

CRIMES.

No. 11 of 1963.

An Ordinance relating to Crimes.

1. This Ordinance may be cited as the *Crimes Ordinance* 1963.* Short title.

2. The *Crimes Ordinance* 1931 is repealed. Repeal of
*Crimes
Ordinance* 1931

3. In this Ordinance, “the Crimes Act” means the Crimes Act, 1900 of the State of New South Wales in its application to the Territory. Definition.

4. After section fifty-two of the Crimes Act the following section is inserted:—

“52A.—(1.) Where the death of any person is occasioned through impact with a motor vehicle or through the impact of a motor vehicle with a vehicle or other object in, on or near which the person was at the time of impact and in either case the motor vehicle was at the time of impact being driven by a person— Culpable
driving.

(a) under the influence of intoxicating liquor or of a drug; or

(b) at a speed or in a manner which is dangerous to the public,

the person last mentioned shall be guilty of the misdemeanour of culpable driving and shall be liable to imprisonment for five years.

“(2.) Where grievous bodily harm to a person is occasioned through impact with a motor vehicle or through the impact of a motor vehicle with a vehicle or other object in, on or near which the person was at the time of impact and in either case the motor vehicle was at the time of impact being driven by a person—

(a) under the influence of intoxicating liquor or of a drug; or

* Made on 11th May, 1963; notified in the *Commonwealth Gazette* and commenced on 23rd May, 1963.

(b) at a speed or in a manner which is dangerous to the public,

the person last mentioned shall be guilty of the misdemeanour of culpable driving and shall be liable to imprisonment for three years.

“ (3.) It shall be a defence to a charge under this section that the death or the grievous bodily harm occasioned, as the case may be, was in no way attributable to the fact that the person charged was under the influence of intoxicating liquor or of a drug or, as the case may be, to the speed at which or the manner in which the vehicle was driven.

“ (4.) This section shall not take away the liability of a person to be prosecuted for or found guilty of murder, manslaughter or any other offence, or affect the punishment which may be imposed for such an offence.

“ (5.) A person who has been convicted or acquitted of an offence against this section shall not afterwards be prosecuted for murder or manslaughter or for any other offence under this Act on the same or substantially the same facts, and a person who has been convicted or acquitted of murder or manslaughter or of any other offence shall not afterwards be prosecuted for an offence under this section on the same or substantially the same facts.

“ (6.) Upon the trial of a person who is indicted for murder or manslaughter or for an offence under section fifty-three or fifty-four of this Act in connexion with the driving of a motor vehicle by him, the jury may, if they are satisfied that he is guilty of an offence under this section, find him guilty of that offence.

“ (7.) Without limiting the generality of the meaning of the expression ‘ object ’ that expression, in sub-section (1.) and sub-section (2.) of this section, includes animal, building and structure.”.

5. After section ninety of the Crimes Act the following section is inserted:—

Kidnapping.

“ 90A.—(1.) Whosoever leads takes or entices away or detains a person with intent to hold him for ransom or for any other advantage to any person shall be liable to imprisonment for twenty years or, if it is proved to the satisfaction of the judge that the person so led taken enticed away or detained was thereafter liberated without having sustained any substantial injury, to imprisonment for fourteen years.

“(2.) This section does not apply to a person who, in good faith, claims a right to the possession of the person so led, taken or enticed away or detained.”

6. Sections one hundred and twelve and one hundred and thirteen of the Crimes Act are repealed and the following sections inserted in their stead:—

“ 112. Whosoever—

(a) breaks and enters any dwelling-house, or any building within the curtilage of any dwelling-house and occupied therewith but not being part thereof, or any school-house, shop, warehouse, or counting-house, office, store, garage, pavilion, factory, or workshop, or any building belonging to Her Majesty, or to the Commonwealth, or to any authority established by or under a law of the Commonwealth or the Territory, and commits any felony therein; or

(b) being in any dwelling-house, or any such building as aforesaid, or any school-house, shop, warehouse, or counting-house, office, store, garage, pavilion, factory, or workshop, or any building belonging to Her Majesty, or to the Commonwealth, or to any authority established by or under a law of the Commonwealth or the Territory, commits any felony therein and breaks out of the same,

shall be liable to imprisonment for ten years.

“ 113. Whosoever breaks and enters any dwelling-house, or any building within the curtilage of any dwelling-house, or any school-house, shop, warehouse, or counting-house, office, store, garage, pavilion, factory, or workshop, or any building belonging to Her Majesty, or to the Commonwealth, or to any authority established by or under a law of the Commonwealth or the Territory, with intent to commit felony therein, shall be liable to imprisonment for seven years.”

7. Section one hundred and twenty of the Crimes Act is amended by inserting after the word “embezzlement” the words “or fraudulent misappropriation”.

8. After section one hundred and fifty-four of the Crimes Act the following section is inserted:—

“ 154A.—(1.) Whosoever, without the consent of the owner or person in lawful possession thereof—

(a) takes and uses, or takes for the purpose of using, a vehicle or boat; or

Breaking, &c.,
into any
house, &c.,
and committing
felony.

Breaking, &c.,
into any
house, &c.,
with intent
to commit
felony.

Trial for
larceny—
verdict of
embezzlement,
&c.

Unlawfully
using another's
vehicle or boat.

(b) takes a vehicle or boat for the purpose of secreting the same, or obtaining a reward for the restoration or pretended finding thereof, or for any other fraudulent purpose,

shall be deemed to be guilty of larceny, and may be convicted thereof upon an indictment for simple larceny.

“ (2.) In this section—

(a) ‘ vehicle ’ includes a cart, waggon, cab, carriage, aeroplane or other aircraft, motor car, caravan, trailer, motor lorry, motor or other bicycle, grader or tractor; and

(b) ‘ boat ’ includes launch, yacht, raft or pontoon.”.

9. After section one hundred and seventy-eight of the Crimes Act the following section is inserted:—

“ 178A.—(1.) A person who, having, whether before or after the commencement of this section, collected or received money or a valuable security upon terms requiring him to deliver or account for or pay to a person the whole or a part of—

(a) such money, valuable security or the proceeds thereof; or

(b) the balance of such money, valuable security or the proceeds thereof after any authorized deductions or payments have been made thereout,

fraudulently misappropriates to his own use or the use of any other person, or fraudulently omits to account for or pay the whole or a part of such money, valuable security, or proceeds, or the whole or a part of such balance in violation of the terms on which he collected or received such money or valuable security, shall be liable to imprisonment for seven years.

“ (2.) For the purposes of this section, any such money, valuable security, or proceeds thereof, or any balance thereout shall be deemed to be the property of the person who authorized the collection or receipt of the money or valuable security or from whom the money or valuable security was received notwithstanding that the accused may have been authorized to make a deduction thereout on his own behalf, or a payment thereout to another person, or to mix such money, valuable security, or proceeds thereof, or such balance with his own moneys.”.

Fraudulent
misappropriation
of
moneys
collected or
received.

- 10.** Section one hundred and seventy-nine of the Crimes Act is amended by inserting after the word "pretence" (first occurring) the words "or by any wilfully false promise". False pretences, &c.
- 11.** Section one hundred and eighty of the Crimes Act is amended by inserting after the word "pretence" (first occurring) the words "or by any wilfully false promise". Causing payment, &c., by false pretence, &c.
- 12.** Section one hundred and eighty-two of the Crimes Act is amended by inserting after the word "pretence" (first occurring) the words "or by any wilfully false promise". Accused may be convicted on a charge of false pretences, &c., though property obtained partly by a false promise.
- 13.** Section one hundred and eighty-three of the Crimes Act is repealed and the following section inserted in its stead:—
 "183. Where, on the trial of a person for obtaining property by a false pretence or by a wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, it appears that he obtained the property in such manner as to amount in law to larceny or fraudulent misappropriation, the jury may acquit him of the offence charged, and find him guilty of simple larceny, or of larceny as a clerk, or servant, or a person employed in the Public Service, or of fraudulent misappropriation, as the case may be, and he shall be liable to punishment accordingly." Trial for false pretences &c., verdict of larceny.
- 14.** Section one hundred and ninety-six of the Crimes Act is amended by inserting after the word "dwelling-house" (wherever occurring) the words ", vehicle or aircraft". Setting fire to dwelling, &c., knowing person therein.
- 15.** Section one hundred and ninety-seven of the Crimes Act is amended by inserting after the word "dwelling-house" (wherever occurring) the words ", vehicle or aircraft". Setting fire to dwelling, &c., a person being therein or to a church.
- 16.** Section one hundred and ninety-eight of the Crimes Act is amended by inserting after the word "dwelling-house" the words ", vehicle or aircraft". Setting fire to certain other buildings, &c.
- 17.** Section two hundred of the Crimes Act is amended by omitting the words "hereinbefore mentioned" and inserting in their stead the words "mentioned in sections one hundred and ninety-six to one hundred and ninety-nine both inclusive". Setting fire to other buildings.
- 18.** Section two hundred and one of the Crimes Act is amended by inserting after the word "building" (wherever occurring) the words ", vehicle or aircraft". Setting fire to things in or adjacent to buildings, &c.
- 19.** Section two hundred and two of the Crimes Act is amended by inserting after the word "building" the words ", vehicle, aircraft". Attempt to set fire to buildings, &c.

Destroying or
damaging a
house, &c.,
with gun
powder.

20. Section two hundred and three of the Crimes Act is amended—

- (a) by inserting after the word “dwelling-house” the words “, vehicle or aircraft”; and
- (b) by inserting after the word “whatsoever” the words “, vehicle or aircraft”.

Attempting to
destroy
building, &c.,
with gun
powder.

21. Section two hundred and four of the Crimes Act is amended—

- (a) by inserting after the word “building” (first occurring) the words “, vehicle or aircraft”; and
- (b) by inserting after the word “building” (second occurring) the words “, vehicle, aircraft”.

22. Sections three hundred and sixty-five and three hundred and sixty-six of the Crimes Act are repealed and the following sections inserted in their stead:—

Orders for
amendment of
indictment,
separate trial
and postpone-
ment of trial.

“365.—(1.) Where, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

“(2.) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for one or more offences charged in an indictment, the court may order a separate trial of a count or counts of such indictment.

“(3.) Where, before trial, or at any stage of a trial, the court is of opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of a power of the court under this Act to amend an indictment or to order a separate trial of a count, the court shall make such order as appears necessary.

“(4.) Where an order of the court is made under this section for a separate trial, or for the postponement of a trial—

- (a) if such an order is made during a trial, the court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed, or on the indictment, as the case may be;

- (b) the procedure on the separate trial of a count and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged), as if the trial had not commenced; and
- (c) the court may make such order as to admitting the accused person to bail and as to the enlargement of recognizances and otherwise as the court thinks fit.

“(5.) A power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

“366. Where an indictment is amended, a note of the order for amendment shall be endorsed on the indictment, and the indictment in its amended form shall be treated as the indictment for the purposes of the trial and for the purposes of all proceedings in connection therewith or consequent thereon.”

Amended indictment.

23. Section four hundred and forty-two of the Crimes Act is repealed and the following section inserted in its stead:—

“442.—(1.) Where by a section of this Act an offender is made liable to penal servitude for life or to penal servitude or imprisonment for a fixed term, the judge may nevertheless pass a sentence of either penal servitude or imprisonment of less duration.

Provision for passing sentences of less duration than those fixed.

“(2.) The last preceding sub-section does not prevent the awarding of hard labour or solitary confinement, or whipping, where authorized by law, or the directing of the offender to enter into recognizances to keep the peace and be of good behaviour.

“(3.) Where, by any section of this Act, an offender is made liable to a fine of any fixed amount, the judge may nevertheless inflict a fine of less amount.”

24. Section four hundred and seventy-seven of the Crimes Act is amended—

List of offences within jurisdiction.

- (a) by inserting in paragraph (f), after the words “one hundred and sixty-nine,” the words “one hundred and seventy-eight A,”

25. Section four hundred and ninety-nine of the Crimes Act is repealed and the following section inserted in its stead:—

“499.—(1.) A person who obtains a certificate of dismissal under section four hundred and ninety-eight, or, who, having been convicted under sections four hundred and ninety-

Certificate or conviction a bar to other proceedings.

three to four hundred and ninety-six (both inclusive), pays the amount adjudged to be paid, or suffers the imprisonment awarded, shall be released—

- (a) from all criminal proceedings for the same cause; and
- (b) from all civil proceedings for the same cause at the suit of the person laying the information in respect of the proceedings for assault.

“(2.) A person against whom civil proceedings have been taken in respect of an act done by him which is an offence of which he might have been convicted under sections four hundred and ninety-three to four hundred and ninety-six (both inclusive) shall be released from all criminal proceedings for the same cause on the information of the person by whom the civil proceedings were taken.”.

26. After section five hundred and twenty-six of the Crimes Act the following section is inserted:—

“526A.—(1.) Whosoever, without the consent of the owner or person in lawful possession thereof—

- (a) takes and uses, or takes for the purpose of using, a vehicle or boat; or
- (b) takes a vehicle or boat for the purpose of secreting the same or obtaining a reward for the restoration or pretended finding thereof, or for any other fraudulent purpose,

shall be guilty of statutory larceny and shall, on conviction before a Magistrate, be liable to imprisonment for twelve months, or to pay a fine of One hundred pounds.

“(2.) In this section, the words ‘vehicle’ and ‘boat’ have the meanings ascribed to those words in section one hundred and fifty-four A.”.

27. Section five hundred and fifty-four of the Crimes Act is amended—

- (a) by inserting in sub-section (2.) after the words “three months” the words “with either hard labour or light labour”; and
- (b) by omitting from sub-section (3.) the words “Fifty pounds” and inserting in their stead the words “One hundred and fifty pounds”.

Unlawfully
using vehicle
or boat.

Recognizance
for good
behaviour—
damages and
compensation.