NATIONAL CRIME AUTHORITY (MISCELLANEOUS AMENDMENTS) BILL 1985

Date Introduced: 9 May 1985
House: House of Representatives
Presented by: Hon. Michael J. Young, M.P., Minister of State

Short Digest of Bill

Purpose

The Bill has a two fold purpose:

- to amend the National Crime Authority Act 1984 with a view to allowing the National Crime Authority more liberal access to information derived under legislation currently exempted under the Schedule to that Act;

- to amend both the Taxation Administration Act 1953 and the Income Tax Assessment Act 1936 so as to afford the National Crime Authority access to a wider range of taxation information.

Background

Following a number of Reports of Royal Commissions during the period 1974 to 1982, culminating in the Costigan Royal Commission, the Fraser Government enacted the National Crimes Commission Act 1982 to facilitate a consolidated effort against illegal activity and organised crime. However, on coming to power in March 1983, the Labor Government undertook a review of that legislation. A green paper was prepared by the Special Minister of State and the Attorney-General, and a national conference on the issue was held in Canberra in July 1983.

As a result of these and other initiatives, the National Crime Authority Bill was introduced into the Parliament by Attorney-General Gareth Evans on 10 November 1983. After extensive debate and much public comment, the Bill became law in July 1984. The Attorney-General stated that the basic role of the National Crime Authority (NCA) would be to:
"... operate as another arm of the criminal investigation process, gathering and assembling evidence for transmission to other law enforcement agencies and for use ultimately in conducting prosecutions."[1]

Before the NCA Bill's enactment, it was referred by the Senate, to the Standing Committee on Constitutional and Legal Affairs for inquiry. Furthermore, the Committee would report on whether the Bill effectively fulfilled the objective of investigating organised crime and official corruption.

In its report the Committee considered that the NCA ought to be generally empowered to obtain all information including documents held in the government sector with regard to any relevant criminal activity. The Committee further observed that Commonwealth agencies should be required to provide to the NCA, information which they would be otherwise prevented from divulging because of the operation of their respective secrecy provisions. Some exceptions would have to be made, however, principally in the areas of defence and security information. Such exemptions, which should be as few as possible, should be provided for in a Schedule to the proposed Act.[2]

The National Crime Authority Act 1984 (the Principal Act) enshrined the Senate Committee's recommendations regarding the supply of information by Commonwealth agencies virtually in toto. Section 20 of the Principal Act thus empowered the NCA to require Commonwealth agencies to supply it with information. However, certain information obtained under 16 Commonwealth Acts which were listed in a Schedule to the Principal Act, were exempt from the ambit of section 20. This information was invariably of a sensitive and personal nature.

One of the amendments which the Bill seeks to make to the Principal Act, is to add 8 further Acts to the abovementioned Schedule. Personal medical information held under the Health Insurance Act 1973, sensitive commercial information under the Prices Surveillance Act 1983 and information obtained under the Federal Court of Australia Act 1976 and the Administrative Appeals Tribunal Act 1975, are examples of legislation from which information cannot be generally obtained by the NCA under section 20.

However the Bill will render section 20 capable of a less rigid interpretation and effect, by implanting a new section 19A into the Principal Act. The rationale for the inclusion of the new section was explicitly outlined by the
Special Minister of State in his Second Reading Speech. Speaking of the exempt legislation under section 20, the Minister observed that while sensitive information was being afforded protection, the existing provisions of the Principal Act,

"... prevent all such information from being made available to the Authority, irrespective of the circumstances. Of course, much of this information may not be of relevance to the Authority's investigations in any event... After carefully considering the balance between the duty to protect sensitive and personal information and the need for the NCA to have access to information which could be relevant to its investigations, the Government has accepted a suggestion from the Authority that Commonwealth agencies immune from the Authority's powers under section 20 of the Act, should have a discretion to pass on relevant information to the Authority."[3]

The proposed section 19A will allow a Commonwealth agency exempt under section 20 to provide information to the NCA at the latter's request. In conjunction with this amendment, the Government will introduce a number of administrative measures and guidelines, formulated in consultation with the NCA and the relevant agencies, governing which information should be or should not be released.

The Bill also revises the arrangements by which taxation information is obtainable by the NCA. Under the present Act, the NCA only has access to information under the Income Tax Assessment Act 1936. Other taxation acts are not covered by the NCA's powers. There are several of these Acts in the Schedule and therefore exempt from section 20. The net result is, that the NCA does not have access to a large amount of taxation information which could be relevant to its investigations. The Bill extends the access arrangements available to the NCA to those taxation Acts currently listed in the Schedule to the Principal Act.

Main Provisions

For a comprehensive summary of the clauses of the Bill, refer to the Explanatory Memorandum.

The National Crimes Authority Act 1984

The proposed section 19A provides the prescribed officer of an agency, with a discretion to comply with a request for information or a document or thing, by the NCA
on that agency (clause 5). The Bill defines an "agency" as an agency under the Freedom of Information Act 1982. This wide definition includes a court or a tribunal excluding the Security Appeals Tribunal. More importantly it includes those agencies currently exempt under the Schedule to the Principal Act.

Upon receiving a request from the NCA under section 19A, the prescribed officer may comply with it if he "considers it appropriate" to do so.

A person who receives a request for the Security Appeals Tribunal but is prevented from providing that information by section 81 of the Australian Security Intelligence Organisation Act 1979, will be under no obligation to furnish the information to the NCA (clause 5).

Section 20 of the Principal Act is amended by the Bill, so that an agency to whom a request is made by the NCA will not be required to provide information, documents or things, if the agency operates under an Act which contains a taxation secrecy provision. A "taxation secrecy provision" is defined in clause 4 as a secrecy provision of taxation law for the purposes of the Taxation Administration Act 1953. The effect of the amendment to section 20 now means that information covered by:

(a) a taxation secrecy provision; and

(b) a provision of a law specified in the Schedule to the Principal Act,

is not subject to the NCA's power to require information from Commonwealth agencies.

**Taxation Administration Act 1953**

Clause 11 of the Bill lists the above Act as the Principal Act which is to be amended by the Bill. A new proposed section 3D provides for taxation information held by the Commissioner of Taxation under the Acts administered by him, as well as taxation information which was obtained by a Royal Commission, to be furnished to the NCA. This provision applies notwithstanding anything in a taxation secrecy provision (proposed sub-sections 3D(1) and (2)). If the NCA requests information from the Commissioner of Taxation, for a tax-related investigation, the information required can be communicated directly. However, if the taxation information is required for a special investigation being undertaken by the NCA, other than a tax related investigation, then the information will only be made
Income Tax Assessment Act 1936

The Bill also makes corrective and editorial amendments to section 16 of the above Act.

For further information, if required, contact:

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References

2. The National Crime Authority Bill 1983; Report by the Senate Standing Committee on Constitutional and Legal Affairs, p.27.