

Chapter 1

Introduction

1.1 On 14 September 2017 the Senate referred the provisions of the Criminal Code Amendment (Impersonating a Commonwealth Body) Bill 2017 (the bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 13 November 2017.¹ In referring the bill to the committee, the Selection of Bills Committee noted that:

The criminal law has a significant impact on the rights and obligations of the Australian people, including potentially the ability to see them deprived of their liberty.

It is appropriate and responsible for the Senate to properly examine the impact of proposed criminal laws.²

Purpose of the bill

1.2 In his second reading speech, the Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, the Hon Michael Keenan MP, explained the purpose of the bill:

It is essential to a well-functioning democracy that the public have trust in the legitimacy of statements made by government agencies. That trust will inevitably be eroded if people are able, with impunity, to represent themselves as communicating on behalf of government, without any authorisation.

...This bill seeks to address a possible gap in our criminal law, which means that impersonating a Commonwealth entity, company or service may not be appropriately prosecuted. It is already a criminal offence to impersonate a Commonwealth official. It is less clear whether the current offences cover a person pretending to be, or acting on behalf of, a Commonwealth body—which is why we have taken action.³

1.3 This bill introduces new offences and a new injunction power which would 'prohibit and prevent conduct amounting to false representation of a Commonwealth body'.⁴ Specifically, the bill amends the *Criminal Code Act 1995* (the Act) to:

- criminalise conduct where a person falsely represents themselves to be, or to be acting on behalf of, or with the authority of, a Commonwealth entity or service; and

1 *Journals of the Senate*, No. 63, 14 September 2017, p. 2007.

2 Selection of Bills Committee, *Report No. 11 of 2017*, 14 September 2017, p. 1 and appendix 3.

3 The Hon. Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 13 September 2017, pp. 10178–10179.

4 Explanatory Memorandum, p. 2.

- provide a new injunction power allowing authorised persons to apply to the relevant court to seek an injunction to restrain that conduct.⁵

Financial implications of the proposed measures

1.4 The Explanatory Memorandum includes a statement that the proposed amendments will have no financial impact.⁶

Reports of other committees

1.5 Both the Senate Standing Committee for the Scrutiny of Bills and the Joint Parliamentary Committee on Human Rights noted that the bill did not raise any Scrutiny or human rights concerns.⁷

Compatibility with human rights

1.6 The Explanatory Memorandum states that the bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.⁸

Conduct of the inquiry

1.7 Details of this inquiry were advertised on the committee's website, including a call for submissions to be received by 13 October 2017.⁹ The committee also wrote directly to some individuals and organisations inviting them to make submissions. The committee received seven submissions, which are listed at appendix 1 of this report.

Structure of this report

1.8 This report consists of two chapters:

- This chapter provides a brief background of the bill, as well as the administrative details of the inquiry.
- Chapter 2 outlines the provisions of the bill in more detail, and discusses the support for, and concerns raised by, submitters about the proposed amendments.

Acknowledgements

1.9 The committee thanks all organisations and individuals that made submissions to this inquiry.

5 Explanatory Memorandum, p. 2.

6 Explanatory Memorandum, p. 2.

7 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2017*, 18 October 2017, p. 17; and Parliamentary Joint Committee on Human Rights, *Report 11 of 2017*, 17 October 2017, p. 60.

8 Explanatory Memorandum, p. 3.

9 The committee's website can be found at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs.