

EXPLANATORY STATEMENT  
AUSTRALIAN CAPITAL TERRITORY

CRIMES (AMENDMENT) ORDINANCE (NO.2) 1984

NO. 78 of 1984

The purpose of this proposed Ordinance is to make a number of amendments to the Crimes Act 1900, of New South Wales in its application to the Australian Capital Territory. The proposed Ordinance continues the programme of criminal law reform and in the main inserts reforms already made in New South Wales. The proposed Ordinance has been considered and approved by the Australian Capital Territory House of Assembly.

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

Section 3 defines an "officer" of a body corporate to include a person appointed or acting as an auditor of the body corporate. The effect of the definition is to render auditors punishable for fraudulent conduct in respect of which directors, members or other officers are already punishable.

Section 4 corrects an anomaly and brings section 70 into line with sections 69, 71 and 72. The amendment provides that if a person is charged with carnal knowledge of a girl under the age of 10 years but the jury finds that the girl is over 10 but under 16 years of age he may be acquitted of the offence charged but convicted of the offence of attempting to carnally know or assault with intent to carnally know a girl of the latter age bracket.

Section 5 inserts the words "or by any wilfully false promise" into section 120 of the Act. The effect of the amendment is to permit, in appropriate cases, an alternative verdict for an offence an element of which is a wilfully false promise where the charge preferred was one of larceny.

Section 6 inserts new section 154B which makes the fraudulent abstraction or use of electricity an offence. It is particularly, but not exclusively, directed to persons bypassing meters in order to avoid being charged for electricity consumed. The maximum penalty for this offence is 5 years imprisonment.

Section 7 inserts new section 176A which makes it an offence for any director, officer or member of a body corporate to deal fraudulently with either the body corporate or any other person in dealings with the body corporate of which he is such a director, officer or member. The maximum penalty for this offence is 10 years imprisonment.

Section 8 inserts the expression "recover" in section 186, that section dealing with corrupt rewards for the return of stolen goods. The amendment makes the section more explicit.

Section 9, 10 and 11 amend sections 188, 189 and 189A. The effect of the amendments is to make the disposing of goods knowing them to be stolen an offence in the same manner as the receiving of such goods.

Section 12 inserts new section 189B and provides that on the trial of a person for receiving or disposing of goods within the A.C.T., knowing those goods to have been stolen, it shall not be necessary to prove that the stealing occurred in the A.C.T. in cases where the prosecution can prove that the subject goods were stolen in the course of being sent to the Territory from another part of Australia or in the course of being sent from the Territory to another part of Australia.

Section 13 in respect of cattle makes the same amendment as made by Clauses 9, 10 and 11 in respect of sections 188, 189 and 189A.

Section 14 amends the section 245 and makes the killing or maiming of pigs and goats punishable in the same manner as the killing or maiming of other cattle.

Section 15 inserts new section 248A which makes "hoax" communications, to the effect that any person (including the person making the communication) or property or both are in danger, an offence. It is, in essence, a public nuisance provision. The maximum penalty for this offence is 5 years imprisonment.

Section 16 amends section 294. The effect of the amendment is to make it an offence to enter into any bail transaction in circumstances where the person entering into the transaction purports to be another person.

Section 17 inserts new sub-sections 352(4) and (5) which permit a police officer to arrest a person in respect of whom a warrant of commitment has been issued even though the police officer does not at the time have the actual warrant in his possession.

Section 18 inserts new section 352A. The amendment confers a power of arrest without warrant on police in respect of interstate offenders provided that the offence for which the fugitive is wanted interstate would, if committed in the A.C.T., amount to an indictable offence or an offence punishable by at least 2 years imprisonment. Thereafter, the person is to be treated in the same manner as any other person arrested for an offence committed within the A.C.T. with the exception that if the State or Territory in which he is wanted does not commence extradition proceedings within 7 days, a Magistrate may discharge the person.

Section 19 amends section 353A to make it explicit that a person in custody may only be searched by a person of the same sex.

Section 20 amends section 354. The amendment makes it an offence for a person within the A.C.T. to harbour or otherwise assist a person who is, to his knowledge, an escapee from lawful custody from another State or Territory.

Section 21 inserts new section 404. It provides that in circumstances where a judge has the power to direct a jury to return a verdict of acquittal the judge may, instead of giving such a direction, discharge the jury and record a verdict of acquittal. Such a recording has the same effect as a jury verdict.

Section 22 inserts new section 406. The section requires a person committed for trial on an indictable offence to notify the Director of Public Prosecutions of any alibi that he proposes to establish within 14 days of his committal. Failure to give such notice means that he may not at the trial adduce that evidence except with the leave of the Court. At the time of the committal the Magistrate must inform the person of the operative parts of the section and give the person a copy of the section. The provision is designed, in cases where the veracity of an alibi can be established to obviate a needless trial, to assist in determining no bill applications, to avoid trial by ambush and to avoid the adjournment of a jury trial in cases where the Crown is permitted to adduce evidence to rebut an alibi of which it was previously unaware.

Section 23 amends section 494. The effect of the amendment is to treat a "custodial officer" in the same manner as a justice, constable or other law enforcement officer and any assault on such a person is to be an aggravated assault.

Section 24 inserts new section 527A which makes it an offence to prepare false documentation in relation to goods in order to hide the fact that the goods were stolen, unlawfully obtained, or to prevent the seizure of such goods on suspicion of being stolen or otherwise unlawfully obtained or from being produced in evidence. The maximum penalty for this offence is fine of \$200 or imprisonment for 3 months.

Section 25 amends section 556 of the Act. The amendment precludes the same person from obtaining a criminal conviction against another person and then bringing a civil action against that person for the same cause. It does not preclude a private person bringing a civil action in a case where the police have laid a criminal charge, which was believed to be the position under the old provision.

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Authorized by the Attorney-General