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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CRIMES LEGISLATION AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

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



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CRIMES LEGISLATION AMENDMENT ACT 1990

GENERAL OUTLINE

The purpose of the Bill is to amend various Acts concerned with crime, law enforcement and criminal justice.

Part 2 makes a variety of amendments to the Australian Federal Police Act 1979 found necessary following the implementation of the AFP's fixed term appointment arrangements contained in the Australian Federal Police Legislation Amendment Act (No 2) 1989, including improvement to the review and appeal mechanisms to enhance efforts to provide for a uniform AFP workforce.

Part 2 also underpins the capacity of the Minister and the Administrator of an External Territory to enter an arrangement for the AFP to police local laws, by giving the AFP the functions, powers and duties in relation to local laws where an arrangement is in place.

Part 3 amends the Cash Transaction Reports Act 1988 as a consequence of the change in name of the New South Wales State Drug Crime Commission to the Crime Commission of New South Wales. Other minor changes are also made.

Part 4 amends the Crimes Act 1914 to ensure that the intended meaning of section 76 ('Obstructing etc public officers') is preserved notwithstanding the decision of the South Australian Supreme Court in Austin -v- Parsons (1986) 83 FLR 402. Part 4 also makes a minor amendment to section 10 ('Search warrants') in order to correct a problem arising from the change to the Magistrates' Courts in Victoria following the passage of the Magistrates' Court Act 1989 (Vic) and makes other minor amendments. An interpretive provision relating to defences is also added to Part 1A of the Act.

Part 5 amends the Crimes (Protection of Aircraft) Act 1973 by providing for accession by Australia to the Protocol to the Convention for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation which provides for the punishment of persons who commit acts of violence at airports serving international aviation.

Part 6 amends the Director of Public Prosecutions Act 1983 in order to provide for the creation of a new statutory office of Associate Director of Public Prosecutions and to make other minor amendments to the Act.

Part 7 amends the Proceeds of Crime Act 1987 in anticipation of the enactment of separate legislation dealing with the confiscation of the proceeds of crime by the legislature of the Australian Capital Territory and to make other minor amendments.

Part 8 makes a variety of amendments to the Telecommunications (Interception) Act 1979 to resolve a number of minor administrative difficulties in its operation as it affects law enforcement agencies and to take account of the proposed change of name of the State Drug Crime Commission to the New South Wales Crime Commission.

Part 9 makes very minor amendments to a range of Commonwealth Acts, generally as a consequence of the amendments made by other Parts of the Bill. Certain Commonwealth Acts which currently apply ACT law are amended in Schedule 2 to apply Jervis Bay Territory laws where applicable. This Part also enables the NCA to pass evidence directly to any person or authority responsible for prosecuting Commonwealth, State or Territory offences. The NCA Act currently provides that the evidence can only be given to the relevant Attorney-General or law enforcement agency. This change will streamline procedures.

#### FINANCIAL IMPACT

The amendments to the AFP Act and the consequential amendments, and the amendments to the NCA Act, should have only a minor financial impact. It is not anticipated that the other measures proposed in the Bill will occasion any increased costs to the Commonwealth.

**ABBREVIATIONS**

The following abbreviations are used in this explanatory memorandum:

- . AAT: Australian Antarctic Territory
- . ACT: Australian Capital Territory
- . AFP: Australian Federal Police
- . AFP Act: Australian Federal Police Act 1979
- . AFP Amendment Act: Australian Federal Police Legislation Amendment Act (No 2) 1989
- . Crimes Act: Crimes Act 1914
- . CTRA: Cash Transaction Reports Agency
- . CTR Act: Cash Transaction Reports Act 1988
- . DPP: Director of Public Prosecutions
- . DPP Act: Director of Public Prosecutions Act 1983
- . Gibbs' Committee: The Committee to Review Commonwealth Criminal Law chaired by the Right Honourable Sir Harry Gibbs, GCMG, AC, KBE
- . HI & MIT: the Territory of Heard Island and McDonald Islands
- . JBT: Jervis Bay Territory
- . NCA: National Crime Authority
- . Proceeds Act: Proceeds of Crime Act 1987

## NOTES ON CLAUSES

### PART 1 - INTRODUCTORY

#### Clause 1 - Short title

This is a formal provision specifying the short title of the Bill.

#### Clause 2 - Commencement

Clause 2 makes provision for the commencement of the amendments proposed by the Bill. Generally, as provided by subclause 2(1), the amendments commence upon the Royal Assent. Some of the amendments included in the Bill are proposed as a consequence of the change made by the New South Wales legislature to the name of the State Drug Crime Commission (to the Crime Commission of New South Wales). This change of name has not yet been proclaimed and, accordingly, the amendments in the Bill related to this matter (the amendments specified in subclause 2(2) of the Bill), will commence on a date to be fixed by Proclamation, being the date on which Schedule 1(3) of the State Drug Crime Commission (Amendment) Act 1990 (NSW) commences operation.

Subclause 2(3) specifies that the amendments proposed by clauses 26 (to section 4B of the Crimes Act 1914), 29 (to section 76 of the Crimes Act) and clause 43 (to section 9 of the DPP Act) will commence 28 days after the Royal Assent. These clauses amend substantive provisions of the criminal law and the 28 day delay will give time for the amendments to come to the attention of the Courts and the legal profession before they commence operation.

Subclauses 2(4) and (5) provide that clause 58, which amends section 4 of the Proceeds Act, commences 12 months after the Royal Assent unless it is proclaimed to commence earlier. The Proceeds Act is amended in anticipation of the legislature of the ACT enacting its own legislation dealing with the confiscation of the proceeds of crime. This ACT legislation will be enacted within the next 12 months.

Subclause 2(6) provides that subclause 74(2) and Part 2 of Schedule 2, which amend section 15 of the Crimes Legislation Amendment Act 1989, are taken to have commenced immediately after the commencement of section 15 of that Act. Section 15 amended section 18 of the Crimes (Aircraft) Act 1963 ('Taking or sending dangerous goods on aircraft') by inserting a reference to the Air Navigation Regulations. However, the amendment did not completely identify where in section 18 the extra words were to be located. Subclause 74(2) and Part 2 of Schedule 2 clarify the amendment. Subclause 2(6) provides that the amendment is deemed to have commenced

immediately after the amendment made by section 15 of the 1989 amending Act.

Finally, subclause 2(7) provides that subclause 74(3) and Part 3 of Schedule 2, which amends section 25 of the Intelligence and Security (Consequential Amendments) Act 1986, are taken to have commenced immediately after the commencement of section 25 of that Act. Section 25 incorrectly cited the words which were intended to be omitted from the title to the Telecommunications (Interception) Act 1979.

**PART 2 - AMENDMENTS OF THE AUSTRALIAN FEDERAL POLICE ACT 1979**

**Clause 3 - Principal Act**

This clause identifies the Australian Federal Police Act 1979 as the Principal Act amended by Part 2 of the Bill.

**Clause 4 - Functions**

This clause amends section 8 by inserting paragraph 8(1)(ba) which provides that the provision of services in accordance with subsection 8(1C) (under an arrangement with an External Territory) or subsection 8(2A) (services for the protection of witnesses) and matters incidental to the provision of those services are a function of the AFP. This clause also enables the AFP to provide regulatory services of the nature often performed by police in small External Territory communities, (for example, in Norfolk Island they are to perform a barrier control service for the purposes of local immigration laws, licence testing and assistance to the stock inspectors). The current functions of the AFP do not cover all the services necessary for these communities. Finally, the clause allows arrangements for the provision of police services and services for the protection of witnesses to also include things incidental or conducive to the provision of those services.

**Clause 5 - Powers and duties of members**

This clause amends section 9 by inserting paragraph 9(1)(bb) which provides that AFP members performing functions in an External Territory have the appropriate local police powers and duties.

**Clause 6 - Commissioner and Deputy Commissioner**

This corrects a numbering error in section 17.

**Clause 7 - Absence etc of Commissioner or Deputy Commissioner**

This clause omits subsection 19(1A) and substitutes subsections 19(1A), (1B) and (1C) which enable the Commissioner of Police to determine the remuneration and

allowances of a person who performs the powers, functions and duties of Deputy Commissioner. Previously this was determined by the Minister. The change is consistent with the chief executive powers of the Commissioner recognised elsewhere in the AFP Act and will free the Minister from unnecessary involvement. The provisions will still preserve the role of the Minister as the person who determines the remuneration and allowances for a person who performs the powers, functions and duties of Commissioner and continue to provide that a person is not entitled to be paid the remuneration or allowance where performance is for less than one week.

#### **Clause 8 - Remuneration and allowances**

This clause corrects a typographical error at section 20.

#### **Clause 9 - Leave of absence**

This clause amends section 21 and inserts subsection 21(2), which enables the Commissioner of Police to grant leave of absence to a Deputy Commissioner. The provision enables the Commissioner to determine terms and conditions as to remuneration or otherwise in relation to the leave. Previously these matters were determined by the Minister. The change is consistent with the chief executive powers of the Commissioner recognised elsewhere in the AFP Act and will free the Minister from unnecessary involvement. The provision will still preserve the role of the Minister as the person who grants leave of absence to the Commissioner and determines the terms and conditions of that leave.

#### **Clause 10 - Termination of appointment**

This is a minor consequential amendment to section 22 as a result of the amendment described in clause 9. Paragraph 22(2)(b) provides that where the Commissioner or Deputy Commissioner is absent from duty for 14 consecutive days or for 28 days in any 12 months (except on leave granted by the Minister) the Governor-General shall terminate the person's appointment. The exception will be altered by removing the reference to Minister and providing that it applies where leave is granted under section 21. This recognises the amendment in clause 9 to section 21 which allows the Commissioner to grant leave to the Deputy Commissioner.

#### **Clause 11 - Inserting of new section 26BA - Members may be directed to perform certain staff member functions etc**

This clause inserts section 26BA. It will enable the Commissioner to divert members into administrative work where, due to illness or injury, a member is unable to perform active police duty. The provision should also give the Commissioner more flexibility to deal with short term adjustments in workload between administrative and police operational duties.



#### **Clause 12 - Term of appointments**

This clause is a reconstruction of subsection 26D(4) to remove any doubt that immediate re-appointment to another term with the AFP (whether it be under the same provision of the AFP Act or some other provision of that Act) will be taken to be continuous service. Continuous service status preserves entitlements such as sick leave.

#### **Clause 13 - Undertakings and oaths or affirmations**

This amends subsections 28(2) and (3) and inserts section 28(2A). It enables the Commissioner of Police to administer the oath or affirmation prescribed where a Deputy Commissioner, a commissioned or non-commissioned police officer is appointed. Previously this was done by the Minister in relation to the Deputy Commissioner or by a person authorised by the Minister in relation to commissioned and non-commissioned police officers. Subsection 28(3) will also provide that the Commissioner may authorise another person to administer the oath or affirmation. The change is consistent with the chief executive powers of the Commissioner recognised elsewhere in the AFP Act and will free the Minister from unnecessary involvement. Subsection 28(2) will preserve the role of the Minister as the person who authorises another person to administer the oath or affirmation where it is in relation to the appointment of a Commissioner.

#### **Clause 14 - Special leave of absence**

This amends subsection 34(2) by enabling the Commissioner of Police to grant an extended period of special leave of absence for a member or staff member without Ministerial approval. Under the current provision subsection 34(2) restricts special leave of absence to a 12 month period. An extension of that period may only occur where the Minister has certified that in his opinion, the engagement, or further engagement of the member or staff member in the service, studies or research concerned for the period of the grant or extension is in the public interest. The amendment has the effect of giving the Commissioner responsibility for the public interest test. This change is consistent with the chief executive powers of the Commissioner recognised elsewhere in the AFP Act and will free the Minister from unnecessary involvement.

#### **Clause 15 - Inserting of new section 35A - Transfers**

This clause inserts section 35A. Section 35A clarifies the status of a person who has been transferred to another position under the new fixed term appointment regime. As is the case with promotions, a person's appointment does not end as a result of a transfer but is taken to be an appointment to the position where the person is transferred. As opposed to promotions, a

transfer is not to have the effect of extending the person's term of appointment. This provision is necessary to remove uncertainty as to whether a person who is transferred should be re-appointed.

#### **Clause 16 - Promotion**

This amends subsection 36(3) to clarify the intention of that provision that appointments do not end as a result of a promotion.

#### **Clause 17 - Review by Merit Protection and Review Agency of non-appellable promotion decisions**

Clause 17 re-structures subsections 36B(8) and (8A) which deal with the mechanism where, following a review by the Merit Protection and Review Agency of a non-appellable promotion, a person's promotion is cancelled by the Governor-General or Commissioner. The provision ensures that service in the promotion position is recognised and that the person must be placed back in the same or an equivalent position to that which he or she held prior to being promoted. The provision has the same overall effect as existing subsections 36B(8) and (8A) but makes it more applicable to those people affected by new section 36C.

#### **Clause 18 - Inserting of new section 36C - Review by Merit Protection and Review Agency in certain other cases**

This clause inserts section 36C. Section 36C extends the circumstances where movement to a position is to be treated as a non-appellable promotion. A key plank in the new fixed term appointment regime is the creation of an employment environment which will help unify the AFP as a workforce. Part of the process was to ensure that all staff are appointed under the AFP Act as either a member (police officer) or staff member (non-police). Prior to the AFP Amendment Act non-police staff were appointed under the Public Service Act 1922 and could be directed to perform duties for the AFP by the Commissioner. Since the implementation of the new arrangements it has become apparent that in a more unified AFP workforce it is necessary for a review process to be available whereby members and staff members are able to seek a review of a decision to fill the vacancy where they have applied for certain vacancies which could be filled by either a member or staff member, (that is, a vacancy which is administrative in nature, but where certain experience as a police officer may assist in the performance of the duties).

Section 36C is designed to ensure that people who apply for vacancies which are advertised as a vacancy which may be filled by either a member or staff member have reciprocal rights of review on the same basis as the rights of review which would apply if the promotion was within a single stream of appointment. For example, if a

member was promoted to a member position to fill a vacancy which had been advertised in the manner described, and the positions were at a rank and level which are currently prescribed as non-appellable, then subsection 36C(2) will enable a staff member who applied for the corresponding advertised staff member position to seek a review of the decision to promote the member.

Subsection 36C(3) provides for the same review rights as subsection 36C(2) where the staff member is promoted and an applicant who is a member wants to seek a review.

Subsection 36C(4) provides for the same rights where a member is appointed to a staff member position and subsection 36(5) covers the situation where a staff member is appointed to a member position.

Subsections 36C(6), (7) and (8) provide for the mechanics of placing those who have had their promotion cancelled as a result of a review under this provision and preserve continuity of service.

Subsection 36C(9) ensures that the provision only applies to the equivalent to promotions and the definition of 'commencement' at subsection 36C(10) (when read with subsection 36C(1)) ensures that the rights of review apply to positions advertised whether before, on or after clause 18 commences.

**Clause 19 - Regulations may provide for certain other terms and conditions**

Clause 19 amends the regulation making power at section 40. It adds matters about which regulations may be made by inserting paragraphs 40(1)(ca) and (daa). These provisions are designed to enable the same scheme described in clause 18 to apply to appellable promotions. This aspect of the scheme will be contained in the regulations because that is where other appeal provisions are found and the procedures are more detailed than those contained in section 36B and proposed section 36C.

**PART 3 - AMENDMENTS OF THE CASH TRANSACTION REPORTS ACT 1988**

**Clause 20 - Principal Act**

Clause 20 specifies that the Cash Transaction Reports Act 1988 is the Act amended by Part 3 of the Bill.

**Clause 21 - Reports of suspect transactions**

Section 16 of the CTR Act deals with the reporting of suspect transactions. Under subsection 16(4) a cash dealer who has prepared a report under the section is required to provide further information if requested 'by a relevant authority' or by 'an investigating officer'. The Australian Customs Service already has access to all

CTR information, including suspect transaction reports made under subsection 16(1), at the discretion of the Director of the CTRA. However, due to an oversight, Customs Officers were omitted from the class of investigators able to obtain further information about reported transactions. Clause 21(a) corrects this oversight and amends the definition of 'investigating officer' by including a reference to a Customs officer. 'Customs officer' is already defined in subsection 3(1) of the CTR Act. It is defined to mean 'the Comptroller-General of Customs or an officer of customs within the meaning of the Customs Act 1901'. (This definition is included in subsection 3(1) because the expression 'customs officer' is used in sections 25 and 27 of the CTR Act.) For the purposes of subsection 16(6) clause 21 (a) proposes that the expression 'investigating officer' shall also include a customs officer other than the Comptroller-General. The exclusion of the Comptroller-General is necessary for two reasons:

- . it is unlikely that the Comptroller-General himself (or herself) would be an investigating officer in a particular matter; and
- . section 26 of the CTR Act (which is discussed at clause 22 below) provides that the investigating officer (eg a taxation officer) may communicate information to the relevant authority (eg the Commissioner for Taxation). If the Comptroller-General is within the meaning of both expressions, 'investigating officer' and 'relevant authority', the consequential amendment to section 26 whereby the investigating officer may communicate the information to the relevant authority becomes absurd.

Subsection 16(6) defines 'relevant authority' to mean the Commissioner of the AFP, the Chairperson of the NCA or the Commissioner of Taxation. Clause 21(c) proposes to amend subsection 16(6) by including the Comptroller-General of Customs as a 'relevant authority'. The Comptroller-General is appointed by the Governor-General under section 5 of the Customs Administration Act 1985.

#### **Clause 22 - Special provisions in relation to reports of suspect transactions**

Clause 22 proposes to amend section 26 of the CTR Act consequential upon the amendment of section 16 proposed by clause 21. Section 26 of the CTR Act makes special provision for the communication of information received by an investigating officer under subsection 16(4) to the head of the investigating officer's organization. Clause 22(b) proposes that subsection 26(1) be amended by including a new paragraph (d) so that a customs officer may communicate the information to the Comptroller-General of Customs.

### Clause 23 - Access to CTR information

Part IV of the CTR Act (sections 25-27) provides a system to ensure the security of CTR information and to restrict access to the information in limited specified circumstances. Section 27 provides that access to CTR information is allowed only to the Australian Taxation Office, to the Australian Customs Service (if authorised in writing by the Director of the CTRA) and to 'a law enforcement agency' if authorised in writing by the Director. Subsection 27(17) of the CTR Act then defines the expression 'law enforcement agency' to include, amongst other State agencies, the Chairperson or acting Chairperson of the State Drug Crime Commission of New South Wales.

The New South Wales Parliament has now passed legislation, the State Drug Crime Commission (Amendment) Act 1990 (NSW), which will alter the name of the Drug Crime Commission to the 'New South Wales Crime Commission'. The amendment of section 27 is consequential upon the change of name of the State Commission and will ensure that it may continue to have access to CTR information if authorised in writing by the Director of the CTRA.

### PART 4 - AMENDMENTS OF THE CRIMES ACT 1914

#### Clause 24 - Principal Act

Clause 24 identifies the Crimes Act 1914 as the Act amended by Part 4 of the Bill.

#### Clause 25 - Interpretation

Clause 25 amends the definition of 'Commonwealth officer' by including a staff member of the AFP, as well as a member of the AFP, as a Commonwealth officer.

#### Clause 26 - Pecuniary penalties - natural persons and bodies corporate

Clause 26 amends section 4B of the Crimes Act by inserting a new subsection 4B(3A). The amendment will ensure that the 5 times multiplier (which applies to the maximum pecuniary penalty prescribed where a body corporate is convicted of an offence) will apply both to the power in the Act to prescribe maximum pecuniary penalties for offences against regulations and to the penalties prescribed in the regulations.

#### Clause 27 - Inserting of new section 4L - Specified defences not to preclude other defences

At the suggestion of the Office of Parliamentary Counsel a new section is added to Part 1A of the Crimes Act to the effect that if a defence to a particular offence is specified in an Act, in the absence of anything to the

contrary, this will not limit or preclude the availability of other defences to the offence. It is normal drafting practice to add such a provision in each Commonwealth enactment which includes a specific defence to an offence. The inclusion of a provision of general application in the Crimes Act will eliminate the need to reproduce such provisions in the future.

#### Clause 28 - Search warrants

Clause 28 proposes an amendment of section 10 of the Crimes Act which provides that a 'Justice of the Peace' alone may issue a search warrant. Until recently a Magistrate in Victoria also could issue a search warrant because section 17 of the Magistrates' Court Act 1971 (Vic) provided that every Magistrate was, by virtue of his or her office, a Justice of the Peace. This is also the case in other jurisdictions. However, under the Magistrates' Court Act 1989 (Vic) which came into operation earlier this year, Magistrates are not deemed to be Justices of the Peace. Accordingly, it is now doubtful whether a Magistrate in Victoria may issue a search warrant under section 10 unless the Magistrate also holds a separate appointment as a Justice of the Peace.

Clause 28 therefore proposes to amend section 10 to preserve the status quo so that a person holding office as a Magistrate in a State or Territory, as well as a Justice of the Peace, is empowered to issue a section 10 warrant.

#### Clause 29 - Obstructing etc public officers

The amendment of section 76 of the Crimes Act will restore the intended effect of section 76 and preclude the disjunctive reading of the section which was favoured by the South Australian Supreme Court in Austin -v- Parsons (1986) 83 FLR 402. In that case the Court read each of the three limbs of section 76 separately so that it was an offence:

- . to wilfully obstruct or resist any Commonwealth officer;
- . to wilfully obstruct or resist any person discharging a Commonwealth duty; and
- . by violence or threats or intimidation of any kind to interfere with, hinder or obstruct any person performing any service for the Commonwealth.

The Court also held that the categories of person protected by each limb are mutually exclusive. Thus the reference to 'any person' in the third limb did not include a Commonwealth officer. One likely consequence of this decision is that it may not be an offence to

'interfere with' a 'Commonwealth officer' by threats or intimidation.

The Gibbs' Committee recommended amendment of section 76 in order to overcome the consequences of the decision in Austin -v- Parsons (Interim Report 'Principles of Criminal Responsibility and Other Matters' pp 467-475). The proposed amendment to section 76 is similar to the proposed legislation recommended by the Gibbs' Committee (see proposed section 29CB of the draft Bill at Part IX of the Report). There are some differences between the draft provisions suggested by the Gibbs' Committee and clause 29. These differences arise because the former was drafted in the context of a proposed codification of the provisions relating to the mental element of offences which has not been implemented.

The mental element included in the provision is that a person must not 'intentionally and knowingly' obstruct etc. The word 'knowingly' will have the effect that a defendant must know, for example, that a person is a Commonwealth officer carrying out his or her duty before the defendant may be convicted under the section.

Section 8 of the Acts Interpretation Act 1901 will ensure that the new section 76 will apply only to conduct after commencement.

#### Clause 30 - Interpretation of Part

Section 85ZL is the interpretation provision for Part VIIC of the Crimes Act which is known as the spent convictions scheme. Clause 30(a) proposes an amendment to section 85ZL by including a reference to the Australian Customs Service as a 'law enforcement agency'. This will ensure that the Australian Customs Service, along with the other specified law enforcement agencies, is exempted from the spent conviction scheme in relation to prospective employees (pursuant to paragraph 85ZZH(a) of the Act). The Service is currently exempt under regulations.

Clause 30(b) of the Bill also amends the definition of 'law enforcement agency' by changing the reference to the State Drug Crime Commission of New South Wales at paragraph (g) of the definition. This is a result of the change to the name of the Commission referred to in the remarks above on clause 23 of the Bill amending section 27 of the CTR Act.

Clause 30(c) corrects a typographical error in the definition of 'spent' in section 85ZL. That definition made reference to section 85ZP of the Crimes Act. This is incorrect as the interpretation of 'spent' is contained at section 85ZM of the Crimes Act.

**PART 5 - AMENDMENTS OF THE CRIMES (PROTECTION OF AIRCRAFT) ACT 1973**

**Clause 31 - Principal Act**

Clause 31 is a formal provision that identifies the Crimes (Protection of Aircraft) Act 1973 as the Principal Act amended by Part 5.

**Clause 32 - Long title**

The clause repeals the long title to the Principal Act and inserts a new long title which includes a reference to the supplementary Protocol to the Convention for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation which is being given effect to by the other amendments to the Principal Act made by Part 5 of the Bill.

**Clause 33 - Interpretation**

The clause amends section 3 of the Principal Act by incorporating a definition of the Protocol and by including the 'Protocol offences' created by new paragraph 7(2A)(a) in the definition of 'Convention offence'.

**Clause 34 - Approval of ratification of Convention and accession to Protocol**

The clause adds a new subsection (2) to section 6 of the Principal Act approving Australia's accession to the Protocol.

**Clause 35 - Offences**

This clause amends section 7 of the Principal Act by inserting a new subsection (1A) creating the new Protocol offences. The subsection makes it an offence for a person to unlawfully and intentionally perform an act of violence against a person at, or the facilities of, or any aircraft not in service located on, or to disrupt the services of, an airport which serves international civil aviation, if such an act endangers or is likely to endanger safety at that airport. It will also be an offence to attempt to do such an act or to be an accomplice to such an act.

Proposed subsection 7(2A) inserted by subclause (b) sets out the circumstances in which the offences will apply. They are:

- . where the Convention, read together with the Protocol, requires Australia to make the conduct concerned punishable
- . in the case of an act which destroys or seriously damages an aircraft not in service, where the



aircraft concerned is in Australia or is an Australian Government aircraft, or where the act is committed by an Australian citizen, whether in Australia or not.

Subsection (3) is amended by subclause (c) and sets out the penalty of a maximum of 15 years imprisonment for an act of violence against a person, and 10 years for the other offences.

A new subsection (5) is added by subclause (d) which states that a person is not to be tried for a Protocol offence unless the act occurred in circumstances in which Australia is, under the Convention as read with the Protocol, required to establish its jurisdiction. These circumstances are set out in Article 5 of the Convention and include where the act occurred in Australia, where the aircraft against which the act was committed was registered in Australia, and where the offender is present in Australia and is not extradited pursuant to Article 8 to the Contracting State in the territory of which the offence occurred.

#### **Clause 36 - Evidence of certain matters**

The clause amends section 22 of the Principal Act by providing that courts take judicial notice of the date on which the Protocol entered into force and a number of other amendments relating to matters to be proved under the Principal Act.

#### **Clause 37 - Regulations**

The clause amends section 23 of the Principal Act by including a reference to the Protocol. This amendment will allow regulations to be made prescribing airports in Australia which will be taken to be 'airports serving international civil aviation' and any airport outside Australia serving international civil aviation for the purposes of the Protocol.

#### **Clause 38 - Schedule**

Formal.

#### **Clause 39 - Inserting of new schedule 2 - Protocol**

Formal.

### **PART 6 - AMENDMENTS OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 1983**

#### **Clause 40 - Principal Act**

Clause 40 identifies the Director of Public Prosecutions Act 1983 as the Principal Act amended by Part 6 of the Bill.

### **Clause 41 - Interpretation**

Clause 41 amends the interpretation provision, section 3, of the DPP Act. Clause 41(a) inserts a definition of the expression 'Associate Director'. New section 18A, which is inserted by clause 45, proposes the creation of a new statutory position of Associate Director of Public Prosecutions. Clause 45 is discussed below.

The position of Associate Director will assist the DPP in the discharge of his statutory responsibilities and in the general administration of the Office. There has been a steady increase in the functions of the Office since it was established. In March 1984 the Office was primarily a prosecution agency with only a limited civil remedies function. However, since then, the civil remedies function has been expanded in 1985 and the enactment of the Proceeds Act in 1987 has conferred upon the Office a leading role in the confiscation of the proceeds of crime.

Additional statutory powers have also been conferred on the DPP since the establishment of the Office. The DPP is now empowered to sign ex officio indictments and to grant transactional indemnities against prosecution, powers that were previously exercised only by the Attorney-General.

These new and expanded functions and powers will be further supplemented by the role that the Office will play in the prosecution of offences in the corporate and securities area following the establishment of the Australian Securities Commission.

Clause 41(b) amends the definition of the expression 'member of the staff of the Office' by including the Associate Director within this expression. This expression is used in a number of places in the DPP Act, eg in paragraph 15(1)(d) to permit a member of the staff to represent the Director in Court; in section 16 to permit a member of the staff to practise as a legal practitioner in a Court whether or not the person is admitted to the roll of that particular Court; and in section 17 where a member of the staff may, with the consent of the Attorney-General, hold an appointment to prosecute offences against the laws of a State.

### **Clause 42 - Office of the Director of Public Prosecutions**

Section 5 of the DPP Act establishes the Office of the Director of Public Prosecutions and the statutory office of Director of Public Prosecutions. Clause 42 amends subsection 5(2) to provide for the creation of a further statutory office of Associate Director of Public Prosecutions.

### Clause 43 - Powers of Director

Section 9 of the DPP Act sets out the powers of the Director of Public Prosecution. Subsection 9(5) contains the power of the DPP to take over a prosecution that was commenced by another person. In particular, subsection 9(5) provides that, where the DPP does take over such a proceeding, the DPP may decline to carry it on further. Therefore, before the DPP may discontinue a prosecution, it is necessary for the DPP to formally take over the prosecution. Section 14 of the DPP Act ('Director to inform court when taking over or carrying on proceedings') sets out the procedural requirements when the DPP takes over a prosecution, or carries on a prosecution, that was instituted by another person.

The DPP may continue a prosecution instituted by another person without actually taking it over. It frequently happens that prosecutions are commenced by the Department of Social Security or the Australian Taxation Office and then are carried on by the DPP. The DPP would give notice to the court under section 14. If, however, the DPP decides that the prosecution should be discontinued, then it is necessary to take the further step of 'taking over' the prosecution. In light of the fact that the DPP would already have given notice pursuant to section 14 when the DPP started to carry on the prosecution, the giving of notice yet again when taking it over is an unnecessary formality. Clause 43(a) inserts a new subsection 9(5A) which will correct this anomaly.

Clause 43(b) omits the definition of 'State or Territory proceedings' contained in subsection 9(6C) and inserts a new definition. Subsection 9(6B) of the DPP Act empowers the DPP to give a person an undertaking that evidence given by the person in 'State or Territory proceedings' will not be used in evidence against the person in any civil or criminal proceedings under a law of the Commonwealth. This provision allows the DPP to indemnify a witness where the evidence that the person is to give in the State or Territory proceeding may, for example, expose the person to prosecution for a Commonwealth offence. Thus the definition of the expression 'State or Territory proceedings' determines the type of proceedings in which a person may give evidence under the protection of an indemnity granted by the DPP.

The present definition is limited to proceedings for an offence against a State or Territory law, for the imposition of a pecuniary penalty or for the making of a forfeiture order under State or Territory law. This definition does not permit the DPP to give an indemnity where the evidence to be given by the person is in connection with a coronial inquest under a law of the State or Territory. This will be corrected by proposed paragraph 9(6C)(b) to be inserted into the DPP Act.

Further, the present definition would not extend to evidence to be given before, for example, the State Drug Crime Commission of New South Wales (which will be known as the Crime Commission of New South Wales once the amendments made by the State Drug Crime Commission (Amendment) Act 1990 (NSW) are proclaimed into operation). This Commission is empowered to conduct hearings under its legislation but such hearings are not within the scope of the present definition of 'State or Territory proceedings'. There is at present a range of other State bodies which may conduct hearings and other such bodies may be created in the future. It is proposed to give the DPP power to grant a person an indemnity to give evidence before selected bodies by using the power to prescribe such bodies pursuant to proposed paragraph 9(6C)(c) of the DPP Act.

**Clause 44 - Director may request assistance of Commissioner of Police**

Section 13 of the DPP Act enables the DPP to request the Commissioner of Police to provide the assistance of AFP members (police officers) to further investigate an offence. This clause amends section 13 in recognition of the fact that staff members (non-police staff) of the AFP assist in investigations. Previously, section 13 only applied to members of the AFP (police officers).

**Clause 45 - Inserting of New Sections 18A and 18B**

**New section 18A - Appointment etc of Associate Director**

New section 18A deals with the procedure for the appointment of the Associate Director and with related matters. It reflects section 18 of the DPP Act which concerns the appointment of the DPP. Proposed subsection 18A(1) provides that the Associate Director must be appointed by the Governor-General.

Proposed subsection 18A(2) provides that the Associate Director holds office for the period specified in the instrument of appointment, being not longer than 7 years, but is eligible for re-appointment. This reflects the similar provisions for the DPP at subsection 18(3).

Proposed subsection 18A(3) provides that a person must not be appointed as the Associate Director unless he or she is a legal practitioner of at least 5 years standing. This corresponds with subsection 18(2) which makes similar provision in relation to the DPP.

Proposed subsection 18A(4) provides that a person who has turned 65 must not be appointed as the Associate Director. Again, this corresponds with subsection 18(4) which makes similar provision for the DPP.

Proposed subsection 18A(5) provides that the Governor-General may determine the terms and conditions upon which

the Associate Director holds appointment in respect of matters not provided for by the DPP Act. This corresponds with subsection 18(5) which makes similar provision in relation to the DPP.

It may be noticed that there are some modifications of language between section 18 and proposed section 18A. For example, section 18 uses the word 'shall' whereas proposed section 18A uses the word 'must'. This change of language is a change of style in the interests of clarity. Section 15AC of the Acts Interpretation Act 1901 ('Changes to style not to affect meaning') provides that such stylistic language changes do not lead to the inference that a difference in meaning was intended.

#### **New section 18B - Exercise of powers and functions by Associate Director**

Proposed section 18B sets out the functions of the Associate Director. Proposed subsection 18B(1) provides that the Associate Director has all the powers and functions of the DPP, except the DPP's power of delegation under section 31. As a result, the Associate Director will be able to exercise those powers that are capable of exercise only by the DPP, namely the power to issue an ex officio indictment under subsection 6(2D), the power to authorize the signing of indictments under subsection 9(2), and the power to give a transactional indemnity under subsection 9(6D).

Proposed subsection 18B(2) provides that a power or function exercised or performed by the Associate Director shall be taken to have been exercised by the DPP.

Proposed subsection 18B(3) provides that where the exercise of a power or performance of a function by the DPP depends on the opinion, belief or state of mind of the DPP then the power or function may be exercised by the Associate Director depending on his or her opinion, belief or state of mind in relation to the matter. For example, subsection 6(2C) provides that the DPP may issue an ex officio indictment if the person has been committed for trial in respect of a State or Territory offence and the DPP is satisfied that the facts or evidence disclose the commission of an indictable Commonwealth offence and that the person could have been committed for trial for that offence. Where this function is performed by the Associate Director then it will be the state of mind of the Associate Director in relation to the relevant matters that will determine the performance of the function.

#### **Clause 46 - Remuneration and allowances**

The amendments to section 19 proposed by clause 46 provide that the remuneration to be paid to the Associate Director is to be fixed by the Remuneration Tribunal.

The Associate Director is to receive the same allowances as are payable to the DPP.

**Clause 47 - Leave of absence**

Section 20 presently provides that the DPP may be granted leave of absence by the Attorney-General on such terms and conditions as the Attorney-General determines. Clause 47 proposes amendments to section 20 which will make similar provision for leave of absence for the Associate Director save that the approval will be given by the DPP.

**Clause 48 - Resignation**

Section 21 provides that the DPP may resign his office by writing signed by him and delivered to the Governor-General. Clause 48 proposes to amend section 21 so that similar arrangements will apply in relation to the Associate Director.

**Clause 49 - Director or Associate Director not to undertake other work**

Section 22 prevents the DPP from engaging in legal practice or, without the Attorney-General's consent, from engaging in paid employment outside the duties of his or her office. The amendments proposed to section 22 by clause 49 will apply the same restrictions to the Associate Director.

**Clause 50 - Termination of appointment**

Section 23 specifies the circumstances in which the appointment of the DPP may be terminated. Clause 50 proposes amendments to section 23 to apply that section to the Associate Director as well as to the DPP.

**Clause 51 - Disclosure of interests**

Section 24 requires that the DPP give written notice to the Attorney-General of all direct or indirect pecuniary interests that he or she has or acquires in any business or in any body corporate carrying on a business. Clause 51 proposes the amendment of section 24 by making a similar requirement of the Associate Director.

**Clause 52 - Oath or affirmation of office**

Clause 52 proposes the amendment of section 25 so that the Associate Director shall make an oath (or affirmation) of office in the form contained in the Schedule to the DPP Act.

**Clause 53 - Acting appointments - Director**

Subsection 26(1) presently provides that the Attorney-General may appoint a person to act in the office of DPP

whenever there is a vacancy in the office or the DPP is absent from duty. Once the office of Associate Director has been established it is proposed that the Associate Director shall act as DPP when the need arises, unless the Attorney-General chooses to appoint another person, under subsection 26(1), to act in the office. Clause 53(a) proposes to insert a new subsection 26(1A) which will have this effect.

Clause 53(b) proposes to replace subsection 26(3) as a consequence of the creation of the office of Associate Director. The power of the Attorney-General to determine the terms and conditions of a person acting as DPP (whether the Associate Director or another person), and the power to terminate an appointment to act as DPP, are both continued. Where the Associate Director is acting as DPP pursuant to the new subsection 26(1A) the Attorney-General may effectively terminate the period of acting in the office by appointing another person to act pursuant to subsection 26(1).

Clause 53(c) makes a minor language change to subsection 26(4).

Clause 53(d) proposes to insert a new subsection 26(9) which is to similar effect to the existing subsection 26(8), which applies to persons acting as DPP pursuant to an appointment by the Attorney-General under subsection 26(1). New subsection 26(9) will apply where the Associate Director is acting as DPP pursuant to new subsection 26(1A).

#### **Clause 54 - Inserting of new section 26A - Acting appointments - Associate Director**

New section 26A is in similar terms to section 26 and makes provision for the appointment of persons to act as Associate Director. Proposed subsection 26A(1) provides that the Attorney-General may appoint a person to act as Associate Director during any vacancy in the office or whenever the Associate Director is absent from duty.

Proposed subsection 26A(2) applies sections 20 ('Leave of absence'), 24 ('Disclosure of interests') and 25 ('Oath or affirmation of office') to a person appointed to act as Associate Director. As a result a person acting as Associate Director will be required to make disclosure of certain pecuniary interests under section 24 and to make an oath (or affirmation) of office under section 25. It will also be possible for the DPP to approve leave of absence for the person pursuant to section 20.

Proposed subsection 26A(3) mirrors subsection 26(8) which is the validation provision in relation to acts done by a person acting, or purporting to act, as DPP.

### Clause 55 - Staff

Clause 55(a) makes a minor amendment to subsection 27(2) by replacing the reference to 'a Permanent Head' under the Public Service Act 1922 with a reference to 'a Secretary'. Following the passage of the Public Service Reform Act 1984 the title of 'Secretary' has replaced the former title of 'Permanent Head'.

Clause 55(b) proposes to amend subsection 27(3) which provides that the DPP may, with the approval of the Attorney-General or his or her delegate, employ persons under agreements in writing. Clause 55(b) proposes to remove the requirement for the approval of the Attorney-General or the delegate of the Attorney-General.

Clause 55(c) corrects an error in subsection 27(4). Subsection 27(4) should provide that the terms and conditions of employment of persons employed under an agreement in writing under subsection 27(3) are such as are determined by the DPP. At present the subsection incorrectly refers to subsection 27(1). Clause 55(d) further amends subsection 27(4) by omitting the requirement for the approval of the Public Service Board for the terms and conditions of employment determined by the DPP under this subsection.

### Clause 56 - Delegation by Director

Section 31 contains the power of delegation of the DPP. As mentioned earlier, clause 45 proposes to insert a new section 18B which will provide that the Associate Director has all the powers and functions of the DPP, except the DPP's power of delegation under section 31. Clause 56 proposes an amendment to section 31 which excludes the Associate Director.

## PART 7 - AMENDMENTS OF THE PROCEEDS OF CRIME ACT 1987

### Clause 57 - Principal Act

Clause 57 identifies the Proceeds of Crime Act 1987 as the principal Act amended by Part 7 of the Bill. The purpose of these amendments is to open the way for the ACT to enact its own proceeds of crime legislation. At present the Commonwealth legislation deals exhaustively with proceeds of ACT offences and precludes the operation of any ACT enactment on the subject. The proposed amendments exclude the operation of the Commonwealth Act in relation to ACT offences except insofar as orders made under State law (including NT and ACT) if any may be enforced against property located in a Commonwealth Territory.

### Clause 58 - Interpretation

Clause 58 proposes amendments to the definitions of 'State' and of 'Territory' in section 4 of the Proceeds



Act. The effect of the amendments is that the ACT will be included, along with the Northern Territory, as a State for the purposes of the Proceeds Act.

Section 14 of the Proceeds Act provides that a confiscation order may be sought where a person is convicted of 'an indictable offence'. The expression 'indictable offence' is defined to mean an offence against a law of the Commonwealth or of a Territory. Following the amendments made by clause 58 the expression will no longer include an offence against a law of the ACT. The consequence of this is that the Proceeds Act will no longer govern the confiscation of proceeds of offences against ACT law and will be replaced by ACT legislation dealing with the confiscation of the proceeds of crime, to be enacted by the ACT legislature. Clauses 2(4) and (5) of the Bill (Commencement) provide that clause 58 does not commence until a date fixed by Proclamation or 12 months after the Royal Assent, whichever is the sooner.

Clause 58(2) makes transitional arrangements for the abridgement to the operation of the Proceeds Act made by clause 58(1). The effect of the transitional arrangements is that where, in any matter, an application under the Proceeds Act was on foot at the commencing day then the matter shall continue to be subject to the Proceeds Act notwithstanding the amendments made by clause 58(1). This is the effect of clause 58(2)(b).

Further, where an order or warrant had been made or issued in any matter under the Proceeds Act then, again, the Proceeds Act will continue to apply to that matter. Thus, in a particular matter, if a warrant had been issued under section 36 ('Search warrants in relation to tainted property') or a monitoring order had been made under section 73 ('Monitoring orders') at or prior to the commencing day, then all subsequent proceedings shall continue to be brought under the Proceeds Act. This is the effect of clause 58(2)(a).

Clause 58(3) preserves the operation of the Proceeds Act in relation to interstate restraining orders and interstate forfeiture orders registered before the commencing day under the Proceeds Act for enforcement in the ACT pursuant to Part VI (sections 86-96) of the Proceeds Act.

#### **Clause 59 - Charge on property subject to restraining order**

Clause 59 corrects a typographical error in paragraph 50(3)(b) of the Proceeds Act by replacing the word 'an' with the word 'and'.

**PART 8 - AMENDMENTS OF THE TELECOMMUNICATIONS  
(INTERCEPTION) ACT 1979**

**Clause 60 - Principal Act**

Clause 60 identifies the Telecommunications (Interception) Act 1979 as the Principal Act amended by Part 8 of the Bill.

**Clause 61 - Interpretation**

This clause amends the definition of 'permitted purpose' in subsection 5(1) of the Principal Act to include a purpose connected with, or incidental to, the keeping of records by a Commonwealth agency under Part VIII of the Principal Act (or by a State agency under the equivalent provisions of the relevant State legislation). Under the Act, information obtained from a lawful interception may only be used by an agency for a "permitted purpose" and must be destroyed if it is no longer needed for such a purpose. This amendment will allow some information so obtained (not including the content of conversations) to be used by agencies to enable them to fulfil their record-keeping obligations under the Act and to trace faults in the automated equipment which facilitates compliance with those obligations.

The clause also makes a number of other amendments to subsection (1) changing the reference from the 'State Drug Crime Commission' to the 'New South Wales Crime Commission'. This change was made necessary following the passing by the New South Wales Parliament of legislation renaming the 'State Drug Crime Commission' as the 'New South Wales Crime Commission'.

**Clause 62 - Investigation of an offence**

This clause amends section 6A of the Principal Act to change the reference from the 'State Drug Crime Commission' to the 'New South Wales Crime Commission'.

**Clause 63 - Relevant proceedings**

The clause amends section 6L of the Principal Act to change the reference from the 'State Drug Crime Commission' to the 'New South Wales Crime Commission'.

**Clause 64 - Telecommunications not to be intercepted**

The clause amends section 6L of the Principal Act to change the reference from the 'State Drug Crime Commission' to the 'New South Wales Crime Commission'. The clause makes a minor drafting amendment to section 7 of the Principal Act by deleting the word 'section' from subparagraph (2)(a)(ii).

**Clause 65 - Reports to be made to Attorney-General on results of interception**

The clause makes a minor drafting amendment to section 17 of the Principal Act by inserting a comma after the number '10' in the section.

**Clause 66 - Preconditions for declaration**

This clause amends paragraph 35(1)(d) of the Principal Act by replacing the requirement that the 'eligible authority' supply a report to the Minister within 2 months after the end of the relevant year with a requirement that it be supplied within 3 months after the end of the relevant year. The amendment is necessary for the same reason as the amendment to section 94 made by clause 72 and will allow States to make the necessary amendment to their own legislation.

**Clause 67 - Agency may apply for warrant**

This clause amends paragraph 39(2)(d) of the Principal Act by changing the reference from the 'State Drug Crime Commission' to the 'New South Wales Crime Commission'.

**Clause 68 - Issue of warrant for entry on premises**

This clause amends subsections 48(3) and (4) of the Principal Act by including a reference to 'line'. This will overcome the unintended consequence of the definition of 'equipment' in the Act which specifically excludes a 'line'.

**Clause 69 - Managing Director of carrier to be informed of issue or revocation of certain warrants**

This clause amends section 60 of the Principal Act by omitting from paragraph (1)(d) the reference to 'certifying' and substituting 'prescribed'. The definition of 'prescribed officer' in proposed subsection 60(4) of the Act extends the number of persons who are able to certify a copy of a warrant as being a true copy for the purposes of subsection 60(1) by including Assistant Commissioners of the AFP and officers of the Police Force of a State of equivalent rank, and a member of the staff of the NCA who is a Senior Executive Service officer employed under the Public Service Act 1922 and who is authorised for that purpose by the Chairman of the NCA. This will facilitate the coming into force of the warrant (which cannot occur until the original is received by the AFP) by allowing other senior officers to certify a copy of the original as soon as possible after it is received.

**Clause 70 - Further dealing by recipient of certain information**

This clause amends section 73 of the Principal Act by omitting the word 'or' before '67'. This is a minor

drafting amendment made necessary by a previous amendment to section 73.

**Clause 71 - Other records to be kept by Commonwealth agencies in connection with interceptions**

This clause amends subsections 81(1) and (2) of the Principal Act enabling the records required by Part VIII of the Act to be kept by agencies to be recorded by means of a computer.

**Clause 72 - Commonwealth agencies to report to Minister about applications and warrants under Parts IV and VI**

This clause amends subsection 94(3) of the Principal Act by replacing the requirement that a Commonwealth agency (the AFP and the NCA) supply a report to the Minister within 2 months after the end of the relevant year with a requirement that it be supplied within 3 months after the end of the relevant year. As warrants may be issued for a period of up to 3 months, the requirement imposed on the chief officer of the agency to provide certain information about warrants within 2 months cannot be complied with if a warrant issued in the final month of the year remains in force more than 2 months into the new year.

**Clause 73 - Savings**

Subclause (1) provides that the declaration made under section 34 of the Principal Act for the State Drug Crime Commission in force immediately before the 'commencing day' as defined in subclause (4) continues to have effect as if it had been made for the New South Wales Crime Commission.

Subclause (2) provides that any references in warrants or documents to the State Drug Crime Commission, to the chief officer or the Chairperson of that Commission, or to a member or a member of staff of that Commission in force immediately before the 'commencing day' as defined in subclause (4) shall be taken to be references to the New South Wales Crime Commission, or to the chief officer, Chairperson, or a member or member of staff of the New South Wales Crime Commission, as the case may be.

Subclause (3) has the effect of ensuring that subclause (1) is not taken to affect the Minister's power to revoke the declaration which applies to the New South Wales Crime Commission by virtue of subclause (1).

Subclause (4) is an interpretation provision for the purposes of this clause. It defines 'commencing day' as the day on which subsection 61(2) of this Act commences and 'section 34 declaration' as one made under section 34 of the Principal Act declaring the State Drug Crime Commission of New South Wales to be an agency for the purposes of the Act.

## PART 9 - AMENDMENTS OF OTHER ACTS

### Clause 74 - Amendments of other Acts

This clause amends certain Acts as set out in Schedule 2.

Clause 74(1) makes the amendments that are set out at Part 1 of Schedule 2. Those Commonwealth Acts, included in Part 1 of Schedule 2, which currently apply ACT law for Commonwealth purposes are amended to apply JBT laws instead. Some amendments were necessary to change references to ACT criminal laws which became the responsibility of the ACT, rather than the Commonwealth, Government on 1 July 1990. It was considered desirable when amending those laws to also alter the applicable law to one over which the Commonwealth retained control. In this way, any departure from ACT law need only be made for the JBT and thus will flow through automatically to other applied law regimes without the need for separate amendment of each legislative scheme.

In the case of the Australian Antarctic Territory Act 1954 and the Heard Island and McDonald Islands Territory Act 1953 the amendments distinguish between civil and criminal laws. The criminal laws of the JBT are to apply in those Territories so far as they are applicable and not inconsistent with the laws of the respective Territory. The other laws of the ACT are to continue to apply, again so far as they are applicable and not inconsistent with the laws of the Territory. This makes no substantive alteration to the law as there is no significant difference between current ACT and JBT law.

The amendments include a definition of criminal laws and a number of minor technical and procedural changes which are consequential upon the distinction between applied criminal and civil laws.

Certain Commonwealth legislation currently creates offences by reference to both Commonwealth laws in force in the ACT and certain specified criminal laws of the ACT. These are the Crimes (Aircraft) Act 1963, the Crimes (Hijacking of Aircraft) Act 1972, the Crimes (Overseas) Act 1964 and the Defence Force Discipline Act 1982. These Acts are amended in Schedule 2 to create these offences by reference to those laws as they apply in the JBT. In the case of the Crimes (Aircraft) Act and the Crimes (Hijacking of Aircraft) Act, the reference to the Police Offences Ordinance has been deleted as most of that Ordinance was repealed some years ago and the remainder is no longer relevant to the circumstances covered by the legislation.

The amendments include a series of other changes which are consequential upon the application of JBT laws in place of ACT laws.

Clause 74(2) makes the amendment to section 15 of the Crimes Legislation Amendment Act 1989 which is set out at Part 2 of Schedule 2. The 1989 Act amended section 18 of the Crimes (Aircraft) Act 1963 by inserting a reference to the Air Navigation Regulations. However, the amendment did not completely identify where the extra words were to be located in section 18. Clause 74(2) and Part 2 of Schedule 2 clarify the amendment.

Clause 74(3) makes the amendment to section 25 of the Intelligence and Security (Consequential Amendments) Act 1986 which is set out in Part 3 of Schedule 2.

## SCHEDULE 2 - AMENDMENTS OF OTHER ACTS

### PART 1

Many of these amendments are as a consequence of the new fixed term appointment arrangement introduced by the AFP Amendment Act which will result in all AFP personnel being appointed under the AFP Act. Previously non-police staff were appointed under the Public Service Act 1922 and most of the Acts to be amended by this schedule applied to them by virtue of their status as public servants. Following these changes it has become necessary to include references to staff members of the AFP in the Audit Act 1901, the Canberra Water Supply (Googong Dam) Act 1974, the Evidence Act 1905, the Privacy Act 1988 and the Radiocommunications Act 1983.

Schedule 2 also concerns the AFP in relation to an amendment of subsection 2(3) of the AFP Amendment Act. The amendment brings forward the repeal of section 38G of the AFP Act and paragraph 58(3)(ba) of the Superannuation Act 1976 from 1 January 1992 to 1 January 1991. These provisions were part of the old management initiated retirement mechanism of the AFP appointment arrangements which were in place prior to the commencement of the AFP Amendment Act. They were kept in place to facilitate some redundancies which were only appropriate to deal with under the previous scheme. Those redundancies have now been finalised and the provisions have no further purpose. Under the new scheme, redundancies can be processed under section 26E of the AFP Act.

The final amendment relating to the AFP concerns subsection 21(1) of the Complaints (Australian Federal Police) Act 1981. Subsection 21(1) currently excludes enactments of Norfolk Island from the scope of various procedures under Part III of that Act. The exclusion is to be removed to reflect the likely extension of AFP functions on Norfolk Island if the Administration and Commonwealth enter a policing arrangement later this year under subsection 8(1C) of the AFP Act. The extension of AFP functions will arise as a result of clause 4 of this Bill and, in the case of Norfolk Island, will primarily concern the enforcement of Norfolk Island enactments.

The Norfolk Island Administration has advised that it agrees with the amendment.

Schedule 2 amends subsection 12(1) of the National Crime Authority Act 1984. The amendment enables evidence collected by the NCA to be assembled and given to those authorised to prosecute Commonwealth, State or Territory offences. At present the evidence can only be given to the Attorney-General of the Commonwealth or a State or a law enforcement agency. This change will streamline procedures which were originally designed for a prosecutions system which had the Attorney-General as the central authority. Now the Commonwealth, States and Northern Territory use a separate prosecuting authority. The amendment has been recommended by the Inter-Governmental Committee for the NCA. The Committee recommended similar amendments to State and Northern Territory legislation.

## **PART 2**

Section 15 of the Crimes Legislation Amendment Act 1989 amended section 18 of the Crimes (Aircraft) Act 1963 by inserting a reference to the Air Navigation Regulations. However, the 1989 amendment did not completely identify where in section 18 the extra words were to be located. Part 2 of Schedule 2 clarifies the 1989 amendment.

## **PART 3**

Section 25 of the Intelligence and Security (Consequential Amendments) Act 1986 incorrectly cited the words which were intended to be omitted from the title to the Telecommunications (Interception) Act 1979. The amendment ensures that the words intended to be removed are in fact removed.

