

AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Ordinance 1984

No. 32 of 1984

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 27 June 1984.

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 1984*.¹

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.

Heading

3. After the heading to Part X of the Crimes Act the following heading is inserted:

Division 1—Apprehension, detention, search and seizure".

4. After section 358 of the Crimes Act the following Division is inserted in Part X:

Division 2—Criminal investigation (extra-territorial offences)

Interpretation

“358A. (1) In this Division, unless the contrary intention appears—

‘appropriate authority’, in relation to a State or another Territory, means an authority exercising in relation to the police force of that State or Territory functions corresponding to those of the Commissioner of Police of the Australian Federal Police in relation to the Australian Federal Police;

‘corresponding law’ means a law of a State or of another Territory declared by proclamation to be a corresponding law;

‘night’ means the period commencing at 7 o’clock in each evening and ending at 7 o’clock in the following morning;

‘offence to which this Act applies’ means an indictable offence against the law of a reciprocating State (being an offence arising from an act, omission or state of affairs which, if done or occurring in the Territory would attract criminal liability under the law of the Territory);

‘owner’ in relation to an object, includes a person entitled to possession of the object;

‘premises’ means a building, structure or place (whether built upon or not and whether enclosed or unenclosed) and includes an aircraft, vessel or vehicle;

‘reciprocating State’ means a State or another Territory—

- (a) in which a corresponding law is in force; and
- (b) in relation to which arrangements are in force under section 358E;

‘search warrant’ means a warrant under this Division authorizing a search of premises;

‘telephone’ includes any telecommunication device.

“(2) For the purpose of this Division—

- (a) anything obtained by the commission of an offence, used for the purpose of committing an offence, or in respect of which an offence has been committed;
- (b) anything that may afford evidence of the commission of an offence; or
- (c) anything intended to be used for the purpose of committing an offence,

is an object relevant to the investigation of the offence.

“(3) The Governor-General may, by proclamation, declare a law of a State or of another Territory to be a corresponding law and may, by subsequent proclamation, vary or revoke any such declaration.

Issue of search warrants

“358B. (1) Where, upon the application of a police officer, a magistrate is satisfied that there are reasonable grounds to believe—

- (a) that an offence to which this Act applies has been, or is intended to be, committed; and
- (b) that there is in any premises an object relevant to the investigation of that offence;

the magistrate may issue a search warrant in respect of those premises.

“(2) An application for the issue of a search warrant may be made either personally or by telephone.

“(3) The grounds of an application for a search warrant shall be verified by affidavit.

“(4) An application for the issue of a search warrant shall not be made by telephone unless in the opinion of the applicant a search warrant is urgently required and there is insufficient time to make the application personally.

“(5) Where an application for the issue of a search warrant is made by telephone—

- (a) the applicant shall inform the magistrate of his name and of his rank and number in the police force, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is a police officer;
- (b) the applicant shall inform the magistrate of the grounds on which he seeks the issue of the search warrant;

- (c) if it appears to the magistrate from the information furnished by the applicant that there are proper grounds for the issue of a search warrant, he shall inform the applicant of the facts on which he relies as grounds for the issue of the warrant, and shall not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;
- (d) if the applicant gives such an undertaking, the magistrate may then make out, and sign, a search warrant, noting on the warrant the facts on which he relies as grounds for the issue of the warrant;
- (e) the search warrant shall be deemed to have been issued, and shall come into force, when signed by the magistrate;
- (f) the magistrate shall inform the applicant of the terms of the warrant; and
- (g) the applicant shall, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).

“(6) A magistrate by whom a search warrant is issued shall file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the Court of Petty Sessions.

Authority conferred by search warrant

“358C. (1) A search warrant authorizes any police officer, with such assistants as he thinks necessary, to enter and search the premises in respect of which the warrant was issued and anything in those premises.

“(2) Subject to any direction by a magistrate authorizing execution of a search warrant at night, or during specified hours of the night, it shall not be executed at night.

“(3) A police officer, or a person assisting him, may use such force as is reasonably necessary for the execution of a search warrant.

“(4) A police officer executing a search warrant may seize and remove any object that he believes on reasonable grounds to be relevant to the investigation of the offence in relation to which the warrant was issued.

“(5) An object seized and removed under sub-section (4) shall be dealt with in accordance with arrangements in force under section 358E.

“(6) A police officer who executes a search warrant—

- (a) shall prepare a notice containing—
 - (i) his own name and rank;
 - (ii) the name of the magistrate who issued the warrant and the date and time of its issue; and
 - (iii) a description of any objects seized and removed in pursuance of the warrant; and
- (b) shall, as soon as practicable after execution of the warrant, give the notice to the occupier of the premises in respect of which the warrant was issued or leave it for him in a prominent position on those premises.

“(7) A search warrant, if not executed at the expiration of 1 month from the date of its issue, shall then expire.

Offence of hindering execution of search warrant

“358D. A person who, without lawful excuse, hinders a police officer, or a person assisting him, in the execution of a search warrant shall be guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or by imprisonment for a period not exceeding 6 months.

Ministerial arrangements for transmission and return of objects seized under this Division or under a corresponding law

“358E. (1) The Attorney-General may enter into arrangements with a Minister of State of a State or another Territory to whom the administration of a corresponding law is committed under which—

- (a) objects seized under this Division that may be relevant to the investigation of an offence against the law of the State or Territory in which the corresponding law is in force—
 - (i) are to be transmitted to the appropriate authority of that State or Territory for the purposes of investigation of, or proceedings in respect of, that offence; and
 - (ii) when no longer required for the purposes of any such investigation or proceedings, are (unless disposed of by order or direction of a court) to be returned to the Commissioner of Police; and
- (b) objects seized under the corresponding law that may be relevant to the investigation of an offence against the law of the Territory—

- (i) are to be transmitted to the Commissioner of Police; and
- (ii) when no longer required for the purposes of investigation of an offence or proceedings in respect of an offence, are (unless disposed of by order or direction of a court) to be returned to the appropriate authority of the State or Territory in which they were seized.

“(2) The owner of an object returned to the Commissioner of Police in pursuance of arrangements under sub-section (1) is entitled to the return of the object.

“(3) The right conferred by sub-section (2) is enforceable by action in detinue in any court of competent jurisdiction.

“(4) In this section, ‘Commissioner of Police’ means the Commissioner of Police of the Australian Federal Police.”

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 29 June 1984.