



## **Crimes Amendment Bill 2005**

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## Crimes Amendment Bill 2005

**Date Introduced:** 26 May 2005

**House:** House of Representatives

**Portfolio:** Attorney-General

**Commencement:** Date of Royal Assent (6 July 2005)

### Purpose

This Bill amends the *Crimes Act 1914* ('the Crimes Act') to enable Commonwealth participating agencies to request assumed identity documents from State and Territory issuing agencies in accordance with legislation in force in those jurisdictions.

The Bill was passed without amendment on 16 June 2005, was assented to on 6 July 2005 and became Act No. 87 of 2005.

### Background

Under the current provisions of the Crimes Act, officers from specified Commonwealth and State agencies, such as the Australian Federal Police, the Australian Security Intelligence Organisation and the police forces of each State, may be issued evidence of an assumed identity by a Commonwealth agency. This covers documentation such as birth certificates, drivers' licences, passports and Medicare cards.

As the Attorney-General noted in his second reading speech:

Assumed identities are false identities adopted to facilitate intelligence and investigative functions, or the infiltration of a criminal, hostile or insecure environment with a view to collecting information and investigating offences.<sup>1</sup>

Historically, requests by the Commonwealth to the States for false identification for the purpose of assumed identity were handled in an informal manner. However, the States are now formalising this process through their own legislation.

The Bill introduces definitions of 'State agency' and 'Territory agency' and a **new section 15XMA** to ensure that any request for this type of assumed-identification assistance to a State or Territory issuing agency must be complied with to the extent that the laws of the State or Territory require the agency to do so. These arrangements are reciprocal. The States and Territories police authorities can also gain access to federal documentation for the purpose of undercover law enforcement work.

**Warning:**

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*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

The measures relating to assumed identities were passed, with bipartisan support, under the *Measures to Combat Serious and Organised Crime Act 2001* (see the [Bills Digest](#) for further information). Amongst other things, that Act inserted section 15XR into the Crimes Act to criminalise the misuse of assumed identities. As the Attorney-General stated when introducing that Act:

This is not something that is used lightly, and there is a reporting mechanism in place and criminal punishments for the misuse and abuse of the system of assumed identities. For the financial year 2003-04, for example, only 71 authorisations were issued. Perhaps in the coming year we may see a more widespread use of these identities as security issues come to light. In particular, the controversy that was before the parliament and the media yesterday concerning controlled operations at our airports is perhaps a continuing trend and a situation where we will see these assumed identities being necessary to assist those officers who are operating under cover. However, that is obviously going to be an operational matter for the Australian Federal Police to determine.<sup>2</sup>

This Bill does not seek to modify either the existing requirements for authorisation or the offences, reporting or accountability measures of the regime created by the *Measures to Combat Serious and Organised Crime Act 2001*.

## Main Provisions

### Schedule 1—Amendment of the Crimes Act 1914

Part IAC of the Crimes Act deals with assumed identities and permits officers of a number of Commonwealth agencies—the Australian Federal Police, the Australian Customs Service, ASIO, ASIS, the Australian Taxation Office and any other agency specified in the regulations—to obtain documents establishing an assumed identity from Commonwealth agencies.

Under a Commonwealth authorisation (existing section 15XG of the Crimes Act) Commonwealth participating agencies (defined in section 15XA of the Crimes Act) can request assumed identity documents from Commonwealth issuing agencies (also defined in section 15XA of the Crimes Act). This schedule will amend the Crimes Act to enable Commonwealth participating agencies under a Commonwealth authorisation to make requests for assumed identity documents from State and Territory issuing agencies in accordance with State and Territory legislation.

**Item 1** amends the definition of ‘issuing agency’ set out in subsection 15XA(1) of the Crimes Act by adding a reference to a State agency or a Territory agency. The amendment ensures that requests to issue assumed identity documents can be made to an issuing agency of a State or a Territory.

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**Items 2 and 3** insert definitions for ‘State agency’ and ‘Territory agency’ into subsection 15XA(1) of the Crimes Act.

**Item 4** amends paragraph 15XG(1)(a) of the Crimes Act to add a reference to State and Territory agencies. The effect of the amendment is to allow an authorising person of a Commonwealth participating agency to authorise a person to acquire evidence of an assumed identity from a State agency or a Territory agency and to use that identity. ‘A person’ is not defined.

**Item 5** amends paragraph 15XG(3)(a) of the Crimes Act to add a reference to State and Territory agencies. The effect of the amendment is to allow an authorising person of a Commonwealth participating agency to authorise a foreign officer (defined in section 15XA of the Crimes Act) to acquire evidence of an assumed identity from a State agency or a Territory agency and to use that identity.

**Item 6** makes a consequential amendment to paragraph 15XI(2)(f) of the Crimes Act to provide that an authorisation to acquire evidence of, and use, an assumed identity must specify all State agencies and Territory agencies that are to be requested to issue evidence of the assumed identity. The amendment is consequential on making State agencies and Territory agencies ‘issuing agencies’ for the purpose of the assumed identity provisions in the Crimes Act (see **item 1**).

**Item 7** adds a new section 15XMA to the Crimes Act. This provision will require that when a State or a Territory agency receives a request to provide evidence of an assumed identity from a Commonwealth participating agency, the State or Territory agency must comply with the request only to the extent that the law of the particular State or Territory requires it to do so. This provision gives mutual recognition to the law of the State or Territory by allowing Commonwealth participating authorities to access the regimes created by the State or Territory but only to the extent that the law of that State or Territory allows.

## Endnotes

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- 1 The Hon. Philip Ruddock MP (Attorney-General), *Debates*, House of Representatives, 26 May 2005, p. 5.
- 2 *op. cit.*

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