Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2026

Senate Standing Committees on Legal and Constitutional Affairs

Submitter:

Michael Sanderson

[redacted]

Introduction

I make this submission to express serious concern about the Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2026.

The Parliamentary Library Bills Digest states that the Bill amends a wide range of crimes related legislation in order to update and clarify the intended operation of key provisions. It identifies among the key measures the extension of network activity warrants, data disruption warrants, account takeover warrants and related emergency authorisations, the move from a purity-based method to a mixture weight approach for drug threshold quantities, and the creation of an explicit police power to enter premises and use reasonable force when executing an extradition arrest warrant.

The Explanatory Memorandum confirms that this is an omnibus bill spanning the Crimes Act 1914, the Criminal Code Act 1995, the Director of Public Prosecutions Act 1983, the Extradition Act 1988, the Surveillance Devices Act 2004, the Telecommunications Interception and Access Act 1979 and associated legislation. It says the Bill is intended to update, improve and clarify the operation of key provisions across those statutes.

This submission applies two filters.

The first is '*Good Public Purpose'*. Under that filter, the question is not whether a measure is administratively convenient for agencies, politically saleable, or capable of being described as modernisation. The question is whether it genuinely advances public safety, fairness, accountability, proportionality and institutional integrity.

The second is that '*the Federal Government's paramount purpose is to build a floor that all can stand on and to regulate a ceiling that protects from disproportional excess'*. In this context, that means building a secure and fair legal baseline for the public while ensuring that both criminal exploitation and coercive state power are held within principled limits.

On those filters, the Bill should not be treated as a benign package of technical tidying. Some parts are indeed machinery changes. Some are not. Some materially extend or sharpen coercive state power. Some alter the way criminal liability is measured in ways that risk disproportionate outcomes. An omnibus form should not be allowed to blur those distinctions.

The omnibus form itself is a problem

One of the first issues the Committee should confront is the form of the Bill. It bundles together airport police powers, digital surveillance powers, detention related arrangements, drug evidence rules, drug quantity rules, prosecution conflict mechanisms, extradition custody and force powers, and a telecommunications name update. Those matters are not naturally of one character. When measures of very different weight and consequence are packaged together, scrutiny becomes harder, comparison becomes muddier and genuinely significant changes can be carried through under cover of legislative convenience.

That is not a trivial procedural point. It goes directly to institutional integrity. A good legislative process should sharpen scrutiny, not dilute it. A bill that combines minor housekeeping with rights engaging expansions of coercive power invites Parliament to normalise what should instead be tested with discipline.

The Explanatory Memorandum's human rights analysis itself indicates the difference in weight across the schedules. It presents Schedules 1, 2 and 4 as engaging important rights, while describing Schedules 3 and 5 as raising no human rights issues. That alone should tell the Committee that this is not one neat reform package but a mixed vehicle carrying measures of profoundly different significance.

Schedule 1

Schedule 1 is presented as police powers and warrants. Some of it is modest. Some of it is not.

The first part would add Sydney West Airport to the major airport regime so that the Australian Federal Police can exercise existing identity check, move on and associated powers there, including while the airport is still being developed. The stated rationale is continuity with other major airports rather than creation of a new category of power.

That continuity argument has some force, but it should not be treated as self-proving. Coercive powers do not become harmless because they already exist elsewhere. Identity check powers and move on powers affect ordinary people in public places. They sit on the coercive ceiling side of the state. The Committee should therefore ask the right question. Not whether the power already exists, but whether the extension is genuinely necessary, proportionate and tightly confined in this new setting.

The second part would permit certain search warrant and assistance order applications to be made electronically or remotely. The Explanatory Memorandum says this is procedural modernisation and does not alter substantive thresholds or safeguards.

This is less concerning than the major coercive measures elsewhere in the Bill, but it is not cost free. Modernising administrative process is not, of itself, objectionable. But even here Parliament should be alert to the obvious institutional risk. Convenience can degrade discipline. Remote process must not become a softer process.

There is also a resilience problem that the materials do not confront with anything like sufficient seriousness. The Bill preserves a narrow fall back because applications may still be made in person and the Explanatory Memorandum refers to multiple channels such as email, fax, mobile message and phone. That is better than a digital only model, but it is not a serious continuity framework. It is merely a drafting level escape hatch. The materials do not explain what happens if there is a major digital failure, a cyber-attack, a communications compromise, a record integrity problem, or a wider failure of trust in the digital environment through which warrants are being sought and processed. They do not identify who determines that a system is unsafe, how authorisations are verified if channels are compromised, or how legality and record integrity are protected during serious disruption. In a period of elevated cyber risk, Parliament should not be asked to endorse a more digitally mediated warrant process without being shown the analogue resilience, continuity and evidentiary protections that would apply when the digital environment itself fails.

The third part of Schedule 1 is the real issue. It extends network activity warrants, data disruption warrants, account takeover warrants and related emergency authorisations by three years to 4 September 2029. It also removes the Australian Criminal Intelligence Commission's ability to obtain data disruption warrants. The Bills Digest explains that these powers were introduced by the Identify and Disrupt framework and notes that the Independent National Security Legislation Monitor found an ongoing need for some form of the powers, while also concluding that the Australian Criminal Intelligence Commission should not retain the data disruption power because it went beyond that body's intelligence role.

This is not housekeeping. This is an extension of intrusive covert powers that reach into data, accounts and networks. It is precisely the kind of area where Parliament should be

most wary of legislative drift. A sunset is meant to force reconsideration. It is not meant to become a ritual date that is pushed out whenever broader reform remains unfinished.

The Explanatory Memorandum says the extension is needed while the Government considers broader electronic surveillance reform, and the human rights statement points to safeguards such as independent issuing authorities, proportionality tests, privacy considerations and controls on use and disclosure.

Those points do not end the matter. They barely begin it. The existence of safeguards does not answer the threshold question of whether Parliament should continue these powers in their present form for another three years. Nor does an appeal to future reform justify present extension without a concrete timetable, a transparent reform pathway and clear evidence that the interim period cannot be handled more narrowly.

On Good Public Purpose grounds, there is plainly a public interest in serious tools against serious cyber enabled crime. But public purpose is not satisfied by invoking threat. Public purpose requires necessity, proportionality, disciplined oversight and a genuine willingness to let exceptional powers lapse if their continuation is not justified.

Under the second filter, this is a textbook ceiling issue. These powers may regulate serious criminal excess, but they also raise the ceiling of state intrusion into private digital life. That is why Parliament should be slow, exacting and sceptical. In my view, this part of the Bill should not proceed on a broad appeal to modern threat language. If it proceeds at all, it should proceed only as a tightly supervised bridge with explicit reporting expectations and a clear reform end point. Otherwise, Parliament is not preserving a sunset. It is normalising a permanent ratchet.

The fourth part of Schedule 1 repeals an unproclaimed provision so that ACT Policing can continue to rely on the Commonwealth pre charge detention and investigation scheme because the ACT chose not to establish its own scheme.

This is presented as tidying. It should not be waved through on that label. Detention related powers are never mere tidying. They sit directly in the space where the state deprives liberty. If the Commonwealth scheme is to remain the scheme, the Committee should say so on the basis of principle and accountability, not because an old transitional assumption turned out never to be implemented.

Schedule 2

Schedule 2 alters serious drug offence proceedings and drug quantity rules. The first part introduces evidentiary certificates. The second part replaces the purity-based method with a mixture weight model.

The evidentiary certificate measure is presented as a way to reduce the burden of calling multiple officers to prove continuity of possession from seizure to forensic analysis. The Explanatory Memorandum says the certificate is only prima facie evidence, that notice must be provided, and that the defence retains the ability to require witnesses to be called and cross examined.

That reform is defensible in principle. Courts should not be clogged with ritual proof of matters that nobody disputes. But the Committee should still look past the formal drafting and ask the practical question. Does the accused retain a real ability to contest the material, or merely a formal ability on paper. A criminal process can be made more efficient without ceasing to be fair. But that line must be watched.

Proportional access to justice is also directly engaged. The question is not only whether some procedural right survives on the page. The question is whether an accused person, especially one of ordinary means, retains a realistic and proportionate ability to use that right in practice. A requirement to give notice, seek orders, and call or cross examine witnesses may preserve formal fairness, but it may still leave practical fairness unevenly distributed depending on resources, representation and capacity.

The mixture weight reform is far more serious. The Bills Digest says the Bill repeals the purity-based method and replaces it with a mixture weight approach under which quantity is established by reference to the total weight of any substance containing a prohibited drug or precursor. The Explanatory Memorandum says this will reduce hazardous purity testing, align the Commonwealth with state, territory and international practice, and support more efficient and effective prosecution. It also says that commencement may be delayed while threshold quantities are reviewed to ensure they remain fit for purpose.

That justification is incomplete and too comfortable by half.

Yes, reducing dangerous forensic processes is a legitimate public aim. Yes, legal consistency across jurisdictions can be useful. But the question is not whether the change is simpler to administer. The question is whether it is fair.

A mixture weight model can dramatically increase criminal exposure because filler, carrier material, low concentration content or concealment medium can drive quantity thresholds upward even where the actual prohibited substance is comparatively modest. In plain terms, it can make the law harsher while making proof easier. That may suit administration. It does not automatically serve justice.

The problem is broader than the Bill’s sales pitch suggests. New section 312.1 is triggered by any amount of a controlled drug, border-controlled drug, controlled precursor or border-controlled precursor in a mixture, and then directs that the whole mixture is to be treated as consisting wholly of the prohibited substance for quantity

purposes. The drafting is therefore broad enough that, if a prescription product contains a substance falling within Part 9.1, the whole tablet, capsule, liquid, patch or other mixture could in principle be counted, not merely the tiny prohibited component. The Bill does not create a clear statutory exception for trivial concentration, lawful carrier material, therapeutic context or commercially meaningless dilution.

That matters because the obvious hard cases are not confined to street drug mixtures. The rule is capable of operating wherever there is any amount of the relevant prohibited substance in a mixture. If the concentration is so low that there is no real-world possibility that the material reflects commercial dealing in any sensible sense, the Bill still permits the total mixture to be used. The Explanatory Memorandum attempts to soften that result by saying the new rule is intended to operate in a facilitative way, that the prosecution is enabled but not compelled to proceed on the total mixture, and that courts retain sentencing discretion to impose a proportionate penalty. But that is not a statutory safeguard. It is a reliance on prosecutorial restraint after Parliament has already enacted a blunt rule.

Proportional access to justice is engaged here as well. Making quantity easier to prove does not formally remove defence rights, but it changes the terrain of the case in a way that can make meaningful contest harder, more technical and more expensive. The Explanatory Memorandum says the defence can still challenge identification, weight, chain of custody and methodology, but that answer is incomplete. The real question is whether an accused person retains a realistic and proportionate ability to test the prosecution case once purity ceases to matter and the whole mixture becomes available to drive liability upward. A system is not proportionate merely because formal rights remain written down. It is proportionate only if those rights remain practically usable.

This is exactly where the second filter becomes decisive. The Commonwealth's task is not merely to punish. It is to regulate a ceiling that protects from disproportional excess. A criminal law rule that counts the whole mixture as the prohibited substance risks punishing bulk rather than culpability unless the thresholds are recalibrated with exceptional care. Administrative simplicity is not enough. Alignment with other jurisdictions is not enough. Market reality rhetoric is not enough. The test is proportionality between wrongdoing, proof, liability, penalty and practical access to justice.

The Explanatory Memorandum says the regulations will be reviewed before commencement so that thresholds remain fit for purpose. That point is important, but at present it is also vague. Parliament is being asked to approve the architecture now and trust that the calibration will be handled later. That is backwards. If the fairness of the model depends on the future threshold settings, then Parliament should not be

expected to assess the reform in a vacuum. Nor should Parliament be asked to accept that the answer to over breadth is simply that prosecutors and courts can be trusted to clean up the injustice later.

In my view, this part of the Bill is one of the clearest examples of why legislative convenience must not be mistaken for good public purpose. If enacted without transparent threshold recalibration and without a clear statutory safeguard for trivial, highly diluted or otherwise commercially meaningless mixtures, and without preserving proportionate practical access to justice for those accused under the new model, this reform risks entrenching disproportional punishment under the banner of efficiency.

Schedule 3

Schedule 3 would allow the Attorney General to authorise a sufficiently senior legal practitioner within the Office of the Commonwealth Director of Public Prosecutions to exercise the Director's powers where the Director has an actual, potential or perceived conflict of interest. It would also rename the Associate Director as the Deputy Director of Public Prosecutions.

This schedule is largely administrative, but even here the Committee should not simply relax. The conflict mechanism is sensible in one respect. A prosecution system should not freeze because the Director cannot act. Institutional continuity matters. That supports the public floor.

But the authorisation sits with the Attorney General. That creates an obvious independence question, even if the mechanism is framed as conflict management rather than executive direction. In prosecution matters, optics matter because independence matters. Public confidence can be damaged not only by actual interference, but by institutional arrangements that look too comfortable from the perspective of ministerial influence. That concern is sharpened by the reality that Attorneys General change, governments change, and decisions or positions accepted in one political context can later be reversed in another. The issue is therefore structural, not personal. A prosecutorial conflict mechanism should not be designed in a way that leaves its legitimacy exposed to shifting political doctrine, priorities or sensibilities over time.

I do not regard this schedule as the central danger in the Bill. But the Committee should say clearly that the mechanism is justified only as a narrow conflict solution and not as a back door expansion of executive reach into prosecutorial decision making.

The title change from Associate Director to Deputy Director is, by contrast, little more than a cosmetic relabelling and is not where the real risk in this Schedule lies.

Schedule 4

Schedule 4 is another schedule that deserves much harder scrutiny than the omnibus packaging encourages.

Part 1 clarifies that a person who waives the right to contest extradition remains in custody until physically surrendered or released under the Act. Part 2 gives police officers explicit power to enter premises where they reasonably believe the subject of an extradition arrest warrant is located and to use reasonable force in executing the warrant, subject to stated limits including restrictions on entry to dwellings at certain times and requirements relating to announcement and reasonableness.

The Explanatory Memorandum frames this as clarification and alignment with existing Crimes Act style powers. That framing should be treated cautiously.

Extradition is not a domestic criminal trial about guilt. It is an administrative surrender process. That fact matters. It means Parliament should be especially careful before importing or extending arrest, entry and force powers in this context. Administrative regimes can become highly coercive while being presented as mere facilitation.

Recent United States experience provides a useful warning, not because the legal systems are identical, but because the institutional pattern is familiar. Broad enforcement powers, once granted, do not reliably remain confined to the narrow class of cases used to justify them. Recent reporting indicates that large numbers of people with no criminal record were still being detained in United States immigration operations despite public claims that enforcement would be more targeted. Other reporting records judicial criticism of warrantless arrests supported by nearly identical forms rather than genuinely individualised grounds, and litigation challenging forced home entry based on administrative rather than judicial warrants. The lesson is not to import United States politics into Australian law. The lesson is that broad coercive powers combined with weak specificity, generic paperwork and heavy reliance on discretion can slide quickly from exceptional use into routinised overreach.

That is why Schedule 4 should be judged not by its most careful imaginable use, but by its abuse case. Parliament should legislate for the case in which entry powers are used too readily, custody is prolonged too mechanically, and force is justified by broad statutory language but thin factual specificity. Once powers of entry into the home and powers of force are placed on the statute book, later assurances about restraint are no substitute for tight drafting, independent discipline and practical accountability. The recent United States detention experience is also a warning about access to justice after the event. Reuters reported more than 4,400 court rulings that people had been unlawfully detained, alongside more than 20,000 federal lawsuits seeking release. That is what happens when broad detention practice is allowed to run ahead of legal discipline and correction is left to individuals and courts after the damage is done.

The human rights statement acknowledges that Schedule 4 engages the right to life, the prohibition on cruel, inhuman or degrading treatment, the right to freedom from arbitrary detention and the right to privacy.

That is not incidental. It is the point.

A measure that prolongs custody after waiver and gives police an explicit power to enter premises and use force should not be described as though it were simply a drafting clean up. These are real coercive powers touching liberty, bodily integrity and the home. Under Good Public Purpose, they require an exact and compelling justification. Under the second filter, they are almost entirely about the ceiling of state power and the risk of disproportion.

It may be that in some cases these powers are necessary. But necessity should be demonstrated, not presumed. The Committee should ask whether the existing regime was truly unworkable, whether the proposed powers are no broader than strictly required, and whether the safeguards are sufficient not just in theory but in operational reality. An administrative process should not quietly accumulate the muscle of a domestic criminal arrest regime unless Parliament is satisfied that anything less is genuinely inadequate.

In my view, Schedule 4 is one of the clearest points at which the Bill moves beyond updating and clarifying and into expanding and entrenching coercive capacity.

Schedule 5

Schedule 5 replaces references to the Victorian Inspectorate with Integrity Oversight Victoria because the agency's name has changed. The Explanatory Memorandum says this makes no substantive change to powers or functions.

This schedule appears unobjectionable. It is the kind of machinery amendment that belongs in a narrow technical bill. Its presence here only sharpens the point that truly minor amendments are being bundled together with much more consequential measures.

Conclusion

This Bill should not be assessed through the soft lens of administrative convenience. Nor should it be allowed to pass under the reassuring language of update, improve and clarify. In several important respects the Bill does more than clarify. It extends. It entrenches. It broadens. It makes some forms of prosecution easier and some forms of state coercion more explicit and more durable.

The least problematic measures are the telecommunications name update and the title change in the prosecution office. The conflict mechanism in Schedule 3 is probably defensible if kept narrow. The electronic warrant application process is less serious

than the major coercive measures elsewhere in the Bill, but even that reform is not cost free. It carries an unresolved resilience problem in the event of digital failure, cyber-attack or compromised communications. The core scrutiny issues, however, lie elsewhere. They lie in the extension of covert digital warrant powers in Schedule 1, the shift to total mixture weight in Schedule 2 with its implications for proportional liability and practical access to justice, and the custody, entry and force provisions in Schedule 4. Those are the places where the Commonwealth's legitimate role in protecting the public risks sliding into disproportionate criminal liability, weakened practical fairness, or disproportionate state power.

My overall position is that the Committee should not recommend the Bill in its present form without substantial qualification and much harder scrutiny of its most consequential parts. The proper test is not whether agencies prefer these measures or whether they can be presented as modernisation. The proper test is whether each measure serves Good Public Purpose and whether it helps build a floor that all can stand on while regulating a ceiling that protects from disproportional excess.

On that test, several measures in this Bill remain insufficiently justified, insufficiently disciplined and too ready to normalise the expansion of coercive power while shifting too much faith onto discretion to correct over breadth later.