The Parliament of the Commonwealth of Australia

Advisory Report:

Crimes Legislation Amendment (Powers and Offences) Bill 2011

House of Representatives
Standing Committee on Social Policy and Legal Affairs

February 2012
Canberra

ISBN 978-0-642-79642-4 (Printed version)

ISBN 978-0-642-79643-1 (HTML version)

Contents

APPENDICES

Membership of the Committee

Chair	Mr Graham Perrett MP
Deputy Chair	Ms Judi Moylan MP
Members	Mr Shayne Neumann MP
	Dr Sharman Stone MP
	Mr Ross Vasta MP
	Ms Laura Smyth MP
	Ms Michelle Rowland MP (to 07/02/12)
	Mr Mike Symon MP (from 07/02/12)

Committee Secretariat

Secretary	Dr Anna Dacre
Inquiry Secretary	Mrs Pauline Cullen (until 15/02/2012)
Research Officer	Ms Alicia Lin

Inquiry information

On Wednesday 23 November 2011, the Hon Brendan O'Connor MP, Minister for Home Affairs and Justice, introduced the *Crimes Legislation Amendment (Powers and Offences) Bill 2011* (the Bill) into the House of Representatives.

On Thursday 24 November 2011, the Selection Committee referred the Bill to the House Standing Committee on Social Policy and Legal Affairs for inquiry.

The Committee received 10 submissions on the Bill. A list of the submissions is at Appendix A. Copies of the submissions have been placed on the Committee's website.

A public hearing was held in Canberra on Friday 10 February 2012. A list of witnesses who appeared before the Committee at the hearing is at Appendix B.

List of abbreviations

ACC	Australian Crime Commission
ACC Act	*Australian Crime Commission Act 2003* (Cth)
ACLEI	Australian Commission for Law Enforcement Integrity
AFP	Australian Federal Police
ALRC	Australian Law Reform Commission
ALRC Report	Australian Law Reform Commission's 2006 Report: *Same Crime, Same Time: Sentencing of Federal Offenders*
Customs	Australian Customs and Border Protection Service
CEO	Chief Executive Officer
Crimes Act	*Crimes Act 1914* (Cth)
Criminal Code	*Criminal Code Act 1995* (Cth)
Cth	Commonwealth
Customs	Customs and Border Protection Service
DNA	Deoxyribonucleic acid
DNA Review	*DNA Forensic Procedures: Further Independent Review of Part 1D of the Crimes Act 1914 Review*
DPP Act	*Director of Public Prosecutions Act 1986* (Cth)
Law Council	Law Council of Australia

LEIC Act	*Law Enforcement Integrity Act 2003* (Cth)
NCIDD	National Criminal Investigation DNA Database
PI Regulations	Customs (Prohibited Import) Regulations 1956 Cth
POC Act	*Proceeds of Crime Act 2002* (Cth)
Privacy Act	*Privacy Act 1988* (Cth)
Privacy Commissioner	Officer of the Privacy Commissioner
RLI	Rule of Law Institute
The Bill	Crimes Legislation Amendment (Powers and Offences) Bill 2011
The Taskforce	Criminal Assets Confiscation Taskforce

List of recommendations

Schedule 1

Recommendation 1

The Committee recommends that Schedule 1 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.

Schedule 2

Recommendation 2

The Committee recommends the amendment of Item 27 in Schedule 2 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 to insert, in section 59 AB of the *Australian Crime Commission Act 2002* (Cth), similar protections and wording as that contained in section 25A(9) of the *Australian Crime Commission Act 2002* (Cth).

Recommendation 3

The Committee recommends that the Attorney-General undertake an audit of investigative and coercive powers available to security and law enforcement agencies in order to identify the full scope of powers available to those agencies, with a view to:

- comprehending the extent to which an individual's right to privacy can be abrogated; and
- ascertaining whether recent or any further expansion of those powers is necessary or justified.

The audit report should be provided to the Attorney-General and to this Committee by 1 October 2012.

Schedule 3

Recommendation 4

The Committee recommends that Schedule 3 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.

Schedule 4

Recommendation 5

The Committee recommends that Schedule 4 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.

Schedule 5

Recommendation 6

The Committee recommends that Schedule 5 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.

Schedule 6

Recommendation 7

The Committee recommends that Schedule 6 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.

Schedule 7

Recommendation 8

The Committee recommends the amendment of Item 12 in Schedule 7 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 to remove the retrospective application by deleting the word *before* in section 2(a).

This would ensure that amendments made in this Schedule to abolish automatic parole would only apply to persons sentenced after commencement.

Recommendation 9

The Committee recommends that the Australian Government give further consideration to establishing a Federal parole board.

Schedule 8

Recommendation 10

The Committee recommends that the Minister for Justice provide an explanation to the House of Representatives regarding the need for the retrospective application of amendments proposed in Schedule 8 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011.

1

Schedule 1

1.1 The purpose of Schedule 1 of the Crimes Legislation Amendment (Powers and Offences) Bill (the Bill) is to:

- implement recommendations from the *DNA Forensic Procedures: Further Independent Review of Part 1D of the Crimes Act 1914 Review*[1] (the DNA Review); and
- increase transparency and reduce complexity contained in provisions governing the collection and use of DNA forensic material in Part 1D of the *Crimes Act 1914* (Cth) (the Crimes Act).

Existing laws and practices

1.2 The Crimes Act is Commonwealth legislation that deals with crime, the powers of the authorities to investigate it, and many other related issues including sabotage, treachery, disclosure of information and other issues.

1.3 Part 1D of the Crimes Act allows for the collection and use of DNA material by Commonwealth law enforcement agencies for law enforcement purposes.

1.4 Part 1D also establishes a scheme for the matching and inter-jurisdictional exchange of DNA profiles between Commonwealth, State and Territory law enforcement agencies.

---

1 Australian Government, *The Report of the Independent Review of Part 1D of the Crimes Act 1914*, 30 June 2010.

The DNA Review

1.5 The DNA review was tasked with assessing Part 1D of the Crimes Act and examining issues that arose from an earlier review of Part 1D.

1.6 It made 32 recommendations, and the Bill proposes implementing in full, or part, 13 of these recommendations.

Proposed legislative amendments

Non-intimate forensic procedures

1.7 The Bill proposes that the taking of a sample of blood by a finger prick and the taking of a sample of saliva or sample by buccal swab be reclassified as a non-intimate forensic procedure.

1.8 This amendment responds to a recommendation from the DNA Review which noted that collection of a forensic sample via a self-administered buccal swab is the most common and a relatively non-invasive means of collecting a forensic sample.

1.9 Legislation in most States and Territories already classifies this method as a non-intimate forensic procedure.

1.10 Under current legislation, taking blood via a finger prick, a buccal swab or taking a saliva sample cannot take place unless the suspect has consented or a judge or magistrate has ordered the procedure to be conducted.

1.11 The reclassification of these procedures as non-intimate means that they are able to be ordered by a senior police officer once the officer has considered the matters listed in section 23WO of the Crimes Act including:

- whether there is a less intrusive but reasonably practicable way of obtaining evidence to confirm or disprove the suspect committed the relevant offence;
- the seriousness of the circumstances surrounding the commission of the relevant offence; and
- whether carrying out the forensic procedure is justified in all the circumstances.

Presence of a representative during testing of a sample

1.12 Under current legislation, a representative of a suspect could be present during testing of a sample when there is insufficient material to be shared with accredited laboratories and where the material is being analysed in the investigation of an offence.

1.13 Following concerns from the Australian Federal Police (AFP), the DNA Review made recommendations 13 and 14, suggesting modifications of the conditions under which the suspect's representative could attend and be present during the testing of a suspect's sample.

1.14 Under the proposed amendments, the analyst conducting the testing will be able to direct the attendee to leave the premises if they do not comply with the instructions given by the analyst. Failure to comply with the analyst's direction would be an offence of strict liability.

Consent of children and incapable persons

1.15 During the DNA Review, the Office of the Privacy Commissioner (Privacy Commissioner) submitted that changes should be made to the Crimes Act enabling children and incapable persons to have greater control over decision making processes.[2]

1.16 The proposed legislation gives children and incapable persons more opportunities to resist or object to the carrying out of the procedure as well as being explicitly told that if they object or resist the procedure, it will not take place.

Accreditation of laboratories

1.17 In implementing recommendation 16 of the DNA review, the Bill proposes a definition of accredited laboratory to mean a forensic laboratory accredited by the National Association of Testing Authorities Australia or of a kind prescribed by regulation.

1.18 This will apply to all DNA analysis carried out under Part 1D of the Crimes Act whether it is testing for Commonwealth law enforcement agencies or retesting a sample on behalf of suspects and offenders.

2 Crimes Legislation Amendment (Powers and Offences) Bill 2011 Explanatory Memorandum, p. 28, Item 49.

The National Criminal Investigation DNA Database

1.19 The National Criminal Investigation DNA Database (NCIDD) is established under Part 1D of the Crimes Act. It has seven indices of DNA profiles. These indices are:

- crime scene index;
- missing persons index;
- unknown deceased persons index;
- serious offenders index;
- volunteers (unlimited purpose) index;
- volunteers (limited purpose) index; and
- suspects index.

1.20 DNA profiles are provided by Commonwealth, State and Territory law enforcement agencies and are uploaded onto an index that corresponds to the purposes for which the profile was collected and analysed. A profile is then able to be matched against other uploaded profiles in accordance with matching rules that have been agreed by all jurisdictions.

1.21 The Bill proposes that the NCIDD will be utilised as the sole database for any participating jurisdiction for the purpose of national exchange and matching of DNA profiles.

1.22 The Bill will also provide express statutory authority for a number of matters:

- the AFP can respond to an inquiry from a foreign law enforcement agency as to whether there is a match with a profile held by a foreign agency;
- a law enforcement agency of a participating jurisdiction can initiate international matches through the AFP; and
- subject to the requirements of the *Mutual Assistance in Criminal Matters Act 1987* (Cth), the AFP can develop, in consultation with the Privacy Commissioner, procedural rules governing the sharing of information with a foreign law enforcement agency. The AFP should report to the Minister for Justice on whether agreement has been reached with the Privacy Commissioner and the legislation should require that the rules be tabled in Parliament.

1.23 Additionally, the Bill proposes an amendment that all volunteer DNA profiles are for a 'limited purpose' and that all volunteers are to be informed of this. This arose from the findings of the DNA Review which found that most volunteer profiles were being placed on the 'unlimited purpose' index.

1.24 The aim of this amendment is to ensure that an individual's rights are protected when they voluntarily provide a DNA sample and may also lead to more people providing voluntary samples.

Information provided to persons

1.25 A range of proposed amendments will implement recommendation 8(a) of the DNA Review regarding seeking informed consent to a forensic procedure:

- from a suspect;
- from a suspect who is an Aboriginal person or a Torres Strait Islander person;
- from an offender; and
- from a volunteer or the parent or guardian of a volunteer.

1.26 The proposed amendments will make a change to how a suspect is provided with information during the process under which their consent is sought. This includes the provision of interpreters to persons from a non-English speaking background.

1.27 This will not reduce the amount of matters that a suspect would need to be informed but looks to provide this information in a more appropriate and streamlined manner.

1.28 Further consultation will take place to develop an appropriate set of procedures that will create a set of written and oral notifications to ensure that suspects are able to gain a better understanding of what their consent means.

Other minor and technical amendments

1.29 Schedule 1 of the Bill will make a number of minor and technical amendments to the Crimes Act. The proposed amendments will simplify the language used in various sections of the Act and rectify a number of technical drafting issues and inconsistency of terminology.

Issues raised in consultation

1.30 The amendments confer authority on a senior police officer instead of a magistrate to order a DNA test.

1.31 The AFP assures the Committee that this amendment was not sought due to problems with access to the judicial system.[3] The AFP views the buccal swab and finger prick procedures as being 'simple, relatively non-invasive DNA sampling techniques,' and as such, senior police officers should have the authority to order them.[4]

1.32 As noted above, this reclassification will align Australian laws not only with the approach taken under most State and Territory laws but also with other jurisdictions such as the United Kingdom.[5]

1.33 Currently, ordinary police officers already have authority to carry out these procedures under the Crimes Regulations 1990 (Cth).[6]

1.34 The amendments are not granting the police officers any additional powers. They only seek to change who can grant authority to carry out these procedures.[7]

Committee comment

1.35 The Committee notes the expertise and thoroughness of the DNA Review, which conducted extensive consultation with Commonwealth, State and Territory law enforcement agencies, government departments and civil liberty and privacy advocates. The Committee supports the implementation of its findings.

1.36 The Committee conducted an inspection of a forensic facility and saw for itself that the buccal swab is a self administered, painless and non-invasive process, similar to brushing one's teeth.

1.37 The conferral of authority on a senior police officer to order a DNA test is in line with other Australian and other national jurisdictions. The Committee therefore finds this amendment appropriate, especially as it does not grant ordinary police officers any additional powers.

3 Australian Federal Police, *Submission 10*, p. 1.

4 Australian Federal Police, *Submission 10*, p. 1.

5 Australian Federal Police, *Submission 10*, p. 1.

6 Australian Federal Police, *Submission 10*, p. 2.

7 Australian Federal Police, *Submission 10*, p. 1.

1.38 The Committee notes the importance of safeguards to ensure privacy and protect individual rights. The Committee also notes that law enforcement agencies act in the public interest, and require tools to effectively and efficiently carry out their functions. In this instance, the Committee considers that an appropriate balance between these two objectives has been achieved.

1.39 In particular, the Committee supports the inclusion of greater opportunities for children and incapable persons to object to DNA testing, including being told that if they resist, the procedure will not take place. Similarly, the Committee supports the increase in the availability of interpreters.

Recommendation 1

1.40 **The Committee recommends that Schedule 1 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.**

2

Schedule 2

2.1 The purpose of Schedule 2 of the Crimes Legislation Amendment (Powers and Offences) Bill (the Bill) is to amend the *Australian Crime Commission Act 2002* (Cth) (the ACC Act) to improve how the Australian Crime Commission (ACC) can share and disclose information and material in its possession to combat serious and organised crime.

Existing laws and practices

2.2 The ACC was established under the ACC Act as a statutory authority to combat serious and organised crime. It reports directly to the Minister for Home Affairs and Justice and is part of the Attorney-General's portfolio.

2.3 The ACC is governed by:

- the ACC Board;
- the Minister for Home Affairs and Justice;
- the Inter-Governmental Committee on the ACC; and
- the Parliamentary Joint Committee on Law Enforcement.

2.4 The ACC conducts special operations and investigations against Australia's highest threats of serious and organised crime through:

- providing national strategic criminal intelligence assessments;
- maintaining the nation's criminal intelligence holdings;
- developing national responses to organised crime;

- developing partnerships, providing coordination and collaboration across the Commonwealth, States and Territories and the private sector; and
- providing an independent view about the risk of serious and organised crime impacting Australia, domestically and abroad.

2.5 The ACC works with partners to disrupt, disable and dismantle serious and organised criminal syndicates. The agency seeks to harden the Australian environment against the threat of nationally significant crime through the development of prevention strategies and influencing policy and legislation at a Commonwealth, State and Territory level.

2.6 Currently, the Chair of the ACC Board is the only person who is authorised to provide information to the Minister administering the ACC Act and the Intergovernmental Committee on the ACC.

2.7 There are a range of circumstances where the ACC may disclose information that would normally be subject to the secrecy provisions in section 51 of the ACC Act. These circumstances do not include sharing information with Commonwealth Ministers other than the Minister administering the ACC Act, Members of Parliament or the private sector.

2.8 The ACC Act currently has no provision for the dissemination of information outside of government, other than through public meetings and bulletins released by the Board.

2.9 There is a perceived need for greater public-private partnerships in combating organised crime.

Proposed legislative amendments

Powers of the Chief Executive Officer

2.10 Proposed amendments to the ACC Act will allow the Chief Executive Officer (CEO) of the ACC, in addition to the Chair of the Board, to report on matters relating to the ACC's conduct in the performance of its functions.

2.11 Many of the amendments are as simple as adding the CEO after existing references to the Chair of the Board.

2.12 Amendments apply in relation to all information possessed by the ACC whether it already had the information or obtained it after the commencement of the amendments.

Members of Parliament

2.13 The proposed amendments will allow the Chair or CEO to give information to a member of either House of the Commonwealth Parliament or a member of a State or Territory parliament if he or she considers that it is in the public interest to do so. An example of this would be the situation where the ACC would be able to brief a parliamentary committee that is conducting an inquiry on matters pertaining to an ACC investigation.[1]

Information sharing

2.14 One purpose of the amendments is to make the sharing of information with Commonwealth, State and Territory and foreign and international bodies less complex.

2.15 The proposed amendments provide a definition of 'ACC information' into subsection 4(1) of the ACC Act, as being 'information that the ACC has in its possession.' It distinguishes information from a 'returnable item' (see Schedule 3) to ensure that there is a clear divide between how the ACC deals with ACC information and returnable items.

2.16 Through proposed amendments, the ACC will be able to share information with private sector bodies as well as government bodies where specific requirements have been met and for defined purposes.

2.17 The Explanatory Memorandum provides a detailed description of the term 'permissible purpose', setting out the reasons for which the ACC will be able to share information, distinguishing between Commonwealth, State, Territory and foreign and international bodies, and private sector bodies.

2.18 The definition of permissible purpose will also include any other purpose prescribed by the regulations. This is to ensure that if there is some other reason to share information, the ACC is able to seek prescription of the proposed new purpose in the regulations.

1 Crimes Legislation Amendment (Powers and Offences) Bill 2011 Explanatory Memorandum, p. 54.

Government bodies

2.19 Currently, the ACC Act requires the CEO to provide evidence of an offence obtained in carrying out an operation or investigation to the appropriate Commonwealth, State or Territory law enforcement agency or Attorney-General.

2.20 Under the proposed legislation, the CEO would be able to disclose 'ACC information' but not information that was obtained in an examination if it would breach a non-publication direction made by an Examiner under subsection 25A(9).

2.21 The CEO would be able to share information if the following requirements are met:

- the CEO considers it appropriate to do so;
- it is relevant to a permissible purpose; and
- doing so would not be contrary to a rule of the Commonwealth, State or Territory that would otherwise apply.[2]

Private sector bodies

2.22 The proposed legislation would allow the CEO to disclose 'ACC information' to private sector bodies subject to specific undertakings and conditions and only if it is necessary for a permissible purpose.

2.23 For the CEO to provide ACC information to a prescribed corporation, it is proposed that:

- the CEO must consider it appropriate;
- the CEO must consider it necessary for a permissible purpose;
- the body must have undertaken, in writing, not to use or further disclose information except in accordance with a written specification by the CEO permitting such further disclosure, or as required by a law of the Commonwealth, State or Territory;
- the body has undertaken in writing to comply with any conditions specified by the CEO; and
- disclosing the ACC information would not be contrary to a law of the Commonwealth, State or a Territory that would otherwise apply.[3]

2 Australian Crime Commission, *Submission 3*, p.14.

3 Australian Crime Commission, *Submission 3*, p. 17.

Issues raised in consultation

2.24 By far the most contentious aspect of Schedule 2 is the power awarded to the ACC to share information with the private sector. The ACC argues for the necessity of the amendments.

> A significant part of the ACC's work in recent years (for example in relation to organised fraud and crime on the waterfront) has highlighted the need for law enforcement agencies, including the ACC, to operate in partnership with the private sector ... there is ... clearly a public interest in using criminal intelligence developed by the ACC to contribute to a reduction in the cost of fraud to the private sector by prevention and early detection.[4]

2.25 In particular, the ACC argues that the financial and insurance sectors could use the information to implement better risk management systems.[5]

2.26 The ACC supports its argument by noting that information sharing is a common practice in the United Kingdom and the United States, and is supported by the Commonwealth Organised Crime Strategic Framework. It asserts that without this information sharing power, 'it is not practicable to develop ... fully functional partnerships that would effectively serve ... public interest'.[6]

2.27 The ACC considers that the proposed amendments strike a sufficient balance between the rights of the individual and the needs of law enforcement agencies.[7] In its view, two adequate safeguards exist.

2.28 Firstly, the test of 'necessary to a permissible purpose' which applies for information sharing is 'deliberately higher than the test for providing information to government bodies'.[8]

2.29 Secondly, private bodies will be required to enter into Memorandums of Understanding that the body will not inappropriately use or further disclose the information.[9]

2.30 The ACC assured the Committee there will only be exchange of information where there is direct evidence of a criminal offence by a particular individual and the information will not identify the individual.

---

4 Australian Crime Commission, *Submission 3*, p. 16.
5 Australian Crime Commission, *Submission 3,* p. 19.
6 Australian Crime Commission, *Submission 3*, p. 16.
7 Australian Crime Commission, *Submission 3*, p. 20.
8 Australian Crime Commission, *Submission 3*, p. 17.
9 Australian Crime Commission, *Submission 3*, p. 19.

The information will instead identify the criminal activity or the risks involved. This information would not be allowed to be used in relation to employment conditions and supervisors would not be informed.[10]

> Indeed, such an outcome is not in the operational interests of the ACC: it could result in operationally sensitive information being prematurely disclosed to a criminal associate or in public legal proceedings.[11]

2.31 Moreover, before acting on such information, a private body 'must undertake its own inquiries ... [and] the ACC information is to be used only as a "lead".'[12]

2.32 Further, the ACC claims it is subject to 'robust governance and oversight'.[13] It is accountable to several bodies, including the Australian Commission for Law Enforcement Integrity, the Commonwealth Ombudsman and the Administrative Appeals Tribunal.[14]

2.33 However, reservations about these amendments were raised by other submitters. For example, the Law Council of Australia (the Law Council) argued for a stricter information sharing regime.[15] In particular, the Law Council found the 'permissible' test worrying.

> … the expression of [a] number of these permissible purposes appears to go beyond the possibilities under the existing section 59 and to be expressed quite broadly.[16]

2.34 It expressed concerns that

> … protecting public revenue, developing government policy and researching criminology ... appear to be expressed more broadly than necessary in the context of the type of information the ACC is likely to have in its possession.[17]

10 Mr John Lawler, CEO, and Phillipa de Veau, Legal Services, Australian Crime Commission, *Committee Hansard*, Canberra, 10 February 2012, pp. 4-5.

11 Australian Crime Commission, *Submission 3A*, p. 7.

12 Australian Crime Commission, *Submission 3A*, pp. 7-8.

13 Australian Crime Commission, *Submission 3A*, p. 1.

14 Australian Crime Commission, *Submission 3A*, pp. 1-4.

15 Law Council of Australia, *Submission 1*, p. 7.

16 Law Council of Australia, *Submission 1*, p. 9.

17 Law Council of Australia, *Submission 1*, p. 10.

2.35 Given these concerns, the Law Council recommended that qualifiers be introduced:

> … for example 'protecting public revenue from threats posed by serious and organised crime'; 'developing government policy relating to serious and organised crime' and 'researching criminology relating to serious and organised crime'.[18]

2.36 Similarly, the Rule of Law Institute (RLI) expressed concern regarding the proposed amendments around information sharing and claimed they could deride the presumption of innocence.[19]

2.37 The RLI was concerned that the sharing of information with the private sector would result in an employee being subject to adverse treatment due to their perceived involvement in criminal activities.[20]

2.38 It was particularly concerned about the lack of safeguards in the amendments to protect employees, and gave a simple example:

> … [the employer] can be told, 'I saw you mixing with the bikies' or 'I am telling you that you have an employee that mixes with the bikies'. What are you meant to do? Fire the guy? That is not fair and that is not right.[21]

2.39 The RLI drew the Committee's attention to section 29A(5) of the *Australian Crimes Commission Act 2002* (Cth), which relates to the confidentiality of ACC examinations. The section provides that an examiner may give a direction that evidence obtained by the examination process 'must not be published, or must not be published except in such manner, and to such persons, as the examiner specifies'.

2.40 Crucially, the examiner must give such a direction 'if the failure to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been, or may be, charged with an offence. 'The RLI suggested that in this way:

> The existing Act recognises that there can be a real danger to people if they are identified.[22]

---

18 Law Council of Australia, *Submission 1*, p. 10.

19 Rule of Law Institute, *Submission 4*, p. 1.

20 Rule of Law Institute, *Submission 4*, pp. 2-3.

21 Robin Speed, CEO, Rule of Law Institute, *Committee Hansard*, Canberra, 10 February 2012, p. 25.

22 Robin Speed, CEO, Rule of Law Institute, *Committee Hansard*, Canberra, 10 February 2012, p. 25.

2.41 The RLI expressed dismay that similar protections were not applied to the proposed information sharing provisions.[23]

2.42 The Senate Scrutiny of Bills Committee examined the Bill. In relation to Schedule 2, that Committee noted the importance of the right to privacy and the significance of sharing personal information with the private sector.[24]

2.43 The Scrutiny of Bills Committee therefore sought the Minister's advice as to whether the provisions could be limited to apply only to more serious offences, such as those attracting a minimum period of imprisonment, for example, 12 months. It further drew Senators' attention to the provisions, as they could be considered to trespass unduly on personal rights and liberties.[25]

Committee comment

2.44 The Committee supports amendment to enable the CEO, in addition to the Chair, to report on matters relating to the ACC. It is a sensible addition and will provide greater opportunities for reporting on ACC activities.

2.45 In relation to information sharing and disclosure, the Committee found that the Explanatory Memorandum was scant on detail with reference to the operation of amendments in Schedule 2, which is troubling given the gravity of the issues at stake and the need to protect individual rights no matter the seriousness of the crime under investigation. The Committee notes the detail provided in submissions and the concerns raised by submitters regarding parts of Schedule 2 of the Bill.

2.46 Further the Committee notes the concerns of the Senate Scrutiny of Bills Committee and the advice sought as to whether the provisions could be limited to serious offences.

2.47 The Committee questioned the ACC at length regarding the amendments proposed around disclosing information to private sector bodies, and the protections and redress which might be in place for individuals.

2.48 While the ACC assured the Committee that it would operate with integrity and the Memorandum of Understanding was thorough in

23 Robin Speed, CEO, Rule of Law Institute, *Committee Hansard*, Canberra, 10 February 2012, p. 25.

24 Senate Scrutiny of Bills Committee, *Alert Digest No. 1*, 8 February 2012, p. 5.

25 Senate Scrutiny of Bills Committee, *Alert Digest No. 1*, 8 February 2012, p. 5.

specifying how information could not be used or disclosed, the Committee was not convinced of the adequacy of safeguards to avoid inadvertent or prejudicial use of disclosure of information. In the wake of a lack of safeguards, the Committee was also concerned about a lack of redress to the individual should information be disclosed or used inappropriately.

2.49 The Committee supports the capacity for information sharing. However, it is concerned that, as they stand, the measures proposed in the Bill are insufficient to protect the rights of the individual in, for example, adverse employment decisions.

2.50 Protections already exist in the ACC Act to protect individuals against the consequences of information disclosure if this information was obtained through the examination process.

2.51 The Committee is of the view that similar protections should apply to information obtained by a private company through the ACC.

2.52 Further, in Schedule 4 of the Bill (discussed in Chapter 4), it is proposed to insert similar safeguards into the legislation governing the Australian Law Enforcement Integrity Commission. Members of the general public subject to investigation should be accorded the same protections in regard to information disclosure as afforded to law enforcement officers.

2.53 While Memorandums of Understanding may set out the conditions controlling information sharing, the Committee is concerned that they may not actually be contractually enforceable and that sanctions may be too low to deter any breach. Additionally, the Committee considers it important that the most fundamental of protections against prejudicial disclosure should be enshrined in legislation — namely protection against disclosure which would prejudice the safety or reputation of a person, or prejudice their access to a fair trial.

2.54 These fundamental protections should be clearly stipulated in the Bill and could easily be achieved by inserting into Schedule 2 of the Bill wording similar to that setting out such protections in the ACC Act.

Recommendation 2

2.55 **The Committee recommends the amendment of Item 27 in Schedule 2 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 to insert, in section 59 AB of the *Australian Crime Commission Act 2002* (Cth), similar protections and wording as that contained in section 25A(9) of the *Australian Crime Commission Act 2002* (Cth).**

Recommendation 3

2.56 **The Committee recommends that the Attorney-General undertake an audit of investigative and coercive powers available to security and law enforcement agencies in order to identify the full scope of powers available to those agencies, with a view to:**

- **comprehending the extent to which an individual's right to privacy can be abrogated; and**
- **ascertaining whether recent or any further expansion of those powers is necessary or justified.**

The audit report should be provided to the Attorney-General and to this Committee by 1 October 2012.

3

Schedule 3

3.1 The purpose of Schedule 3 of the Crimes Legislation Amendment (Powers and Offences) Bill (the Bill) is to amend the *Australian Crime Commission Act 2003* (the ACC Act) to introduce rules that are required to better govern the use, sharing and retention of things seized under the ACC Act.

Existing laws and practices

3.2 The Australian Crime Commission (ACC) is able to undertake intelligence operations and investigations authorised by the ACC Board. The ACC Board is also able to determine that such operations and investigations are special operations and special investigations.

3.3 Determination of an operation or investigation as being 'special' is on the basis of whether ordinary police methods of investigation have been effective or other methods of collecting criminal information and intelligence are effective.[1] Declaration of an investigation or operation as being 'special' gives rise to the use of the ACC's coercive powers.

3.4 Coercive powers allow ACC Examiners to:

- summon any witness to appear before an examiner;
- require witnesses to give evidence of their knowledge of criminal activities, involving themselves or others which are the focus of the investigation or intelligence operation; and

1 Australian Crime Commission, *Submission 3*, p. 3.

- require witnesses to provide documents or other things[2] to the Examiner.

3.5 Examiners are independent statutory officers appointed to approve the use of the coercive powers. ACC Examiners are appointed by the Governor-General for a non-renewable five year term.

3.6 Examiners function independently of the ACC and all agencies of the Government. The powers of the Examiner are subject to Federal Court oversight and the exercise of their administrative functions can form the subject of review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

3.7 Current legislation in section 22 of the ACC Act allows the ACC to apply for and execute a warrant to search for a thing or things (including a document) of a particular kind that are connected with a special ACC operation or investigation.

3.8 Section 28 gives examiners the power to summons witnesses to appear before an examiner to give evidence and provide such documents or other things as outlined in the summons.

3.9 Section 29 provides examiners with the power to require persons to produce a document or a thing to a specified person.

3.10 There is currently no existing legislation that requires the return (or otherwise) of things produced under a section 29 notice or at an ACC examination.

Proposed legislative amendments

3.11 The amendments contained in this schedule will introduce rules governing the use, sharing and retention of things seized under an ACC Act search warrant and things or documents produced under sections 28 or 29 of the ACC Act. These amendments are based on similar provisions in the *Crimes Act 1914* (Cth) (Crimes Act).

Australian Crime Commission Act 2002 (Cth)

3.12 A proposed amendment inserts into the ACC Act a definition of 'Commonwealth Officer' into the ACC Act which is similar to that in the Crimes Act. This will ensure that all ACC staff will be subject to the same

2 'Thing' is not defined in the ACC Act.

statutory regime governing the way they deal with documents and other things seized or produced under the ACC Act.

3.13 The proposed legislation will insert a definition of a returnable item which will include a thing seized under a warrant under section 22 or a thing or document produced under a notice given under section 29 or during an examination. The new amendments will make reference to returnable items.

3.14 A definition of a State and Territory law enforcement agency will be inserted by proposed amendments. This will facilitate the ACC sharing of a returnable item with a State or Territory law enforcement agency in certain circumstances, as a later amendment proposes.

3.15 Proposed new amendments will create more consistency between Commonwealth regimes governing the seizing and producing of things and documents.

3.16 New sections are proposed which are modelled on the provisions of the Crimes Act and set out provisions governing the use, sharing and retention of documents and other things obtained by the ACC using its coercive powers.

3.17 These amendments clarify the different rules that apply when the ACC is dealing with returnable items compared to when they are dealing with ACC information.

3.18 The Explanatory Memorandum details at great length the purposes for which a constable or Commonwealth officer would be able to use a returnable item.[3]

3.19 The Explanatory Memorandum concludes that:

> All these purposes for using and sharing returnable items are important in ensuring that the ACC is able to properly carry out its designated functions as the national body responsible for detecting and investigating serious and organised crime and maintaining a leading capability in national criminal intelligence and information services.[4]

3 Crimes Legislation Amendment (Powers and Offences) Bill 2011 Explanatory Memorandum pp. 70-72.

4 Crimes Legislation Amendment (Powers and Offences) Bill 2011 Explanatory Memorandum p. 72.

Other minor and technical amendments

3.20 Schedule 3 of the Bill will make a number of minor and technical amendments to the Crimes Act. The proposed amendments will simplify the language used in various sections of the Act and rectify a number of technical drafting issues and inconsistency of terminology.

Committee comment

3.1 No significant issues were raised in consultation regarding the amendments proposed in Schedule 3 of the Bill.

3.2 The Committee notes the importance of safeguards to protect individual rights. The Committee also notes that law enforcement agencies act in the public interest, and require tools to effectively and efficiently carry out their functions. In this instance, the Committee considers that an appropriate balance between these two objectives has been achieved.

Recommendation 4

3.3 **The Committee recommends that Schedule 3 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.**

4

Schedule 4

4.1 The *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) establishes the Australian Commission for Law Enforcement Integrity (ACLEI) and the position of the Integrity Commissioner and provides them with powers to prevent, detect and investigate corrupt conduct within Australian Government law enforcement agencies.

4.2 The purpose of Schedule 4 of the Crimes Legislation Amendment (Powers and Offences) Bill (the Bill) is to amend the LEIC Act to enhance the ability of ACLEI to investigate corruption.

4.3 Other amendments to the LEIC Act aim to improve the operation of provisions relating to arrest warrants, search warrants, Notices to Produce and Summons Notices, and provide consistency between non-disclosure regimes in the *Privacy Act 1988* (Cth) and the LEIC Act.

Existing laws and practices

4.4 ACLEI's primary role is to investigate law enforcement-related corruption issues, giving priority to serious and systemic corruption.

4.5 Those agencies subject to the Integrity Commissioner's jurisdiction are the Australian Crime Commission (ACC), the Australian Customs and Border Protection Service (Customs), the Australian Federal Police (AFP) and the former National Crime Authority. Other agencies with a law enforcement function may also be added by regulation.

4.6 The Integrity Commissioner considers the nature and scope of corruption revealed by investigations, and reports annually on any patterns and trends in corruption in Australian Government law enforcement and other Government agencies which have law enforcement functions. Accordingly, ACLEI collects intelligence about corruption in support of the Integrity Commissioner's functions.[1]

4.7 One of the goals of ACLEI is to understand corruption and prevent it. When, as a consequence of performing his or her functions, the Integrity Commissioner identifies laws of the Commonwealth or administrative practices of government agencies that might contribute to corrupt practices or prevent their early detection, he or she may make recommendations for these laws or practices to be changed.[2]

Proposed legislative amendments

Law Enforcement Integrity Commissioner Act 2006 (Cth)

4.8 In summary, Schedule 4 amends the LEIC Act to:

- change terminology and some rules relating to the provision of information, documents or things to the Integrity Commissioner;
- allow an arrest warrant issued by the Integrity Commissioner to be executed by a nominated authorised officer;
- clarify the use of force and what items can be seized when executing search warrants issued by the Integrity Commissioner;
- provide ACLEI with contempt power in line with that exercisable by the Australian Crime Commission; and
- make minor amendments to fix drafting errors in the LEIC Act.

1 Australian Commissioner for Law Enforcement Integrity, 'About Us', <http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About_Us> accessed 30 January 2012.

2 Australian Commissioner for Law Enforcement Integrity, 'About Us', <http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About_Us> accessed 30 January 2012.

Notices to Produce

4.9 Under the changes introduced by the Bill, there would no longer be any difference between Notices to Produce issued to staff of law enforcement agencies and Notices to Produce issued to other persons. Information could be delivered to an ACLEI officer other than the Integrity Commissioner, thus eliminating delay.

4.10 Other amendments require that a person served with a Notice to Produce must comply within the specified time period. The Integrity Commissioner is required to provide written acknowledgement to a person confirming they have produced all things specified in a Notice to Produce. This is crucial, because a failure to produce is an offence. Additionally, a defence is created where it is not reasonably practicable to comply with the Notice within the time required.

4.11 A non-disclosure regime is proposed, ensuring that the Integrity Commissioner can effectively control the disclosure of sensitive information. A disclosure of Notice to Produce, or of the nature of the material sought in the Notice, can be damaging to an investigation.

4.12 The Integrity Commissioner must prohibit disclosure where it would be reasonably expected to prejudice a person's safety or reputation, or prejudice the fair trial of a person or the investigation of corruption or any action taken as a result of the investigation.

4.13 Additionally, the Integrity Commissioner may prohibit disclosure where it would be contrary to the public interest or might prejudice a person's safety or reputation, the fair trial of a person or the investigation of corruption or any action taken as a result of the investigation.

4.14 Such notifications would be accompanied by a statement setting out the rights and obligations conferred or imposed on the person served with the Notice. It would be an offence to disclose the existence of the Notice or any official connected matter within five years of serving the Notice.

4.15 Disclosure would be permitted to the person's lawyer or if the person is a body corporate, to an officer or agent to ensure compliance. The lawyer or officer/agent could not disclose the notification, with the same time limit and penalty applying.

4.16 However, a lawyer could disclose existence of the notification if it is for the purpose of advising or representing a person served with a Notice. An

officer/agent can disclose knowledge it was to ensure compliance with the Notice.

Privilege

4.17 The proposed amendments provide certainty that legal professional privilege can be claimed over the information, documents or things in other proceedings.

4.18 Currently, a person is required to expressly claim that giving information or producing a document or thing might tend to incriminate them or expose them to a penalty before that information or object will be inadmissible in evidence against the person in criminal proceedings. This must be claimed before the giving of any information or production of every document or thing which may incriminate the person.

4.19 This can result in inconsistent claims and impact on the timeliness of production, especially where people are confused about how the process works.

4.20 The amendment means that people will automatically be protected and do not have to make an express claim of privilege before immunity applies.

4.21 However, despite immunity, documents and things can still be used in evidence for certain purposes.

4.22 ACLEI is prevented from sharing information, documents or things that are subject to legal professional privilege with any other party. Also, privilege will continue to apply if the information, documents or things are the subject of other proceedings.

Contempt

4.23 The proposed amendments introduce a contempt offence.

4.24 Currently there is no immediate threat of detention for failing to answer a question or failing to produce required documents. ACLEI investigations can be compromised by the delay in commencement of court proceedings and witnesses may not cooperate with ACLEI, knowing that no penalty will be imposed for 12–18 months.

4.25 ACLEI will be able to refer an uncooperative witness to a court to be dealt with as if that person was in contempt of court. This will give ACLEI similar powers to the Australian Crime Commission and ACLEI state counterparts.

4.26 Procedural requirements are set out in the amendments. People will be notified of their non-compliance and given a further opportunity to comply.

4.27 However, ACLEI does not ultimately determine whether a person is in contempt; this is the responsibility of a court.

4.28 ACLEI can direct the police to detain a person against whom the contempt is being alleged. ACLEI can withdraw an allegation of contempt at any time, providing witnesses with a further opportunity to cooperate.

4.29 To avoid double jeopardy, people can only be prosecuted in relation to contempt under the LEIC Act or another law.

Applying for a warrant

4.30 The proposed amendment deals with the circumstances surrounding when an authorised officer can apply for a warrant. The effect of the amendment is that the officer does not need to have 'reasonable grounds to believe' that the suspect has been ordered to deliver their passport to ACLEI and is to be served with a summons, as this will be clear from ACLEI records.

4.31 In addition, the authorised officer that applied for the warrant does not need to execute the warrant. This is crucial where the arrest warrant needs to be executed in a different jurisdiction than the one where the warrant was issued.

4.32 Under the amendments, the warrants can now authorise seizures of anything that the authorised or assisting officer believes on reasonable grounds to be an 'eligible seizable item'. This is defined as anything that would present a danger to a person or could be used to assist a person to escape from lawful custody.

Authorised officers

4.33 The amendments mean that ACLEI may authorise a person to be an 'authorised officer'. 'Authorised officers' must be a staff member of ACLEI and meet certain other criteria or be a member of the AFP.

4.34 Under the LEIC Act, only authorised officers may use reasonable force against persons when executing a search warrant. 'Assisting officers' can help, but may only use reasonable force against things, not people, and they cannot search people.

4.35 The amendments mean that 'assisting' members of the police, who are trained to use force, can assist an authorised officer to execute a search warrant and, search people and use necessary and reasonable force against things and people.

Privacy Act 1988 (Cth)

4.36 The Privacy Act is amended so that a credit reporting agency must not keep a note on a person's file about a Notice to Produce issued to that person if the Notice includes a notation that information about it is not to be disclosed.

4.37 A similar provision for a Summons Notice already exists.

Surveillance Devices Act 2007 (Cth)

4.38 The definition of 'federal law enforcement officer' is amended to include the Integrity Commissioner, the Assistant Integrity Commissioner and staff members of ACLEI. This means these people can use optical surveillance for any purpose that is within the functions of the Integrity Commissioner, if they are acting within the course of their duties.

Extending the Integrity Commissioner's term

4.39 The amendments will extend the Integrity Commissioner's total term from five to seven years.

Other minor and technical amendments

4.40 Schedule 4 of the Bill will make a number of minor and technical amendments to the LEIC Act. The proposed amendments will simplify the language used in various sections of the Act and rectify a number of technical drafting issues and clarify terminology.

Committee comment

4.41 No significant issues were raised in consultation regarding the amendments proposed in Schedule 4 of the Bill.

4.42 The Committee notes the importance of safeguards to ensure privacy and protect individual rights. The Committee also notes that law enforcement agencies act in the public interest, and require tools to effectively and

efficiently carry out their functions. In this instance, the Committee considers that an appropriate balance between these two objectives has been achieved.

Recommendation 5

4.43 **The Committee recommends that Schedule 4 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.**

5

Schedule 5

5.1 The purpose of Schedule 5 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 (the Bill) is to help combat the emergence and importation of illicit substances.

5.2 Amendments to Part 9.1 of the *Criminal Code Act 1995* (Cth) (the Criminal Code) will ensure substances and quantities that are temporarily prescribed in the Criminal Code Regulations 2002 (Cth) will remain subject to Commonwealth serious drug offences in the longer term.

5.3 Amendments to the *Customs Act 1901* (Cth) (the Customs Act) aim to ensure that the Australian Customs and Border Protection Service (Customs) is provided with the legislative tools to enable it to consistently and efficiently undertake its role in seizing illicit substances unlawfully entering Australia.

Existing laws and practices

5.4 Part 9.1 of the Criminal Code contains the Commonwealth's serious drug offences. Where referred to below, the term 'substances' includes drugs, plants and precursors.

5.5 Domestic offences involve 'controlled' substances. Import/export offences involve 'border controlled' substances. The quantity of the substance determines the level of seriousness of the crime. The most serious is 'commercial' quantity, followed by 'marketable' and 'trafficable' quantities.

Proposed legislative amendments

Criminal Code Act 1995 (Cth)

5.6 Items 1-5 insert certain drugs on the 'controlled' list and specify threshold quantities for prosecution. Respectively, the drugs are Benzylpiperazine, Ketamine, Methcathinone, 4-Methylmethcathinone and Phenylpropanolamine.

5.7 Items 6, 7 and 11 insert certain drugs on the 'border controlled' list and specify threshold quantities for prosecution. Item 6 relates to Benzylpiperazine, item 7 to Ketamine and item 11 to 4-MMC.

5.8 Item 9 inserts threshold quantities for Methcathinone which is already a 'border controlled' substance. Item 12 inserts threshold quantities for phenylpropanolamine which is already a 'border controlled' substance.

5.9 The quantities specified in Items 1–12 are pure quantities, which is relevant where a prosecution relates to a quantity of a particular drug contained in a mixture of other substances.

Customs Act 1901 (Cth)

5.10 The Bill amends the Customs Act to provide consistency in how Customs seizes substances. Customs can seize substances under two instruments, the Customs (Prohibited Imports) Regulations 1956 (PI Regulations) and the Criminal Code.

5.11 There exists considerable overlap between 'prohibited' substances as defined in the PI regulations and the 'border controlled' substances as defined in the Criminal Code.

5.12 Currently, Customs can seize substances without a warrant only if they are covered by the PI Regulations. This places an administrative burden on Customs, which can be inefficient in light of an emerging drug analogues market. Drug analogues are legal substances for illicit drugs and are not prohibited under the PI Regulations.

5.13 The amendments do not disrupt any safeguards in the Customs Act or give Customs any other additional powers. For example, it continues to be the case that Customs may only seize substances without a warrant if it is necessary to prevent the goods from being concealed, lost or destroyed.[1]

1 *Customs Act 1901* (Cth) s 203.

5.14 Hence, the proposed amendment inserts a new definition of 'border controlled precursor' into the Definitions section of the Customs Act. This definition aligns with Part 9.1 of the Criminal Code. A further amendment repeals the existing definition of 'special forfeited goods' and inserts an expanded definition which will include 'border controlled precursors'. The practical effect of these amendments is that Customs can seize border controlled substances at and outside Customs Places without a warrant. Customs Places include designated ports, airports and wharfs.

5.15 The amendment of item 15 is only required if the Customs Amendment (Military End-Use) Bill 2011 (Military Bill) which is currently before Parliament commences before the commencement of this Bill. The amendment is merely to ensure application of the Military Bill; there is no additional substantive impact.

Committee comment

5.16 No significant issues were raised in consultation regarding the amendments proposed in Schedule 5 of the Bill.

5.17 The Committee notes the importance of safeguards to protect individual rights. The Committee also notes that law enforcement agencies act in the public interest, and require tools to effectively and efficiently carry out their functions. In this instance, the Committee considers that an appropriate balance between these two objectives has been achieved.

Recommendation 6

5.18 **The Committee recommends that Schedule 5 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.**

6

Schedule 6

6.1 Schedule 6 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 (the Bill) amends the *Proceeds of Crime Act 2002* (Cth) (POC Act) and the *Director of Public Prosecutions Act 1986* (Cth) (DPP Act) to allow a court to restrict publication of certain matters to prevent prejudice to the administration of justice.

6.2 Under the existing Act, Australian Federal Police (AFP) staff are considered 'authorised officers' and have certain powers. The amendments mean that non-members of the AFP and secondees can also be 'authorised officers'.

Existing laws and practices

6.3 In 2011, the Government launched a multi-agency Criminal Assets Confiscation Taskforce (the Taskforce) which is led by the AFP and includes the Commonwealth Director of Public Prosecutions (DPP), Australian Crime Commission and Australian Tax Office.

6.4 Following legislative amendment in 2011, the Commissioner of the AFP can also conduct proceeds of crime litigation. Previously, only the DPP could do so. This Bill will make several further amendments to facilitate the work of the Taskforce.

Proposed legislative amendments

Director of Public Prosecutions Act 1983 (Cth)

6.5 Currently, the court has the power to restrict or prohibit the publication of certain matters contained in affidavits where the DPP has applied for a restraining order and the court considers it to be necessary to make the order to prevent prejudice to the administration of justice. This section is being repealed because a similar section is being inserted in the POC Act.

6.6 The court continues to have similar powers to prohibit or restrict disclosure of matters contained in affidavits that are part of an application for a restraining order.

Proceeds of Crime Act 2002 (Cth)

6.7 The amendments bring several changes to the POC Act.

6.8 Firstly, a new provision is inserted which is similar to the repealed provision in the DPP Act. The practical effect of the new provision is to permit the Commissioner of the AFP as well as the DPP to do certain things when conducting proceeds of crime litigation.

6.9 'Authorised officer' would include non-member staff of the AFP and secondees to the AFP. This is important given the multi-agency nature of the Taskforce. Experts and public servants from other agencies often assist the AFP with its investigations. The amendments are needed to enable them to apply for freezing orders, make affidavits in support of restraining or unexplained wealth orders, and exercise certain information gathering tools.

6.10 Further, magistrates would be able to make an order prohibiting or restricting the publication of certain matters contained in affidavits in support of freezing orders if it is necessary to prevent prejudice to the administration of justice. This is similar to the powers of magistrates in relation to restraining orders.

Application of amendments

6.11 Amendments apply to any restraining and freezing orders made under the POC Act after those amending items commence. This is even if the conduct on which the order is based on occurred before, on or after the commencement of the amendments.

6.12 This provides clarity as to which of the provisions in DPP Act and POC Act apply, and is important given that conduct leading to a restraining order may continue over several years or may not be discovered immediately.

Other minor and technical amendments

6.13 Schedule 6 of the Bill will make a number of minor and technical amendments to the *Crimes Act 1914* (Cth). The proposed amendments will simplify the language used in various sections of the Act and rectify a number of technical drafting issues and inconsistency of terminology.

Committee comment

6.14 No significant issues were raised in consultation regarding the amendments proposed in Schedule 6 of the Bill.

6.15 The Committee notes the importance of safeguards to protect individual rights. The Committee also notes that law enforcement agencies act in the public interest, and require tools to effectively and efficiently carry out their functions. In this instance, the Committee considers that an appropriate balance between these two objectives has been achieved.

6.16 The Committee notes that some items in Schedule 6 apply retrospectively, but considers that the need for retrospective application is adequately detailed in the Bill and Explanatory Memorandum.

Recommendation 7

6.17 **The Committee recommends that Schedule 6 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.**

7

Schedule 7

7.1 The purpose of Schedule 7 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 (the Bill) is to amend Part 1B of the *Crimes Act 1914* (Cth) (the Crimes Act) to implement recommendations arising out of the Australian Law Reform Commission's 2006 Report: *Same Crime, Same Time: Sentencing of Federal Offenders* (ALRC Report).

7.2 The effect of the amendments is to ensure that all parole decisions for federal offenders are able to be made at the Attorney-General's discretion and that adequate parole, licence and supervision periods can be applied to federal offenders as required.

Existing laws and practices

Federal offenders

7.3 Part 1B of the Crimes Act largely governs the sentencing of federal offenders. Federal offenders are people who have been convicted of a crime against a law of the Commonwealth.

7.4 The number of federal prisoners is relatively small. The September 2011 Australian Bureau of Statistics Corrective Services report states that there were 900 federally sentenced prisoners in Australia.[1] This number

1 Australian Bureau of Statistics, Cat 4512.0 'Corrective Services, Australia, Sep 2011', <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0> accessed 20 February 2012.

represents approximately three per cent of the Australian prison population.[2]

7.5 There are no federal prisons so federal offenders are held in State and Territory prisons. They are subject to the same discipline, use the same amenities and take part in the same activities.

7.6 In general, federal offenders are eligible for the same programs as State prisoners such as work release, home detention or pre-release, if these schemes are offered in the State in which they are imprisoned. However, there may be specific conditions that make them ineligible for these programs.

Non-parole or recognizance release order

7.7 If the court hands down a federal sentence to a term of imprisonment that exceeds three years in total, it may fix a non-parole period or make a recognizance release order.

7.8 The non-parole period is the minimum time that the offender must serve in prison.

7.9 A recognizance release order is an order made under section 20(1)(b) of the Crimes Act and is analogous to a suspended sentence. A court may sentence a person convicted of a federal offence to imprisonment. The court can then direct that the person be released; either immediately or after he or she has served a specific period of imprisonment, upon the giving of security that he or she will comply with certain conditions.[3]

7.10 The release of the offender at the end of the non-parole period is on the basis of parole, where he or she is released back into the community under supervision and subject to conditions.

7.11 Section 19AU of the Crimes Act provides that decisions on parole are to be made by the Attorney-General.

2 There were 29 041 persons in full-time custody as at the September quarter 2011. See Australian Bureau of Statistics, Cat 4512.0 'Corrective Services, Australia, Sep 2011' <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0> accessed 20 February 2012.

3 *Crimes Act 1914* (Cth) s 20(1)(b).

Truth in sentencing

7.12 The current definition of 'parole period' in the Crimes Act varies depending on how long an offender's sentence is:

- for a federal offender not subject to a life sentence, the parole period is set at a maximum of five years; and
- for an offender serving a life sentence, the parole period must exceed five years.

7.13 Under section 19AP of the Crimes Act, the Attorney-General may grant a licence for a federal offender to be released from prison.

7.14 A licence authorises the release of the offender earlier than the date that he or she would be have been eligible for release from prison under the terms of the sentence.

7.15 The Attorney-General must not grant a licence unless he or she is satisfied that exceptional circumstances exist which justify the grant of the licence. The exceptional circumstances are at the discretion of the Attorney-General.

7.16 Currently, for a federal offender who is not subject to a life sentence, the licence period is capped at a maximum of five years. An example is detailed in the Explanatory Memorandum. A prisoner (not subject to a life sentence or a recognizance release order) could be released under licence, due to exceptional circumstances, five years into a 12 year sentence. Under the current legislation, the maximum licence period is five years. Effectively the prisoner would have served five years in jail, five years under licence and the remaining two years of the sentence imposed by the court would not be enforced.[4]

7.17 These maximum licence and parole periods can have the unintended consequence that the total sentence imposed by the court may not be enforced.

Automatic parole

7.18 Section 19AL of the Crimes Act sets out different arrangements for the release on parole of federal offenders depending on the length of their sentence.

4 Crimes Legislation Amendment (Powers and Offences) Bill 2011 Explanatory Memorandum, pp. 127-128.

7.19 For sentences of 10 years or more where a non parole period has been fixed, the Attorney-General may determine whether or not the prisoner should be released on parole at the expiry of his or her non-parole period.

7.20 However, for sentences of less than 10 years where a non-parole period has been fixed by the court, the Attorney-General has no discretion to refuse to release the prisoner on parole. The Attorney-General can only make a parole order directing that the person be released either at the end of the parole period or if appropriate, at a date no earlier than 30 days before the end of the non-parole period. This is referred to as automatic parole.

7.21 Automatic parole can be problematic under a range of situations such as where a State or Territory corrective service agency does not support the grant of parole or when the federal offender has committed a further offence while serving a sentence of imprisonment but has not been sentenced.

7.22 As an example, State or Territory offenders are encouraged to take part in rehabilitation programs as failure to do so may affect their chances of parole. However, there is no such incentive for federal offenders who will be released whether they take part in rehabilitation programs or not.

Supervision and licence periods

7.23 Supervision refers to the oversight and management of the offender by the relevant State and Territory parole service. The Crimes Act defines 'supervision period' in subsection 16(1).

7.24 The 'supervision period' for federal offenders not serving a life sentence is capped at a maximum length of three years.

7.25 This cap is arbitrary and can have the unintended effect that federal offenders who may need additional supervision beyond three years during their licence or parole period are unable to access it.

7.26 As previously stated, the current legislation states that the licence period for a federal offender who is not subject to a life sentence cannot exceed five years.

Proposed legislative amendments

Supervision and licence periods

7.27 The proposed amendment repeals the current definition and inserts a new definition of 'licence period'. This definition will vary depending on whether the federal offender who is released on licence is:

- subject to a recognizance release order;
- serving a federal life sentence; or
- serving any other type of federal sentence.

7.28 Under the new definition of 'licence period' under section 19AP, the prisoner could be granted a licence to be released after five years.

7.29 The licence period would then extend to the end of the sentence so that the full sentence originally set by the court is enforced.

7.30 The proposed amendment will change the definition of 'supervision period' to mean that the supervision period will start when the offender is released from prison on parole or licence; and end, either at the end of the offender's parole or licence period, or on an earlier date being the day on which the supervision period ends, as specified in the parole order or licence.

7.31 In all instances, the 'licence period' commences on the day of release on licence.

7.32 Where the offender is subject to a recognizance release order, the 'licence period' ends when the person is eligible for release in accordance with the recognizance release order. This is because offenders released under such orders are generally not under supervision and the only condition is to be of good behaviour for a set period.

7.33 Where the offender has been given a federal life sentence, the 'licence period' ends at the day specified on the licence as the day on which the licence period ends.

7.34 When the offender has been given any other federal sentence, the 'licence period' ends on the last day of any federal sentence being served or to be served.[5]

7.35 These amendments aim to achieve greater 'truth in sentencing'.

5 For a diagrammatic representation of this phenomenon, refer to Crimes Legislation Amendment (Powers and Offences) Bill 2011 Explanatory Memorandum, p. 128.

Supervision period as a condition of a parole order

7.36 Section 19AN of the Crimes Act deals with the conditions of a parole order.

7.37 Subsection 19AN(2) provides that the Attorney-General may, at any time before the end of an offender's parole period, vary or revoke a condition of the parole order or impose additional conditions.

7.38 Under a proposed amendment to subsection 19AN(2), the Attorney-General will continue to be able to vary or revoke a condition of the parole order or impose additional conditions, but will also be able to change the day on which the offender's supervision period ends.

7.39 The ability to change the day on which an offender's supervision period will end will allow the offender's changing circumstances to be taken into account and will maximise the ability of the licence to promote the offender's reintegration and rehabilitation and better protect the community.

Abolishment of automatic parole

7.40 The proposed amendment will require that before the end of the offender's non-parole period, the Attorney-General is required to either make or refuse to make a parole order directing that the person be released from prison on parole.

7.41 Additionally, proposed amendments will address a range of issues including:

- the requirement to reconsider a prisoner's release on parole within 12 months of refusing to make a parole order; and
- that every parole order must be in writing and specify whether or not the person is to be released subject to supervision.

7.42 Amendments will also provide more detail with respect to supervision periods and their duration in relation to parole.

7.43 Federal offenders who are eligible for release on federal parole but who are still serving a State or Territory custodial sentence when their federal non-parole period expires will not be released on federal parole until their release is authorised under the State and Territory sentence. This amendment will also take into account the type of sentence that the federal offender is serving.

7.44 The new arrangements will apply to all federal offenders who are sentenced to a period of imprisonment, with non parole period, *before, on* or *after* the commencement of this Schedule for whom a parole order has not been made at the commencement of this Schedule.[6]

Issues raised in consultation

Retrospectivity

7.45 The Law Council of Australia (the Law Council) supports many of the amendments relating to parole conditions, but opposes the retrospective abolishment of automatic parole. They are of the firm view that 'legislative provisions which create criminal penalties should not be retrospective in their application'.[7] They express alarm that:

> Offenders sentenced to less than 10 years imprisonment with a non-parole period will no longer automatically be released on completion of the non-parole period as they would have expected, probably based on the advice of their lawyer according to the law in effect at the time they were sentenced. Such offenders may also be subject to longer periods of supervision than they would have expected.[8]

7.46 The Law Council notes that amendments intend to facilitate the use of parole for purposes such as community protection and rehabilitation of offenders, but considers that retrospectivity is not necessary:

> Such purposes could still be facilitated by carefully tailoring the conditions in parole orders. For example, rather than using the threat of not granting parole to create incentives for offenders to participate in relevant programs, including sex offender programs, such participation could be made a condition of the parole order itself.[9]

7.47 The Law Council further argued that the retrospectivity of the amendments was not supported by the ALRC's recommendations.

6 Crimes Legislation Amendment (Powers and Offences) Bill 2011 Explanatory Memorandum, p. 149.

7 Law Council of Australia, *Submission 1A*, p. 2.

8 Law Council of Australia, *Submission 1A*, p. 2.

9 Law Council of Australia, *Submission 1A*, p. 3.

7.48 The Human Rights Law Centre noted that:

> … the proposed amendments potentially engage the following relevant human rights:
>
> - freedom from retrospective application of criminal laws (contained in article 15 of the International Covenant on Civil and Political Rights, to which Australia is a party); and
> - freedom from arbitrary detention (contained in article 9 of the ICCPR).[10]

7.49 However, the Human Rights Law Centre concluded that

> … the Bill does not appear to raise any major concerns with the relevant human rights standards and principles.[11]

7.50 The Rule of Law Institute (RLI) stated that

> …retrospective legislation is destructive of the rule of law. We all need to know what the law is. In my view, most people want to comply with the law. You destroy the rule of law as soon as you make it retrospective—because how do you comply with it?[12]

7.51 The RLI argued that retrospective laws can be appropriate in 'extreme situations', but there must be a compelling need due to the potential for abuse.

> … you have got to look at all the circumstances and say: 'This is so unusual. Am I prepared to take the risk that this involves?'[13]

Parole at the Attorney-General's discretion

7.52 Bronwyn Naylor, Associate Professor, Monash University Faculty of Law, criticised the amendments for leaving parole decision making 'open to political influence in sensitive or controversial cases'.[14]

10 Human Rights Law Centre, *Submission 6*, p. 1.

11 Human Rights Law Centre, *Submission 6*, p. 1.

12 Mr Robin Speed, CEO, Rule of Law Institute, *Committee Hansard*, Canberra, 10 February 2012, p. 26.

13 Mr Robin Speed, CEO, Rule of Law Institute, *Committee Hansard*, Canberra, 10 February 2012, p. 27.

14 Bronwyn Naylor, Associate Professor, Monash University Faculty of Law, *Submission 9*, p. 1.

7.53 Ms Naylor argued that this was at odds with the recommendation of the ALRC Report. In that report, the ALRC recommended that parole decisions should be made:

> … through transparent and accountable processes in accordance with high standards of procedural fairness and independently of the political arm of government.[15]

7.54 Ms Naylor wrote:

> … the proposed process does not provide 'equal treatment' for federal prisoners. All other Australian jurisdictions have independently-established parole authorities. Independence from government is recognised to be essential in these jurisdictions, to ensure institutional separation from political influence.[16]

7.55 Ms Naylor referred to United Kingdom, New Zealand and Victorian court cases which highlighted 'the importance of perceived and actual independence'.[17]

7.56 In this vein, Ms Naylor advocated for the establishment of an independent parole board. She emphasised the necessity of its 'specialist expertise and judicial and community membership, reflecting the varied goals of the parole process.'[18]

7.57 Ms Naylor's views were seconded by Lorana Bartels, Senior Lecturer, University of Canberra School of Law.

7.58 Ms Bartels found the refusal to establish a federal parole board particularly odd, given that consultations and submissions to the ALRC expressed 'almost universal support for the principle that decisions in relation to parole should be made by a body independent of the executive'.[19]

7.59 As a result, she is concerned that the power accorded to the Attorney-General 'would be open to abuse', writing that 'it is inappropriate that this power be granted to the [Attorney-General], rather than an independent authority.'[20]

---

15 Bronwyn Naylor, Associate Professor, Monash University Faculty of Law, *Submission 9*, p. 1.

16 Bronwyn Naylor, Associate Professor, Monash University Faculty of Law, *Submission 9*, p. 1.

17 Bronwyn Naylor, Associate Professor, Monash University Faculty of Law, *Submission 9,* p. 1.

18 Bronwyn Naylor, Associate Professor, Monash University Faculty of Law, *Submission 9*, p. 2.

19 Australian Law Reform Commission, *Same Crime, Same Time: Sentencing of Federal Offenders*, Report no 103 (Sydney, 2006) at 23.7.

20 Lorana Bartels, Senior Lecturer, University of Canberra School of Law, *Submission 7*, p. 2.

7.60 As such, Ms Bartels deemed the amendments 'an incomplete response' to the ALRC's recommendations'.[21]

7.61 The Law Council felt the same. They were 'disappointed that the Bill does not address the ALRC's recommendations more holistically' and support:

> … the concept of a separate federal sentencing Act and greater federal administrative machinery, including a federal parole board rather than the Attorney-General making decisions about parole.[22]

7.62 Civil Liberties Australia claimed the Attorney General's discretion would:

> … delay the release of unpopular prisoners, for example sex offenders, who have served their sentences but are deemed insufficiently punished by sectors of the community. This is especially likely around election times when 'tough on crime' becomes a popular political catch-cry. Also this could be used to further detain a person who maintains his or her innocence.[23]

7.63 The Human Rights Law Centre did not advocate for a separate parole board, but noted the 'wide ranging impact'[24] of parole on the rights of offenders and the broader community. They did not object to the Attorney-General's discretion, but outlined principles which should guide the exercise of his discretion:

- considering relevant human rights when exercising discretion;
- affording procedural fairness to prisoners and parolees;
- where appropriate, providing legal representation for prisoners and parolees;
- ensuring access to relevant information for prisoners and parolees; and
- providing rights of appeal.[25]

7.64 Ms Naylor commented on the positive aspects of the parole reforms. She noted that:

> ... prisoners can make a submission and have the submission considered, and that they are provided with a statement of reasons if parole is refused. These rights are important, and should be made uniform across all state boards. In addition, all parole bodies—state, territory and federal—ought to ensure that prisoners are provided with information being relied on

21 Lorana Bartels, Senior Lecturer, University of Canberra School of Law, *Submission 7*, pp. 2-3.

22 Law Council of Australia, *Submission 1A*, p. 2.

23 Civil Liberties Australia, *Submission 2*, pp. 8-9.

24 Human Rights Law Centre, *Submission 6*, p. 1.

25 Human Rights Law Centre, *Submission 6*, p. 1.

beforehand in order to prepare a response, and should have a clear avenue of appeal, without having to rely on judicial review. These elements of natural justice are provided in a small number of Australian jurisdictions, but are seen as essential human rights protections in jurisdictions such as the United Kingdom and Canada.[26]

Other minor and technical amendments

7.65 Schedule 7 of the Bill will make a number of minor and technical amendments to the Crimes Act. The proposed amendments will simplify the language used in various sections of the Act and rectify a number of technical drafting issues and inconsistency of terminology.

Committee comment

7.66 The Committee supports implementation of the reforms recommended by the ALRC Report. The Committee considers the current system of automatic parole to be flawed and supports its abolition. Additionally, the Committee supports the changes to supervision and licence periods to ensure that there is 'truth in sentencing'.

7.67 However, the Committee finds the retrospective abolishment of automatic parole highly troubling.

7.68 According to the Department of Prime Minister and Cabinet's Legislation Handbook, retrospective legislation affecting rights or imposing liabilities must only be introduced in exceptional circumstances and on explicit policy authority.[27]

7.69 The Explanatory Memorandum does not mention any exceptional circumstances or refer to explicit policy. Indeed, there is no clear reasoning given, which is deeply alarming given that the question of people's liberty is at hand.

7.70 Federal prisoners who have been sentenced under the current regime have a legitimate expectation of automatic parole and may have made different decisions in relation to their defence under a different parole regime. The Committee finds that their rights are prejudiced by the retrospectivity of the amendments that would abolish automatic parole for these prisoners.

26 Bronwyn Naylor, Associate Professor, Monash University Faculty of Law, *Submission 9*, p. 2.

27 Department of Prime Minister and Cabinet, 'Legislation Handbook', 1999, p. 29.

7.71 Accordingly, while supporting the prospective reforms, the Committee is not able to support the retrospective application of these amendments.

Recommendation 8

7.72 **The Committee recommends the amendment of Item 12 in Schedule 7 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 to remove the retrospective application by deleting the word *before* in section 2(a).**

This would ensure that amendments made in this Schedule to abolish automatic parole would only apply to persons sentenced after commencement.

7.73 The Committee is concerned that the Attorney-General remains responsible for parole decisions. This is contrary to the recommendation of the ALRC Report and was an issue raised in consultation. In other jurisdictions, parole decisions are made by a judicial officer or board rather than the executive arm of government.

7.74 The Committee notes the importance of the separation of the legislative, executive and judicial arms of power and expresses grave concern over parole discretions residing with the Attorney-General. The Committee strongly suggests that the establishment of a federal parole board warrants further urgent consideration.

Recommendation 9

7.75 **The Committee recommends that the Australian Government give further consideration to establishing a Federal parole board.**

8

Schedule 8

8.1 Schedule 8 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 (the Bill) amends section 15A of the *Crimes Act 1914* (Cth) (the Crimes Act) to enable State and Territory fine enforcement agencies to take non-judicial enforcement action to enforce Commonwealth fines without first obtaining a court order, and to make related amendments to the Crimes Act.

Existing laws and practices

8.2 The Commonwealth does not have a fine enforcement agency and relies upon State and Territory agencies to enforce Commonwealth fines on its behalf.

8.3 Section 15A allows State and Territory laws to be applied to enforce fines against federal offenders in the same way that they are applied to State and Territory offenders.

8.4 In its current form section 15A(1) limits the actions that State and Territories can take on behalf of the Commonwealth. In particular, fine enforcement agencies cannot take certain types of enforcement action for fine default unless they first obtain a court order.

8.5 It has been recognised that having to obtain a court order is an expensive and time consuming process and can act as a disincentive.

Proposed legislative amendments

8.6 The Bill proposes an amendment to empower State and Territory fine enforcement agencies to enforce Commonwealth fines through non-judicial enforcement actions. These non-judicial enforcement actions proposed are:

- garnishment of a debt, wage or salary;
- a charge or caveat on property;
- seizure of property; or
- forfeiture of property.

8.7 The amendments will not affect other fine enforcement options that are currently available as an alternative to paying a fine such as voluntary community service or suspension of a person's driver's licence.

8.8 Additionally, if a court imposes a fine on a federal offender but at the same time makes an order that another penalty be imposed on the offender if arrangements have not been made pay the fine by a certain date, a proposed amendment clarifies that no further court order is required to enforce this penalty.

8.9 Finally the Bill proposes an amendment to provide retrospective authority for past actions taken by State and Territory fine enforcement agencies to enforce or recover fines from federal offenders by the way of garnishment of a debt, wage or salary; a charge or caveat on property; seizure of property; or forfeiture of property (or similar penalties) without first applying for a court order.

Other minor and technical amendments

8.10 Schedule 8 of the Bill will make a number of minor and technical amendments to the Crimes Act. The proposed amendments will simplify the language used in various sections of the Act and rectify a number of technical drafting issues and inconsistency of terminology.

Issues raised in consultation

8.11 No significant issues were raised in consultation regarding the prospective operation of the amendments proposed in Schedule 8 of the Bill.

8.12 The Senate Scrutiny of Bills Committee raised the retrospective application of amendments proposed in Schedule 8 of the Bill. It left to the consideration of the Senate as a whole whether the approach proposed in these amendments is appropriate. It noted that these provisions may be considered to trespass unduly on personal human rights and liberties, and drew Senators' attention to the Schedule 8 provisions.[1]

Committee comment

8.13 The Committee notes that no significant issues were raised regarding the substance of the amendments proposed, and the Committee supports the prospective application of the amendments.

8.14 However the Committee is concerned about the retrospective application of the amendments that is contained in Items 5 and 7 of Schedule 8 of the Bill.

8.15 The Committee notes that the Explanatory Memorandum does refer to the retrospective application of amendments but provides only a brief justification for each Item.

8.16 Retrospectivity should not be used lightly and merits a thorough explanation. In regards to the retrospective application, the Committee requests an explanation on the need for this measure and clarification of the potential impact that this may have on individual rights and liabilities.

Recommendation 10

8.17 **The Committee recommends that the Minister for Justice provide an explanation to the House of Representatives regarding the need for the retrospective application of amendments proposed in Schedule 8 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011.**

Graham Perrett MP
Chair

1 Senate Scrutiny of Bills Committee, *Alert Digest No. 1*, 8 February 2012, p. 7.

A

Appendix A – List of Submissions

1	Law Council of Australia
1a	Law Council of Australia - Supplementary
2	Civil Liberties Australia
2a	Civil Liberties Australia - Supplementary
2b	Civil Liberties Australia - Supplementary
3	Australian Crime Commission
3a	Australian Crime Commission - Supplementary
4	Rule of Law
4a	Rule of Law - Supplementary
5	Australian Commission for Law Enforcement Integrity
6	Human Rights Law Centre Ltd
7	Dr Lorana Bartels
8	Mr Yau Hang Chan
9	Dr Bronwyn Naylor
10	Australian Federal Police

B

Appendix B – List of witnesses appearing at public hearing

Friday, 10 February 2012 - Canberra

Attorney-General's Department

Ms Sarah Chidgey, Assistant Secretary, Law Enforcement Branch

Ms Rachel Field, Acting Director, Criminal Law Policy

Mr Cameron Rapmund, Senior Legal Officer, Law Enforcement Policy

Australian Crime Commission

Ms Phillipa De Veau, National Manager, Legal Services

Mr John Lawler, Chief Executive Officer

Australian Federal Police

Mr Mark Harrison, Manager, Forensic Operations

Dr Simon Walsh, Coordinator, Forensic and Data Centres,

Mr Peter Whowell, Manager, Government Relations

Civil Liberties Australia

Dr Kristine Klugman, President

Mr Bill Rowlings, CEO

Mr Benjamin Smith, Member

Rule of Law Institute of Australia

Mr Richard Gilbert, Chief Executive Officer

Mr Robin Speed, President