not include the holder of a judicial office within the meaning of section 121.

Falsification of records by public officer

85. Any public officer who corruptly—

- (a) makes any false entry in any record;
- (b) omits to make any entry in any record;
- (c) gives any certificate or information which is false in a material particular;
- (d) by act or omission falsifies, destroys, alters or damages any record;
- (e) furnishes a return relating to any property or remuneration which is false in a material particular; or
- (f) omits to furnish any return relating to any property or remuneration, or to give any other information which he is required by law to give,

is guilty of a crime and is liable to imprisonment for 3 years.

Administering extra judicial oaths

86. (1) Any person who administers an oath or takes a declaration or affirmation without having lawful authority so to do is guilty of a misdemeanour and is liable to imprisonment for 2 years.

(2) This section does not apply to an oath, declaration or affirmation administered or taken—

(a) as authorized or required by law of; or

(b) for purposes lawful in,

another country, State or Territory.

Personation

87. Any person who—

(a) personates a public officer on an occasion when the latter is required to do any act or attend in any place by virtue of his office or employment; or

(b) falsely represents himself to be a public officer, and assumes to do any act or attend in any place for the purpose of doing any act by virtue of his pretended office or employment,

is guilty of a misdemeanour and is liable to imprisonment for 2 years.

Bargaining for public office

88. Any person who—

(a) corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind, whether pecuniary or otherwise, for himself or any other person on account of anything already done or omitted to be done, by him or any other person with regard to the appointment of any person as a public officer, or with regard to any application by any person for employment as a public officer; or

- (b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure to, upon , or for any person any property or benefit of any kind, whether pecuniary or otherwise, on account of any such act or omission,

is guilty of a crime and is liable to imprisonment for 3 years. ”.

Chapter XV repealed

17. Chapter XV of the Code is repealed.

Chapter XVIII repealed

18. Chapter XVIII of the Code is repealed.

Chapter XIX repealed and section 1 amended

19. (1) Chapter XIX of the Code is repealed.

(2) Section 1 of the Code is amended in subsection (1) by deleting the definitions of the terms “mail” and “mail conveyance”.

Chapter XXI repealed

20. Chapter XXI of the Code is repealed.

Section 188 amended

21. Section 188 of the Code is amended by repealing subsections (1) and (2) and substituting the following subsections—

“ (1) Any person who has unlawful carnal knowledge of a girl or woman who is so mentally disabled or intellectually handicapped as to be incapable—

- (a) of understanding the nature of the act; or
(b) of guarding herself against sexual exploitation,

is guilty of a crime and is liable to imprisonment for 14 years.

(2) A person is not criminally responsible under subsection (1) for having carnal knowledge of a girl or woman unless the person did so under such circumstances that the person knew or ought to have known that the girl or woman was mentally disabled or intellectually handicapped as described in subsection (1). ”.

Section 189 amended

22. Section 189 of the Code is amended—

(a) in subsection (1) by deleting paragraph (ii) and substituting the following paragraph—

“ (ii) who is so mentally disabled or intellectually handicapped as to be incapable—

(A) of understanding the nature of the act; or

(B) of guarding herself against sexual exploitation; ”; and

(b) after subsection (3) by inserting the following subsection—

“ (3a) A person is not criminally responsible under subsection (1) (ii) for indecently dealing with a girl or woman unless the person did so under such circumstances that the person knew or ought to have known that the girl or woman was mentally disabled or intellectually handicapped as described in subsection (1) (ii). ”.

Section 207 repealed

23. Section 207 of the Code is repealed.

Section 213 amended

24. Section 213 of the Code is amended by deleting “the four last preceding sections” and substituting the following—

“ section 209 ”.

Section 214 amended

25. Section 214 of the Code is amended by inserting after the section the following—

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

Chapter XXIV repealed

26. Chapter XXIV of the Code is repealed.

Section 282 repealed and a section substituted

27. Section 282 of the Code is repealed and the following section is substituted—

Punishment of wilful murder and murder

“ **282.** A person, other than a child or young person under the age of 18 years, who commits the crime—

(a) of wilful murder is liable to a mandatory punishment of—

(i) strict security life imprisonment; or

(ii) life imprisonment;

(b) of murder is liable to a mandatory punishment of life imprisonment,

and a child or young person under the age of 18 years who commits the crime—

(c) of wilful murder is liable to a punishment of—

(i) strict security life imprisonment; or

(ii) life imprisonment; or

(iii) an order that the child or young person be detained in strict custody until the Governor's pleasure is known and, thereafter, in safe custody in such place or places as the Governor may, from time to time, direct;

(d) of murder is liable to a punishment of—

(i) life imprisonment; or

(ii) an order that the child or young person be detained in strict custody until the Governor's pleasure is known and, thereafter, in safe custody in such place or places as the Governor may, from time to time, direct. ”.

Section 317 amended

28. Section 317 of the Code is amended—

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

“ Summary conviction penalty: Imprisonment for 2 years or a fine of \$7 500. ”; and

(b) by repealing subsection (2).

Section 318 amended

29. Section 318 of the Code is amended—

(a) in subsection (1)—

(i) by deleting “or” after paragraph (e); and

(ii) by deleting the comma after paragraph (f) and substituting the following—

“ ; or

(g) assaults the driver or person operating or in charge of—

(i) a vehicle travelling on a railway;

(ii) a ferry; or

(iii) a passenger vehicle as defined in paragraph (a) of the definition of “passenger vehicle” in section 5 (1) of the *Road Traffic Act 1974.* ”; ”.

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

“ Summary conviction penalty: Imprisonment for 2 years or a fine of \$7 500. ”; and

(c) by repealing subsection (2).

Section 324H amended

30. Section 324H of the Code is amended in paragraphs (b) and (d) by inserting before “the offender” the following—

“ at or immediately before or immediately after the commission of the offence, ”.

Miscellaneous amendments removing requirement of corroboration

31. The Code is amended—

(a) in section 1 (1) by deleting the definition of the term “uncorroborated testimony”;

(b) in each of sections 57, 127 and 185 by deleting the following—

“ A person cannot be convicted of the offence defined in this section upon the uncorroborated testimony of one witness. ”;

(c) in section 113 by deleting the following—

“ A person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness. ”;

(d) by repealing sections 126 and 171;

(e) in section 187 by repealing subsection (4); and

(f) in each of sections 52, 191 and 192 by deleting the following—

“ A person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of one witness. ”.

Section 684 amended

32. Section 684 of the Code is amended in subsection (1) by deleting “permanent head” and substituting the following—

“ chief executive officer ”.

Section 703 amended

33. Section 703 of the Code is amended in the definition of the expression “sentence” by inserting after “37A” the following—

“ or 40D (2a) ”.

PART 3—*EVIDENCE ACT 1906***Principal Act**

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

[*Reprinted as at 14 August 1986 and amended by Acts Nos. 81 of 1986 and 66 of 1987.]

Section 3 amended

35. Section 3 of the principal Act is amended by inserting after the definition of “the State” the following definition—

“ “uncorroborated evidence”, in relation to the conviction of a person accused of an offence, means evidence that is not corroborated in some material particular by other evidence implicating the accused person; ”.

Sections 33 and 34 repealed

36. Sections 33 and 34 of the principal Act are repealed.

Section 35 repealed and a section substituted

37. Section 35 of the principal Act is repealed and the following section is substituted—

Evidence on charge of perjury

“ 35. (1) Notwithstanding any rule of law to the contrary, a person may be convicted of committing perjury or of counselling or procuring the commission of perjury upon the uncorroborated evidence of one witness.

(2) Nothing in subsection (1) affects the operation of section 101 (2). ”.

Section 36A amended

38. Section 36A of the principal Act is amended in subsection (1) by deleting “, 36BE”.

Section 36BE repealed

39. Section 36BE of the principal Act is repealed.

Section 37 repealed

40. Section 37 of the principal Act is repealed.

Section 48 repealed

41. Section 48 of the principal Act is repealed.

Section 50 repealed and a section substituted

42. Section 50 of the principal Act is repealed and the following section is substituted—

No requirement for warning as to
conviction on uncorroborated evidence
of one witness

“ 50. (1) In this section “corroboration warning” in relation to a trial means a warning to the effect that it is unsafe to convict the person who is being tried on the uncorroborated evidence of one witness.

(2) On the trial of a person on indictment for an offence—

(a) the Judge is not required by any rule of law or practice to give a corroboration warning to the jury in relation to any offence of which the person is liable to be convicted on the indictment; and

(b) the Judge shall not give a corroboration warning to the jury unless the Judge is satisfied that such a warning is justified in the circumstances.

(3) Nothing in subsection (2) affects the operation of section 101(2). ”.

Section 105 repealed

43. Section 105 of the principal Act is repealed.

Third Schedule repealed

44. The Third Schedule to the principal Act is repealed.

PART 4—*BAIL ACT 1982***Section 15 amended**

45. Section 15 of the *Bail Act 1982** is amended—

(a) in subsection (1) by deleting “an offence to which this section applies” and substituting the following—

“ wilful murder or murder ”; and

(b) by repealing subsection (2).

[*Act No. 86 of 1982 as amended by Acts Nos. 52 and 74 of 1984.]

PART 5—*CHILD WELFARE ACT 1947***Various provisions amended**

46. The *Child Welfare Act 1947** is amended as set out in the Table.

TABLE

<i>Provision amended</i>	<i>Amendment</i>
Section 33 (4) (a)	Delete “treason,”
Section 40 (1)	Delete “, infanticide or treason”, substitute “or infanticide”
Fourth Schedule Part 1, Division A	Delete the following—
	“ 37 Treason.
	38 Concealment of treason.
	39 Reasonable crimes.
	41 Inciting to mutiny.
	42 Assisting escape of prisoners of war.
	47 Unlawful oaths to commit offences punishable with strict security life imprisonment.
	78 Piracy—
	if the crime is committed with respect to a ship, and if at or immediately before or immediately after the time of committing the crime the offender—
	(a) assaults any person on board of or belonging to the ship, with intent to kill him or to kill any other person; or

<i>Provision amended</i>	<i>Amendment</i>
	(b) wounds any such person; or
	(c) unlawfully does any act by which the life of any such person is endangered.
79 Attempted piracy with personal violence.	
80 Aiding pirates. ”.	
Delete the following—	
“ 153 Counterfeiting gold and silver coin— if the crime is committed with respect to current coin.	
154 Preparation for coining gold and silver coin— if the crime is committed with respect to current coin.	
155 Clipping.	
159 Offences after previous convictions committed with respect to current coin. ”.	
Delete the following—	
“ 284 Accessory after the fact to murder. ”.	

[*Reprinted as approved 30 August 1984 and amended by Acts Nos. 52, 61 and 121 of 1984, 74 and 98 of 1985, 89 of 1986 and 127 of 1987.]

PART 6—OFFENDERS PROBATION AND PAROLE ACT 1963

Principal Act

47. In this Part the *Offenders Probation and Parole Act 1963** is referred to as the principal Act.

[*Reprinted as approved 11 June 1984 and amended by Acts Nos. 52 of 1984, 24 and 118 of 1985 and 47, 113 and 129 of 1987.]

Section 34 amended

48. (1) Section 34 of the principal Act is amended in subsection (2) (a) (iv) by deleting “37, 78, 79 or”.

(2) Section 34 of the principal Act is amended in Column 1 of the Table—

(a) by deleting the description in item 2 and substituting the following description—

“ A prisoner undergoing a sentence of strict security life imprisonment other than—

(a) a sentence mentioned in item 1; or

(b) a sentence in respect of which an order was made under section 40D (2a) ”; and

(b) in each of items 5 and 7 by inserting after “282 (a) (ii)” the following—

“ or (c) (ii) ”.

Section 40D amended

49. Section 40D of the principal Act is amended—

(a) in subsection (1) by deleting “subsection (2)” and substituting the following—

“ subsections (2) and (2b) ”;

(b) in subsection (2) by inserting after “imprisonment”, where it first occurs, the following—

“ other than a sentence in respect of which an order was made under subsection (2a) ”; and

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

“ (2a) Where a court imposes a sentence of strict security life imprisonment on a person the court may, if it considers that the making of an order under this subsection is appropriate, order that the person is not to be eligible for parole.

(2b) In the case of a prisoner undergoing a sentence of strict security life imprisonment in respect of which an order was made under subsection (2a), an order under subsection (1) shall not be made at any time. ”.

PART 7—ACTS AMENDMENT (PUBLIC SERVICE) ACT 1987

**Acts Amendment (Public Service)
Act 1987 amended**

50. The *Acts Amendment (Public Service) Act 1987** is amended in Schedule 2 by deleting item 8.

[*Act No. 113 of 1987.]

PART 8—JUSTICES ACT 1902

Justices Act 1902 section 69 amended

51. Section 69 of the *Justices Act 1902** is amended in subsection (7) by deleting “, but a person shall not be convicted of the crime upon the uncorroborated testimony of one witness. ”.

[*Reprinted as approved 9 November 1984 and amended by Acts Nos. 69 of 1984, 15 and 119 of 1985, 71 and 81 of 1986 and 65 of 1987.]
