



Crimes Legislation Amendment (Miscellaneous Matters) Bill 2008

Moira Coombs
Law and Bills Digest Section

Contents

Purpose.	2
Background.	2
Australian Federal Police Act 1979 – Secrecy provisions.	2
Crimes Act 1914.	3
Independent Review of Part 1D of the <i>Crimes Act 1914</i> – Forensic Procedures.	4
National Criminal Investigation DNA Database (NCIDD).	4
Crimes (Aviation) Act 1991.	5
Financial implications	5
Main provisions.	6
Australian Federal Police Act 1979	6
Crimes Act 1914.	6
Crimes (Aviation) Act 1991.	6

Crimes Legislation Amendment (Miscellaneous Matters) Bill 2008

Date introduced: 4 June 2008

House: Representatives

Portfolio: Home Affairs

Commencement: Sections 1 to 3 and Schedule 1 items 2, 3 and 4 on Royal Assent. Schedule 1 item 1 commences immediately after 30 December 2006.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To amend:

- the *Australian Federal Police Act 1979* (the AFP Act) to re-insert a penalty to the secrecy provisions;
- the *Crimes Act 1914* (the Crimes Act) to alter the required date for a second independent review of Part 1D of that Act, and
- the *Crimes (Aviation) Act 1991* (the Crimes Aviation Act) to make reference to the *Criminal Code 2002 (ACT)* (the ACT Criminal Code) in its application to the Jervis Bay Territory.

Background

Australian Federal Police Act 1979 – Secrecy provisions

In 2006 the *Law Enforcement Integrity Commissioner Act 2006* and the *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006* were passed. The purpose of that legislation was to establish the Australian Commission for Law Enforcement Integrity ('ACLEI') with power to detect, investigate and prevent corruption in the Australian Federal Police ('AFP'), the Australian Crime Commission ('ACC'), the former National Crime Authority ('NCA') and prescribed Commonwealth law enforcement agencies. ACLEI also has a role to maintain and improve the integrity of staff members of Commonwealth law enforcement agencies. The Integrity Commissioner can report to the

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Minister for Justice¹ on reforms that may be needed to prevent corruption and preserve integrity in law enforcement agencies.²

Prior to 2006, subsection 60A(2) of the AFP Act prohibited the making of a record of prescribed information, or divulging or communicating, that information to other persons except in certain circumstances in prescribed legislation. The penalty for making such records, or divulging information, was imprisonment for 2 years.

In 2006, the *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006* amended the provision to include reference to the *Law Enforcement Integrity Commissioner Act 2006*. However the penalty was, according to the second reading speech, ‘inadvertently repealed.’³ This Bill reinstates the penalty into the provision retrospectively making it operative as from the commencement of the *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006*, that is as from 30 December 2006. As the second reading speech of the Minister for Home Affairs states:

It should not be the case that individuals can escape punishment simply because of the inadvertent repeal of the penalty.⁴

Crimes Act 1914

This Bill seeks to amend paragraph 23YV(5)(a) of the Crimes Act to amend the date required for a further independent review of the operation of the forensic procedures of Part 1D of the Crimes Act.

Part 1D of the *Crimes Act 1914* was inserted by the *Crimes Amendment (Forensic Procedures) Act 1998* which commenced on 23 January 1999. Part 1D was based on the model provisions developed in 1995 by the Model Criminal Code Officers Committee (MCCOC) of the Standing Committee of Attorneys-General (SCAG). The model provisions drew heavily on the recommendations of the Report on Body Samples and Examinations (1989) published by the Victorian Consultative Committee on Police Powers of Investigation.⁵

Part 1D was amended in 2001 to include provisions authorising the matching of DNA profiles on a DNA database system and the carrying out of forensic procedures on

1 The Minister for Home Affairs now has responsibility for justice matters.

2 Australian Commission for Law Enforcement Integrity
http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About_Us

3 Hon. Bob Debus, Minister for Home Affairs, ‘Second reading speech: Crimes Legislation Amendment (Miscellaneous Matters) Bill 2008’, Representatives, *Debates*, 4 June 2008, p. 2.

4 *ibid*, p. 2.

5 Independent Review of Part 1D of the Crimes Act 1914—Forensic Procedures, March 2003, p. 1.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

volunteers. It also included updated provisions relating to carrying out of forensic procedures on serious offenders. It was amended again in 2002 with the addition of Division 11A of Part 1D which came into force on 22 October 2002.

Division 11A was an urgent response to the terrorist attacks in Bali and was required to facilitate inter-jurisdictional cooperation between law enforcement and other agencies on victim identification matters and other matters.⁶

Independent Review of Part 1D of the *Crimes Act 1914* – Forensic Procedures

The report of the first *Independent Review of Part 1D of the Crimes Act 1914 – Forensic Procedures* was completed in March 2003. Division 11A did not form part of this review. The second review was due to take place two years after the first review in March 2005. However as the Explanatory Memorandum notes

The purpose of this amendment is to ensure the National Criminal Investigation DNA Database (NCIDD) has been fully operational for some time when the review takes place. Inter-jurisdictional 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.⁷

National Criminal Investigation DNA Database (NCIDD)

The NCIDD was developed with the collaboration and cooperation of state, territory and Commonwealth police services and forensic units. It provides police access to a national DNA database and the capability to conduct rapid, automated inter-jurisdictional and intra-jurisdictional DNA profile matching. This is provided under strict access and disclosure safeguards in accordance with privacy and other relevant legislation.

NCIDD comprises a central database and matching engine. It is a web-based system that provides secure online access to jurisdictions to view potential and confirmed matches between DNA information held by police agencies. NCIDD also allows users to group similar DNA profiles and search for links between groups.⁸

On 28 June 2007, the Single Ministerial Arrangement was signed by the Australian Capital Territory, the Commonwealth, CRIMTRAC, Northern Territory, Queensland, South Australia, Tasmania and Western Australia allowing the exchange of DNA profile information with each other. New South Wales and Victoria committed to signing when

6 Independent Review of Part 1D of the Crimes Act 1914–Forensic Procedures, March 2003, p. 1.

7 Explanatory Memorandum, Crimes Legislation Amendment (Miscellaneous Matters) Bill 2008, p. 4.

8 CRIMTRAC Annual Report, 2006-07, CrimTrac Agency, Canberra, p. 19.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

their legislation allows.⁹ New South Wales is currently matching with six of the eight other Australian jurisdictions and is progressing with bilateral agreements with the remaining jurisdictions.¹⁰

Crimes (Aviation) Act 1991

The *Jervis Bay Territory Acceptance Act 1915* section 4A states that the laws of the Australian Capital Territory including the principles and rules of common law and equity will apply in the Jervis Bay Territory as long as they are not inconsistent with any Jervis Bay Ordinances in force at the time.

The ACT Criminal Code came into force in January 2003. Once the ACT Criminal Code came into force there were no common law offences in the ACT. The ACT Criminal Code implemented the principles of the Model Criminal Code. The Bill to amend the Crimes Aviation Act inserts a reference into the Crimes (Aviation) Act to the ACT Criminal Code as it applies to the Jervis Bay Territory. The Bill also provides that other ACT laws may be prescribed under the *Crimes (Aviation) Regulations* in their application to the Jervis Bay Territory.

The Bill ensures that the offences contained within the *Criminal Code (ACT)* will apply to criminal conduct on board aircraft relating to the Jervis Bay Territory that includes:

- 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.¹¹

Financial implications

The Explanatory Memorandum states that this Bill has no financial impact on Government revenue.¹²

9 *ibid*, p. 20.

10 Crimtrac, http://www.crimtrac.gov.au/systems_projects_key_dates_in_the_history_of_forensic_dna_profiling.html, accessed on 17 June 2008.

11 Explanatory Memorandum, Crimes Legislation Amendment (Miscellaneous Matters) Bill 2008, p. 4.

¹² *ibid*, p. 1

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Main provisions

Australian Federal Police Act 1979

Item 1 amends **existing subsection 60A(2)** by the addition of a penalty of imprisonment for two years. This is the same clause which was inadvertently repealed by the *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006*.

Item 1 applies from 30 December 2006 and is, therefore, retrospective in its effect.

As a matter of practice, there is no prohibition on a Bill which seeks to have retrospective impact.

In this case the prohibited behaviour, that is, making a record of prescribed information or divulging or communicating that information to any other person, except as proscribed, has been a feature of the *Australian Federal Police Act 1979* since 17 December 1989. Section 60A was inserted by the *Australia Federal Police Legislation Amendment Act (No. 2) 1989*.

While the amendment will clearly have retrospective effect, it merely restates the nature and extent of the penalty for any breach of what has been a long standing prohibition, rather creating the prohibition per se.

Crimes Act 1914

Item 2 amends **existing paragraph 23YV(5)(a)** by changing the required date for a second independent review of Part 1D of the Crimes Act so that it commences no later than 1 November 2009.

Crimes (Aviation) Act 1991

Item 3 inserts **new subparagraph 15(1)(b)(iia)** which is a reference to the ACT Criminal Code and its application to the Jervis Bay Territory.

Item 4 inserts **new subparagraph 15(1)(b)(iv)** which provides that other Australian Capital Territory laws may be prescribed in the regulations if they apply to the Jervis Bay Territory.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2784.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.