

## CRIMINAL CODE.

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No. 21 of 1972.

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AN ACT to amend sections 1, 3, 21, 151, 183, 189, 208, 210, 211, 212, 291A, 319, 320, 321, 323, 369, 401, 402, 403, 404, 426, 433, 465, 486, 496, 574, 586, 593, 599, 618, 669, 671 and 719, repeal and re-enact sections 277, 427, 466 and 551, and repeal section 289 of The Criminal Code, and to add sections 324A, 407A, 427A and 489A to that Code.

[Assented to 26th May, 1972.]

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:—

1. This Act may be cited as the *Criminal Code Amendment Act, 1972*.

Short title  
and  
interpre-  
tation.

(2) In this Act—

“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  
as reprinted, with amendments to and  
including Act No. 1 of 1969 incorporated.

Commence-  
ment.

2. (1) Subject to subsection (2) of this section, this Act shall come into operation on a date to be fixed by proclamation.

(2) It is not necessary that the whole of this Act be proclaimed to come into operation on the one day; and the several sections may be proclaimed to come into operation on such respective days as are fixed by proclamation.

Amendment  
to s. 1.  
(Construc-  
tion of  
terms.)

3. Section 1 of the Code is amended—

(a) by adding after the interpretation “having in possession” an interpretation as follows—

The term “indictable offence” means an offence a complaint of which is, unless otherwise expressly stated by the Code, triable only by jury;

(b) by adding after the interpretation “ship” an interpretation as follows—

The term “summarily” means before a Court of Petty Sessions; ; and

(c) by substituting for the interpretation “summary conviction” an interpretation as follows—

The term “summary conviction” means conviction before a Court of Petty Sessions; .

Amendment  
to s. 3.  
(Division  
of  
offences.)

4. Section 3 of the Code is amended—

(a) by deleting all words in the second paragraph after the word “offences” at the end of line 1 of that paragraph; and

- (b) by adding after the second paragraph a third paragraph as follows—

Where for any indictable offence offenders may be punished summarily any Court of Petty Sessions before which a person charged with the offence or which deals with the charge or examines the person charged, or commits him for trial shall be constituted by a magistrate alone, or if there is no magistrate available and the person consents, by two justices. .

5. Section 21 of the Code is amended by substituting for the passage "Subject to the provisions of section seven hundred and six A of the Code, nothing", in lines one and two, the word "Nothing".

Amendment  
to s. 21.  
(Prerogative.)

6. The Code is amended by deleting the words "before two justices" or "before two Justices", as the case may be, in—

Amend-  
ments to  
ss. 151, 208,  
210, 211, 212  
and 319.

- (a) lines seven and eight of section 151;
- (b) line twenty of section 208;
- (c) lines twenty-one and twenty-two of section 210;
- (d) lines forty and forty-one of section 211;
- (e) line five of section 212; and
- (f) line three of section 319.

7. Section 183 of the Code is amended—

- (a) by substituting for the word "boy", in line two, the word "child"; and
- (b) by adding after the word "years", in line two, the words "or who incites such a child to so deal with him or another".

Amendment  
to s. 183.  
(Indecent  
treatment  
of boys  
under  
fourteen.)

Amendment  
to s. 189.  
(Indecent  
dealing  
with girls  
under  
sixteen and  
others.)

8. Section 189 of the Code is amended by adding before the word "is", being the first word in line ten, the passage "or who incites such a girl or woman to so deal with him or another,".

Repeal and  
re-enact-  
ment of  
s. 277.

9. Section 277 of the Code is repealed and re-enacted as follows—

Unlawful  
homicide.

277. Any person who unlawfully kills another is guilty of a crime which, according to the circumstances of the case, may be wilful murder, murder, manslaughter, or causing death by the negligent use or management of a vehicle.

Repeal of  
s. 289.  
(Attempt-  
ing to  
commit  
suicide.)

10. Section 289 of the Code is repealed.

Amend-  
ment to  
s. 291A.  
(Reckless or  
dangerous  
driving.)

11. Subsection (1) of section 291A of the Code is amended by substituting for the word "and", in line four, the word "or".

Amend-  
ment to  
s. 320.  
(Some  
assaults  
not to be  
so dealt  
with.)

12. Section 320 of the Code is amended—

- (a) by substituting for the words "justices find", in line one the words "Court of Petty Sessions finds";
- (b) by substituting for the words "justices are", in line three, the words "Court is"; and
- (c) by substituting for the words "they are", in line five, the words "the Court is".

Amend-  
ment to  
s. 321.  
(Common  
assaults.)

13. Section 321 of the Code is amended—

- (a) by substituting for the words "justices are", in line five, the words "Court of Petty Sessions is"; and
- (b) by substituting for the word "justices", in line nine, the words "a Court of Petty Sessions".

## 14. Section 323 of the Code is amended—

Amendment to s. 323.

- (a) by substituting for the word “justices”, in line two, the words “a Court of Petty Sessions”;
- (b) by substituting for the words “they dismiss”, in line four, the words “the Court dismisses”; and
- (c) by substituting for the words “they are”, in line five, the words “the Court is”.

(Effect of summary conviction or dismissal.)

## 15. Chapter XXXI of the Code is amended by adding after section 324 a section as follows—

Amendment to Chapter XXXI.

(ASSAULTS PUNISHABLE ON SUMMARY CONVICTION.)

324A. Where a person is charged before a Court of Petty Sessions with an offence under section three hundred and seventeen of this Code 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 he is liable on summary conviction to imprisonment for six months with hard labour, or to a fine of five hundred dollars. .

Assaults occasioning bodily harm.

## 16. Section 369 of the Code is amended—

Amendment to s. 369.

- (a) by substituting for the first paragraph a paragraph as follows—

(Summary jurisdiction in trivial cases of defamation.)

Where a person is charged before a Court of Petty Sessions with unlawful publication of defamatory matter 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, consider that the charge can be adequately dealt with summarily, the charge may be dealt with summarily at the election of the person charged, and he is liable on summary conviction to a fine of one hundred dollars. ;

- (b) by substituting for the word “justices”, in line two of the second paragraph, the words “Court of Petty Sessions”; and
- (c) by substituting for the words “under their hands”, in lines three and four of the second paragraph, the words “by the Court”.

Amendment  
to ss. 401,  
402, 403 and  
404.

17. The Code is amended by substituting for the words “a crime” in—

- (a) line three of section 401;
- (b) line six of section 401;
- (c) line seven of section 401;
- (d) line two of section 402;
- (e) line two of section 403;
- (f) line three of section 403; and
- (g) line two of section 404.

the words “an offence”.

18. Chapter XXXIX of the Code is amended by adding after section 407 a section as follows—

Amendment  
to Chapter  
XXXIX.  
(BUR-  
GLARY:  
HOUSE-  
BREAKING:  
AND LIKE  
OFFENCES.)

407A. Where a person is charged before a Court of Petty Sessions with an offence under section four hundred and three, four hundred and four, or four hundred and seven of this Code 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 and—

Summary  
conviction  
for burglary,  
house-  
breaking  
and like  
offences.

- (a) in the case of an offence against property, under section four hundred and three, the value of the property does not exceed five hundred dollars; and
- (b) in the case of an offence under section four hundred and three or section four hundred and four, there is no allegation that the person used or offered violence to another person or used a firearm, dagger, cosh, any other offensive weapon, or any explosive to facilitate the commission of the offence,

the charge may be dealt with summarily at the election of the person charged, and he is liable on summary conviction to imprisonment with hard labour for six months, or to a fine of five hundred dollars. .

19. Section 426 of the Code is amended—

Amendment  
to s. 426.  
(Indictable  
offences  
which may  
be dealt  
with  
summarily.)

- (a) by substituting for the words “two justices”, in lines one and two of subsection (1) the words “a Court of Petty Sessions”;

- (b) by substituting for the word “three”, in line two of paragraph (1) of subsection (1), the word “five”;
- (c) by substituting for the word “justices”, in line two of paragraph (2) of subsection (1), the word “Court”;
- (d) by substituting for the passage beginning with the word “the”, being the first word in the fourth last line of subsection (1), and ending with the word “such”, in the third last line of that subsection, the passage “the charge may be dealt with summarily at the election of the person charged, and he is liable on”; and
- (e) by substituting for the word “justices”, in line one of subsection (2), the words “a Court of Petty Sessions”.

Repeal and  
re-enact-  
ment of s.  
427.  
(Procedure.)

20. Section 427 of the Code is repealed and re-enacted as follows—

Procedure.

427. In respect of a person charged before a Court of Petty Sessions with any of the indictable offences referred to in subsection (1) of section four hundred and twenty-six of this Code—

(a) if—

- (i) it appears that, by reason of the person charged having been previously convicted of some offence on indictment, he is liable, on conviction of the offence charged to imprisonment for a term of more than three years; or

- (ii) for any reason the Court is of the opinion that the charge is a fit subject for prosecution by indictment,

the Court shall abstain from dealing with the charge summarily; and

- (b) where the charge is dealt with summarily—

- (i) if the Court finds that the charge is proved the Court may, whether it imposes any punishment or not, order the offender to make restitution of the property, if any, in respect of which the offence was committed, to the owner thereof; and if the property is not at once restored, the Court may order the offender to pay the amount of its value, to be assessed by the Court, to the owner, either in one sum or by such instalments, and at such times as the Court thinks fit; and

- (ii) if the person is convicted and the Court is of the opinion that for any reason the sentence which it is empowered by this Chapter to pass on the person convicted by it is inadequate, the Court may, in lieu of passing sentence, commit the convicted person for sentence. .

21. Chapter XLIII of the Code is amended by adding after section 427 a section as follows—

Amendment  
to Chapter  
XLIII.  
(SUMMARY  
CONVIC-  
TION FOR  
STEALING  
AND LIKE  
INDICT-  
ABLE  
OFFENCES.)

427A. The provisions of section five hundred and ninety-nine of this Code in respect of convictions of persons on indictment of offences

Stealing,  
false  
pretences,  
and  
cheating.

other than those with which they are charged apply to convictions of offenders on charges against them of any of the offences referred to in that section upon their trial in order to their summary conviction by a Court of Petty Sessions. .

Amendment  
to s. 433.  
(Committal  
for trial.)

**22. Section 433 of the Code is amended—**

- (a) by substituting for the word “justices”, in line one, the words “Court of Petty Sessions”;
- (b) by substituting for the word “are”, in line three, the word “is”; and
- (c) by substituting for the word “they”, in line five, the words “the Court”.

Amendment  
to s. 465,  
(Offences  
which may  
be dealt  
with  
summarily.)

**23. Section 465 of the Code is amended—**

- (a) by substituting for the words “two justices”, in lines one and two of subsection (1), the words “a Court of Petty Sessions”;
- (b) by substituting for the word “three”, in line two of paragraph (1) of subsection (1), the word “five”;
- (c) by substituting for the word “justices”, in line two of paragraph (2) of subsection (1), the word “Court”;
- (d) by substituting for the passage beginning with the word “the”, being the first word in the fourth last line of subsection (1), and ending with the word “such”, in the third last line of that subsection, the passage “the charge may be dealt with summarily at the election of the person charged, and he is liable on”; and
- (e) by substituting for the word “justices”, in line one of subsection (2), the words “a Court of Petty Sessions”.

24. Section 466 of the Code is repealed and re-enacted as follows—

Repeal and re-enactment of s. 466.  
(Procedure.)

466. The provisions of section four hundred and twenty-seven of this Code in respect of indictable offences referred to in subsection (1) of section four hundred and twenty-six of this Code apply, with such modifications as are necessary, in respect of indictable offences referred to in subsection (1) of section four hundred and sixty-five of this Code. .

Procedure.

25. Subsection (2) of section 486 of the Code is repealed.

Amendment to s. 486.  
(False statements for the purpose of registers of births, deaths, and marriages.)

26. Chapter L of the Code is amended by adding before section 490 a section as follows—

Amendment to Chapter L.  
(FORGERY AND LIKE OFFENCES PUNISHABLE ON SUMMARY CONVICTION.)

489A. Where a person is charged before a Court of Petty Sessions with—

General offences which may be dealt with summarily.

- (a) an offence of forging a document, writing, or seal, or doing anything that is, under Chapter XLIX of this Code, an offence of the same kind, in respect of which the greatest punishment to which an offender convicted of the offence is liable does not exceed imprisonment with hard labour for three years; or
- (b) an offence under section four hundred and seventy-eight, four hundred and seventy-nine, or four hundred and eighty-six of this Code,

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 he is, subject to this Chapter, liable on summary conviction—

- (c) where the offence is not under section four hundred and eighty-six of this Code, to imprisonment for six months with hard labour, or to a fine of five hundred dollars; or
- (d) where the offence is under section four hundred and eighty-six of this Code, to a fine of two hundred dollars. .

Amendment  
to s. 496.  
(Offences as  
to trade  
marks and  
trade  
descrip-  
tions.)

27. Subsection (5) of section 496 of the Code is repealed and re-enacted as follows—

(5) Where a person is charged before a Court of Petty Sessions with an offence under this Chapter, other than an offence under section five hundred and nine of this Code, he may, at his election, be prosecuted on indictment. .

Repeal and  
re-enact-  
ment of  
s. 551.  
(Person  
accused  
before court  
of summary  
jurisdiction  
may elect  
to be  
tried on  
indictment.)

28. Section 551 of the Code is repealed and re-enacted as follows—

Prosecution  
on indict-  
ment.

551. Where a person is charged before a Court of Petty Sessions with an offence under section five hundred and fifty of this Code, he may, at his election, be prosecuted on indictment. .

## 29. Section 574 of the Code is amended—

Amendment  
to s. 574.  
(Summary  
convictions:  
Time.)

- (a) by substituting for the word “The”, in line one of subsection (1), the passage “Subject to subsection (4) of this section, the”;
- (b) by substituting for the word “justices”, in line four of subsection (1), the words “a Court of Petty Sessions”; and
- (c) by adding a subsection as follows—

(4) Where a person is charged before a Court of Petty Sessions with an indictable offence and the charge is one that may, at his election, be dealt with summarily, or with a simple offence for which he may, at his election, be prosecuted on indictment—

- (a) before he is asked to show cause why he should not be convicted, the Court is required to explain to him that he is entitled to be tried by a jury, and is not obliged to make any defence before the Court, unless he elects to have the charge dealt with summarily, and to ask him to make his election; and
- (b) if he elects to have the charge dealt with summarily, the Court is required to reduce the charge to writing and to read it to him, and then to ask him whether he is guilty or not guilty of the offence; and if he says he is guilty the Court is to convict him of the offence, but if he says he is not guilty the Court is required to determine the charge summarily. .

Amendment  
to s. 586.  
(Cases in  
which  
several  
charges may  
be joined.)

30. Section 586 of the Code is amended by adding after subsection (6) a subsection as follows—

(7) Any number of persons charged with committing different or separate offences may be charged in the same indictment and tried together if the offences arise substantially out of the same or closely related facts. .

Amendment  
to s. 593.  
(Summary  
convictions.)

31. Section 593 of the principal Act is amended by substituting for the word "Justices", in line three, the words "a Court of Petty Sessions".

Amendment  
to s. 599.  
(Stealing,  
false  
pretences,  
and cheat-  
ing.)

32. Section 599 of the Code is amended by adding after the word "pretence", in line two of paragraph (b), the passage "or a wilfully false promise or partly by a false pretence and partly by a wilfully false promise," .

Amendment  
to s. 618.  
(Persons  
committed  
for  
sentence.)

33. Section 618 of the Code is amended by substituting for the word "justice", in line two and in line eleven, the words "Court of Petty Sessions".

Amendment  
to s. 669.  
(First  
offenders.)

34. Subsection (1) of section 669 of the Code is amended by deleting the words "by Justices", in lines eighteen and nineteen of paragraph (a).

Amendment  
to s. 671.  
(Discharge  
of offender  
in certain  
cases.)

35. Section 671 of the Code is amended—

(a) by substituting for the word "justices", in line two, the words "Court of Petty Sessions"; and

(b) by substituting for the word "justices", in line six, the word "Court".

## 36. Section 719 of the Code is amended—

- (a) by adding after the section number “719.” the subsection designation “(1)”;
- (b) by substituting for the word “and”, in line four, the words “if the application is made”;
- (c) by substituting for the passage “in the case of a summary conviction, fifty dollars, and in other cases, two”, in lines eleven and twelve, the word “five”; and
- (d) by adding subsections as follows—

(2) In determining an application under subsection (1) of this section, the Court may consider evidence that led to the conviction and any other evidence that is relevant to any loss of property suffered or expenses incurred by the applicant and the extent thereof.

(3) The award of a sum of money under this section to a person aggrieved does not affect any civil remedy he may have against the person convicted but that sum shall be taken into account by way of mitigation of any damages awarded pursuant to the remedy. .

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Amendment  
to s. 719.  
(Power to  
award com-  
pensation  
to persons  
aggrieved by  
offence.)