

WESTERN AUSTRALIA

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**CRIMINAL LAW AMENDMENT  
ACT (No. 2) 1992**

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**No. 51 of 1992**

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**AN ACT to amend *The Criminal Code* and a number of  
other Acts.**

*[Assented to 9 December 1992.]*

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 (No. 2) 1992*.

### The Code

2. 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.*

*For subsequent amendments see 1991 Index to Legislation of Western Australia, pp. 49-51 and Acts Nos. 48 of 1991 and 1 of 1992.]*

**PART 2 — THE CRIMINAL CODE: AMENDMENTS  
RELATING TO TRANSMISSION OF DISEASES**

**Section 1 amended**

3. (1) Section 1 (1) of the Code is amended by inserting before the definition of the term “**ship**” the following definition —

“ the term “**serious disease**” means a disease of such a nature as to —

(a) endanger, or be likely to endanger, life; or

(b) cause, or be likely to cause, permanent injury to health; ”.

(2) After section 1 (3) of the Code the following subsection is inserted —

“ (4) In this Code, unless the context otherwise indicates —

(a) a reference to causing or doing bodily harm to a person includes a reference to causing a person to have a disease which interferes with health or comfort;

(b) a reference to intending to cause or intending to do bodily harm to a person includes a reference to intending to cause a person to have a disease which interferes with health or comfort;

(c) a reference to causing or doing grievous bodily harm to a person includes a reference to causing a person to have a serious disease;

and

- (d) a reference to intending to cause or intending to do grievous bodily harm to a person includes a reference to intending to cause a person to have a serious disease. ”.

### **Section 259A amended**

4. After section 259 of the Code the following section is inserted —

#### **Inoculation procedures**

“ **259A.** A person is not criminally responsible for performing, in good faith and with reasonable care and skill, a procedure that involves causing a person to have a disease, if that procedure is performed for inoculation purposes. ”.

### **Section 294 amended**

5. Section 294 of the Code is amended by inserting after paragraph (7) the following —

“ or

- (8) does any act that is likely to result in a person having a serious disease; ”.

### **Section 306 amended**

6. Section 306 of the Code is amended by deleting “misdemeanour, and is liable to imprisonment with hard labour for 2 years.” and substituting the following —

“ crime, and is liable to imprisonment for 5 years.

Summary conviction penalty: Imprisonment for 2 years or a fine of \$8 000. ”.

**PART 3 — THE CRIMINAL CODE:  
GENERAL AMENDMENTS**

**Section 18 repealed and a section substituted**

7. Section 18 of the Code is repealed and the following section is substituted —

**Kinds of punishment**

“ 18. (1) A court sentencing a person convicted of an offence against this Code may inflict any punishment or combination of punishments provided in this Code for that offence.

(2) Subsection (1) does not affect the court's power, under section 19 or Chapter LXV or under any other enactment, to inflict another form of punishment or disposition available to the court instead of or in addition to the punishment or punishments referred to in subsection (1). ”

**Section 19A amended**

8. (1) After section 19A (1) (a) of the Code the following paragraph is inserted —

“ (aa) the protection of the community; ”.

(2) After section 19A (1) of the Code the following subsection is inserted —

“ (1a) A court that imprisons an offender for a term of 6 months or less shall give written reasons why no other form of punishment or disposition available to the court in the case was appropriate; except when —

(a) the aggregate of the term and any other term of imprisonment being or liable to be

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served by the offender is more than 6 months; or

- (b) the term is imposed for a prison offence as defined in the *Prisons Act 1981*. ”.

(3) Section 19A (2) of the Code is amended by deleting “subsection (1)” and substituting the following —

“ subsection (1) or (1a) ”.

### **Section 20 amended**

9. Section 20 of the Code is amended —

- (a) in the first paragraph by inserting before “When” the subsection designation “(1)”;
- (b) in the second paragraph by inserting before “Judgments” the subsection designation “(2)”;
- (c) in the third paragraph —
- (i) by inserting before “A” the subsection designation “(3)”; and
- (ii) by deleting “the preceding provisions of this section” and substituting the following —
- “ subsections (1) and (2) ”;
- (d) by inserting after the third paragraph the following subsections —

“ (4) If the punishment inflicted on a person for an offence is directed to take effect cumulatively upon a federal sentence for which a non-parole period or pre-release period has been fixed, that punishment takes effect at the end of that non-parole

period or pre-release period unless the person is then undergoing, or is then to undergo, another sentence upon which all or some of that punishment is cumulative.

(5) In subsection (4) —

**“federal sentence”** means a sentence imposed for an offence against the law of the Commonwealth;

**“non-parole period”** and **“pre-release period”** have the same meanings as they have in Part 1B of the *Crimes Act 1914* of the Commonwealth. ”;

(e) in the fourth paragraph by inserting before “The” the subsection designation “(6)”;

(f) by repealing the fifth paragraph and substituting the following subsection —

“ (7) Except as provided in subsections (1) to (6), a sentence of imprisonment takes effect from the commencement of the offender’s custody under sentence. ”;

(g) in the last paragraph by inserting before “A” the subsection designation “(8)”;

and

(h) by inserting after the last paragraph the following subsection —

“ (9) This section applies subject to section 38 (6) and (7) of the *Offenders Community Corrections Act 1963*. ”.

**Section 414 amended**

10. Section 414 of the Code is amended by repealing the second and third paragraphs and substituting the following paragraph —

“ The offender is liable to —

- (a) the greatest punishment provided for the kind of offence by means of which the property was obtained; or
- (b) imprisonment for 14 years,

whichever is the lesser.

”.

**Sections 515 to 526 and 528 repealed**

11. Sections 515 to 526 and 528 of the Code are repealed.

**Section 527 repealed and a section substituted**

12. Section 527 of the Code is repealed and the following section is substituted —

**Fraudulent dealing by judgment debtors**

“ **527.** (1) Any person who, with intent to defraud the person's creditors or any of them, conceals or removes any property —

- (a) before a judgment or order for payment of money is obtained against the person; or
- (b) while a judgment or order for payment of money obtained against the person remains unsatisfied,



is guilty of a crime, and is liable to imprisonment for 7 years.

Summary conviction penalty (subject to subsection (2)): Imprisonment for 2 years or a fine of \$8 000.

(2) If the value of the property concealed or removed is more than \$4 000 the charge is not to be dealt with summarily.

### **Section 693 amended**

13. (1) Section 693 (1) of the Code is amended by deleting “offence.” at the end and substituting the following —

“ , or may give directions as to when the sentence passed for that other offence takes effect which may include a direction that the sentence is to be regarded as having taken effect at a time that precedes the making of the direction.

(2) After section 693 (1) of the Code the following subsection is inserted —

“ (1a) Where the sentence passed for an offence ceases to have effect in circumstances other than those set out in subsection (1) and, at the time when the sentence ceases to have effect, the offender is undergoing, or under sentence to undergo, a sentence passed for another offence of which he was convicted on or after the occasion on which he was convicted of the first-mentioned offence, the Court of Criminal Appeal may, on the application of the Attorney General, exercise powers in relation to the sentence passed for that other offence similar to those set out in subsection (1).

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**PART 4 — OFFENDERS COMMUNITY CORRECTIONS  
ACT 1963**

**Section 38 amended**

14. Section 38 (8) of the *Offenders Community Corrections Act 1963*\* is amended by deleting “20” and substituting the following —

“ 20 (7) ”.

[\* *Reprinted as at 10 October 1991.*]

**PART 5—JUSTICES ACT 1902**

**Section 150 repealed and a section substituted**

**15.** Section 150 of the *Justices Act 1902*\* is repealed and the following section is substituted—

**Commencement and calculation of  
terms of imprisonment**

“ **150.** Section 20 of *The Criminal Code* applies to sentences of imprisonment imposed by justices. ”.

[\* *Reprint approved 9 November 1984.*

*For subsequent amendments see 1991 Index to Legislation of Western Australia, pp. 106-7 and Act No. 48 of 1991.]*

**PART 6 — ABOLITION OF PUNISHMENTS  
OF WHIPPING AND HARD LABOUR**

**Amendments to various Acts**

16. (1) The Acts in Column 1 of Schedule 1 are amended in the provision or provisions opposite them in Column 2 by deleting the phrase or sentence, in each case enclosed by quotation marks, in Column 3, wherever the phrase or sentence occurs.

(2) The Code is amended in the provisions listed in Schedule 2 by deleting “with hard labour” wherever it occurs.

(3) The *Police Act 1892* is amended in the provisions listed in Schedule 3 by deleting “, with or without hard labour,” where it occurs.

(4) The Acts in Column 1 of Schedule 4 are amended by repealing the provision or provisions opposite them in Column 2.

## SCHEDULE 1

[s. 16 (1)]

## DELETION OF VARIOUS PROVISIONS IN VARIOUS ACTS

Column 1 <u>Short title of Act</u>	Column 2 <u>Provision amended</u>	Column 3 <u>Deletion</u>
<i>Albany Port Authority Act 1926</i>	s. 69	“, with or without hard labour”
	s. 72	“with or without hard labour”
<i>Anatomy Act 1930</i>	s. 22 (1)	“with hard labour”
<i>Bunbury Port Authority Act 1909</i>	s. 69	“, with or without hard labour”
	s. 72	“, with or without hard labour”
<i>Child Welfare Act 1947</i>	s. 113 (1)	“with or without hard labour”
	s. 130A (5)	“with, or without hard labour”
	Fourth Schedule Part 1	“with hard labour”
<i>Coal Mines Regulation Act 1946</i>	s. 15 (1)	“, with or without hard labour,”
	s. 61	“with or without hard labour,”
	s. 64 (3) (b)	“, with or without hard labour,”
<i>Companies Co-operative Act 1943</i>	s. 148 (1)	“with hard labour”
	s. 226 (4)	“with hard labour”

<i>Conspiracy and Protection of Property Act of 1900</i>	s. 3	“, with or without hard labour”
	s. 4	“, with or without hard labour”
	s.6	“, with or without hard labour”
<i>Co-operative and Provident Societies Act 1903</i>	s. 36	“, with or without hard labour”
	s. 51	“with or without hard labour”
	s. 55	“, with or without hard labour,”
<i>Country Areas Water Supply Act 1947</i>	s. 71 (2)	“with or without hard labour”
	s. 113 (1)	“with or without hard labour”

<i>The Criminal Code</i>	s. 19 (1)	“, either with or without hard labour,”
	s. 19 (3)	“, either with or without hard labour,”
	s. 65	“and kept to hard labour”
	s. 190	“with or without whipping”
	s. 292	“, with or without whipping”
	s. 340	“with or without hard labour”
	s. 393	“, with or without whipping”
	s. 394	“, with or without whipping”
	s. 705	“with or without hard labour”
s. 743	“But no sentence of whipping inflicted by one justice may be inflicted until approved by the Governor.”	
<i>Fire Brigades Act 1942</i>	s. 42 (3)	“, with or without hard labour,”
	s. 59	“, with or without hard labour,”
<i>Fremantle Port Authority Act 1902</i>	s. 77	“, with or without hard labour”
	s. 78	“, with or without hard labour”
	s. 79	“, with or without hard labour”
	s. 82	“, with or without hard labour”

<i>Friendly Societies Act 1894</i>	s. 15 (10)	“with or without hard labour”
	s. 22 (3)	“, with or without hard labour”
	s. 25 (9)	“, there to be kept to hard labour”
	s. 48	“, with or without hard labour,”
<i>Government Railways Act 1904</i>	s. 34 (1)	“, with or without hard labour,”
	s. 42	“with or without hard labour”
	s. 43	“, with or without hard labour,”
	s. 45	“, with or without hard labour,”
	s. 51 (2)	“, with or without hard labour,”
<i>Income Tax Assessment Act 1937</i>	s. 9 (6)	“with hard labour”



<i>Justices Act 1902</i>	s. 32	“; but no sentence of whipping imposed by one justice may be carried out until approved by the Governor”
	s. 57 (3)	“, with or without hard labour,”
	s. 69 (7)	“with hard labour”
	s. 149	“with or without hard labour”
	s. 157	“with or without hard labour”
	s. 159	“with or without hard labour”
		and
		“with or without hard labour, as the case may be,”
	s. 166	“with hard labour”
		and
		“impose the same without hard labour, and may”
		and
		“or do either of such acts”
	Fourth Schedule:	
	Form 31	“[there to be kept to hard labour]”
	Form 32	“[there to be kept to hard labour]”

Form 33      “[there to be kept at hard labour]”

Form 34      “[there to be kept to hard labour]”

Form 36      “[there to be kept at hard labour]”

Form 38      “[there to be kept at hard labour]”

and

“, [and to be privately whipped with [six] strokes of a birch rod (or cane or leather strap) in the presence of (the persons described in Chapter LXIX of *The Criminal Code*)]”

Form 39      “inserting Chapter LXX. instead of Chapter LXIX”

Form 42      “[there to be kept to hard labour],”

Form 43      “[there to be kept to hard labour]”

Form 44      “[there to be kept to hard labour]”

Form 48      “[there to be kept to hard labour],”

Form 59      “[and there kept to hard labour]”

and

“[and keep [him] to hard labour]”

	Form 60	“[and there be kept to hard labour]”
		and
		“and keep [him] to hard labour”
	Form 61	“[there to be kept to hard labour]”
		and
		“and keep [him] to hard labour”
	Form 62	“[there to be kept to hard labour]”
		and
		“and keep [him] to hard labour”
	Form 63	“[there to be kept to hard labour]”
		and
		“and keep [him] to hard labour”
<i>Land Boundaries Act 1841</i>	s. 7	“and kept to hard labour”
<i>Limited Partnerships Act 1909</i>	s. 12	“with hard labour”

<i>Local Courts Act</i> 1904	s. 44 (2)	“with or without hard labour”
<i>Marine Stores Act</i> 1902	s. 26	“with or without hard labour”
<i>Mental Health Act</i> 1962	s. 61 (1)	“with hard labour”
<i>Optometrists Act</i> 1940	s. 42	“with or without hard labour”
<i>Pharmacy Act 1964</i>	s. 18 (3)	“with or without hard labour”
<i>Police Act 1892</i>	s. 50	“there to be kept to hard labour”
	s. 65	“with or without hard labour”
	s. 66	“, with or without hard labour”
	s. 67	“, with hard labour”
		and
		“; and every offender who shall be so committed as aforesaid shall be there kept to hard labour during the period of his imprisonment”
	s. 76F (3) (b)	“, with or without hard labour”
	s. 83 (1)	“with or without hard labour”
	s. 90	“with or without hard labour”
	s. 124	“, either with or without hard labour”

<i>Prisons Act 1981</i>	s. 110 (1) (h)	“and prescribing the nature of hard labour”
<i>Registration of Births, Deaths and Marriages Act 1961</i>	Sixth Schedule	“with hard labour”
<i>Street Alignment Act 1844</i>	s. 10	“and kept to hard labour”
<i>Sunday Entertainments Act 1979</i>	s. 3 (1)	“, with or without hard labour,”
<i>The Masters and Servants Act 1892</i>	s. 10	“or be with hard labour”
	s. 13	“, with or without hard labour,”
	Schedule Form D	“[and there to be kept to hard labour]”
<i>The Oyster Fisheries Act 1881</i>	s. 9	“only, or to be imprisoned and kept to hard labour, as the Justices think fit,”
<i>Trade Unions Act 1892</i>	s. 15 (1) (c)	“, with or without hard labour,”
<i>Workmen’s Wages Act 1898</i>	s. 22	“, with or without hard labour,”

**SCHEDULE 2**

[s. 16 (2)]

**DELETION OF "WITH HARD LABOUR" FROM  
THE CRIMINAL CODE**

s. 47	s. 129	s. 293
s. 48	s. 130	s. 294
s. 51 (1)	s. 131	s. 294A (1)
s. 52	s. 132	s. 295
s. 57	s. 134	s. 296
s. 58	s. 135	s. 296A
s. 60	s. 136	s. 297
s. 61	s. 142	s. 298
s. 64	s. 144	s. 299
s. 65	s. 145	s. 300
s. 66	s. 146	s. 301
s. 67	s. 147	s. 302
s. 68	s. 149	s. 303
s. 71	s. 150	s. 304
s. 72	s. 151	s. 305
s. 74	s. 169	s. 307
s. 75	s. 170	s. 308
s. 94	s. 172	s. 309
s. 95	s. 190	s. 311
s. 96	s. 191	s. 312
s. 97	s. 192	s. 318A
s. 98	s. 195	s. 336
s. 99	s. 197	s. 339
s. 104	s. 198	s. 343
s. 105	s. 199	s. 360
s. 106	s. 200	s. 361
s. 107	s. 201	s. 363
s. 108	s. 203	s. 378
s. 109	s. 204	s. 378 (1)
s. 110	s. 208	s. 378 (4a)
s. 111	s. 209	s. 378 (5)
s. 113	s. 214	s. 378 (6)
s. 121	s. 283	s. 378 (7)
s. 122	s. 287	s. 378 (8)
s. 123	s. 288	s. 378 (9)
s. 125	s. 290	s. 378 (12)
s. 127	s. 291	s. 379
s. 128	s. 292	s. 380

s. 381	s. 418	s. 456
s. 384	s. 419	s. 457
s. 385	s. 420	s. 458
s. 386	s. 421	s. 459
s. 387	s. 428	s. 461
s. 389	s. 429	s. 462
s. 390	s. 430	s. 510
s. 390B	s. 431	s. 511
s. 393	s. 434	s. 512
s. 394	s. 435	s. 514
s. 395	s. 436	s. 547
s. 396	s. 449	s. 548
s. 397	s. 451	s. 549
s. 398	s. 451A	s. 550
s. 399	s. 451B	s. 557
s. 407	s. 454	s. 660
s. 416	s. 455	

**sch. 3**

**SCHEDULE 3**

[s. 16 (3)]

**DELETION OF “, WITH OR WITHOUT HARD LABOUR,”  
FROM *POLICE ACT 1892***

s. 13

s. 41 (1)

s. 54

s. 64

s. 69

s. 71

s. 76A

s. 76C

s. 76D

s. 76F (3) (a)

s. 82 (1)

s. 82 (2)

s. 82 (3)

s. 83 (2)



**SCHEDULE 4**

[s. 16 (4)]

**REPEAL OF VARIOUS PROVISIONS**

<u>Column 1</u> <u>Short title of Act</u>	<u>Column 2</u> <u>Provision repealed</u>
<i>The Criminal Code</i>	s. 19 (2) s. 206 s. 659 s. 670 s. 680
<i>Electoral Act 1907</i>	s. 203
<i>Justices Act 1902</i>	s. 167 (2)

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