

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

Ordinance No.55,1983

CRIMES (AMENDMENT) ORDINANCE (NO. 3) 1983

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 this 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 effects of the amendments are:

- . the insertion in more modern terms of some provisions removed from the Police Offences Ordinance 1930 by the Police Offences (Amendment) Ordinance 1983. In some cases the new provisions are wider than the deleted provisions referred to above
- . the insertion of certain sections which are already in force in New South Wales (clause 11)
- . the creation of a new offence of robbery to deal with situations where, unbeknowns to the victim, the third person to whom violence is apparently threatened is in fact an accomplice
- . to decriminalise simple drunkenness but permit the detention of an intoxicated person where this is necessary either for his own protection or for the protection of other persons or property
- . the deletion of some remaining archaic or irrelevant expressions and the substitution of meaningful terms



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

Section 3 amends the definitions section by omitting the definitions of "Governor" and "Railway", extending the definition of "Cattle", to include poultry and domestic pets and by replacing in more modern terms the definitions of "grievous bodily harm" and "Loaded arms" previously contained in section 36. Finally it inserts new definitions of "Offensive weapon" and "Weapon".

Section 4 amends section 34 so that the section refers to sections 33 and 35 instead of to the preceding and following section. This was overlooked when section 33A and 33B were inserted by the Crimes (Amendment) Ordinance 1983. It is an alternative verdict provision.

Section 5 repeals section 36 consequent upon the amendments which are effected by section 3.

Section 6 replaces repealed sections 75 and 76 of the Police Offences Ordinance. The sections empower a Court to require the delivery of stolen goods and to make orders as to the disposition of such goods.

Section 7 creates the offence of robbery in situations where the victim is put in fear that a third person will be subjected to violence, the third person in fact being an accomplice. In R v. Varney and Collenso a judge of the Victorian Supreme Court held that this did not constitute robbery and convicted of larceny.

Section 8 amends section 96 of the principal Act which presently relates only to section 95 to also apply to the offence created by the previous section. The section provides a higher penalty in circumstances where any person is wounded immediately before, during or immediately after a robbery.

Section 9 deletes the definition of "infamous crime" in relation to the offences created by sections 101-103 inclusive. Those sections create offences of obtaining benefits as a result of threatening to accuse or accusing persons of certain crimes.

The amendments effected by section 23 render the definition of infamous crime nugatory.

Section 10 amends section 114 of the Crimes Act, 1900. That section creates the offences of being found at night under certain circumstances with intent to commit an offence. The circumstances include being armed, being in possession of housebreaking implements, and entering or being in any building. The amendment deletes the term "at night" and inserts new sub-section (2) which provides that when convicted of an offence against sub-section (1), any weapon, instrument or housebreaking implement found on the person at the time of the commission of the offence is forfeited.

Section 11 inserts four new sections which are already law in New South Wales. The new sections and the offences to which they relate are:

- Section 178B - obtaining property by passing a cheque not paid on presentation
- Section 178C - obtaining money by deception
- Section 178D - obtaining money by false or misleading statements, and
- Section 178E - obtaining credit by fraud

Section 12 inserts sections 350 and 351 which respectively replace repealed sections 88 and 10 of the Police Offences Ordinance. Section 350 deals with the seizure and condemnation of forfeited goods. Section 351 decriminalises drunkenness but permits, for the protection of the intoxicated person, for the protection of other persons or property, the protective custody of an intoxicated person until he is sober or for a maximum period of 8 hours.

Section 13 inserts a new section creating the statutory offences of escape from lawful custody and the harbouring of such an escapee. The common law offence of breaking out and escaping from confinement is abolished by section 24.

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Section 14 repeals section 421 which dealt with the forging of British stamps and seals.

Section 15 enables a court, where it convicts a person of an offence the penalty for which is a fine or a period of imprisonment, to impose both in appropriate circumstances. It is primarily intended to avoid persons being incarcerated in circumstances where the court is of the view that a fine coupled with a suspended sentence is a proper sentencing option. That combination is presently unavailable.

Section 16 deals with the disruption of public meetings and replaces repealed sections 45 and 46 of the Police Offences Ordinance. The new section 482 makes it an offence to behave in a manner that disrupts or is likely to disrupt a public meeting.

Section 17 repeals current section 501 and re-enacts it in modern terms. The section deals with the unlawful driving, using or marking of cattle. Paragraph (1)(e) re-enacts repealed section 8 of the Police Offences Ordinance and deals with the possession of stolen cattle.

Section 18 re-enacts repealed section 40B of the Police Offences Ordinance and makes it an offence to lay poison capable of endangering the lives of domestic animals.

Section 19 inserts new section 527A dealing with goods reasonably suspected of being stolen in the custody of a person. It is already law in New South Wales and replaces repealed section 29 of the Police Offences Ordinance.

Section 20 re-enacts, albeit in some instances in wider terms, various repealed provisions of the Police Offences Ordinance. It inserts new sections dealing with subject matter as follows:

Section 545 - the enclosing of entrances to cellars,
manholes and similar places

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Section 546 - the defacing of premises and of public property including streets, roads, footpaths and bus shelters

Section 546A - offensive behaviour

Section 546B - indecent exposure (the common law offence is to be repealed by clause 24), and

Section 546C - noise abatement

With respect to section 546C, the repealed Police Offences Ordinance provision dealt only with the loud playing of musical instruments. The new provision deals generally with offensive noise which is capable of interfering unreasonably with the comfort or repose of other persons. The making of the noise is not an offence, but the failure to comply with an abatement direction is. The section is based on provisions in the Noise Control Act 1975 (N.S.W.).

Section 21 repeals section 576 which is rendered nugatory by the creation of the statutory offence of indecent exposure.

Section 22 removes the Fifth Schedule to the Act.

Section 23 amends various headings and effects the amendments of the Crimes Act, 1900 as set out in the Schedule to the proposed Ordinance.

Section 24 abolishes the common law offences of publicly exposing the naked person and of breaking out and escaping from confinement. Those offences are recreated in statutory form by sections 20 and 13 respectively.

Schedule lists the amendments effected by section 23. These amendments replace archaic expressions with meaningful ones and were identified during the work preparatory to the production of a consolidated reprint in which it is intended to include this Ordinance.

ORD No 66/83

Authorised by the Attorney-General

