

CHAPTER 1

INTRODUCTION

Purpose of the Bill

1.1 On 14 September 2006, the Crimes Amendment (Bail and Sentencing) Bill 2006 (the Bill) was referred to the Legal and Constitutional Affairs Committee, for inquiry and report by 16 October 2006.

1.2 The Bill seeks to amend the sentencing and bail provisions in the *Crimes Act 1914* (Crimes Act) in accordance with the decisions made by the Council of Australian Governments (COAG) on 14 July 2006. The COAG decisions followed the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities (Intergovernmental Summit) which took place on 26 June 2006.¹

1.3 The Explanatory Memorandum (EM) to the Bill describes the principal features of the proposed amendments as follows:

- to require that a court consider the potential impact on victims and witnesses, and specifically the potential impact on victims and witnesses in remote communities, when granting and imposing bail conditions for Commonwealth offences;
- to delete the reference to 'cultural background' in section 16A of the Crimes Act for all Commonwealth offences; and
- to ensure that no customary law or cultural practice excuses, justifies, authorises, requires, or lessens the seriousness of any criminal behaviour with which the Crimes Act is concerned.²

Background to the Bill

1.4 In his Second Reading Speech, the Parliamentary Secretary to the Minister for Defence noted the Federal Government's 'concerns about the relatively high level of violence and abuse in Indigenous Communities'. These concerns were expressed by the Minister for Families, Community Services and Indigenous Affairs at the Intergovernmental Summit. At that summit, the Federal Government 'called upon all Australian jurisdictions to take action against the perpetrators of violence and abuse, and to improve the safety and security of the general community'.³ COAG also expressed concern that some Indigenous communities suffer from high levels of family violence and child abuse, and that the magnitude 'demands an immediate

1 EM, p. 1.

2 p. 1.

3 Senator the Hon. Sandy Macdonald, Parliamentary Secretary to the Minister for Defence, Second Reading Speech, *Senate Hansard*, 14 September 2006, p. 9.

national targeted response focused on improving the safety of Indigenous Australians'.⁴

1.5 The Federal Government 'rejects the idea that an offender's cultural background should automatically be considered, when a court is sentencing that offender, so as to mitigate the sentence imposed'.⁵ At the Intergovernmental Summit, the Federal Government and all state/territory governments agreed that customary law in no way justifies, authorises or requires violence or sexual abuse against women and children. The Federal Government undertook to review bail conditions in relation to Federal offences to ensure that adequate protection is given to alleged victims and potential witnesses, especially those who live in remote communities. The Federal Government also invited, and encouraged, the states and territories to review their bail legislation.⁶

1.6 The EM states that the recommendations of the Royal Commission into Aboriginal Deaths in Custody were considered during the formulation of the Bill. While the Federal Government has expressed concern about Aboriginal deaths in custody and high incarceration rates, the committee notes statements that it is particularly concerned about the high levels of family violence and child abuse in Indigenous communities. The Federal Government wishes to ensure that proper sentences are given to offenders and that the law covering such crimes reflects their seriousness.⁷

1.7 As the Parliamentary Secretary to the Minister for Defence said in his Second Reading Speech:

The high levels of family violence and child abuse in Indigenous communities is appalling. The law covering such crimes must reflect the fact that such criminal behaviour is unacceptable. The Australian Government is committed to protecting Australians from criminal behaviour, and those who are most vulnerable are obviously those most in need of protection.⁸

1.8 The Second Reading Speech notes that the amendments contained in the Bill form one element of the Federal Government's approach to addressing such issues. For example, the amendments 'are complemented by law enforcement initiatives

4 *Council of Australian Governments (COAG) communiqué*, 14 July 2006, p. 12.

5 Senator the Hon. Sandy Macdonald, Parliamentary Secretary to the Minister for Defence, Second Reading Speech, *Senate Hansard*, 14 September 2006, p. 9.

6 See further the Hon Mal Brough MP, Minister for Families, Community Services and Indigenous Affairs, Media Release, Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities, 'Communiqué: Safer Kids, Safer Communities', 26 June 2006 at: http://www.atsia.gov.au/Media/media06/4606_attach.aspx (accessed 19 September 2006).

7 EM, p. 1.

8 Senator the Hon. Sandy Macdonald, Parliamentary Secretary to the Minister for Defence, Second Reading Speech, *Senate Hansard*, 14 September 2006, p. 9.

which include the creation of a National Indigenous Violence and Child Abuse Intelligence Task Force to facilitate the sharing of information and intelligence on crimes of violence and child abuse in the Indigenous community'.⁹

Conduct of the inquiry

1.9 The committee advertised the inquiry in *The Australian* newspaper on 19 September 2006, and invited submissions by 25 September 2006. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to over 130 organisations and individuals.

1.10 The committee received 14 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.11 The committee held a public hearing in Sydney on 29 September 2006. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

Acknowledgement

1.12 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

Note on references

1.13 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

9 Senator the Hon. Sandy Macdonald, Parliamentary Secretary to the Minister for Defence, Second Reading Speech, *Senate Hansard*, 14 September 2006, p. 9.

