

AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Ordinance (No. 4) 1986

No. 57 of 1986

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 25 September 1986.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
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) 1986*.¹

The Crimes Act

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.

Repeal of sections 121, 122 and 123

3. Sections 121, 122 and 123 of the Crimes Act are repealed.

Defacing premises

4. Section 131 of the Crimes Act is amended by omitting sub-section (3).

5. After section 431 of the Crimes Act the following section is inserted:

Theft of motor vehicle—cancellation of licence

“432. (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 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 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.”.

6. Section 437 of the Crimes Act is repealed and the following section substituted:

Restitution orders

“437. (1) Where—

- (a) a person is convicted of an offence against a law of the Territory;
- (b) a person is charged with an offence against a law of the Territory 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 has been taken into account in passing sentence upon a person,

then, in addition to imposing a penalty on, or otherwise dealing according to law with, the person (in this section called the ‘offender’) the court may order

the offender to make reparation to any person, by means of a payment of money or otherwise, in respect of any loss suffered or any expense incurred by that person as a direct result of the commission of the offence.

“(2) Without limiting the generality of sub-section (1), where an offence referred to in sub-section (1) relates to stolen property, the court may, subject to the following sub-sections, make any of the following orders:

- (a) an order that any person having possession, custody or control of the stolen 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 offender any other property directly or indirectly representing the stolen property (as being the proceeds of any disposal or realisation of the stolen property or of property directly or indirectly representing the stolen property)—an order that the property be delivered or transferred to the applicant;
- (c) on the application of a person who, if the stolen property were in the possession of the offender, would be entitled to recover it from the offender—an order that an amount not exceeding the value of the stolen property be paid to the applicant by the offender.

“(3) A person is not entitled to recover, pursuant to orders made under this section in respect of stolen property, amounts that, in the aggregate, exceed the value of the property.

“(4) Where the court makes an order under paragraph (2) (a) for the restoration of any property and it appears to the court that the offender has sold the property to a purchaser who was 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 the offender to pay the applicant 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.

“(5) 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 to be paid pursuant to the order, or each instalment as it falls due, as the case requires, is a debt due to the person in whose favour the order is made.

“(6) An order shall not be made 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.

“(7) 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.

“(8) Subject to section 556, nothing in this section shall be construed as abolishing or affecting any cause of action which any person may have to recover damages for, or to be indemnified against, any loss suffered or expense incurred, but in any proceedings in relation to that cause of action the court shall have regard to any amount paid in pursuance of an order under this section.

“(9) In this section, ‘loss’ and ‘stolen property’ have the same respective meanings as in Division I of Part IV.”.

Provision for passing sentences of less duration than those fixed

7. Section 442 of the Crimes Act is amended by omitting from sub-section (2) all the words after “prevent” and substituting “the directing of the offender to enter into recognizances to keep the peace and be of good behaviour, nor the making of any orders under this Act or under another law of the Territory.”.

8. Sections 443 and 444 of the Crimes Act are repealed and the following section substituted:

Cumulative sentences

“443. (1) Where a person who is convicted of an offence against a law of the Territory—

- (a) is, at the time of his or her conviction, serving a term of imprisonment for another offence (whether against a law of the Commonwealth or of a State or Territory); or
- (b) has been sentenced to serve a term of imprisonment (otherwise than in default of the payment of a fine) for another offence (whether against a law of the Commonwealth or of a State or Territory), but has not, at

the time of his or her conviction for the first-mentioned offence, begun to serve the term of imprisonment,

the court before which the person was convicted of the first-mentioned offence may order that the person shall begin serving any term of imprisonment imposed on the person in respect of the first-mentioned offence (including a term of imprisonment in default of the payment of a fine imposed on the person for the first-mentioned offence) immediately after serving the term of imprisonment referred to in paragraph (a) or (b) as the case requires.

“(2) Where a court commits a person sentenced to a term of imprisonment to prison pursuant to paragraph 556C (4) (e), with or without varying the sentence, the court may order that the person shall begin serving the term immediately after serving another term of imprisonment imposed on the person by that or another court.

“(3) Where a person has been convicted of 2 or more offences against laws of the Territory, and the person is sentenced (whether or not by the court by which the person was convicted) to—

- (a) 2 or more terms of imprisonment for the offences;
- (b) a term or terms of imprisonment for one or more of the offences and a term or terms of imprisonment in default of the payment of a fine or fines imposed for the other offence or offences; or
- (c) 2 or more terms of imprisonment in default of the payment of fines imposed for the offences,

the court may order that all or some of the sentences shall be cumulative.

“(4) Where, pursuant to sub-section (3), a court directs that 2 or more sentences shall be cumulative, they shall take effect one after the other as the court directs or, in default of any direction, in accordance with the sequence in which the convictions are recorded.

“(5) Where—

- (a) a person is convicted of an offence against a law of the Territory; and
- (b) the person is sentenced to a term of imprisonment for the offence and also to a term of imprisonment in default of the payment of a fine imposed for the offence,

the court may order that the person shall begin serving the term of imprisonment in default of the payment of the fine immediately after serving the other term of imprisonment.

“(6) A reference in this section to a fine shall be read as including a reference to a pecuniary penalty, an amount in respect of costs or any other amount ordered to be paid by an offender for or in respect of an offence.”.

Repeal of sections 447 and 554

9. Sections 447 and 554 of the Crimes Act are repealed.

Conditional release of offenders without proceeding to conviction

10. Section 556A of the Crimes Act is amended—

- (a) by omitting from paragraph (1) (a) “the Magistrates Court” and substituting “a court of the Territory”;
- (b) by omitting from sub-section (1) “Court” (wherever occurring) and substituting “court”;
- (c) by omitting from sub-paragraph (1) (d) (i) “and”;
- (d) by adding at the end of paragraph (1) (d) the following word and sub-paragraph:
“; and (iii) the condition that the offender will comply with an order made pursuant to section 437.”;
- (e) by omitting from sub-section (2) all the words from and including “Magistrates Court” and substituting “court by which the person was discharged at a time specified in the summons and show cause why the person should not be dealt with by that court under this section, or, if the information is laid on oath, may issue a warrant for the arrest of the person and for the person to be brought before that court to be dealt with under this section.”;
- (f) by omitting from sub-section (3) “Magistrates Court on summons or warrant issued under the last preceding sub-section, the Court may” and substituting “court by which the person was discharged on summons or warrant issued under sub-section (2), the court may”;
- (g) by omitting from sub-section (3) “Court would” (wherever occurring) and substituting “court would”; and
- (h) by omitting from sub-section (5) all the words from and including “by the Court” to and including “against him,” and substituting “under sub-section (3) the court may, in addition to imposing a penalty on the person or making an order against the person,”.

Conditional release of offenders

11. Section 556B of the Crimes Act is amended—

- (a) by omitting from sub-sub-paragraph (1) (a) (ii) (A) “and”;
- (b) by adding at the end of sub-sub-paragraph (1) (a) (ii) (B) the following sub-sub-paragraph:
 - “(C) the condition that the offender will comply with an order made pursuant to section 437; and”.
- (c) by omitting from sub-paragraph (1) (a) (iii) “if any (being a penalty not exceeding the prescribed penalty)” and substituting “(if any)”;
- (d) by omitting sub-section (4); and
- (e) by omitting sub-section (7) and substituting the following sub-section:
 - “(7) The maximum amount of the penalty that a court may specify in respect of an offence in an order made under sub-section (1) in relation to a person is—
 - (a) where the offence is punishable by a fine—the amount of the maximum fine that the court is empowered to impose on the person for the offence; or
 - (b) where the offence is not punishable by a fine—
 - (i) in the case of the Supreme Court—\$10,000; or
 - (ii) in the case of the Magistrates Court—\$2,000.”.

Directions to perform work

12. Section 556G of the Crimes Act is amended—

- (a) by omitting from sub-section (1) “imposing any other penalty or otherwise dealing with him” and substituting “sentencing the person to imprisonment”;
- (b) by omitting from paragraph (2) (d) “the person” and substituting “an offender”;
- (c) by omitting from paragraph (2) (d) “or” (last occurring); and
- (d) by adding at the end of sub-section (2) the following paragraphs:
 - “(f) to impose a fine upon an offender; or

- (g) to make an order in respect of an offender pursuant to paragraph 556B (1) (a).”.

Obligations of offender and consequences of failure to comply

13. Section 556K of the Crimes Act is amended—

- (a) by omitting from sub-section (7) “offender” and substituting “person”;
and
- (b) by omitting from sub-section (7) all the words after “the court shall”
and substituting the following:
 - “have regard to—
 - (a) any work performed by that person pursuant to the
community service order;
 - (b) any fine imposed on the person in respect of that offence;
and
 - (c) any other order made in respect of the person in relation to
that offence.”.

***Magistrates Court Ordinance 1930*—repeal of section 146**

14. Section 146 of the *Magistrates Court Ordinance 1930* is repealed.

Savings

15. Notwithstanding the amendments made by sections 8, 9 and 14, sections 443, 444, 447 and 554 of the Crimes Act and section 146 of the *Magistrates Court Ordinance 1930*, being those sections as in force immediately before the commencement of this Ordinance, continue to apply in relation to proceedings instituted before that commencement as if they had not been repealed.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 3 October 1986.