

WESTERN AUSTRALIA

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# CRIMINAL CODE AMENDMENT ACT (No. 2)

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No. 106 of 1987

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AN ACT to amend *The Criminal Code and the Criminal Law Amendment Act 1986*.

[Assented to 16 December 1987]

The Parliament of Western Australia enacts as follows:

## PART I—PRELIMINARY

### Short title

1. This Act may be cited as the *Criminal Code Amendment Act (No. 2) 1987*.

### Commencement

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

**The Code**

3. In this Act “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 and 14, 74 and 119 of 1985.]

PART II—AMENDMENTS RELATING TO ATTEMPTS, INCITEMENT,  
CONSPIRACY AND ACCESSORIES AFTER THE FACT

**Section 1 amended**

4. Section 1 of the Code is amended in subsection (1) by inserting after the definition of the term “grievous bodily harm” the following definition—

“ The term “incites” includes solicits and endeavours to persuade; ”.

**Section 4 amended**

5. Section 4 of the Code is amended by deleting “means adapted to its fulfilment, and manifests his intention by some overt act,” and substituting the following—

“ doing an act that is more than merely preparatory to the commission of the offence ”.

**Section 33 repealed**

6. Section 33 of the Code is repealed.

**Section 283 amended**

7. Section 283 of the principal Act is amended by inserting after “life” the following—

“ or, where the person is convicted of an offence under this section upon an indictment charging her with the crime of infanticide, to imprisonment for 7 years ”.

**Sections 552 to 555 repealed  
and sections substituted**

8. Sections 552, 553, 554 and 555 of the Code are repealed and the following sections are substituted—

Attempts to commit indictable offences

“ 552. Any person who attempts to commit an indictable offence is guilty of an indictable offence.

Incitement to commit indictable offences

553. Any person who, intending that an indictable offence be committed, incites another person to commit the offence, is guilty of an indictable offence.

Punishment of attempts and incitement

554. Unless another punishment is provided, the punishment to which a person is liable for an offence under section 552 or 553 of attempting to commit, or inciting another person to commit, an indictable offence is—

- (a) where that indictable offence is punishable by imprisonment for life—imprisonment for 14 years;
- (b) in any other case—a punishment equal to one-half of the greatest punishment to which a person convicted of that indictable offence is liable.

Summary trial of attempt or incitement charges

555. (1) Without limiting section 426, where a person is charged before a Court of Petty Sessions with an offence under section 552 or 553 of attempting to commit, or inciting another person to commit, a prescribed offence and the Court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge 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.

(2) The punishment to which a person is liable on being convicted summarily of attempting to commit, or inciting another person to commit, a prescribed offence is—

- (a) the punishment to which a person convicted summarily of that prescribed offence is liable; or

- (b) a punishment equal to one-half of the greatest punishment to which a person convicted upon indictment of that prescribed offence is liable,

whichever is the lesser.

(3) In subsections (1) and (2) "prescribed offence" means an indictable offence a charge of which may be dealt with summarily. "

### **Sections 558 to 560 repealed and sections substituted**

9. Sections 558, 559 and 560 are repealed and the following sections are substituted—

#### Conspiracies to commit indictable offences

" 558. (1) Any person who conspires with another person—

- (a) to commit any indictable offence; or
- (b) to do any act or make any omission in any part of the world which, if done or made in Western Australia, would be an indictable offence and which is an offence under the laws in force in the place where it is proposed to be done or made,

is guilty of an indictable offence.

(2) The punishment to which a person is liable for an offence under subsection (1) of conspiring with another person to commit an indictable offence, or to do any act or make any omission which if done or made in Western Australia would be an indictable offence, is—

- (a) where that indictable offence is punishable by imprisonment for 14 years or more than 14 years—imprisonment for 14 years;
- (b) in any other case—a punishment equal to the greatest punishment to which a person convicted of that indictable offence is liable.

(3) Without limiting subsections (1) and (2), the application of those subsections extends to a conspiracy under which an offence is to be committed, or an act or omission done or made, by a person other than the persons conspiring with each other.

Summary trial of charges of conspiracy  
to commit indictable offences

559. (1) Where a person is charged before a Court of Petty Sessions with an offence under section 558 (1) of conspiring to commit a prescribed offence, or to do any act or make any omission which, if done or made in Western Australia, would be a prescribed offence, and the Court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge 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 that person is liable on summary conviction to the punishment to which a person convicted summarily of that prescribed offence is liable.

(2) In subsection (1) "prescribed offence" means an indictable offence a charge of which may be dealt with summarily.

Conspiracies to commit simple offences

560. (1) Any person who conspires with another person—

- (a) to commit any simple offence; or
- (b) to do any act or make any omission in any part of the world which, if done or made in Western Australia, would be a simple offence and which is an offence under the laws in force in the place where it is proposed to be done or made,

is guilty of a simple offence and is liable to a punishment equal to the greatest punishment to which a person convicted of the offence referred to in paragraph (a) or (b) is liable.

(2) Without limiting subsection (1) the application of that subsection extends to a conspiracy under which an offence is to be committed, or an act or omission done or made, by a person other than the persons conspiring with each other.

(3) A prosecution for an offence under subsection (1) may be commenced at any time. "

**Section 561 repealed**

10. Section 561 of the Code is repealed.

**Sections 562 and 563 repealed  
and sections substituted**

**11.** Sections 562 and 563 of the Code are repealed and the following sections are substituted—

Accessories after the fact to indictable offences

“ 562. (1) Any person who becomes an accessory after the fact to an indictable offence is guilty of an indictable offence.

(2) The punishment to which a person is liable for an offence under subsection (1) of becoming an accessory after the fact to an indictable offence is—

- (a) where that indictable offence is punishable by imprisonment for life—imprisonment for 14 years;
- (b) in any other case—a punishment equal to one-half of the greatest punishment to which a person convicted of that indictable offence is liable.

Summary trial of charge of becoming  
an accessory after the fact

563. (1) Where a person is charged before a Court of Petty Sessions with an offence under section 562 of becoming an accessory after the fact to a prescribed offence and the Court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge 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.

(2) The punishment to which a person is liable on being convicted summarily of becoming an accessory after the fact to a prescribed offence is—

- (a) the punishment to which a person convicted summarily of that prescribed offence is liable; or
- (b) a punishment equal to one-half of the greatest punishment to which a person convicted on indictment of that prescribed offence is liable,

whichever is the lesser.

(3) In subsections (1) and (2) “prescribed offence” means an indictable offence a charge of which may be dealt with summarily. ”.

### **Section 595 repealed and a section substituted**

**12.** Section 595 of the Code is repealed and the following section is substituted—

Alternative convictions upon  
indictment for unlawful homicide

“ 595. Upon an indictment charging a person with the crime of wilful murder, murder, manslaughter or infanticide, the person charged may be convicted of an offence mentioned opposite that crime in the Table if that offence is established by the evidence.

TABLE

Wilful murder	Murder, manslaughter, infanticide or an offence under section 283, 290, or 291 of this Code or section 59 of the <i>Road Traffic Act 1974</i> .
Murder	Manslaughter, infanticide or an offence under section 290 or 291 of this Code or section 59 of the <i>Road Traffic Act 1974</i> .
Manslaughter	An offence under section 290 or 291 of this Code or section 59 of the <i>Road Traffic Act 1974</i> .
Infanticide	An offence under section 283, 290, or 291 of this Code.

”.

### **Sections 599A to 599D inserted**

**13.** After section 599 of the Code the following sections are inserted—

Alternative conviction for attempt or incitement

“ 599A. Upon an indictment charging a person with committing any offence, he may be convicted of attempting to commit, or of inciting another person to commit, that offence or any other offence of which he might be convicted on the indictment.

Alternative convictions on charge  
of attempt to commit offence

599B. Upon an indictment charging a person with attempting to commit any offence (in this section called the “principal offence”), he may be convicted—

- (a) of committing the principal offence; or
- (b) of committing, or attempting to commit, any other offence of which he might have been convicted if the indictment had charged him with committing the principal offence,

but he shall not be liable to a punishment greater than the greatest punishment to which he would have been liable if he had been convicted on the indictment of attempting to commit the principal offence.

Alternative convictions on charge  
of conspiring to commit offence

599C. Upon an indictment charging a person with conspiring to commit an offence (in this section called the “principal offence”), he may be convicted—

- (a) of committing the principal offence;
- (b) of attempting to commit the principal offence; or
- (c) of inciting another person to commit the principal offence,

but he shall not be liable to a punishment greater than the greatest punishment to which he would have been liable if he had been convicted on the indictment of conspiring to commit the principal offence.

Alternative conviction as an  
accessory after the fact

599D. Upon an indictment charging a person with committing an offence, he may be convicted of becoming an accessory after the fact to that offence. ”.

### **Consequential amendments and repeals**

14. (1) Section 38 of the Code is amended by deleting paragraph (1) and “or” immediately following that paragraph.



(2) Sections 183 and 189 (1) of the Code are amended by deleting “incites” and substituting, in each case, the following—

“ procures ”.

(3) Section 185 of the Code is amended—

(a) by repealing the second paragraph; and

(b) in the third paragraph by deleting “either of the offences” and substituting the following—

“ the offence ”.

(4) Section 197 of the Code is amended—

(a) by repealing the second paragraph; and

(b) in the third paragraph by deleting “, or that the attempt was made,”.

(5) Sections 182, 284, 286, 448 and 450 of the Code are repealed.

(6) Section 601 of the Code is amended by repealing the first and third paragraphs.

(7) Section 10 of the *Criminal Law Amendment Act 1986\** is repealed.

[\*Act No. 89 of 1986.]

### PART III—AMENDMENTS RELATING TO SUMMARY CONVICTION FOR CERTAIN OFFENCES

#### **Section 313 substituted**

**15.** Section 313 of the Code is repealed and the following section is substituted—

#### Common assaults

“ 313. (1) Any person who unlawfully assaults another is guilty of a simple offence and is liable to imprisonment for 18 months or a fine of \$6 000.

(2) A prosecution for an offence under subsection (1) may be commenced at any time. ”.

**Section 378A inserted**

16. After section 378 of the Code the following section is inserted—

Stealing property of value of \$400 or less

“ 378A. (1) Any person who steals anything capable of being stolen, where the value of the property in question does not exceed \$400, is guilty of a simple offence, and is liable to imprisonment for 6 months or to a fine of \$2 000.

(2) A prosecution for an offence under subsection (1) may be commenced at any time. ”.

**Section 407A repealed**

17. Section 407A of the Code is repealed.

**Heading to Chapter XLIII amended**

18. Chapter XLIII is amended in the heading by inserting after “STEALING” the following—

“ , BURGLARY ”.

**Section 426 repealed and sections 426 and 426A substituted**

19. Section 426 of the Code is repealed and the following sections are substituted—

Summary conviction for stealing and like offences

“ 426. (1) This section applies to the following indictable offences—

(a) an offence under section 378, 382, or 383 in respect of which the greatest term of imprisonment to which an offender convicted of the offence is liable does not exceed 3 years;

(b) an offence under section 378 to which item (5) (a), (6), or (7) of that section applies;

- (c) an offence under section 409 or 411;
- (d) attempting to commit, or inciting another person to commit any of the offences mentioned in paragraph (a), (b), or (c);
- (e) receiving anything that has been obtained by means of an indictable offence of such a nature, or committed under such circumstances, that the offender who committed the indictable offence might be summarily convicted under this section.

(2) If a person is charged before a Court of Petty Sessions with an offence to which this section applies and—

- (a) the value of the property in question does not exceed \$4 000; or
- (b) whatever may be the value of the property in question, the Court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge 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, subject to subsections (3) and (4), the person is liable on summary conviction to imprisonment for 18 months, or to a fine of \$6 000.

(3) If the greatest term of imprisonment to which an offender convicted on indictment of an offence to which this section applies is liable does not exceed one year the person charged is liable upon summary conviction to imprisonment for 6 months, or to a fine of \$2 000.

(4) If the greatest term of imprisonment to which an offender convicted on indictment of an offence to which this section applies is liable does not exceed 2 years the person charged is liable upon summary conviction to imprisonment for 12 months or to a fine of \$4 000.

Summary conviction for burglary  
and certain other offences

426A. (1) If a person is charged before a Court of Petty Sessions with—

- (a) an offence under section 403 where the offence committed in the building in question is not an offence against property; or
- (b) an offence under section 381, 384, 385, 386, 387, 389, 390, 390A, 404, 407, 410, or 413,

and the Court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge 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, subject to subsections (3) and (4), the person is liable on summary conviction to imprisonment for 18 months, or to a fine of \$6 000.

(2) If a person is charged before a Court of Petty Sessions with an offence under section 403 where the offence committed in the building in question is an offence against property and—

- (a) the value of the property does not exceed \$4 000; or
- (b) whatever may be the value of the property, the Court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge 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 imprisonment for 18 months, or to a fine of \$6 000.

(3) If the greatest term of imprisonment to which an offender convicted on indictment of an offence mentioned in subsection (1) is liable does not exceed one year the person charged is liable upon summary conviction to imprisonment for 6 months, or to a fine of \$2 000.

(4) If the greatest term of imprisonment to which an offender convicted on indictment of an offence mentioned in subsection (1) is liable does not exceed 2 years the person charged is liable upon summary conviction to imprisonment for 12 months or to a fine of \$4 000. ”.

### **Section 427 amended**

**20.** Section 427 of the Code is amended by deleting “subsection (1) of section four hundred and twenty-six of this Code” and substituting the following—

“ section 426 (1) or 426A (1) or (2) ”.

### **Section 465 repealed and a section substituted**

**21.** Section 465 of the Code is repealed and the following section is substituted—

Summary conviction for unlawful damage  
to property and like offences

“ 465. (1) This section applies to the following indictable offences—

- (a) wilfully and unlawfully destroying or damaging any property, under such circumstances that the greatest term of imprisonment to which an offender convicted of the offence is liable does not exceed 3 years;
- (b) wilfully and unlawfully killing, maiming or wounding any animal capable of being stolen.

(2) If a person is charged before a Court of Petty Sessions with an offence to which this section applies and—

- (a) the amount of the injury done does not exceed \$4 000; or
- (b) whatever the amount of the injury done, the Court, having regard to the nature and particulars of the offence and to such particulars of the circumstances relating to the charge 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 imprisonment for 18 months, or to a fine of \$6 000. ”.

**Section 594 amended**

**22.** Section 594 of the Code is amended by deleting “any offence” and substituting the following—

“ any indictable or simple offence under this Code, or any other indictable offence, ”.

**Section 602A inserted**

**23.** After section 602 of the Code the following section is inserted—

Conviction on indictment of offence  
that might have been tried summarily

“ 602A. A person may be convicted of and punished for an offence on indictment notwithstanding that the person might have been convicted of and punished for that offence summarily. ”.

**Various sections amended**

**24.** The provisions of the Code referred to in column 1 of the table to this section are amended by deleting the expression set out in column 2 opposite the reference to that provision and substituting the expression set out in column 3 opposite that reference.

TABLE

COLUMN 1 Provision	COLUMN 2 Deleted expression	COLUMN 3 Substituted expression
Section 317 (2)	\$4 000	\$7 500
Section 318 (2)	\$4 000	\$7 500
Section 378		
(a) in item (3) in both places where it occurs—	three hundred dollars	\$4 000
(b) in item (5) (b)	ten dollars	\$4 000
(c) in item (10)	one thousand dollars	\$10 000
(d) in item (11)	ten dollars	\$4 000

**Saving**

**25.** The Code as amended by sections 17 to 22 and 24 shall not apply to an indictable offence with which a person was charged before a Court of Petty Sessions before the coming into operation of this Act and the Code as enacted before the commencement of those sections shall continue to apply to the offence.

## PART IV—MISCELLANEOUS

**Section 143 repealed and  
a section substituted**

**26.** Section 143 of the Code is repealed and the following section is substituted—

Attempting to pervert justice

“ 143. Any person who attempts to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and is liable to imprisonment for 7 years. ”.

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