
Crimes (Amendment) Ordinance (No. 3) 1983

No. 55 of 1983

I, THE GOVERNOR-GENERAL of 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*.

Dated 11 November 1983.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

GARETH EVANS
Attorney-General

An Ordinance to amend the Crimes Act, 1900 of the State of New South Wales in its application to the Territory

Short title

1. This Ordinance may be cited as the *Crimes (Amendment) Ordinance (No. 3) 1983*.

The Crimes Act

2. In this Ordinance, "the Crimes Act" means the Crimes Act, 1900 of the State of New South Wales in its application to the Territory.

Interpretation

3. Section 4 of the Crimes Act is amended—

- (a) by inserting "poultry and domestic pets and" after "includes" in the definition of "Cattle";
- (b) by omitting the definition of "Governor" and substituting the following definition:
" 'Grievous bodily harm' includes any permanent or serious disfiguring of the person. ";

- (c) by inserting after the definition of "law of the Territory" the following definition:
 - " 'Loaded arms' means any firearm, air-gun or air-pistol that is loaded with any projectile or missile, whether or not the firearm, air-gun or air-pistol is capable of being discharged. ";
- (d) by inserting after the definition of "Night" the following definition:
 - " 'Offensive weapon' and 'offensive weapon or instrument' includes an imitation or replica of an offensive weapon, or of an offensive weapon or an instrument, as the case may be. ";
- (e) by omitting the definition of "Railway";
- (f) by adding at the end thereof the following definition:
 - " 'Weapon' and 'weapon or instrument' includes an imitation or replica of a weapon, or of a weapon or an instrument, as the case may be. "; and
- (g) by adding at the end thereof the following sub-section:
 - "(2) For the purposes of this Act, a firearm, air-gun or air-pistol that is unlawfully presented at a person shall, unless the contrary is proved, be deemed to be loaded arms."

Wounding

4. Section 34 of the Crimes Act is amended by omitting "the last preceding section and "the next following section" and substituting "section 33" and "section 35", respectively.

Repeal of section 36

5. Section 36 of the Crimes Act is repealed.

6. After section 93 of the Crimes Act the following sections are inserted:

Delivery of stolen goods held by dealers

"93A. (1) Where the owner of any goods that have been stolen, unlawfully obtained or unlawfully deposited, pawned, pledged, sold or exchanged makes a complaint to a Magistrate that the goods are in the possession of a dealer in second-hand goods or of any person who has advanced money upon the security of the goods, the Magistrate may--

- (a) issue a summons for the appearance of the dealer or person and for the production of the goods; and
- (b) order the dealer or person to deliver the goods to the owner upon payment by the owner of such sum (if any) and at such time as the Magistrate thinks fit.

"(2) A dealer or person who refuses or fails to comply with an order made under paragraph (1) (b), or who disposes of any goods after he has been notified by the owner of the goods that they were stolen, unlawfully obtained or unlawfully deposited, shall be liable to pay to the owner of the goods the full value of the goods as determined by a Magistrate.

“(3) An order under paragraph (1) (b) shall not bar the dealer or person from recovering possession of the goods in respect of which the order is made from the owner by proceedings in a court of competent jurisdiction, being proceedings commenced within 6 months after the date on which the order is made.

Disposal of stolen goods, &c.

“93B. (1) Where—

- (a) any goods are lawfully held in the custody of a member of the police force;
- (b) a person is charged with having stolen or fraudulently obtained the goods; and
- (c) the person so charged—
 - (i) cannot be found;
 - (ii) is discharged or acquitted; or
 - (iii) is convicted and the goods are not included in any indictment upon which he is so convicted,

a Magistrate may make an order for the delivery of the goods to the person who appears to be the owner of the goods or, where the owner cannot be ascertained, may make such order with respect to the goods as the Magistrate thinks just.

“(2) An order under sub-section (1) shall not bar a person from recovering possession of the goods in respect of which the order is made from the person to whom the goods are delivered in pursuance of the order by proceedings in a court of competent jurisdiction, being proceedings commenced within 6 months after the date on which the order is made.

“(3) In this section, ‘goods’ includes a sum of money.”.

7. After section 95 of the Crimes Act the following section is inserted:

Robbery—threat of violence to third person

“95A. A person who steals any chattel, money or valuable security and who, immediately before or at the time of doing so, puts or seeks to put the person from whom he so steals in fear that any other person will be there and then subjected to violence, is guilty of robbery and liable, on conviction, to imprisonment for 14 years.”.

Same with wounding

8. Section 96 of the Crimes Act is amended by omitting “the last preceding section, and thereby” and substituting “section 95 or 95A, and in the course of committing that offence”.

Repeal of section 104

9. Section 104 of the Crimes Act is repealed.

Being found with intent to commit an offence

10. Section 114 of the Crimes Act is amended—

- (a) by omitting “at night”;
- (b) by omitting “blackened,” and substituting “blackened”; and
- (c) by adding at the end thereof the following sub-section:

“(2) Where a person is convicted of an offence against sub-section (1), any weapon, instrument or implement of housebreaking in the custody or possession of the person shall be forfeited.”

11. After section 178A of the Crimes Act the following sections are inserted:

Valueless cheques

“178B. (1) A person who—

- (a) obtains any chattel, money or valuable security; or
- (b) purports to pay wages or salary,

by passing a cheque that is not paid on presentation is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or by imprisonment for a term not exceeding 12 months.

“(2) It is a defence to a prosecution for an offence against sub-section (1) that the defendant

- (a) had reasonable grounds for believing that the cheque would be paid in full on presentation; and
- (b) did not have an intent to defraud.

“(3) In a prosecution for an offence against sub-section (1), the fact that, at the time when the cheque was drawn, there were some funds standing to the credit of the account on which the cheque was drawn is not of itself a defence.

Obtaining money, &c., by deception

“178C. (1) A person who, by any deception, dishonestly obtains for himself or any other person any money or valuable thing or any financial advantage is guilty of an offence punishable, on conviction, by imprisonment for a term not exceeding 5 years.

“(2) In this section, ‘deception’ means any deliberate or reckless deception by words or conduct in relation to any matter of fact or law or in relation to the intention of any person.

Obtaining money, &c., by false or misleading statements

“178D. A person who, with intent to obtain for himself or any other person any money or valuable thing or any financial advantage, makes or publishes, or concurs in making or publishing, any statement (whether in writing or otherwise) which he knows, or ought reasonably to know, to be false or misleading in a material particular, is guilty of an offence punishable, on conviction, by imprisonment for a term not exceeding 5 years.

Obtaining credit by fraud

"178E. A person who incurs any debt or liability and who obtains credit by any false pretence or by any wilfully false promise, or both, or by any other fraud is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or by imprisonment for a term not exceeding 12 months."

12. After section 349 of the Crimes Act the following sections are inserted in Part X:

Seizure of forfeited articles

"350. (1) A member of the police force may, without warrant, seize any article which is forfeited, or which he has reasonable grounds for believing is forfeited, under any law in force in the Territory and take that article before the Court of Petty Sessions.

"(2) Where any article is brought before the Court under sub-section (1), the Court may, subject to the giving of such notice (if any) to such person (if any) as the Court directs, order that the article be condemned or returned to the person from whom it was taken.

"(3) Where a prosecution is pending in relation to an article, the Court shall not make an order under sub-section (2) in relation to the article until the prosecution is determined.

"(4) All articles condemned under sub-section (2) shall be dealt with as directed by the Attorney-General and, pending his direction, may be detained in such custody as the Court of Petty Sessions directs.

Detention of drunken persons

"351. (1) A person who is found drunk in a public place and who is—

- (a) behaving in a disorderly manner;
- (b) behaving in a manner likely to cause injury to himself or another person or damage to any property; or
- (c) incapacitated, due to his being drunk, and in need of physical protection,

may be taken into custody by a member of the police force and detained until he ceases to be drunk or until the expiration of the period of 8 hours after he is so taken into custody, whichever first occurs.

"(2) A member of the police force may search a person who is taken into custody under sub-section (1) and may take possession of any personal belongings found in the possession of the person.

"(3) A person is entitled to the return of any personal belongings taken from him under sub-section (2) when he ceases to be detained under this section."

13. After section 353A of the Crimes Act the following section is inserted:

Escape and harbouring

“354. (1) A person who is lawfully held in custody (other than a person taken into custody and detained under section 351) shall not, at any time when he is so held, break or escape out of that custody.

“(2) A person shall not knowingly harbour any person who has broken or escaped out of custody in contravention of sub-section (1).

Penalty: \$5,000 or imprisonment for 2 years.”

Repeal of section 421

14. Section 421 of the Crimes Act is repealed.

15. After section 429 of the Crimes Act the following section is inserted:

Sentences—imprisonment and fines

“430. Where a person is convicted of an offence against a provision of this Act, the penalty for which is a fine or a term of imprisonment, the Court may, if it thinks fit, impose both penalties on the person.”

16. After section 481 of the Crimes Act the following section is inserted:

Misbehaviour at public meetings

“482. (1) A person shall not, in any premises in which a public meeting is being held, behave in a manner that disrupts, or is likely to disrupt, the meeting.

Penalty: \$1,000 or imprisonment for 6 months.

“(2) Where a person presiding at any public meeting reasonably believes that another person in the premises in which the meeting is being held is behaving in a manner that is disrupting, or is likely to disrupt, the meeting, the person so presiding may request any member of the police force who is present to remove the other person and the member of the police force may remove that other person accordingly.”

17. Section 501 of the Crimes Act is repealed and the following section substituted:

Unlawfully driving, using, marking or possessing cattle

“501. (1) A person shall not—

- (a) without reasonable excuse, drive any cattle owned by another person from the land, or out of the herds, of that other person without the consent of that other person;
- (b) take and work or use, or take for the purpose of working or using, any cattle owned by another person without the consent of the owner, or the person lawfully in possession of, the cattle;
- (c) take any cattle owned by another person for the purpose of committing a fraud;

- (d) fraudulently brand or ear-mark, or deface or alter the brand or ear-mark of, any cattle owned by another person; or
- (e) without reasonable excuse, have in his possession any stolen cattle or any cattle reasonably suspected of having been stolen.

“(2) A person who commits an offence against this section shall be liable, on conviction before a Magistrate, to a fine not exceeding \$2,000 or by imprisonment for a term not exceeding 12 months.”.

18. After section 510 of the Crimes Act the following section is inserted:

Laying of poison

“510A. A person shall not lay any poison which endangers, or is likely to endanger, the life of any domestic animal or bird.

Penalty: \$1,000 or imprisonment for 6 months.”.

19. After section 527 of the Crimes Act the following section is inserted:

Unlawful possession

“527A. (1) A person who—

- (a) has any goods in his custody or in the custody of another person;
- (b) has any goods in or on any premises, whether the goods are in or on those premises for his own use or for the use of another person; or
- (c) gives custody of any goods to a person who is not lawfully entitled to possession of the goods,

being goods that are reasonably suspected of having been stolen or otherwise unlawfully obtained, shall be guilty of an offence punishable, on conviction before a Magistrate, by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 6 months.

“(2) It is a defence to a prosecution for an offence against sub-section (1) if the defendant satisfies the Court that he had no reasonable grounds for suspecting that the goods in relation to which the offence is alleged to have been committed were stolen or otherwise unlawfully obtained.

“(3) Where the owner of any goods suspected of having been stolen or unlawfully obtained is not discovered before the expiration of the period of 3 months from the date of the conviction of a person for an offence under sub-section (1) in relation to those goods, the goods may be sold by public auction and the proceeds of the sale shall be paid to the Commonwealth.

“(4) Where, at any time after the expiration of the period of 3 months referred to in sub-section (3), the owner of the goods claims the goods or the proceeds of the sale of the goods by public auction, the goods shall be returned to him or, if they have been sold by public auction, an amount equal to the proceeds of the sale shall be paid to him by the Commonwealth.

“(5) In this section, ‘premises’ includes any building, structure, vehicle or vessel, or any place, whether built upon or otherwise, and any part of a building, structure, vehicle, vessel or place.”.

20. After section 543 of the Crimes Act the following sections are inserted:

Obstruction of stream, &c.

"544. A person shall not place any obstruction in any stream, river or lake, being an obstruction that is likely to endanger the safety of any person.

Penalty: \$1,000 or imprisonment for 6 months.

Entrance to cellars, &c.

"545. The owner or occupier of any premises in or on which there is any cellar, man-hole or other similar place having an entrance that opens into, upon or near a public place shall have and maintain in good repair a rail, gate, fence or cover effectively enclosing that entrance and shall not permit that entrance to remain open for longer than is reasonably necessary.

Penalty: \$1,000 or imprisonment for 6 months.

Defacing premises

"546. (1) A person shall not—

- (a) affix a placard or paper upon any private premises; or
- (b) wilfully mark, by means of chalk, paint or any other material, any private premises,

unless the person has first obtained the consent—

- (c) where the premises are occupied of the occupier or person in charge of the premises; or
- (d) where the premises are not occupied—of the owner or person in charge of the premises.

Penalty: \$1,000 or imprisonment for 6 months.

"(2) A person shall not, without lawful authority, affix a placard or paper upon, or wilfully mark, by means of chalk, paint or any other material, any public street, road, footpath, bus-shelter or other property of the Commonwealth or of an authority or body constituted by or under a law of the Commonwealth or of a Territory.

Penalty: \$1,000 or imprisonment for 6 months.

"(3) A person convicted of an offence under sub-section (1) or (2) shall be liable to pay to the owner of the premises or property in relation to which the offence was committed such amount (if any) as the Court may order as the cost of, or contribution to the cost of, any repairs or restoration of the premises or property that are necessary as a result of the action constituting the offence.

Offensive behaviour

"546A. A person shall not in, near, or within the view or hearing of a person in, a public place behave in a riotous, indecent, offensive or insulting manner.

Penalty: \$1,000.

Indecent exposure

"546B. A person who offends against decency by the exposure of his person in a public place, or in any place within the view of a person who is in a public place, is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

Noise abatement directions

"546C. (1) Where it appears to a member of the police force that offensive noise is being, or has at any time during the preceding 30 minutes been, emitted from any premises, he may—

- (a) direct the person whom he believes to be the occupier of those premises to cause the emission of the noise to cease; or
- (b) direct any person whom he believes to be making, or contributing to the making of, the noise to cease making, or contributing to the making of, the noise,

or he may give directions under both paragraphs (a) and (b).

"(2) A person to whom a direction referred to in paragraph (1) (a) is given shall not, without reasonable excuse—

- (a) fail to cause the emission from the premises of the noise in respect of which the direction was given to cease promptly; or
- (b) at any time within 6 hours after the time when the direction was given, cause, permit or allow any offensive noise to be emitted from the premises.

Penalty: \$1,000 or imprisonment for 6 months.

"(3) A person to whom a direction referred to in paragraph (1) (b) is given shall not, without reasonable excuse—

- (a) fail to promptly cease making, or contributing to the making of, the noise in respect of which the direction was given; or
- (b) at any time within 6 hours after the time when the direction was given, make, or contribute to the making of, any offensive noise emitted from the premises.

Penalty: \$1,000 or imprisonment for 6 months.

"(4) A person shall not be convicted of an offence under this section unless the prosecution establishes that the noise to which the alleged offence relates was an offensive noise.

"(5) In this section—

'offensive noise' means noise that, by reason of its level or nature, or the time at which it is made, or any other circumstances, is likely to be harmful or offensive to, or to interfere unreasonably with the comfort or repose of, persons who are—

- (a) where the noise is made in premises other than a public place—outside the premises; or

(b) where the noise is made in premises that are a public place—within or outside the premises; ‘premises’ include any place, vehicle or vessel.”.

Repeal of section 576

21. Section 576 of the Crimes Act is repealed.

Fifth Schedule

22. The Fifth Schedule to the Crimes Act is repealed.

Further amendments

23. (1) The heading to Part X of the Crimes Act is omitted and the following heading substituted:

“APPREHENSION, DETENTION AND DISCHARGE OF CERTAIN PERSONS AND SEARCH AND SEIZURE PROVISIONS.”.

(2) The heading to Part XIV of the Crimes Act is omitted and the following heading substituted:

“OFFENCES PUNISHABLE SUMMARILY AND SUMMARY PROCEDURE GENERALLY.”.

(3) A provision of the Crimes Act specified in Column 1 of the Schedule is amended as set out in Column 2 of the Schedule.

Abolition of common law offences

24. The common law offences of publicly exposing the naked person and of breaking out and escaping from confinement are abolished.

SCHEDULE

Section 23

FURTHER AMENDMENTS OF CRIMES ACT

Column 1 Provision	Column 2 Amendment
101	Omit "of felony, or of having committed, or attempted to commit, an infamous crime as hereinafter defined, or of having committed an offence against decency in a public place", substitute "of having committed, or of having attempted to commit, an offence punishable by imprisonment for 5 years or more".
102	Omit "crime or".
103	Omit "infamous crime", substitute "offence".
219	Omit "penal servitude", substitute "imprisonment".
255	Omit "Governor", substitute "Governor-General".
280	Omit "penal servitude", substitute "imprisonment".
287	Omit "Act", substitute "law in force in the Territory".
289	(a) Omit "Act, now or hereafter in force.", substitute "law in force in the Territory". (b) Omit "the Act", substitute "the law".
332	Omit "Justice", substitute "Magistrate".
333	Omit "Justices", substitute "Magistrate".
376	(a) Omit "feloniously and". (b) Omit "feloniously slay", substitute "kill".
378	Omit "in the manner heretofore accustomed".
420	Omit from paragraph (a) "felonious".
497	Omit "felony", substitute "an offence".
513	Omit "a shilling", substitute "10 cents".
515	Omit "ten pounds", substitute "\$20".
516	(a) Omit "two Justices", substitute "a Magistrate". (b) Omit "twenty pounds", substitute "\$40".
517	Omit "one shilling", substitute "10 cents".
518	Omit "one shilling", substitute "10 cents".
522	Omit "five shillings", substitute "50 cents".
523	(a) Omit "two Justices, fails to satisfy them", substitute "a Magistrate, fails to satisfy the Magistrate". (b) Omit "twenty pounds", substitute "\$40". (c) Omit "such Justices", substitute "the Magistrate". (d) Omit "ascertained by them", substitute "ascertained by the Magistrate".
532	Omit "one shilling", substitute "10 cents".
564	Omit "felony, or misdemeanour, in any Court, or before any Justice.", substitute "an offence".

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 18 November 1983.