

EXPLANATORY STATEMENT

Crimes (Amendment) Ordinance (No 4) 1986

No 57, 1986

This Ordinance is part of the ongoing review of the criminal laws of the ACT and amends the Crimes Act, 1900 (NSW) in its application to the Australian Capital Territory (Crimes Act, 1900), by:

- (a) replacing section 437 with a new provision that provides that a court may order a person convicted of an offence to pay reparation to any person who suffered loss or damage as a result of the commission of the offence;
- (b) replacing sections 444 and 447 with a new provision in relation to the imposition of cumulative sentences in the A.C.T. The new provision is in similar terms to section 19 of the Crimes Act 1914;
- (c) amending section 556A so that the Supreme Court can also require offenders to enter into recognizances to be of good behaviour. Previously the section only applied to Magistrates Courts.
- (d) amending section 556B so that the Court can release an offender on condition that he or she comply with a reparation order made pursuant to the new section 437. The section is also amended by increasing the level of penalties that may be imposed where a Court makes an order under this section;
- (e) amending section 556G so that the power of a court to order a person to perform work does not affect the power of the court to fine or release the person subject to conditions made pursuant to section 556B.

Details of the proposed Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Crimes (Amendment) Ordinance (No.4) 1986.

Section 2 is an interpretation provision which defines the term 'the Crimes Act'.

Section 3 repeals sections 121 and 122 of the Crimes Act 1900. These provisions are reinserted by section 4 of this Ordinance. The section also repeals section 123 which is reinserted by section 5 of this Ordinance. As the latter section relates to sentencing it has been moved out of Part IV which relates to property offences and has been inserted into Part XII which relates to sentencing.

Section 4 repeals sub-section 131(3) as the new section 437 provides for restitution where a person is convicted of an offence of defacing premises under section 131.

Section 5 Inserts a new section 432 in similar terms to section 123 which is repealed by section 3. The new section makes provision for the cancellation of a driving licence of a person convicted of stealing a motor vehicle, or of taking a motor vehicle without lawful authority contrary to sub-section 120(1).

Section 6 repeals and replaces section 437 of the Crimes Act 1900. The new section 437 removes the \$1000 upper limit a Court could previously award against an offender in relation to any loss or damage suffered by another person as a direct result of the offenders criminal conduct. The new section provides as follows:

Sub-section (1): provides that a court may order an offender to make reparation to any person who has suffered any loss or incurred any expenses as a direct result of the criminal conduct of the offender. An order under this sub-section can be made upon a conviction, where a person is charged with an offence but the charge is dismissed pursuant to sub-section 556A(1), or where an offence is taken into account in passing sentence on a person pursuant to section 448.

Sub-section (2): provides that where an offence relates to stolen property the court may order,

- . any person having possession of stolen property to restore it;
- . that property directly or indirectly representing the stolen property by delivered to the person entitled to recover the stolen property, or;
- . that an amount equal in value to the stolen property be paid to the person entitled to recover the stolen property.

Sub-section (3): ensures that a person cannot recover an amount that exceeds the value of the property stolen.

Sub-section (4): provides that in cases where stolen property is in the possession of a person who purchased the property in good faith from the offender and the Court makes an order under sub-section (2), the purchaser may seek an order for reparation from the offender. The sub-section also applies where the offender has borrowed money on the security of the stolen property.

Sub-section (5): provides that a Court may order that reparation payments be made by instalments and that a reparation order is a debt due to the person in whose favour the order is made.

Sub-section (6): sets out the evidence the Court is to have regard to in making a reparation order.

Sub-section (7): defines the term 'available documents' for the purpose of sub-section (6).

Sub-section (8): preserves any other course of action a person may have to recover damages but, where such other cause of action is taken the Court is to have regard to any reparation order made pursuant to this section.

Sub-section (9): is an interpretation provision.

Section 7 amends section 442 of the Crimes Act 1900 to remove references to 'hard labour' and 'solitary confinement'. These terms are no longer of any relevance to ACT offenders.

Section 8 repeals the provisions of the Crimes Act 1900 relating to cumulative sentences (sections 443, 444) and replaces them with a new section 443. The new section is in similar terms to section 19 of the Crimes Act 1914 and provides as follows:

Sub-section (1); provides that where a person is convicted of an offence and that person is also serving a sentence for a previous conviction or, has previously been sentenced but has not begun to serve that sentence, the court may order that the sentence for the subsequent conviction be served at the expiry of service of the term of imprisonment imposed in respect of the earlier offence;

Sub-section (2): provides that where a person has had their sentence suspended, and that suspension is revoked, then the court may order that the revived sentence be served at the same time or at the expiry of any other term of imprisonment the person is liable to;

Sub-section (3): provides that where a person is convicted of 2 or more offences and that person is sentenced to imprisonment or imprisonment in default of the payment of a fine in respect of those offences the court may order that all or some of the sentences be cumulative;

Sub-section (4): provides that cumulative sentences shall be served in the order determined by the court, or, where no order is specified, in the sequence in which the sentences are recorded;

Sub-section (5): provides that where a person is convicted of an offence and the court imposes a term of imprisonment as well as a sentence in default for payment of a fine the court may order the term of imprisonment in default of a fine be cumulative to the other term of imprisonment;

Sub-section (6): provides that a reference to a fine includes a reference to a pecuniary penalty.

Section 9 repeals sections 447 and 554 of the Crimes Act 1900. Section 447 is replaced by the new section 443 to be inserted by section 8 and the provisions of section 554 are covered by section 556B.

Section 10 amends section 556A (conditional release of offenders without proceeding to a conviction) of the Crimes Act 1900 to allow the provisions of that section to be used by the Supreme Court.

Section 11 amends section 556B (conditional release of offenders) of the Crimes Act 1900 in the following ways;

- by adding a further condition of complying with a order made under section 437 to the types of conditions that a court may already impose on the offender and
- increasing the maximum amount of penalty a court can impose under this section. These penalties are consistent with those in sub-section 20(5) of the Crimes Act 1914.

Section 12 amends section 556G (Directions to perform work) of the Crimes Act 1900 to provide that the power of the court to order a person to perform work does not affect the power of the court to fine the person or to make an order releasing the person pursuant to paragraph 556B(1)(a) without passing sentence, with or without conditions.

Section 13 is consequential to the amendment contained in section 12 and expands the matters the court may take into account in sentencing a person where a community service order is revoked.

Section 14 repeals section 146 of the Magistrates Ordinance as a consequence of the new section 443 to be inserted by section 8.

Section 15 is a savings provision.

By the Authority of
the Attorney-General