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HOUSE OF REPRESENTATIVES

**CRIMES AMENDMENT
(CONTROLLED OPERATIONS) BILL 1995**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice,
the Honourable Duncan Kerr MP)



CRIMES AMENDMENT (CONTROLLED OPERATIONS) BILL 1995

GENERAL OUTLINE

The purpose of this Bill is to amend the *Crimes Act 1914*, by inserting a new Part 1AB, and by adding additional definitions to section 3. The main elements of the Bill are that it:

- allows the Commissioner, Deputy Commissioners and Assistant Commissioners of the Australian Federal Police and members of the National Crime Authority to issue certificates authorising a controlled law enforcement operation involving the import, export and/or possession of narcotic drugs;
- provides that certain law enforcement officers acting in good faith and in the course of duty in relation to an authorised controlled operation are not criminally liable for offences against section 233B of the *Customs Act 1901*, and associated offences eg conspiracy, aiding and abetting, and in some cases, State or Territory offences relating to the possession of narcotic substances and associated offences;
- requires the Commissioner of the Australian Federal Police and the Chairperson of the National Crime Authority to report to the Minister on the results of applications for certificates authorising controlled operations, and the reasons for the decision in each case, and requires the Minister to report on these matters to Parliament;
- provides that the fact that law enforcement officials took part in, or facilitated, the importation of narcotics prior to the commencement of the Bill, is not to render evidence of that importation inadmissible where the importation was made pursuant to a request from the Australian Federal Police to the Australian Customs Service for an exemption from detailed customs scrutiny.

The Bill is a response to the decision of the High Court in *Ridgeway v R* (1995) 129 ALR 41. In *Ridgeway*, the High Court held that where law enforcement officials break the law by committing an element of the offence for which a defendant is being prosecuted, then as a general rule, a court should exercise its discretion to refuse to allow evidence of that element of the offence to be admitted against the defendant.

By exempting law enforcement officers from criminal liability for certain conduct related to importation, exportation or possession of narcotic goods, the Bill will ensure that evidence resulting from such conduct is not excluded from evidence under the principles enunciated in *Ridgeway*. The transitional provisions of the Bill directly reverse the discretionary principles laid down in *Ridgeway* in the case of certain importations carried out under conditions agreed by the Australian Federal Police and Australian Customs Service.

FINANCIAL IMPACT

The Bill will have no real impact on Government expenditure. Minor compliance costs will be absorbed in the budgets of the Australian Federal Police and the National Crime Authority.

NOTES ON CLAUSES

Clause 1 - Short title

This clause is formal and provides for the short title of the Bill.

Clause 2 - Commencement

This clause provides that the Bill will commence on Royal Assent.

Clause 3 - Schedule

This clause explains that the items set out in the Schedule amend the *Crimes Act 1914*.

Schedule

Amendments to Section 3 - Interpretation

The proposed amendments insert definitions, used in Part 1AB, in section 3 of the *Crimes Act 1914*. These definitions are as follows:

Assistant
Commissioner,
Deputy
Commissioner
and
Commissioner

These are defined as references to officers holding these ranks
within the Australian Federal Police

associated offence	<p>The purpose of this definition is to describe the range of ancillary offences that may occur in the course of a controlled operation, and in relation to which a certificate acts as a shield from criminal liability.</p> <p>In the case of offences against section 233B of the <i>Customs Act 1901</i>, associated offences are offences against sections 236 (ie, aiding, abetting, counselling or procuring an offence against section 233B) and 237 (ie, attempting an offence against section 233B) of the <i>Customs Act 1901</i>, and against section 7A (ie, inciting an offence against section 233B) or subsection 86(1) (ie, conspiring to commit an offence against section 233B), of the <i>Crimes Act 1914</i>.</p> <p>While sections 236 and 237 of the <i>Customs Act 1901</i> do not appear to create distinct offences, there is some authority to the contrary (<i>Beckwith</i> (1976) 135 CLR 569 at 580 and 583 per Mason and Murphy JJ), and they have accordingly been included in the definition of 'associated offence', out of caution.</p> <p>In the case of offences against a State or Territory law, an element of which is possession of narcotic drugs, associated offences are offences equivalent to those found in sections 5 (ie, aiding and abetting a narcotics possession offence), 7 (ie, attempting a narcotics possession offence), 7A (inciting a narcotics possession offence) and subsection 86(1) (conspiring to commit a narcotics possession offence) of the <i>Crimes Act 1914</i>.</p>
Australian law enforcement officer and law enforcement officer	<p>The term 'law enforcement officer' is defined to mean an Australian Federal Police member, staff member or special member, a National Crime Authority staff member, an Australian Customs Service officer, a State or Territory police force member, or a member of a police force or law enforcement agency of a foreign country.</p> <p>The definition of 'Australian law enforcement officer' is the same, except that it excludes a member of a police force or law enforcement agency of a foreign country.</p>
authorising officer	<p>This is the person to whom an application may be made for a certificate authorising a controlled operation under proposed section 15J, and who may grant that application. These persons are: the Commissioner, Deputy Commissioners and Assistant Commissioners of the Australian Federal Police, and members of the National Crime Authority (including the Chairperson).</p>

controlled operation	The definition contains a cross-reference to the definition of controlled operation in proposed section 15H.
narcotic goods	This is defined as having the same meaning as in the <i>Customs Act 1901</i> (see section 4 of that Act).
narcotic goods offence	A certificate granted under the Bill only provides a shield from criminal liability in relation to a narcotics goods offence, defined as an offence against section 233B of the <i>Customs Act 1901</i> or an associated offence (see the definition above); or an offence against a State or Territory law an element of which is possession of narcotic goods eg possession for the purpose of supply or an associated offence (see the definition above)

PROPOSED PART 1AB - CONTROLLED OPERATIONS FOR OBTAINING EVIDENCE ABOUT CERTAIN OFFENCES RELATING TO NARCOTIC GOODS

Proposed Division 1 - Objects of Part

Proposed Section 15G - Objects of Part

The proposed section sets out the objects of Part 1AB.

The first objective relates to law enforcement: to exempt law enforcement officers (as defined) from criminal liability for conduct in the course of a controlled operation authorised under the Part involving or related to the importation, exportation or possession of narcotics goods. Law enforcement officials are not exempt from liability for other kinds of activity that might be carried out in the course of the operation, such as property damage, assault or bribery.

The second objective relates to accountability: to require the Commissioner of the Australian Federal Police and the Chairperson of the National Crime Authority to report to the Minister for Justice on requests to authorise controlled operations, and for the Minister to report on these matters to Parliament.

The final object relates to the evidence derived from operations before the commencement of the Bill: to provide that evidence of importation of narcotic goods, obtained through a controlled operation prior to the commencement of the Act, and in which the Australian Federal Police and the Australian Customs Service co-operated to allow the narcotic goods to pass through the customs barrier, is not to be rejected because of the unlawful conduct of law enforcement officers in carrying out or facilitating the operation.

Proposed Division 2 - General

Proposed Section 15H - What is a controlled operation?

This definition plays an important role in a number of areas of the Bill. Firstly, a certificate can only be issued in relation to a 'controlled operation'. Secondly, a law enforcement official is only exempt from criminal liability for certain conduct in the course of an authorised 'controlled operation'. Finally, the transitional provision (proposed section 15V) only relates to the admissibility of evidence gathered in the course of, or as a result of, a 'controlled operation'.

The proposed section defines a controlled operation as having three elements that (i) certain persons (ii) acting for certain purposes (iii) are likely to engage in certain conduct that constitutes an offence against section 233B of the *Customs Act 1901* or an associated offence, or would constitute such an offence but for this Bill.

A controlled operation must involve the participation of law enforcement officers (as defined): officers of the Australian Federal Police, the National Crime Authority, the Australian Customs Service, State or Territory police force, or foreign police and law enforcement agencies.

A controlled operation must be for the purposes of gathering evidence of one or more offences relating to the importation or exportation of narcotic goods, ie, offences against section 233B of the *Customs Act 1901* or associated offences (aiding and abetting, attempting, inciting and conspiring to commit an offence against section 233B). The ultimate objective of this Bill is to facilitate the investigation and prosecution of such offences. To be a controlled operation, therefore, the investigation must be for this purpose.

Finally, a controlled operation must be one that may involve a law enforcement officer (as defined) engaging in conduct that would, apart from subsection 15I(1) or (3), constitute a narcotic goods offence. If an investigation is not expected to involve any law enforcement officials committing offences in respect of which a certificate would act as a shield from criminal liability, it is not an investigation of the kind to which the Bill relates, and does not fall within the definition of 'controlled operation'.

An operation falling within this definition is a 'controlled operation', whether or not a certificate authorising the operation is issued under the Bill, and whether the operation took place before the commencement of Part 1AB, or takes places subsequently.

Proposed section 15I - Law enforcement officers not liable for certain offences committed for purposes of authorised controlled operation

This section is the key provision of the Bill. The purpose of the section is to define the circumstances in which a law enforcement official will not be criminally liable for otherwise unlawful conduct.

Proposed subsection 15I(1) defines the circumstances in which a law enforcement officer, other than a State or Territory police officer, is not criminally liable for conduct that would otherwise constitute a narcotic goods offence.

A narcotic goods offence is defined in subsection 3(1) as an offence against section 233B of the *Customs Act 1901* or an associated offence (aiding and abetting, attempting, inciting and conspiring to commit an offence against section 233B); or against a State or Territory law, an element of which is the possession of narcotic goods, or an associated offence (aiding and abetting, attempting, inciting and conspiring to commit such an offence).

A law enforcement officer, other than a State or Territory police officer, will not be criminally liable for conduct that (i) is carried out in the course of duty; (ii) for the purposes of a controlled operation; (iii) at a time at which a certificate issued under section 15N, authorising the controlled operation, is in force. Subsection 15I(3) deals with the criminal liability of State or Territory police officers.

The certificate does not prevent a law enforcement officer from being civilly liable for conduct in the course of a controlled operation. Nor does it prevent a law enforcement officer from being criminally liable for other kinds of conduct eg theft, bribery or assault, even if committed 'in the course of the operation'.

Proposed subsection 15I(2) clarifies the notion of 'in the course of duty' in proposed subsection 15I(1) in relation to foreign police and law enforcement officers.

As a matter of law, there must be uncertainty as to the scope of a foreign police or law enforcement officer's duty in investigating a Commonwealth offence. For that reason, the proposed subsection provides that a foreign police officer or law enforcement officer is to be taken to be acting in the course of duty in relation to a controlled operation to the extent that he or she takes part in the controlled operation in accordance with the instructions given by the Australian law enforcement officer in charge of the operation.

Proposed subsection 15I(3) defines the circumstances in which a State or Territory police officer is not criminally liable for conduct that would otherwise constitute an offence against section 233B of the *Customs Act 1901*, or an associated offence (aiding and abetting, attempting, inciting and conspiring to commit an offence against section 233B).

A State or Territory police officer, like a Commonwealth or foreign officer, will not be criminally liable for conduct that (i) is carried out in the course of duty; (ii) for the purposes of a controlled operation; (iii) at a time at which a certificate issued under section 15N, authorising the controlled operation, is in force.

The difference between proposed subsection 15I(1) and (3), is that for Constitutional reasons, State and Territory police officers are not shielded from liability for any State or Territory narcotics offences.

Proposed subsection 15I(4) provides that the fact that a law enforcement official is not criminally liable for importing or exporting narcotic goods does not alter the fact that the goods were imported or exported in contravention of paragraph 233B(1)(b) of the *Customs Act 1901*. This is to ensure that the importation or exportation of narcotic goods by a law enforcement official who is exempt from criminal liability for that conduct does not render that importation or exportation lawful, thereby preventing the prosecution of offences depending on that unlawful importation or exportation.

Proposed section 15J - Application for certificate authorising a controlled operation - by whom and to whom made

The proposed section provides that the Australian law enforcement officer - from the Australian Federal Police, National Crime Authority or Australian Customs Service - in charge of a controlled operation, may apply for a certificate authorising the controlled operation. In practice, this will almost always be an officer of the Australian Federal Police or National Crime Authority.

The application may be made to a member of the National Crime Authority (including the Chairperson), or a Commissioner, Deputy Commissioner or Assistant Commissioner of the Australian Federal Police. These are the 'authorising officers' who may grant a certificate authorising a controlled operation.

There may be cases in which an officer of a foreign law enforcement operation has some degree of control over a controlled operation. Whether or not this is the case, it is the most senior Australian law enforcement officer responsible for the Australian involvement in the operation who is to make the application.

Proposed section 15K - Form and contents of application

The proposed section lays down a number of prerequisites for the form and content of applications for certificates. The rules for urgent applications are dealt with in section 15L.

The first requirement of proposed section 15K is that the application must be in writing, signed by the applicant. This is to ensure that any later dispute as to the content and authenticity of the application can be easily resolved.

The second is that the application must identify whether there has been any previous application in relation to the operation, and if so whether it was granted or refused. In a case where a certificate has previously been denied, the authorising officer will be alerted to the possibility that the applicant may be 'shopping round' for a certificate. In a case where a certificate has previously been granted, the authorising officer will be alerted to the fact that the time allowed by the previous certificate was not, or is not expected to be, sufficient, and can decide whether it is appropriate to grant another certificate.

Nothing in the Bill prevents the making of further application for a certificate, regardless of whether an earlier application was refused, a certificate is in force, or a certificate has terminated. For example, circumstances may have changed following a previously unsuccessful application, or unexpected delays in the trafficker's timetable for the transit of narcotic drugs may render the time allowed by the original certificate insufficient.

Finally, the application must contain, or be accompanied by, sufficient written information to allow the authorising officer to decide whether to grant the application. Charts, pictures and diagrams are all forms of writing (*Acts Interpretation Act 1901*, section 25), and could therefore be included with the application.

Proposed section 15L - Urgent applications

The purpose of proposed section 15L, which allows for urgent applications, is to allow a certificate to be granted in circumstances where, if a certificate is to be given, it must be given quickly to have any law enforcement value.

Proposed subsection 15L(1) limits the availability of the urgent application procedure to circumstances where the applicant has reason to believe that the delay caused by making the application in writing, in accordance with proposed section 15K, may hinder the operation. This would be the case, for example, where a delay would alert the intended recipient of narcotic drugs of law enforcement involvement, causing him or her to refuse to take delivery of the drugs.

Proposed subsection 15L(2) provides that an urgent application may be made by any means of communication, including orally in person or by telephone.

Proposed subsection 15L(3) requires the applicant to give the authorised officer such information as the authorising officer requires to decide whether or not to grant the application. This is the same requirement as for non-urgent applications, except that the information need not be provided in written form.

Under proposed subsection 15L(4), the applicant is required to inform the authorising officer whether any previous application has been made in relation to the operation, and whether any such application was granted or refused. This mirrors the obligation under paragraphs 15K(b) and (c) relating to non-urgent applications.

Under proposed subsection 15L(5), the authorising officer must immediately inform the applicant if he or she decides to grant the application, and must, as soon as practicable, furnish the applicant with the certificate authorising the operation. This ensures that law enforcement officers know whether they can proceed with an authorised operation as soon as possible.

Proposed subsection 15L(6) requires an applicant, as soon as practicable, to prepare a written application that complies with section 15K, and to provide that application to the authorising officer. This ensures a written record of the contents of the application is produced while the oral application is still fresh in the applicant's memory.

Proposed section 15M - On what grounds may a certificate authorising a controlled operation be given?

Proposed section 15M requires an authorising officer, ie, Australian Federal Police Commissioner, Deputy Commissioner or Assistant Commissioner, or National Crime Authority member, to grant a certificate authorising a controlled operation if he or she is satisfied of four things. This is so whether an ordinary application has been made under section 15K, or an urgent application under section 15L.

First, the authorising officer must be satisfied that the applicant has provided as much information as he or she possesses, about the nature and quantity of narcotic goods to which the operation relates. This is so that, to the degree of specificity possible, the certificate can describe the narcotic goods to which the proposed controlled operation relates.

Secondly, the authorising officer must be satisfied that the suspected criminal activity to which the investigation relates would have taken place without the involvement of law enforcement officials. This is to ensure that certificates are not issued to allow law enforcement officials to 'manufacture' crime - to entrap citizens who otherwise would not have been involved in the commission of offences involving narcotic goods.

Thirdly, the authorising officer must be satisfied that the operation has a genuine law enforcement purpose - that it will make it much easier to obtain evidence that may lead to the prosecution of an offence against section 233B of the *Customs Act 1901*, or an associated offence (aiding and abetting, attempting, inciting and conspiring to commit an offence against section 233B).

The fourth matter of which the authorising officer must be satisfied is that any narcotic goods to which the controlled operation relates, and that will be in Australia at the end of the operation, will be under the control of an Australian law enforcement officer.

In the course of some controlled operations, law enforcement officers must allow the narcotic goods to be conveyed by couriers and others. It is essential, however, that the controlled operation be set up so that law enforcement officers can be confident that the narcotic goods will be under their control at the *end* of the operation, so that the drugs do not go astray and are disseminated in the community.

Proposed section 15N - Form and contents of certificate

The purpose of this section is to regulate the form and content of certificates authorising controlled operations. These prescriptions have been set down with the objectives of minimising the prospect of later dispute as to the terms of the order, providing the information law enforcement officers need to effectively perform their duties, and requiring the proposed operation to be described in as much detail as possible.

Proposed subsection (1) regulates the form of certificates authorising controlled operations: they must be in writing, signed by the authorising officer.

Proposed subsection (2) regulates the content of certificates authorising controlled operations. A certificate must state the name of the applicant for the certificate, and whether the certificate was made under section 15K (standard application) or section 15L (urgent application).

Proposed paragraph (2)(c) requires the certificate to contain a description of the operation. The purpose of this requirement is to ensure that a certificate relates only to a specific, describable operation, and is not issued as a blanket authorisation to import or export narcotic goods.

The amount that law enforcement officers will know about an operation and the type of information relevant to describing the operation, will vary widely from case to case. For that reason, proposed paragraph 15N(2)(c) only requires the following details to be described to the extent that they are known and relevant: (i) the name of any person being, or to be, investigated; (ii) the nature and quantity of the narcotic goods to which the operation relates; (iii) the foreign countries through which the goods have passed, or are likely to pass, in the course of the operation; (iv) the place(s) where the narcotic goods have or will be dealt with by Customs or (v) the place(s) where the narcotic goods have otherwise entered, or are likely to enter, Australia.

Proposed paragraphs (2)(d) and (e) require the certificate to state that the authorising officer has authorised the operation to be carried out, and the date and time on which the certificate was given.

Proposed subsection (3) requires a certificate given following an urgent application under section 15L to specify the date and time at which the applicant was informed of the decision to give the certificate.

The time and date required to be stated by proposed paragraph (2)(e) and proposed subsection (3) are important, because this is the time from which law enforcement officers may engage in certain otherwise unlawful conduct in the course of a controlled operation without incurring criminal liability.

Proposed subsection (4) allows the authorising officer to specify a day prior to the normal termination date 30 days after issue, on which a certificate is to cease to be in force. This might be done for example, where it is known that the narcotic drugs must be delivered to the intended recipient within one or two days, so that the operation will certainly be complete within a week.

Proposed subsection (5) provides that the a certificate is not invalidated by a failure to comply with section 15N. This is so that law enforcement officers can rely on the terms of a certificate. It would be unjust for an officer who had acted in accordance with an apparently valid certificate to find him or herself criminally liable because, for example, the certificate misdescribed the place at which narcotic drugs had passed through Customs.

Proposed section 15O - Surrender of certificate

Proposed subsection 15O(1) allows the law enforcement officer in charge of a controlled operation to surrender a certificate by notifying the authorising officer who issued the certificate of the surrender. The notification must be in writing, specify the time it is to have effect, and be signed by the officer in charge of the controlled operation. A certificate might be surrendered, for example, where an operation has been completed or aborted, so the certificate has no further application or use.

Proposed section 15P - Period for which certificate is in force

Proposed subsections 15P(1) and (2) regulate the time at which a certificate comes into force.

Under subsection 15P(1), a certificate given in response to an urgent application under section 15L comes into force when the authorising officer notifies the applicant of his or her decision to give the certificate. Under subsection 15P(2), a certificate given in response to a standard application under section 15K comes into force when the certificate is given.

In each case, the relevant time must be noted on the certificate (see section 15N).

Subsection 15P(3) regulates the time at which a certificate ceases to be in force. A certificate that ceases to be in force does not exempt law enforcement officer from criminal liability for conduct that occurs after it ceases to be in force, but continues to

exempt law enforcement officials from criminal liability for the conduct described in proposed section 15I that occurred while the certificate was in force.

A certificate ceases to be in force on the 30th day after it is granted, unless an earlier date for expiry has been specified in the certificate, or in a surrender notice under section 15O.

The Bill does not preclude an application for a further certificate where a certificate has previously been granted in respect of the controlled operation in question, either while the certificate is in force, or after it ceases to be in force. This might occur, for example, where the conveyance of the narcotic goods to the intended recipient is unexpectedly delayed.

Proposed section 15O - Comptroller-General of Customs to be notified in certain circumstances

The purpose of this section is to ensure that the Australian Customs Service is notified of any authorised controlled operation that will involve narcotics passing through the customs barrier.

Proposed subsection (1) provides that the notification requirement in the proposed section applies where a certificate authorising a controlled operation is given under proposed section 15M, and the applicant believes that in the course of the authorised controlled operation, the narcotics to which it relates may pass through customs control.

Proposed subsection (2) requires the applicant for the certificate, in the circumstances described in subsection (1), to notify the Comptroller-General (Chief Executive) of the Australian Customs Service of certain things. These are: (i) the applicant's name; (ii) the date on which the certificate was given; (iii) to the extent that this is known - the place(s) at which the narcotics are expected to be dealt with by the Australian Customs Service; and (iv) to the extent that this is known - the time(s) and date(s) at which the narcotics are expected to be dealt with by the Australian Customs Service.

Proposed subsection (3) provides that this notification must be made orally, by telephone, or by other electronic means eg electronic mail or facsimile machine.

Proposed subsection (4) provides that failure to comply with this notification requirement does not affect the validity of a certificate authorising a controlled operation.

Proposed subsection (5) indicates that the reference in the proposed section to "Comptroller-General" is a reference to the Comptroller-General of Customs.

Proposed section 15R - Minister to be notified of applications for certificate

Proposed sections 15R and 15S lay down the mechanism by which the seeking and granting of certificates under the Bill will be accountable.

Proposed subsection 15R(1) requires the Commissioner of the Australian Federal Police to inform the Minister of any decision to grant or refuse to grant a certificate, and the reasons for that decision, as soon as possible after an Australian Federal Police

Assistant Commissioner, Deputy Commissioner or the Commissioner has made such a decision.

Proposed subsection 15R(2) places the same obligation on the Chairperson of the National Crime Authority in relation to decisions made by members of the Authority.

Proposed section 15S - Minister to table report before Parliament

Proposed subsection 15S(1) requires the Minister to lay a report about applications for controlled operations in the year to 30 June, before each House of Parliament. The report must be laid before each House by the first sitting after 1 October of that year.

Proposed subsection 15S(2) requires the report to include the date on which each application for a controlled operation was made during the year, the decision taken, and the reasons for that decision. The reporting requirement is subject to provisos in subsections 15S(2) and (3).

Subsection 15S(2) prohibits the report from mentioning anything about a named person that has not already been published.

Subsection 15S(3) requires the Minister, based on the advice of the Australian Federal Police Commissioner or National Crime Authority Chairperson, to exclude from the report information that may endanger the safety of a person or prejudice an investigation. The information must then be included in the first report after these risks no longer exist.

Proposed Division 3 - Controlled operations started before commencement of this Part

The purpose of this Division is to prevent evidence being rendered inadmissible in proceedings *after* the commencement of the Bill, because of the unlawful importation of narcotic goods *before* the commencement of the Bill, where certain conditions are met.

Proposed section 15T - Interpretation

Proposed subsection 15T(1) provides that proposed Division 3 only applies to controlled operations started before the commencement of the Bill.

Proposed subsection 15T(2) contains two definitions for the purposes of proposed Division 3 only.

“Collector of Customs for a State or Territory” is given the same meaning as in the *Customs Act 1901*, which is the principal officer of Customs for that State or Territory (*Customs Act 1901*, subsection 8(1)).

The “Ministerial Agreement” referred to in the Division is that dated 3 June 1987 between the then Minister for Industry, Technology and Commerce, and the then Special Minister of State, concerning the relationship between the Australian Customs Service, Australian Federal Police and National Crime Authority in relation to narcotic goods law enforcement.

Proposed section 15U - Minister may give certificate about controlled operation that involved unlawful importation of narcotic goods by law enforcement officer

The purpose of proposed section 15U is to lay down a method by which the prosecution may prove the matters relevant to establishing that evidence should not, under section 15V, be excluded from evidence. This does not prevent these matters being proved by other means, and nor does it preclude the defence from bringing evidence suggesting the non-existence of these matters.

Proposed subsection 15U(1) allows the Minister to give a certificate in writing stating that for the purposes of a controlled operation leading to the prosecution of a person, an Australian Federal Police member named in the certificate made a written request which purported to be in accordance with the 1987 Ministerial agreement, to a customs official that the narcotic goods be exempted from detailed customs scrutiny by Customs officers, and that this request was accepted.

The Minister may give a certificate where three things have occurred. First, evidence leading to the prosecution of a person for an offence against section 233B of the *Customs Act 1901* or an associated offence (aiding and abetting, attempting, inciting and conspiring to commit an offence against section 233B) must have been obtained through a controlled operation.

Secondly, a law enforcement officer, acting in the course of duty for the purposes of the operation must have contravened paragraphs 233B(1)(b) or (d) of the *Customs Act 1901*, ie, imported narcotic goods or aided, abetted, counselled, procured or been knowingly concerned in the importation of narcotic goods.

Finally, for the purposes the controlled operation, an Australian Federal Police member must have made a written request which purported to be in accordance with the 1987 Ministerial agreement, to a customs official that the narcotic goods be exempted from detailed customs scrutiny by Customs officers, and that this request was granted.

The request need only 'purport' to have been made in accordance with the agreement, because while prior to the decision in *Ridgeway v R* (1995) 129 ALR 41, the Australian Federal Police, National Crime Authority and Australian Customs Service believed controlled operations were being carried out in accordance with that agreement, the legal status of the agreement is now in doubt.

Proposed subsection 15U(2) describes the effect of the Ministerial certificate. In a prosecution for an offence against section 233B of the *Customs Act 1901* or an associated offence (aiding and abetting, attempting, inciting and conspiring to commit an offence against section 233B) a document purporting to be a certificate given under subsection (1) is admissible as prima facie (non-conclusive) evidence of the facts that it states.

Proposed section 15V - Evidence of illegal importation etc. of narcotic goods not to be rejected on ground of unlawful conduct by law enforcement officer

The purpose of proposed section 15V is to alter the rule of evidence laid down in *Ridgeway v R* (1995) 129 ALR 41, where certain circumstances relating to the involvement of law enforcement officers in the importation of narcotic goods in the course of a controlled operation can be shown to have existed.

The proposed section provides that in a prosecution for an offence against section 233B of the *Customs Act 1901* or an associated offence (aiding and abetting, attempting, inciting and conspiring to commit an offence against section 233B), evidence that narcotic goods were imported into Australia in contravention of the *Customs Act 1901* is not inadmissible on the ground that a law enforcement officer committed an offence in importing the narcotic goods, or in aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, their importation, if three things can be shown.

The first is that the law enforcement officer was acting in the course of duty for the purposes of the controlled operation when he or she committed the offence.

Secondly, a purpose of the operation must have been to obtain evidence leading to the prosecution of a person for a narcotic goods offence.

Finally, for the purposes the controlled operation, an Australian Federal Police member must have made a written request which purported to be made in accordance with the 1987 Ministerial agreement, to a customs official, that the narcotic goods be exempted from detailed customs scrutiny, and that request must have been granted.

A certificate granted under proposed section 15U will facilitate proof of this final matter.