

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CRIMES LEGISLATION AMENDMENT (MISCELLANEOUS MATTERS)
BILL 2008**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Home Affairs,
the Honourable Bob Debus MP)

CRIMES LEGISLATION AMENDMENT (MISCELLANEOUS MATTERS) BILL 2008

GENERAL OUTLINE

The Bill contains amendments to the *Australian Federal Police Act 1979* (AFP Act), the *Crimes Act 1914* (Crimes Act) and the *Crimes (Aviation) Act 1991* (Crimes (Aviation) Act). The amendments:

- retrospectively re-insert the penalty for the secrecy offence in subsection 60A(2) of the *Australian Federal Police Act 1979*
- defer the second review of Part ID of the *Crimes Act 1914* until November 2009, and
- amend the *Crimes (Aviation) Act 1991* to ensure standard criminal offences apply on relevant flights.

FINANCIAL IMPACT STATEMENT

The amendments in this Bill have no financial impact on Government revenue.

NOTES ON CLAUSES

Clause 1: Short Title

This clause provides that when the Bill is enacted, it is to be cited as the *Crimes Legislation Amendment (Miscellaneous Matters) Act 2008*.

Clause 2: Commencement

This clause sets out when the various parts of the Bill are to commence.

Clauses 1 to 3 commence on the day the Bill receives Royal Assent.

Item 1 of Schedule 1 commences immediately after the commencement of item 4 of Schedule 1 to the *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006*. This is a retrospective commencement as the penalty provision formerly in subsection 60A(2) of the *Australian Federal Police Act 1979* was inadvertently repealed by the *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006*. Although such retrospectivity is unusual, the secrecy offence has been in force since it was first enacted and there is no legitimate excuse for conduct that breaches this provision. It is better not to leave a gap in the capacity to prosecute breaches of the offence.

Item 2 of Schedule 1 (which deals with the deferral of the DNA review) commences the day after the Bill receives Royal Assent.

Items 3 and 4 of Schedule 1 (which deal with amendments to the Crimes (Aviation) Act) commence the day after the Bill receives Royal Assent.

Clause 3: Schedule(s)

This is a formal clause that enables the Schedules to amend Acts simply by including amendments under the title of the relevant Act.

SCHEDULE 1 - AMENDMENTS

Item 1: Re-insertion of the penalty for the secrecy offence in *Australian Federal Police Act 1979*

This item reinserts the maximum penalty of two years imprisonment for the secrecy offence in subsection 60A(2) of the *Australian Federal Police Act 1979*. The penalty provision was inadvertently repealed by the *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006*. The amendment does not alter the elements of the offence.

The re-enactment of this penalty is retrospective to when the penalty was repealed. The retrospectivity is important because the secrecy offence continued to be in force even after the penalty was repealed in 2006. The amendment will ensure that individuals convicted of the offence do not escape punishment because of the previous inadvertent repeal of the penalty.

Item 2: Requirement about timing of second review into Part ID of the *Crimes Act 1914*

Part ID of the *Crimes Act 1914* (Crimes Act) deals with the collection and use of DNA material by Commonwealth law enforcement agencies. It also includes provisions which set up the National Criminal Investigation DNA Database (NCIDD) as a platform to facilitate the matching of DNA profiles across Australian jurisdictions.

Item 2 amends section 23YV of the Crimes Act to remove the requirement that a second review of Part ID of the Act must be held within two years of the completion of the first review (ie March 2005, two years after the first review in 2003). It is replaced with a provision stating that the second review must commence no later than 1 November 2009.

The purpose of this amendment is to ensure NCIDD has been fully operational for some time when the review takes place. Interjurisdictional matching between most jurisdictions only commenced in mid-2007. For a review to be fully effective, it is desirable that a body of cases to have progressed from matching, to investigation, to trial, so that there has been a real test of the powers and safeguards in the legislation.

The second review will need to commence by 1 November 2009.

Items 3 and 4: Amend the *Crimes (Aviation) Act 1991* to ensure criminal activity captured

Items 3 and 4 amend section 15 of the *Crimes (Aviation) Act 1991* (Crimes (Aviation) Act) so that it applies the *Criminal Code 2002* (ACT) (ACT Criminal Code) to conduct on relevant flights. The amendment will also allow regulations to be made to specify Australian Capital Territory laws that apply on relevant flights.

The Crimes (Aviation) Act governs crimes and other acts committed on aircrafts or in airports or related facilities. Section 15 of the Crimes (Aviation) Act is intended to

ensure that standard criminal offences (eg theft and assault) apply on flights commencing or finishing in Australia and to Australian aircrafts in flight outside Australia. These include:

- any aircraft engaged in a commercial flight with other countries or among the States and Territories
- any aircraft engaged in a flight that started in Australia
- an Australian aircraft engaged in a flight wholly outside Australia, and
- a Commonwealth aircraft or defence aircraft.

To ensure that relevant criminal laws apply on board these flights, section 15 of the Crimes (Aviation) Act applies the *Crimes Act 1900* (ACT) (ACT Crimes Act) and the *Prostitution Act 1992* (ACT) to relevant flights. However, many offences which were formerly in the ACT Crimes Act now appear in the ACT Criminal Code. The amendment will ensure that the ACT Criminal Code as well as the ACT Crimes Act applies to conduct on relevant flights. The amendment will also allow regulations to be made to specify particular ACT laws that apply on relevant flights. This will provide flexibility in the event of future changes to ACT criminal law.