

AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Ordinance 1985

No. 11 of 1985

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 22 February 1985.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
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 1985*.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.

Commencement

3. This Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories by notice in the *Gazette*.

4. After Part XV of the Crimes Act the following Part is inserted:

“PART XVA—COMMUNITY SERVICE ORDERS

Interpretation

“556F. In this Part, unless the contrary intention appears—

‘authorized officer’ means a person appointed under section 4 of the *Supervision of Offenders (Community Service Orders) Ordinance 1985*;

‘community service order’ means an order made by a court pursuant to section 556G;

‘offender’ means a person in respect of whom a community service order is in force;

‘officer of the court’ means—

- (a) in relation to a community service order made by the Supreme Court—the Registrar of the Supreme Court; and
- (b) in relation to a community service order made by the Court of Petty Sessions—the Clerk of the Court of Petty Sessions;

‘supervisor’ means a person appointed under section 5 of the *Supervision of Offenders (Community Service Orders) Ordinance 1985*.

Directions to perform work

“556G. (1) Where a person who has attained the age of 18 years is convicted of an offence against a law of the Territory punishable by imprisonment, the court may, if it thinks fit, instead of imposing any other penalty or otherwise dealing with him, by order—

- (a) direct him to perform unpaid work for such number of hours, being a number that is a multiple of 8, not less than 24 and not more than 208, as the court specifies;
- (b) require him to report to an authorized officer within such time (if any) as the court specifies; and
- (c) direct that he be released from custody forthwith.

“(2) Nothing in sub-section (1) affects the power of a court—

- (a) to order an offender to make restitution of property;

- (b) to direct an offender to pay compensation to an aggrieved person;
 - (c) to make an order for costs against an offender;
 - (d) to suspend or cancel an offender's licence to drive a motor vehicle or to disqualify the person from holding such a licence for such period as the court thinks fit; or
 - (e) to order the forfeiture of any property.
- “(3) Where a person who has attained the age of 18 years is liable to be committed to prison pursuant to sub-section 150 (1) of the *Court of Petty Sessions Ordinance 1930*, the Court of Petty Sessions may, if it thinks fit, instead of so committing him, by order, direct him—
- (a) to perform unpaid work for such number of hours as the court specifies, being a number that is a multiple of 8 and is not less than 24 but not more than—
 - (i) the number equal to the number of hours he would work if he were to work for 8 hours on each of the days in respect of which he was liable to be committed to prison; or
 - (ii) 208,whichever is less; and
 - (b) to report to an authorized officer within such time (if any) as the court specifies,

and where a community service order has been made under this sub-section in respect of a person the person shall not be committed to prison under the first-mentioned sub-section in respect of that liability unless the order is revoked pursuant to sub-section 556K (5).

“(4) Where a community service order has been made, the officer of the court shall—

- (a) cause the order to be reduced to writing in accordance with Form 1 or Form 2 in Schedule 5, as the case requires; and
- (b) cause a copy of the order to be given to the offender and another copy to be given to an authorized officer.

“(5) Where a court—

- (a) makes more than one community service order in respect of the same offender; or

- (b) makes a community service order while another community service order is in force in respect of the relevant offender,

the court may direct that the hours specified in the last-made order be worked concurrently with or in addition to any hours to be worked pursuant to any other community service order in force in respect of the offender.

“(6) The number of hours for which an offender in respect of whom two or more community service orders are in force may, after the date on which the later or last of those orders was made, be required to perform unpaid work pursuant to those orders shall not exceed, in the aggregate, 208.

Effect of payment of fine, &c., where community service order made

“556H. (1) Where a community service order has been made pursuant to sub-section 556G (3)—

- (a) the number of hours for which the relevant offender is required to perform work pursuant to the order shall, upon payment of part of the amount that the offender was liable to pay in accordance with the terms of the relevant conviction or order referred to in sub-section 150 (1) of the *Court of Petty Sessions Ordinance 1930*, be reduced by the prescribed number of hours; and
- (b) the community service order ceases to have effect upon payment of the whole of that amount.

“(2) For the purposes of paragraph (1) (a), the prescribed number of hours is—

- (a) the number of hours that bears to the number of hours specified in the relevant community service order the same proportion as the amount paid bears to the whole of the amount referred to in that paragraph; or
- (b) where the number of hours first referred to in paragraph (a) is not a number that is a multiple of 8—the next lower number that is a multiple of 8.

“(3) Notwithstanding paragraph (1) (a) but otherwise subject to this Part, where, but for this sub-section, the number of hours for which an offender is required to perform work pursuant to a community service order would, by virtue of the operation of sub-section (1), be reduced to less than 24 hours, that community service order shall have effect as if the first-mentioned number of hours had been reduced to 24 hours.

Circumstances in which a community service order may be made

“556J. (1) A court shall not make a community service order in respect of a person unless—

- (a) the person consents;
- (b) the person submits himself to a medical examination by a duly qualified medical practitioner, if so required by the court; and
- (c) the court is satisfied that—
 - (i) the person is a suitable person to perform work under such an order; and
 - (ii) work of a suitable nature will be provided for the person.

“(2) Before making a community service order, the court shall explain to the person in respect of whom the order is to be made—

- (a) the effect that the proposed order would have;
- (b) the consequences of a non-compliance with the order and of the commission of an offence under sub-section 556K (1); and
- (c) that the court has the power to review the order upon the application of an authorized officer or of the offender.

“(3) For the purpose of paragraph (1) (c), the court may have regard to—

- (a) the report of an authorized officer; and
- (b) where a person has submitted to a medical examination by a duly qualified medical practitioner as required by the court—the report of that medical practitioner in respect of that examination.

Obligations of offender and consequences of failure to comply

“556K. (1) An offender who, without reasonable excuse, refuses or fails to—

- (a) comply with a community service order;
- (b) inform an authorized officer of any change in his address;
- (c) comply with the directions of an authorized officer with regard to the performance of work pursuant to a community service order;
- (d) perform work pursuant to a community service order in a satisfactory manner; or

- (e) comply with any reasonable request of a supervisor while performing work pursuant to a community service order,

is guilty of an offence and shall be dealt with in accordance with this section.

“(2) Where it appears to an authorized officer that an offender has committed an offence under sub-section (1), the authorized officer may lay an information before a magistrate in respect of that offence.

“(3) Where an information has been laid before a magistrate under sub-section (2), the magistrate may cause a summons to be issued requiring the offender to appear, at a time and place to be fixed, before the court that made the community service order to answer to the information and to be further dealt with according to law.

“(4) If the offender fails to appear before a court in answer to a summons issued in accordance with sub-section (3), the court shall adjourn the proceedings and may issue a warrant for the apprehension of the offender and for the offender to be brought before that court.

“(5) Subject to sub-section (6), where an offender appears or is brought before a court pursuant to this section and the court is satisfied that the offender has committed an offence under sub-section (1), the court may make one or more of the following orders:

- (a) an order extending the period during which the relevant community service order is to remain in force;
- (b) an order varying the relevant community service order by increasing the number of hours for which the offender is required to perform unpaid work pursuant to the community service order;
- (c) an order requiring the offender to perform work pursuant to the relevant community service order other than the work he has been performing;
- (d) an order revoking the relevant community service order;
- (e) an order that the offender pay a penalty not exceeding \$1,000.

“(6) Where—

- (a) an offender appears or is brought before a court pursuant to this section; and

- (b) the court is satisfied that the offender has committed an offence under sub-section (1) but is of the opinion that an order should not be made under sub-section (5),

the court may decline to make such an order and may instead admonish the offender in respect of that offence.

“(7) Where under sub-section (5) a court revokes a community service order that was made in respect of a person pursuant to sub-section 556G (1), the court may make such other order in respect of that person as it thinks fit, being an order that the court would, if the offender were then before the court for sentence for the offence in respect of which the community service order was made, be empowered to make, and in making such an order the court shall have regard to any work performed by that person pursuant to the community service order.

“(8) A community service order shall not be varied pursuant to paragraph (5) (b) so that the relevant offender would be required to perform, after the time at which the variation took effect, unpaid work pursuant to the order for a total period exceeding 208 hours.

Community service order to cease to have effect after 12 months except where period extended

“556L. (1) Subject to sub-section (2) and sub-section 556K (5), a community service order, unless earlier discharged, shall cease to have effect upon the expiration of the period of 12 months commencing on the date on which the order was made.

“(2) On the application of an authorized officer, a court that made a community service order may extend the period during which the order is to have effect if, having regard to circumstances that have arisen since the order was made, it appears to the court to be in the interests of justice to do so.

“(3) Where an application is made to a court under sub-section (2) by an authorized officer, the court shall issue a summons to the relevant offender to appear before it on the hearing of the application and, if he does not appear in answer to the summons, shall adjourn the hearing of the application and may issue a warrant for the apprehension of the offender and for the offender to be brought before the court.

Revocation and variation of community service order and variation of nature of work

“556M. (1) On the application of an offender or an authorized officer, the court that made the relevant community service order may—

- (a) in the case of an order made pursuant to sub-section 556G (1)—
 - (i) revoke the order; or
 - (ii) vary the order by substituting a lesser number of hours for that specified in the order; and
- (b) in the case of an order made pursuant to sub-section 556G (3)—
 - revoke the order,

if, having regard to circumstances that have arisen since the order was made, it appears to the court to be in the interests of justice to do so.

“(2) Where, under sub-section (1), a court revokes a community service order that was made in respect of a person pursuant to sub-section 556G (1), the court may make such other order in respect of that person as it thinks fit, being an order that the court would, if the offender were then before the court for sentence for the offence in respect of which the community service order was made, be empowered to make, and in making such an order the court shall have regard to any work performed by that person pursuant to the community service order.

“(3) On the application of an offender, the court that made the relevant community service order may direct an authorized officer to arrange for the offender to do work other than the work he has been doing pursuant to the community service order.

“(4) Where an application is made to a court under sub-section (1) by an authorized officer, the court shall issue a summons to the offender to appear before it on the hearing of the application and, if he does not appear in answer to the summons, the court shall adjourn the hearing of the application and may issue a warrant for the apprehension of the offender and for the offender to be brought before the court.

“(5) Where an application is made to a court under this section by an offender, the officer of the court shall cause notice of the application and of the time and place fixed for the hearing of the application to be served on an authorized officer.

Power of court where offender convicted of further offence

“556N. (1) Where, after a community service order has been made, the relevant offender—

- (a) is convicted by the Supreme Court of an offence; or
- (b) is committed to the Supreme Court pursuant to paragraph (3) (b),

the Supreme Court may deal with him in relation to the community service order in like manner as it or the Court of Petty Sessions, as the case may be, could deal with him under section 556K if he had committed an offence under sub-section 556K (1).

“(2) The powers of the Supreme Court under sub-section (1) with respect to a person who has been convicted by that court of an offence are in addition to its powers to deal with him in relation to that offence.

“(3) Where, after a community service order has been made, the relevant offender is convicted by the Court of Petty Sessions of an offence, then, in addition to dealing with the offender in relation to that offence, the court—

- (a) may, if the community service order was made by that court, deal with the offender in like manner as it could deal with him under section 556K if he had committed an offence under sub-section 556K (1) in relation to the community service order; or
- (b) shall, if the community service order was made by the Supreme Court, commit the offender to the Supreme Court to be dealt with in accordance with sub-section (1).

“(4) Where, pursuant to paragraph (3) (b), the Court of Petty Sessions commits an offender to the Supreme Court, the Court of Petty Sessions may admit him to bail on such recognizance as it thinks fit, on condition that he appears before the Supreme Court at a time and place to be fixed to be dealt with by the Supreme Court in accordance with sub-section (1), or may direct that he be kept in such custody as the Court of petty Sessions directs until he can be brought before the Supreme Court.

“(5) Where a court deals with a person under this section the court shall have regard to any work performed by that person pursuant to the relevant community service order.

Apprehension of offender about to leave Territory

“556P. (1) Where a magistrate is satisfied by information on oath that there are reasonable grounds for believing that an offender is about to leave the

Territory with the intention of avoiding any of the requirements of a community service order, of this Part or of the *Supervision of Offenders (Community Service Orders) Ordinance 1985*, the magistrate may issue a warrant for the apprehension of the offender and for the offender to be brought before the Court of Petty Sessions.

“(2) A warrant under sub-section (1) shall—

- (a) be in writing signed by the magistrate issuing it;
- (b) be directed to all police officers or to a named police officer; and
- (c) state shortly the matters of the information on which it is founded.

“(3) A warrant under sub-section (1) may be issued on a Sunday as on any other day.

“(4) A person who has been apprehended pursuant to a warrant issued under this section shall be brought before the Court of Petty Sessions as soon as practicable after he is taken into custody.

Power of court re offender about to leave Territory

“556Q. (1) Where the Court of Petty Sessions is satisfied that an offender brought before it pursuant to section 556P is about to leave the Territory with the intention of avoiding any of the requirements of the relevant community service order, of this Part or the *Supervision of Offenders (Community Service Orders) Ordinance 1985*, the court—

- (a) may, if the community service order was made by that court, deal with the offender in like manner as it could deal with him under section 556K if he had committed an offence under sub-section 556K (1) in relation to the community service order; or
- (b) shall, if the community service order was made by the Supreme Court, remand him in custody to be brought before the Supreme Court.

“(2) Where an offender has been brought before the Supreme Court pursuant to paragraph (1) (b), the court may deal with the offender in like manner as it could deal with him under section 556K if he had committed an offence under sub-section 556K (1) in relation to the relevant community service order.

Effect of compliance with, or revocation of, certain community service orders

“556R. (1) Where a community service order that was made in respect of a person pursuant to sub-section 556G (3) ceases to have effect otherwise than by reason of the revocation of the order pursuant to sub-section 556K (5), that person ceases to be liable to pay the amount that he was liable to pay in accordance with the terms of the relevant conviction or order referred to in sub-section 150 (1) of the *Court of Petty Sessions Ordinance 1930*.

“(2) Where—

- (a) a community service order that was made in respect of a person pursuant to sub-section 556G (3) is revoked pursuant to sub-section 556K (5);
- (b) that person has performed work in accordance with the community service order; and
- (c) a magistrate, upon the revocation of the community service order, commits that person to prison in accordance with sub-section 150 (1) of the *Court of Petty Sessions Ordinance 1930*,

the magistrate shall have regard to the work performed by that person pursuant to the community service order and may, if it seems to him to be proper in all of the circumstances of the case to do so, vary the relevant conviction or order referred to in sub-section 150 (1) of the *Court of Petty Sessions Ordinance 1930* by substituting for the period specified in that conviction or order such lesser period of imprisonment as he considers appropriate.

Service of documents

“556S. A document that is required or permitted under this Ordinance to be served on or given to a person may be served or given—

- (a) by delivering a copy of the document to the person; or
- (b) by leaving a copy of the document at the last known place of residence or business of the person with a person apparently resident or employed at that place and apparently over the age of 16 years.

Power of court where offender apprehended under this Part

“556T. (1) Where an offender is apprehended and brought before a court in accordance with this Part, otherwise than in accordance with section 556P, the court has the same power to remand the offender in custody, admit the

offender to bail or order the discharge of the offender upon recognizance as it has in respect of a defendant.

“(2) Where an offender fails to comply with the condition of a recognizance entered into for the purposes of this Part the court has the same powers as it would have if at the time the offender entered into the recognizance he had been a defendant.

Power of court in certain circumstances upon revoking community service order

“556U. Where—

- (a) a court, pursuant to sub-section 556K (5) or 556M (1), revokes a community service order that was made in respect of a person under sub-section 556G (1); and
- (b) the court proposes to make an order in respect of that person under sub-section 556K (7) or 556M (2),

then, pending the making of that order, the court has the same powers in relation to that person as it would have if, at the time of revocation of the community service order, it had made a finding of guilt against him of an offence.

Discharge of community service order

“556V. For the purposes of this Act and the *Supervision of Offenders (Community Service Orders) Ordinance 1985*, an offender shall be taken to have discharged a community service order if he has worked, or is, pursuant to that Ordinance, to be taken to have worked, pursuant to the order for the number of hours specified in the order.

Jurisdiction of Supreme Court

“556W. Jurisdiction is vested in the Supreme Court to hear and determine matters under this Part relating to a community service order made by that court.”.

Schedule 5

5. The Fifth Schedule to the Crimes Act is repealed and the following Schedule substituted:

SCHEDULE 5

FORM 1

Section 556G

Australian Capital Territory

Crimes Act, 1900

In the (*court*) at Canberra.

The day of , 19 .

Whereas

- the defendant (*name and address of defendant*), being a person who has attained the age of 18 years, on the day of , 19 , was convicted of (*here set out the offence of which the defendant was convicted*); and
- the requirements of section 556J of the Crimes Act, 1900 of the State of New South Wales in its application to the Territory have, in respect of the defendant, been satisfied.

It is this day ordered that the defendant shall for his offence

- perform unpaid work for hours; and
- report to (*here specify the authorized officer, whether by name or otherwise, to whom the defendant is to report*) (*and, where the court directs the defendant to so report within a particular time, add*) within (*here set out the time within which the defendant is to report to the authorized officer*).

*And it is further ordered that the defendant be released from custody forthwith.

* Judge of the Supreme Court.

* Magistrate.

*Delete if in applicable.

FORM 2

Section 556G

Australian Capital Territory

Crimes Act, 1900

In the Court of Petty Sessions at Canberra.

The day of , 19 .

Whereas

- *(name and address of person in respect of whom the order is to be made)*, being a person who has attained the age of 18 years, is liable to be committed to prison in pursuance of sub-section 150 (1) of the *Court of Petty Sessions Ordinance 1930*; and
- the requirements of section 556J of the Crimes Act, 1900 of the State of New South Wales in its application to the Territory have, in respect of that person, been satisfied.

It is this day ordered that *(name of person in respect of whom the order is made)* shall

- perform unpaid work for hours; and
- report to *(here specify the authorized officer, whether by name or otherwise, to whom the person is to report)* (and, where the court directs the person to so report within a particular time, add) within *(here set out the time within which the person is to report to the authorized officer)*.

Magistrate.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 8 March 1985.