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Crimes Legislation Enhancement Bill 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Crimes Legislation Enhancement Bill 2002

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19 March 2003

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Crimes Legislation Enhancement Bill 2002

Date Introduced: 5 December 2002

House: Senate

Portfolio: Justice and Customs

Commencement: The amendments will commence on the day the Act receives the Royal Assent unless otherwise specified. The dates for commencement of various amendments differ and are set out in a table that forms part of clause 2 of the Bill.

Purpose

This is an omnibus Bill, which makes a series of relatively minor policy and technical amendments to the *Crimes Act 1914* and other legislation relating to criminal law or the enforcement of various Commonwealth criminal laws.

Background

The majority of amendments in this Bill are of a purely technical and minor nature. They are intended to remove technical errors and inconsistencies in existing Commonwealth criminal laws.

Main Provisions

Schedule 1 contains amendments to the *Crimes Act 1914*. The proposed amendments to the *Crimes Act 1914* involve:

- technical changes to facilitate the taking of fingerprint and photograph records of convicted persons
- clarification of the admissibility and purpose of evidence of a suspect's refusal and submission of other identity evidence

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- extension of the lower courts jurisdiction to deal with Commonwealth offences involving property up to \$5,000, and
- expansion of the number of Commonwealth offences in which defendants may waive their right to jury trial and have matters dealt with in the summary jurisdiction of the lower courts.

Item 2 clarifies that a judge or magistrate is empowered to make any order ‘reasonably necessary’ to ensure that fingerprint and photograph evidence is obtained from a convicted person. A failure to comply with the order is a criminal offence subject to a penalty of 12 months imprisonment.

Section 3ZM deals with the conduct of identification parades. **Item 3** amends the section to provide that evidence of an offender’s refusal to submit to an identity parade is admissible for the purpose of explaining why such a parade was not held. This amendment replaces an existing provision, which currently limits admissibility of such evidence to cases in which the accused had ‘no reasonable excuse’ to refuse a parade but does not limit the purpose for which such evidence may be admitted. The EM states that the amendment is intended to remove the implication that a negative inference as to the suspect guilt may be drawn from evidence of the refusal to take part in an identification parade. It also clarifies that, in these circumstances, identification evidence based on photographs or another sighting of the suspect (other than by identity parade) is admissible.¹

Currently, offences involving property valued at more than \$500 must be dealt with as an indictable offence. **Item 4** amends subsection 4J(4) to raise this threshold to \$5,000. The effect of the amendment is to expand the jurisdiction of lower courts in relation to Commonwealth offences. The extension of the jurisdiction of the lower courts is not retrospective and will take effect for offences committed from the date of Royal Assent (**item 5**).

Item 6 inserts **new section 4JA** to extend the existing class of Commonwealth indictable offences that may be dealt with summarily. The proposed amendment would permit the lower courts to deal with indictable offences, punishable by a fine only, provided there is agreement between the defendant and prosecution.

The offences are limited to those, which do not attract a term of imprisonment and where the fine is limited to 600 penalty units or less for a individual, or 3,000 penalty units or less for a body corporate.² One important aspect of this amendment is that, the lower courts will be limited in the level of fines they can impose thereby creating an incentive for defendants to waive the right to a jury trial.

Schedule 2 contains a series of minor policy and technical amendments to other Acts. **Item 7** amends subsection 22(2) of the *Foreign Evidence Act 1994* to remove a provision that requires foreign material to bear an official or public seal of the foreign country or of a Minister or official of the country, in order for it to be adduced as evidence in criminal

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and related civil proceedings. This amendment is a response to the inability of some countries to meet the requirement for confirmation that the evidence was obtained through appropriate official channels. Section 26 makes provision for the Attorney-General (or an authorised officer) to certify that specified foreign material was obtained as a result of a request made to a foreign country by or on behalf of the Attorney-General. The Government considers that this provision is sufficient to ensure the authenticity of the evidence.

Items 8 to 13 consist of technical amendments to the mutual assistance in criminal matters provisions of the *International War Crimes Tribunals Act 1995* (IWCT Act). The purpose of the amendments is to ensure consistency with amendments made to the *Mutual Assistance in Criminal Matters Act 1987* in 1996.

Item 9 amends section 29 of the IWCT Act by inserting **new subsections 29(3) and (4)**. The proposed provisions are designed to enable the person giving or producing the evidence, or that person's legal representative, or the Tribunal's legal representative, to be examined or cross examined by means of video link. The facility applies to proceedings under sections 27 or 28 of the IWCT Act – that is proceedings designed to comply with a request from a War Crimes Tribunal for evidence to be taken in Australia for the purpose of a proceedings or investigation being conducted by the War Crimes Tribunal.

Item 10 amends subparagraph 66(2)(b)(i) of the IWCT Act to change the circumstances which allow the use of force by police officers when making an arrest under the Act. The purpose of the amendment is to remove an unintentional restriction on the use of force in circumstances where such force is necessary to protect other lives or prevent serious injury to other persons.

Presently, paragraph 66(2)(b) provides that a police officer shall not do anything that is likely to cause the death of, or a grievous bodily harm to, the person being arrested unless

(i) the officer believes on reasonable grounds that doing that thing is necessary to protect another life or to prevent serious injury to another person (including the police officer), **and**

(ii) the person being arrested has, if practicable, been called upon to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other manner.

The effect of the amendment is to require only one of those conditions rather than both conditions to be present before the police officer may lawfully use such force that is likely to result in death or grievous bodily harm.

Item 12 amends section 80 of the IWCT Act. The proposed amendment adds section 47C of the *Crimes Act 1914* to a list of provisions of that Act, which govern the custody and arrest, and apply to the arrest and custody of a person for an offence against the IWCT Act.

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Section 47C of the *Crimes Act 1914* provides that a person, responsible for the custody or detention of a person charged with an offence under Commonwealth law, is guilty of an offence if he or she intentionally or negligently permits the detainee to escape.

Schedule 3 contains technical corrections relating to part numbering in the *Crimes Act 1914*.

Concluding Comments

Expansion of jurisdiction of lower courts over less serious Commonwealth offences

The proposal in **items 4 and 6** warrants some comment. The proposed amendments, if passed, will expand the jurisdiction of the lower court to deal with all offences involving property valued at not more than \$5,000 and permit less serious indictable offences to be dealt with by the lower court by the consent of the parties.

The Explanatory Memorandum (EM) states that the Government's aim is to contribute to making the criminal trial process more efficient. In pursuing this reform the Commonwealth is following a trend initiated by its counterparts in the States and Territories as a means of reducing delays and the costs of jury trials.³

A number of issues remain unclear. For example, details of the case load or time delays involved in the prosecution of Commonwealth offences in the higher courts; expected number of cases that will be removed to the lower courts, as a result of these proposed changes; the cost savings to the Commonwealth; and the impact on defendants.

Waiver of right to trial by jury

In essence, the reform set out in **item 6** relies on providing an incentive to defendants to waive their right to trial by jury by reducing the severity of the penalty that can be imposed by a magistrate.

While these reforms have become an accepted part of the criminal justice system at the State level it is worth noting two key issues. First, while the offences covered by the Bill may be characterised as less serious crimes and do not involve terms of imprisonment, the consequences for defendants, especially for those from a lower socio-economic background are potentially still quite severe. There is a trend for accused in the lower courts to plead guilty. While this may also appear to add to the efficiency of the criminal trial process it may mean that an unrepresented accused, and even those with private or publicly funded representation, forego the opportunity to put the Crown to the test of proving guilt beyond reasonable doubt.

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Second, it is axiomatic that the reforms proposed in both **items 4 and 6**, will reduce the caseload of the higher courts and will contribute to lessening delay. However, it is unclear what impact this will have on the lower courts or what cost implications there may be for the Commonwealth.

Endnotes

- 1 Explanatory Memorandum, p. 3.
- 2 A penalty unit is \$110 (section 4AA *Crimes Act 1914*).
- 3 Explanatory Memorandum, p. 4.

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