

AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Ordinance (No. 4) 1985

No. 44 of 1985

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 6 September 1985.

J.A. ROWLAND
Administrator

By His Excellency's Command,

GARETH EVANS
Minister of State for Resources and Energy
for and on behalf of the
Attorney-General

An Ordinance to amend the Crimes Act, 1900 of the State of New South Wales in its application to the Territory

Short title

1. This Ordinance may be cited as the *Crimes (Amendment) Ordinance (No. 4) 1985*.¹

Commencement

2. (1) This section and sections 1, 3 and 4 and sub-sections 5 (2) and 12 (1) shall come into operation on the day on which this Ordinance is notified in the *Gazette*.

(2) The remaining provisions of this Ordinance shall come into operation on 1 January 1986.

The Crimes Act

3. In this Ordinance, “the Crimes Act” means the Crimes Act, 1900 of the State of New South Wales in its application to the Territory.

Application

4. Section 3 of the Crimes Act is amended by omitting “sections mentioned in the second Schedule hereto, so far as their provisions” and substituting “provisions of this Act, in so far as they”.

Interpretation

5. (1) Section 4 of the Crimes Act is amended by omitting from sub-section (1) the definitions of “Burglary”, “Cattle”, “Dwelling-house”, “Money”, “Night”, “Place of Divine worship”, “Property”, “Property belonging to a vessel” and “Valuable security”.

(2) Section 4 of the Crimes Act is amended by adding at the end thereof the following sub-section:

“(3) In any provision of this Act relating to an offence, a reference to the jury shall, where a person charged with that offence is dealt with summarily, be read as a reference to the Magistrate.”.

6. Part IV of the Crimes Act is repealed and the following Part substituted:

“PART IV—OFFENCES RELATING TO PROPERTY***Division 1—Interpretation*****Interpretation**

“93. In this Part, unless the contrary intention appears—

‘blackmail’ means an offence under section 112;

‘burglary’ means an offence under section 102;

‘deception’ means any deception (whether deliberate or reckless) by words or conduct as to any matter of fact or law, and includes a deception as to the intentions of any person;

‘explosive’ means a substance or an article that is manufactured for the purpose of producing an explosion or that is intended by any person having it with him or her to be used for that purpose;

‘firearm’ includes an air-gun and an air-pistol;

‘gain’ means a gain of any property, whether temporary or permanent, and includes the keeping by a person of any property that he or she already has;

‘handling’, in relation to stolen property, means an offence against section 113;

‘imitation explosive’ means an article, not being an explosive, which has the appearance of being or containing, or which may reasonably be taken to be or to contain, an explosive;

‘imitation firearm’ means an article, not being a firearm, which has the appearance of being a firearm, or which may reasonably be taken to be a firearm;

‘loss’ means a loss of any property, whether temporary or permanent, and includes the failure by a person to receive any property he or she might otherwise have received;

‘offensive weapon’ means an article made or adapted for use for the purpose of causing injury to or incapacitating a person or which any person having it with him or her intends to use for that purpose;

‘property’ means any real or personal property and includes—

- (a) a chose in action and any other intangible property, other than an incorporeal hereditament;
- (b) a wild animal that is tamed or ordinarily kept in captivity; and
- (c) a wild animal that is not tamed nor ordinarily kept in captivity but that is—
 - (i) reduced into the possession of a person who has not lost or abandoned that possession; or
 - (ii) in the course of being reduced into the possession of a person;

‘robbery’ means an offence under section 100;

‘theft’ means an offence under section 99.

Stealing—interpretation

“94. For the purposes of this Part, a person shall be taken to steal if he or she dishonestly appropriates property belonging to another person with the intention of permanent depriving that other person of that property.

Property belonging to another—interpretation

“95. (1) For the purposes of this Part, property shall be taken as belonging to any person who has possession or control of it or who has any proprietary right or interest in it (other than an equitable interest arising only from any agreement to transfer or grant an interest).

“(2) Where any property is subject to a trust, a person having a right to enforce the trust shall be taken, for the purposes of this Part, to be a person to whom the property belongs and an intention to defeat the trust shall be treated as an intention to deprive any person having that right to the property.

“(3) Where a person receives any property from or on account of another person and is under a legal obligation to that other person to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall, for the purposes of this Part, be taken (as against the first-mentioned person) to be property belonging to that other person.

“(4) Where a person obtains any property by the mistake of another person and is under a legal obligation to make restoration, in whole or in part, of the property or of the value of the property, the property or its proceeds shall, for the purposes of this Part, be taken (to the extent of that obligation and as against the first-mentioned person) to belong to the person entitled to the restoration and an intention not to make restoration shall be treated as an intention to deprive that person of that property.

“(5) The property of a corporation sole shall, for the purposes of this Part, be taken to belong to the corporation notwithstanding any vacancy in the corporation.

Appropriation and dishonest appropriation—interpretation

“96. (1) For the purposes of this Part, a person shall be taken to have appropriated property if—

- (a) he or she obtains by deception the ownership, possession or control of the property for himself or for any other person; or
- (b) he or she adversely interferes with or usurps any of the rights of an owner of the property.

“(2) A person who has come by any property (whether innocently or not) without stealing it shall be taken to have adversely interfered with or usurped the rights of an owner of the property for the purpose of paragraph (1) (b) if he or she later keeps or deals with it as the owner.

“(3) For the purposes of this Part, a person may be taken to dishonestly appropriate property belonging to another person notwithstanding that the first-mentioned person is willing to pay for the property.

“(4) For the purposes of this Part, the appropriation by a person of property belonging to another person shall not be regarded as dishonest if—

- (a) he or she appropriates the property in the belief that he or she has a lawful right to deprive the other person of the property on behalf of himself or herself or a third person;
- (b) he or she appropriates the property in the belief that the appropriation will not thereby cause any significant practical detriment to the interests of the person to whom the property belongs in relation to that property;
- (c) he or she appropriates the property in the belief that the other person would consent to the appropriation if the other person knew of it and of the circumstances in which it was done; or
- (d) in the case of property other than property held by the person as trustee or personal representative—he or she appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

“(5) Where a person acting in good faith believes himself or herself to be acquiring a right or interest in property that is or purports to be transferred for value to him or her, no later adverse interference with or usurpation of the rights in the property by the person shall, by reason of any defect in the title of the transferor, be taken to be a dishonest appropriation of the property.

Intention to deprive permanently—interpretation

“97. (1) A person who appropriates property belonging to another person shall be taken, for the purposes of this Part, as having the intention to deprive the other person of that property permanently if his or her intention is to treat the property as his or her own to dispose of regardless of the rights of the other person.

“(2) For the purposes of sub-section (1), a person shall be taken to have an intention to treat property as his or her own to dispose of regardless of the

rights of any other person to whom the property belongs if he or she borrows or lends the property for such a period and in such circumstances as to make the borrowing or lending equivalent to treating the property as his or her own.

“(3) Without limiting the generality of sub-section (1), where a person who has possession or control (whether lawfully or not) of any property belonging to another person parts with that property for his or her own purposes and without the authority of the other person under a condition as to its return, being a condition that the first-mentioned person may not be able to perform, the first-mentioned person shall, for the purposes of this Part, be taken to have treated the property as his or her own to dispose of regardless of the rights of the other person.

“(4) Notwithstanding anything in this section, a person who appropriates a sum of money belonging to another person shall not be taken to have intended to deprive the other person of the money permanently by reason only of the fact that he or she did not, at the time of the appropriation, intend to return the money *in specie*.

Stolen property—interpretation

“98. (1) In this Part, a reference to stolen property shall be read as a reference to—

- (a) any property stolen or obtained by blackmail before or after the commencement of the *Crimes (Amendment) Ordinance (No. 4) 1985*, if the stealing or obtaining occurred—
 - (i) in the Territory; or
 - (ii) in any place outside the Territory where that stealing or obtaining constituted an offence in that place at the time when it occurred,

whether or not the property is in the state in which it was when it was so stolen or obtained;

- (b) any part of any property of the kind referred to in paragraph (a); and
- (c) any other property in the hands of the thief or of a handler of the stolen property (or any part of it), being the proceeds of any disposal or realization—
 - (i) of the whole or part of the stolen property; or
 - (ii) of any other proceeds of any earlier disposal or realization of that property.

“(2) In this Part, a reference to a thief, in relation to stolen property, shall be read as including a reference to a person who obtained the property by blackmail.

“(3) For the purposes of this Part, where—

- (a) stolen property is restored to the person from whom it was stolen or to any other person entitled to lawful possession or custody; or
- (b) the person from whom stolen property was stolen and any other person claiming from that person have otherwise ceased to have any right to restitution in respect of that property,

the property shall cease to be taken to be stolen property within the meaning of this Part.

Division 2—Theft and related offences

Theft

“99. A person who steals is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Robbery

“100. (1) A person who steals and, immediately before or at the time of doing so, and in order to do so, uses force on another person, or puts or seeks to put another person in fear that he or she or any other person will be then and there subjected to force, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

“(2) A person who assaults another person with intent to rob is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

Armed robbery

“101. A person who commits robbery and at the time of doing so has with him or her a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive is guilty of an offence punishable, on conviction, by imprisonment for 25 years.

Burglary

“102. (1) A person who enters or remains in any building as a trespasser with intent—

- (a) to steal anything in the building; or

- (b) to commit an offence involving an assault on a person in the building or involving any damage to the building or to property in the building, being an offence punishable by imprisonment for 5 years or more,

is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

“(2) In this section, a reference to a building shall be read as including a reference to a part of a building and any vehicle or vessel in or on which a person resides, whether or not the vehicle or vessel is, at any particular time, occupied.

Aggravated burglary

“103. A person who commits burglary and at the time of doing so has with him or her a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

Obtaining financial advantage by deception

“104. (1) A person who by deception dishonestly obtains for himself or herself or another person a financial advantage is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

“(2) For the purposes of this section, a reference to a person who obtains a financial advantage shall be read as a reference to a person who—

- (a) is allowed to borrow by way of overdraft or otherwise, or to take out any policy of insurance or annuity contract or obtains an improvement in the terms on which he or she is allowed to do so; or
- (b) is given the opportunity to earn remuneration or greater remuneration in an office or employment.

Obtaining service by deception

“105. a person who by deception dishonestly obtains from another person the provision of a service for himself or herself or for any other person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Evasion of liability by deception

“106. (1) A person who by deception—

- (a) dishonestly secures the remission of the whole or part of an existing liability of the person or of another person to make a payment;

- (b) dishonestly induces, with intent to make permanent default in whole or in part on any existing liability to make a payment, or with intent to enable another person to do so, the creditor or any person claiming payment on behalf of the creditor to defer the due date for a payment or otherwise to wait for payment or to forgo payment; or
- (c) dishonestly obtains for himself or herself or for another person, or enables another person to obtain, any exemption from, or abatement of, liability to make a payment,

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

“(2) For the purpose of paragraph (1) (b), a person who is induced to take in payment a cheque or other security for money by way of conditional satisfaction of a pre-existing liability shall be taken to have been induced to wait for payment.

“(3) In this section, ‘liability’ means a legally enforceable liability.

“(4) Sub-section (1) does not apply in relation to a liability to pay compensation for a wrongful act or omission, being a liability that has not been accepted or established.

Making off without payment

“107. (1) A person who, knowing that immediate payment for any goods supplied or services provided is required or expected from him or her, dishonestly makes off without having paid and with intent to avoid payment of the amount due, is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

“(2) sub-section (1) does not apply to or in relation to—

- (a) the supply of goods or the provision of a service where that supply or provision is contrary to law; or
- (b) payment for the provision of a service where that payment is not legally enforceable.

“(3) In this section, a reference to immediate payment shall be read as including a reference to payment at the time of collecting goods in respect of which a service has been provided.

False accounting

“108. (1) A person who, with a view to gain for himself or herself or another person, or with intent to cause loss to another person, dishonestly—

- (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or
- (b) in furnishing information for any purpose produces or makes use of any account, or any record or document of the kind referred to in paragraph (a), which to his or her knowledge is misleading or false in a material particular,

is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

“(2) for the purposes of this section, a person who makes or concurs in making in an account or other document an entry which is misleading or false in a material particular, or who omits or concurs in omitting a material particular from an account or other document, shall be taken to have falsified the account or document.

Liability of company officers

“109. (1) Where an offence committed by a body corporate under this Division is proved to have been committed with the consent or connivance of any director or officer of the body corporate, the director or officer, as the case may be, is guilty of that offence as well as the body corporate and is liable to be proceeded against and punished accordingly.

“(2) Where the affairs of a body corporate are managed by its members, this section applies in relation to the acts of a member of the body corporate in connection with his or her functions of management as if he or she were a director of the body corporate.

False statements by officers of associations

“110. (1) An officer of an unincorporated association who, with intent to gain for himself or herself or another person or to cause loss to another person, dishonestly publishes or concurs in publishing a written statement or account that to his or her knowledge is misleading or false in a material particular is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

“(2) Where the affairs of an association are managed by its members, this section applies in relation to any statement which a member publishes or concurs in publishing in connection with his or her functions of management as if he or she were an officer of the association.

“(3) For the purposes of this section, a person who has entered into a security for the benefit of an association shall be taken to be a creditor of the association.

Suppression, &c., of documents

“111. (1) A person who dishonestly, with a view to gain for himself or herself or another person, or with intent to cause loss to another person, by deception procures the execution of a valuable security is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

“(2) For the purpose of sub-section (1), the making, acceptance, endorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security shall be taken to be the execution of a valuable security.

“(3) In this section, ‘valuable security’ means any document—

- (a) creating, transferring, surrendering or releasing any right to, in or over property;
- (b) authorizing the payment of money or delivery of any property; or
- (c) evidencing the creation, transfer, surrender or release of any right to, in or over property, or the payment of money or delivery of any property, or the satisfaction of any obligation.

Blackmail

“112. (1) A person who, with a view to gain for himself or herself or another person, or with intent to cause loss to another person, makes any unwarranted demand with menaces is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

“(2) For the purposes of this section, a demand with a menace shall be taken to be unwarranted unless the person making the demand does so in the belief that he or she has reasonable grounds for making the demand and that the use of the menace is a proper means of enforcing the demand.

Handling stolen property

“113. (1) A person who dishonestly receives stolen property, or dishonestly undertakes its reception, retention, removal, disposal or realization by another person, and who knows or believes that property to be stolen property, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

“(2) Sub-section (1) does not apply to or in relation to the handling of stolen property in the course of stealing that property.

Dishonest abstraction of electricity

“114. A person who dishonestly abstracts, causes to be wasted or diverted, or uses any electricity with intent to cause loss to another person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Dishonest use of computers

“115. (1) A person who, by any means dishonestly uses, or causes to be used, a computer or other machine, or part of a computer or other machine, with intent to obtain by that use a gain for himself or herself or another person, or to cause by that use a loss to another person, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

“(2) In this section, ‘machine’ means a machine designed to be operated by means of a coin, bank-note, token, disc, tape or any identifying card or article.

Possession of housebreaking implements, &c.

“116. (1) A person who, in any place other than his or her place of abode, has with him or her any article for use in the course of, or in connection with, any theft or burglary is guilty of an offence punishable, on conviction, by imprisonment for 3 years.

“(2) Where a person is charged with an offence under this section, proof that he or she had with him or her an article made or adapted for use in committing a theft or burglary shall be evidence that he or she had it with him or her for that use.

“(3) Where a person is convicted of an offence under sub-section (1), any article of the kind referred to in that sub-section that is in the custody or possession of the person shall be forfeited to the Commonwealth.

Advertising for return of stolen property

“117. Where any advertisement for the return of any property which has been stolen or lost is published and the advertisement uses any words to the effect that the person producing the property or any other person will be safe from prosecution or inquiry, the person who advertised for the return of the property and any person who printed or published the advertisement is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

Delivery of stolen property held by dealers

“118. (1) Where the owner of any stolen property makes a complaint to a Magistrate that the property is in the possession of a dealer in second-hand

goods or of any person who has advanced money upon the security of the property, the Magistrate may—

- (a) issue a summons for the appearance of the dealer or person and for the production of the property; and
- (b) order the dealer or person to deliver the property to the owner upon payment by the owner of such sum (if any) as the Magistrate thinks fit.

“(2) A dealer or person who refuses or fails to comply with an order made under paragraph (1) (b), or who disposes of any property after he or she has been notified by the owner of the property that it is stolen, is liable to pay to the owner of the property the full value of the property as determined by a Magistrate.

Disposal of stolen property

“119. (1) Where—

- (a) any property is lawfully held in the custody of a police officer;
- (b) a person is charged with having stolen the property; and
- (c) the person so charged—
 - (i) cannot be found; or
 - (ii) is convicted, discharged or acquitted in relation to that charge,

a Magistrate may make an order for the delivery of the property to the person who appears to be the owner of the property or, where the owner cannot be ascertained, may make such order with respect to the property as the Magistrate thinks just.

“(2) Any order under sub-section (1) shall not bar a person from recovering possession of the property in respect of which the order is made from the person to whom the property is delivered in pursuance of the order by proceedings in a court of competent jurisdiction, being proceedings commenced within 6 months after the date on which the order is made.

Taking vehicle without authority

“120. (1) Subject to this section, a person who, without lawful authority or excuse, takes any vehicle for use by himself or herself or another person, or who drives or rides in or on a vehicle, knowing that vehicle to have been taken without lawful authority or excuse, is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

“(2) A person does not commit an offence under sub-section (1) if he or she acted in the belief that—

- (a) he or she had lawful authority or excuse to do the act alleged to constitute the offence; or
- (b) the owner of the vehicle would have consented to the doing of the act alleged to constitute the offence if the owner knew of it and of the circumstances in which it was done.

“(3) If, on the trial of a person for theft, the jury is not satisfied that the accused committed theft but is satisfied that the accused committed an offence under sub-section (1), the jury may acquit him or theft and convict him of an offence under that sub-section.

“(4) In this section—

‘owner’ includes a person in possession of a vehicle that is the subject of a hiring agreement or hire-purchase agreement;

‘vehicle’ means a motor vehicle, bicycle, aircraft or boat.

Orders for restitution

“121. (1) Where any property has been stolen and a person is found guilty of an offence under a provision of this Division in relation to that property (whether or not the person is convicted of the offence), the court may, subject to this section, make any of the following orders:

- (a) an order that any person having possession or control of the property restore it to any person entitled to recover it from him or her;
- (b) on the application of a person entitled to recover from the person found guilty of the offence any other property directly or indirectly representing the first-mentioned property (as being the proceeds of any disposal or realization of the whole or part of the first-mentioned property or of property so representing the first-mentioned property)—an order that that property be delivered or transferred to the applicant;
- (c) on the application of a person who, if the property were in the possession of the person found guilty, would be entitled to recover it from him or her—an order that an amount not exceeding the value of that property be paid to the applicant by the person found guilty.

“(2) The court shall not make orders under paragraphs (1) (b) and (c) if the applicant for the order would thereby recover more than the value of the property in relation to which the orders are sought.

“(3) Where the court makes an order under paragraph (1) (a) for the restoration of any property and it appears to the court that the person found guilty of any offence against a provision of this Division in relation to that property has sold the property to a purchaser acting in good faith, or has borrowed money on the security of the property from a lender so acting, the court may, on the application of the purchaser or lender, order that there shall be paid to the applicant by the person an amount not exceeding the amount paid for the purchase by the applicant or the amount owed to the applicant in respect of the loan, as the case requires.

“(4) Where the court makes an order under this section for the payment by a person of an amount—

- (a) the court may direct that the amount be paid by specified instalments; and
- (b) the amount so ordered to be paid is a debt due to the person in whose favour the order is made.

“(5) The court shall not make an order under this section unless, in the opinion of the court, the relevant facts sufficiently appear from evidence given at the trial or from the available documents, together with submissions made by or on behalf of any person in connection with any proposed order.

“(6) In this section, ‘available documents’ means any written statements or admissions which were made for use and which would have been admissible as evidence at a trial, the depositions taken at any committal proceedings and any written statements or admissions used as evidence in those proceedings.

Theft of motor vehicle—compensation

“122. (1) Where—

- (a) a person is convicted of the offence of stealing or attempting to steal a motor vehicle, or of an offence against sub-section 120 (1) in relation to a motor vehicle;
- (b) a person is charged with an offence referred to in paragraph (a) and, pursuant to sub-section 556A (1), the charge is dismissed or an order is made in respect of the person; or

- (c) pursuant to section 448, an offence referred to in paragraph (a) has been taken into account in passing sentence upon a person,

the court may, if it is satisfied that the motor vehicle or any property in or on the motor vehicle has been damaged or destroyed as a result of the offence, in addition to imposing a penalty on the person or otherwise dealing with the person according to law, order the person to pay to the owner of the motor vehicle or property, as the case requires, such amount as the court determines as compensation, in whole or in part, for the damage or destruction and may direct that any such amount be paid by specified instalments.

“(2) Where the court makes an order under sub-section (1) for the payment of an amount as compensation, the amount so ordered to be paid is a debt due to the person in whose favour the order was made.

“(3) Nothing in sub-section (1) shall be construed as abrogating or affecting any cause of action which any person may have to recover damages for, or to be indemnified against, any damage or destruction of the kind referred to in that sub-section but in any proceedings in relation to that cause of action the court shall have regard to any amount paid under this section.

Theft of motor vehicle—cancellation of licence

“123. (1) Where—

- (a) a person is convicted of the offence of stealing or attempting to steal a motor vehicle or of an offence under sub-section 120 (1) in relation to a motor vehicle;
- (b) a person is charged with a offence referred to in paragraph (a) and, pursuant to sub-section 556A (1), the charge is dismissed or an order is made in respect of the person; or
- (c) pursuant to section 448, an offence referred to in paragraph (a) has been taken into account when passing sentence upon a person,

the court may, by order—

- (d) if the person holds a driving licence under the *Motor Traffic Ordinance 1936*—cancel that licence or suspend that licence for such period as the court thinks fit; or
- (e) if the person does not hold such a driving licence—declare the person to be disqualified from obtaining such a driving licence for such period as the court thinks fit.

“(2) Where the court makes an order under this section, the court shall cause particulars of the order to be forwarded to the Registrar of Motor Vehicles.

Proof of general deficiency in a case

“124. On the trial of a person for theft of money, it shall not be necessary to prove the theft by the person of any specific sum of money if there is proof of a general deficiency on the examination of the books of account or entries kept or made by him or her, or otherwise, and the jury is satisfied that he or she stole the deficient money, or any part thereof.

Procedure and evidence

“125. (1) Any number of persons may be charged in one indictment with reference to the same stolen property, with having stolen or with having at different times or at the same time handled all or any of the stolen property, and the persons so charged may be tried together.

“(2) On the trial of 2 or more persons for jointly handling stolen property, the jury may find any of the accused guilty if it is satisfied that he or she handled all or any of the stolen property, whether or not he or she did so jointly with the other accused or with any of them.

“(3) In any proceedings for the theft of any property in the course of transmission (whether by post or otherwise), or for handling stolen property from such a theft, a statutory declaration made by any person that he or she despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by him or her were or was in a particular state or condition, shall be admissible as evidence of the facts stated in the declaration—

- (a) where and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and
- (b) if, at least 7 days before the hearing or trial, a copy of the declaration is given to the person charged, and that person has not, at least 3 days before the hearing or trial, or with such further time as the court may in special circumstances allow, given to the informant or the Director of Public Prosecutions, as the case requires, written notice requiring the attendance at the hearing or trial of the person making the declaration.

Verdict of “theft or handling”

“126. (1) Where, on the trial of a person charged with theft, or with any offence that involves stealing, and also with handling the property alleged to

have been stolen, the jury find that the person either stole or handled that property but are unable to decide which of those offences was committed by him or her, the person shall not be entitled to acquittal but shall be convicted of theft.

“(2) On the trial of any 2 or more persons charged with theft and also with having handled stolen property, the jury may find all or any of those persons guilty of theft or of handling the property or part of the property, or may find any of those persons guilty of theft and the other or any of the others guilty of handling the property or part of the property.

“Division 3—Criminal damage to property

Interpretation

“127. (1) In this Division, ‘property’ means any real or personal property (other than intangible property) and includes—

- (a) a wild animal that is tamed or ordinarily kept in captivity; and
- (b) a wild animal that is not tamed or ordinarily kept in captivity but that is—
 - (i) reduced into the possession of a person who has not lost or abandoned that possession; or
 - (ii) in the course of being reduced into the possession of a person.

“(2) for the purposes of this Division, property shall be taken to belong to any person who—

- (a) has possession or control of it;
- (b) has any proprietary right or interest in it, other than an equitable interest arising only from an agreement to transfer or grant an interest; or
- (c) has a charge on it.

“(3) Where any property is subject to a trust, the trustee and any person having a right to enforce the trust shall, for the purposes of this Division, be taken to be the person to whom the property belongs.

“(4) The property of a corporation sole shall, for the purposes of this Division, be taken to belong to the corporation notwithstanding any vacancy in the corporation.

“(5) For the purposes of this Division, a person who destroys or damages property shall be taken to have done so intentionally if he or she acted—

- (a) with intent to destroy or damage any property; or
- (b) in the knowledge or belief that his or her actions were likely to result in destruction of or damage to property.

“(6) For the purposes of this Division, a person who destroys or damages property shall be taken to have intended to endanger the life of another person by that destruction or damage if he or she acted—

- (a) with intent to endanger the life of any other person; or
- (b) in the knowledge or belief that his or her actions were likely to endanger the life of another person.

Destroying or damaging property

“128. (1) A person who intentionally and without lawful excuse destroys or damages (otherwise than by means of fire or explosive) any property belonging to another person or to himself or herself and another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

“(2) A person who destroys or damages (otherwise than by means of fire or explosive) any property with intent to endanger the life of another person by that destruction or damage is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

“(3) A person who dishonestly, with a view to gain for himself or herself or another person, destroys or damages (otherwise than by means of fire or explosive) any property is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

Arson

“129. (1) A person who intentionally and without lawful excuse destroys or damages by means of fire or explosive any property belonging to another person or to himself or herself and another person is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

“(2) A person who destroys or damages by means of fire or explosive any property with intent to endanger the life of another person by that destruction or damage is guilty of an offence punishable, on conviction, by imprisonment for 25 years.

“(3) A person who dishonestly, with a view to gain for himself or herself or another person, destroys or damages by means of fire or explosive any property is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

Lawful excuse

“130. (1) Without limiting the generality of the expression ‘lawful excuse’ in sub-section 128 (1) and 129 (1), a person charged with an offence against one of those provisions shall be taken as having a lawful excuse if, at the time he or she engaged in the conduct constituting the alleged offence, he or she believed that—

- (a) the property in relation to which the offence is alleged to have been committed belonged solely to himself or herself;
- (b) he or she held a right or interest in that property that authorized him or her to engage in that conduct; or
- (c) the person he or she believed was entitled to consent to the destruction of or damage to that property had consented to that destruction or damage or would have consented if that person had known the circumstances of that destruction or damage,

or if he or she engaged in that conduct in order to protect any other property or a right or interest in any other property which he or she believed to be vested in himself or herself or any other person and, at the time he or she engaged in that conduct, he or she believed that—

- (d) the property, right or interest which he or she sought to protect was in immediate need of protection; and
- (e) the means of protection adopted or proposed to be adopted by him or her were reasonable in all the circumstances.

“(2) For the purposes of this section, a reference to a right or interest in property shall be read as including any right or privilege in or over land, whether created by grant, licence or otherwise.

Defacing premises

“131. (1) A person shall not—

- (a) affix a placard or paper upon any private premises; or
- (b) willfully mark, by means of chalk, paint or any other material, any private premises,

unless the person has first obtained the consent—

- (c) where the premises are occupied—of the occupier or person in charge of the premises; or
- (d) where the premises are not occupied—of the owner or person in charge of the premises.

Penalty: \$1,000 or imprisonment for 6 months.

“(2) A person shall not, without lawful authority, affix a placard or paper upon, or wilfully mark, by means of chalk, paint or any other material, any public street, road, footpath, bus-shelter or other property of the Commonwealth or of an authority or body constituted by or under a law of the Commonwealth or of a Territory .

“(3) A person convicted of an offence under sub-section (1) or (2) is liable to pay to the owner of the premises or property in relation to which the offence was committed such amount (if any) as the court may order as the cost of, or contribution to the cost of, any repairs or restoration of the premises or property that are necessary as a result of the action constituting the offence.

Threats to destroy or damage property

“132. A person who, without lawful authority or excuse and in any manner, threatens—

- (a) to destroy or damage any property belonging to another person or to himself or herself and another person; or
- (b) to destroy or damage his or her own property in a manner that he or she knows or believes is likely to endanger the life of another person,

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Possession of article with intent to destroy property

“133. A person who has in his or her possession or control any substance or article that he or she intends to use, or that he or she intends to be used by another person, in committing an offence against section 128 or 129 is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Untrue representations

“134. A person who knowingly makes in any manner an untrue representation to any other person, being a representation that tenders to give rise to apprehension for the safety of any person (including the person making

the representation and the person to whom it is made) or property, or both, is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

Alternative verdict

“135. Where, on the trial of a person for an offence under this Division, the jury is not satisfied that the person is guilty of that offence but is satisfied that the person is guilty of another offence under this Division carrying a lesser penalty than the offence charged, the jury may acquit the person of the offence charged and find him guilty of that other offence.

“Division 4—Miscellaneous

Hindering working of mines

“136. A person who, with intent to hinder the working of a mine—

- (a) causes water to be conveyed or permitted to enter the mine or any subterranean passage communicating with the mine; or
- (b) obstructs, or otherwise interferes with any airway, waterway, drain, pit, level or shaft of the mine,

is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

Removal of sea-banks, &c.

“137. A person who without lawful authority or excuse removes any article or material fixed in or placed upon the ground and used for securing a sea-bank or sea-wall, or the bank, dam or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty or lock is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

Obstructing navigation of rivers

“138. A person who opens or draws up any floodgate or sluice or who in any way damages any navigable river or canal with intent to obstruct or prevent the navigation of the river or canal is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

Offences in relation to railways

“139. A person who, with intent to obstruct, damage or destroy any railway engine, tender, carriage or truck—

- (a) deposits any article or material upon or across a railway;
- (b) removes or displaces any rail, sleeper or other thing belonging to a railway;

- (c) moves or diverts, or fails to move or divert, any point or other machinery belonging to a railway; or
- (d) displays, masks or removes any signal or light upon or near a railway, or who does, or causes to be done, any other thing with that intent, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Obstructing railway engines

“140. A person who, by any unlawful act, omission or neglect, obstructs, or causes to be obstructed, the passage or working of a railway engine or carriage on any railway is guilty of an offence punishable, on conviction, by imprisonment for 3 years.

Alternative verdict

“141. Where, on the trial of a person for an offence under section 139, the jury is not satisfied that the person is guilty of that offence but is satisfied that he or she is guilty of an offence under section 140, the jury may acquit the person of the offence charged and find him or her guilty of an offence under section 140.

Displaying false signals

“142. A person who, with intent to endanger any vessel, masks, alters or removes any light or signal or displays any false light or signal is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Removing or concealing buoys, &c.

“143. A person who does any act with intent to cut away, cast adrift, remove, alter, deface, sink, destroy, damage or conceal any vessel, buoy, buoy-rope, perch or mark used or intended for the guidance of seamen or for the purposes of navigation is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

Removal of articles on public exhibition

“144. (1) A person who without lawful authority or excuse removes from premises that are at any time open to the public any article that is publicly exhibited, or kept for public exhibition, in or upon those premises is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

“(2) Sub-section (1) does not apply in relation to an article that is publicly exhibited, or kept for public exhibition, for the purpose of effecting a sale of, or any other commercial dealing with, the article or articles of that kind.

“(3) A person who removes an article from any premises in the belief that he or she has lawful authority or excuse to do so does not commit an offence under sub-section (1).

“(4) In this section, a reference to premises shall be read as including a reference to any building or part of a building.

Being found with an intent to commit an offence

“145. (1) A person who—

- (a) is armed with any weapon or instrument, with intent to enter a building and to commit an offence therein;
- (b) has his or her face disguised, with intent to commit an offence; or
- (c) enters, or is in or near, a building with intent to commit an offence,

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

“(2) Where a person is convicted of an offence under sub-section (1), any weapon or any instrument or implement of housebreaking in the custody or possession of the person shall be forfeited to the Commonwealth.

Forcible entry on land

“146. A person who enters on land that is in the actual and peaceable possession of another person in a manner likely to cause a breach of the peace is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or by imprisonment for 12 months.

Forcible detainer of land

“147. A person who, being in actual possession of land without any legal right to possession, holds possession of the land against any person legally entitled to possession of the land in a manner likely to cause a breach of the peace is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or by imprisonment for 12 months.

Property of spouses

“148. (1) The provisions of Divisions 2 and 3 apply in relation to the parties to a marriage and to property belonging to either of those parties or to both of them jointly (whether or not by reason of an interest derived from the marriage) in the same manner as they would apply if the parties were not married and any such interest subsisted independently of the marriage.

“(2) Subject to this section, a party to a marriage shall have the same right to bring proceedings against the other party in relation to any offence against a provision of Division 2 or 3 as if the parties were not married and a person bringing any such proceedings shall be competent to give evidence for the prosecution at every stage of the proceedings.

“(3) Subject to this section, proceedings shall not be instituted against a person in respect of an offence relating to property which, at the time of the alleged offence, belonged to the spouse of that person, or for any attempt, incitement or conspiracy to commit such an offence, without the written consent of the Attorney-General, the Director of Public Prosecutions or a person authorized by the Director of Public Prosecutions to give consent.

“(4) Sub-section (3) does not apply to or in relation to proceedings against a person for an offence—

- (a) if that person is charged with committing the offence, jointly with his or her spouse; or
- (b) if that person and his or her spouse were, at the time of the alleged offence, living separately and apart.

“(5) Nothing in sub-section (3) shall be taken to prevent the arrest, or the issue for a warrant for the arrest, of a person charged with an offence against a provision of Division 2 or 3, or the remand in custody or on bail of a person charged with such an offence, where the arrest, if made without a warrant, is made, or the warrant is issued on any information laid, by a person other than the spouse of the first-mentioned person.

Property of partners or joint owners

“149. (1) Where, in an indictment for an offence under this Part, it is necessary to allege the ownership of property belonging to more than one person, whether as partners in trade, joint tenants or tenants-in-common, or to allege that property is in the possession or control of more than one person, it is sufficient to name one of those persons and to allege that the property belongs to, or is in the possession or control of, the person named and another, or others, as the case may be.

“(2) In sub-section (1), a reference to a person shall be read as including a reference to a joint-stock company, an executor, an administrator or a trustee.

Indictment for theft, &c., of deeds

“150. In an indictment for an offence under a provision of this Part in relation to any document of title to land, or any part of such a document, it shall

be sufficient to allege that the document or the part of the document is or contains evidence of the title to the land, and to mention the person, or any of the persons, having an interest in the land, or in any part of the land.

Allegations in indictment as to stolen money or securities

“151. In an indictment for an offence under a provision of this Part in relation to any property, being money or any valuable security, it shall be sufficient to describe the property as a certain amount of money, or as a certain valuable security, as the case may be, without specifying any particular kind of money or security, and the description shall be sustained by proof of the offence in relation to any money or valuable security even where it is agreed that part of the value for that money or security has been returned, or such part was in fact returned.”.

Property of partners or joint owners

7. Section 373 of the Crimes Act is amended by omitting “, parceners,”.

8. After section 430 of the Crimes Act the following section is inserted:

Fine instead of imprisonment

“431. (1) Subject to sub-section (2), when imposing a penalty on a person in respect of an offence against Part IV, being an offence punishable by imprisonment for a period not exceeding 15 years, the Supreme Court may, if it considers a fine to be an appropriate penalty in all the circumstances of the case, impose a fine on the person in addition to or instead of sentencing the person to imprisonment.

“(2) A fine imposed pursuant to sub-section (1) in respect of an offence shall not exceed—

- (a) where the offence is punishable by imprisonment for a period exceeding 12 months but not exceeding 2 years—
 - (i) if the offender is a natural person—\$5,000; or
 - (ii) in any other case—\$25,000;
- (b) where the offence is punishable by imprisonment for a period exceeding 2 years but not exceeding 5 years—
 - (i) if the offender is a natural person—\$10,000; or
 - (ii) in any other case—\$50,000;

- (c) where the offence is punishable by imprisonment for a period exceeding 5 years but not exceeding 10 years—
 - (i) if the offender is a natural person—\$20,000; or
 - (ii) in any other case—\$100,000; and
- (d) where the offence is punishable by imprisonment for a period exceeding 10 years—
 - (i) if the offender is a natural person—\$30,000; or
 - (ii) in any other case—\$150,000.”.

Compensation to person aggrieved by an offence

9. Section 437 of the Crimes Act is amended by inserting “, other than an offence against a provision of Division 1 of Part IV or against section 131,” after “any offence”.

Abolition of common law offences

10. (1) The common law offences of larceny, robbery, burglary, receiving stolen property, obtaining property by threats, extortion by colour of office or franchise, false accounting by public officers, concealment of treasure trove, cheating and arson are abolished.

(2) Section 38 of the *Interpretation Ordinance 1967* applies in relation to the abolition by this Ordinance of the common law offences specified in sub-section (1) in the same manner as it applies in relation to the repeal of an Ordinance or part of an Ordinance.

Amendment of Married Women’s Property Act 1901

11. The Married Women’s Property Act 1901 of the State of New South Wales in its application to the Territory is amended by omitting sub-section 16 (3) and section 20.

Repeal of Imperial Acts

12. The following Imperial Acts shall cease to have any force or effect in the Territory:

- (a) 5 Ric.II, St. 1, c.7 (The Forcible Entry Act, 1381);
- (b) 15 Ric. II, c.2;
- (c) 8 Hen. VI, c.9 (The Forcible Entry Act, 1429);

- (d) 31 Eliz., c.11 (The Forcible Entry Act, 1588);
- (e) 21 James I, c.15 (The Forcible Entry Act, 1623).

Repeals

- 13. (1) The Second Schedule to the Crimes Act is repealed.
- (2) The Fourth Schedule to the Crimes Act is repealed.
- (3) Each provision of the Crimes Act specified in the Schedule is repealed.

SCHEDULE

Section 12

PROVISIONS OF THE CRIMES ACT REPEALED

Section 6, 7, 382, 383, 384, 385, 386, 387, 388, 389, 420, 438, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 526A, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 546, 550, 575.

NOTE

- 1. Notified in the *Commonwealth of Australia Gazette* on 13 September 1985.