

AUSTRALIAN CAPITAL TERRITORY.

No. 14 of 1951.

AN ORDINANCE

Relating to Crimes.

BE it ordained by the Deputy of the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act* 1909-1938 and the *Seat of Government (Administration) Act* 1910-1947, as follows:—

1. This Ordinance may be cited as the *Crimes Ordinance* 1951.* Short title.
2. In this Ordinance—
“the Crimes Act” means the Crimes Act, 1900 of the State of New South Wales in its application to the Territory. Definition.
3. The Crimes (Girls’ Protection) Act, 1910 of the State of New South Wales shall cease to apply to the Territory. Crimes (Girls’ Protection) Act 1910 to cease to apply.
4. Section one of the Crimes Act is amended—
(a) by omitting from the portion of that section relating to Part III. the words “(9) *Rape and similar offences.*—ss. 62-78” and inserting in their stead the words—
“(9) *Rape and similar offences.*—ss. 62-78g.”; Short title and contents of Act.
(b) by omitting from the portion of that section relating to Part III. the words “(13) *Abduction.*—ss. 86-91.” and inserting in their stead the words “(13) *Abduction and similar offences.*—ss. 86-91d.”; and
(c) by omitting from the portion of that section relating to Part XIV. the portion relating to Chapter I. of that Part and inserting in its stead the following:—
“Chapter I.—*Certain indictable offences punishable summarily.*—ss. 476-481.”.
5. Section sixty-four of the Crimes Act is repealed and the following section inserted in its stead:—
“64. Where on the trial of a person for rape, the jury are satisfied that—
(a) the female was a girl under the age of sixteen years, but above the age of ten years; and
(b) the accused had carnal knowledge of her, but with her consent,
they may acquit him of the rape charged and find him guilty of an offence under section seventy-one of this Act.” Trial for rape—verdict of carnal knowledge.

* Notified in the *Commonwealth Gazette* on 14th December, 1951.

6. Sections sixty-nine, seventy, seventy-one, seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight of the Crimes Act are repealed and the following sections inserted in their stead:—

Trial for carnal knowledge—girl in fact over ten.

“69. Where, on the trial of a person for carnally knowing a girl under the age of ten years, the jury are satisfied that—

(a) she was of or above that age, but under the age of sixteen years; and

(b) the accused had carnal knowledge of her,

they may acquit him of the offence charged and find him guilty of an offence under section seventy-one of this Act.

Trial for carnal knowledge—verdict of assault with intent.

“70. Where, on the trial of a person for carnally knowing a girl under the age of ten years, the jury are satisfied that—

(a) she was of or above the age of sixteen years; and

(b) the accused did not have carnal knowledge of her, but was guilty of an offence under section seventy-two of this Act,

they may acquit him of the offence charged and find him guilty of an offence under that section.

Carnally knowing a girl between ten and sixteen.

“71. A person who unlawfully and carnally knows a girl of or above the age of ten years but under the age of sixteen years is liable to penal servitude for ten years.

Attempts.

“72. A person who attempts unlawfully and carnally to know, or assaults with intent unlawfully and carnally to know, a girl of or above the age of ten years and under the age of sixteen years is liable to penal servitude for five years.

Carnal knowledge of idiot or imbecile.

“72A. A person who, knowing a woman or girl to be an idiot or imbecile, has, or attempts to have, unlawful carnal knowledge of her is liable to penal servitude for five years.

Carnal knowledge by teacher, &c.

“73. A teacher, father or step-father who unlawfully and carnally knows a girl of or above the age of ten years and under the age of seventeen years, being his pupil, daughter or step-daughter, is liable to penal servitude for fourteen years.

Attempts.

“74. A teacher, father or step-father who attempts unlawfully and carnally to know or assaults with intent unlawfully and carnally to know, a girl of or above the age of ten years and under the age of seventeen years, being his pupil, daughter or step-daughter, is liable to penal servitude for seven years.

Alternative charge.

“75. Nothing in the last two preceding sections prevents a teacher, father or step-father from being prosecuted under section seventy-one or seventy-two of this Act.

“76. A person who assaults a female and at the time of, or immediately before or after, the assault commits an act of indecency upon or in the presence of that female is liable to imprisonment for three years, or, if the female is under the age of sixteen years, to penal servitude for five years. Indecent assault.

“77. It is a defence to a charge under section seventy-one or seventy-two of this Act, or, if the female is under the age of sixteen years, to a charge under section seventy-six of this Act, if it appears to the court or jury that, at the time of the alleged offence— Defences.

- (a) the female was over the age of fourteen years;
- (b) she consented to the commission of the offence; and
- (c) either—
 - (i) she was a common prostitute or an associate of common prostitutes; or
 - (ii) the person charged had reasonable cause to believe, and did believe, that she was of or above the age of sixteen years.

“77A. The consent of the woman, girl, pupil, daughter or step-daughter is no defence to a charge under section sixty-seven, sixty-eight, seventy-one, seventy-two, seventy-two A, seventy-three, or seventy-four of this Act, or, if the female is under the age of sixteen years, to a charge under section seventy-six of this Act. Consent no defence in certain cases.

“78. If the girl was, at the time of the alleged offence, over the age of fourteen years and under the age of sixteen years, no prosecution under section seventy-one, seventy-two or seventy-six of this Act shall be commenced after the expiration of twelve months from the time of the alleged offence. Limitation.

“78A. A male who has carnal knowledge of his mother, sister, daughter or granddaughter (whether the relationship is of half-blood or full blood, or is or is not traced through lawful wedlock) is liable to penal servitude for seven years. Incest by male.

“78B. A male who attempts to commit an offence under the last preceding section is liable to imprisonment for two years. Incest by male, attempts.

“78C. A female who, with her consent, permits her grandfather, father, brother or son to have carnal knowledge of her (whether the relationship is of half-blood or full blood, or is or is not traced through lawful wedlock) is liable to penal servitude for seven years. Incest by female.

“78D.—(1.) It is a defence to a charge under any of the last three preceding sections that the person charged did not know that the person with whom the offence is alleged to have been committed was related to him or her, as alleged. Defences.

“(2.) The consent of the person with whom the offence is alleged to have been committed is no defence to a charge under section seventy-eight A or seventy-eight B of this Act.

Removal from
guardianship,
&c.

“78E. On the conviction of a father or step-father of an offence under section seventy-three or seventy-four of this Act or of a male of an offence under section seventy-two A, seventy-eight A or seventy-eight B of this Act, the court may—

(a) divest the offender of all authority over the female with whom the offence is committed or, if the offender is her guardian, remove the offender from that guardianship; and

(b) appoint a person or persons to be her guardian or guardians during her minority, or for a greater or less period.

Rape or
attempt—
verdict of
incest or
attempt.

“78F. Where on the trial of a male for an offence under section sixty-three or sixty-five of this Act, the jury are not satisfied that he is guilty of the offence charged, but are satisfied that he is guilty of an offence under section seventy-eight A or seventy-eight B of this Act, they may acquit him of the offence charged and find him guilty of an offence under section seventy-eight A or seventy-eight B of this Act.

Sanction of
Attorney-
General.

“78G.—(1.) A prosecution for an offence under section seventy-eight A, seventy-eight B or seventy-eight C of this Act shall not be commenced without the sanction of the Attorney-General.

“(2.) All proceedings under section seventy-eight A, seventy-eight B or seventy-eight C of this Act shall be held *in camera*.”

7. Section eighty-five of the Crimes Act is repealed and the following section inserted in its stead:—

Concealment
of birth.

“85.—(1.) A person who wilfully conceals or attempts to conceal the birth of a child by disposing of its dead body, whether the child died before, after or during its birth, is liable to imprisonment for two years.

“(2.) It is a sufficient defence to a charge under this section if the accused person satisfies the court or jury that the dead body in respect of which the disposition took place had issued from the body of its mother before the expiration of the twenty-eighth week of pregnancy.”

8. After section ninety-one of the Crimes Act the following sections are inserted:—

Procuring, &c.
female under
twenty-one.

“91A. A person who procures, entices or leads away a female under the age of twenty-one years, whether with her consent or not, with intent that another person carnally know her, either within or without the Territory, is, notwithstanding that any of the acts constituting the offence is committed outside the Territory, liable to penal servitude for seven years.

“91b. A person who, by means of fraud, violence, threat or abuse of authority, or by the use of drugs or intoxicating liquor, procures, entices or leads away a female of or above the age of twenty-one years with intent that another person carnally know her, either within or without the Territory, is, notwithstanding that any of the acts constituting the offence is committed outside the Territory, liable to penal servitude for ten years.

Procuring female by drugs, &c.

“91c. A male who—

(a) has been convicted under the Vagrancy Act, 1902 of the State of New South Wales in its application to the Territory, or under an Act, applying to the Territory, which amends or replaces that Act, of an offence of knowingly living, wholly or in part, on the earnings of prostitution; and

Male living on earnings of prostitution.

(b) afterwards commits that offence,

is liable to imprisonment for three years.

“91d. A person who employs in, or knowingly allows to resort to be or be upon, premises used as a brothel or house of ill-fame, a girl under the age of eighteen years, is liable to penal servitude for five years.”

Employment, &c., in brothel of girl under eighteen.

9. After section one hundred and eighty-nine of the Crimes Act the following section is inserted:—

“189A.—(1.) A person who, without lawful excuse, receives or has in his possession any property stolen outside the Territory, knowing the same to have been stolen, is liable to penal servitude for ten years.

Receiving, &c., goods stolen out of New South Wales.

“(2.) For the purposes of this section, property shall be deemed to have been stolen if it has been taken, extorted, obtained, embezzled, converted, or disposed of under such circumstances that if the act had been committed in the Territory the person committing it would have been guilty of an indictable offence under the law of the Territory.

“(3.) A person is not liable to conviction under this section if the taking, extorting, obtaining, embezzling, converting, or disposing is not a criminal offence in the place in which the act is committed.

10. Section four hundred and twenty-nine of the Crimes Act is repealed and the following section inserted in its stead:—

“429.—(1.) Where a person under the age of sixteen years is convicted on indictment of an offence under this Act, the court may—

Court may release juvenile offender on recognizance.

(a) abstain from passing sentence upon him if he enters into a recognizance with sureties that he will—

(i) appear and receive sentence if, within three years, he is so required; and

(ii) keep the peace and be of good behaviour for that period; or

- (b) direct that, instead of, or in addition to, any sentence, he be sent, forthwith or at the expiration of his sentence, to an institution in the State of New South Wales for the reception, detention and maintenance of children in pursuance of the provisions of the *Child Welfare Agreement Ordinance 1941*.

“(2.) Where a person of or above the age of sixteen years and under the age of eighteen years is convicted—

- (a) of an offence under section seventy-one, seventy-two or seventy-six of this Act, and the jury are satisfied that the girl in question was at the time of the offence of or above the age of fourteen years and under the age of sixteen years; or
- (b) of an offence under section seventy-two A, seventy-eight A or seventy-eight B,

he may be dealt with in the manner provided by the last preceding sub-section or under the provisions of sections thirty, thirty-one, thirty-two and thirty-three of the *Neglected Children and Juvenile Offenders Act, 1905* of the State of New South Wales in its application to the Territory, as amended by the *Juvenile Offenders Ordinance 1941*.”.

11. Chapter I. of Part XIV. of the Crimes Act is repealed and the following Chapter inserted in its stead:—

“CHAPTER I.—*Certain indictable offences punishable summarily.*

“476.—(1.) Where a person is charged before a court of summary jurisdiction with an offence mentioned in the next succeeding section, and the evidence for the prosecution is, in the opinion of the court, sufficient to put the accused on his trial, but it appears to the court that the case may properly be disposed of summarily, the court shall, if the subject-matter of the charge, or the value of the property involved, does not exceed One hundred pounds, have jurisdiction to hear and determine the charge in a summary manner, and pass sentence upon the person so charged.

“(2.) The jurisdiction conferred by this section may be exercised without the consent of the accused, but the court shall not have jurisdiction to hear and finally determine a charge if it appears to the court that the offence, having regard to its seriousness or the intricacy of the facts or the difficulty of any questions of law likely to arise at the trial, or any other relevant circumstances, ought to be tried by the Supreme Court.

“477. The offences referred to in the last preceding section are—

- (a) attempting to commit suicide;
- (b) concealment of birth where the accused is the mother of the child, and is not charged jointly with any other person;

Extent of
jurisdiction.

List of
offences
within
jurisdiction.

- (c) simple larceny;
- (d) escaping from lawful custody;
- (e) stealing any chattel, money or valuable security from the person of another;
- (f) an offence mentioned in any of the following sections of this Act, namely, sections one hundred and twenty-five, one hundred and twenty-six, one hundred and thirty-one, one hundred and thirty-two, one hundred and thirty-three, one hundred and thirty-four, one hundred and thirty-nine, one hundred and forty, one hundred and forty-four, one hundred and forty-seven, one hundred and forty-eight, one hundred and fifty, one hundred and fifty one, one hundred and fifty-two, one hundred and fifty-four, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-five, one hundred and sixty-six, one hundred and sixty-eight, one hundred and sixty-nine, one hundred and seventy-nine, one hundred and eighty-six, one hundred and eighty-eight, one hundred and eighty-nine, one hundred and ninety, one hundred and ninety-two, two hundred and eight, two hundred and sixteen, two hundred and seventeen, two hundred and eighteen, two hundred and nineteen, two hundred and twenty, two hundred and forty-four, two hundred and forty-five, two hundred and forty-six, two hundred and forty-seven, two hundred and forty-eight, two hundred and seventy-three, two hundred and seventy-four and two hundred and seventy-five; and
- (g) attempting to commit an offence mentioned in this section.

“478. Where a person is convicted of an offence by virtue of this chapter, he is liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding Fifty pounds or if he is, in the opinion of the court, under sixteen years of age, to imprisonment for a term not exceeding three months or to a fine not exceeding Ten pounds. Punishment in such cases.

“480. In any such case, if the case is dismissed, the magistrate or magistrates shall, if requested, make out, and deliver to the person charged, a certificate under his hand or their hands stating the fact of the dismissal. Certificate of dismissal.

“481. A conviction in pursuance of this chapter has the same effect as a conviction upon indictment for the offence would have had, and a person who is convicted, or a charge against whom is dismissed, in pursuance of this chapter is not afterwards liable to prosecution for the same cause.” Summary conviction or dismissal a bar to indictment.

12. Section five hundred and fifty-four of the Crimes Act is repealed and the following section inserted in its stead:—

Hard or light
labour.

“554.—(1.) Where imprisonment is awarded by a court of summary jurisdiction for an offence punishable under this Act or any other law of the Territory, the court may direct that the offender be imprisoned in any gaol, with either hard labour or light labour.

Recognizance
for good
behaviour.

“(2.) A court of summary jurisdiction may, in addition to, or in substitution for, any sentence imposing a fine or of imprisonment, require the offender to enter into a recognizance, with or without a surety or sureties, to be of good behaviour for a term which shall not be less than twelve months or more than three years, and may direct that, in default of entering into the recognizance, the offender be imprisoned, or further imprisoned, for a period not exceeding three months, unless the recognizance is sooner entered into, but so that the total term of the imprisonment and further imprisonment shall not together exceed twelve months.

Damages and
compensation.

“(3.) Where a person is convicted of an offence by a court of summary jurisdiction, the court may, at the time of the conviction, or at any time thereafter upon notice given to the offender, direct that a sum not exceeding Fifty pounds be paid to any person aggrieved by way of compensation for injury or loss sustained by reason of the commission of the offence.

“(4.) Any sum so directed to be paid shall be paid by the offender to the Clerk of the Court, to be paid by him to the person aggrieved.

“(5.) A direction under this section shall be deemed to be a conviction or order whereby a sum of money is adjudged to be paid within the meaning of the *Court of Petty Sessions Ordinance 1930-1951*.”

Security for
performance
of order.

13. Section five hundred and fifty-nine of the Crimes Act is amended by omitting sub-section (2.) and inserting in its stead the following sub-section:—

“(2.) The Court may also, if it thinks fit, require the offender to give security for the performance of any such order, or may direct that the recognizance mentioned in sub-section (2.) of section five hundred and fifty-eight of this Act shall be further conditioned that the offender shall perform any order made or any directions given under sub-section (1.) of this section and may in the sentence passed upon the offender sentence him to such additional terms as to the Court may seem fitting to be served by him in the event of his failure to give that security or to comply with that condition of the recognizance, and may make the discharge of the offender from custody conditional upon such security being given or recognizance so conditioned being entered into.”

14. Section five hundred and sixty-one of the Crimes Act is repealed and the following section inserted in its stead:—

“561.—(1.) If, during the period specified in the recognizance, an offender so discharged—

Forfeiture of
recognizance,
&c.

- (a) is proved to the Judge of the Supreme Court or a magistrate to have failed to comply with a condition of the recognizance or to report his address and occupation to the person, at the times and in the manner prescribed by the last preceding section;
- (b) is charged by an officer of police with getting his livelihood by dishonest means, and, upon his being brought before a magistrate, it appears to the magistrate that there are reasonable grounds for believing that he is getting his livelihood by dishonest means;
- (c) on being charged with an offence punishable on indictment or summary conviction, and on being required by the magistrate or magistrates before whom he is charged to give his name and address, refuses to do so, or gives a false name or false address; or
- (d) is convicted of an indictable offence, or an offence punishable on summary conviction for which imprisonment for a period exceeding one month may be imposed,

the Judge, magistrate or magistrates before whom the proof is given, or before whom the offender is so charged or convicted, may, whether the period named in the recognizance has or has not expired, forfeit the recognizance, and may direct him to be committed to prison to perform his sentence or so much thereof as remains to be performed, and he shall be so committed accordingly, and the Judge, magistrate or magistrates may grant any necessary warrant for his committal.

“(2.) Upon the production of a certificate under the hand of the Clerk of the Court of Petty Sessions stating that the recognizance is liable to be forfeited or that the offender is liable to be committed to prison, the Judge of the Supreme Court may exercise all or any of the powers vested by the last preceding sub-section in the magistrate or magistrates therein mentioned.”

Dated this fourteenth day of December, 1951.

J. NORTHCOTT

Deputy of the Governor-General.

By His Excellency's Command,

J. A. SPICER

for and on behalf of the Minister
of State for the Interior.

By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.
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