

No. 2 of 1971

AN ORDINANCE

Relating to Crimes.

I. THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1970*.

Dated this eighteenth day of February, 1971.

PAUL HASLUCK
Governor-General.

By His Excellency's Command,

T. E. F. HUGHES
Attorney-General, acting for and on behalf of the
Minister of State for the Interior.

CRIMES ORDINANCE 1971

1. This Ordinance may be cited as the *Crimes Ordinance 1971*.^{*} Short title.
- 2.—(1.) Subject to the next succeeding sub-section, this Ordinance shall come into operation on the first day of March, 1971. Commencement.
(2.) Section 8 of this Ordinance shall come into operation on the twenty-ninth day of March, 1971.
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. Section 1 of the Crimes Act is amended— Short title and contents of Act.
 - (a) by omitting the words—
" (14) *Bigamy*—ss. 92, 93.";
 - (b) by omitting the words—
" (3) *Rules respecting evidence*—ss. 406-424."
and inserting in their stead the words—
" (3) *Rules relating to proof of miscellaneous matters*
—ss. 406-424."; and
 - (c) by omitting the words—
" PART XV.—FIRST OFFENDERS.—ss. 557-562."
and inserting in their stead the words—
" PART XV.—CONDITIONAL RELEASE OF OFFENDERS.
—ss. 556A-556E."

^{*} Notified in the *Commonwealth Gazette* on 25 February 1971.

Interpretation.

5. Section 4 of the Crimes Act is amended—

- (a) by inserting after the definition of “justice” the following definition:—

“‘law of the Territory’ includes a continued State law but does not include an Act of the Parliament of the Commonwealth or Regulations under such an Act”; and

- (b) by inserting after the definition of “telegraph” the following definition:—

“‘the Crimes Act’ means the Crimes Act, 1900, of the State of New South Wales in its application to the Australian Capital Territory;”.

Power to permit conditional release of offender.

6. Section 556A of the Crimes Act is repealed.

7. Part XV. of the Crimes Act is repealed and the following Part inserted in its stead:—

“PART XV.

CONDITIONAL RELEASE OF OFFENDERS.

“556A.—(1.) Where—

- (a) a person is charged before the Court of Petty Sessions with an offence against a law of the Territory; and

- (b) the Court is satisfied that the charge is proved but is of opinion, having regard to—

(i) the character, antecedents, age, health or mental condition of the person;

(ii) the extent, if any, to which the offence is of a trivial nature; or

(iii) the extent, if any, to which the offence was committed under extenuating circumstances,

that it is inexpedient to inflict any punishment, or to inflict any punishment other than a nominal punishment, or that it is expedient to release the person on probation,

the Court may dismiss the charge or, without proceeding to conviction, by order, direct that the person be discharged upon his giving security, with or without sureties, by recognizance or otherwise, to the satisfaction of the Court, that—

- (c) he will be of good behaviour for such period, not exceeding three years, as the Court specifies in the order; and

- (d) he will, during the period so specified, comply with such conditions (if any) as the Court thinks fit to specify in the order, which conditions may include—

(i) the condition that the offender will, during the period so specified, be subject to the supervision on probation under a person, for the time being, appointed in accordance with the order; and

Conditional release of offenders without proceeding to conviction.

- (ii) the condition that the offender will obey all reasonable directions of a person so appointed;

“(2.) Where a person has been discharged in pursuance of an order made under the last preceding sub-section upon the condition that he will be of good behaviour for a period specified in the order (in this section referred to as ‘the period of good behaviour’) and information is laid before a magistrate, whether before or after the expiration of the period of good behaviour, alleging that the person has, during the period of good behaviour—

- (a) failed to be of good behaviour; or
 (b) failed to comply with a condition specified in the order in accordance with paragraph (d) of the last preceding sub-section,

the magistrate may issue a summons directing the person to appear before the Court of Petty Sessions at a time specified in the summons and show cause why he should not be dealt with by that Court under this section or, if the information is laid on oath, may issue a warrant for the arrest of the person and for his being brought before the Court of Petty Sessions to be dealt with under this section.

“(3.) Where a person who has been discharged by an order made under sub-section (1.) of this section appears before the Court of Petty Sessions on summons or warrant issued under the last preceding sub-section, the Court may, if it is satisfied that the person has, during the period of good behaviour—

- (a) failed to be of good behaviour; or
 (b) failed to comply with a condition specified in that order in accordance with paragraph (d) of sub-section (1.) of this section,

impose on the person any penalty which the Court would, if the person had then and there been convicted of the offence with which he was originally charged, be empowered to impose or make any order (including an order under sub-section (1.) of this section or an order under sub-section (1.) of the next succeeding section) which the Court would, if he had then and there been convicted of the offence of which he was originally charged, be empowered to make.

“(4.) Where a recognizance that was entered into in accordance with an order made under sub-section (1.) of this section is varied under section five hundred and fifty-six D of the Crimes Act, a corresponding variation shall be deemed to have been made in the terms of that order, and the last two preceding sub-sections apply to and in relation to that order—

- (a) in a case where the period specified in the order in accordance with paragraph (c) of sub-section (1.) of this section is to be deemed to have been varied—as if references in the last two preceding sub-sections to that period were read as references to that period as it is to be deemed to have been varied; and
 (b) in a case where the conditions specified in the order in accordance with paragraph (d) of sub-section (1.) of this

section are to be deemed to have been varied (whether by the alteration of such a condition or the addition of a further condition)—as if references in the last two preceding sub-sections to a condition so specified were read as references to a condition included in those conditions as they are to be deemed to have been varied.

“(5.) Where a person is dealt with by the Court of Petty Sessions under sub-section (3.) of this section, the Court may, in addition to the imposition of a penalty on the person or to the making of an order against him, order that any recognizance given by him or by a surety for him shall be estreated and that any other security given by or in respect of him shall be enforced.

Conditional
release of
offenders.

“556B.—(1.) Subject to this section, where a person is convicted of an offence against the law of the Territory, the Court by which he is convicted may, if it thinks fit, by order—

- (a) release the person without passing sentence upon him upon his giving security, with or without sureties, by recognizance or otherwise, to the satisfaction of the Court that—
 - (i) he will be of good behaviour for such period as the Court specifies in the order;
 - (ii) he will, during the period so specified, comply with such conditions (if any) as the Court thinks fit to specify in the order, which conditions may include—
 - (A) the condition that the offender will, during the period so specified, be subject to the supervision on probation under a person, for the time being appointed in accordance with the order; and
 - (B) the condition that the offender will obey all reasonable directions of a person so appointed; and
 - (iii) he will pay to the Commonwealth such penalty if any (being a penalty not exceeding the prescribed penalty) as the Court specifies in the order on or before a date specified in the order or by specified instalments as provided in the order; or
- (b) sentence the person to a term of imprisonment but direct that the person be released, upon his giving a like security to that referred to in the last preceding paragraph, either forthwith or after he has served a specified part of the sentence imposed upon him.

“(2.) Where a person is convicted of an offence in respect of which a fine might be imposed on the person instead of imprisonment, the last preceding sub-section does not authorize the court by which he is convicted, when directing that the person be released as provided in paragraph (a) of that sub-section, to require the person to give security for the payment of a penalty exceeding the maximum amount of the fine that might be so imposed.

“(3.) Sub-section (1.) of this section does not authorize the Court of Petty Sessions, when directing that a person be released as provided in paragraph (a) of that sub-section, to require the person to give security for the payment of a penalty where the offence of which the person has been convicted is an offence in respect of which the Court is empowered to sentence the person to imprisonment but the maximum term of imprisonment to which the court may sentence the person is less than six months.

“(4.) Sub-section (1.) of this section does not authorize a court, when directing that the person be released as provided in paragraph (b) of that sub-section, to require the person to give security for the payment of a penalty.

“(5.) Where a court releases a person under paragraph (a) of sub-section (1.) of this section upon his giving security for the payment of a penalty, the provisions of section four of the *Fines and Penalties Act, 1901*, of the State of New South Wales, in its application in the Territory, do not apply to or in relation to the penalty so required to be paid.

“(6.) Where a court makes an order for the release of a person upon his giving security for the payment of a penalty, the Court shall specify in the order the person to whom and the place at which the penalty, or each instalment of the penalty, as the case may be, is to be paid.

“(7.) For the purpose of sub-paragraph (iii) of paragraph (a) of sub-section (1.) of this section, the prescribed penalty is, subject to sub-section (2.) of this section—

- (a) if the court by which the order is made is the Supreme Court—Two thousand dollars; or
- (b) in any other case—Five hundred dollars.

“556c.—(1.) Where a person has been released in pursuance of an order made under the last preceding section upon the condition that he will be of good behaviour for a period specified in the order in accordance with sub-paragraph (i) of paragraph (a) of sub-section (1.) of that section (in this section referred to as ‘the period of good behaviour’) and information is laid before a magistrate, whether before or after the expiration of the period of good behaviour, alleging that—

- (a) the person has failed during the period of good behaviour to comply with a condition specified in the order in accordance with sub-paragraph (ii) of paragraph (a) of sub-section (1.) of the last preceding section;
- (b) the person has failed to pay, as provided in the order, the penalty or an instalment of the penalty for the payment of which he has given security; or
- (c) the person has been convicted, whether within or outside the Territory, of an offence committed during the period of good behaviour,

the magistrate may issue a summons directing the person to appear before the court by which he was so released at a time specified in the summons and show cause why he should not be dealt with by that court

Failure to
comply with
condition of
recognizance
or release.

under this section or, if the information is laid on oath, may issue a warrant for the arrest of the person and for his being brought before the court by which he was so released to be dealt with under this section.

“ (2.) Sections twenty-eight and twenty-nine of the *Court of Petty Sessions Ordinance 1930-1968* apply to and in relation to a summons or information under the last preceding sub-section.

“ (3.) Where a person is arrested by virtue of a warrant under sub-section (1.) of this section that requires him to be brought before the Supreme Court and the Supreme Court is not sitting at the time of his arrest, the person shall be brought before a magistrate who may admit the person to bail on such recognizance as the magistrate thinks fit on condition that the person appears before the Supreme Court at such time and place as the magistrate specifies to be dealt with by the Supreme Court under this section or may direct that he be kept in such custody as the magistrate directs until he can be brought before the Supreme Court to be so dealt with.

“ (4.) Where a person who has been released in pursuance of an order made under the last preceding section appears before the court on summons or warrant issued under sub-section (1.) of this section or as a result of having been committed to be dealt with by the court under the last preceding sub-section, the court, if it is satisfied that—

- (a) the person has failed during the period of good behaviour to comply with a condition specified in the order in accordance with sub-paragraph (ii) of paragraph (a) of sub-section (1.) of the last preceding section;
- (b) the person has failed to pay, as provided in the order, the penalty or an instalment of the penalty for the payment of which he has given security; or
- (c) the person has been convicted, whether within or outside the Territory, of an offence committed during the period of good behaviour,

may—

- (d) in a case where the person was released without sentence having been passed on him—impose on the person any penalty which the Court would, if the person had then and there been convicted of the offence with which he was originally charged, be empowered to impose or make any order (including an order under sub-section (1.) of the last preceding section) which the Court would, if he had then and there been convicted of the offence of which he was originally charged, be empowered to make; or
- (e) in a case where the person having been sentenced, was released forthwith or after he had served a specified part of the sentence imposed on him—commit the person to prison to undergo imprisonment for such term, being a term not exceeding the sentence or the balance of that sentence, as the case requires, or make any order (including an order under sub-section (1.) of the last preceding

section) which the Court would, if he had then and there been sentenced for the offence of which he was originally charged, be empowered to make.

“(5.) Where the court commits to prison a person who had served part of his sentence, the order for his release from prison shall, if the period of good behaviour has not elapsed, be deemed to have been revoked.

“(6.) Where a person who has been released under sub-section (1.) of the last preceding section is convicted by the Supreme Court of an offence committed during the period of good behaviour, the Supreme Court may, upon convicting the person and in addition to dealing with the person for the offence of which he is convicted, deal with the person in like manner as it or the Court of Petty Sessions, as the case may be, could deal with the person if he were before whichever of those courts is the appropriate court in pursuance of a summons or warrant issued under sub-section (1.) of this section.

“(7.) Where a person who has been released under sub-section (1.) of the last preceding section is convicted by the Court of Petty Sessions of an offence committed during the period of good behaviour, the Court of Petty Sessions may, upon convicting the person and in addition to dealing with the person for the offence of which he is convicted—

- (a) if the person had been so released by an order of the Supreme Court—commit him to be dealt with by the Supreme Court under this section and then deal with him in like manner as a magistrate may deal with a person brought before him under sub-section (3.) of this section; or
- (b) if the person had been so released by order of the Court of Petty Sessions—deal with the person in like manner as it could deal with the person if he were before the Court of Petty Sessions in pursuance of a summons or warrant issued under sub-section (1.) of this section.

“(8.) Where a person is dealt with by the court under this section, the court may, in addition to the imposition of a penalty or to so dealing with him, but subject to the next succeeding sub-section, order that any recognizance given by him or by a surety for him shall be estreated and that any other security given by or in respect of him shall be enforced.

“(9.) Where a person who has been released under sub-section (1.) of the last preceding section upon giving security for the payment of a penalty is dealt with by the Court under this section, the person and any surety—

- (a) ceases to be liable to pay any part of the penalty that remains unpaid; and
- (b) is not entitled to recover any part of the penalty that has already been paid.

“(10.) Where a recognizance that was entered into in accordance with an order made under sub-section (1.) of the last preceding section is varied under the next succeeding section, a corresponding

variation shall be deemed to have been made in the terms of that order, and the preceding sub-sections of this section apply to and in relation to that order—

- (a) in a case where the period specified in the order in accordance with sub-paragraph (i) of paragraph (a) of sub-section (1.) of the last preceding section is to be deemed to have been varied—as if references in those sub-sections to that period were read as references to that period as it is to be deemed to have been varied;
- (b) in a case where the conditions specified in the order in accordance with sub-paragraph (ii) of paragraph (a) of sub-section (1.) of the last preceding section are to be deemed to have been varied (whether by the alteration of such a condition or the addition of a further condition)—as if references in the preceding sub-sections of this section to a condition so specified were read as references to a condition included in those conditions as they are to be deemed to have been varied; and
- (c) in a case where the provisions of the order with respect to the amount of the penalty, or the manner in which the penalty or the instalments of the penalty are to be paid have been varied or the amount of each instalment of the penalty has been varied—as if references in the preceding sub-sections of this section to failure to pay, as provided in the order, the penalty or an instalment of the penalty were read as references to failure to pay, as provided in the order as it is to be deemed to have been varied, the penalty or an instalment of the penalty.

Power to discharge or vary conditions of recognizance.

“ 556D.—(1.) Where a person has given a recognizance under section five hundred and fifty-six A or five hundred and fifty-six B of the Crimes Act, the court before which the person is bound by his recognizance may—

- (a) upon application by an authorized person, the person who has given the recognizance or his surety; and
- (b) upon being satisfied that the conduct of the person bound by the recognizance has been such as to make it unnecessary that he should remain bound by the recognizance,

discharge the recognizance and any surety given in respect of the recognizance.

“ (2.) Where a person has given a recognizance under section five hundred and fifty-six A or five hundred and fifty-six B of the Crimes Act, an authorized person, the person who has given the recognizance or his surety may apply to the Court before which the person is bound by the recognizance for a variation of the terms of the recognizance including a reduction of the amount of penalty that is to be paid by the person who has given the recognizance or a variation of the manner in which the penalty or the instalments of penalty are to be paid by that person.

“(3.) Upon application being made to a Court under the last preceding sub-section, the Court may, if satisfied that notice as required by sub-section (5.) or (6.) of this section has been given and upon hearing the applicant and any person to whom notice has been so given, vary, if it thinks fit to do so, the terms of the recognizance in all or any of the following ways, that is to say, by—

- (a) extending or reducing the duration of the recognizance;
- (b) altering the conditions of the recognizance;
- (c) inserting additional conditions in the recognizance;
- (d) reducing the amount of the penalty that is to be paid by the person; and
- (e) altering the manner in which the penalty or the instalments of penalty are to be paid.

“(4.) A court shall not extend the duration of a recognizance given by a person under section five hundred and fifty-six A of this Act beyond the period of three years from the date of the order under that section discharging the person.

“(5.) Where an application is made under sub-section (1.) or (2.) of this section by an authorized person, the authorized person shall cause notice of the application and of the time and place fixed for the hearing of the application to be served on the person who has given the recognizance and, if that person has a surety in respect of the recognizance, on the surety.

“(6.) Where an application is made under sub-section (1.) or (2.) of this section by a person who has given a recognizance or by his surety, the person making the application shall cause notice of the application, and of the time and place fixed for the hearing of the application, to be served on the Deputy Crown Solicitor, Australian Capital Territory, and—

- (a) if the application is made by a surety—on the person who has given the recognizance; or
- (b) if the application is made by the person who has given the recognizance and that person has a surety—on his surety.

“(7.) Where notice of an application is served on a surety under either of the last two preceding sub-sections, the surety may appear on the hearing or further hearing of the application and show cause before the court why he should not continue to be bound by the terms of the recognizance.

“(8.) Where a court varies the terms of a recognizance, a person who is a surety in respect of the recognizance continues to be bound by the recognizance as so varied except that—

- (a) if the recognizance is varied by extending its duration—he is not bound after the expiration of the period for which he had agreed to be bound when he entered into the recognizance;

- (b) if the recognizance is varied by altering a condition—he is not bound by that condition as altered; and
- (c) if the recognizance is altered by the addition of a condition—he is not bound by the additional condition, unless he agrees to be bound by the recognizance as so varied.

“(9.) Where the court varies a recognizance by altering a condition of the recognizance, the court shall direct the extent, if any, to which a surety in respect of the recognizance is to continue to be bound by the condition as it existed before the alteration and the condition as it so existed shall be deemed, after the variation of the recognizance, to bind the surety to that extent but not otherwise.

“(10.) In this section—

- (a) ‘authorized person’ means the Attorney-General or a person appointed under section fifty-three of the *Australian Capital Territory Supreme Court Act 1933-1968* to prosecute indictable offences triable before the Supreme Court of the Australian Capital Territory; and
- (b) references to a variation of the manner in which the instalments of penalty are to be paid by a person shall be read as including references to a variation of the amount of any instalments of the penalty.

Recovery of amounts where recognizances estreated.

“556E.—(1.) Where the Supreme Court has, under sub-section (8.) of section five hundred and fifty-six c of the Crimes Act made an order that a recognizance given by a person or by a surety for him be estreated, the order shall, upon being filed by the Registrar of that Court, be deemed to have the same effect as if the order were a judgment by the Supreme Court in favour of the Commonwealth against the person who has given the security or his surety for the amount for which the person or the surety was bound, and the like proceedings may be taken for the enforcement of the order as if it were such a judgment.

“(2.) Where the Court of Petty Sessions has under sub-section (5.) of section five hundred and fifty-six A of the Crimes Act or under sub-section (8.) of section five hundred and fifty-six c of the Crimes Act, made an order that a recognizance given by a person or by a surety for him be estreated, the order shall, upon being filed by the Clerk of the Court of Petty Sessions, be deemed to have the same effect as if it were an order made by the Clerk of Petty Sessions on a complaint by the Commonwealth for recovery of the amount for which the person who has given the recognizance or the surety was bound, and the like proceedings may be taken for the enforcement of the order as if it were an order made on such a complaint.”

Repeal of certain sections of the Crimes Act, consequential on the making of the Evidence Ordinance 1971.

8. Sections 92, 93, 404, 406, 407, 408, 409, 410, 412, 413, 415, 418, 419 and 445 of the Crimes Act cease to apply in the Territory as laws of the Territory.

9. Subject to the next succeeding section, sections 19B, 20 and 20A of the *Crimes Act* 1914-1966 in so far as those sections have been applied by section 7 of the *Interpretation Ordinance* 1937-1967 to all Ordinances as if an Ordinance were a law of the Commonwealth cease to apply as laws of the Territory.

Certain provisions of the *Crimes Act* applied by the *Interpretation Ordinance* 1937-1967 to cease to apply.

10.—(1.) Where—

- (a) an order has been made, before the commencement of this Ordinance under section 556A of the *Crimes Act*, in relation to an offender and the period specified in the order has not expired;
- (b) an order has been made, before the commencement of this Ordinance under section 19B or 20 of the *Crimes Act* 1914-1966, in its application under section 7 of the *Interpretation Ordinance* 1937-1967 to all Ordinances as if an Ordinance were a law of the Commonwealth, in relation to an offender and the period specified in the order has not expired; or
- (c) a sentence imposed on an offender has, before the commencement of this Ordinance, been suspended under Part XV, of the *Crimes Act* and the offender has not been discharged by that Part from the sentence,

Continued application of provisions that have ceased to apply to and in relation to orders made before the commencement of this Ordinance.

the provisions of the section under which the order was made or of that Part, as the case requires, continue, notwithstanding that that section or that Part has ceased to apply as a law of the Territory, to apply to and in relation to—

- (d) the offender;
- (e) the recognizance entered into by the offender;
- (f) any surety or security given in respect of the recognizance; and
- (g) in a case where the sentence has been suspended under that Part, any security given for the performance of an order made under that Part,

as if that section or that Part, as the case requires, had continued to apply as a law of the Territory.

(2.) Section 20A of the *Crimes Act* 1914-1966, in its application under section 7 of the *Interpretation Ordinance* 1937-1967 to all Ordinances as if an Ordinance were a law of the Commonwealth, continues to apply to and in relation to a person who has, before the commencement of this Ordinance, given a recognizance under section 19B or 20 of that Act and to and in relation to the recognizance given by such a person as if the section under which the recognizance was given had not ceased to apply as a law of the Territory.