

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

CRIMES (AMENDMENT) ORDINANCE 1990

Ordinance No. 1, 1990

Subsection 12(1) of the Seat of Government (Administration) Act 1910 provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory.

The Ordinance amends the Crimes Act, 1900 of the State of New South Wales in its Application to the Australian Capital Territory (the Act) by inserting a regime for the enforcement of restitution orders which prevails over the more general provisions already contained in the Magistrates Court Ordinance 1930 and elsewhere. This regime:

- . applies to orders made in both the Supreme Court and Magistrates Court;
- . removes the remedy of imprisonment for the enforcement of restitution orders;
- . provides that the enforcement of money orders will be along the lines of that available under the Magistrates Court Ordinance;
- . in the case of orders for the return of property or for the performance of services, gives to the beneficiary of the order the right to apply for conversion of the order to a money order.

Details of the Ordinance are:

Section 1 This gives the short title of the Ordinance.

Section 2 This is definitional.

Section 3 This section amends section 437 of the Act by:

(a) omitting the former subsection (5) and substituting new subsections (5) to (5F) as follows:

- . new subsection (5) confers on the beneficiary of an order for the return of property or an order for the performance of services a right to apply for the conversion of the order into a money order in the event of breach;
- . new subsection (5A) provides that the court may make an order for the payment of money in the event of the breach of a non-money order;

- . new subsection (5B) provides that the court may order payment by instalments and that the offender may be required to give security;
  - . new subsection (5C) applies sections 249 to 253 (inclusive) of the Magistrates Court Ordinance 1930 in relation to security referred to in new subsection (5B);
  - . new subsection (5D) provides that in the event of any default in the payment of an order by instalments the total amount outstanding becomes due;
  - . new subsection (5E) provides that an order under this section may have effect as if it were a final judgment of the court;
  - . new subsection (5F) provides that notwithstanding any other enactment, the sanction of imprisonment shall not be available for breach of restitution order except where the order was a condition of discharge under section 556A or release under section 556B of the Act:
- (b) amending subsection (8) to expressly preserve the right to proceed in detinue where the offender breaches an order to return property to another.

Section 4 This section repeals section 457 of the Act as it is no longer necessary to require the keeping of a register of restitution orders and the deeming of such orders as judgments of the court is now merged into section 437.

Section 5 This section amends the Magistrates Court Ordinance 1930 by removing the sanction of imprisonment for breach of a restitution order.

Section 6 This section provides that the new enforcement mechanism should also apply to restitution orders made before commencement of this Ordinance.

Attorney-General