

AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Ordinance (No. 2) 1984

No. 78 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 13 December 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 (No. 2) 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.

Interpretation

3. Section 4 of the Crimes Act is amended by inserting after the definition of "Offensive weapon" the following definition:

“ ‘officer’, in relation to a body corporate or public company, includes a person who has been appointed or who acts as an auditor of the body corporate or public company;”.

Trial for carnal knowledge—verdict of assault with intent

4. Section 70 of the Crimes Act is amended by inserting in paragraph (a) “that age but under” after “above”.

Trial for larceny—verdict of embezzlement, &c.

5. Section 120 of the Crimes Act is amended by inserting “or by any wilfully false promise” after “pretence” (first occurring).

6. After section 154A of the Crimes Act the following section is inserted:

Fraudulent abstraction, waste &c., of electricity

“154B. A person who fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity is guilty of an offence punishable, on conviction, by imprisonment for 5 years.”.

7. After section 176 of the Crimes Act the following section is inserted:

Directors, &c., cheating or defrauding

“176A. A person who, being a director, officer or member of a body corporate or public company, defrauds the body corporate or company or any other person in his dealings with the body corporate or company is guilty of an offence punishable, on conviction, by imprisonment for 10 years.”.

Taking reward for helping to recover stolen property

8. Section 186 of the Crimes Act is amended by inserting “recover” after “person to”.

Receiving

9. Section 188 of the Crimes Act is amended by inserting “, or disposes of, or attempts to dispose of,” after “receives”.

Receiving in other cases

10. Section 189 of the Crimes Act is amended by inserting “, or disposes of, or attempts to dispose of,” after “receives”.

Receiving, &c., goods stolen outside the Territory

11. Section 189A of the Crimes Act is amended—

- (a) by inserting in sub-section (1) “, or disposes of, or attempts to dispose of,” after “receives”; and
- (b) by inserting in sub-section (1) “and whether or not he took part in the stealing of the property,” after “stolen,” (second occurring).

12. After section 189A of the Crimes Act the following section is inserted:

Prosecution under section 188 or 189 where property stolen in course of transmission

“189B. (1) Where, in the trial of a person for the offence under section 188 or 189 of receiving, or disposing of, or attempting to dispose of, any property knowing it to have been stolen, it is proved that the property was stolen in the course of transmission between the Territory and any other jurisdiction or between any other jurisdiction and the Territory the person shall be liable to be convicted of the offence without proof that the stealing took place in the Territory.

“(2) For the purposes of sub-section (1), ‘other jurisdiction’ means a State or another Territory.”.

Receiving cattle killed, or carcass, &c.

13. Section 190 of the Crimes Act is amended by inserting “, or disposes of, or attempts to dispose of,” after “receives” (second occurring).

Killing or maiming cattle

14. Section 245 of the Crimes Act is amended by omitting “other than pigs or goats” and substituting “, the property of another person”.

15. After section 248 of the Crimes Act the following section is inserted:

False statement that person or property in danger

“248A. Where any person—

- (a) knowingly makes a false statement to any other person; or

- (b) sends to any other person a document containing a statement the first-mentioned person knows to be false,

and the statement tends to give rise to apprehension for the safety of any person (including the person making the statement and the person to whom it is made) or property, or both, the first-mentioned person is guilty of an offence punishable on conviction by imprisonment for 5 years.”.

Acknowledging recognizances, &c., in the name of another

16. Section 294 of the Crimes Act is amended by inserting “or gives any bail undertaking, or enters into any agreement pursuant to a bail condition, or makes any acknowledgment pursuant to a bail condition,” after “instrument,”.

Person in act of committing or having committed an offence

17. Section 352 of the Crimes Act is amended by adding at the end thereof the following sub-sections:

“(4) Where a warrant has been lawfully issued for the apprehension of a person on any ground other than a charge for an offence, any constable may, although the warrant is not at the time in his possession, apprehend that person.

“(5) In sub-section (4), ‘warrant’ includes a warrant of commitment.”.

18. After section 352 of the Crimes Act the following section is inserted:

Offences committed outside Territory—power of arrest

“352A. (1) This section applies to an offence that—

- (a) is an offence against the law of a State or another Territory; and
(b) consists of an act or omission which, if it occurred in the Territory, would constitute an indictable offence or an offence punishable by imprisonment for 2 years or more.

“(2) A member of the police force may, at any hour of the day or night and without warrant, apprehend any person whom he has reasonable cause to suspect of having committed an offence to which this section applies.

“(3) A person apprehended under this section shall be brought before a Magistrate as soon as practicable and the Magistrate may—

- (a) discharge the person; or

- (b) commit the person to custody, or admit him to bail, pending the execution under a law of the Commonwealth of a warrant or provisional warrant for his apprehension or pending his earlier discharge from custody or release from bail under sub-section (7).

“(4) A member of the police force may exercise, in relation to a person apprehended under this section, the powers conferred by section 353A as if the person were in lawful custody upon a charge referred to in that section.

“(5) Where a person has been committed to custody under this section and a warrant for his apprehension is subsequently presented for execution, the person shall be delivered in accordance with the terms of the warrant to the custody of the person executing it.

“(6) Where a person has been admitted to bail under this section and subsequently, but before he has complied with his bail undertaking, a warrant for his apprehension is executed under a law of the Commonwealth, the person shall be deemed, at the time the warrant is executed, to be released from that bail and to have complied with any condition or undertaking in relation to that bail that was outstanding at that time, other than a condition or undertaking with which he had, before that time, refused or failed, without reasonable excuse, to comply.

“(7) Where—

- (a) a person has been committed to custody or admitted to bail under this section; and
- (b) a warrant or provisional warrant for the apprehension of the person is not executed within 7 days after the person is so committed to custody or admitted to bail,

a Magistrate may, by order, discharge the person from custody or release the person from bail, as the case requires.”.

Power to search and medically examine a person and take fingerprints, &c.

19. Section 353A of the Crimes Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) Where a person is in lawful custody upon a charge of committing any offence—

- (a) a member of the police force who is of the same sex as the person; or

- (b) if no such member is available for the purpose of conducting a search of the person—any other person who is of the same sex as the person and who is requested to do so by a member of the police force,

may search the person and take from the person anything found in the course of that search.

“(1A) An action or proceeding, civil or criminal, does not lie against a person referred to in paragraph (1) (b) for or in respect of any search conducted by the person under sub-section (1), being a search that would be lawful if conducted by a member of the police force.”; and

- (b) by omitting from sub-section (2) “crime or” (wherever occurring).

Escape and harbouring

20. Section 354 of the Crimes Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) A person shall not harbour or otherwise assist another person who, to the knowledge of the first-mentioned person—

- (a) has broken or escaped out of custody in contravention of sub-section (1); or
- (b) has broken or escaped out of lawful custody in which he was held in a State or another Territory.”.

21. After section 403 of the Crimes Act the following section is inserted:

Power of Judge to record verdict of acquittal

“404. (1) Where, on the trial of a person for an offence against this Act or any other law of the Territory, the Judge would have power to direct the jury to return a verdict of acquittal in respect of that offence, the Judge may, instead of giving such a direction, make an order—

- (a) discharging the jury from returning a verdict in respect of that offence; and
- (b) recording a verdict of acquittal in respect of that offence.

“(2) An order under sub-section (1) shall, for all purposes, have the same effect as a verdict of acquittal returned by a jury.”.

22. After section 405 of the Crimes Act the following section is inserted:

Noice of alibi

“406. (1) Where a defendant is committed for trial for an indictable offence, the committing Magistrate shall—

- (a) inform the defendant of the requirements of sub-sections (2), (3), (4) and (6); and
- (b) cause a copy of this section to be furnished to the defendant.

“(2) On a trial on indictment the defendant shall not, without the leave of the Court, adduce evidence in support of an alibi or assert in any statement made by him under section 405 that he has an alibi unless, before the expiration of the period of 14 days commencing on the date of the committal of the defendant for trial, he gives notice of particulars of the alibi.

“(3) On a trial on indictment the defendant shall not, without the leave of the Court, call any other person to give evidence in support of an alibi unless—

- (a) the notice given under sub-section (2) includes the name and address of the person or, if the name or address is not known to the defendant at the time he gives the notice, any information in his possession which might be of material assistance in finding the person;
- (b) if the name or the address is not included in the notice—the Court is satisfied that the defendant before giving the notice took, and after giving the notice continued to take, all reasonable steps to ascertain the name or address;
- (c) if the name or the address is not included in the notice, but the defendant subsequently ascertains the name or address or receives information which might be of material assistance in finding the person—the defendant forthwith gives notice of the name, address or other information, as the case may be; and
- (d) if the defendant is notified by or on behalf of the Crown that the person has not been found by the name or at the address given by the defendant—the defendant forthwith gives notice of any information which might be of material assistance in finding the person and which is then in his possession, or on subsequently receiving any such information, forthwith gives notice of it.

“(4) A notice purporting to be given under this section on behalf of the defendant by his solicitor shall, unless the contrary is proved, be deemed to be given with the authority of the defendant.

“(5) Any evidence tendered to disprove an alibi may, subject to any direction by the Court, be given before or after evidence is given in support of the alibi.

“(6) A notice under this section shall be given in writing addressed to the Director of Public Prosecutions.

“(7) In this section, ‘evidence in support of an alibi’ means evidence tending to show that by reason only of the presence of the defendant at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.”.

Aggravated assaults

23. Section 494 of the Crimes Act is amended—

- (a) by inserting “, custodial officer” after “sheriff’s officer”; and
- (b) by adding at the end thereof the following sub-section:

“(2) For the purposes of sub-section (1), ‘custodial officer’ has the same meaning as in the *Remand Centres Ordinance 1976*.”.

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

Making a false invoice

“527B. A person who fraudulently prepares, causes to be prepared or produces an invoice, receipt or document containing a false statement, with intent to induce the belief that anything was not stolen or otherwise unlawfully obtained or to prevent anything from being seized on suspicion of being stolen or otherwise unlawfully obtained or from being produced in evidence concerning an alleged offence, is guilty of an offence punishable, on conviction, by a fine not exceeding \$200 or by imprisonment for 3 months.”.

Summary conviction a bar to further proceedings

25. Section 556 of the Crimes Act is amended—

- (a) by omitting all the words after “shall not be” and substituting the following words:

“liable—

- (a) to any other criminal proceedings for the same cause; or
 - (b) to any civil proceedings for the same cause at the suit of the person laying the information upon which he was summarily convicted under this Act.”; and
- (b) by adding at the end thereof the following sub-section:

“(2) Any person against whom civil proceedings have been taken in respect of any act or thing done or omitted to be done by him which is an offence of which he might have been convicted summarily without consent under this Act shall not be liable to any criminal proceedings for the same cause on the information of the person by whom the civil proceedings were taken.”.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 19 December 1984.