

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

Ordinance No.27,1983

CRIMES (AMENDMENT) ORDINANCE 1983

The purpose of this Ordinance is to make a number of amendments to the Crimes Act, 1900 (N.S.W.) in its application to the Australian Capital Territory. The effects of the amendments are:

- . the insertion of certain new sections which, with one exception (the amendment effected by clause 25) are already in force in New South Wales
- . the abolition of the distinction between felony and misdemeanour
- . the abolition of the distinction between simple larceny and larceny
- . the repeal of sections which are inoperative, irrelevant to contemporary society or which contain matter covered either in applicable legislation of the Commonwealth Parliament or other laws of the Australian Capital Territory, and
- . the deletion of archaic or irrelevant expressions and the substitution therefore of meaningful expressions

Sections 1, 2, 3 and 4 are the Short Title and Formal provisions.

Section 5 provides a new definition of "dwelling house" to cover mobile and temporary dwellings.

Section 6 abolishes the distinction between felony and misdemeanour.

Sections 7 and 8 delete references to the death penalty and also substitute, consequent upon the abolition of the distinction between felony and misdemeanour, imprisonment in lieu of penal servitude.



..../2.

2.

Section 9 deletes the reference in section 24 to "penal servitude" and replaces it with imprisonment.

Section 10 creates new offences of discharging loaded arms with intent and using a weapon to resist arrest.

Section 11 is concerned with property previously stolen and is intended to eliminate a possible defense to a stealing charge namely that the accused's actions did not constitute an infringement of the property rights of the owner.

Sections 12, 13, 14, 15 and 16 provide increased penalties for committing certain offences whilst armed. The offences are:

- . breaking and entering a place of Divine Worship and committing an offence
- . breaking and entering a place of Divine Worship with intent to commit an offence
- . burglary
- . entering with intent, or stealing in a dwelling house and breaking out
- . entering a dwelling house in the night with intent to commit an offence

Section 17 deletes, from section 244 of the principal Act, the penalty of penal servitude and substitutes imprisonment.

Section 18 deletes, from section 328 of the principal Act, a reference to the death penalty and penal servitude and substitutes imprisonment.

Section 19 preserves the existing common law powers of arrest without warrant but, in respect of past criminal conduct, limits it to offences punishable by imprisonment for 5 years or more. It is a consequential amendment flowing from the abolition of felonies and misdemeanours.

Section 20 deletes a reference to the death penalty in section 441.

...../3.

3.

Section 21 enables a Court to either backdate a sentence or order that the sentence take effect from a subsequent date.

Section 22 deletes a reference to penal servitude in section 444.

Section 23 enables a Court, with the consent of the accused and of the prosecutor, to take outstanding charges into account when passing sentence for another offence or offences in respect of which the accused has been convicted.

Section 24 makes it clear that existing section 477, which sets out those offences which may be disposed of summarily with the consent of the accused, does not extend to common law offences.

Section 25 is the provision which is not to be found in current New South Wales law. It provides that common law offences may be dealt with summarily where the Court is of the opinion that it is proper to do so and the prosecutor and accused consent to that course. It is a logical companion measure to section 477.

Sections 26 and 27 make amendments consequential to clause 25.

Section 28 inserts the Schedule referred to in clause 23 and provides a written record of the offences taken into account on sentence.

Section 29 deletes the term "penal servitude" wherever occurring in each provision specified in Schedule 1 and inserts in lieu the term "imprisonment".

Section 30 provides that each provision specified in Column 1 of Schedule 2 is amended as set out in Column 2 of the said Schedule. Some amendments are consequential to the abolition of the distinction between felony and misdemeanour. Others delete inoperative or meaningless expressions and replace them with meaningful and comprehensible ones reflecting the true situation in the Australian Capital Territory. For example the expression "conviction before two Justices" is meaningless in the Territory where Justices of the Peace do not perform Magisterial judicial functions.

.... /4.

4.

Section 31 repeals Part VI of the Crimes Act, 1900 and repeals each provision specified in Schedule 3 for reasons earlier stated. It also repeals the Habitual Criminals Act, 1905 (N.S.W.) in its application to the Australian Capital Territory, ensuring untrammelled application of section 17 of the Crimes Act 1914.

Section 32 makes transitional provisions in respect of persons charged but not dealt with to finality prior to this proposed Ordinance coming into effect.

Schedule 1 lists the provisions referred to in section 29, being those provisions from which the expression "penal servitude" is to be deleted and replaced with "imprisonment".

Schedule 2 lists the various amendments referred to in section 30.

Schedule 3 lists some of the repeals effected by section 31.

Authorised by the Attorney-General

Ord. No. 46/83