

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CRIMES AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Attorney-General,
the Honourable Michael Duffy MP)



CRIMES AMENDMENT BILL 1991OUTLINE

This Bill amends the Crimes Act to empower the police to search aircraft, vehicles and vessels without a warrant in emergencies. Commonwealth legislation currently confers emergency search powers on a wide range of officials, including police, in relation to offences against specific enactments, however, no such powers are conferred on police in relation to the vast majority of Commonwealth offences. The police have in the past relied on emergency search powers conferred in State and Territory laws and applied by s.9 of the Australian Federal Police Act 1979. A recent Court decision (R-v-Barritt) indicated that State law could not be applied in this way because s 10 of the Crimes Act covers the field. Section 10 provides for searches authorised by a warrant. This amendment is designed overcome the effect of that decision by providing a clear basis for police action in relation to emergency searches which applies across the various jurisdictions in relation to Commonwealth and Territory offences.

The emergency search power is limited and will only apply in a public place or in some other place to which members of the public have ready access.

The amendment would enable a constable to stop, detain and search a 'conveyance' (an aircraft, vessel or vehicle) in public places if the constable suspects on reasonable grounds that:

- . a thing relevant to an indictable offence is in or on the conveyance and it is necessary to use this power to prevent the thing from being concealed, lost or destroyed; and
- . that the circumstances are so serious and urgent that it is necessary to take action without the authority of a search warrant.

It will also allow the constable to seize any item found in the search with respect to which:

- . an indictable or summary offence against any law of the Commonwealth or of a Territory has been committed or is suspected on reasonable grounds to have been committed; or
- . there are reasonable grounds for suspecting that it will provide evidence of the commission of such an offence or that it is intended to be used for the purpose of committing any such offence.

The amendment provides clear safeguards. The constable may only use such assistance as is necessary, the conveyance may only be detained for a period that is reasonable and necessary to conduct the search, and while force may be used to open parts of the conveyance or a receptacle, these must not be damaged without giving the person in charge of the conveyance reasonable opportunity to open it himself or herself. The amendment provides that where a thing is seized, it may only be retained for up to 60 days without a court order or authorisation under some other law.

FINANCIAL IMPACT STATEMENT

It is not expected that the amendment will have any significant financial impact.

NOTES ON CLAUSES**Clause 1 - Short title etc.**

1. This clause provides for the citation of the legislation and defines the Principal Act as the Crimes Act 1914 ("the Crimes Act").

Clause 2 - Interpretation

2. Clause 2 inserts the definitions of 'conveyance', 'thing relevant to an indictable offence' and 'thing relevant to a summary offence' into the interpretation section of the Crimes Act.

3. The definitions 'thing relevant to an indictable offence' and 'thing relevant to a summary offence' contain restrictions which together with section 10A limit what may be searched for and seized under the provisions in recognition of the emergency nature of the search power.

4. 'Thing relevant to an indictable offence' is used in sub-section 10A(1) to require that things which may be the subject of the search must relate to an indictable offence which has been committed or is suspected on reasonable grounds to have been committed. Alternatively, the thing must be something as to which there are reasonable grounds for suspecting that it will provide evidence as to the commission of such an offence. Finally, the thing may be something as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing such an offence. These are the grounds set out in section 10 as the basis for search for Commonwealth offences.

5. 'Thing relevant to a summary offence' is used, together with the above definition, at sub-section 10A(3) to enable seizure of anything relevant to any Commonwealth or Territory offence. The definition of this term is the same as the above definition except it relates to summary offences.

Clause 3

6. This clause inserts new sections 10A to 10D into the Crimes Act. These follow section 10, which provides for the issue of search warrants for Commonwealth and Territory offences.

7. Sections 10A(1) and (2) empower constables to search a conveyance without a warrant in certain limited circumstances. It allows a constable to stop, detain and search a conveyance for a thing if the constable suspects, on reasonable grounds, that:

- . a thing relevant to an indictable offence is on or in the conveyance;

- . it is necessary to stop, detain and search the conveyance to prevent the thing from being concealed lost or destroyed; and
- . the circumstances are so serious and urgent that it is necessary to exercise this power without the authority of a search warrant.

8. Subsection 10A(3) empowers constables to seize items relevant to an indictable or summary offence if these are found in the course of the search and the constable suspects, on reasonable grounds, it is necessary to seize them to prevent concealment, loss or destruction and the circumstances are so serious and urgent that it is necessary to proceed without the authority of a search warrant. This extends to summary offences because to do otherwise would place the constable in an invidious situation of having to turn a blind eye to things which are likely to be concealed, lost or destroyed and which are relevant to the commission of offences which are not indictable.

9. Section 10B limits the way in which the power conferred under section 10A is to be exercised. When acting under section 10A, a constable may use such assistance as is necessary, must search the conveyance in a public place or in a place which is readily accessible to members of the public, must not detain the conveyance for longer than is reasonable, and may use such force as is necessary but must not damage the conveyance or any receptacle found in or on it unless the person apparently on charge of the conveyance has been given a reasonable opportunity to open such parts of the conveyance or receptacles as is necessary. These are reasonable safeguards designed to control the use of the power.

10. Section 10C provides that sections 10A and 10B do not limit or exclude the operation of a law of a Territory relating to the matters covered by those sections. This is consistent with section 10(2) of the Crimes Act and is designed to ensure Territory laws apply where they address these issues. Self-governing Territories are therefore able to develop a different approach. It is of course not intended that this general provision affect the operation of any specific search power (including emergency search) conferred by another law of the Commonwealth.

11. Finally, section 10D allows a thing seized to be retained for a period of up to 60 days. After this period has elapsed, the section provides that the constable must return the thing to the person from whom it was seized or the owner. Alternatively, the constable can obtain authorisation to retain it for a longer period, destroy or otherwise dispose of it under another law or by court order.

12. Under section 10E a court will be able to extend the time that the thing is retained where it can be demonstrated that it is necessary for the constable to retain it for the purposes of an investigation as to whether an offence has been committed or to enable evidence of an offence to be secured for the purposes of a prosecution.

13. Retention is necessary to enable forensic and other analysis, (for example, the thing may contain a complex computer program which requires perusal by experts for several weeks before it can be established that an offence has been committed). Adequate analysis of the things seized will work towards the removal of suspicion about some persons, while in other cases it may assist in providing the basis for an arrest.

