

WESTERN AUSTRALIA

CRIMINAL LAW AMENDMENT ACT

No. 89 of 1986

AN ACT to amend *The Criminal Code*, the *Child Welfare Act 1947*, and the *Coroners Act 1920*.

[Assented to 10 December 1986.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Criminal Law Amendment Act 1986*.

Commencement

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

PART II—THE CRIMINAL CODE**The Code**

3. In this Part, “the Code” means The Criminal Code set out in the Schedule to the *Criminal Code Act 1913** appearing in Appendix B to the *Criminal Code Act Compilation Act 1913*.

[*Reprinted as approved 13 December 1983 and amended by Acts Nos. 13, 52 and 121 of 1984 and 14, 74 and 119 of 1985.]

Section 8 amended

4. Section 8 of the Code is amended—

(a) by inserting after the section designation “8.” the subsection designation “(1)”; and

(b) by inserting the following subsection—

“ (2) A person is not deemed under subsection (1) to have committed the offence if, before the commission of the offence, the person—

(a) withdrew from the prosecution of the unlawful purpose;

(b) by words or conduct, communicated the withdrawal to each other person with whom the common intention to prosecute the unlawful purpose was formed; and

(c) having so withdrawn, took all reasonable steps to prevent the commission of the offence. ”.

Section 10 substituted

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 Section 10 of the Code is repealed and the following section is substituted—

Accessories after the fact

“ 10. (1) A person who, knowing that another person has committed an offence, receives or assists that other person in order to enable that other person to escape punishment is said to become an accessory after the fact to the offence.

(2) A person does not become an accessory after the fact to an offence committed by the person's spouse by receiving or assisting that spouse. ”.

Section 277 amended

6. Section 277 of the Code is amended by deleting “or manslaughter” and substituting the following—

“ manslaughter, or infanticide ”.

Section 281A inserted

7. After section 281 of the Code the following section is inserted—

Definition of infanticide

“ 281A. (1) When a woman or girl who unlawfully kills her child under circumstances which, but for this section, would constitute wilful murder or murder, does the act which causes death when the balance of her mind is disturbed because she is not fully recovered from the effect of giving birth to the child or because of the effect of lactation consequent upon the birth of the child, she is guilty of infanticide only.

(2) In this section “child” means a child under the age of 12 months. ”.

Section 287A inserted

8. After section 287 of the Code the following section is inserted—

Punishment of infanticide

“ 287A. Any person who commits the crime of infanticide is liable to imprisonment for 7 years. ”.

Section 399A repealed and a section substituted

9. Section 399A of the Code is repealed and the following section is substituted—

Court may restrict publication of certain proceedings

“ 399A. (1) Subject to subsection (2) a Court may by order restrict or prohibit the printing or publication of any particulars or account of proceedings in the Court under section 396, 397, 398 or 399 of this Code.

(2) An order made under subsection (1) in respect of proceedings shall not prohibit or restrict the printing or publication of—

- (a) the name, address and occupation of the person charged;
- (b) the nature (but not the particulars) of the charge;
- (c) the name or names of a member or members of the Court, at any stage of the proceedings, and of counsel and solicitors;
- (d) submissions made on any point of law, at any stage of the proceedings, and the decision of the Court on any such submission; and
- (e) the result of a hearing and the final outcome of the proceedings.

(3) Any person who prints or publishes or causes to be printed or published any particulars or account of proceedings in contravention of an order made under subsection (1) is guilty of a contempt of the Supreme Court and is punishable accordingly by the Supreme Court. ”.

Section 595 repealed and a section substituted

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

Alternative convictions upon indictment
for unlawful homicide

“ 595. (1) Except as provided by subsection (2) a person charged with the crime of wilful murder, murder, manslaughter or infanticide shall not be convicted of any other offence than that with which the person is charged.

(2) Upon an indictment charging a person with a crime mentioned in subsection (1) 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 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 290 or 291 of this Code.

Section 656A inserted

11. After section 656 of the Code, the following section is inserted—

When convicted offender may be sentenced
for other offences

“ 656A. (1) Where a person is convicted of an offence, the Court may, in accordance with subsection (2), and if it considers it proper to do so, convict the offender of any other offence to which subsection (2) applies and when passing sentence for the first-mentioned offence sentence the offender for that other offence.

(2) The powers in subsection (1) may be exercised if—

- (a) the prosecutor and the offender request the Court to do so;
- (b) the notice in Schedule 1 is completed, filed in the Court and a copy served on the offender; and
- (c) the offence is listed in that notice and the offender pleads guilty to it,

and may be so exercised—

- (d) by the Court if it would otherwise have jurisdiction over the offence whether with the consent, or at the election, of the person charged or otherwise; and
- (e) in the case of the Supreme Court or the District Court, also in respect of a simple offence.

(3) Where the Court exercises the powers in subsection (1), it shall complete the certificate provided for in the notice filed under subsection (2) (b).

(4) When passing sentence on an offender for a simple offence under subsection (1), the Supreme Court or District Court has the powers of, and is deemed to be, a Court of Petty Sessions or a Children's Court, as the case may require; but any sentence so passed shall for the purposes of appeal be treated as a sentence passed following conviction on indictment.

(5) If an offender pleads guilty to an offence for which it is proposed that he be, but for which he is not in fact, sentenced under subsection (1), the plea is not admissible in any proceedings for that offence.

(6) In this section—

“convicted” includes the incurring or award of—

- (a) a conviction in respect of which a probation order is made, notwithstanding section 20 of the *Offenders Probation and Parole Act 1963* or sections 40 and 126A of the *Child Welfare Act 1947*;

- (b) a finding of guilt referred to in section 34 or 34B of the *Child Welfare Act 1947* or a dismissal under section 26 (2) of that Act; and
- (c) a dismissal under section 669 (1) (a);

“offence” does not include an offence for which the punishment is fixed by law;

“prosecutor” includes a complainant and, in the case of an offence for which the sentencing Court is not a Court of Petty Sessions or a Children’s Court, the Crown;

“sentence” has the meaning assigned to it by section 703. ”.

Schedule 1 added

12. After Part LXXIV of the Code, the following Schedule is added—

“ SCHEDULE 1 (Section 656A)

NOTICE OF OTHER OFFENCES FOR WHICH
PERSON PROPOSED TO BE SENTENCED

(1) Insert name and address of person charged To (1):

(2) Insert name of court (3) Insert details 1. You have been charged before (2)with the following offences (3)

- 2. YOU ARE NOTIFIED that if you are convicted of any of the above offences you may also be convicted and sentenced for all or any of the offences listed in the Table below BUT ONLY IF—
 - (a) both you and the prosecutor so request;
 - (b) this notice is completed, filed in the Court and a copy served on you; and
 - (c) you plead guilty to the offence in question.

Table of offences (4)

(4) List full particulars of other offences for which person proposed to be sentenced, and number each offence consecutively

.....
.....
.....
.....

(5) To be signed
by police officer
or by or on behalf
of Crown
Prosecutor

Signed⁽⁵⁾
Date

I acknowledge that I have received a copy of the above notice.

(6) To be signed
by the person
charged

Signed⁽⁶⁾

Certificate of Court

(7) Refer to
paragraph 1.
above

When sentencing
for the offences of ⁽⁷⁾
.....
the Court also passed sentence for the offences numberedin
the Table above.

(8) To be signed
by the Judge,
Stipendiary
Magistrate, or
Justice of the
Peace

Signed ⁽⁸⁾
Date.....

”.

PART III—CHILD WELFARE ACT 1947

Various provisions amended

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

TABLE

Provision amended	Amendment
Section 20 (8)	After “manslaughter” insert “, infanticide”.
Section 33 (4) (a)	After “manslaughter” insert “, infanticide”.
Section 40 (1)	After “manslaughter” insert “, infanticide”.
Fourth Schedule	Below “197 Incest by man.” insert “281A Infanticide.”.
Part I, Division A	
Sixth Schedule	Below “280 Manslaughter” insert “281A Infanticide”.

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

PART IV—CORONERS ACT 1920

Various provisions amended

14. The *Coroners Act 1920** is amended as set out in the Table.

TABLE

Provision amended	Amendment
Section 12A (1)	After "his", in both places where it occurs, insert "or her". Delete "or manslaughter" and substitute ", manslaughter or infanticide".
Section 16 (1)	After "his", where it first occurs, insert "or her".
Section 16 (2)	After "his", where it first occurs, insert "or her". After "manslaughter" insert "or infanticide".
Section 19 (1)	After "his" insert "or her".
Section 19 (1) (b)	After "manslaughter" insert "or infanticide".
Section 43 (1) (g)	After "his" insert "or her".
Section 43 (1) (g) (b)	After "manslaughter" insert "or infanticide".
Section 44 (1)	After "his", in both places where it occurs, insert "or her". After "manslaughter" insert "or infanticide".

[*Reprinted as approved 2 December 1980 and amended by Acts Nos. 17 of 1982 and 80 of 1983.]