

EXPLANATORY STATEMENT  
AUSTRALIAN CAPITAL TERRITORY  
CRIMES (AMENDMENT) ORDINANCE 1986

No. 15, 1986

This Ordinance is part of the ongoing review of the criminal laws of the Territory and contains a comprehensive review of the laws relating to forgery. The existing law is contained in Part V of the Crimes Act 1900 of the State of New South Wales in its application to the Australian Capital Territory (Crimes Act 1900) which creates a number of offences of forgery differentiated by the nature of the document forged, and carrying different maximum penalties. As with the Crimes (Amendment) Ordinance (No.4) 1985 relating to offences against property the principle underlying the new provisions is that criminal conduct possessing the same basic features does not need to be dealt with by a large number of separate offences, each with its own penalty and each covering a particular set of circumstances. Details of the Ordinance are as follows;

Section 1, 2 and 3 are the short title and formal provisions and include a provision that the Ordinance shall come into operation on 1 July 1986. This will permit law enforcement agencies, the legal profession and the judiciary to become familiar with the new provisions prior to their coming into force.

Section 4 inserts a definition of 'instrument' in section 93 of the Crimes Act 1900 for the purposes of the new forgery provisions. an instrument is defined to mean

- (a) a formal document or informal document.
- (b) a card such as a bankcard, cashcard or other card by the use of which property or credit may be obtained. and
- (c) a disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means. Under the existing law such discs etc cannot be the subject of forgery but the increased use of sophisticated methods of recording information and instructions makes this extension necessary. Examples of such instruments include magnetic tapes containing instructions for the payment or crediting of money and discs containing information upon which a computer can operate to effect fund transfers.

Section 5 is the main provision inserting a new Division 3A into Part IV of the Crimes Act 1900. These provisions are explained in detail below.

Section 6 repeals Part V of the Crimes Act 1900. This Part contains the existing provisions relating to forgery.

Section 7 amends section 350 to enable the Magistrates Court to return a forfeited article seized pursuant to that section to the person the Court is satisfied is entitled to the article as opposed to the person from whom it was taken. The provision is designed to ensure that an innocent owner does not lose property which unbeknowns to him has been used in criminal activity by a third party.

Section 8 repeals section 390 which provides how an instrument is to be described in an indictment for an engraving offence. As these engraving offences are to be repealed by clause 6 this sections will be rendered nugatory.

Section 9 inserts a new section 464 into Part XIII of the Crimes Act 1900. This section provides the procedure to be followed by a Court when considering the question of forfeiture of any articles. The Court may order such a forfeiture where the Crimes Act 1900 permits and a person has either been convicted or where a finding of guilt is made. Again, an innocent third party is protected.

Section 10 abolishes the common law offence of forgery as the new provisions replace both the existing common law and the existing statutory provisions. Sub-clause (2) is a transition provision in standard form so that the abovementioned abolition relates only to conduct engaged in after the commencement of the Ordinance.

#### The amendments made by Section 5

Section 5 inserts a new Division 3A into Part IV of the Crimes Act 1900. The new provisions are explained as follows.

New section 135A defines, for the purpose of Part IV Division 3A, when an instrument is false. This depends not upon whether the instrument contains a false statement but whether it purports to be what it is not. That is it tells a lie about itself and not merely a lie.

Sub-section (1) defines when an instrument is false for the purpose of forgery. These are

- . where an instrument purports to be made in the form or in the terms in which it is made by a person who did not in fact make it in such form or terms or by a person who did not authorise its making in that form or in those terms.
- . where an instrument purports to be altered in some respects by a person who did not in fact make or authorize such an alteration.
- . where an instrument purports to be made or altered in circumstances in which it was not made or altered. This is an extension of the existing law. For example a valuation certificate which purports to be made by a valuer after examining the items to be valued would be a false document

under this provision where the items to be valued did not exist or, if they did exist, the examination did not in fact occur.

- where the document is allegedly made or altered by a person who does not in fact exist.

Sub-section (2): defines what is meant by the term 'making' of a false instrument'. It provides that the falsification may be of the whole or merely part of the instrument and an alteration rendering the instrument false (within the meaning of that expression is proposed sub-section (1)) in any respect will suffice.

New section 135B defines for the purpose of Part IV Division 3A what is meant by the term 'act or omission to a person's prejudice'.

Sub-section (1) provides that an act or omission is to a person's prejudice where such act or omission will result in any of the following

- a person's temporary or permanent loss of property ('loss' being defined in section 93 of the Crimes Act 1900 and includes not getting what the person might get, as well as parting with what he has), a person being deprived of an opportunity to earn remuneration or greater remuneration, or a person being deprived of an opportunity to obtain a financial advantage otherwise than by way of remuneration.
- some other person being given an opportunity to earn a remuneration or greater remuneration or to obtain a financial advantage otherwise than by remuneration from the person acting on the false instrument. A false testimonial of qualifications in order to gain employment is one example coming within this sub-section.
- a person accepting the false instrument as genuine, or a copy of a false instrument as a copy of a genuine instrument in connection with his or her performance of a duty. This provision gives statutory effect to the decision in Welham V D.P.P. (1961) A.C. 103 and thus by use of a false instrument inducing a person to behave in a way in which he would not have behaved in relation to that duty had he been aware of the falsity constitutes that behaviour as an act to his prejudice.

Sub-section (2) extends the forgery provisions to situations where the criminal activity is perpetrated by the use of a machine or computer. Thus causing a machine to respond to a false instrument is deemed to be inducing a person to accept that false instrument. If the intention is to induce a response from the machine which, if made by a person, would be to that person's prejudice, then the machine's response is deemed to be an act or omission to a person's prejudice.

New section 135C this provision creates the offence of forgery and the offences of using a forged instrument. These offences each carry a maximum period of imprisonment of 10 years.

Sub-section (1) creates the main offence of forgery, and does away with the multiplicity of existing forgery offences that are differentiated by the nature of the document forged. The sub-section creates the offence of making a false instrument with the intent to use it to induce another person to accept it as genuine and by reason of so accepting it to do or omit to do some act to that person or another person's prejudice.

Sub-section (2) creates the main offence of using a false instrument which the accused knows or believes to be false with the intention of inducing another person to accept it as genuine and by reason of so accepting it to do or omit to do some act to that person or another person's prejudice. This offence replaces the existing offence of "uttering".

Sub-section (3) creates a similar offence to the offence created in sub-section (1). It covers the situation where the accused makes a copy of a false instrument knowing or believing it to be a copy of a false instrument. The purpose of this provision is to remove the uncertainty arising from the dicta in R v Harris (1966) 1QB 184 where it was left open whether the making of a photostat copy of a forged instrument amounted to using a forged document.

Sub-section (4) creates a similar offence to the offence created in sub-section (2) except it covers the situation where the accused uses a copy of a false instrument knowing it to be such a copy.

New section 135D creates the offence of having custody or control of a false instrument which the accused knows to be false with the intention of inducing another person to accept it as genuine and by reason of so accepting it to do or omit to do an act to that person or another person's prejudice. This offence carries a maximum penalty of 10 years imprisonment.

New section 135E creates two separate offences relating to having custody or control of a machine or implement etc which is to the knowledge of the accused designed or adapted to make a false instrument.

Sub-section (1) creates the more serious offence of having custody or control of a machine etc which to the knowledge of that person is designed or adapted for making a false instrument and that person intends that he/she or another person shall make a false instrument to be used to induce a third person to accept it as genuine and by reason of so accepting it the third person or any other person will do or omit to do an act which is to their prejudice. This offence carries a maximum penalty of 10 years imprisonment.

Sub-section (2) creates the less serious offence of having custody or control without lawful excuse a machine etc which to the knowledge of that person is designed or adapted for making a false instrument. This offence carries a maximum penalty of 2 years imprisonment. This offence and the offence created in proposed sub-section (1) are directed to those machines which are specifically designed or adapted to make a false instrument. Therefore items such as a pen, photocopier or ordinary paper which may be incidentally used to make a false instrument will not be covered by this provision.

New section 135F enables a court to order the forfeiture of articles used in relation to offences against the new Division 3A of Part IV.

New section 135G provides that, for the purposes of Division 3A in Part IV, where it is necessary in an indictment to allege an intent to induce a person etc it is not necessary to allege that the accused intended to induce a particular person.

Authorised by the  
Attorney-General