

# AUSTRALIAN CAPITAL TERRITORY

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## Crimes (Amendment) Ordinance (No. 2) 1988

No. 75 of 1988

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 7 October 1988.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

LIONEL BOWEN  
Attorney-General

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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) 1988*.<sup>1</sup>

### Commencement

2. (1) Sections 1, 2, 3, 7, 8 and 9 commence on the day on which this Ordinance is notified in the *Gazette*.

(2) Sections 4, 5 and 6 commence on such date as is fixed by the Minister of State for the Arts and Territories by notice in the *Gazette*.

### Crimes Act

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

(Ord. 4/88)—Cat. No.

**Repeal**

4. Sections 26 and 30 of the Crimes Act are repealed.

**Insertion**

5. After section 343 of the Crimes Act the following section is inserted in Part VII:

**False accusation**

“344. A person who charges another person falsely, or causes another person to be charged falsely, with an offence under a law of the Territory is guilty of an offence punishable, on conviction, by imprisonment for 10 years.”.

**Substitution**

6. Parts VIII and IX of the Crimes Act are repealed and the following Part is substituted:

**“PART VIII—AIDING AND ABETTING, ACCESSORIES, ATTEMPTS,  
INCITEMENT AND CONSPIRACY**

**Aiding and abetting**

“345. A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the commission of an offence under a law of the Territory, shall be deemed to have committed that offence and shall be punishable, on conviction, accordingly.

**Accessory after the fact**

“346. A person who receives or assists another person who is, to the knowledge of the first-mentioned person, guilty of an offence under a law of the Territory in order to enable that other person to escape punishment or to dispose of the proceeds of the offence is guilty of an offence punishable, on conviction, by—

- (a) if the first-mentioned offence is the crime of murder—imprisonment for life;
- (b) if the first-mentioned offence is an offence referred to in section 101 or 103—imprisonment for 14 years; or
- (c) in any other case—imprisonment for 2 years.

### **Attempts**

“347. A person who attempts to commit an offence under a law of the Territory is guilty of an offence punishable, on conviction, as if the attempted offence had been committed.

### **Incitement**

“348. A person who—

- (a) incites to, urges, aids or encourages; or
- (b) prints or publishes any writing which incites to, urges, aids or encourages;

the commission of, or the carrying on of any operation for or by the commission of, an offence under a law of the Territory is guilty of an offence punishable, on conviction, by—

- (a) if the first-mentioned offence is the crime of murder—imprisonment for life; or
- (b) in any other case—imprisonment for 12 months or a fine of \$2,000, or both.

### **Conspiracy**

“349. (1) A person who conspires with another person—

- (a) to commit—
  - (i) an offence under a law of the Territory; or
  - (ii) an offence under a law of a place outside the Territory, being an offence consisting of, or including, elements that, if present or occurring in the Territory, would constitute an offence under a law of the Territory;
- (b) to prevent or defeat the execution or enforcement of a law of the Territory;
- (c) to effect a purpose that is unlawful under a law of the Territory; or
- (d) to effect a lawful purpose by means that are unlawful under a law of the Territory;

is guilty of an offence punishable, on conviction, by imprisonment for 3 years.

“(2) Notwithstanding subsection (1), where a person is convicted of conspiring with another person to commit—

- (a) a serious Territory offence; or
- (b) an offence under a law of a place outside the Territory, being an offence consisting of, or including, elements that, if present or occurring in the Territory, would constitute a serious Territory offence;

the first-mentioned person is punishable as if he or she had committed that offence.

“(3) Subparagraph (1) (a) (ii) does not apply unless at least one of the parties is in the Territory at some time while the conspiracy subsists.

“(4) Subject to subsection (3), for the purpose of a prosecution for an offence under paragraph (1) (a), it is immaterial whether the person charged or any other person with whom he or she is alleged to have conspired was in the Territory or elsewhere at the time of the alleged offence.

“(5) In subsection (2), ‘serious Territory offence’ means an offence under a law of the Territory punishable by imprisonment for a period exceeding 3 years.”.

### **Substitution**

7. The heading to Part X of the Crimes Act is omitted and the following heading substituted:

**“PART X—APPREHENSION, DETENTION, DISCHARGE, SEARCH  
AND SEIZURE, AND ESCAPE”.**

### **Repeal**

8. Section 354 of the Crimes Act is repealed.

### **Insertion**

9. After Division 1 of Part X of the Crimes Act the following Division is inserted:

*“Division 1A—Escape provisions*

### **Detention during pleasure: meaning**

“358AA. In this Division, a reference to detention during pleasure shall be read as a reference to detention during the pleasure of the Governor-General,

the Governor of a State or the Administrator of the Northern Territory of Australia, as the case requires.

**Aiding prisoner to escape**

“358AB. A person who—

- (a) aids another person to escape, or to attempt to escape, from lawful custody in respect of an offence under a law of the Territory, a State or another Territory;
- (b) aids another person who has been lawfully arrested in respect of such an offence to escape, or to attempt to escape, from that arrest;
- (c) aids another person who is lawfully detained during pleasure in respect of such an offence to escape, or to attempt to escape, from that detention; or
- (d) conveys anything into a prison, lock-up or other place of lawful detention with intent to facilitate the escape from there of another person who is in custody in respect of such an offence;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

**Escaping**

“358AC. A person who has been lawfully arrested, is in lawful custody, or is lawfully detained during pleasure, in respect of an offence under a law of the Territory, a State or another Territory and who escapes from that arrest, custody or detention is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

**Rescuing a prisoner from custody etc.**

“358AD. A person who—

- (a) rescues by force a person (other than a person referred to in paragraph (c) or (d)) from lawful custody in respect of an offence under a law of the Territory, a State or another Territory with which the person has been charged;
- (b) rescues by force a person who has been lawfully arrested in respect of such an offence with which the person has not been charged from that arrest;

- (c) rescues by force a person who is in lawful custody in any prison, lock-up or other place of lawful detention in respect of such an offence from that prison, lock-up or place; or
- (d) rescues by force a person who is lawfully detained during pleasure in respect of such an offence from that detention;

is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

### **Person unlawfully at large**

“358AE. A person who—

- (a) in accordance with a permission given under a law of the Territory, a State or another Territory, leaves a prison, lock-up or other place of lawful detention where the person is in custody, or is detained during pleasure, in respect of an offence under a law of the Territory, a State or another Territory; and
- (b) refuses or fails, without reasonable excuse, to return to that prison, lock-up or place in accordance with that permission;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

### **Permitting escape**

“358AF. (1) A person who—

- (a) is an officer of a prison, lock-up or other place of lawful detention, a constable or a Commonwealth officer;
- (b) is charged for the time being with the custody or detention of another person (including a person detained during pleasure) in respect of an offence under a law of the Territory, a State or another Territory; and
- (c) wilfully or negligently permits that other person to escape from that custody or detention;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

“(2) A constable or a Commonwealth officer who wilfully or negligently permits a person who has been lawfully arrested in respect of an offence under a law of the Territory, a State or another Territory to escape from that arrest is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

“(3) In this section, ‘constable’ and ‘Commonwealth officer’ have the same respective meanings as in the *Crimes Act 1914*.

**Harbouring etc. escapee**

“358AG. A person who harbours, maintains or employs another person knowing that other person to have escaped from lawful custody or detention in respect of an offence under a law of the Territory, a State or another Territory is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

**Escaped prisoner—current sentence**

“358AH. A person who commits an offence under section 358AC, or 358AE shall, upon being returned to lawful custody, undergo, in addition to any punishment imposed for that offence, the punishment that the person would have undergone if the person had not committed that offence.

**Failure to answer bail etc.—offence**

“358AI. (1) Where—

- (a) in accordance with a law in force in the Territory, a person arrested in respect of, or charged with, an offence under a law in force in the Territory has been—
  - (i) admitted to bail on an undertaking; or
  - (ii) released or discharged on entering into a recognizance, with or without a surety or sureties, on condition;

that he or she will attend, or appear before, a court at a specified time and place or at a time and place to be determined and of which he or she is to be notified; and

- (b) he or she fails, without reasonable excuse, to so attend or appear;

the person is guilty of an offence punishable, on conviction, by imprisonment for 2 years or a fine of \$5,000, or both.

“(2) The reference in subsection (1) to an undertaking or a recognizance shall not be read as including a reference to an undertaking given or a recognizance entered into (as the case requires) following the instituting of an appeal.”.

**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 19 October 1988.