

# Chapter 1

## Introduction

### Referral

1.1 The Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016 (the bill) was introduced into the House of Representatives on 23 November 2016 by the Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, the Hon Michael Keenan, MP.<sup>1</sup> On 1 December 2016, the Senate referred the bill to the Senate Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 16 February 2017.<sup>2</sup> The reporting date was extended until 23 March 2017 to allow for a response to questions on notice provided to the Australian Federal Police.

1.2 The Senate Selection of Bills Committee noted that the bill updates 16 different Commonwealth Acts:

Given the complexity and volume of amendments to Commonwealth legislation contained in the Bill, it would be appropriate to refer the Bill to committee for careful consideration.<sup>3</sup>

### Conduct of inquiry

1.3 In accordance with usual practice, the committee advertised the inquiry on its website and wrote to relevant organisations inviting written submissions by 13 January 2017. The committee received six submissions; these are listed at Appendix 1. The committee thanks the organisations that contributed to this inquiry.

### Purpose and background

1.4 The purpose and policy background to the bill is described in the second reading speech. The Minister noted that the government keeps the criminal justice framework under constant review to ensure that '...policies, frameworks and laws...[are] well equipped for the job of tackling crime' in order to ensure '...the right balance between protecting fundamental rights, while ensuring justice is served'.<sup>4</sup>

1.5 The purpose of the bill is stated as being to '...enhance Australia's position globally in the fight against crime, making improvements to our international crime cooperation arrangements, and our ability to assist international courts and tribunals'.<sup>5</sup>

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1 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 23 November 2016, p. 4071.

2 Journals of the Senate, *No. 23*, 1 December 2016, p. 751.

3 Senate Selection of Bills Committee, *Report No. 10 of 2016*, Appendix 3.

4 Minister Keenan, Second Reading Speech, House of Representatives, 23 November 2016. p. 4072.

5 Minister Keenan, Second Reading Speech, House of Representatives, 23 November 2016. p. 4072.

1.6 The bill has several amendments that contribute to its purpose. These include, for example, to improve the Commonwealth's anti-human trafficking and slavery regime, increase protections afforded to vulnerable witnesses, strengthen the Commonwealth's anti-money laundering and counter-terrorism financing laws, improve the government's ability to address national security and safety risks at large-scale events, and enhance the Australian Federal Police's capacity to address instances of serious misconduct or corruption in its workforce.<sup>6</sup>

### **Overview of the bill**

1.7 The size and scope of the bill was noted by the Minister: describing it as a 'comprehensive bill—11 schedules in length—which contains a range of measures that will strengthen the Commonwealth's already robust criminal justice arrangements'.<sup>7</sup> The bill seeks to amend the following Commonwealth legislation:

- *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
- *AusCheck Act 2007*;
- *Australian Crime Commission Act 2002*;
- *Australian Federal Police Act 1979*;
- *Crimes Act 1914*;
- *Crimes Legislation Amendment (Law Enforcement Integrity; Vulnerable Witness Protection and Other Measures) Act 2013*;
- *Criminal Code Act 1995*;
- *Extradition Act 1988*;
- *Foreign Evidence Act 1994*;
- *International Criminal Court Act 2002*;
- *International War Crimes Tribunals Act 1995*;
- *Mutual Assistance in Criminal Matters Act 1987*;
- *Surveillance Devices Act 2004*;
- *Telecommunications Act 1997*;
- *Telecommunications (Interception and Access) Act 1979*; and the
- *War Crimes Act 1945*.

1.8 More specifically, the measures seek to enhance Commonwealth criminal justice law and policy to:

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6 Minister Keenan, Second Reading Speech, House of Representatives, 23 November 2016, p. 4072.

7 Minister Keenan, Second Reading Speech, House of Representatives, 23 November 2016, p. 4072.

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- ensure Australia can effectively respond to requests from the International Criminal Court and international war crimes tribunals;
  - enhance the provisions on proceeds of crime search warrants, clarify which foreign proceeds of crime orders can be registered in Australia and clarify the roles of judicial officers in domestic proceedings to produce documents or articles for a foreign country, and others of a minor or technical nature;
  - ensure magistrates, judges and relevant courts have sufficient powers to make orders necessary for the conduct of extradition proceedings;
  - ensure foreign evidence can be appropriately certified and extend the application of foreign evidence rules to proceedings in the external territories and the Jervis Bay Territory;
  - ensure the offence of identifying a child witness or vulnerable adult complainant also extends to identifying a child complainant;
  - clarify the application of the supports and protections for victims and witnesses in the *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* to future criminal proceedings, regardless of when the alleged conduct occurred;
  - address ambiguity and inconsistencies in the offences relating to slavery and slavery-like conditions, including definitions and cross references;
  - expand the definition of debt bondage to cover the condition of a person whose personal services are pledged by another person as security for the other person's debt;
  - allow a trier of fact to take into account relevant evidence (including personal circumstances and the relationship between the alleged victim and alleged offender) in determining whether a person was incapable of understanding the nature and effect of a marriage ceremony and whether a person was significantly deprived of personal freedom;
  - require the Attorney-General to report to the Parliament on the operation of the *War Crimes Act 1945* only if an investigation or prosecution is commenced or carried on in the preceding financial year;
  - ensure the Australian Federal Police's alcohol and drug testing program and integrity framework is applied efficiently and effectively to the entire workforce and clarify and enhance processes for resignation in cases of serious misconduct or corruption;
  - provide additional flexibility regarding the method and timing of reports about outgoing movements of physical currency, allowing travellers departing Australia to report cross-border movements of physical currency electronically;
  - include the Australian Charities and Not-for-profits Commission (ACNC) in the existing list of designated agencies which have direct access to financial intelligence collected and analysed by the Australian Transaction Reports and

Analysis Centre (AUSTRAC) (known as ‘AUSTRAC information’), enabling it to access AUSTRAC information;

- clarify use of the Australian Crime Commission’s prescribed alternative name; and
- permit the AusCheck scheme to provide for the conduct and coordination of background checks in relation to major national events.<sup>8</sup>

### **Structure of this report**

1.9 There are two chapters in this report.

1.10 Chapter 1 provides details of the bill and briefly discusses its policy background and purpose.

1.11 Chapter 2 discusses the key issues raised in submissions and provides the committee's recommendations.

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8 Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016, Explanatory Memorandum (EM), pp. 2–3.