

Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Bill 2013

Introduced into the House of Representatives on 29 May 2013

Portfolio: Attorney-General

Summary of committee view

1.10 The committee thanks the Attorney-General for providing a comprehensive and well-reasoned statement of compatibility, which has greatly assisted the committee in undertaking its scrutiny role.

1.11 The committee seeks further information as to what protections are in place to ensure an unrepresented person is able to fully test the evidence against them if they are prohibited from cross-examining certain witnesses against them, including whether additional provision for legal assistance will be made available in these circumstances.

1.12 The committee seeks further information as to why it is necessary to reverse the burden of proof with the creation of an exception to an existing offence.

Overview

1.13 This bill seeks to amend a number of Acts with the intention of improving and clarifying aspects of Commonwealth criminal law. In particular, the bill proposes amendments:

- to expand the jurisdiction of the Australian Commission for Law Enforcement Integrity to enable the Integrity Commissioner to investigate corruption issues within the Australian Transaction Reports and Analysis Centre (AUSTRAC) (Schedule 1);
- to expand protections available for vulnerable witnesses in Commonwealth criminal proceedings (particularly victims of slavery and human-trafficking offences) and for the use of victim impact statements in the sentencing of federal offenders (Schedule 2);
- relating to investigating, prosecuting and sentencing for people smuggling offences, including removing the use of wrist x-rays as a prescribed age determination process; requiring the prosecution to prove age; ensuring time spent in immigration detention or on remand is recognised in sentencing; and enabling the use of evidentiary certificates to establish prima facie evidence of facts relating to the interception of people smuggling vessels (Schedule 3);

- to strengthen the anti-money laundering and counter-terrorism financing legislative framework, by providing greater privacy protections; giving access to AUSTRAC data to two new agencies; enabling AUSTRAC to conduct internal reviews (in addition to existing external review); and strengthening certain offences (Schedule 4).
- to facilitate assistance to the United Nations Mechanism for International Criminal Tribunals (which was established in 2010 to complete the work of the international criminal tribunals for the Former Yugoslavia and Rwanda) (Schedule 5);
- to the *Australian Federal Police Act 1979* to reflect current governance arrangements and to the *Telecommunications (Interception and Access) Act 1979* to update cross-references to Victorian legislation (Schedule 6).

Compatibility with human rights

1.14 The bill is accompanied by a lengthy and detailed statement of compatibility that identifies that the bill engages, promotes and limits a number of human rights, including the right to privacy, the presumption of innocence, the right to a fair hearing and the right to be treated with dignity when deprived of liberty. The committee notes that the statement sets out in helpful detail how each right is engaged, and where it limits a right it explains what the objective being sought is and how such a limitation may be seen to be proportionate to that objective.

1.15 The committee thanks the Attorney-General for providing such a comprehensive and well-reasoned statement of compatibility, which has greatly assisted the committee in undertaking its scrutiny role.

1.16 The committee considers that, except in relation to those issues set out below, any limitations in the bill have been adequately explained in the statement of compatibility and as such do not appear to raise human rights concerns.

Right to examine witnesses

1.17 Article 14(3)(e) of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone charged with a criminal offence has the right to examine, or have examined, the witnesses against them. Schedule 2 of the bill proposes restricting unrepresented defendants from cross-examining vulnerable persons (such as victims of slavery or trafficking or witnesses recognised by the court to be 'special witnesses').⁴ The committee appreciates that this is intended to protect vulnerable witnesses and does not limit the ability of the defendant's legal

4 See item 26 of Schedule 2 (read in conjunction with the amendment inserted by item 27).

representative from testing evidence. However, the committee is concerned that if a person is not legally represented this provision may limit the defendant's ability to effectively examine the witnesses against them.⁵

1.18 The committee intends to write to the Attorney-General to ask what protections are in place to ensure an unrepresented person is able to fully test the evidence against them if they are prohibited from cross-examining certain witnesses against them, including whether additional provision for legal assistance will be made available in these circumstances.

Presumption of innocence

1.19 New item 24 of Schedule 4 of the bill creates an exception to an existing offence to ensure a regulated business does not commit an offence by providing a designated service to an individual using a false identity 'if the customer's use of that name is justified, or excused, by or under a law'. The defendant bears an evidential burden in relation to this exception. The statement of compatibility recognises that offences which reverse the burden of proof may limit the right to the presumption of innocence contained in article 14(2) of the ICCPR. However, the statement does not go on to explain why there is a need for the evidential burden to be reversed in this instance.

1.20 The committee intends to write to the Attorney-General to ask why it is necessary to reverse the burden of proof with the creation of the exception to an existing offence in item 24 of Schedule 4.

5 The committee notes article 14(3)(d) of the ICCPR provides for the right of a person to have access to legal assistance (including without payment if the person does not have sufficient means to pay) and the High Court in *Dietrich v The Queen* (1992) 177 CLR 292 has held that the common law requires that in some cases, in the interests of a fair trial, it may be necessary to require legal representation for a trial to proceed.