

1980 - 1981

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

CRIMES (CURRENCY) BILL 1981

EXPLANATORY MEMORANDUM

(CIRCULATED BY AUTHORITY OF THE ATTORNEY-GENERAL)

OUTLINE

The purpose of this Bill is to consolidate and update the law relating to the counterfeiting of coins and paper money (both domestic and foreign) and of foreign and Commonwealth government bonds and other securities and to deal with the undesirable reproduction of such articles. The legislation will also allow Australia to accede to the International Convention for the Suppression of Counterfeiting Currency.

NOTES ON CLAUSES

Clause 1 - Short Title:

This is formal.

Clause 2 - Commencement:

Sections 1, 2 and 3 come into operation upon the Act receiving Royal Assent to facilitate action for Australia to accede to the Convention (for the Suppression of Counterfeiting Currency) and Protocol. The remaining provisions of the Act will be brought into operation by Proclamation to implement Australia's undertakings under the Convention once accession has taken place.

Clause 3 - Interpretation:

This clause contains interpretation provisions and other preliminary matters. Included in the range of matters defined in this clause are -

- : "counterfeit money" which includes not only articles resembling or apparently intended to resemble or pass for genuine coin or genuine paper money but also genuine coin or genuine paper money that has been altered in a material respect so as to conceal or so as to be apparently intended to conceal the alteration.
- : "counterfeit prescribed security" which includes any articles intended to resemble or pass for a prescribed security as well as a prescribed security that has been altered in a material respect so as to conceal the alteration. A "prescribed security" includes bonds, debentures, stock certificates, treasury bills

and other like securities, and coupons, warrants and other documents for the payment of money in respect of such securities issued by the Commonwealth, an authority of the Commonwealth or by or with the authority of any foreign government.

- : "paper money" is defined to include materials other than paper.
- : genuine coin or genuine paper money includes any coin or paper money that is or has been current coin or paper money in any country even if that country is no longer in existence and coin or paper money is taken to be current coin or current paper money if it is lawfully current in Australia or in a foreign country by virtue of a law in force in Australia or in that country. A reference to a country is to be read as including territories, dependencies or colonies of another country.

Clause 4 - Extension of Act to Territories:

This is to ensure that the Act will apply to Australian external territories as well as the States and mainland territories.

Clause 5 - Extra-territorial operation of Act:

This clause provides for the extra-territorial operation of the Act as required by Australia's obligations under the Convention.

Clause 6 - Making counterfeit money or counterfeit securities:

This clause sets out the main offence under the scheme of legislation and provides for penalties of 14 years' imprisonment for natural persons and of \$75,000 for a corporation.

Clause 7 - Uttering counterfeit money or counterfeit securities:

This clause makes it an offence to utter counterfeit money knowing it to be counterfeit money or a counterfeit prescribed security knowing it to be a counterfeit prescribed security. A penalty of 12 years' imprisonment for natural persons and of \$60,000 for corporations is provided.

Clause 8 - Buying or selling counterfeit money or counterfeit securities:

This clause provides that it will be an offence for a person to buy, sell, receive or dispose or to offer to buy, sell, procure or dispose of counterfeit money or counterfeit prescribed securities without reasonable excuse; penalties of 12 years' imprisonment for natural persons and of \$60,000 for corporations are provided.

Clause 9 - Possession of counterfeit money or counterfeit securities:

This clause provides that it will be an offence for a person without lawful authority or reasonable excuse to have in his possession either counterfeit money knowing it to be counterfeit money or a counterfeit prescribed security knowing it to be a counterfeit prescribed security; penalties of 10 years for natural persons and \$50,000 for corporations are provided. Sub-clause 9(2) provides a defence for persons who have come into 'innocent' possession of such items and have not had a reasonable opportunity to surrender them to the police.

Clause 10 - Import and export of counterfeit money or counterfeit securities:

This clause provides for an offence of importing into, or exporting from Australia, counterfeit money knowing it to be counterfeit money or a counterfeit prescribed security

knowing it to be a counterfeit prescribed security. The penalties are 12 years' imprisonment for a natural person and \$60,000 for a corporation.

Clause 11 - Instruments and materials used for counterfeiting:

This clause sets out various offences that can be committed in relation to dealings with all instruments and materials that have been used or are intended for use in or in connection with the making of counterfeit money or counterfeit prescribed securities. Penalties of imprisonment for 10 years for natural persons and of \$50,000 for corporations are provided.

Clause 12 - Persons shall not import or export machines for counterfeiting etc:

This clause provides that it will be an offence for a person to import into, or export from Australia, any instrument or materials that have been used or that are intended for use in or in connection with the making of counterfeit money or counterfeit prescribed securities. Penalties of 10 years' imprisonment for a natural person and \$50,000 for a corporation are provided.

Clause 13 - Conveying instruments or materials from premises:

This clause provides that it will be an offence for a person, without lawful authority or reasonable excuse, to knowingly convey certain instruments, materials or articles from any premises at which the production of genuine coins, genuine paper money or prescribed securities is or was carried on. The penalties provided are 10 years' imprisonment for a natural person and \$50,000 for a corporation.

Clause 14 - Information with respect to counterfeit money or counterfeit securities:

This clause provides that it will be an offence for a person, without reasonable excuse, to give or offer to give information as to the manner in which or the means by which counterfeit money or counterfeit prescribed securities may be made, bought, sold, procured or disposed of, and penalties of \$10,000 or imprisonment for 5 years or both for natural persons and of \$20,000 for corporations are provided.

Clause 15 - Possession of filings, clippings, etc:

It will be an offence under this clause for a person to be in possession without reasonable excuse, of any material in any form which he knows to have been obtained by genuine coin dealt with in such a way as to diminish its weight. The penalties provided are \$10,000 or imprisonment for 5 years, or both for natural persons, and \$20,000 for corporations.

Clause 16 - Defacing or destroying current Australian coins or paper money

This clause provides that it shall be an offence for a person to wilfully deface, disfigure, mutilate or destroy any coin or paper money that is lawfully current in Australia, without the consent in writing of an authorized person. Penalties of \$5,000 or imprisonment for 2 years or both for a natural person and of \$10,000 for a corporation are provided.

Clause 17 - Selling defaced coins or paper money:

This clause provides that it shall be an offence for a person to sell or offer to sell current Australian coin or paper money knowing that it has been defaced, disfigured or mutilated without authority. The penalties provided are \$5,000 or imprisonment for 2 years or both for natural persons and \$10,000 for corporations.

Clause 18 - Possessing defaced coins or paper money:

This clause provides that it shall be an offence for a person to possess for sale defaced, disfigured or mutilated current Australian coin or paper money knowing that it has been defaced, disfigured or mutilated without authority. Penalties of \$5,000 or imprisonment for 2 years or both for a natural person and of \$10,000 for a corporation are provided.

Clause 19 - Person not to design, make or distribute cards, advertisements, etc:

Pursuant to this clause it will be an offence to design, make, print or distribute without the consent in writing of an authorised person, certain items or representations that so resemble or are apparently intended to so resemble current paper money or an Australian prescribed security that they are capable of misleading persons into believing that they are the current paper money or that Australian prescribed security. Penalties of \$5,000 or imprisonment for 2 years, or both for natural persons and of \$10,000 for a corporation are provided.

Sub-clause 19(3) expressly excludes, from the operation of this clause, foreign prescribed securities.

Clause 20 - Import and export of cards, advertisements, etc forbidden in certain circumstances:

This clause makes it an offence for a person, without consent in writing of an authorised person, to import into or export from Australia any of the items, advertisements or articles referred to in sub-clauses 19(1)(a) and (b). A penalty of \$5,000 or imprisonment for 2 years, or both is provided for a natural person whilst a corporation would be liable for a penalty of \$10,000.

Clause 21 - Machines etc operated by coins or paper money

Sub-clause 21(1) provides that it will be an offence for a person without reasonable excuse to make or sell an

article with intent that it be used in substitution for a current coin or current paper money in any coin or paper money - operated machine and sub-clause 21(2) makes it an offence to import into, or export from Australia, any articles that are known to be intended for such use. Both offences attract penalties of \$2,000 or imprisonment for 6 months or both for natural persons and of \$5,000 for corporations.

Sub-clause 21(3) makes it an offence to possess such an article with intent that it be so used and sub-clause 21(4) makes it an offence to so use such an article. Both of these offences attract penalties of \$2,000 for natural persons and \$5,000 for corporations.

Clause 22 - Interpretation:

This clause provides that in Part III of the Bill any reference to an offence against the Bill also includes a reference to the offences created by Sections 6, 7 or 7a of the Crimes Act 1914.

Clause 23 - Liability to prosecution:

This clause limits the application of this Bill to offences committed by Australian citizens or in relation to Australian money or committed in Australia or on an Australian ship or Australian aircraft.

Clause 24 - Indictable offences may be dealt with summarily:

This clause contains necessary procedural provisions. Sub-clause (1) provides that all offences (except those against sub-clauses 21(1), (2), (3) and (4)) are indictable offences.

Sub-clause (2) allows for a court of summary jurisdiction to determine indictments laid under the legislation if the consent of the defendant and the prosecutor is forthcoming

and sub-clause (3) provides that where this is done the court may impose a fine not exceeding \$2,000 or order imprisonment for a term not exceeding 1 year, or both for natural persons or a fine not exceeding \$5,000 for a corporation.

Clause 25 - Jurisdiction of courts:

This clause ensures that State Courts shall have jurisdiction with respect to these offences as provided by the Judiciary Act 1903, but except in the case of trials on indictment for offences committed within a State which, by section 80 of the Constitution, must be heard in the State where the offence is committed, permits the State Courts to exercise jurisdiction without regard to the usual limitations as to locality of the offence.

Clause 26 - Section 38 of Judiciary Act:

This clause provides that any matter arising under the legislation, including any question of interpretation of the Convention, shall not be regarded as a matter arising directly under a treaty for the purposes of Section 38 of the Judiciary Act 1903.

Clause 27 - Evidence of examiner of counterfeit money:

Sub-clauses 27(1) and (2) and (3) provide that the Treasurer may, by written instrument appoint persons to be examiners of counterfeit foreign coin or examiners of counterfeit foreign paper money or examiners of counterfeit foreign prescribed securities for the purposes of the legislation.

Sub-clauses 27(4) - (7) set out the rules by which the certificate of such an examiner of counterfeit money will be received in evidence.

Clause 28 - Counterfeit money to be rendered incapable of use:

Sub-clause 28(1) states that where a person charged with the receipt or disbursement of public moneys or an officer of the Reserve or Commonwealth Banks is presented with counterfeit paper money he shall stamp or write "counterfeit" on both sides of the money and, if he is presented with counterfeit coin, he shall forward it to the Royal Australian Mint as soon as practicable.

Sub-clause 28(2) requires the Mint to then render such coin incapable of use.

Clause 29 - Forfeiture and seizure:

Sub-clause 29(1) specifies the articles to be forfeited to the Commonwealth under the legislation.

Sub-clause 29(2) makes provision for a constable to seize any article without warrant, that he believes to be forfeited under the Act.

Sub-clause 29(3) provides that an Officer of Customs may seize any article, without warrant, that he has reasonable grounds to believe is forfeited to the Commonwealth under the Act and then shall forthwith hand the article over to the Australian Federal Police.

Sub-clause 29(4) provides that any constable who has seized an article under sub-section (2) or received it under sub-section (3) may retain it for 90 days or, if a prosecution under the Act is commenced before the expiration of that period, until the prosecution is determined.

Sub-clause 29(5) provides that upon proceedings being taken in respect to an article seized under 29(2) or (3)

the court may either order the article to be condemned or order it to be delivered to a person the court is satisfied is entitled to it.

Sub-clause 29(6) provides that where a prosecution has not been commenced before the expiration of the 90 days, a constable may take the article before a court of summary jurisdiction and sub-sections 9(2), (2A) and (3) of the Crimes Act 1914 shall then apply to the article.

Pursuant to sub-clause 29(7) an article condemned as forfeited to the Commonwealth shall be dealt with in accordance with the instructions of the Treasurer.

Clause 30 - Regulations:

This clause provides that the Governor-General may make regulations, that are not inconsistent with the legislation to prescribe any matters as required or permitted by the legislation or that are necessary or convenient for carrying out or giving effect to the Act.

Clauses 31 - 42 - Amendments of other Acts:

Clauses 31 to 42 (inclusive) provides for consequential amendments to other Commonwealth legislation.

