

1995

ROBINSON & HEDDERWICKS

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**PUBLIC ORDER (PROTECTION OF PERSONS AND PROPERTY)
AMENDMENT BILL 1995**

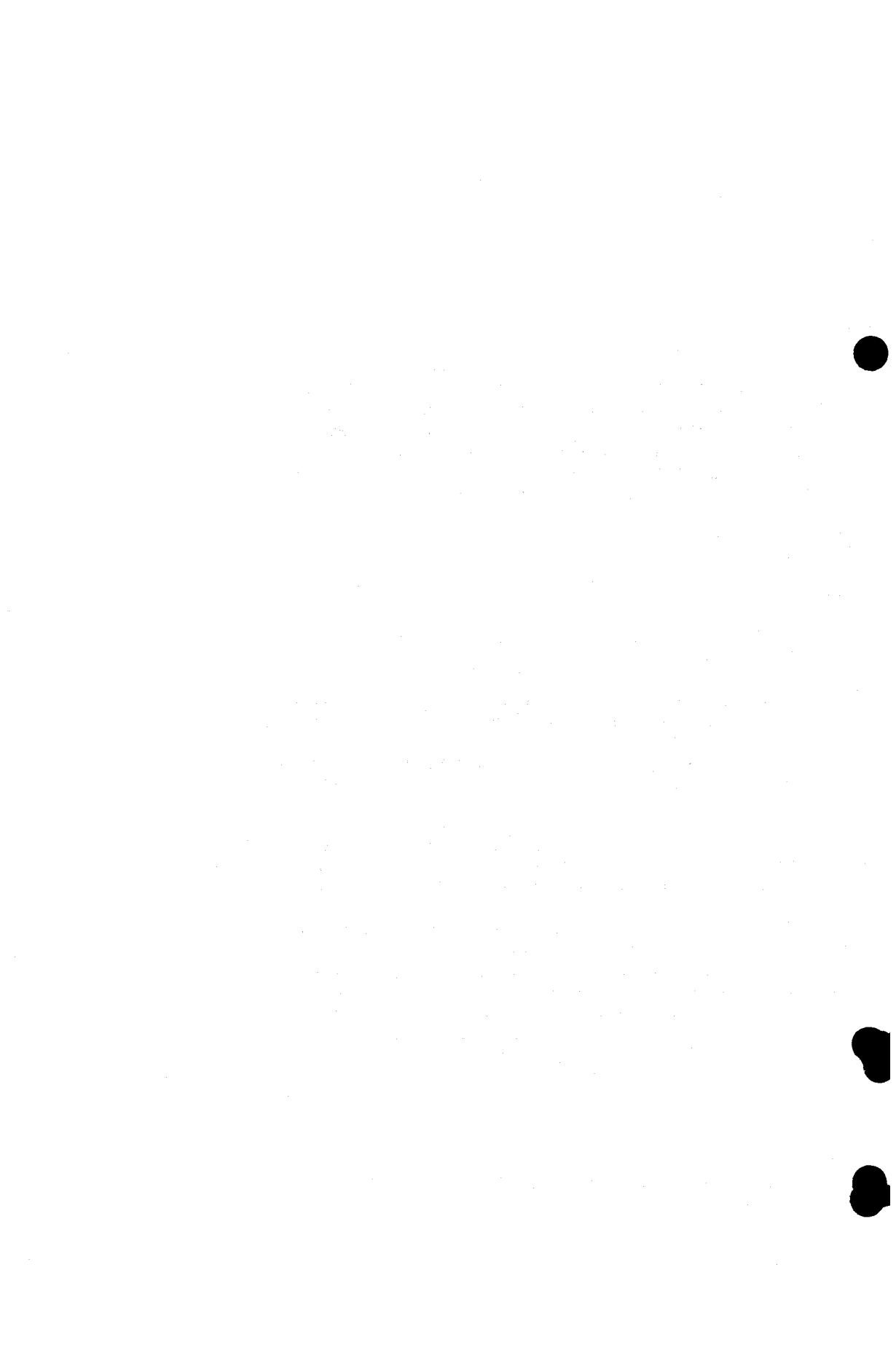
EXPLANATORY MEMORANDUM

(Circulated by the authority of the Attorney-General,
the Hon Michael Lavarch MP)

73090 Cat. No. 95 4758 4 ISBN 0644 450829



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PUBLIC ORDER (PROTECTION OF PERSONS AND PROPERTY) AMENDMENT BILL 1995.

GENERAL OUTLINE

This bill amends the *Public Order (Protection of Persons and Property) Act 1971* (the Act) to allow police and other authorised persons to take protective security measures on the premises of Federal Courts and tribunals.

The application of these powers to a particular Federal court or tribunal will be determined by regulations made under the Act. These regulations will prescribe the particular powers available and set the scope of the powers available at any particular court or tribunal. Regulations will apply the powers to particular courts or tribunals only at the request of such bodies, in light of their own security requirements; for example, some courts may only require people attending the court premises to deposit with an authorised officer any personal effects capable of concealing firearms, explosive substances or offensive weapons, or allow a search of the personal effects for such items, while others, in view of their assessed security requirements, may not seek application of the protective security procedures.

Subject to any limitations and restrictions provided by the regulations, authorised officers will, if they believe on reasonable grounds it is necessary in the interests of security to do so, be empowered to require a person attending a prescribed court or tribunal to:

- (a) provide his or her name and address and reason for being on the premises, and evidence of his or her identity;
- (b) submit to a search of his or her clothing or any personal effects reasonably capable of concealing a firearm, explosive substance or offensive weapon; and
- (c) deposit any personal effects reasonably capable of concealing a firearm, explosive substance or offensive weapon, or of being used to cause injury to, or incapacitate a person, with an authorised officer.

An authorised officer is a person who is either a constable or a person authorised to exercise these powers by either the Attorney-General or by a person exercising the power of a court or tribunal to administer its own affairs.

Certain safeguards will be built into the exercise of the personal search power by authorised officers. Where a person is required to undergo a clothing search for the purpose of determining whether they are concealing any firearm, explosive substance or offensive weapon the search can only be conducted by an authorised officer of the same sex as the person to be searched (or by a person of the same sex who agrees to conduct the search). A person cannot be required to remove any clothing, nor is an authorised officer empowered to remove a person's clothing for the purposes of a search. Authorised officers will be under an obligation not to use force or to subject the person they are searching to any greater indignity than is necessary to achieve the purposes of the search.

Authorised officers will have the power to direct a person to leave prescribed premises in circumstances where a person has refused or failed to comply with any of the legitimate requests of an authorised officer.

A person who wishes to enter or remain on court premises may, subject to any limitations imposed by regulations, be required to provide an authorised officer with their reason for being on the premises. However, to ensure it is clear that Federal courts and tribunals with security regimes in place are still open to the public, the legislation will specifically state that wishing to hear the proceedings of a court or tribunal constitutes a proper reason for entering or wishing to remain on the premises.

Authorised officers will also be empowered to seize any firearm, explosive substance or offensive weapon that is found concealed on a person or in a person's personal effects. This is to ensure the physical safety of authorised officers and other persons, including staff of the court or tribunal and members of the public who are on the court premises. However, authorised officers will have no role in enforcing any refusal of entry to, or removal from, court premises. While an authorised officer can direct a person to leave court premises, it is properly a matter for the police to enforce that direction.

Regulations will also provide for the proper management of any information gathered about persons attending court in accordance with the *Privacy Act 1988*.

Existing penalties and valuations of property throughout the Act have been updated. The penalties for new offences are consistent with these updated penalties.

FINANCIAL IMPACT

The Bill will have no significant financial impact.

NOTES ON CLAUSES

Clause 1 - Short Title

1. This is a formal clause. It provides for the Act to be cited as the *Public Order (Protection of Persons and Property) Amendment Act 1995*.

Clause 2 - Commencement

2. Clause 2 provides for the commencement of the Act. Subclause (1) provides that, subject to subclause (2), the Act will commence on a date to be fixed by Proclamation. Subclause (2) provides that, if the Act is not proclaimed within a period of 6 months after the day on which it receives the Royal Assent, the commencement date will be the first day after the end of that period.

Clause 3 - Amendments

3. This is a formal clause. The clause provides for the amendment of the *Public Order (Protection of Persons and Property) Act 1971* as set out in the Schedule.

SCHEDULE - AMENDMENTS OF THE *PUBLIC ORDER (PROTECTION OF PERSONS AND PROPERTY) ACT 1971*

Item 1. Title

4. This item amends the title to reflect the application of the legislation to the premises of Federal Courts and Tribunals.

Item 2. Subsection 4(1)

5. This item amends the interpretation section of the Act by inserting two new terms and their definitions. The terms 'frisk search' and 'screening search', which are used in clause 13D, are given precise definitions.

Items 3 to 14

6. These items amend certain penalties set out in the Act which are no longer in accordance with criminal law policy. The amendments made to these penalty provisions are designed to rectify this situation (items 3, 4, 6, 8, 10, 11, 12, 13 and 14). The items also make amendments to ensure that references to a gender include a reference to the other gender (item 9), simplify a reference to another provision in the section (item 7), and increase the value of damage to property required to constitute an indictable offence for the purposes of the section (item 5).

Item 3. Subsection 6(1)

Item 4. Subsection 6(2)

Item 5. Paragraph 7(b)

Item 6. Subsection 8(3)

Item 7. Paragraph 8(4)(b)

- Item 8. Section 9
- Item 9. Paragraph 10(1)(a)
- Item 10. Subsection 10(2)
- Item 11. Subsection 11(1)
- Item 12. Subsection 11(2)
- Item 13. Subsection 12(1)
- Item 14. Subsection 12(2)

Item 15 After Part II

- 7. This item inserts a new Part IIA into the Act.

**PART IIA - PROVISIONS RELATING TO PREMISES OF CERTAIN
FEDERAL COURTS AND TRIBUNALS**

Clause 13A - Interpretation

- 8. The purpose of this provision is to define a number of expressions used in this Part.
- 9. The security powers provided in this Part can only be exercised by authorised officers. The term ‘authorised officer’ is defined to include constables. ‘Constables’ is defined in section 4 of the Act to mean a member or a special member of the Australian Federal Police or a member of a police force of a State or Territory. The definition also allows the Attorney-General, or a person exercising the power of a court or tribunal with power to administer its own affairs, to authorise other persons to exercise powers under this part in relation to the premises of particular Federal courts or tribunals. Constables are included as authorised officers to ensure that police officers have all the powers that other authorised officers at that Federal court or tribunal may have. This provides flexibility in the implementation of the necessary security measures, while recognising that it is not appropriate for police officers to be responsible for the day to day operation of security regimes in any Federal court or tribunal.
- 10. The term ‘court’ is defined to include any Federal court, and any tribunal, authority or person having powers under a law of the Commonwealth to require the production of documents or the answering of questions. While this provision is broad, it is intended to ensure that any tribunal, authority or person exercising the necessary powers can call for regulations allowing them to utilise the protective security regime provided by the legislation if circumstances dictate.
- 11. The term ‘court premises’ is defined as any premises occupied in connection with operations of a court. This would include any premises which are temporarily or occasionally occupied by a court, as well as any other premises occupied for any other purpose, including the administration or maintenance of a court.
- 12. The terms ‘explosive substance’, ‘firearm’ and ‘offensive weapon’ are also defined for the purposes of the Part. The term ‘explosive substance’ is defined to include any machinery which may be used to cause an explosion in or with an

explosive substance. The term 'firearm' is defined to include weapons modified to fire bullets or other missiles, and includes ammunition for any such weapon. The term 'offensive weapon' is defined to include any article which is made or adapted for causing injury to, or incapacitating, a person. It also includes any article which a person intends to use to cause injury to, or incapacitate, a person, even though the article itself may not be made or adapted for such use. All the definitions include references to parts of items which may be assembled to form an explosive substance, firearm or offensive weapon. The intention is to include within the definitions all firearms, explosive substances or offensive weapons whatever their method of operation, to ensure that they may be excluded from the premises of a Federal court or tribunal unless a person has a lawful excuse for bringing the weapon onto the premises.

Clause 13B - Application of Part

13. This provision provides that this Part will only apply to those Federal courts and tribunals which may be specified in the regulations. Clause 13H provides the regulation making power for the purposes of this Part.

14. Federal courts and tribunals will be encouraged to assess their particular security requirements. Those which require a protective security regime based upon the powers in this Part may be specified by regulations. These courts or tribunals will be encouraged to implement only the powers which are required for the maintenance of a safe environment in their particular circumstances. The exact range of powers provided by regulation may depend upon a number of factors, including the history of security breaches at the particular premises, the geographical location and layout of the premises, and the availability of alternative measures to maintain security.

Clause 13C - Power of authorised officer to require information

15. These powers may be subject to any limitations or restrictions specified in the regulations for prescribed Federal courts and tribunals.

16. Subclause 13C(1) gives an authorised officer power to require certain information. These powers may be necessary to establish a record of persons on the court premises. Because the powers are somewhat intrusive their exercise will be subject to certain restrictions. An authorised officer must believe, on reasonable grounds, that it is necessary in the interests of security at the particular court premises to require a person to provide the information. A requirement to provide this information may also serve the purpose of alerting potential offenders to the fact that a security system is in operation, forcing them to reconsider their intentions. The powers will also allow authorised officers who have been alerted to possible breaches of security by particular persons to identify those persons and establish that they have proper reasons for attending the premises.

A person who refuses or fails to comply with, or gives false information or evidence of identity in relation to, a lawful request by an authorised officer made under subclause 13C(1), without a reasonable excuse, will commit an offence under subclause 13C(2).

Clause 13D - Power of authorised officer to search a person or require a person to deposit personal effects.

18. These powers may be subject to any limitations or restrictions specified in the regulations for prescribed Federal courts and tribunals.

19. The powers specified in subclause 13D(1) may only be exercised when an authorised officer believes on reasonable grounds that it is necessary in the interests of security to do so at the particular court premises. Paragraph 13D(1)(a) allows an authorised officer to require a person attending court premises to submit to a search of the person. There are two ways a search of the person may be performed : by a screening search, and/or by a frisk search. These terms have been defined in section 4 of the Act. In practice, the power to search would be exercised predominantly through electronic means, in a similar manner to that which is undertaken at airports or Parliament House. It is intended that a frisk search by an authorised officer would not occur as a matter of course for all persons entering the court. The conduct of a frisk search is governed by certain restrictions, as specified in subclauses (4), (5), (6) and (7).

20. Paragraph 13D(1)(a) also allows an authorised officer to require a person attending court premises to submit his or her personal effects for a search. The personal effects can also be searched if, in the judgement of the authorised officer, they are reasonably capable of concealing a firearm, explosive substance or offensive weapon. Personal effects can be searched by screening equipment or, where it is appropriate, by physical search.

21. Subclause 13D(1) concludes by stating and limiting the purpose of the search powers to finding out whether a firearm, explosive substance or offensive weapon is hidden in the person's clothing or personal effects. Searches cannot be conducted for any other purpose.

22. Subclause 13D(1)(b) provides for the deposit of a person's personal effects with an authorised person. While this is as an alternative to search under subclause 13D(1)(a), these powers may be used concurrently if required - for example, when personal effects cannot be searched adequately by screening equipment. Deposit may also be appropriate where items carried by a person are not adapted for causing injury, or do not appear to be intended for such use, but may be dangerous enough to raise concerns about the security of others if they were carried into a court or hearing room.

23. Subclause 13D(2) creates an offence of refusing or failing, without reasonable excuse, to comply with the search and deposit requirements of subparagraphs 13D(1)(a) and (b).

24. Subclause 13D(3) gives authorised officers certain powers in relation to any firearm, explosive substance or offensive weapon that may be found in the course of a search of a person or their personal effects. Such powers are necessary to ensure the safety of both authorised officers who may find such items and of any other persons on the court premises. Authorised officers will be empowered to take possession of, and retain, any firearm, explosive substance or offensive weapon that is found in the course of a search. Retention of the item is permitted for any period which the authorised officer thinks is necessary for the purposes of the Part. It is envisaged that an authorised officer would retain the item until a constable was available to take possession of it.

25. Subclauses 13D(4), (5) and (7) place certain limitations upon the exercise of the frisk search powers by authorised officers. Subclause 13D(5) requires a frisk search of a person to be made by an authorised officer of the same sex as that person. Where an authorised officer of that sex is not available, a search can be conducted by any other person of the same sex who is requested to do so by the authorised officer and agrees to do so. Subclause 13D(4) prohibits a person conducting a frisk search on a person from removing, or requiring the person to remove, any of the person's clothing. Subclause 13D(7) is intended to ensure that a person who is required to undergo a frisk search is not subjected to any greater indignity than is reasonably necessary to conduct the search, nor any more than the minimal amount of force required to conduct a frisk search. The provision also applies to the other search powers in the clause.

26. Subclause 13D(6) protects persons who conduct a search at the request of an authorised officer from any action or proceeding, whether civil or criminal. This protection is dependant upon the person acting in good faith and not contravening subclause 13D(7). The purpose of this provision is to ensure that a person who conducts a search in such circumstances is not held to be liable if, for example, the authorised officer was acting beyond his or her powers by requesting the person to search another person.

Clause 13 E - Removal from court premises.

27. Clause 13E provides authorised officers with the power to direct persons to leave court premises, and provides enforcement powers to constables. The provision is intended to ensure the protection of those who, whether for work or other reasons, attend the prescribed premises. Paragraph 13E(1)(a) confers a power on authorised officers to direct a person to leave court premises where the person refuses or fails to comply with any requirements made by an authorised officer pursuant to subclauses 13C(1) or 13D(1). This provision applies to all persons who fail to satisfy the necessary security requirements, even if a person is a party to a matter before the court.

28. Paragraph 13E(1)(b) allows an authorised officer to direct a person to leave a prescribed premises if they fail to satisfy the officer that they have a proper reason for being on the court premises. However, subclause 13E(2) makes it clear that wishing to attend the hearing of the court is a proper reason for the purposes of paragraph 13E(1)(b). Subclause 13E(4) reinforces subclause 13E(2) by providing a clear right for members of the public to remain on court premises if room is available for the person on the premises, and they are not otherwise prohibited by the operation of subclause 13E(1). The intention of the provision is to allow persons to remain on court premises if they have a proper reason, such as attendance at a hearing on the premises. The right of the public to enter court premises and observe court proceedings is preserved. The intention of the legislation is to allow appropriate security procedures to be put into place without discouraging people who satisfy those basic requirements from exercising their right to attend any court proceedings they wish, where their reason for doing so is not one that would infringe the safety of others.

29. Subclause 13E(3) creates an offence of failing to comply with a direction given under subclause 13E(1). The powers of authorised officers only extend to giving such a direction. Enforcement of a direction can only be performed by a constable pursuant to paragraph 13E(3)(b), who may remove a person from, or deny the person entry to, court premises. Section 22 of the Act sets out the conditions under which constables

may arrest a person. A constable may exercise arrest powers without warrant if a person commits an offence under the Part.

13 F - Person not to carry firearm, explosive substance or offensive weapon on court premises.

30. This provision creates an offence of being in possession of any firearm, explosive substance or offensive weapon while on court premises. The inclusion of a lawful excuse provides for the lawful carrying of firearms onto court premises, for example where armed police officers are required to attend court premises. The penalty reflects the seriousness of the security risk posed by the possession of such items on court premises.

13 G - Saving

31. Subclause 13G(1) makes it clear that the powers conferred by the amendment are in addition to, and do not derogate from, any other powers conferred on or possessed by any court, judge, or other person in relation to proceedings and the conduct of persons on court premises. In particular, subclause 13G(2) specifically maintains any powers of a court in relation to any contempt of the court. The legislation is only intended to improve certain aspects of the physical security of court premises, and is not intended to affect any other existing powers which may be exercised for security purposes.

13 H - Regulations

32. There is no general regulation making power in the Act. Clause 13H is limited to the making of regulations for the purposes of the new Part. Regulations may provide for a number of matters, including the application of the Part to any particular court premises and the scope of the powers available at those premises, having regard to the particular circumstances which must be addressed to ensure the security of the premises. Regulations will also expressly provide for the management of any information requested by authorised officers under subclause 13C(1). The management of such information will comply with the provisions of the *Privacy Act 1988*.

Items 16 to 31

33. These items make certain amendments to the Act. A number of items amend the penalties set out in the Act, which are no longer in accordance with criminal law policy. The amendments made to these penalty provisions are designed to rectify this situation (items 16, 17, 20, 23, 26, 27, 28, 30). The items also make amendments to ensure that references to a gender include a reference to the other gender (items 22, 24 and 29), simplify references to another provision in the Act (items 19, 21, 25 and 31), and increase the value of damage to property required to constitute an indictable offence for the purposes of the section (item 18).

Item 16. Subsection 15(1)

Item 17. Subsection 15(2)

Item 18. Paragraph 16(b)

Item 19. Subparagraph 17(1)(a)(ii)

- Item 20. Subsection 17(3)
- Item 21. Paragraph 17(4)(b)
- Item 22. Subsection 17(4)
- Item 23. Section 18
- Item 24. Paragraph 19(1)(a)
- Item 25. Subsection 19(2)
- Item 26. Paragraph 19(2)(a)
- Item 27. Paragraph 19(2)(b)
- Item 28. Subsection 20(1)
- Item 29. Paragraph 20(2)(c)
- Item 30. Subsection 20(2)
- Item 31. Subsections 23(3) and (4)







