

EXPLANATORY MEMORANDUM.
AUSTRALIAN CAPITAL TERRITORY.
CRIMES ORDINANCE 1963.

No. 11 of 1963

The statute law of Australian Capital Territory relating to crimes is largely contained in the adopted Crimes Act, 1900 of New South Wales, as amended by Ordinances of the Territory.

It is proposed, by the accompany draft Crimes Ordinance 1963, to make a number of amendments to the Act in its application to the Territory; these are explained seriatim below. For the most part, the amendments closely follow amendments made to the Act in New South Wales un recent years.

Section 2, which repeals the Crimes ordinance 1931, is explained under the heading “Fraudulent misappropriation” below.

Culpable driving.

Section 4 inserts a new section creating the offence of culpable driving. At present, where death is caused by the negligent or drunken act of a driver he is charged with manslaughter but it has been found that juries are reluctant to convict on this charge.

Kidnapping.

Section 5 inserts a new section creating the offence of kidnapping. There is at present no special provision dealing with this crime in the Territory.

Breaking and entering with intent to commit felony.

Section 6 repeals sections 112 and 113 of the Crimes Act and substitutes new sections designed to cover the breaking and entering of a variety of building (e.g. offices, stores, garages) not covered by the sections in their present form.

Trail for larceny, verdict of embezzlement.

Section 7 adds to the list of offences of which a person charged with larceny may be convicted the offence of fraudulent misappropriation.

Unlawfully using a vehicle.

Section 8 creates the particular offence of unlawfully using a vehicle (or boat). At present persons taking and using a vehicle in the Territory can be charged either with the relatively minor police offence of illegally using a motor vehicle or with the offence of larceny. It is difficult to substantiate this latter offence, as the accused almost invariably maintains that he did not intend to deprive the owner of his vehicle permanently.

Fraudulent misappropriation.

The Crimes Ordinance 1931 incorporated into the laws of the Territory provisions similar to those contained in section 178A of the New South Wales Act.

Opportunity is now being taken to insert the provisions as section 178A of the Crimes Act, in its application to the Territory. Section 2 repeals the Crimes Ordinance 1931 and section 9 inserts section 178A.

False pretences.

Sections 10, 11, 12 and 13 amend sections 179, 180, 182 and 183 respectively. The object is to broaden the sections so as to include wilfully false promises. The alternative charges are thus extended and the effect is to make it more probable that a person charged with an offence of this general nature will be convicted on the appropriate charge. An additional amendment, made to section 183, makes it possible for a person charged with an offence of this nature to be found guilty, in addition to other offences, of fraudulent misappropriation.

Malicious injuries to property.

Sections 196, 197, 198, 201, 202, 203 and 204 of the Act as in force in the Territory deal with setting fire to, or otherwise damaging, buildings. The object of sections 14, 15, 16, 18, 19, 20 and 21 of the proposed Ordinance is to make it equally an offence to set fire to, or otherwise damage, vehicles or aircraft. Section 17 effects a drafting improvement.

Orders for amendment of indictment, separate trial and postponement of trial.

Sections 365 and 366 of the Act as in force in the Territory provide for the amendment of indictments in a limited number of cases only and they have been found to be not adequate for the variety of circumstances which arise in the preparation of indictments and the conduct of criminal trials. Section 22 of the proposed Ordinance has the effect of widening them considerably in these respects.

Passing of sentence of less duration than the term fixed or imposition of fine of less than the amount fixed.

Section 442 of the Act as in force in the Territory provides for the reduction of a sentence or fine, below the term or amount fixed, in accordance with a scale. The section as now in force in the State enables the Judge to pass a sentence of any less duration than the period fixed or to reduce the fixed amount of a fine to any less amount and section 23 of the proposed Ordinance is designed to achieve the same effect.

Section 24 makes an amendment consequential on the insertion of section 178A, mentioned above.

Certificate of dismissal or conviction a bar to other proceedings

Under section 499 of the Act as in force in the Territory, in cases of assault a certificate of dismissal or conviction is a bar to all proceedings, civil or criminal, arising out of the same assault, whether taken by the complainant or by any other person. Thus, where a person is fined for an assault on the complainant and pays the fine, a civil action, either by the complainant or by any other person suffering consequential damage, is barred by the section.

Section 25 of the proposed Ordinance is designed to remedy this situation so that the only civil proceedings which will be barred are “proceedings for the same cause at the suit of the person laying the information in respect of the proceedings for assault”.

Unlawfully using a vehicle or boat.

Section 26 inserts a section which will provide for the punishment for this offence on summary conviction – see the note relating to section 8 above.

Recognizances for good behaviour and compensation to persons aggrieved.

Section 27 is designed to provide for the awarding of a term of imprisonment in default of entering into a recognizance with either hard labour or light labour (the words underlined do not appear in the section as in force in the Territory). In addition, section 27 increases the maximum compensation for injury or loss payable to a person aggrieved from £50 to £150.