

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

No. 11 of 1985

CRIMES (AMENDMENT) ORDINANCE 1985

This Ordinance amends the Crimes Act, 1900 (N.S.W.) in its application to the Australian Capital Territory (the Act), by adding community services orders to the range of sentencing options available to courts in the Territory. Community service orders are expected to be particularly useful as an alternative to the imposition of short terms of imprisonment.

In essence, the Ordinance provides that an adult convicted of an offence punishable by imprisonment, or liable to imprisonment for non-payment of a fine may, if he consents, and if the Court thinks fit, be sentenced to perform unpaid work of a community nature for not more than 208 hours and not less than 24. Unless the period of the order is extended, an offender will have 12 months in which to discharge the order. The Ordinance provides as follows:

A complementary Ordinance, the Supervision of Offenders (Community Service Orders) Ordinance will provide for the administration of the community service orders scheme.

Section 1: provides that the Ordinance may be cited as the Crimes (Amendment) Ordinance 1985.

Section 2: is an interpretation provision which defines the Crimes Act.

Section 3: provides that the Ordinance will come into operation on such date as fixed by the Minister for Territories by notice in the Gazette.

Section 4: inserts into the Act a New Part XVA comprising sections 556F to 556W. The provisions of these new sections are explained below.

Section 556F is the interpretation section which defines terms used in the part, viz, 'community service order', 'offender', 'authorized officer' and 'supervisor'.



Section 556G empowers a court, where it thinks fit, instead of imposing any other penalty or otherwise dealing with a matter, to direct an adult offender, liable to be sentenced to imprisonment or liable to imprisonment for non-payment of a fine, to perform unpaid work of a nature useful to the community for not more than 208 hours and not less than 24. The power to order community service does not affect a court's power to make an order as to restitution of property, compensation to an aggrieved person, costs, forfeiture, or to suspend or cancel an offender's licence to drive a motor vehicle. In each case the court is required to cause the order to be written and give the offender a copy of the order. Provision is made for concurrent or consecutive community service orders.

Section 556H provides a formula for calculating the duration of a community service order in circumstances where the order is imposed for the non-payment of a fine and subsequently part-payment of the fine is made.

Section 556J sets out the circumstances in which a community service order may be made. These include that the person to be the subject of such order consents to the order being made, that there is submission to a medical examination if required, that work of a suitable nature will be available and the person is a suitable person to perform work under such an order. The section also provides that the offender be informed of the purpose and effect of a community service order, the consequences of non-compliance with the order, and that the order is capable of review.

Section 556K sets out obligations imposed upon an offender the subject of an order, and provides that failure to comply with an obligation constitutes an offence. The section sets out the procedure by which an offender may be brought before the court where he has failed to comply with an order and provides the range of options open to the court when it is satisfied that a person has committed an offence against this section. It may -



- . extend the period during which the order is to remain in force;
- . increase the number of hours the offender is required to perform unpaid work;
- . require the offender to perform work of a different nature;
- . revoke the order, in which case the court is required to impose an alternative sentence of the type that could have been made when the offender was originally sentenced;
- . order that the offender pay a penalty of not more than \$1,000; or
- . admonish the offender.

Section 556L provides that a community service order, unless earlier complied with by the offender or unless extended by the court, shall cease to have effect after 12 months.

Section 556M enables a court to revoke or vary a community service order where the interests of justice so require.

Where a court revokes an order it may make such other order that it could have made if the offender was being sentenced there and then, but it is required to take account of work performed in accordance with the community service order. The section also permits a court, on the application of an offender, to require him to perform work other than that which he has been performing.

Section 556N provides that where an offender in respect of whom a community service order is in force is convicted by the Supreme Court of a further offence, or committed to the Supreme Court in respect of a further offence, the court may, in addition to dealing with the offender for that further offence, deal with him in a like manner to an offender dealt with under section 556K above. A similar power is given to the Court of Petty Sessions, where an offender subject to a community service order is convicted by that court of an offence, provided that if the community service order was made by the Supreme Court, that court shall deal with the matter.



Section 556P empowers a magistrate to issue a warrant for the apprehension of an offender where he is satisfied by information on oath that there are reasonable grounds for believing that an offender is about to leave the Australian Capital Territory with the intention of avoiding any of the requirements of a community service order.

Section 556Q provides that where a person is brought before the court pursuant to a warrant under section 556P he may be dealt with along similar lines to that specified in section 556K as if he had failed without reasonable excuse to comply with the order.

Section 556R sets out the effect of compliance with or revocation of a community service order imposed for the non-payment of a fine. Where the order ceases to have effect (except by revocation) the liability to pay the fine ceases. Where the order is revoked in circumstances where the offender has failed to comply with the order the magistrate may reduce the period of imprisonment to be served by the offender having regard to any work performed pursuant to the order.

Section 556S sets out the procedure for service on an offender of a document under Part XVA.

Section 556T provides that when an offender is apprehended and appears before a court otherwise than in accordance with section 556P, the court may remand him in custody, admit him to bail or order his discharge on a recognizance. It also empowers a court to deal with an offender who breaches a condition of such a recognizance.

Section 556U provides for the powers that may be exercised by a Court where it revokes a community service order imposed on an offender and proposes to make orders consequential to such revocation.


Section 556V sets out the circumstances in which an offender is taken to have discharged a community service order by completing the required period of work.

Section 556W provides the Supreme Court with jurisdiction to hear and determine matters relating to community service orders made by that court.



Section 5: inserts into the Act a new Schedule 5, which sets out the form of the community service orders.

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Authorized by the Attorney-General