The Senate

Legal and Constitutional Affairs Legislation Committee

Crimes Legislation Amendment (Proceeds of Crime and Other Measures) Bill 2015 [Provisions]

February 2016

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ISBN 978-1-76010-342-2

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Recommendation

Recommendation 1

2.67 The committee recommends that the bill be passed.

Chapter 1

Introduction and background

1.1 On 26 November 2015 the Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister on Counter-Terrorism, introduced the Crimes Legislation Amendment (Proceeds of Crime and Other Measures) Bill 2015 (the bill) into the House of Representatives.[1] The bill was passed by the House of Representatives on 3 December 2015.[2]

1.2 On 3 December 2015, pursuant to a report of the Senate Standing Committee for Selection of Bills, the Senate referred the provisions of the bill to the Senate Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 3 February 2016.[3]

Conduct of the inquiry

1.3 In accordance with usual practice the committee wrote to a number of persons and organisations, inviting submissions to the inquiry by 8 January 2016. The inquiry was also made public on the committee's website (www.aph.gov.au/senate_legalcon).

1.4 The committee received 12 submissions to the inquiry. The list of submissions received by the committee is at Appendix 1.

Purpose of the bill

1.5 According to its Explanatory Memorandum (EM), the bill contains 'a range of measures to improve and clarify Commonwealth criminal justice arrangements'.[4] These measures are implemented through proposed amendments to the *Proceeds of Crime Act 2002* (PoC Act), the *Criminal Code Act 1995* (Criminal Code), the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and the *AusCheck Act 2007* (AusCheck Act).

1.6 The bill proposes five discrete sets of amendments, all relating to criminal justice and national security matters, but not directly related to each other. The amendments are intended to:

- clarify the operation of the non-conviction based civil scheme for the forfeiture of assets suspected of being the proceeds of crime;
- create new offences of false dealing with accounting documents;
- amend provisions relating to serious drug offences in the Criminal Code to ensure that they capture all relevant substances and processes;

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1 House of Representatives, *Votes and Proceedings*, No. 162, 26 November 2015, p. 1749.

2 House of Representatives, *Votes and Proceedings*, No. 166, 3 December 2015, p. 1805.

3 *Journals of the Senate*, No.134, 3 December 2015, pp 3624, 3626.

4 Explanatory Memorandum, p. 2.

- enable a wider range of agencies and officials to access and share information obtained by AUSTRAC under the AML/CTF Act, and further clarify the circumstances under which information can be shared; and
- extend the circumstances under which AusCheck can share background checking information it gathers with other Commonwealth, state and territory agencies performing law enforcement and national security functions.

1.7 Commending the bill to the House of Representatives, Minister Keenan said that:

> This bill will enhance the ability of Commonwealth agencies to investigate and prosecute criminal offences, and seeks to ensure that the Commonwealth can effectively target and confiscate proceeds of crime. It will better address law enforcement issues and national security risks through improved information sharing, and it will improve the efficiency and effectiveness of various laws relating to the administration of criminal justice.[5]

Key provisions of the bill

1.8 The key substantive provisions of the bill are contained in its five schedules.

Schedule 1: proceeds of crime

Disclosure of information

1.9 Under the PoC Act, a person may be compelled by a court or a proceeds of crime examiner to provide a sworn statement or certain information to specified persons. Section 266A of the PoC Act provides that such information may then be disclosed onward to certain other authorities, and sets out the authorities to whom and the purposes for which such disclosures may be made.

1.10 Subsection 266A(2) presently provides that the listed disclosures may be made if the person disclosing information for a purpose specified in the subsection 'believes on reasonable grounds that the disclosure will serve that purpose'. The proposed amendment to that subsection would add the requirement that a court has not made an order prohibiting the disclosure of the information to the authority for that purpose.

Asset forfeiture scheme—interaction with related criminal proceedings

1.11 The PoC Act establishes a non-conviction based civil scheme for the restraint and subsequent forfeiture of assets which may be the proceeds of crime. Under the scheme, the Commissioner of the Australian Federal Police (AFP) or the Commonwealth Director of Public Prosecutions (CDPP) may apply to a court to restrain property reasonably suspected of being the proceeds of crime, without requiring any person to be charged. The restrained property may later be forfeited, if

5 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister on Counter-Terrorism, Second Reading Speech, *House of Representatives Hansard*, 26 November 2015, p. 5.

the court is satisfied on the balance of probabilities that the property is the proceeds of crime.[6]

1.12 The non-conviction based forfeiture scheme operates alongside provisions for forfeiture upon criminal conviction. Section 319 of the PoC Act provides that the fact that related criminal proceedings have been instituted is not grounds for staying non-conviction based forfeiture proceedings. Following a 2015 High Court decision in which the Court held that civil forfeiture proceedings must be stayed until criminal charges against the respondent had been determined,[7] the bill seeks to amend section 319 to provide more specific direction on the relationship between civil proceedings under the Act, and related criminal proceedings.

1.13 Item 4 of Schedule 1 proposes to replace the existing Section 319 with a new multi-part section setting out more detailed criteria for the stay of non-criminal forfeiture proceedings under the PoC Act (PoC Act proceedings).

1.14 Subsection 319(1) provides that a court may stay PoC Act proceedings 'if the court considers that it is in the interests of justice to do so'.

1.15 Subsection 319(2) states that the court may not stay PoC Act proceedings on any or all of the grounds that:

a) (any) criminal proceedings have been, are proposed to be or may be instituted or commenced against the person subject to the PoC Act proceedings;

b) (any) criminal proceedings have been, are proposed to be or may be instituted or commenced against another person in respect of matters relating to the subject matter of the PoC Act proceedings;

c) a person may need to give or call evidence in the PoC Act proceedings and that evidence is or may be relevant to a criminal matter; or

d) PoC Act proceedings in relation to someone else have been, are to be or may be stayed.

1.16 The EM states that the grounds set out in subsection 319(2) are 'designed to prevent a respondent from claiming merely a generalised "risk" of prejudice to support a stay of proceedings', which would 'have flow-on effects on the availability of evidence, would impede the operation of the non-conviction based scheme and would frustrate the objects of the PoC Act'.[8]

1.17 Subsections 319(3) and (4) provide that paragraphs 319(2)(a) and (2)(b) apply even if the circumstances or subject matter of the civil and criminal proceedings in question are the same or very similar; and subsection 319(5) provides that paragraph 319(2)(d) applies even if the result is a multiplicity of PoC Act proceedings.

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6 Explanatory Memorandum, p. 2.

7 *Commissioner of the Australian Federal Police v Zhao* [2015] HCA 5.

8 Explanatory Memorandum, p. 28.

1.18 Subsection 319(6) provides that in considering whether a stay of PoC Act proceedings is in the interests of justice, the court must have regard to the following matters:

a) that both the criminal and civil proceedings in question should proceed as expeditiously as possible;

b) the cost and inconvenience to the Commonwealth of retaining property to which the PoC Act proceedings relate, and being unable to expeditiously realise the proceeds;

c) the risk of any prejudice to the PoC Act proceedings if they were stayed;

d) whether any prejudice that might occur if the civil proceedings were not stayed may be addressed by the court by means other than a stay of the proceedings; and

e) any other order the court could make to address any potential prejudice to a person which may arise from continuing with the PoC Act proceedings.

1.19 The EM states that the list of matters in subsection 319(6) 'is not a closed list, and does not prevent the court from considering other issues in its determination of the interests of justice'.[9]

1.20 A note is inserted after new subsection 319(6) to give examples of orders the court could make to address any potential prejudice resulting from not staying PoC Act proceedings. These include appropriate orders for the non-disclosure of evidence, or hearing the proceedings in closed court under new section 319A proposed in the bill, which provides that a court may order PoC Act proceedings to be heard in whole or part in closed court, if the court considers that necessary to prevent interference with the administration of criminal justice.

Restraint and forfeiture: order of proceedings

1.21 An amendment is also proposed in relation to the order of proceedings where the restraint and subsequent forfeiture of assets is in question. Section 315A presently provides that a court may hear and determine two or more applications under the PoC Act at the same time. New subsection 315A(2) qualifies this, by providing that if a proceeds of crime authority applies for a forfeiture order in relation to particular property (which will have been 'restrained' by authorities under the Act pending the forfeiture application), and a person has applied to exclude an interest in that property from the restraining order, the court may only hear the application for the forfeiture order after the application for exclusion from restraint has been determined.

Schedule 2: false accounting

1.22 Schedule 2 of the bill seeks to amend the Criminal Code to create two new offences of false dealing with accounting documents. The EM states that these are

9 Explanatory Memorandum, p. 29.

intended to implement Article 8 of the OECD Anti-Bribery Convention,[10] which requires parties to create offences of false accounting for the purposes of concealing or enabling bribes to a foreign public official. While there are existing provisions at Commonwealth, state and territory level which relate to false accounting, a 2012 OECD review of Australia's implementation of the Convention found that Australia had not fully implemented the accounting obligations required under Article 8 of the Convention.[11]

1.23 Schedule 2 would insert a new Part 10.9 at the end of Chapter 10 of the Criminal Code, containing a new Division 490: 'False dealing with accounting documents'. Within that Division, two new offences would be created.

1.24 Section 490.1 would make it an offence to make, alter, destroy or conceal an accounting document,[12] or to fail to make or alter an accounting document a person is required by law to make or alter, with the intention that such conduct would facilitate, conceal or disguise the giving or receiving (by any person) of a benefit that is not legitimately due, or a loss not legitimately incurred.

1.25 The penalty for an individual committing the offence would be imprisonment for up to ten years, a fine of up to 10,000 penalty units ($1.8 million), or both. For a corporation, the offence is punishable by a fine of up to 100,000 penalty units ($18 million), an amount three times the value of the illegitimate benefit obtained by the company from the offence, or ten per cent of the company's turnover for the 12 months before the offence was committed, whichever is greater.

1.26 Section 490.2 would make the same conduct an offence where the person is reckless (rather than intentional) about whether the conduct would facilitate, conceal or disguise an illegitimate benefit or loss. The penalties for commission of a section 490.2 offence would be half the value of the penalties under section 490.1.

1.27 With regard to both offences, section 490.5 provides that it is not necessary to prove that a benefit was actually given or received, or a loss incurred; or that the defendant intended that a particular person receive a benefit or incur a loss. The (general) intention or recklessness itself is sufficient to prove the offence.

1.28 Subsection 490.1(2) sets out the circumstances in which the offences would apply, as determined by the constitutional powers of the Commonwealth, such as in relation to constitutional corporations, territories, the Commonwealth public service, Australian currency or matters occurring outside Australia. Under section 490.7, the new provisions would not exclude or limit the operation of any other Commonwealth, state or territory laws.

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10 Organisation for Economic Cooperation and Development, *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, [1999] ATS 21, entry into force for Australia and generally 17 December 1999.

11 Explanatory Memorandum, pp 31-32.

12 Item 2 of Schedule 1 inserts a definition of 'accounting document' into the Dictionary of the Criminal Code.

1.29 In cases where the conduct occurs wholly overseas and the alleged offender is not an Australian citizen, resident or corporation, section 490.6 requires that proceedings can only commence with the written consent of the Attorney-General. Subsection 490.6(2) provides that an alleged offender may be arrested, charged and detained pending such consent from the Attorney-General, to ensure that a person can not evade justice by fleeing Australia while the determination is made.

Schedule 3: serious drugs

Drug analogues

1.30 Part 9.1 of the Criminal Code establishes serious drug offences, applying to substances determined by regulation to be 'controlled' and 'border controlled' drugs, plants or precursors. Controlled and border controlled drugs are described by their chemical structure.

1.31 The offences relating to such drugs also apply to substances that are structurally similar to a controlled or border controlled drug, called 'drug analogues'.[13] The bill seeks to amend the chemical descriptors of drug analogues in section 301.9, to clarify the provisions and account for some of the most common methods of synthesising drug analogues.[14]

1.32 New subsection 301.9(3), further seeks to remedy an unintended ambiguity in existing subsection 301.9(2), which states that a drug analogue 'does not include a substance that is itself a listed controlled drug or a listed border controlled drug'. The new subsection 301.9(3) would clarify that while a substance cannot be a drug analogue of a controlled drug if it is already listed as a controlled drug, and similarly cannot be a drug analogue of a border controlled drug if it is already listed as a border controlled drug, a substance can be a drug analogue of a controlled drug if it is listed as a border controlled drug, and vice versa.

1.33 Finally, new subsection 301.9(4) provides that the words 'addition' and 'replacement' used in section 301.9 have their ordinary meanings. The EM advises that this is necessary because both terms have a scientific meaning which is different to their ordinary meaning, and which is not intended here.[15]

Manufacture

1.34 Part 9.1 of the Criminal Code includes offences relating to the manufacture of controlled drugs. The bill proposes to amend the definition of 'manufacture' in section 305.1 to specify that it includes any process (other than the cultivation of a plant) by which a substance is produced, extracted, refined, transformed into a different substance, or converted from one form to another. This amendment responds to a 2013 case in which the Victorian Court of Appeal interpreted the definition of

13 Explanatory Memorandum, p. 13.

14 Explanatory Memorandum, p. 42.

15 Explanatory Memorandum, p. 43.

'manufacture' to require that the process produce a new substance, not merely convert a substance from one form into another.[16]

Schedule 4: anti-money laundering and countering the financing of terrorism (secrecy and access of AUSTRAC information)

1.35 The AML/CTF Act establishes the Australian Transaction Reports and Analysis Centre (AUSTRAC), a Commonwealth entity which retains, compiles, analyses and disseminates information to specified government persons and agencies in support of counter-terrorism and anti-money laundering activities.[17] Part 11 of the AML/CTF Act governs the secrecy and disclosure of AUSTRAC information, providing for access to it by 'designated agencies'.

1.36 Item 1 of Schedule 4 seeks to amend the definition of 'designated agency' in section 5 of the Act to add the Independent Commissioner Against Corruption of South Australia (ICAC SA), enabling it to access AUSTRAC information. A consequential amendment to subsection 22(1) designates relevant staff of ICAC SA as 'officials' of the agency for the purposes of the Act.

1.37 Section 132 of the AML/CTF Act provides for the AFP or Australian Crime Commission (ACC) to disclose AUSTRAC information to foreign law enforcement agencies in certain circumstances. A proposed amendment to the definition of 'foreign law enforcement agency' in Section 5, presently defined as 'a government body that has responsibility for law enforcement in a foreign country or a part of a foreign country', would expand it to add multi-country organisations the European Police Office (Europol) and the International Criminal Police Organization (Interpol), and to allow other international bodies to be added in future by regulation.

1.38 Section 49 of the AML/CTF Act enables certain designated persons to compel further written information and documents from agencies who report to AUSTRAC (such as banks and other financial service providers[18]), to assist with relevant investigations arising from their reporting. Section 122 governs the secrecy of information obtained under section 49, providing that it must not be disclosed to anyone else, other than in accordance with exceptions set out in subsection 122(3).[19] Item 4 of Schedule 4 proposes to add to these exceptions, by way of a new subparagraph 122(3)(c), allowing disclosure 'for the purposes of, or in connection with, the performance of the duties of' the AFP Commissioner, the Chief Executive Officer of the ACC, the Comptroller-General of Customs, the Integrity Commissioner or an investigating officer. The EM provides the example that such further disclosure may be required in an application for a warrant.[20]

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16 *Beqiri v R* (2013) 37 VR 219, cited in the Explanatory Memorandum, p. 14.

17 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, Part 16.

18 Section 6 of the AML/CTF Act lists providers of designated services.

19 It is noted that this prohibition does not apply to the AUSTRAC CEO.

20 Explanatory Memorandum, p. 45.

1.39 Item 5 of Schedule 4 provides that the new disclosure provisions, once commenced, would apply to information obtained both before and after the commencement of the bill.

Schedule 5: disclosure and use of AusCheck scheme personal information

1.40 AusCheck is a branch within the Attorney-General's Department (AGD) that provides national security background checking services for persons who require an Aviation Security Identification Card or a Maritime Security Identification Card, and for the National Health Security check regime. These accreditations enable persons to have access to secure areas of Australia's airports or seaports, or to security-sensitive biological agents. To conduct the background checks, AusCheck obtains personal information on applicants' identity, criminal history, security assessment and citizenship or residency status, from agencies such as the Australian Security Intelligence Organisation (ASIO), CrimTrac and the Department of Immigration and Border Protection (DIBP).[21]

1.41 Schedule 5 of the bill seeks to amend the AusCheck Act to extend AusCheck's ability to share the personal information it obtains with other agencies.

1.42 Subsection 4(1) of the Act presently defines 'Commonwealth authority' as 'a body corporate established for a public purpose by or under a law of the Commonwealth'. The bill proposes to replace this definition with 'a body (whether incorporated or not) established for a public purpose by or under a law of the Commonwealth'. The EM states that expanding the definition in this way aims to allow AusCheck to share information with non-corporate Commonwealth agencies and entities, such as specific areas within government departments.[22]

1.43 Section 14 of the AusCheck Act governs the retention and subsequent use of information gathered by AusCheck. Subparagraph 14(2)(b) sets out the purposes for which the information may be used or disclosed. These include for carrying out a subsequent background check on the same individual, responding to an incident that poses a threat to national security, and, at 14(2)(b)(iii), for:

> the collection, correlation, analysis or dissemination of criminal intelligence or security intelligence by the Commonwealth, or by a Commonwealth authority that has functions relating to law enforcement or national security, for purposes relating to law enforcement or national security.

1.44 The bill proposes to repeal subparagraph 14(2)(b)(iii) and replace it with two new provisions, allowing disclosure for the following purposes:

> (iii) the performance of functions relating to law enforcement or national security by the Commonwealth or a Commonwealth authority;
>
> (iiia) the performance of functions relating to law enforcement or national security by a State or Territory or a State or Territory authority.

21 Explanatory Memorandum, p. 5.

22 Explanatory Memorandum, p. 46.

1.45 The bill would insert into subsection 4(1) a new definition of 'State or Territory authority' as 'a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory'.

1.46 The EM states that these amendments would enable AusCheck to disclose personal information to 'a Commonwealth authority which is not traditionally considered to be a law enforcement agency but may require access to the information to respond to national security or crime threats', as well as to state and territory agencies, which were not previously included in the Act.[23] The EM advises that 'appropriate safeguards' exist within the Act in relation to the use and disclosure of information, which would apply to the broader range of agencies with whom information may be shared under the amended provisions.[24]

1.47 Item 5 of Schedule 5 provides that the amendments would apply to the use or disclosure of information collected both before and after the commencement of the bill.

Consideration by Scrutiny of Bills Committee

1.48 On 2 December 2015 the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) tabled its comments on the bill.[25]

1.49 The Scrutiny of Bills Committee raised two issues upon which it sought further advice from the minister:

- the provision in Schedule 4 which would allow for additional international bodies to be prescribed by regulation in future for the purposes of sharing information. The committee stated that 'the implications for individual privacy of sharing AUSTRAC information are significant', and therefore such provision 'should be included in primary legislation unless a comprehensive and compelling justification is provided'.[26] The committee requested that the minister provide more detailed justification for the use of regulation rather than future primary legislation in this instance; and
- with regard to Schedule 5, the strength of safeguards to protect the disclosure of AusCheck personal information, given the expansion of such disclosures which would be allowed by the bill and the implications for persons' privacy. While recognising that AusCheck policies established practical safeguards, the committee regarded it as 'a matter of concern that the existence of safeguards…is not required by law', and sought the minister's advice as to whether consideration had been given to enshrining practices and policy in

23 Explanatory Memorandum, p. 48.

24 Explanatory Memorandum, pp 6-7, 48.

25 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No.14 of 2015,* 2 December 2015, pp 3-6. Tabled per *Journals of the Senate,* No.133, 2 December 2015, p. 3594.

26 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No.14 of 2015,* 2 December 2015, p. 5.

law to provide assurance that the safeguards were 'robust and permanent', or to at least impose a legislative requirement that safeguards be in place.[27]

1.50 Addressing one additional matter, the Scrutiny of Bills Committee noted that the ratio between imprisonment and penalty units for the new false accounting offences in Schedule 2 was inconsistent with other provisions in the Criminal Code, but that that approach had been justified in detail in the EM. The committee therefore did not seek further advice from the minister, inviting the Senate to consider the appropriateness of the provisions.[28]

27 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No.14 of 2015,* 2 December 2015, pp 5-6.

28 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No.14 of 2015,* 2 December 2015, p. 4.

Chapter 2

Key issues and committee views

2.1 Submissions to the inquiry discussed Schedules 1, 2, 4 and 5 of the bill. This chapter sets out the issues raised and views offered by submitters in respect of those schedules, and the committee's views in response to each.

Schedule 1: proceeds of crime

Human rights issues and questions of constitutionality

The 'interests of justice' and the right to a fair trial

2.2 Several submitters expressed concern that the proposed amendments to section 319 may interfere with the right of potential defendants in criminal proceedings to a fair trial, by limiting courts' discretion to stay non-conviction based forfeiture proceedings.[1] The Australian Human Rights Commission (AHRC) advised that the right to a fair trial was guaranteed under international and Australian law,[2] and the Law Council of Australia (LCA) noted that section 80 of the Constitution, as interpreted by the courts, also 'provides some limited protection to the right to a fair trial'.[3]

2.3 The AHRC and the NSW Council for Civil Liberties (CCL) regarded the drafting of section 319 as ambiguous, and potentially internally contradictory.[4] The AHRC stated that while subsection 319(1) provided that a court may stay proceedings if it considered that it was 'in the interests of justice to do so', subsection 319(2) set out grounds on which the court may not stay proceedings, and the bill did not indicate which provision took precedence.[5]

2.4 The AHRC described the concern, shared by other submitters: that requiring a person to provide in a forfeiture case details of the specific potential prejudice posed by the proceedings to the related criminal case, may in itself cause prejudice, where the person would have to incriminate themselves or reveal information about their defence.[6]

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1 Australian Human Rights Commission, *Submission* 2, pp 4-5; Law Council of Australia, *Submission* 3, pp 6-9; Families and Friends for Drug Law Reform, *Submission* 8, pp 4-6; The Victorian Bar and Criminal Bar Association, *Submission* 10, pp 4-5; NSW Council for Civil Liberties, *Submission* 11, pp 1-4.

2 The AHRC advised that the right to a fair trial is guaranteed by Article 14 of the International Covenant on Civil and Political Rights (ICCPR), and is a fundamental element of Australia's criminal justice system: Australian Human Rights Commissions, *Submission* 2, p. 4.

3 Law Council of Australia, *Submission* 3, pp 6-7.

4 Australian Human Rights Commissions, *Submission* 2, p. 7; NSW Council for Civil Liberties, *Submission* 11, p. 2.

5 Australian Human Rights Commission, *Submission* 2, p. 7.

6 Australian Human Rights Commission, *Submission* 2, p. 8.

2.5 LCA believed that:

> The result of the proposed amendments may be that [PoC Act] cases would proceed uncontested. Clients may be advised not to contest the civil proceedings on the basis that it may jeopardize their criminal trial. Individuals could therefore be in a position where they will have to relinquish their property rights so as not to put at risk a finding of guilt in the criminal proceedings.[7]

2.6 The Victorian Bar and Criminal Bar Association (CBA) described the proposed restriction of the courts' inherent power to stay proceedings where there was a risk of prejudice to impending criminal proceedings, as 'a grave infringement of the rights of an accused to a fair criminal trial', expressing the view that 'the public interest in determining proceeds of crime proceedings expeditiously should not displace long-held fundamental principles underpinning the adversarial system and the right to a fair trial'.[8]

2.7 Families and Friends for Drug Law Reform (FFDLR) expressed strong opposition to the existence of a non-conviction based forfeiture scheme at all, arguing that the confiscation of property where no court had established that a crime had been committed was a breach of the fundamental civil liberties enshrined in Australia's legal system.[9]

2.8 The AHRC proposed that concerns about the impact of the provisions on the right to a fair trial may be overcome by adding a caveat to subsection 319(2) to clarify that subsection 319(1), the interests of justice, took precedence. The proposed addition would have subsection 319(2) read:

> Unless it would be in the interests of justice to do so, the court must not stay the POCA proceedings on any of the following grounds:…[10]

2.9 The AHRC also believed that some of the grounds which a court would be required to ignore under the new section 319 would be 'highly likely to result in prejudice to an accused person and increase the risk that their trial would not be fair'. The AHRC regarded subsections 319(3) and (4) as the most serious in this regard, in requiring a court to overlook the fact that the case or subject matter of the forfeiture proceedings was the same as, or substantially similar to, the matter or circumstances of the criminal proceedings. The AHRC recommended that these subsections be deleted.[11]

2.10 The Attorney-General's Department (AGD) responded that 'the amendments do not require the court to "ignore" factors which may raise risks of prejudice to an

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7 Law Council of Australia, *Submission* 3, p. 9.

8 The Victorian Bar and Criminal Bar Association, *Submission* 10, p. 5.

9 Families and Friends for Drug Law Reform, *Submission* 8, p. 3.

10 Australian Human Rights Commission, *Submission* 2, p. 8 (emphasis added).

11 Australian Human Rights Commission, *Submission* 2, pp 8-9.

accused person', but require that the matters in subsections 319(2) not be the sole ground/s upon which a stay is granted.[12]

2.11 AGD stated that there were often instances where criminal proceedings and non-conviction forfeiture proceedings were on foot at the same time. These covered a wide range of circumstances and potential relationships between the parties involved. AGD's view was that:

> it is appropriate that any respondent making an application for a stay of their POC proceedings should be required to demonstrate a specific risk of prejudice to the criminal trial if the civil POC matter proceeded, not just the overlap in the subject matter of the two proceedings.[13]

2.12 AGD explained that if this were not the case:

> A stay of the determination of forfeiture proceedings until related criminal trial(s) are complete may delay the proceeds of crime matter for several years. Such a delay would have a substantial impact on the effective operation of the POC Act - for example, it may compromise the availability of evidence and reduce the efficiency of POC litigation (including restraining orders). There are also flow-on effects, including vast increases in the costs and complexity of the management of restrained assets, and significant delays in forfeiture and realisation of assets into the Confiscated Assets Account ('CAA'), preventing the investment of CAA funds into crime prevention and community safety initiatives.
>
> The amendments have been developed in consultation with key stakeholders, particularly the AFP. Development of the amendments involved careful consideration of how best to ensure the effective operation of the regime while recognising its role in the criminal justice system, legitimate interests and human rights.[14]

2.13 AGD did not support the amendment proposed by the AHRC to subsection 319(2), confirming that the additional words proposed 'would appear to make proposed subsection 319(2) subordinate to subsection 319(1), which would negate the effect of proposed subsections 319(2)-(5)'.[15]

2.14 Submitters acknowledged that the bill sought to introduce two safeguards against potential prejudice where a stay of forfeiture proceedings was refused, providing that a court may make an order prohibiting the disclosure of information, or hear the forfeiture proceedings in closed court. The AHRC and others regarded these as insufficient, however, to mitigate the potential prejudice created by section 319.[16]

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12 Attorney-General's Department, *Submission* 12, p. 6.

13 Attorney-General's Department, *Submission* 12, p. 3.

14 Attorney-General's Department, *Submission* 12, p. 4.

15 Attorney-General's Department, *Submission* 12, p. 6.

16 Australian Human Rights Commission, *Submission* 2, p. 9.

2.15 In relation to potential non-disclosure orders, CCL set out a range of circumstances in which it believed these would not prevent prejudice to a criminal trial, including where the very existence of evidence discovered during forfeiture proceedings might affect a criminal defence, and where the investigating authority in respect of both the forfeiture and the criminal proceedings was the AFP.[17]

2.16 The AHRC and CCL argued that allowing for closed court hearings was potentially inappropriate given that international human rights law and the public interest required that closed courts should be the exception rather than the rule. Both believed that the proposed provisions made it likely that forfeiture proceedings would become closed proceedings as 'a matter of course'.[18]

2.17 FFDLR stated that closed court hearings were restrictive of the rights of the media and public to know about proceedings, and only offered 'flimsy' privacy protections for those involved.[19] CBA and CCL were of the view that, as with disclosure orders, closed court hearings would not effectively safeguard against prejudice when the AFP was a party to both sets of proceedings.[20]

2.18 LCA acknowledged that the *Federal Court of Australia Act 1976* allowed that court to close proceedings to the public 'if it is considered in the interests of justice'.[21] However, LCA observed that the High Court's 2015 decision in relation to the PoC Act forfeiture scheme rejected the argument that a confidentiality order or closed court would sufficiently avoid the risk of prejudice, which 'may suggest the inadequacy of the purported safeguards in the Bill'.[22]

2.19 AGD advised the committee that in practice, since 2012, non-conviction based forfeiture was undertaken by the AFP, while criminal cases and conviction-based forfeiture cases were handled only by the Commonwealth Director of Public Prosecutions (CDPP). This 'clear role delineation' was set out in a Memorandum of Understanding between the AFP and CDPP.[23] AGD noted that information could not be exchanged between authorities where a court had made a non-disclosure order to that effect.[24]

2.20 In relation to closed court hearings, AGD emphasised that these would remain at the discretion of the court as one of a range of options available to protect the

17 NSW Council for Civil Liberties, *Submission* 11, pp 3-4.

18 Australian Human Rights Commission, *Submission* 2, p. 9; NSW Council for Civil Liberties, *Submission* 11, pp 4-5.

19 Families and Friends for Drug Law Reform, *Submission* 8, p. 4.

20 The Victorian Bar and Criminal Bar Association, *Submission* 10, p. 5; NSW Council for Civil Liberties, *Submission* 11, p. 5.

21 Law Council of Australia, *Submission* 3, p. 6.

22 Law Council of Australia, *Submission* 3, p. 7.

23 Attorney-General's Department, *Submission* 12, pp 2-3.

24 Attorney-General's Department, *Submission* 12, p. 5.

interests of the parties, and stated that 'the AFP does not anticipate that a proceeds of crime authority would often, if ever, apply for a court to be closed'.[25]

2.21 AGD further offered the view in relation to the safeguards in the bill, that 'in circumstances where a court considers that the combination of these protections will not sufficiently preserve the respondent's right to a fair trial, a stay of the POC proceedings can and should be granted'.[26]

Restraint, exclusion and forfeiture: order of proceedings

2.22 LCA, CBA and CCL also opposed the proposed amendment to section 315A, which would require an application for exclusion from a restraining order to be resolved prior to the court hearing an application for forfeiture. LCA believed this provision was 'similarly likely to be a disproportionate infringement on the right to a fair hearing'.[27]

2.23 CCL pointed out that under the legislation:

> …if no exclusion order is sought from the restraining order, the Commissioner of Police does not have to present any evidence in order for the property to be forfeited…
>
> The result is that if a possessor of an asset wishes to challenge a forfeiture order, he or she must, in practical terms, first seek an exclusion order, excluding the property from a restraining order.
>
> If item 3 of Schedule 1 is accepted, the possessor of property suspected to be tainted will have to present a case for exclusion of the property before he or she has heard the case for it being tainted.[28]

2.24 CBA further observed that the threshold for securing a restraint order (reasonable grounds to suspect that the property is the proceeds of crime) was lower than that for forfeiture (satisfaction of the court that the property is the proceeds of crime). CBA said that:

> By hearing the applicant authority's forfeiture application first…the Court can determine on the basis of admissible evidence whether it is satisfied that the property in question is the proceeds of crime or an instrument of crime. If it is so satisfied, then the Court can determine if the respondent's interests should be excluded from both the restraining order and the forfeiture order. If the Court is not so satisfied, then it is appropriate that the restraining order be discharged.[29]

2.25 CBA added that the proposed amendment would complicate the legislative regime, by potentially requiring the court to hear two separate exclusion

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25 Attorney-General's Department, *Submission* 12, p. 6.

26 Attorney-General's Department, *Submission* 12, p. 5.

27 Law Council of Australia, *Submission* 3, p. 8.

28 NSW Council for Civil Liberties, *Submission* 11, pp 5-6 (internal references omitted).

29 The Victorian Bar and Criminal Bar Association, *Submission* 10, p. 4.

applications—first against restraint, then against forfeiture—rather than dealing with the matter conclusively in one step.[30]

2.26 AGD emphasised the distinction between restraining orders as an interim step and the final nature of forfeiture orders, saying that 'if an application for a final forfeiture order must be heard before an exclusion application in respect of a restraining order, this creates an anomalous situation and undermines the provisions allowing exclusion of property from a restraining order'.[31]

The separation of powers and role of the courts

2.27 The AHRC and LCA also submitted that the constitutional validity of the proposed amendments to section 319 may be open to question, on the basis of the doctrine of the separation of powers.

2.28 The AHRC believed that if subsection 319(2) could be read as a predetermination by the executive of what is or is not in the interests of justice, this may amount to a usurpation of Commonwealth judicial power, contrary to Chapter III of the Constitution.[32]

2.29 LCA agreed, stating that 'the proposed categories of what does not qualify as being in the interests of justice warranting a potential stay of proceedings is very broad', and that 'there seems to be little or no basis left for when [PoC Act] proceedings could be stayed'.[33] On that basis, LCA assessed that the bill may therefore be beyond the government's legislative power, because it was inimical to the exclusive powers of the judiciary, and the inherent powers of the courts to prevent their processes being employed in a manner which gave rise to unfairness.[34]

2.30 LCA advised that regulating judicial processes was constitutionally admissible—an alteration of procedural rules would not constitute an invalid direction to exercise judicial power in a manner inconsistent with the essential characteristics of a court, or with the nature of judicial power. LCA assessed that:

> It is unclear, however, as to whether the High Court's inherent power to order a stay of proceedings should be distinguished from other procedural matters such as the rules of evidence.[35]

2.31 LCA recommended that the constitutional validity of the proposed amendments (in terms of both Section 80 and the separation of powers doctrine) may be more assured if subsection 319(2) were recast so as not to seek to direct a court, but instead present 'various factors for a court to consider and weigh' in its discretion, in

30 The Victorian Bar and Criminal Bar Association, *Submission* 10, pp 3-4.

31 Explanatory Memorandum, p. 27.

32 Australian Human Rights Commission, *Submission* 2, p. 7.

33 Law Council of Australia, *Submission* 3, p. 5.

34 Law Council of Australia, *Submission* 3, pp 5-6.

35 Law Council of Australia, *Submission* 3, p. 6.

deciding whether or not to grant a stay of proceedings.[36] As with the AHRC's proposed amendment to section 319(2) above, AGD rejected this proposal, stating that it would undermine the desired effect of the amendments.[37]

Efficacy of the civil forfeiture scheme

2.32 FFDLR argued that strengthening the non-conviction forfeiture scheme as proposed in Schedule 1 would not be effective. Comparing figures from the Australian Crime Commission on the direct costs to the economy of serious and organised crime in 2013-14 ($21.29 billion), against the receipt of confiscated assets by the Financial Management Authority in 2014 ($83.6 million), FFDLR stated that 'any expectation that the proposed amendments will significantly reduce the probability of serious and organised crime in Australia and reduce the amount of that crime seems based on a groundless hope rather than a realistic appreciation and strategic analysis'.[38]

2.33 Commenting specifically on drug-related crime, FFDLR elaborated its view that law enforcement measures such as confiscation had the effect of stimulating rather than hindering the illicit drug trade, and argued that strengthening the proceeds of crime forfeiture scheme would only be justified if there was sufficient 'compelling evidence' that it would materially reduce the availability of illicit drugs in Australia, and thereby have a positive impact sufficient to outweigh its imposition on civil liberties.[39]

2.34 Conversely, the Police Federation of Australia, the Justice and International Mission of the Uniting Church Synod of Victoria and Tasmania (JIM), and the Victorian Director of Public Prosecutions were supportive of the proposed amendments, which they saw as strengthening action against crime through the non-conviction based asset forfeiture scheme under the PoC Act.[40]

2.35 JIM emphasised the impact of corruption and financial crime on poverty in developing countries, including where proceeds of crime were transferred into Australia, and believed that 'it is vital that concurrent civil and criminal proceedings be possible'.[41]

2.36 JIM argued that the UN Office for Drugs and Crime (UNODC) and the World Bank had taken the position that 'properly constructed legislation for the restraint and confiscation of unexplained wealth is consistent with human rights standards', and that

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36 Law Council of Australia, *Submission* 3, p. 9.

37 Attorney-General's Department, *Submission* 12, pp 5-6.

38 Families and Friends for Drug Law Reform, *Submission* 8, p. 7.

39 Families and Friends for Drug Law Reform, *Submission* 8, pp 15-16.

40 Police Federation of Australia, *Submission* 4; Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission* 5; Director of Public Prosecutions, State of Victoria, *Submission* 6.

41 Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission* 5, p. 2.

civil forfeiture schemes were in place in a number of other jurisdictions including Ireland, the United Kingdom, United States and Italy.[42] JIM submitted that:

> The World Bank and UNODC have pointed out that because assets can be moved within minutes and at the click of a button, investigations need to act in a time-sensitive manner. Any delay in executing a freezing request after the suspect has been arrested or tipped off can be fatal to the recovery of assets.[43]

2.37 AGD described the objectives of the PoC Act, including preventing crime by diminishing the capacity of offenders to finance further criminal activity, deterring criminals by reducing the profitability of their actions, and compensating society for the harm caused by criminal activity. AGD said that the non-conviction based forfeiture scheme was 'one of a range of tools developed to meet these objects'.[44] AGD added that:

> Non-conviction based forfeiture is a vital tool in the fight against serious and organised crime, countering the techniques that senior members of organised crime syndicates use to insulate themselves from criminal prosecution, and disrupting and dismantling serious and organised crime groups.[45]

Committee view

2.38 The committee takes seriously the concerns raised in submissions regarding the fundamental rights and constitutional principles that may be impacted by the proposed amendments. At the same time, the committee is cognisant of the importance of an effective proceeds of crime regime in combating serious crimes and those who profit from crime, as emphasised by AGD and supported by a number of other submitters.

2.39 The committee acknowledges the department's advice that these amendments were developed in consultation with key stakeholders, and with a view to striking the appropriate balance between effectively combating crime, and respecting the fundamental rights and principles underlying Australia's criminal justice system. The committee notes that the amended legislation will if necessary be tested in the courts, who will be well placed to determine the questions of constitutionality and fundamental rights that have been raised in this inquiry.

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42 Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission* 5, p. 4.

43 Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission* 5, p. 5.

44 Attorney-General's Department, *Submission* 12, p. 2.

45 Attorney-General's Department, *Submission* 12, p. 3.

Schedule 2: false accounting

2.40 Varying perspectives were offered in submissions in relation to Schedule 2. LCA, and law firm Johnson Winter & Slattery (JWS) were concerned that the provisions went much further than required to meet Australia's obligations under the OECD Convention, and were likely to result in 'significant unintended consequences' for businesses dealing with accounting documents.[46]

2.41 On the other hand the Australian Securities and Investments Commission (ASIC) indicated its support for the passage of Schedule 2,[47] and JIM argued that the offences could be made even stronger.[48]

Application beyond foreign bribery

2.42 LCA and JWS observed that a key element of the OECD Convention's foreign bribery offence provision, an intention of influencing a foreign public official, was not included in the proposed new offences, and as such, they were not limited to foreign bribery situations. These submitters argued that the absence of a nexus with foreign bribery, and the breadth of the offences as drafted, meant that the offences would potentially impose criminal liability in a very wide range of situations, which it believed were unintended and unreasonable.[49] JWS recommended that the provisions be amended to expressly limit their application to conduct relating to foreign corrupt practices.[50]

2.43 ASIC advised, on the other hand, that the amendments in Schedule 2 were of particular significance to its work, and particularly welcomed that the new offences would have a broader field of application than foreign bribery. ASIC said they would assist more generally in addressing corporate crime offences of false accounting, which 'can and do cause significant harm to Australian financial consumers and compromise the integrity of our markets'.[51]

2.44 JIM suggested making the offences even broader, to apply where the action or omission was intended to (or reckless about the potential to) facilitate, conceal or disguise the contravention of any law of the Commonwealth,[52] although AGD did not regard this as necessary under the current construction of the bill.[53]

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46 Law Council of Australia, *Submission* 3, pp 10-11; Johnson Winter & Slattery Lawyers, *Submission* 7, pp 1-2.

47 Australian Securities and Investments Commission, *Submission* 1.

48 Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission* 5, pp 5-9.

49 Law Council of Australia, *Submission* 3, pp 10-11; Johnson Winter & Slattery Lawyers, *Submission* 7, p. 2.

50 Johnson Winter & Slattery Lawyers, *Submission* 7, p. 2.

51 Australian Securities and Investments Commission, *Submission* 1, pp 1-2.

52 Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission* 5, pp 8-9.

53 Attorney-General's Department, *Submission* 12, p. 10.

2.45 AGD confirmed that the offences had been drafted deliberately without an explicit link between the false accounting and foreign bribery. The department considered that confining the offences to a foreign bribery context would make them difficult to prosecute, and unnecessarily limit their effectiveness. The department believed that:

> It is appropriate that the offences should be implemented to the extent of the Commonwealth's Constitutional authority. The broad application of the proposed offences will assist to combat the conduct of false accounting in a range of criminal contexts. The offences will target not only bribes to foreign public officials, but all manner of duplicitous payments.[54]

Intention and recklessness

2.46 LCA's view was that, given the broad application of the offences and the substantial penalties proposed, they 'should require as a minimum an intention on behalf of the defendant that a person receive or give a benefit, or incur a loss'.[55] JWS agreed, submitting that the threshold for recklessness under the Criminal Code is not high and is not well understood, and conduct 'that is not much more than carelessness could be criminalised by the new provisions'.[56]

2.47 On the other hand, ASIC supported the introduction of both intention- and recklessness-based forms of the offence, particularly 'in light of the likelihood that fault will often need to be inferred from the available circumstantial evidence'. ASIC believed that:

> In cases where the evidence does not support prosecution of an intention-based offence it will be important that an alternative means is available to deal with those who have nevertheless engaged in the proscribed conduct with an awareness of the substantial risk that their dealing with an accounting document would, for instance, facilitate an illegitimate payment.[57]

2.48 JIM observed that prosecutions under the recklessness offence were likely to occur more frequently than under the intent offence, because of the difficulty of proving intent. JIM suggested that the bill 'could be further refined to improve its effectiveness and reduce the evidential and enforcement burden', although it did not specify how this might be done.[58]

2.49 JIM further advocated that the proposed new offences should be amended to go a step beyond their present application to accounting documents that a person is under a legal duty to make or alter. JIM recommended, in line with United States

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54 Attorney-General's Department, *Submission* 12, p. 8.

55 Law Council of Australia, *Submission* 3, p. 11.

56 Johnson Winter & Slattery Lawyers, *Submission* 7, p. 2.

57 Australian Securities and Investments Commission, *Submission* 1, p. 2.

58 Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission* 5, p. 9.

legislation, that the bill create an express obligation on persons to maintain proper accounting records for the purposes of demonstrating compliance with the foreign bribery provisions of the Criminal Code.[59]

2.50 AGD advised that it 'considers that the fault elements in the proposed offences strike an appropriate balance between enforceability of the offences and fairness'.[60] The department did not agree that recklessness was a low threshold, noting that it required that defendants were aware of a substantial risk that their conduct would result in the described outcomes. AGD added that a similar structure of 'tiered' liability was used for the money laundering offences in Division 400 of the Criminal Code.[61]

2.51 While agreeing with JIM's view that the proposed offences should harmonise with existing Australian laws, AGD advised that extending the offences beyond accounting documents a person was under a legal duty to make would not be consistent with Australian common law, under which criminal liability does not attach to an omission unless the person is under a legal obligation to perform the act.[62]

2.52 AGD also expressed its view that heavy penalties were appropriate in these circumstances to reflect 'the gravity of white-collar crime', noting ASIC's support for this. AGD further advised that the proposed penalties were consistent with comparable offences in other jurisdictions.[63]

Committee view

2.53 The committee joins submitters from both within and outside government in welcoming these proposed new offences, which will not only support Australia's compliance with its international obligations, but go further in helping combat a range of financial crimes. The committee regards the breadth of the proposed offences, and the potentially serious penalties for those who commit them, as appropriate in the circumstances.

59 Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission* 5, pp 8-9.

60 Attorney-General's Department, *Submission* 12, p. 7.

61 Attorney-General's Department, *Submission* 12, p. 8.

62 Attorney-General's Department, *Submission* 12, p. 10.

63 Attorney-General's Department, *Submission* 12, p. 9.

Schedules 4 and 5: disclosure of AUSTRAC and AusCheck information

2.54 Submitters again offered mixed views on Schedules 4 and 5, with two concerns raised by LCA, while others indicated their support for the proposed amendments.

Schedule 4: regulation-making power

2.55 LCA expressed similar concerns to the Scrutiny of Bills Committee regarding the 'very general regulation-making power' in Schedule 4 for proscribing additional international organisations with which AUSTRAC information may be shared in future. LCA recommended that such a power should be subjected to a six-month 'sunset clause', which:

> would provide law enforcement agencies and the public with assurance that the Parliament will consider the effectiveness of the power and any necessary oversight measures within a definite timeframe. It would also provide those stakeholders with the opportunity to comment further on the necessity and proportionality of the power.[64]

2.56 JIM stated its support in general terms for Schedule 4, observing that '[e]ffective information sharing is essential to curbing money laundering and financing of terrorism'.[65]

2.57 AGD stated that:

> The department consulted extensively with the relevant affected stakeholders, including the Australian Transaction Reports and Analysis Centre (AUSTRAC), the AFP, and the Australian Crime Commission (ACC), on the necessity and proportionality of the regulation-making power. It is our considered view that the proposed measure is both reasonable and necessary in order to ensure that newly constituted international bodies, in particular those with multijurisdictional law enforcement coordination and cooperation functions similar in nature to INTERPOL and Europol, are able to be listed in future as expediently as possible. Enabling timely and effective cooperation in the investigation of transnational crime will both assist in fulfilling our international obligations to combat money laundering and the financing of terrorism and beneficially affect Australia's relations with foreign countries and international organisations. We further note that as regulations are a disallowable instrument, the prescription of any additional body will be subject to Parliamentary scrutiny.[66]

Possible retrospectivity in schedules 4 and 5

2.58 LCA raised a further concern in relation to the potential retrospective operation of both Schedules 4 and 5 of the bill, in that they would permit the use and

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64 Law Council of Australia, *Submission* 3, p. 11.

65 Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission* 5, p. 9.

66 Attorney-General's Department, *Submission* 12, p. 12.

disclosure of personal information collected prior to the passage of the bill. On this matter LCA recommended that, where reasonable or possible, the public be informed about the scope of such possible uses and disclosures.[67]

2.59 AGD did not agree with LCA's concern that the provisions may have retrospective effect, stating that the proposed amendment 'does not seek to retrospectively alter legal rights or obligations; it simply seeks to provide legislative certainty regarding the scope of existing powers under the AML/CTF Act'.[68] AGD advised that AUSTRAC already provided information about access to and disclosure of information on its website.[69]

2.60 In a submission to the committee the Department of Immigration and Border Protection (DIBP) added its endorsement of the 'legislative certainty and clarity' for information sharing by AUSTRAC and AusCheck with other agencies which would be achieved by Schedules 4 and 5. DIBP emphasised the importance of inter-agency information sharing for the work of the Australian Border Force (ABF), including in light of its counter-terrorism role and the detection of an increase in attempts to take undeclared currency out of Australia.[70]

Committee view

2.61 The committee notes the concerns raised by LCA in relation to the operation of these provisions, but welcomes the clarifications provided by AGD in that regard, and emphasises, as the department has done, that the regulatory powers granted by the bill remain subject to parliamentary oversight. The committee regards information sharing as crucial to effective action against crime, particularly where anti-terrorism and other national security concerns are at stake. As such, the committee endorses the enhanced information-sharing proposed in Schedules 4 and 5, while encouraging AUSTRAC and AGD/AusCheck to ensure that adequate and robust safeguards are in place to protect personal privacy and to appropriately govern and oversee the careful and lawful sharing of information.

67 Law Council of Australia, *Submission* 3, pp 11-12.

68 Attorney-General's Department, *Submission* 12, p. 12.

69 Attorney-General's Department, *Submission* 12, p. 12.

70 Department of Immigration and Border Protection, *Submission* 9, p. 2.

Conclusion

2.62 This bill seeks to combat a number of serious and complex criminal activities within Commonwealth jurisdiction including organised crime, bribery and duplicitous financial conduct, trade in illicit drugs, money laundering and the financing of terrorism.

2.63 The committee appreciates the concern shown by submitters to ensure that the bill achieves its objectives in balanced, appropriate and effective ways.

2.64 Ultimately, the issues before the committee in relation to this bill relate to questions of balance: between effectively combating crime and the protection of human rights and constitutional principles; between closing unfair loopholes exploited by criminals and providing sufficient precision to ensure that offences are appropriate to their context; between information sharing and the protection of privacy.

2.65 With the assistance of the information and clarifications provided by the Attorney-General's Department and others on these questions, the committee is satisfied that the bill strikes the appropriate balances within each of its legislative schemes, bearing in mind the important matters of criminal justice and national security at stake.

2.66 As such, the committee believes that the bill should proceed.

Recommendation 1

2.67 The committee recommends that the bill be passed.

Senator the Hon Ian Macdonald
Chair

Appendix 1

Public submissions

1	Australian Securities and Investments Commission
2	Australian Human Rights Commission
3	Law Council of Australia
4	Police Federation of Australia
5	Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia
6	Director of Public Prosecutions for the State of Victoria
7	Johnson Winter & Slattery Lawyers
8	Families and Friends for Drug Law Reform
9	Department of Immigration and Border Protection
10	The Victorian Bar and Criminal Bar Association
11	NSW Council for Civil Liberties
12	Attorney-General's Department