

Western Australia Criminal Code Extract

Chapter XXVI — Assaults and violence to the person generally: Justification and excuse

222. “Assault”, definition of

A person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.

The term “**applies force**” includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.

223. Assaults unlawful

An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.

The application of force by one person to the person of another may be unlawful, although it is done with the consent of that other person.

244. Defence against home invasion

(1) It is lawful for a person (“**the occupant**”) who is in peaceable possession of a dwelling to use any force or do anything else that the occupant believes, on reasonable grounds, to be necessary —

- (a) to prevent a home invader from wrongfully entering the dwelling or an associated place;
- (b) to cause a home invader who is wrongfully in the dwelling or on or in an associated place to leave the dwelling or place;
- (c) to make effectual defence against violence used or threatened in relation to a person by a home invader who is —

- (i) attempting to wrongfully enter the dwelling or an associated place; or

- (ii) wrongfully in the dwelling or on or in an associated place;

or

(d) to prevent a home invader from committing, or make a home invader stop committing, an offence in the dwelling or on or in an associated place.

(2) A person is a “**home invader**” for the purposes of subsection (1) if the occupant believes, on reasonable grounds, that the person —

- (a) intends to commit an offence; or
- (b) is committing or has committed an offence,

in the dwelling or on or in an associated place.

- (3) The authorisation conferred by subsection (1)(a), (b) or (d) extends to a person assisting the occupant or acting by the occupant's authority.
- (4) Section 250 applies to the authorisation conferred by subsection (1)(c).
- (5) This section has effect even if the conduct it authorises would not otherwise be authorised under this Chapter.
- (6) In this section —

“associated place” means —

- (a) any place that is used exclusively in connection with, or for purposes ancillary to, the occupation of the dwelling; and
- (b) if the dwelling is one of 2 or more dwellings in one building or group of buildings, a place that occupants of the dwellings use in common with one another;

“offence” means an offence in addition to any wrongful entry;

“place” means any land, building or structure, or a part of any land, building or structure.

[Section 244 inserted by No. 45 of 2000 s.4.]

245. **“Provocation”, meaning of**

The term **“provocation”** used with reference to an offence of which an assault is an element, means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal relation, or in the relation of master or servant, to deprive him of the power of self control, and to induce him to assault the person by whom the act or insult is done or offered.

When such an act or insult is done or offered by one person to another, or in the presence of another, to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

A lawful act is not provocation to any person for an assault.

An act which a person does in consequence of incitement given by another person in order to induce him to do the act and thereby to furnish an excuse for committing an assault, is not provocation to that other person for an assault.

An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

246. Defence of provocation

A person is not criminally responsible for an assault committed upon a person who gives him provocation for the assault, if he is in fact deprived by the provocation of the power of self-control, and acts upon it on the sudden and before there is time for his passion to cool; provided that the force used is not disproportionate to the provocation, and is not intended, and is not such as is likely to cause death or grievous bodily harm.

Whether any particular act or insult is such as to be likely to deprive an ordinary person of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered, and whether, in any particular case, the person provoked was actually deprived by the provocation of the power of self-control, and whether any force used is or is not disproportionate to the provocation, are questions of fact.

247. Prevention of repetition of insult

It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to him for an assault; provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

248. Self-defence against unprovoked assault

When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for him to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that he cannot otherwise preserve the person defended from death or grievous bodily harm, it is lawful for him to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

249. Self-defence against provoked assault

When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults him with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce him to believe, on reasonable grounds, that it is necessary for his preservation from death or grievous bodily harm to use force in self-defence, he is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.

This protection does not extend to a case in which the person using force which causes death or grievous bodily harm first began the assault with intent to kill or to do grievous bodily harm to some person; nor to a case in which the person using force which causes death or grievous bodily harm endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself arose; nor, in either case, unless, before such necessity

arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

250. Aiding in self-defence

In any case in which it is lawful for any person to use force of any degree for the purpose of defending himself against an assault, it is lawful for any other person acting in good faith in his aid to use a like degree of force for the purpose of defending such first-mentioned person.

251. Defence of movable property against trespassers

It is lawful for any person who is in peaceable possession of any movable property, and for any person acting by his authority, to use such force as is reasonably necessary in order to resist the taking of such property by a trespasser, or in order to retake it from a trespasser, provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the trespasser.

[Section 251 amended by No. 37 of 1991 s.8.]

252. Defence of movable property with claim of right

When a person is in peaceable possession of any movable property under a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession of the property, even against a person who is entitled by law to possession of the property, provided that he does not do bodily harm to such other person.

253. Defence of movable property without claim of right

When a person who is entitled by law to the possession of movable property attempts to take it from a person who is in possession of the property, but who neither claims right to it nor acts by the authority of a person who claims right, and the person in possession resists him, it is lawful for the person so entitled to possession to use such force as is reasonably necessary in order to obtain possession of the property; provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the person in possession.

[Section 253 amended by No. 37 of 1991 s.9.]

254. Defence of property against trespassers: Removal of disorderly persons

- (1) For the purposes of this section and section 255, the term “**place**” means any land, building, structure, tent, or conveyance, or a part of any land, building, structure, tent, or conveyance.
- (2) It is lawful for a person (“**the occupant**”) who is in peaceable possession of any place, or who is entitled to the control or management of any place, to use such force as is reasonably necessary —
 - (a) to prevent a person from wrongfully entering the place;
 - (b) to remove a person who wrongfully remains on or in the place; or
 - (c) to remove a person behaving in a disorderly manner on or in the place;

provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm to the person.

- (3) The authorisation conferred by subsection (2), as limited by the proviso to that subsection, extends to a person acting by the occupant's authority except that if that person's duties as an employee consist of or include any of the matters referred to in subsection (2)(a), (b) or (c) that person is not authorised to use force that is intended, or is likely, to cause bodily harm.

[Section 254 inserted by No. 37 of 1991 s.10.]

255. Defence of possession of a place with claim of right

When a person is in peaceable possession of any place with a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession, even against a person who is entitled by law to the possession of the place, provided that he does not do bodily harm to such person.

[Section 255 amended by No. 37 of 1991 s.11.]

256. Exercise of right-of-way or easement

When a person who is lawfully entitled to enter upon land for the exercise of a right-of-way or other easement or profit enters upon the land for the purpose of exercising such right-of-way, easement, or profit, after notice that his right to use such way or easement or to take such profit is disputed by the person in possession of the land, or having entered persists in his entry after such notice, it is lawful for the person in possession, and for any person acting by his authority, to use such force as is reasonably necessary for the purpose of making the person so entering desist from the entry, provided that he does not do him bodily harm.

257. Discipline of children

It is lawful for a parent or a person in the place of a parent, or for a schoolmaster or master, to use, by way of correction, towards a child, pupil, or apprentice, under his care, such force as is reasonable under the circumstances.

260. Excessive force

In any case in which the use of force by one person to another is lawful, the use of more force than is justified by law under the circumstances is unlawful.