

WESTERN AUSTRALIA

**LAW REFORM
(DECriminalIZATION OF
SODOMY) ACT**

No. 32 of 1989

AN ACT to amend The Criminal Code and to make certain acts unlawful.

[Assented to 19 December 1989]

WHEREAS, the Parliament does not believe that sexual acts between consenting adults in private ought to be regulated by the criminal law;

AND WHEREAS, the Parliament disapproves of sexual relations between persons of the same sex;

AND WHEREAS, the Parliament disapproves of the promotion or encouragement of homosexual behaviour;

AND WHEREAS, the Parliament does not by its action in removing any criminal penalty for sexual acts in private between persons of the same sex wish to create a change in community attitude to homosexual behaviour;

AND WHEREAS, in particular the Parliament disapproves of persons with care supervision or authority over young persons urging them to adopt homosexuality as a lifestyle and disapproves of instrumentalities of the State so doing:

Be it therefore enacted by the Parliament of Western Australia.

Short title

1. This Act may be cited as the *Law Reform (Decriminalization of Sodomy) Act 1989*.

Commencement

2. The provisions of this Act shall come into operation on such day as is fixed by proclamation.

PART 1—AMENDMENTS TO THE CRIMINAL CODE

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. 87 of 1982, 13, 52 and 121 of 1984, 14, 74 and 119 of 1985, 89 of 1986 and 47, 74, 106 and 129 of 1987, and 70 of 1988.]

Section 6 amended

4. Section 6 of the Code is amended by adding after “penetration.” the words—

“ Penetration includes penetration of the anus of a female or male person. ”.

Section 181 repealed and a section substituted

5. Section 181 of the Code is repealed and the following section is substituted—

Carnal knowledge of animal

“ 181. Any person who has carnal knowledge of an animal is guilty of a crime and is liable to imprisonment for 7 years. ”.

Section 183 repealed

6. Section 183 of the Code is repealed.

Section 184 repealed and a section substituted

7. Section 184 of the Code is repealed and the following section is substituted—

“ 184. Any male person who in public commits any acts of gross indecency with another male person or procures another male person to commit in public any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person in public is guilty of a crime and is liable to imprisonment for 3 years. ”.

Section 185 repealed and a section substituted

8. Section 185 of the Code is repealed and the following section is substituted—

Unlawful carnal knowledge of child under 13

“ 185. (1) Any person who has unlawful carnal knowledge of a child under the age of 13 years is guilty of a crime and is liable to imprisonment for 20 years.

(2) Any person who attempts to have unlawful carnal knowledge of a child under the age of 13 years is guilty of a crime and is liable to imprisonment for 14 years.

(3) The spouse of the accused person is a competent and compellable witness. ”.

Section 186 repealed and a section substituted

9. Section 186 of the Code is repealed and the following section is substituted—

“ 186. (1) Any person who, being the owner or occupier of any premises, or having or acting or assisting in the management or control of any premises, induces or knowingly permits any person of such age as in this section is mentioned to resort to or be in or upon such premises for the purpose of being unlawfully carnally known by any man, whether a particular man or not is guilty of a crime, and;

- (a) if the person is a girl under the age of 16 years or a male under the age of 21 years, is liable to imprisonment for two years; and
- (b) if the person is under the age of 13 years, is liable to imprisonment for 20 years.

(2) It is a defence to a charge to any of offences defined in this section prove that the accused person believed, on reasonable grounds, that in the case of a girl, that she was of or above the age of 16 years, and in the case of a male, that he was of or above the age of 21 years. ”.

Section 187 repealed and a section substituted

10. Section 187 of the Code is repealed and the following section is substituted—

Unlawful carnal knowledge of child under 16
and male under 21

“ 187. (1) Subject to subsection (2), any person who has or attempts to have unlawful carnal knowledge of a child under the age of 16 years is guilty of a crime and is liable to imprisonment for—

- (a) 5 years; or
- (b) if the offender's age does not exceed 21 years—2 years.

(2) Notwithstanding subsection (1), any male person who has or attempts to have carnal knowledge of a male under the age of 21 years is guilty of a crime and is liable to imprisonment for—

(a) 5 years; or

(b) if the offender's age does not exceed 21 years—2 years.

(3) It is a defence to a charge of any of the offences defined in this section with regard to a female child to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of 16.

(4) A prosecution under this section—

(a) for the offence of having unlawful carnal knowledge of a child under the age of 16 years or for the offence of having carnal knowledge of a male under the age of 21 years must be begun within 6 months after the offence has been committed; and

(b) for the offence of attempting either of the offences referred to in paragraph (a) must be begun within 3 months after the offence has been committed.

(5) The spouse of the accused person is a competent and compellable witness. ”.

Section 189 repealed and a section substituted

11. Section 189 of the Code is repealed and the following section is substituted—

Indecent dealing

“ 189. (1) Subject to subsection (2), any person who unlawfully and indecently deals with a person—

(a) who is under the age of 16 years; or

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

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

(ii) of guarding himself or herself against sexual exploitation; or

- (c) who is under the age of 17 years, and of whom the accused person is a guardian, employer, teacher, or school teacher,

or who procures such a person to so deal with him or her or another, or who permits such a person to so deal with him or her, is guilty of a crime and is liable to imprisonment for—

- (d) 4 years; or

- (e) if the offender's age does not exceed 21 years—2 years.

(2) Notwithstanding subsection (1), any male person who unlawfully and indecently deals with a male under the age of 21 years or who procures such a male person under the age of 18 years to so deal with him or another male child, or who permits such a male person under the age of 21 years to so deal with him, is guilty of a crime and is liable to imprisonment for—

- (a) 4 years; or

- (b) if the offender's age does not exceed 21 years—2 years.

(3) If the child dealt with is under the age of 13 years the offender is guilty of a crime and liable to imprisonment for 7 years.

(4) If a person accused of the offence of unlawfully and indecently dealing with a female child under the age of 16 years, proves that the act committed was done with the consent of the child, that the child was in fact of or over the age of 13 years and that the offender believed at the time, on reasonable grounds, that the child's age was greater than that stated in the indictment, the offender shall be in the same position as if the child's age had in fact been such as the offender so believed it to be.

(5) A person is not criminally responsible under subsection (1) (b) for indecently dealing with another person unless the person did so under such circumstances that the person knew or ought to have known that the other person was mentally disabled or intellectually handicapped as described in subsection (1) (b).

(6) The spouse of the accused person is a competent and compellable witness.

(7) The term “deal with” includes doing any act which if done without consent would constitute an assault as defined in this Code.

(8) A prosecution under this section for the offence of unlawfully and indecently dealing with a child under the age of 16 years or a male under the age of 21 years, as the case may be, must, if the child is of or over the age of 13 years, be commenced within 3 months after the offence has been committed. ”.

Section 191 amended

12. Section 191 of the Code is amended by adding the word “or” at the end of paragraph (4) and by inserting a new paragraph (5) as follows—

“ (5) Procures a man or boy for any of the above purposes; ”.

Section 192 amended

13. Section 192 of the Code is amended by adding the word “or” at the end of paragraph (3) and by inserting a new paragraph (4) as follows—

“ (4) Does any of the foregoing acts with respect to a man or boy; ”.

Section 193 amended

14. Section 193 of the Code is amended by—

- (1) inserting before the word “an” in line 1 “a male child or”;
- (2) inserting in lines 4 and 7 before the word “her” wherever occurring “him or”;
- (3) inserting in line 5 before the word “her” the words “his or”; and
- (4) inserting in line 14 at the beginning of the line “boy or”.

Section 194 amended

15. Section 194 of the Code is amended by deleting the words “woman or girl” wherever occurring and substituting “person” and deleting the word “her” wherever occurring and substituting “that person” or “that person’s” as the case requires and inserting the word “he or” before the word “she” wherever occurring.

Section 196 repealed and a section substituted

16. Section 196 of the Code is repealed and the following section is substituted—

Conspiracy to defile

“ 196. Any person who conspires with another to induce any third person by means of any false pretence or other fraudulent means to permit any other person to have carnal knowledge of him or her is guilty of a crime and is liable to imprisonment for 3 years. ”.

Section 202 repealed and a section substituted

17. Section 202 of the Code is repealed and the following section is substituted—

Consent no defence

“ 202. It is no defence to any charge defined in sections 185 to 193, that the act of the accused person by which the offence was committed was done with the consent of the person with respect to whom the act was done. ”.

Section 203 amended

18. Section 203 of the Code is amended—

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

“ crime ”; and

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

“ 3 ”.

Section 205 repealed and a section substituted

19. Section 205 of the Code is repealed and the following section is substituted—

Knowledge of age immaterial

“ 205. Except as otherwise expressly stated, it is immaterial, in the case of any of the offences defined in this chapter committed with respect to a person or child under the specified age, that the accused person did not know that the person or child was under that age, or believed that he or she was not under that age. ”.

Section 596 repealed and a section substituted

20. Section 596 of the Code is repealed and the following section is substituted—

Charges of sexual assault etc.

“ 596. Upon an indictment charging a person with a crime under section 324D or 324E, or with the crime of having unlawful carnal knowledge of a child under the age of 13 years, that person may be convicted of any offence which is established by the evidence, and of which the unlawful carnal knowledge of a person or child, whether of a particular age or description or not, is an element and blood relationship is not an element, or of which procuring a woman or girl to have unlawful carnal connection with any man is an element:

Or that person may be convicted of any of the offences following, that is to say—

(a) administering to the woman or girl, or causing the woman or girl to take any drug or other thing, with intent to stupefy or overpower the woman or girl in order to enable any man to have unlawful carnal knowledge of her;

(b) unlawfully and indecently assaulting the person or child;

or

(c) unlawfully and indecently dealing with a child under the age of 13 years or a child under the age of 16 years,

if any such offence is established by the evidence. ”.

Section 596A repealed and a section substituted

21. Section 596A of the Code is repealed and the following section is substituted—

Power to convict for assault on charge of defilement

“ 596A. Upon an indictment charging a person with having or attempting to have unlawful carnal knowledge of a child under a particular age, the accused person may be convicted of unlawfully and indecently assaulting or dealing with the child (he or she being a child under that particular age, or a child or person of or over that age) if such offence is established by the evidence. ”.

Section 596AD repealed

22. Section 596AD of the Code is repealed.

PART 2—PROSELYTISING UNLAWFUL

23. It shall be contrary to public policy to encourage or promote homosexual behaviour and the encouragement or promotion of homosexual behaviour shall not be capable of being a public purpose.

24. It shall be unlawful to promote or encourage homosexual behaviour as part of the teaching in any primary or secondary educational institution.
