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CRIMINAL LAW AMENDMENT ORDINANCE 1939-1960.*

An Ordinance to amend "The Criminal Law Consolidation Act, 1876" of the State of South Australia, in its application to the Northern Territory, and for other purposes.

Short title.
Short title
amended:
No. 17, 1938,
s. 4.

1. This Ordinance may be cited as the *Criminal Law Amendment Ordinance 1939-1960*.*

Repeal.

2. The *Crimes Ordinance 1928-1934* is repealed.

Definitions.
Amended by
No. 17, 1960,
s. 2.

3. In this Ordinance, unless the contrary appears—
"the Act" means "The Criminal Law Consolidation Act, 1876", of the State of South Australia, in its application to the Northern Territory.

Amendment of
the Act.

4. The Act is amended as set out in the Schedule to this Ordinance.

Construction of
Acts as to
punishments.

5. In the construction of the Act as amended by this Ordinance and of "The Criminal Law Consolidation Amendment Act, 1885" and "The Criminal Law Amendment Act, 1902" of the State of South Australia, in their application to the Territory, it is to be taken that, except where it is otherwise expressly provided—

- (a) a person liable to imprisonment for life, either with or without hard labour, may be sentenced to similar imprisonment for a shorter term;
- (b) a person liable to imprisonment, either with or without hard labour, may be sentenced to pay a fine not exceeding Five hundred pounds in addition to, or instead of, such imprisonment;

* The *Criminal Law Amendment Ordinance 1939-1960* comprises the *Criminal Law Amendment Ordinance 1939* as amended. Particulars of the Principal Ordinance and of the amending Ordinances are set out in the following table:—

Ordinance.	Number and Year.	Date notified in Commonwealth Gazette.	Date of Assent by Administrator.	Date of Notification of Governor-General's Assent in N.T. Govt. Gazette.	Date of Commencement.
<i>Criminal Law Amendment Ordinance 1939</i>	No. 17, 1939	27th July, 1939	..	..	27th July, 1939
<i>Criminal Law Amendment Ordinance 1940</i>	No. 19, 1940	31st October, 1940	..	..	31st October, 1940
<i>Criminal Law Amendment Ordinance 1956</i>	No. 25, 1956	..	28th June, 1956	..	9th August, 1956
<i>Criminal Law Amendment Ordinance 1960</i>	No. 17, 1960	..	..	9th November, 1960	9th November, 1960

- (c) a person sentenced on conviction upon indictment to pay a fine may be sentenced to be imprisoned until the fine is paid, in addition to any other punishment to which he is sentenced:

Provided that the imprisonment for non-payment of the fine shall not extend for a term longer than two years, and shall not, together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine;

- (d) a person convicted upon indictment of an offence not punishable with death may, instead of, or in addition to, any punishment to which he is liable, be ordered to enter into his own recognizance, with or without sureties, in such amount as the Court thinks fit, that he shall keep the peace and be of good behaviour for a time to be fixed by the Court, and may be ordered to be imprisoned until such recognizance, with sureties if so directed, is entered into:

Provided that the imprisonment for not entering into the recognizance shall not extend for a term longer than one year, and shall not, together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine; and

- (e) when a person is convicted of any offence not punishable with death, the Court may, instead of passing sentence, discharge the offender upon his entering into his own recognizance, with or without sureties, in such sum as the Court thinks fit, conditioned that he shall appear and receive judgment at some future sittings of the Court or when called upon.

6. Section five of the Act is amended by inserting, before the word "Whosoever", the words "Subject to the provisions of this Act,". Saving as to penalty for murder.

7. Section six of the Act is amended—

- (a) by adding at the end thereof the following proviso:—

"Provided that, where an aboriginal is convicted of murder, the Court shall not be obliged to pronounce sentence of death but, in lieu

Sentence for murder.

thereof, may impose such penalty as, having regard to all the circumstances of the case, appears to the Court to be just and proper.”; and

- (b) by adding, after the proviso referred to in paragraph (a) of this section, the following sub-section:—

“(2.) The Governor-General, acting with the advice of the Attorney-General, may order that the execution of any sentence of death shall be postponed for such period (not exceeding twenty-eight days at any one time) as he thinks fit, and thereupon the execution of the sentence shall be postponed accordingly.”.

8. After section six of the Act the following section is inserted:—

Evidence to be considered where aboriginal convicted of murder.

“ 6A. For the purpose of determining the nature and extent of the penalty to be imposed where an aboriginal is convicted of murder, the Court shall receive and consider any evidence which may be tendered as to any relevant native law or custom and its application to the facts of the case and any evidence which may be tendered in mitigation of penalty.”.

Inserted by No. 19, 1940, s. 2.

8A. After section sixteen of the Act the following section is inserted:—

Causing death by negligent driving.

“ 16A.—(1.) Any person who—

- (a) drives a motor vehicle in a culpably negligent manner, or recklessly, or at a speed, or in a manner, which is dangerous to the public; and

- (b) by such negligence, recklessness, or other conduct, causes the death of any person,

shall be guilty of a misdemeanour.

Penalty: Imprisonment for seven years or a fine of Two hundred and fifty pounds or both.

“(2.) Sub-section (1.) of this section shall be deemed to create a single offence, and no objection shall be taken to an information for such offence alleging that the defendant did drive a motor vehicle ‘in a culpably negligent manner, or recklessly, or at a speed, or in a manner, which was dangerous to the public’ on the ground of duplicity or uncertainty.

“(3.) ‘Motor vehicle’ includes any motor car, motor carriage, automobile, motor cycle, or other vehicle or carriage driven or propelled or ordinarily capable of being driven or

propelled either partly or wholly by any volatile spirit, steam, or electricity, or by means other than animal power, but does not include any vehicle run upon a railway or tramway.

“(4.) This section shall not take away the liability of any person to be prosecuted for or found guilty of murder or manslaughter, or affect the punishment which may be imposed for manslaughter:

Provided that a person who has been convicted or acquitted of an offence under this section shall not afterwards be prosecuted for manslaughter on the same or substantially the same facts, nor shall a person who has been convicted or acquitted of manslaughter be afterwards prosecuted for an offence under this section on the same or substantially the same facts.

“(5.) A charge for murder or manslaughter shall not be joined in the same information with a charge for an offence under this section.

“(6.) If on the holding of any inquest as to the cause of the death of any person it appears that the death of the deceased was caused by another person in such circumstances that the person who caused the death has been guilty of an offence against this section the coroner holding the inquest may find that person guilty of an offence against this section and may commit him for trial accordingly.”

8B. Sections one hundred and seventeen, one hundred and eighteen and one hundred and nineteen of the Act are repealed and the following sections inserted in their stead:—

Inserted by
No. 25, 1956,
s. 3.

“117. Any person who unlawfully and maliciously kills, maims, wounds, or disfigures any cattle, shall be guilty of felony and liable to be imprisoned for any term not exceeding four years.

Killing or
injuring cattle.

118. Any person who unlawfully and maliciously—

- (a) attempts to kill, maim, poison or injure; or
- (b) places poison in such a position as to be easily par-taken of by,

Attempts to
kill cattle.

any cattle, shall be guilty of a misdemeanour and liable to be imprisoned for any term not exceeding three years.

119. Any person who unlawfully and maliciously—

- (a) kills, maims, wounds, or disfigures; or
- (b) places poison in such a position as to be easily par-taken of by,

Killing, &c.,
other animals.

any dog, bird, beast or other animal not being cattle but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose, shall be guilty of an offence punishable summarily, and liable to be imprisoned for any term not exceeding six months, or to pay the amount of the damage done and a fine not exceeding One hundred pounds.”.

Inserted by
No. 17, 1960,
s. 3.

8c. Sections one hundred and seventy-eight and one hundred and seventy-nine of the Act are repealed and the following sections inserted in their stead:—

Breaking and
entering
building and
committing
felony.

“ 178.—(1.) A person who breaks and enters and commits a felony in a building, or breaks out of a building, having committed a felony in the building, shall be guilty of felony and liable to be imprisoned for any term not exceeding eight years, with hard labour.

“ (2.) In this section ‘ building ’ includes any dwelling-house, building within the curtilage of a dwelling-house, school-house, shop, warehouse, counting-house, office, store, garage, pavilion, factory, workshop, hall, place of public entertainment, billiard saloon, dressing-room and any other building whether of the same class as those previously mentioned in this subsection or not.

Housebreaking,
&c., with intent
to commit a
felony.

“ 179.—(1.) A person who breaks and enters any of the buildings mentioned in the last preceding section or any place of Divine Worship with intent to commit a felony shall be guilty of felony, and liable to be imprisoned for any term not exceeding seven years, with hard labour.

“ (2.) In this section ‘ place of Divine Worship ’ means a church, chapel, meeting-house, or other place of divine worship.”.

Termination of
imprisonment
under writ of
capias.

9.—(1.) For the purpose of removing doubts it is hereby declared that notwithstanding anything contained in any other law, any party in default as mentioned in section 367 of the Act may be imprisoned pursuant to a writ of *capias* issued under that section, but no such party shall be so imprisoned for more than six months.

(2.) When a writ of *capias* is issued under section 367 of the Act against a party then serving a sentence of imprisonment, the writ of *capias* shall be effective to keep him in custody for not more than six months after the termination of his sentence unless the Supreme Court otherwise directs.

(3.) The Sheriff shall discharge any party imprisoned pursuant to a writ of *capias* after the expiration of six months from the commencement of his imprisonment pursuant to the writ.

10 After section three hundred and eighty-five of the Act the following section is inserted:—

“385A. The Governor-General may, in the name of the King—

Commutation
or remission of
sentences,
fines, &c.

- (a) commute any sentence of death;
- (b) remit, with or without conditions, any sentence of imprisonment; and
- (c) remit any fine, penalty or forfeiture due or accrued to the Crown,

under, or in respect of an offence against, any law in force in the Territory (other than a law of the Commonwealth).”.

THE SCHEDULE.

AMENDMENTS OF THE ACT IN ITS APPLICATION TO THE TERRITORY.

Section of Act.	Amendment.
15	Omit “, or for any term not more than ten years nor less than three years,”.
21	Omit “, or for any term not less than three years,”.
22	Omit “, or for any term not less than three years,”.
23	Omit “, or any term not less than three years,”.
24	Omit “, or any term not less than three years,”.
25	Omit “, or for any term not less than three years,”.
26	Omit “, and not less than three years,”.
27	Omit “, or any term not less than three years,”.
28	Omit “, or any term not less than three years,”.
32	Omit “, or any term not less than three years,”.
33	Omit “, or any term not less than three years,”.
34	Omit “, and not less than three years,”.
40	Omit “, or any term not less than three years,”.
41	Omit “, and not less than three years,”.
44	Omit “, or any term not less than three years,”.
54	Omit “two months” (wherever occurring) insert “six months”.
	Omit “Five Pounds” insert “Ten pounds”.
60	Omit “, or any term not less than four years,”.
63	Omit “, or any term not less than four years,”.
71	Omit “, or any term not less than ten years,”.
78	Omit “, or any term not less than three years,”.
81	Omit “, or for any term not less than seven years,”.
82	Omit “, or any term not less than seven years,”.
83	Omit “, or any term not less than three years,”.
84	Omit “, or any term not less than seven years,”.
85	Omit “, or any term not less than seven years,”.
89	Omit “, or for any term not less than seven years,”.
91	Omit “, or any term not less than seven years,”.
96	Omit “, or any term not less than three years,”.
97	Omit “, or any term not less than three years,”.
125	Omit “, or any term not less than three years,”.
126	Omit “, or any term not less than three years,”.
160	Omit “, and not less than two years,”.
163	Before “imprisoned” insert “liable to be”.
	Omit “, or for any term not less than three years,”.
164	Omit “, or any term not less than three years,”.
166	Omit “, or for any term not less than three years,”.

THE SCHEDULE—continued.**AMENDMENTS OF THE ACT IN ITS APPLICATION TO THE TERRITORY—continued.**

Section of Act.	Amendment.
167	Omit “, or any term not less than three years,”.
169	Omit “, or for any term not less than three years,”.
171	Omit “, or any term not less than three years,”.
172	Omit “, or any term not less than three years,”.
225	Omit “, or any term not less than five years”.
240	Omit “, or any term not less than three years”.
265	Omit “, or any term not less than three years,”.
266	Omit “, or any term not less than three years,”.
267	Omit “eight years, or any term not less than three years,”, insert “any term not exceeding eight years”.
269	Omit “, or any term not less than three years,”.
270	Omit “, or any term not less than three years,”.
274	Omit “, or any term not less than three years,”.
276	Omit “, nor less than three years,”.
280	Omit “, and not less than three years,”.
281	Omit “seven years, or any term not less than three years,”, insert “any term not exceeding seven years”.
285	Omit “, or for any term not less than three years,”.
315	Omit “two years with hard labour, and shall be whipped”, insert “any term not exceeding two years with hard labour, and may be whipped”.
411	Omit the whole.