NATIONAL CRIME AUTHORITY BILL 1983

Date Introduced: 10 November 1983
House: Senate
Presented by: Senator the Hon. G.J. Evans, Attorney-General

Short Digest of Bill

Purpose

To establish a National Crime Authority with the function of investigating certain categories of organised crime and official corruption, with a view to prosecution action where appropriate.

Background

Following a number of Reports of Royal Commissions over the period from 1974 to 1982, culminating in the Costigan Royal Commission on the Shiplayers and Dockers Union, indicating criminal activities of highly organised groups within the Community, the Fraser Government enacted the National Crimes Commission Act 1982 [see Bills Digest No.140 of 1982]. With the change of Government in March 1983 the incoming Government instituted a review of that legislation commencing with a Green Paper prepared by the Special Minister of State and the Attorney-General and on 28 and 29 July 1983 a national conference on this topic was held in Canberra attended by representatives of Commonwealth, State and Territory Governments, police, the legal profession, civil liberties organisations, Royal Commissioners and others. Subsequently a series of discussions were held with the States and the Northern Territory culminating in a meeting of Attorneys-General and Police Ministers in Melbourne on 9 September 1983. In his Second Reading Speech on this Bill the Attorney-General advised that that meeting reached substantial agreement on a model for the Crime Authority which is now embodied in the present Bill.

Main Provisions

Clause 3 of the Bill will repeal the National Crimes Commission Act 1982 whilst Clause 7 establishes a National Crime Authority constituted by a Chairman and 2 members, all appointed by the Governor-General.
Clause 8 establishes an Inter-Governmental Committee of Ministers representing the Commonwealth and the States which under Clause 9 will approve reference of matters to the authority for investigation and monitor generally the work of the Authority.

The functions of the Authority are set out in Clause 10 of the Bill and are succinctly outlined in the Explanatory Memorandum accompanying the Bill in the following terms:

"To investigate matters referred by the relevant Commonwealth or State Ministers, such matters being circumstances or allegations of certain types of offences against Commonwealth, State or Territory laws (defined in Clause 4, as being offences carrying a penalty of three (3) years imprisonment or more, committed by more than one person on a planned and organised basis, and which involve theft, fraud, tax evasion, currency violations, illegal drug dealings, obtaining financial benefit by vice engaged in by others, extortion, violence, or bribery or corruption of or by officials, and the like); when so directed by the relevant Minister, to furnish evidence for use in a prosecution to the relevant Attorney-General or law enforcement agency; to coordinate investigations by Task Forces and the like; and to collect, analyse and disseminate criminal information and intelligence in cooperation with the Australian Bureau of Criminal Intelligence; and to make, as a result of performance of its other functions, recommendations to the relevant Minister for reform of the law, administrative practices and of administration of the Courts in relation to offences of the kinds referred to above."

Clauses 11 and 12 of the Bill have the effect of restricting the Authority's exercise of coercive investigative powers to specific references initiated by the appropriate Government and approved by the Inter-Governmental Committee.

A clear chain of Ministerial responsibility, lacking in the National Crimes Commission Act 1982, is set up under Clause 16 whereby the Commonwealth Minister charged with the administration of the Act (presumably the Attorney-General) is empowered to give directions or furnish guidelines to the Authority, subject to the concurrence of the relevant State Minister where the Authority is exercising a function under State laws. In addition Clause 46 requires the Authority to furnish reports and information to the Commonwealth Minister.
That legislation setting out the powers of the Authority in respect of its conduct of hearings is primarily contained in Clause 21 of the Bill. These provisions are also well summarized in the Explanatory Memorandum in the following terms:

"Hearings of the Authority may be in public or in private, but in exercising this discretion, the Authority is to have regard to certain matters including the need to protect the interests of persons and to respect their wishes. Hearings are required to be held in private and the Authority is required to give a direction for non-publication of evidence where publication might prejudice the safety, reputation or fair trial of a person charged with an offence. Offences of unauthorised presence at private hearings and publication of evidence or other information contrary to a direction of the Authority are created. As a further protection, the defence of fair report is not to be available in an action for defamation arising out of a hearing of the Authority."

By Clause 44 of the Bill the activities of the Authority are specifically made subject to the jurisdiction of the Commonwealth Ombudsman and in addition Clause 47 provides for judicial audit and report to the Minister every 3 years on the Authority's operations and effectiveness and also as to whether there has been any illegal action or undue trespass by it on personal rights and liberties.

Clause 46(9) of the Bill provides that the Authority shall not publish a report finding that an offence has been committed or recommending prosecution unless the finding is expressed to be based on evidence that would be admissible in a Court of Law.

For further information, if required, contact:

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