



AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Ordinance (No. 2) 1990

No. 2 of 1990

TABLE OF PROVISIONS

Section

Section

1. Short title
2. Commencement
3. Crimes Act
4. Repeal
5. Substitution—
 - PART III—OFFENCES AGAINST THE PERSON
 10. When child born alive
 11. Cause of death, or death, occurring outside the Territory
 12. Murder
 13. Trial for murder—provocation
 14. Trial for murder—diminished responsibility
 15. Manslaughter
 16. Suicide etc.—not an offence
 17. Suicide—aiding etc.
 18. Prevention of suicide
 19. Intentionally inflicting grievous bodily harm
 20. Recklessly inflicting grievous bodily harm

(Ord. 4/90)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

TABLE OF PROVISIONS—continued

Section

- 21. Wounding
- 22. Assault with intent to commit certain indictable offences
- 23. Inflicting actual bodily harm
- 24. Assault occasioning actual bodily harm
- 25. Causing grievous bodily harm
- 26. Common assault
- 27. Acts endangering life etc.
- 28. Acts endangering health etc.
- 29. Culpable driving of motor vehicle
- 30. Threat to kill
- 31. Threat to inflict grievous bodily harm
- 32. Demands accompanied by threats
- 33. Possession of object with intent to kill etc.
- 34. Forcible confinement
- 35. Torture
- 36. Abduction of young person
- 37. Kidnapping
- 38. Unlawfully taking child etc.
- 39. Exposing or abandoning child
- 40. Child destruction
- 41. Childbirth—grievous bodily harm
- 42. Procuring own miscarriage
- 43. Procuring another's miscarriage
- 44. Procuring drugs etc. to procure miscarriage
- 45. Concealment of birth
- 46. Misconduct with regard to corpses
- 47. Alternative verdicts
- 6. Alternative verdicts
- 7. Indictment for murder or manslaughter
- 8. Insertion—
 - 427A. Multiple alternative verdicts



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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 16 May 1990.

BILL HAYDEN
Governor-General

By His Excellency's Command,

MICHAEL DUFFY
Attorney-General

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

Short title

1. This Ordinance may be cited as the *Crimes (Amendment) Ordinance (No. 2) 1990*.¹

Commencement

2. This Ordinance commences on 15 June 1990.

Crimes Act

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

Repeal

4. Section 5 of the Crimes Act is repealed.

Substitution

5. Part III of the Crimes Act is repealed and the following Part substituted:

“PART III—OFFENCES AGAINST THE PERSON**When child born alive**

“10. For the purposes of this Part, a child shall be taken to have been born alive if he or she has breathed and has been wholly born, whether or not he or she has had an independent circulation.

Cause of death, or death, occurring outside the Territory

“11. Where, in respect of a homicide—

- (a) the death occurred within the Territory but the cause of death occurred outside the Territory; or
- (b) the death occurred outside the Territory but the cause of death occurred within the Territory;

the matter may be dealt with in all respects as if both the cause of death and the death had occurred within the Territory.

Murder

“12. (1) A person commits murder if he or she causes the death of another person—

- (a) intending to cause the death of any person; or
- (b) with reckless indifference to the probability of causing the death of any person.

“(2) A person who commits murder is guilty of an offence punishable, on conviction, by imprisonment for life.

Trial for murder—provocation

“13. (1) Where, on a trial for murder—

- (a) it appears that the act or omission causing death occurred under provocation; and
- (b) but for this subsection and the provocation, the jury would have found the accused guilty of murder;

the jury shall acquit the accused of murder and find him or her guilty of manslaughter.

“(2) For the purposes of subsection (1), an act or omission causing death shall be taken to have occurred under provocation where—

- (a) the act or omission was the result of the accused’s loss of self-control induced by any conduct of the deceased (including grossly insulting words or gestures) towards or affecting the accused; and
- (b) the conduct of the deceased was such as could have induced an ordinary person in the position of the accused to have so far lost self-control—
 - (i) as to have formed an intent to kill the deceased; or
 - (ii) as to be recklessly indifferent to the probability of causing the deceased’s death;

whether that conduct of the deceased occurred immediately before the act or omission causing death or at any previous time.

“(3) For the purpose of determining whether an act or omission causing death occurred under provocation, there is no rule of law that provocation is negated if—

- (a) there was not a reasonable proportion between the act or omission causing death and the conduct of the deceased that induced the act or omission;
- (b) the act or omission causing death did not occur suddenly; or
- (c) the act or omission causing death occurred with any intent to take life or inflict grievous bodily harm.

“(4) Where, on a trial for murder, there is evidence that the act or omission causing death occurred under provocation, the onus of proving beyond

reasonable doubt that the act or omission did not occur under provocation lies on the prosecution.

“(5) This section does not exclude or limit any defence to a charge of murder.

Trial for murder—diminished responsibility

“14. (1) A person on trial for murder shall not be convicted of murder if, when the act or omission causing death occurred, the accused was suffering from an abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent cause or whether it was induced by disease or injury) that substantially impaired his or her mental responsibility for the act or omission.

“(2) An accused has the onus of proving that he or she is, by virtue of subsection (1), not liable to be convicted of murder.

“(3) A person who, but for subsection (1), would be liable (whether as principal or accessory) to be convicted of murder is liable to be convicted of manslaughter.

“(4) The fact that a person is, by virtue of subsection (1), not liable to be convicted of murder does not affect the question whether any other person is liable to be convicted of murder in respect of the same death.

“(5) Where, on a trial for murder, the accused contends—

- (a) that he or she is entitled to be acquitted on the ground that he or she was mentally ill at the time of the act or omission causing the death; or
- (b) that he or she is, by virtue of subsection (1), not liable to be convicted of murder;

the prosecution may offer evidence tending to prove the other of those contentions and the court may give directions as to the stage of the proceedings at which that evidence may be offered.

Manslaughter

“15. (1) Except where a law expressly provides otherwise, an unlawful homicide that is not, by virtue of section 12, murder shall be taken to be manslaughter.

“(2) A person who commits manslaughter is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

Suicide etc.—not an offence

“16. The rule of law that it is an offence for a person to commit, or to attempt to commit, suicide is abolished.

Suicide—aiding etc.

“17. (1) A person who aids or abets the suicide or attempted suicide of another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

“(2) Where—

- (a) a person incites or counsels another person to commit suicide; and
- (b) the other person commits, or attempts to commit, suicide as a consequence of that incitement or counselling;

the first-mentioned person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Prevention of suicide

“18. It is lawful for a person to use such force as is reasonable to prevent the suicide of another person or any act which the person believes on reasonable grounds would, if committed, result in the suicide of another person.

Intentionally inflicting grievous bodily harm

“19. A person who intentionally inflicts grievous bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

Recklessly inflicting grievous bodily harm

“20. A person who recklessly inflicts grievous bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Wounding

“21. A person who intentionally wounds another person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Assault with intent to commit certain indictable offences

“22. A person who assaults another person with intent to commit another offence against this Part punishable by imprisonment for a maximum period of

5 years or longer is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Inflicting actual bodily harm

“23. A person who intentionally or recklessly inflicts actual bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Assault occasioning actual bodily harm

“24. A person who assaults another person and thereby occasions actual bodily harm is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Causing grievous bodily harm

“25. A person who, by any unlawful or negligent act or omission, causes grievous bodily harm to another person is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

Common assault

“26. A person who assaults another person is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

Acts endangering life etc.

“27. (1) In this section—

‘conveyance’ means a vehicle (including an aircraft) or vessel of a kind used for transporting persons, animals or goods;

‘public utility service’ means—

- (a) the supply of electricity, gas or water;
- (b) the supply of fuel; or
- (c) the collection and disposal of sewerage and other waste;

as a service to the public;

‘transport facility’ means a facility provided to permit the transportation of persons, animals or goods, whether by air or over land or water, or provided in connection with such transportation.

“(2) For the purposes of paragraph (3) (g), an interference shall be taken to include any act or omission which, whether temporarily or permanently,

damages, renders inoperative, obstructs, causes to malfunction or puts to an improper purpose.

“(3) A person who intentionally and unlawfully—

- (a) chokes, suffocates or strangles another person so as to render that person insensible or unconscious or, by any other means, renders another person insensible or unconscious;
- (b) administers to, or causes to be taken by, another person any stupefying or overpowering drug or poison or any other injurious substance likely to endanger human life or cause a person grievous bodily harm;
- (c) uses against another person any offensive weapon likely to endanger human life or cause a person grievous bodily harm;
- (d) discharges any loaded arms at another person or so as to cause another person reasonable apprehension for his or her safety;
- (e) causes an explosion or throws, places, sends or otherwise uses any explosive device or any explosive, corrosive or inflammable substance in circumstances likely to endanger human life or cause a person grievous bodily harm;
- (f) sets a trap or device for the purpose of creating circumstances likely to endanger human life or cause a person (including a trespasser) grievous bodily harm; or
- (g) interferes with any conveyance or transport facility or any public utility service in circumstances likely to endanger human life or cause a person grievous bodily harm;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

“(4) A person who does an act referred to in subsection (3)—

- (a) intending to commit an indictable offence against this Part punishable by imprisonment for a maximum period exceeding 10 years;
- (b) intending to prevent or hinder his or her lawful apprehension or detention or that of another person; or
- (c) intending to prevent or hinder a police officer from lawfully investigating an act or matter which reasonably calls for investigation by the officer;

is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

Acts endangering health etc.

“28. (1) In this section, ‘conveyance’, ‘interferes with’, ‘public utility service’ and ‘transport facility’ have the same meanings as in section 27.

“(2) A person who intentionally and unlawfully—

- (a) administers to, or causes to be taken by, another person any poison or other injurious substance with intent to injure or cause pain or discomfort to that person;
- (b) causes an explosion or throws, places, sends or otherwise uses any explosive device or any explosive, corrosive or inflammable substance in circumstances dangerous to the health, safety or physical well-being of another person;
- (c) sets a trap or device for the purpose of creating circumstances dangerous to the health, safety or physical well-being of another person (including a trespasser); or
- (d) interferes with any conveyance or transport facility or any public utility service in circumstances dangerous to the health, safety or physical well-being of another person;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Culpable driving of motor vehicle

“29. (1) In this section—

‘drug’ has the same meaning as in the *Motor Traffic (Alcohol and Drugs) Act 1977* of the Territory;

‘motor vehicle’ has the same meaning as in the *Motor Traffic Act 1936* of the Territory.

“(2) A person who, by the culpable driving of a motor vehicle, causes the death of another person is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

“(3) A person who, by the culpable driving of a motor vehicle, causes grievous bodily harm to another person is guilty of an offence punishable, on conviction, by imprisonment for 4 years.

“(4) For the purposes of this section, a person shall be taken to drive a motor vehicle culpably if the person drives the vehicle—

- (a) negligently; or

- (b) while under the influence of alcohol, or a drug, to such an extent as to be incapable of having proper control of the vehicle.

“(5) For the purposes of this section, a person shall be taken to drive a motor vehicle negligently if the person fails unjustifiably and to a gross degree to observe the standard of care which a reasonable person would have observed in all the circumstances of the case.

“(6) An information or indictment for an offence against subsection (2) or (3) shall specify the nature of the culpability, within the meaning of subsection (4), that is alleged.

“(7) Nothing in subsection (6) renders inadmissible in proceedings for an offence against subsection (2) or (3) evidence that, apart from that subsection, would be admissible in the proceedings.

“(8) Nothing in this section affects—

- (a) the liability of a person to be convicted of murder or manslaughter or any other offence; or
- (b) the punishment that may be imposed for such an offence.

“(9) A person who has been convicted or acquitted of an offence against subsection (2) or (3) is not liable to be convicted of any other offence against this Act on the same facts or on substantially the same facts.

“(10) Subject to section 47, a person is not liable to be convicted of an offence against subsection (2) or (3) if the person has been convicted or acquitted of any other offence on the same facts or on substantially the same facts.

Threat to kill

“30. Where—

- (a) a person makes a threat to another person to kill that other person or any third person—
 - (i) intending that other person to fear that the threat would be carried out; or
 - (ii) being reckless whether or not that other person would fear that the threat would be carried out; and
- (b) the threat is made—
 - (i) without lawful excuse; and

- (ii) in circumstances in which a reasonable person would fear that the threat would be carried out;

the first-mentioned person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Threat to inflict grievous bodily harm

“31. Where—

- (a) a person makes a threat to another person to inflict grievous bodily harm on that other person or any third person—
 - (i) intending that other person to fear that the threat would be carried out; or
 - (ii) being reckless whether or not that other person would fear that the threat would be carried out; and
- (b) the threat is made—
 - (i) without lawful excuse; and
 - (ii) in circumstances in which a reasonable person would fear that the threat would be carried out;

the first-mentioned person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Demands accompanied by threats

“32. (1) A person who—

- (a) makes a demand of another person;
- (b) resists, prevents or hinders his or her lawful apprehension or detention, or that of another person; or
- (c) prevents or hinders a police officer from lawfully investigating any act or matter which reasonably calls for investigation by the officer;

with a threat to kill or inflict grievous bodily harm on a person (other than the offender or an accomplice of the offender) is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

“(2) A person who—

- (a) makes a demand of another person;
- (b) resists, prevents or hinders his or her lawful apprehension or detention, or that of another person; or

- (c) prevents or hinders a police officer from lawfully investigating any act or matter which reasonably calls for investigation by the officer;

with a threat to endanger the health, safety or physical well-being of a person (other than the offender or an accomplice of the offender) is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Possession of object with intent to kill etc.

“33. A person who—

- (a) has possession of an object capable of causing harm to another person; and
- (b) intends to use the object, or to cause or permit another person to use the object, unlawfully to kill another person or cause grievous bodily harm to another person;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Forcible confinement

“34. A person who unlawfully confines or imprisons another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Torture

“35. (1) In this section, ‘act of torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person—

- (a) for such purposes as—
 - (i) obtaining from the person or from a third person information or a confession;
 - (ii) punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
 - (iii) intimidating or coercing the person or a third person; or
- (b) for any reason based on discrimination of any kind;

but does not include any such act arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the International Covenant on Civil and Political Rights (being the Covenant a copy of the English text of which is set out in Schedule 2 to the *Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth).

“(2) A person who—

- (a) is a public official or acting in an official capacity; or
- (b) is acting at the instigation, or with the consent or acquiescence, of a public official or a person acting in an official capacity;

and who commits an act of torture is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Abduction of young person

“36. A person who unlawfully takes, or causes to be taken, an unmarried person under the age of 16 years out of the lawful control and against the will of a person having lawful control of the unmarried person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Kidnapping

“37. A person who leads, takes or entices away or detains a person with intent to hold that person for ransom or for any other advantage to any person is guilty of an offence punishable, on conviction, by—

- (a) if that other person suffers any grievous bodily harm while being so led, taken or enticed away, or detained—imprisonment for 20 years; or
- (b) in any other case—imprisonment for 15 years.

Unlawfully taking child etc.

“38. A person who, by force or deception, leads, takes or entices away or detains a child under the age of 12 years—

- (a) intending unlawfully to deprive another person of the lawful control of the child; or
- (b) intending to steal any article on or about the person of the child;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Exposing or abandoning child

“39. A person who unlawfully abandons or exposes a child under the age of 2 years and thereby endangers the life or health of the child is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Child destruction

“40. A person who unlawfully and, either intentionally or recklessly, by any act or omission occurring in relation to a childbirth and before the child is born alive—

- (a) prevents the child from being born alive; or
- (b) contributes to the child’s death;

is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

Childbirth—grievous bodily harm

“41. A person who unlawfully and, either intentionally or recklessly, by any act or omission occurring in relation to a childbirth and before the child is born alive, inflicts grievous bodily harm on the child, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Procuring own miscarriage

“42. A pregnant woman who unlawfully—

- (a) administers to herself any drug or noxious thing; or
- (b) uses any instrument or other means;

intending to procure her own miscarriage is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Procuring another’s miscarriage

“43. A person who, unlawfully and with intent to procure a woman’s miscarriage (whether or not she is pregnant)—

- (a) administers a drug to the woman or causes a drug to be taken by the woman; or
- (b) uses any instrument or other means;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Procuring drugs etc. to procure miscarriage

“44. A person who supplies or procures any drug or noxious thing or any instrument or other thing, knowing that it is intended to be used unlawfully with intent to procure the miscarriage of a woman (whether pregnant or not) is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Concealment of birth

“45. (1) A person who disposes of the dead body of a child (whether or not the child was born alive) with intent to conceal the child’s birth is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

“(2) It is a defence to a charge for an offence against subsection (1) if the accused satisfies the court or jury that the body disposed of had issued from the mother’s body before the end of the 28th week of pregnancy.

Misconduct with regard to corpses

“46. A person who—

- (a) indecently interferes with any dead human body; or
- (b) improperly interferes with, or offers any indignity to, any dead human body or human remains (whether buried or not);

is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

Alternative verdicts

“47. Where, on a trial for an offence against a provision specified in column 1 in an item in the following table, the jury is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence against a provision specified in column 3 in that item, it may find the accused not guilty of the offence charged but guilty of the offence against the provision specified in column 3:

| Col 1 Item | Col 2 Offence charged | Col 3 Alternative offences |
|---------------|--|--|
| 1 | Subsection 12 (2) (Murder) | (a) Subsection 15 (2) (b) Subsection 17 (1) (c) Subsection 17 (2) (d) Section 40 (e) Subsection 45 (1) |
| 2 | Subsection 15 (1) (Manslaughter) | (a) Subsection 17 (1) (b) Subsection 17 (2) (c) Section 20 (d) Section 25 (e) Subsection 29 (2) (f) Section 40 (g) Subsection 45 (1) |
| 3 | Section 19 (Intentionally inflicting grievous bodily harm) | (a) Section 20 (b) Section 21 (c) Section 23 (d) Section 41 |
| 4 | Section 20 (Recklessly inflicting grievous bodily harm) | (a) Section 23 (a) Section 25 (c) Subsection 29 (3) (d) Section 41 |
| 5 | Section 21 (Wounding) | (a) Section 23 (b) Section 24 (c) Section 26 |
| 6 | Subsection 22 (2) (Assault with intent to commit indictable offence) | Section 26 |
| 7 | Section 24 (Assault occasioning actual bodily harm) | Section 26 |
| 8 | Paragraph 27 (3) (b) (Administering drugs etc. endangering life etc.) | Paragraph 28 (2) (a) |
| 9 | Paragraph 27 (3) (e) (Causing explosions etc. endangering life etc.) | Paragraph 28 (2) (b) |

| | | |
|----|--|----------------------|
| 16 | <i>Crimes (Amendment) No. 2, 1990</i> | |
| 10 | Paragraph 27 (3) (f) (Setting traps endangering life etc.) | Paragraph 28 (2) (c) |
| 11 | Paragraph 27 (3) (g) (Interfering with conveyances and endangering life etc.) | Paragraph 28 (2) (d) |

”.

Alternative verdicts

6. Section 92S of the Crimes Act is amended—

- (a) by omitting from subsection (3) “35” and substituting “19, 20 or 25”; and
- (b) by omitting from subsection (4) “59” and substituting “24”.

Indictment for murder or manslaughter

7. Section 376 of the Crimes Act is amended by omitting “maliciously”.

Insertion

8. After section 427 of the Crimes Act the following section is inserted:

Multiple alternative verdicts

“427A. Where—

- (a) a person is on trial for an offence against this Act;
- (b) by virtue of this Act, the jury may find the accused not guilty of the offence charged but guilty of another offence against this Act; and
- (c) there is more than one other offence of which the accused may be found guilty;

then, notwithstanding any other provision of this Act, the accused is not liable to be convicted of more than one such other offence.”.

NOTE

1. Notified in the Commonwealth of Australia *Gazette* on 23 May 1990.