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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CRIMES LEGISLATION AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

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



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CRIMES LEGISLATION AMENDMENT BILL 1992

GENERAL OUTLINE

The purpose of the Bill is to amend certain Acts in relation to criminal or law enforcement matters and for related purposes.

Part 2 of the Bill amends the Cash Transaction Reports Act 1988 to clarify the definition of "account" in the Act and to streamline the processes of identity verification as recommended by the Ministerial Advisory Committee. The amendments will also facilitate electronic reporting of significant transactions and facilitate the receipt and use of data obtained under State legislation for reporting of suspect transactions.

Part 3 of the Bill amends the Crimes Act 1914 to provide a penalty unit system as recommended by the Review of Commonwealth Criminal Law (the Gibbs Committee) to allow penalties to reflect variations in current money values, by a single legislative amendment to the Crimes Act rather than by an individual amendment of each offence provision, as is currently required. The amendments establish a time for commencement of corporate prosecutions where there is a large pecuniary penalty for the offence but there is no term of imprisonment prescribed. The power of a court to amend an indictment, information or summons is simplified.

Part 3 also implements the recommendation of the Gibbs Committee to confine the restriction on the availability of imprisonment to specified offences and includes an amendment to Part 1C of the Crimes Act to remove its application to persons arrested in the Antarctic Territories until those persons reach mainland Australia.

In addition, Part 3 of the Bill creates an offence of piracy and related offences. It provides for the seizure of pirate ships and aircraft and repeals outdated Imperial legislation. The new provision is based on the 1958 Geneva Convention on the High Seas (the Convention) and implements relevant recommendations of the ALRC Report No 48 on Criminal Admiralty Jurisdiction and Prize.

This part amends section 85ZF of the Crimes Act to overcome a deficiency in the provision which deals with offences relating to telecommunications services.

The schedule to the Bill amends section 76 of the Crimes Act to enable charges under ACT law to be laid where an AFP member is obstructed or assaulted when engaged in community policing in the ACT.

Part 4 amends the Crimes (Aviation) Act 1991 to rectify an anomaly in the provisions dealing with release from custody by placing an absolute time limit of two months on remand orders under section 39 of the Act.

Part 5 makes a minor amendment to the Crimes (Biological Weapons) Act 1976 to remedy a deficiency relating to the details which may be included in analysts' certificates under section 12 of that Act.

Part 6 amends the Crimes (Superannuation Benefits) Act 1989 to clarify the meaning of "sentence" in the Act and the provision under which the employee contributions are paid when a superannuation order is made.

Part 7 amends the Customs Act 1901 to reinstate the power of the Commissioner or Deputy Commissioner of Police to make decisions regarding the disposal of narcotic goods and to facilitate the discharge of pecuniary penalty orders from property restrained under the Act.

Part 8 amends the Director of Public Prosecutions Act 1983 to broaden the powers of the Director to grant indemnities in respect of proceedings under the Proceeds of Crime Act 1987 and the Customs Act 1901. The part also amends the Act to simplify the service of process on the Director and to enable State or Territory Directors of Public Prosecutions or equivalent to appear on behalf of the Director in certain proceedings.

Part 9 of the Bill amends the Mutual Assistance in Criminal Matters Act 1987 by insertion of a new subsection facilitating proof of documentation received from specified parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Part 10 amends the Proceeds of Crime Act 1987 to extend the definition of “proceeds of crime” to pick up profits from foreign offences which are not narcotics offences such as security offences or the proceeds of kidnapping. The amendment will enable the money laundering provisions to apply to the proceeds of these offences. Other amendments facilitate the payment of pecuniary penalty orders from property restrained under the Act and enable the DPP to take action to protect the Commonwealth’s interest in forfeited property during the appeal period.

The schedule to the Bill amends Section 64 of the Australian Federal Police Act 1979 to enable charges under ACT law to be laid where an AFP member is obstructed or assaulted when engaged in community policing in the ACT. It also amends section 12L of the AFP Act to correct an anomaly in the operation of provisions from the Customs Act which are made applicable by section 12L. These amendments will ensure that the range of proceedings in which information derived from listening devices may be used in evidence corresponds with the range of offences for which the AFP may seek listening device warrants.

Other amendments to the AFP Act in the schedule will enable a female member or staff member of the AFP to be promoted during maternity leave and close a possible loophole in the operation of the scheme for confiscation of superannuation rights and benefits of Commonwealth employees where a staff member is found guilty of a corruption offence.

The schedule amends section 11 of the Public Order (Protection of Persons and Property) Act 1971 to enable ACT charges to be laid for offences relating to trespass on ACT premises where the trespass is incidental to the commission of other offences against ACT law.

FINANCIAL IMPACT

It is not anticipated that any of the provisions of the Bill will have a financial impact on the Commonwealth. The changes to the identity verification procedures in the Cash Transaction Reports Act 1988 may reduce the costs of compliance for cash dealers.

ABBREVIATIONS

The following abbreviations are used in this Explanatory Memorandum:

ACT	Australian Capital Territory
AFP	Australian Federal Police
Agency	Cash Transaction Reports Agency (or AUSTRAC)
ALRC	Australian Law Reform Commission
AUSTRAC	Australian Transaction Reports and Analysis Centre (The CTRA is renamed AUSTRAC from 6 December 1992)
Crimes Act	Crimes Act 1914
CTR Act	Cash Transaction Reports Act 1988 (renamed Financial Transaction Reports Act 1988 from December 1992)
CTR Regulations	Cash Transaction Reports Regulations 1988
CTRA	Cash Transaction Reports Agency (renamed AUSTRAC from December 6)
Director	In Part 2 the Director of the Cash Transaction Reports Agency. In Part 8 the Commonwealth Director of Public Prosecutions
DPP	Director of Public Prosecutions
FTR Information	Information obtained by the Director of AUSTRAC under Part II of the Financial Transaction Reports Act 1988
Gibbs Committee	Review of Commonwealth Criminal Law, Chairman: the Right Honourable Sir Harry Gibbs, GCMG, AG, KBE
Ministerial Advisory Committee	Ministerial Advisory Committee on the Cash Transaction Reports Act 1988. Chairman: Mr Alan Rose, Secretary Attorney-General's Department. Includes the Director of the CTRA and representatives from the Australian Bankers' Association and financial institutions
Money-Laundering Convention	The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990

- Official Trustee
- SCAG
 - SES
 - The Convention

- Official Trustee in Bankruptcy
- Standing Committee of Attorneys-General
- Senior Executive Service of the Australian Public Service
- The 1985 Geneva Convention on the High Seas.

NOTES ON CLAUSES

PART 1 - INTRODUCTORY

Clause 1 - Short title

Formal

Clause 2 - Commencement

All provisions of the Bill other than Part 2 will commence 28 days after Royal Assent. Part 2 of the Bill will commence on a day to be fixed by Proclamation. Part 2 contains the amendments to the Cash Transaction Reports Act 1988 which will necessitate consequential amendments to the CTR Regulations.

PART 2 - AMENDMENTS TO THE CASH TRANSACTION REPORTS ACT 1988

Clause 3 - Principal Act

This is a formal provision identifying the Cash Transaction Reports Act 1988 as the Principal Act.

Clause 4 - Interpretation

Clause 4 amends section 3, the definition section of the Act.

The amendment to the definition of 'FTR information' is consequential upon the repeal of subsection 18(5A). The term 'FTR information' derives from amendments to the Act which will come into force on 6 December 1992.

This clause amends the definition of 'account' in the Act. The amendment inserts a provision which clarifies that, while a loan will generally fall within the definition of account, a limited class of loans, where the times and amounts of the advances and repayments may not be varied by the borrower or the lender, are excluded from the definition. Other loan arrangements remain within the ambit of the definition.

The definition of 'primary identification document' is amended so that the term 'passport' is replaced with 'international travel document'. (A definition of 'international travel document' is inserted in this Bill.) In addition, subclause (d) allows for other documents to be prescribed in the regulations as primary identification documents.

A number of definitions are inserted in subsection 3(1) of the Act:

The definition of 'account information' outlines the information required to be obtained and recorded in relation to an account. It means the name under which the account is held, the address of the account holder other than a Post Office Box address and the description of the account holder, that is, whether it is the name of a natural person or some other incorporated or non-incorporated entity. Where the account is held in the name of a body corporate a copy of the certificate of incorporation (if any) forms part of the account information and where the account is held in a business name a copy of the certificate or registration or if registration has been applied for but not yet obtained, a copy of the application for

registration also forms part of the account information. The "account information" also includes a statement whether the account is held in trust and, if it is, the prescribed details of the trustees and the beneficiaries of the trust. This information was formerly part of the statement under section 20 of the Act which is repealed. It is relocated in the definition section of the Act.

'Identification record' and 'identification reference' are defined by reference to the relevant sections of the Act

'International travel document' is defined to include a current passport and an expired passport which was not cancelled and which was current within the past two years. It also includes a current identity document issued by a government or the United Nations itself or an agency of the United Nations, which has the characteristics of a passport and was issued for the purpose of international travel. This latter category may include some diplomatic documents and some documents issued to refugees.

The definition of 'signatory information' contains the information to be obtained and recorded as signatory information in relation to accounts. It includes the name used by the signatory in relation to any particular account and any other name or names by which the signatory is commonly known. Where the account is held in the name of an unincorporated association the signatory information also includes a copy of the instrument authorising the signatory to sign. The signatory information also includes an identification record for the signatory as specified in section 20A. This information is currently required as part of the statement under section 20.

Clause 5 - Reports of significant cash transactions

This clause proposes an amendment to subsection 7(2) of the Act which requires reports of significant cash transactions to be signed. The amendment extends the method of authentication available where electronic reports are made. Where the Director has approved an electronic method of reporting an electronic method of authenticating these reports may also be approved.

Clause 6 - Identifying cash dealers

The amendment proposed to paragraph 8A(2)(a) is consequential upon the repeal of subsection 20(8) and the proposed amendment to paragraph 20A(1)(b).

Clause 7 - Inspection of record systems etc.

This clause proposes an amendment to paragraph 14A(4)(b) so that where a cash dealer has been given notice under section 14A requiring the cash dealer to give access to premises to an officer authorised by the Director, that officer may inspect records and record systems kept pursuant to the requirement in section 20 to maintain account information and signatory information in a way that can be audited. The authorised officer may also monitor compliance by identifying cash dealers with the undertakings given under section 8A.

Clause 8 - Insertion of new Division 4 - Information provided under State and Territory legislation

This clause inserts a new division into Part II of the Act. The proposed new section 17H which provides that information received by AUSTRAC either under another Commonwealth Act or under a law of a State or Territory will be taken to have been received under Part II means that such information falls within the definition of 'FTR information' in section 3 of the Act. This will enable the Agency to receive and deal with such information received under State legislation as if it were information received under the CTR Act. SCAG has agreed that States and Territories will enact complementary legislation on suspect transaction reporting. To avoid duplication all reports under State legislation (which would

generally also relate to tax evasion under the existing Act) will be reported to the Commonwealth Agency.

Clause 9 - Opening etc of account with a cash dealer

Clause 9 proposes to amend section 18 of the Act replacing subsections (2), (2A) and (2B) with new subsections (2) and (2A). Under the proposed new subsection (2) an account becomes blocked to withdrawals by any signatory at the end of the infringement day, as defined in subsection 18(1), if account information for an account is not held on that day. The account will be blocked to withdrawals by any signatory until the cash dealer has the account information or the Director has given the cash dealer notice under subsection 19(2). Once the account information is held for a particular account the cash dealer holds that information for the purposes of section 18 and does not need to acquire that information again if a new signatory is added to the account. Under the existing provisions this information must be provided whenever a new signatory is added thus increasing the burden on cash dealers. The amendments provide for an audit trail to the information originally supplied.

The new subsection 18(2A) will provide that an account is blocked to withdrawals by a signatory if, at the end of the infringement day, the cash dealer does not hold the signatory information. Where signatory information is not held with respect to any signatory to the account on the infringement day the account is blocked to withdrawals by that signatory until the signatory information for that signatory is obtained or the Director gives a notice under subsection 19(2). Once the signatory information is held for a particular signatory the cash dealer holds that information for the purposes of section 18 and does not need to acquire that information again if that person becomes a signatory to another account with that cash dealer. This amendment also removes the duplication of information in the hands of cash dealers.

Clause 9 also proposes to amend subsection 18(3) in the light of the new requirements in subsections 18(2) and (2A) so that the cash dealer commits an offence unless the cash dealer makes reasonable efforts on or before the end of the infringement day to obtain the account information and the signatory information. The offence is similar to that which exists under subsection 18(3) but reflects the new terminology.

This clause will replace the offences created by subsections (4), (5) and (5A) with new subsections (4), (4A) and (5). Under subsection (4) where a signatory knows that an account is blocked to withdrawals by that signatory (whether by operation of subsection 18(2) or (2A)) and the signatory makes a withdrawal from the account, the signatory will commit an offence. It is only an unverified signatory who could commit an offence under paragraph (4)(b) where the account is blocked because of the operation of subsection (2A) (that is, where the cash dealer does not have the signatory information) and that signatory must know that the account is blocked before an offence can be committed.

The new subsection (4A) provides that a cash dealer will commit an offence against the subsection where a signatory makes a withdrawal from an account where the account is blocked by reason of subsection 18(2) or where an unverified signatory makes a withdrawal from an account where the account is blocked by reason of subsection 18(2A).

The new subsection 18(5) provides that, where an account has become blocked by the operation of subsection (2) or (2A), the cash dealer commits an offence at the end of the period prescribed in the regulations for the purposes of the subsection unless the cash dealer gives the Director written notice stating the reasons the account became blocked, sufficient details to identify the account and, where the account became blocked by operation of subsection 18(2A), the name of the unverified signatory.

Subclause 9(e) inserts a reference to the new subsection 18(4A) into subsection (6) which provides the penalties for offences under the section.

The clause also replaces subsection 18(7) with a new subsection in relation to an account which has been blocked and notice has been given to the Director. New subsection (7) provides for the giving of notice to the Director where the account information or the signatory information is obtained in relation to the account or a signatory to the account. The written notice must be given within 14 days of obtaining the information and must state that the account has become unblocked, the reason it has become unblocked and whether it is unblocked to a particular signatory or signatories or to all signatories.

The amendment to subsection (9) is consequential upon the repeal of subsection (5A).

The amendment proposed to subsection 18(10) is consequential upon the amendment in the new subsection 18(5) which refers to a prescribed period for notice under that subsection..

Clause 10 - Unblocking or forfeiture of account

In accordance with the amendment proposed to section 18, this clause proposes to amend section 19 of the Act in relation to accounts which were blocked so that under paragraphs 19(2)(b) and (c) where the Director is satisfied that the cash dealer has the account information and the signatory information or, where the account was blocked by reason only of subsection 18(2A) and the unverified signatory has ceased to be a signatory to the account the Director shall give written notice of the fact.

Clause 11 - Insertion of new section 20 - Cash dealers to hold information and new section 20A - Identification record

This clause repeals section 20. The proposed new section 20 will require cash dealers to maintain, in relation to each account, the account information and signatory information in a way which can be audited.

Proposed new section 20A outlines the requirements of an identification record for a signatory to an account. The identification record forms part of the signatory information. A cash dealer has an identification record if the cash dealer has an identification reference or, if it is an identifying cash dealer, it has carried out a verification procedure as prescribed in the regulations or as approved by the Director and the identifying cash dealer has a record of the verification procedure. The insertion of an "approved" verification procedure in subparagraph 20(1)(b)(ii) means that identifying cash dealers will have greater flexibility to verify the identity of customers. This opens the way for identifying cash dealers to seek approval for simpler procedures which the industry finds effective. Such procedures will be subject to audit under the Act. Proposed subsection 20A(2) deems the prescribed verification procedure formerly described under subsection 20(8) to be a prescribed verification procedure under the new paragraph 20A(1)(b)(i).

Clause 12 - Insertion of new section 21A - Change of name

This clause inserts a new section 21A which outlines a verification procedure to apply to a signatory who is a member of one of the identified classes of persons and who opens an account or becomes a signatory to an account with an identifying cash dealer in a name by which the signatory is not commonly known but by which the signatory intends to be commonly known. The provision applies to specified classes of persons who change their names and are unable to verify their identity in their new names. Subsection (1) lists the classes of persons to whom the new procedure is available: people who wish to adopt a new name by reason of marriage, women who changed their name upon marriage or defacto marriage and who wish to return to the use of their former name; victims of violence or threats of violence and their dependant children who wish to use a different name for safety reasons; and Aborigines and Torres Strait Islanders who wish to use a traditional name. Where a signatory falls within a class of persons in subsection (1) and gives the cash dealer a change of name statement signed by the signatory and a prescribed, person paragraph(2)(a) will provide that the new name will be taken to be a name by which the signatory is

commonly known. This will ensure that the new name will not fall within the definition of a false name in section 24. Paragraph (2)(b) deems a change of name statement signed by the signatory and by a prescribed person to constitute an identification reference for the signatory in the new name.

This clause includes as subsection 21A(3) an offence to knowingly or recklessly make a statement in a change of name statement that is false or misleading in a material particular or to omit from such a statement any matter or thing without which the change of name statement is misleading in a material particular.

The new section includes a definition of 'change of name statement'. A change of name statement must set out: the name or names by which the signatory has been commonly known and the reasons why the section applies to the signatory. This will include the class of persons to which the signatory belongs and the reason or reasons why the new name is being used; the new name itself and a statement by the signatory that the new name is one by which they will be commonly known.

Clause 13 - Notice to Director if no primary identification document examined

This clause proposes to amend section 22 of the Act as a consequence of the repeal of section 20.

Clause 14 - Cash dealer to keep documents

Clause 14 will amend section 23, as a consequence of the repeal of section 20. The amendment omits subsections (1), (1A) and (2) and substitutes a new subsection (1) which requires that, whenever the cash dealer makes or obtains a record of any information in the course of obtaining account information or signatory information, the cash dealer must retain the record or a copy of the record for seven years after the day on which the relevant account is closed. As a consequential amendment references to the repealed subsections (1A) and (2) are omitted.

A new subsection (4) is proposed. Where account information or signatory information is held in respect of more than one account a reference to the day on which the account is closed is a reference to the day on which the last of the accounts is closed.

Clause 15 - False or misleading information

This clause amends paragraph 29(4)(aa) of the Act consequential upon the verification procedure formerly in subsection 20(8) now being in paragraph 20A(1)(b).

Clause 16 - Functions of Director

This clause proposes to amend section 38 of the Principal Act to enable the Director to deal with the information and reports provided to the Agency under complementary laws of the States and Territories. Where the reporting legislation of the States and Territories provides that the Director may exercise certain powers, this paragraph adds the exercise of those powers to the functions which may be exercised by the Director under this Act.

Clause 17 - Transitional provision in relation to section 23

Clause 17 provides that the obligation to retain documents under the current section 23 will continue despite the amendment to section 23. Cash dealers who hold statements under the repealed provision will be obliged to retain those statements for the period of 7 years after the day on which the relevant account was closed.

PART 3 - AMENDMENTS TO THE CRIMES ACT 1914

Clause 18 - Principal Act

Clause 18 identifies the Crimes Act 1914 as the Act amended by Part 3 of the Bill.

Clause 19 - Insertion of section 4AA - Penalty units and new section 4AB Conversion of pecuniary penalties expressed in dollar amounts to penalty units

This clause inserts a scheme of penalty units into Commonwealth and Territory laws.

Proposed subsection 4AA(1), interprets a reference in a law of the Commonwealth or Territory Ordinance to a penalty unit as \$100.

Proposed subsection 4AA(2) defines 'Territory Ordinance' to mean Ordinances and regulations governing areas of retained Commonwealth responsibility in the Australian Capital Territory and Ordinances and for the non-self-governing Territories (not including Norfolk Island). It will not include those Ordinances of the Australian Capital Territory that became enactments following self-government in the Australian Capital Territory. This makes it clear that the penalty unit scheme will only apply in the Australian Capital Territory to the small number of Ordinances in areas of retained responsibility by the Commonwealth.

Proposed subsection 4AB(1) is an interpretative provision that provides the mathematical calculation for converting pecuniary penalties in a law of the Commonwealth and a Territory Ordinance into penalty units. It provides that where the pecuniary penalty is an exact multiple of \$100, the number of penalty units will be calculated by dividing the pecuniary penalty by 100. Any pecuniary penalty in Commonwealth legislation which is not an exact multiple of \$100 will be increased to the next multiple of \$100 which is then divided by 100. Where certain maximum monetary penalties are increased with the introduction of the penalty unit scheme, these maximum penalties would only apply to offences committed after the amendment comes into force. This results from the application of section 4F of the Principal Act.

A 'pecuniary penalty of D dollars' includes any reference to a penalty expressed in dollar terms, including a regulation making power to prescribe penalties in dollar terms. It does not apply to penalties which are not expressly prescribed in monetary terms, for example, some penalties contained in the Customs Act 1901 (sections 233AB and 234(2) and (3)) are based on a multiple of the value of duty evaded. Another example is section 67 of the Defence Force Discipline Act 1982, which contains penalties expressed in numbers of days pay. When such a penalty includes a fall-back penalty in monetary terms, e.g. paragraph 234(2)(a)(ii) of the Customs Act 1901, the scheme will apply to the fall-back penalty, because it is described in dollar terms.

Proposed subsection 4AB(2) provides that the proposed penalty unit system will only apply to a penalty that is imposed by a court, or in the case of the Defence Force Discipline Act 1982 by a service tribunal. It will not apply to infringement notices as they do not involve penalties imposed by a court after conviction. Nor will it apply to the administrative penalty scheme in Division 4 of Part XIII (sections 243T, 243U and 243V) of the Customs Act 1901 nor to the penalty tax imposed by the Commissioner of Taxation under Part VII (sections 222-228) of the Income Tax Assessment Act 1936.

Proposed subsection 4AB(3) provides that the scheme will not apply to section 76 of the Trade Practices Act 1974 which provides for civil pecuniary penalties for contraventions of Part IV of that Act. Neither will it apply to the Corporations Law and other Commonwealth legislation forming part of the national companies and securities scheme, for the purposes of the Australian Securities Commission Act 1989, or to other prescribed provisions.

Proposed subsection 4AB(4) defines the following terms for the purposes of the section:

'Penalty' is defined to put beyond doubt that the term includes a fine. A fine is a sum of money imposed as penalty for an offence. 'Penalty' includes both criminal penalties following conviction of an offence, and civil penalties which are imposed by a court but not following a conviction. An example of a civil penalty would be prescribed taxation offences under section 8ZJ of the Taxation Administration Act 1953.

'Territory Ordinance' has the same meaning as in proposed section 4AA.

Clause 20 - Pecuniary penalties-natural persons and bodies corporate

Clause 20 amends subsection 4B(2) of the Principal Act which provides a formula for the conversion of terms of imprisonment into monetary penalties. The formula is amended to refer to penalty units. The amendment does not change the result of the formula.

Clause 21 - Time for commencement of prosecutions

This clause amends and clarifies section 15B of the Act which provides a regime to determine the time in which a prosecution may be commenced for an offence. Proposed subsection (1) merely reenacts the present provision where the offender is an individual. For individuals other than those who fall within subsection (1B), a prosecution may be commenced at any time if the maximum penalty is or includes imprisonment for more than six months, and in any other case, at any time within one year after the commission of the offence. The amendment will ensure that, where an offence is committed by a corporation, the level of pecuniary penalty will determine the time for the commencement of the prosecution. Currently the limitation period for prosecution of corporations is also based on the prescribed period of imprisonment even though that cannot be imposed on a corporation. This does not recognise that the seriousness of offences committed by corporations can only be judged by the maximum pecuniary penalty available particularly where the offence can only be committed by a body corporate.

Where an individual (such as a company director) is charged with aiding and abetting in relation to such an offence committed by a corporation the prosecution for that individual may commence at the time appropriate to the corporation.

The time for commencement of corporate prosecutions outlined in subsection (1A) is based on the level of pecuniary penalty imposed. A prosecution may be commenced at any time where the maximum penalty for the offence includes a fine of more than 150 penalty units. The amount of 150 penalty units derives from the formula in subsection 4B(2) of the Act which converts a term of imprisonment into a pecuniary penalty and then by multiplying by five in accordance with the provision in subsection 4B(3) for pecuniary penalties imposed on corporations. Where the penalty does not exceed 150 penalty units the prosecution may be commenced at any time within one year after the commission of the offence.

The proposed new subsection (1B) provides for the situation where an individual is prosecuted for an offence arising under section 5 of the Act or the aiding and abetting provision of another Commonwealth Act in relation to an offence committed by a corporation. In that case, subsection (1B) provides that a prosecution may be commenced within the same time as applies to the corporation under subsection (1A).

Clause 22 - Form of indictments, informations and summonses

This clause proposes to amend section 15C to remove the requirement for an objection to be taken for an alleged defect in the substance or form of an indictment, information or summons before it can be amended. The provision gives the court of its own motion the

power to make such amendment in the process as appears to the court to be desirable or necessary.

Clause 23 - Restriction on imposing sentences

This clause omits subsections 17A(1A) and (1B) of the Principal Act. These subsections are replaced with new section 17B.

Clause 24 - Restriction on imposing sentences for certain minor offences

Proposed section 17B provides that if a person is convicted of one or more federal offences relating to property, money or both, whose total value does not exceed \$2,000 and the person has not previously been sentenced to imprisonment, the court convicting the person cannot impose a prison sentence, unless there are exceptional circumstances. The amendment confines the restriction on the availability of a term of imprisonment to offences against present sections 29, 29A, 29B, 29C, 29D, 71 and 72 of the Principal Act and offences under prescribed provisions of Commonwealth laws including other offences in the Principal Act. This is because the seriousness of the other offences cannot necessarily be judged by the value of the property involved. For example, in the case of bribery the seriousness lies in the nature of the office sought to be corrupted rather than the amount of money involved.

Clause 25 - Insertion of a new section 23AA - Application of Part to Antarctic Territories

This amendment to Part 1C of the Crimes Act provides that the Part will not apply in the Australian Antarctic Territory and the Territory of Heard Island and McDonald Islands. Part 1C requirements cannot be complied with in these Territories where there is no police force, legal professions or interpreter services nor are proper facilities available. Criminal Procedures Ordinances are being specifically developed for those Territories.

However, Part 1C will apply after a person arrested in either Territory, within any of the meanings of 'arrest' in that Part, arrives in a State or Territory of mainland Australia in which the Part applies as if they were arrested on arrival in that State or Territory.

Clause 26 - Insertion of new Part IV - Piracy

Clause 26 inserts a new Part IV into the Crimes Act creating an offence of piracy. The proposed sections in the Part are:

Proposed Section 51 - Interpretation

Proposed section 51 provides a number of definitions for the new Part. The most important are:

- 'act of piracy' which follows paragraph 1 of the definition of piracy in Article 15 of the Convention. Paragraph 2 of the Article 15 is covered by proposed section 53 and paragraph 3 is unnecessary as inciting or intentionally facilitating an act of piracy is covered by section 5 of the Crimes Act concerning aiders and abettors.
- 'pirate-controlled ship or aircraft' which is based on Article 17 of the Convention. A ship or aircraft which has been seized control of by an act of piracy has been included in the definition. This ensures the application of the offence of operating a pirate-controlled ship or aircraft in such a situation and allows the seizure of such ships or aircraft. Such a seizure within the Convention definition of an act of piracy.

Proposed Section 52 - Piracy

This proposed section creates the offence of piracy and provides the maximum penalty for the offence.

Proposed Section 53 - Operating a pirate ship or aircraft

This proposed section creates the offence of voluntarily participating in the operation of a pirate ship or aircraft and provides the maximum penalty for the offence. It is based on paragraph 2 of the Convention definition in Article 15. Unlike the offence of piracy, this offence can apply to acts committed within Australia.

Proposed Section 54 - Seizure of pirate ships and aircraft etc.

This proposed section provides that members of the Defence Forces or the Australian Federal Police may seize pirate ships or aircraft, and property on them, where they are able to form a reasonable belief that the vessel in question is a pirate ship or aircraft or that the property appears to be connected with the commission of a piracy related offence. It also provides for the geographical areas where such seizures may be made, and invests State or Territory Supreme Courts with jurisdiction in matters relating to the seizure and the forfeiture of vessels or other property seized. Property may be forfeited to the Commonwealth after conviction for an offence under this proposed Part, or alternatively, the Court may order that the property be returned to the rightful owner. The Court will also have power to make incidental orders.

Proposed Section 55 - Written consent of Attorney-General required

This proposed section provides that the consent of the Attorney-General is required for a prosecution under the proposed Part. This recognises the political sensitivity of the offences created by this Part, as well as their possible international implications. The proposed section also provides that a person may be arrested, charged and remanded in custody or on bail notwithstanding that the consent of the Attorney-General is still being obtained.

Proposed Section 56 - Evidence of certain matters

This proposed section provides that the Minister for Foreign Affairs and Trade, or a person authorised by him or her, may certify a number of matters for the purposes of this Part, including whether a particular entity is a foreign State and what parts of the sea particular specified waters fall within. Such certificates will be evidence of the facts stated in them for the purposes of relevant proceedings.

Clause 27 - Defrauding a carrier

This clause amends section 85ZF of the Principal Act which makes it an offence for a person to defraud a carrier if a person uses 'an apparatus or device'. The existing provision does not cover the situation where the person fails to use an apparatus or device such as failing to activate a charging meter. The amendment overcomes this deficiency so that the offence includes the failure to operate an apparatus, device or other mechanism and the offence applies whether or not the apparatus, device or other mechanism is extraneous to the telecommunications network or is connected to or forms part of that network.

PART 4 - AMENDMENTS TO THE CRIMES (AVIATION) ACT 1991**Clause 28 - Principal Act**

Clause 28 identifies the Crimes (Aviation) Act 1991 as the Act amended by Part 4 of the Bill.

Clause 29 - Release of person remanded in custody

Clause 29 repeals the existing section 40 of the Crimes (Aviation) Act 1991 and substitutes a new provision which will ensure that a person remanded in custody under section 39 of the Act cannot be detained under that provision for a cumulative period of more than two months before the person must be released or remanded in custody for the purpose of prosecution under that Act.

PART 5 - AMENDMENTS TO THE CRIMES (BIOLOGICAL WEAPONS) ACT 1976

Clause 30 - Principal Act

This clause identifies the Crimes (Biological Weapons) Act 1976 as the Act amended by Part 5 of the Bill.

Clause 31 - Evidence of Analyst

This clause amends the present section 12 of the Principal Act to correct a deficiency noted in this provision. The provision is intended to expedite prosecutions by providing for the evidence of analysts to be given by certificate rather than orally before the Court. However, section 12 does not currently make any provision for the certificate to include such details as the manner in which the specimen to which the certificate relates was conveyed to the analyst. The analyst could therefore still be required to give oral evidence as to these matters. The proposed amendment corrects this by providing, in proposed new subsection 12 (2), for the certificate to include details of the container and means of identification of the sample, and other similar matters. It further provides, in proposed new subsection 12 (6), that the analyst may not be required to be called to give oral evidence unless at least five days' notice is given to the prosecution, or a court orders that the analyst be required to be called.

PART 6 - AMENDMENTS TO THE CRIMES (SUPERANNUATION BENEFITS) ACT 1989

Clause 32 - Principal Act

Clause 32 identifies the Crimes (Superannuation Benefits) Act 1989 as the Act amended by Part 6 of the Bill.

Clause 33 - Definitions

Clause 33 amends the definition of "sentence" in the Act to clarify that a suspended sentence is one which is purely nominal. Section 17 of the Act provides that an application for a superannuation order will only be made where a person receives a sentence of imprisonment for life or a term longer than 12 months. It is only where no period of imprisonment is served that a sentence which exceeds 12 months will be excluded. A sentence of imprisonment of more than 12 months which is backdated so that a non-parole period or pre-release period expires before, or at the time, the sentence is imposed will be included.

Clause 34 - Effect of superannuation orders

Clause 34 amends subsection 21(4) of the Act to clarify that the subsection applies to those persons who are employees on the day that a superannuation order comes into effect and amends subsection 21(5) of the Act so that it applies to all persons who cease to be employees before a superannuation order comes into effect. Subsections (4) and (5) facilitate the payment of outstanding employee contributions to those against whom a superannuation order has been made. The intention of the legislation is to disentitle a person only to the Commonwealth-funded part of superannuation. Subsections (4) and (5) ensure that there is a provision for payment of employee contributions and interest as existing superannuation

legislation does not provide a mechanism by which those contributions and interest can be refunded at the time the superannuation order becomes effective.

PART 7 - AMENDMENTS TO THE CUSTOMS ACT 1901

Clause 35 - Principal Act

Clause 35 identifies the Customs Act 1901 as the Act amended by Part 10 of the Bill.

Clause 36 - Disposal of Forfeited Goods

This clause amends section 208D of the Act. Section 208D sets out the means by which condemned goods will be disposed of. The amendment provides a different regime for narcotic goods and narcotic related goods which are not narcotic goods. Paragraph (b) is amended so that it now refers only to narcotic goods and it states that these goods are to be disposed of in accordance with a direction of the Commissioner of Police or a Deputy Commissioner of Police. The clause adds a new paragraph (c) which provides that narcotic-related goods other than narcotic goods will be disposed of in accordance with section 208DA.

Clause 37 - Disposal of narcotic-related goods other than narcotic goods

~~This clause amends subsection 208DA(4) of the Act so that directions given by the Attorney-General or a prescribed officer authorised by the Attorney-General are made only in relation to the disposal of, or dealing with, narcotic-related goods other than narcotic goods.~~

Clause 38 - Official Trustee to discharge pecuniary penalty

Clause 38 amends section 243G of the principal Act so that, wherever a pecuniary penalty order is made against a person in reliance on the person's conviction of an offence and there is property subject to a restraining order, the court may direct the Official Trustee to pay an amount equal to the penalty amount out of the restrained property. Subsection (1) applies where the restraining order is made before the pecuniary penalty order, subsection (2) applies where the pecuniary penalty order is made before the restraining order and the clause inserts a new subsection (2A) which enables the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions to seek a direction to satisfy the pecuniary penalty order independently of the making of the restraining order or the pecuniary penalty order. Subsection (3) which enables the court to direct the sale of the property and to appoint a person to sign the necessary instrument in the name of the owner is amended so that it applies to restrained property whether or not it is under the control of the Official Trustee.

PART 8 - AMENDMENTS TO THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 1983

Clause 39 - Principal Act

This clause identifies the Director of Public Prosecutions Act 1983 as the Act amended by Part 8 of the Bill.

Clause 40 - Powers of Director

Subsection 9(6) provides that the DPP may give a person an indemnity in relation to evidence given by the person during the course of "specified proceedings". The expression "specified proceedings" in subsection 9(6A) limits the proceedings in which the indemnified evidence may be given. Clause 40 amends paragraph 9(6A)(a) to put beyond doubt that the proceedings referred to in that paragraph include the proceedings under a law of the Commonwealth for the imposition of a pecuniary penalty as well as for the recovery of a pecuniary penalty.

Clause 40 also proposes to omit paragraph (d) and to insert a new paragraph which clarifies that the DPP may give an indemnity in relation to all proceedings under, connected with or arising out of the Proceeds of Crime Act or Division 3 of Part XIII of the Customs Act or proceedings under, connected with or arising out of the forfeiture of goods under the Customs Act.

Clause 41 - Appearances by and on behalf of Director

Clause 41 proposes to add a new paragraph 15(1)(da) which will enable the DPP (or equivalent officer) of a State or Territory to represent the Commonwealth DPP in a prosecution for a Commonwealth offence where that prosecution has been instituted or is being carried on by the Director. The provision is intended to apply where it is unnecessary or inappropriate for a Commonwealth DPP legal practitioner to attend eg guilty pleas in remote locations, mentions and the like. A definition of 'State or Territory authority' is inserted in subsection 15(3) so that the appropriate State and Territory agencies responsible for commencing and carrying on prosecutions on indictment for breaches of State or Territory law are identified.

Clause 42 - Delegation by Director

This clause inserts a new subsection 31(1A) which enables the Director to delegate the power (conferred on him by an instrument under subsection 6(4)) to consent to certain prosecutions. The delegation may be made to a member of the Office who is an SES officer and a legal practitioner.

Clause 43 - Insertion of new section 33A - Service of process on the Director

Clause 43 inserts a new section 33A which provides that personal service of process on the Director may be effected by delivery of the process in the State or Territory in which the process was issued or filed to a member of the staff of the office of the DPP who is a legal practitioner. In those jurisdictions where an arrangement has been made for an officer of the Attorney-General's Department to exercise the powers and functions of the Director then the process may be served on such officer who is a legal practitioner.

PART 9 - AMENDMENTS TO THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1987

Clause 44 - Principal Act

This clause provides that the Mutual Assistance in Criminal Matters Act 1987 is the Act amended by Part 9 of the Bill.

Clause 45 - Interpretation

This clause provides a definition of "Money Laundering Convention" for insertion in section 3 of the Principal Act. The term is defined as the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990.

Clause 46 - Insertion of new section 43A - Admissibility of certain documents - requests under the Money-Laundering Convention

This clause provides for the insertion, after section 43 in the Principal Act, of a new section 43A. Proposed subsection 43A(1) facilitates admissibility into evidence in proceedings arising directly or indirectly from a request by a foreign country for international assistance in criminal matters (including proceedings under the Proceeds of Crime Act 1987) of documents provided by a Party to the Money Laundering Convention. The subsection provides that such documents shall be admissible in evidence in such proceedings where the

Attorney-General has provided a certificate that the documentation has been provided by a specified Party to the Money Laundering Convention in connection with a request made for assistance of the type described in the Convention.

Proposed subsection 43A(2) provides that regulations may be made specifying Parties to the Money-Laundering Convention for the purposes of subsection 43A(1).

PART 10 - AMENDMENTS TO THE PROCEEDS OF CRIME ACT 1987

Clause 47 - Principal Act

This clause identifies the Proceeds of Crime Act 1987 as the Act amended by Part 10 of the Bill.

Clause 48 - Interpretation

The expression 'proceeds of crime' appears in sections 81 and 82 of the Act which are the money laundering offences. Paragraph (b) of the definition of 'proceeds of crime' extends the expression to pick up the profits from overseas narcotics offences which, under subparagraph (b)(ii) correspond with an offence in Australia. Clause 48, by omitting subparagraph (b)(ii) which specifies that the offence must be narcotic related, extends the definition to the proceeds of other foreign offences eg if the proceeds of crime being ~~laundered in Australia resulted from a foreign securities offence or the ransom money from a~~ foreign kidnapping.

Clause 49 - Effects of forfeiture order

Clause 49 amends section 20 of the Act in relation to registrable property which is forfeited by order of a court. The Commonwealth has an equitable interest in the property until registration requirements have been complied with but the property may not be disposed of or dealt with by or on behalf of the Commonwealth during the appeal period. The amendment in subsection (2A) will enable the DPP to take action to give notice of, or otherwise protect, the Commonwealth's interest in the property during that period eg by lodging a caveat on a register of real property. Paragraph (2A)(b) will provide that any such action whether taken by, or on behalf of, the Commonwealth will not fall within the prohibition on dealing with the property during the appeal period.

Clause 50 - Forfeiture of all restrained property if person convicted of serious offence

This clause mirrors the provision in section 20 and applies where property is forfeited to the Commonwealth following conviction of a serious offence. The new paragraph 30(3A)(a) enables the DPP to take action or give notice of the Commonwealth's interest in the property during the appeal period and paragraph 30(3A)(b) will provide that any such action whether taken by or on behalf of the Commonwealth will not fall within the prohibition on dealing with the property during the appeal period.

Clause 51 - Official Trustee to discharge pecuniary penalty

Clause 51 proposes to amend section 49 of the Principal Act so that wherever a pecuniary penalty order is made against a person in reliance on the person's conviction of an offence and there is property subject to a restraining order, the court may direct the Official Trustee to pay an amount equal to the penalty amount out of the restrained property. Subsection (1) applies where the restraining order is made before the pecuniary penalty order, subsection (2) applies where the pecuniary penalty order is made before the restraining order, and the clause inserts a new subsection (2A) which enables the DPP to seek the direction to satisfy the pecuniary penalty order independently of the making of the restraining order or the pecuniary penalty order. Subsection (3) which enables the court to direct the sale of the property and to appoint a person to sign the necessary instrument in the name of the owner is amended so

that it applies to restrained property whether or not it is under the control of the Official Trustee.

PART 11 - REPEAL AND AMENDMENTS TO OTHER ACTS

Clause 52 - Minor and consequential amendments

This clause provides that minor and consequential amendments to specified Acts are set out in a Schedule to the Bill.

Clause 53 - Repeal of certain Acts relating to piracy

This clause repeals all Imperial Legislation relating to piracy that still applies in Australia.





