

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CRIMES LEGISLATION AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Acting Attorney-General
and Minister for Justice, Senator the Hon Michael Tate)

CRIMES LEGISLATION AMENDMENT BILL (NO 1) 1988

OUTLINE

This Bill gives effect to the Government's Election commitment to repeal the sunset clause in the National Crime Authority Act 1984 and makes some related and consequential amendments to the terms of office of the Chairman and members of the Authority.

The amendments to the National Crime Authority Act repeal the sunset clause of the Act, thereby ensuring the continued existence of the Authority.

In respect of the terms and conditions of office of the Chairman and members, the basic principles presently contained in the Act are retained: that is, members (including the Chairman) are appointed for no longer than 4 years and are not eligible for re-appointment.

The Bill, however, contains transitional provisions which will enable the present Chairman to be re-appointed for a period of one year only (allowing a total of 5 years) and for the present members to serve beyond 30 June 1989 (the date of effect of the sunset clause) provided that their terms of appointment do not exceed 4 years. Finally, the Bill will allow for members' terms of appointment to be less than 4 years in lieu of the existing provision providing for a 4 year fixed term of appointment.

The amendments to the Telecommunications (Interception) Act 1979 will provide eligible judges, who will consider applications for the issue of warrants authorising interception, with the same protection and immunity, when performing a function or power conferred by the Act on eligible judges, as a Justice of the High Court has in relation to proceedings in the High Court.

The Bill also contains an amendment which clarifies the manner in which warrants authorising the interception of telegrams are to be dealt with, and other amendments of a minor nature.

Financial Impact Statement

The repeal of the sunset clause of the National Crime Authority Act 1984 will thereby continue the existence of the Authority beyond the date on which the sunset clause was to take effect ie, 30 June 1989. Consequently, while passage of the amendment will not result in any additional unanticipated expenditure in financial year 1988/89, the repeal will result in a continued budgetary expenditure from financial year 1989/90 onwards to support the Authority. In financial year 1987/88 the NCA appropriation was \$16.595m; however over time substantial revenue is expected to be returned to Consolidated Revenue from the successful prosecution of pecuniary penalty orders and taxation assessments following Authority investigations. The amendments to the terms and conditions of appointment of members of the Authority will have no additional budgetary impact. The amendments to the Telecommunications (Interception) Act 1979 have no budgetary impact.

NOTES ON CLAUSES

PART I - PRELIMINARYClause 1 - Short Title

1. Provides for the Act to be cited as the Crimes Legislation Amendment Act (No 1) 1988.

Clause 2 - Commencement

2. Provides that sections 1 to 7 inclusive of the Act shall come into operation on the day the Act receives Royal Assent; that section 8 shall come into operation on the day fixed by proclamation for the purposes of sub-section 2(2) of the Telecommunications (Interception) Amendment Act 1987; and that sections 9-10 of the Act shall come into operation immediately after the commencement of the provisions of the Telecommunications (Interception) Amendment Act 1987 (other than sections 1,2 and 5 (other than paragraph 5(1)(b)), 6 and 8 of that Act).

PART II - AMENDMENTS OF THE NATIONAL CRIME AUTHORITY ACT 1984Clause 3 - Principal Act

3. Formal

Clause 4 - Terms and conditions of appointment

4. This clause amends section 37 of the Principal Act as it applies to the terms and conditions of appointment of the office of Chairman and members of the Authority. In sum, the amendments provide for the re-appointment of the present Chairman for one year only from the cessation of his current term of appointment; enable the present members to serve beyond the date of effect of the sunset clause, ie. 30 June 1989 provided that their total term of appointment does not exceed 4 years and allows for future members to be appointed for a term not exceeding 4 years in lieu of the present provision providing for a 4 year fixed term of appointment.

The intention of these amendments is to provide the Authority with the desired continuity of membership, experience and leadership following the repeal of the sunset clause.

- (a) The existing paragraph (1)(b) is omitted and a new paragraph (b) substituted which more accurately defines the term of appointment of the present members;

- (b) Paragraph (1)(c) is amended to remove the present words providing for a fixed 4 year term of appointment and substituting words enabling future members to be appointed for a period not exceeding 4 years;
- (c) Amends subsection (1) so that the basic principle that members are ineligible for re-appointment is waived but only to the extent provided for in new subsections (1A) and (1B);
- (d) New subsection (1A) provides that the first Chairman may be re-appointed for a period of one year only from the date of cessation of his present four year term (ie. 30 June 1988). This subsection will enable the re-appointment of Mr Justice Stewart for the period 1 July 1988 to 30 June 1989; and

New subsection (1B) will enable the present serving members to be re-appointed thereby enabling their term of appointment to be extended beyond the date of effect of the sunset clause provided that their total term of appointment does not exceed 4 years.

Clause 5 - Cessation of operation of Act

- 5. Repeals section 63 of the Principal Act thereby continuing the Authority's existence beyond 30 June 1989.

PART III - AMENDMENTS OF THE TELECOMMUNICATIONS (INTERCEPTION) ACT 1979

Clause 6 - Principal Act

- 6. Formal

Clause 7 - Judges

- 7. Amends section 6D of the Principal Act which deals with eligible judges who may consider applications for the issue of warrants authorising interception. Clause 7 substitutes a new subsection 6D(4) to provide an eligible judge, in the performance of a function or power conferred by the Act on an eligible judge, with the same protection and immunity as a Justice of the High Court.

Clause 8 - Inspection of telegrams

8. Amends section 8 of the Principal Act which, subject to specified exceptions, prohibits interception of telegrams. Subsection 8(4) provides in part that that prohibition is not to be taken to limit the operation of a warrant issued under section 20, which authorises the interception of telecommunications. When the Telecommunications (Interception) Amendment Act 1987 comes into operation, section 20 will be repealed and provision for the issue of interception warrants to law enforcement agencies will be made under new Part VI. Accordingly, clause 8 substitutes a reference to Part VI warrants for section 20 warrants in subsection 8(4).

Clause 9 - Issue of Warrants

9. Warrants issued to the Australian Federal Police under Part IV of the Principal Act, authorising the interception of telegrams, are forwarded, under paragraph 25(2)(b), to the Managing Director of the Australian Telecommunications Commission. When the Telecommunications (Interception) Amendment Act 1987 comes into operation, paragraph 80(1)(a) will require the Commissioner of the AFP to cause warrants issued under Part IV to be retained in the AFP's records. Clause 9 clarifies the issue of whether Telecom or the AFP is to retain custody of warrants issued under Part IV. This is done by amending subsection 80(1) to require the Commissioner to keep in the AFP's records certified copies of Part IV warrants and of instruments revoking Part IV warrants.

Clause 10 - Other records to be kept by Commonwealth agencies

10. Paragraph 81(2)(c) of the Principal Act refers to 'restricted record' in all provisions except subparagraph 81(2)(c)(iii), where the expression 'restricted information' is used. Clause 10 amends that provision to make it consistent with the other references in that paragraph.





