

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

No 32. of 1984

CRIMES (AMENDMENT) ORDINANCE 1984

Sub-section 12(1) of the Seat of Government (Administration) Act 1910 provides that the Governor-General may make Ordinances for the peace, order and good government of the Australian Capital Territory.

The Purpose of the Ordinance is to give effect to a decision of the Standing Committee of Attorneys-General that uniform legislation be enacted to ensure that evidence of the commission of certain offences which is located in one State or Territory may be seized by warrant and transmitted to the jurisdiction in which those offences are alleged to have been committed. The transmission may be effected for the purposes of either further investigations or proceedings in respect of such offences.

Sections 1 and 2 are the Short Title and formal provisions.

Section 3 inserts a new heading after the heading to Part X. This Part deals with police powers of apprehension, detention and search and seizure.

Section 4 inserts a new Division 2 into Part X. This is the Division which deals with the investigation of extra-territorial offences in order to assist the law enforcement or judicial authorities of another State or Territory. The following sections are inserted by this section:

Section 358A which defines a number of expressions and empowers the Governor-General, by proclamation in the Gazette, to declare a law of a State or of another Territory to be a corresponding law. The operative definitions ensure that the Division applies to reciprocating States or Territories which have a corresponding law as declared by proclamation by the Governor-General. Further, the Division imports a dual criminality concept in that it applies only to indictable offences against the law of a reciprocating jurisdiction which would also attract criminal liability under the laws of the Australian Capital Territory.

Section 358B is the section which permits a Magistrate to issue a search warrant subject to certain conditions.

Sub-section (1) provides that a warrant may only issue if the Magistrate is satisfied that there are reasonable grounds to believe:

- . that an offence to which Division 2 applies has been, or is intended to be, committed; and
- . that there is in the premises to be searched an object relevant to the investigation of the offence.

Sub-section (2) permits the making of an application for the issue of a search warrant either personally or by telephone.

Sub-section (3) requires the grounds upon which the application for the issue of a warrant is made to be verified by affidavit.

Sub-section (4) limits telephone applications to circumstances of urgency.

Sub-section (5) sets out the requirements and procedures relating to the issue of a warrant consequent upon a telephone application. In summary, the sub-section seeks to ensure that the same criteria are met as if the application had been made personally.

Sub-section (6) requires an issuing Magistrate to file the affidavit verifying the grounds of the application and the warrant (or a copy thereof) in the Court of Petty Sessions.

Section 358C deals with the authority conferred by a search warrant and certain procedural steps after execution. Basically the powers conferred are identical to powers conferred by search warrants issued pursuant to other provisions. One difference is found in sub-section (2), namely that the warrant may only be executed at night if the issuing Magistrate so directs.

Sub-section (5) requires that objects seized are to be dealt with in accordance with arrangements in force under section 358E.

Sub-section (6) requires the officer executing a warrant issued under this Division to, as soon as practicable after execution, give a notice to the occupier of the search premises setting out:

- . his name and rank;
- . the name of the issuing Magistrate and the date and time of the issue of the warrant; and
- . a description of the object seized and removed.

Sub-section (7) provides that an unexecuted warrant expires 1 month after the date of its issue.

Section 358D makes it an offence to unlawfully hinder a police officer, or a person assisting him, in the execution of a search warrant. The penalty is a fine of \$2000 or imprisonment for 6 months.

Section 358E empowers the Attorney-General to enter into arrangements with other Ministers administering corresponding laws. The arrangements relate to the transmission to or from the A.C.T. of objects seized which are relevant to ongoing investigations or proceedings in respect of offences to which the Division applies.

They also ensure the ultimate return of the objects to the true owner unless a Court otherwise by order or direction otherwise disposes of them. The owner may, by action in detinue, enforce the right of return.

Authorized by the Attorney-General

Ord. No. 28/84