

Chapter 1

Introduction

1.1 On 10 May 2017 the Senate referred the provisions of the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017 (the bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 8 August 2017.¹

1.2 The Selection of Bills Committee recommended that the bill be referred to the committee, commenting that:

This is an omnibus bill which contains a range of measures relating to Commonwealth criminal justice arrangements. The Bill would create new offences, increase penalties for certain offences, expand access to personal information and alter the procedural protections for Aboriginal and Torres Strait Islanders in the Crimes Act.

Given the complexity of these areas and the capacity for this Bill to significantly affect the individuals' rights and freedoms, it would be appropriate to refer the Bill to committee for careful consideration.²

Background and overview of the bill

1.3 This bill, consisting of eight schedules, seeks to amend the *Australian Federal Police Act 1979*, the *Crimes Act 1914*, and the *Criminal Code Act 1995* to:

- alter the functions of the Australia Federal Police;
- alter the custody notifications of investigating officials intending to question an Aboriginal or Torres Strait Islander person;
- create separate offence regimes for 'insiders' and 'outsiders' for the disclosure of information relating to 'controlled operations';
- double the maximum penalty for general dishonesty offences;
- remove an obsolete reference to the death penalty (which no longer exists at either a federal or state level);
- strengthen protections for vulnerable witnesses and complainants in Commonwealth criminal proceedings;
- authorise information collection, use and disclosure for the purposes of preventing, detecting, investigating and dealing with fraud or corruption against the commonwealth; and
- permit the New South Wales Law Enforcement Conduct Commission to use and disclose spent convictions.

1 *Journals of the Senate*, No. 41, 11 May 2017, p. 1347.

2 Selection of Bills Committee, *Report No.5 of 2017*, 11 May 2017, p. 1 and appendices 4–5.

Conduct of the inquiry

1.4 Details of this inquiry were advertised on the committee's website, including a call for submissions to be received by 23 June 2017.

1.5 The committee received 12 submissions, which are listed at appendix 1 of this report.

1.6 No public hearings were held.

Financial implications of the proposed measures

1.7 The Explanatory Memorandum deals only with financial implications arising from schedule 7 to the bill: proposed fraud investigation measures. It explains that these measures will have a positive financial impact by helping to prevent fraud against the Commonwealth and increase recovery efforts:

[F]rom 2012 to 2015 the Australian Institute of Criminology estimated there was over \$1.2 billion in reported fraud, but only \$50 million was recovered during that period. The Bill reduces the complexity of investigating or otherwise controlling fraud against the Commonwealth to help increase recoveries and prevent fraud occurring.³

Compatibility with human rights

1.8 The Explanatory Memorandum addresses, in detail, the human rights implications of these proposed amendments, and concludes that each schedule is compatible with human rights.⁴

1.9 The Parliamentary Joint Committee on Human Rights (PJCHR) considered the bill in May 2017 and noted that it enlivens the right to privacy, right to life, and prohibition on torture or cruel, inhuman and degrading treatment and punishment.⁵ The committee sought a response from the Minister for Justice in relation to the proportionality of the proposed measures, and this was reported on the following month.⁶ The committee considered this response, and asked the Minister to provide further response in the form of providing Australian Federal Police Guidelines relating to information sharing in death penalty situations and offshore situations involving potential torture or cruel, inhuman or degrading treatment or punishment.⁷ At the date of this report no such further response has been published.

Structure of this report

1.10 This report consists of two chapters:

3 Explanatory Memorandum, p. 4.

4 Explanatory Memorandum, pp. 8–24.

5 Parliamentary Joint Committee on Human Rights (PJCHR), *Human rights scrutiny report*, Report No 4 of 2017, 9 May 2017, pp. 3–6.

6 PJCHR, *Human rights scrutiny report*, Report No 5 of 2017, 14 June 2017, pp. 34–41.

7 PJCHR, *Human rights scrutiny report*, Report No 5 of 2017, 14 June 2017, p. 41.

- This chapter provides a brief background and overview of the bill, as well as the administrative details of the inquiry.
- Chapter 2 outlines the provisions of the bill in more detail, discusses the concerns raised by submitters, and sets out the committee's view.

Acknowledgements

1.11 The committee thanks the submitters to this inquiry.

