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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CRIMES (INVESTIGATION OF COMMONWEALTH OFFENCES) AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Honourable Michael Duffy MP Attorney-General)

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CRIMES (INVESTIGATION OF COMMONWEALTH OFFENCES) AMENDMENT BILL 1990

GENERAL OUTLINE

This Bill amends the Crimes Act 1914 to provide for the introduction of a pre-charge custodial period (of a reasonable time in the particular circumstances of an individual case) for a person under arrest, as defined in the Bill, in relation to a Commonwealth offence. This investigation period may not exceed 4 hours (or, in the case of persons under 18, Aboriginal persons, or Torres Strait Islanders, 2 hours) unless in the case of a serious offence (defined as an offence punishable by more than 12 months imprisonment) it is extended, by application to a magistrate in appropriate circumstances, for a period not exceeding a further 8 hours.

Provision is made for exclusion of certain periods of 'dead time' from the calculation of the investigation period, being those periods of time when questioning or investigation involving the participation of the suspect cannot, or should not, take place.

The purpose of this is to provide a necessary and reasonable pre-charge investigation period before a suspect must be released, either unconditionally or on bail, or brought before a magistrate. The Bill has the effect of providing a lawful period for investigation as opposed to that which occurred widely as a matter of practice, on the assumption that it was in fact lawful, before the High Court's decision in Williams -v- the Queen (1986) 161 CLR 278 established that the assumption was erroneous.

The Bill establishes a system of safeguards to ensure that the introduction of a reasonable period of pre-charge detention is not subject to abuse.

The major safeguard is the introduction of mandatory tape-recording of confessional material, and of the giving of information as required by the new provisions, including the caution regarding the suspect's 'right to silence', and any response made by the person in custody.

Other safeguards introduced by the amendments are:

- an exhaustive list of those circumstances which constitute periods of time ('dead time') which may be excluded from the calculation of the reasonable investigation period.

- statutory rights for persons in custody to be permitted, prior to questioning, to have communication with a relative or friend or with a legal practitioner, and to have a legal practitioner present during questioning and investigation;

- additional special protection for potentially vulnerable groups; for persons under the age of 18 years, Aboriginal persons and Torres Strait Islanders, whether in custody or not, provision for the presence, before questioning, of an interview friend (the expression "interview friend" is defined by proposed sections 23H and 23K); for a foreign national, provision for communication with the relevant consular office; for persons unable to communicate with reasonable fluency in the English language, the right to an interpreter before the commencement of questioning.

The Bill provides for certain safeguards not to apply if and for so long as their application is likely to result in an accomplice avoiding apprehension, interference with evidence or the intimidation of a witness, or if the danger to other people

makes questioning a matter of urgency. However in situations where safeguards may be inapplicable, the burden of proof of that fact rests on the prosecution, and other considerations must be satisfied.

Nothing in the Bill confers a power to detain a person who is not under arrest as defined, or to detain a person solely for the purpose of questioning or investigation, nor affects the right to refuse to answer questions (when not required to do so by statute). In other words, the provisions apply only to those situations where a police officer, having the requisite belief, would be entitled, at common law or by statute, to effect an arrest in respect of a Commonwealth offence. Nor does the Bill affect the burden on the prosecution to prove the voluntariness of a confession or admission or the discretion of a court to exclude unfairly, illegally or improperly obtained evidence.

FINANCIAL IMPACT

The only financial implication arising from the Bill concerns the cost of electronic recording which will be required by proposed section 23V.

It is estimated that the costs involved will be follows:

1990/91	$2,625,000
1991/92	$804,000

These costs relate to equipment (including cassettes and editing, enhancement and reproduction facilities), building alterations, and transcription.

NOTES ON CLAUSES

Clause 1 - Short title etc

This clause is formal and provides for the short title of the Bill. The principal Act amended by the Bill is the Crimes Act 1914.

Clause 2 - Commencement

Sections 1 and 2 of the Bill will come into effect on the day on which it receives the Royal Assent. The remainder of the Bill will come into effect on a day or days to be fixed by Proclamation or at the expiration of 12 months from the Royal Assent. The period of up to 12 months prior to commencement is required in order that the equipment and building alterations, made necessary by the Bill, can be in place before commencement.

Clause 3 - Insertion of New Part IB in Principal Act

This provision inserts the following provisions after Part IA of the Principal Act.

Proposed section 23A - Application of Part

This provision will avoid doubt as to the legislative intention regarding the impact of the new Part on existing law.

Proposed subsection 23A(1) expressly displaces prior inconsistent Commonwealth law and common law.

Proposed subsection 23A(2) preserves the existing application of State and Territory laws to a Commonwealth offence or to a

person charged with a Commonwealth offence to the extent that such laws are not inconsistent with the new provisions.

Proposed subsection 23A(3) clarifies that a law of a State or Territory is intended to include such a law that is given a particular application by a law of the Commonwealth such as the Commonwealth Places (Application of laws) Act 1970.

Proposed subsection 23A(4) excludes the operation of any State or Territory law requiring electronic recording of confessional evidence in relation to a Commonwealth offence ensuring that in relation to such offences this proposed law covers the field.

Proposed subsection 23A(5) preserves laws protecting individual rights and freedoms. Additional rights are conferred by the proposed law.

Proposed subsection 23A(6) extends the operation of the proposed Part to an offence against a law of the Australian Capital Territory which is punishable by imprisonment for a period of more than 12 months if the investigating official concerned is a member or special member of the Australian Federal Police.

Proposed section 23B - Definitions

23B is the definitions section which is largely self explanatory. The more noteworthy definitions are:

'arrested' or 'under arrest' has the meaning given by proposed subsections 23B(2), (3) and (3A). The term includes the situations arising when an investigating official has formed the opinion that there is sufficient evidence to establish that the person committed a Commonwealth offence about which he or she is to be questioned; when the official would not allow the person to

leave if the person wished to do so; or when the official has given the person reasonable grounds to believe that he or she would not be allowed to leave.

Exceptions are provided where functions such as Customs, Immigration and Quarantine are performed and the officer performing those functions does not believe that the person has committed a Commonwealth offence.

Proposed subsections 23B(3A) and (3B) provide that a person who has been arrested, or is deemed to be arrested, ceases to be under arrest once he or she voluntarily participates in a covert operation, although that person may be rearrested once the operation is concluded or once the person ceases to voluntarily participate. Upon rearrest the provisions of the Bill would again apply, including the aggregation of investigation periods pursuant to proposed subsection 23C(5) if that rearrest occurs within 48 hours. The consequences of the person ceasing to be under arrest is that the investigation period no longer runs, so that no application for extension need be sought after 4 hours nor does the person have to be brought before a magistrate - both of which could jeopardise the covert investigation.

Proposed subsection 23B(3B) defines covert investigations for the purposes of proposed subsection 23B(3A) as investigations for the purpose of investigating whether a person other than the arrested person has been involved in the commission of any offence.

For the purposes of the proposed Part (with the exception of the tape recording requirements which, pursuant to proposed section 23V apply to any suspect whether under arrest or not) a person is not treated as being under arrest in respect of an offence after he or she has been remanded by a magistrate in respect of that offence.

'Commonwealth offence' is defined to exclude only service offences for the purposes of the Defence Force Discipline Act 1982. All other offences against a law of the Commonwealth are to be covered by the proposed new Part.

'Investigating official' means, as well as a member or special member of the Australian Federal Police or a member of a State or Territory police force, a person whose official functions include the exercise of powers of investigation and arrest in relation to Commonwealth offences.

'Tape-recording' includes both audio recording and video recording.

'question' has the meaning given by subsection 23B(4), that is, a reference to questioning a person also includes carrying out of an investigation in which the person participates in relation to his or her involvement in a Commonwealth offence, including an offence for which the person is not under arrest. This puts it beyond doubt that if a suspect who is questioned about one or more particular offences makes admissions about other offences, the recording requirements apply to the questioning in relation to those other offences.

Proposed section 23C - Period of Arrest

Proposed subsection 23C(1) is introductory, referring to the precondition of lawful arrest leading to the reasonable investigation period and how that period is to be calculated. It puts it beyond doubt that the power to detain for an investigation period can only be triggered by a lawful arrest for a Commonwealth offence, and removes any room for an argument that the power to detain - conferred by proposed

subsection 23C(2) - is conferred even though the original arrest was unlawful.

Proposed subsection 23C(2) provides that the person who has been arrested for a Commonwealth offence may be detained for investigation of his or her involvement in that or any other Commonwealth offence; but must not be detained for investigation after the end of the investigation period prescribed by subsections 23C(4) and 23C(6).

Proposed subsection 23C(3) requires that the person must be released (whether unconditionally or on bail) within the investigation period, or brought before a magistrate within the investigation period, or if this is not practicable, as soon as practicable after the end of that period.

Proposed subsection 23C(4) provides subject to subsections (5) and (6) for a reasonable investigation period commencing at the time the person is taken into custody and ending at a time which is reasonable in all the circumstances of the particular case, but which is not more than 2 hours, if the person is or appears to be under 18, an Aboriginal person or a Torres Strait Islander, or, in any other case 4 hours, after the person is taken into custody, (unless the period is extended by a magistrate). It makes it clear that the maximum periods are not to be regarded as the norm.

Proposed subsection 23C(4A) makes it clear that in determining time for the purposes of proposed section 23C, the number and complexity of matters being investigated is a relevant consideration.

Proposed subsection 23C(5) ensures that within any 48 hour period a person cannot be arrested on more than one occasion and detained each time for the full specified maximum period. The permissible investigation period for any subsequent arrest

following the initial investigation period is diminished by the time which elapsed in the previous period or periods. For example, if a person who was arrested and questioned for 2 hours then released, either unconditionally or on bail, is re-arrested 10 hours later, perhaps on fresh evidence becoming available concerning further offences, then the 4 hour investigation period is reduced by the earlier 2 hour period, leaving 2 hours available for questioning.

Proposed subsection 23C(6) sets out those times which are to be disregarded in calculating the duration of the investigation period; including reasonable travel time to the nearest premises with recording facilities, time spent in arranging communication with or awaiting the attendance of a legal practitioner, friend, relative or other person as provided by the Part, or awaiting the attendance of an interpreter if required, any time in which the person is receiving medical attention or is too intoxicated to be questioned, any reasonable time to permit the person to rest or recuperate, and any time reasonably required for the making and determination of an application to a magistrate for extension of the investigation period under section 23D.

Proposed subsection 23C(7) places the burden of proving that the person was brought before a magistrate as soon as practicable, or that any given period of time was covered by a provision of subsection 23C(6), on the prosecution.

Proposed section 23D - Extension of Investigation Period

Proposed subsection 23D(1) provides that in the case of a serious offence, an investigating official may, at or before the end of the investigation period, apply for an extension of the investigation period.

Proposed subsection 23D(2) provides that the application must be made to a magistrate if possible, but that, if it must be made at a time when no magistrate is available, it may be made to a bail justice or justice of the peace employed in a court of a State or Territory. Only as a last resort may the application be made to an ordinary justice of the peace.

Proposed subsection 23D(3) permits the application to also be made in writing, or by telephone, and provides that the person in custody, or his or her legal representative, may make representations regarding the application to the judicial officer.

Proposed subsection 23D(4) sets out the matters as to which the judicial officer must be satisfied if he or she is to extend the investigation period : the offence must be a serious offence, as defined in proposed subsection 23D(6), further detention must be necessary to preserve or obtain evidence or complete an investigation into the offence for which the person was taken into custody or into another serious offence, the judicial officer must be satisfied of the proper and expeditious conduct of the investigation, and that the person or a legal representative has been given the opportunity to make representations.

Proposed subsection 23D(5) provides for a single extension of the investigation period for a further period not exceeding 8 hours.

Proposed subsection 23D(6) defines a 'serious offence' for the purposes of this section as a Commonwealth offence punishable by imprisonment for a period exceeding 12 months. By virtue of proposed subsection 23A(6) this equally applies to an offence against a law of the Australian Capital Territory carrying an equivalent penalty.

Proposed section 23E - Applications by telephone etc

Proposed subsection 23E(1) provides that an application for extension of the investigation period may be made by telephone, radio or radio-telephone by following the procedure prescribed by the section.

Proposed subsection 23E(2) places an obligation on the investigating official to inform the person to whom the application relates that he or she, or a legal representative, may make representations to the judicial officer about the application.

Proposed subsection 23E(3) lays down a procedure to be followed to ensure the recording of the date, time, reasons for and terms of the extension by the judicial officer, and require the judicial officer to inform the investigating official of those details.

Proposed subsection 23E(4) requires the investigating official, as soon as practicable, to record the terms of the authority, noting the name of the issuing judicial officer and to forward his or her form of the authority to that judicial officer to allow comparison.

Proposed subsection 23E(5) provides that unless the terms of the authorities signed by both the investigating official and the judicial officer correspond in all material respects the authority granted by the judicial officer is taken to have had no effect and any detention of a person during the relevant period will not have been authorised by law.

Proposed subsection 23E(6) places the burden of proving that an authority for extension of the investigation period was granted on the prosecution, if the authority signed by the judicial officer is not produced in evidence.

Proposed subsection 23E(7) defines "judicial officer" to mean either a magistrate or a justice of the peace depending on the circumstances as to the availability of a magistrate when the application under section 23D is made.

Proposed section 23F - Cautioning person in custody

This proposed section statutorily mandates the caution required by the common law judges' rules.

Proposed subsection 23F(1), subject to proposed subsection 23F(3), requires an investigating official, before starting to question a person under arrest for a Commonwealth offence, to caution the person that he or she does not have to say or do anything but that anything he or she does say or do may be used in evidence.

Proposed subsection 23F(2) requires the caution to be given in, or translated into, a language in which the person is able adequately to understand and express his or her thoughts, but need not be given in writing.

Proposed subsection 23F(3) makes the previous requirements inapplicable if another law of the Commonwealth requires the person to answer question put by, or do things required by, the investigating official.

Proposed section 23G - Right to communicate with friend, relative and legal practitioner

This section enshrines, subject to very limited exceptions, the right of a suspect to communicate with a friend or relative and to have legal representation during questioning.

Proposed subsection 23G(1) requires that, unless considerations specified in proposed section 23L require otherwise, before questioning or investigations in which the person participates takes place, a person under arrest is to be advised of his or her right to communicate or attempt to communicate with a friend or relative and with a legal practitioner, and to have a legal practitioner present at interview. Such questioning and investigation must be deferred for a reasonable time for that purpose and, if relevant, for the legal practitioner to attend.

Proposed subsection 23G(2) places (subject to proposed section 23L) an obligation on the investigating official to provide as soon as practicable facilities to make the permitted communications and to allow private communication in the case of a legal practitioner, or his or her clerk.

Proposed subsection 23G(3) provides (subject to proposed section 23L) that if a legal practitioner attends the investigating official must allow, and provide reasonable facilities for, private communication with the person under arrest, and allow the legal practitioner to be present and to advise the person during any questioning, provided he or she does not unreasonably interfere with the questioning.

Proposed section 23H - Aboriginal persons and Torres Strait Islanders

Proposed subsection 23H(1) requires (subject to proposed section 23L) that an investigating official who believes on reasonable grounds that a person under arrest whom it is intended to question concerning a Commonwealth offence is an Aboriginal person or a Torres Strait Islander must, unless he or she is aware that the person has arranged for the attendance of a legal practitioner, immediately inform the person that the official will notify a representative of an Aboriginal legal aid organisation, and the official must do so. Where a

representative of an Aboriginal Legal Aid organization is notified, it does not mean that that representative must be present during questioning even if the arrested person objects, but permits the representative to be satisfied that the person expressly and voluntarily waives his or her right to have the representative present pursuant to proposed paragraph 23H(2)(d). This precludes the possibility of such an arrested person, for cultural or other reasons, being disadvantaged in the interview process by an apparent express and voluntary waiver of rights occasioned by inappropriate motivations..

Proposed subsection 23H(2) (subject to proposed subsection 23H(7) and proposed section 23L, requires the investigating official to defer questioning for a Commonwealth offence until an interview friend is present and has been allowed private communication with the person. The person may expressly and voluntarily waive the right to the presence of an interview friend. By virtue of proposed paragraph 23H(2)(a) this provision is not limited to the situation where the person is already under arrest as defined in proposed subsection 23B(2) ie the person may not be questioned without an interview friend even before being taken into custody unless this right is expressly waived.

Proposed subsection 23H(3) provides that an interview friend may be excluded if he or she unreasonably interferes with the questioning or investigation.

Proposed subsection 23H(4) places the burden upon the prosecution to prove that any waiver of the right referred to in proposed subsection (2) was explicit and voluntary and done with full understanding.

Proposed subsection 23H(5) places the burden on the prosecution to prove that the person under arrest had, to the knowledge of

the investigating official, arranged for the attendance of a legal practitioner.

Proposed subsection 23H(6) makes it clear that the rights conferred by the proposed section are additional to the general rights conferred by proposed section 23G but, to the extent of any overlap, compliance with proposed section 23H will also satisfy the requirements of 23G.

Proposed subsection 23H(7) has the effect of bringing Aboriginal and Torres Strait Islander persons under the age of 18 years within the special protection for young people of proposed section 23K without depriving them of access to the specific provisions for the protection of Aboriginal persons and Torres Strait Islanders in general.

Proposed 23H(8) relates to the requirements of proposed subsections 23H(1) and (2) regarding the notification of a representative of an Aboriginal legal aid organisation and the deferral of questioning to permit communication with, and presence of, an interview friend. This provision removes those obligations if the investigating official believes on reasonable grounds that in the light of the person's level of understanding and education he or she is not at a disadvantage in the investigation situation compared with members of the Australian community generally.

Proposed subsection 23H(9) defines 'interview friend' for the purposes of this proposed section as a relative or other person chosen by the person, a legal practitioner acting for the person, a representative of an Aboriginal legal aid organisation or a person whose name is included in a list of suitable and willing 'interview friends' maintained under proposed subsection 23J(1).

Proposed section 23J - List of interview friends and interpreters

Proposed subsection 23J(1) imposes an obligation on the Minister to establish and maintain as far as practicable in relation to each region where people are likely to be under arrest and under investigation for Commonwealth offences a list of the names of people who are suitable and willing to perform the functions of an interview friend for such Aboriginal persons or Torres Strait Islanders as would otherwise not have an interview friend available. The list may not contain names of police officers..

Proposed subsection 23J(2) obliges the Minister, or the Minister's delegate, to consult with any local Aboriginal legal aid organisation in establishing and maintaining a list of interview friends in relation to a region.

Proposed subsection 23J(3) imposes a similar obligation on the Minister to establish and maintain as far as practicable in relation to each region a list of people willing and able to act as interpreters as required for Aboriginal persons and Torres Strait Islanders under arrest and undergoing investigation for a Commonwealth offence.

Proposed subsection 23J(4) requires that the list of interpreters specify as far as practicable the languages in which each interpreter is able to provide the necessary assistance.

Proposed subsection 23J(5) permits the Minister to delegate to an officer of the Department any or all of his or her powers under the proposed section.

Proposed section 23K - Persons under 18 years

Proposed subsection 23K(1) requires (subject to proposed section 23L) that, if an investigating official believes on reasonable grounds that a person suspected of involvement in a serious Commonwealth offence, or under arrest in respect of any Commonwealth offence, is under 18 years of age, he or she must not proceed with questioning until an interview friend is present and has first been allowed private communication with the person. By virtue of proposed paragraph 23K(1)(a), this provision is not limited to the situation where the person is in custody as defined in proposed subsection 23B(2).

Proposed subsection 23K(2) permits the exclusion of an interview friend from questioning or investigation if he or she interferes unreasonably in that process.

Proposed subsection 23K(3) defines "interview friend" for the purposes of this proposed section and sets out a preferred order in which the presence of an interview friend must be sought, being firstly a parent, guardian or legal practitioner, secondly a relative or friend acceptable to the person, next (in the case of an Aboriginal person or Torres Strait Islander) an interview friend from a list maintained under proposed subsection 23J(1), or, finally, an independent person.

Proposed subsection 23K(4) makes it clear that the rights conferred by the proposed section are additional to the general rights conferred by proposed section 23G but, to the extent of any overlap, compliance with proposed section 23K will also satisfy the requirements of 23G. Thus, for example, the person would be entitled to both the presence of a parent and a legal practitioner, the latter by virtue of proposed section 23G.

Proposed section 23L - Exceptions

Subject to subsections (2), (3) and (4), proposed subsection 23L(1) has the effect, where an obligation imposed on an investigating official is expressed as subject to section 23L, of releasing the official from that obligation so long as he or she believes on reasonable grounds that:

- compliance would be likely to result in an accomplice avoiding apprehension; or

- compliance would be likely to result in interference with evidence or witnesses; or

- in the case of a requirement relating to deferral of questioning, the safety of other people requires that urgent questioning takes place.

Proposed subsection 23L(2) applies special conditions where a person is prevented from or suffers delay in communicating with ,or having present during questioning, the solicitor of his choice. The investigating official must actively seek to make available the services of another legal practitioner. In any event, delay in allowing access to the solicitor of a person's choice under subsection 23L(1) is permitted only in exceptional circumstances and access must be permitted as soon as possible after subsection (1) ceases to apply.

Proposed subsection 23L(3) requires that where an investigating official seeks relief from compliance with a requirement relating to a legal practitioner by means of a provision of proposed subsection 23L(1) this can only be gained if an officer of the rank of superintendent or higher or a prescribed office holder under this section has authorised the application and recorded in writing the grounds of the investigating official's belief.

Proposed section 23M - Provision of information relating to a person in custody

This provision requires that, subject to the agreement of the person and to the exceptions set out in proposed section 23L, the investigating official must inform any relative, friend or legal representative, who enquires of the whereabouts of a person under arrest in respect of a Commonwealth offence.

Proposed section 23N - Right to interpreter

This provision requires an investigating official who believes on reasonable grounds that a person in custody in respect of a Commonwealth offence is unable to communicate in English with adequate understanding and capacity for self-expression to defer questioning or investigation until he or she has arranged for, and awaited the arrival of, an appropriate interpreter.

Proposed section 23P - Right of foreign national to communicate with consular office

Proposed subsection 23P(1) requires an investigating official, subject to the exceptions in proposed section 23L, to inform a person in custody in respect of a Commonwealth offence who is not an Australian citizen that he or she may communicate if possible, with the appropriate consular office, and to defer questioning for a reasonable time to allow this to be done or attempted.

Proposed subsection 23P(2), subject to the section 23L exceptions, requires the investigating official to provide as soon as practicable to a person who wishes to communicate with a consular office reasonable facilities for the communication.

Proposed section 23Q - Treatment of persons in custody

This provision requires that a person to whom this Part applies must be treated with humanity and dignity and must not be subjected to cruel, inhuman or degrading treatment.

Proposed section 23R - No power to detain person not under arrest

This provision puts it beyond doubt that not only does the Bill not confer any power to arrest, but it also does not confer a power to detain a person who has not been lawfully arrested. Thus it makes it clear that the conditions, purposes and powers of arrest as set out in other laws of the Commonwealth must be complied with. Examples of such laws include section 8A of the Crimes Act 1914 and section 210 of the Customs Act 1901. A failure to comply with the relevant law conferring the arrest power would render the arrest unlawful and consequently any post "arrest" detention would similarly be unlawful.

Proposed section 23S - Right to remain silent etc not affected

This provision makes clear that there is no intention to affect a person's right to refuse to answer questions or to participate in an investigation (except where there is a statutory obligation to do so), or to affect the burden on the prosecution to prove that an admission or a confession was made voluntarily, or to affect the discretion of the court to exclude unfairly, illegally or improperly obtained evidence.

In other words, the rights conferred by this proposed law are, except for the introduction of a reasonable period of pre-charge detention, either additional rights or a statutory conferral of traditional rights.

Proposed section 23T - Acts authorised under other laws

This provision preserves the power of an investigating official to require a person to do a particular thing when the power derives from another Commonwealth statutory provision, or from a law of the Australian Capital Territory (eg a "breathalyser" requirement).

Proposed section 23U - Tape recording of information required to be given to person in custody

Proposed subsection 23U(1) requires that where an investigating official must give the person in custody certain information (which includes a caution) the official shall tape record if practicable both the giving of that information and any response made by the person.

Proposed subsection 23U(2) places on the prosecution the burden of proving whether or not the tape recording required by subsection (1) was practicable.

Proposed section 23V - Tape recording of confessions and admissions

This provision lays down requirements which must be satisfied if confessional material in respect of a Commonwealth offence obtained from a person while in custody is to be admissible. The requirements must be satisfied whether or not the suspect is under arrest at the time of the questioning.

Proposed subsection 23V(1) limits the admissibility in evidence of such a confession or admission to material which was tape recorded or, if this was not reasonably practicable, to material of which a written record was made contemporaneously or as soon as practicable and which was read back to the person, again as soon as practicable, a copy of the record being made available to the person at the time of the reading-

back. The reading-back must be tape recorded; the person must be given an explanation before the reading-back begins in accordance with the form in the Schedule, and must be given the opportunity to interrupt the reading at any time to point out claimed errors or omissions and to make a further statement regarding any claimed errors or omissions at the end of the reading.

Proposed subsection 23V(2) provides that if a video or audio tape recording is made in accordance with proposed subsection 23V(1) the investigating official must, free of charge, make the recording or a copy of it available to the person or his or her legal representative within 7 days. If both a video and an audio recording is made the audio recording or a copy of it must be made available within 7 days, and the official must notify the person or his or her legal representative that the video recording may be viewed on request. A copy of any transcript that is prepared must be made available free of charge to the person or his or her legal representative within 7 days of its preparation.

Proposed subsection 23V(3) permits an investigating official who is engaged in duly authorised covert investigations to defer compliance with subsections 23V(1) and (2) until such time as compliance will not prejudice the covert investigations.

Proposed subsection 23V(4) has the effect that in relation to offences under certain applied laws the provisions of new section 23V will apply if the investigating official is an AFP member, notwithstanding that an arrangement is in existence under which State law rather than Commonwealth law governs such matters as arrest and investigation.

Proposed subsection 23V(5) defines the conditions which will apply to the court's discretion to admit confessional material

in cases where the requirements of the proposed section have not been complied with. Such material may be admitted if, in the special circumstances of a particular case, admission would not be contrary to the interests of justice. Relevant considerations will include, but not be limited to, the nature of and reasons for the non-compliance or insufficiency of evidence of compliance.

Proposed subsection 23V(6) permits a court to admit evidence where a provision of subsection 23V(2) has not been complied with if the court is satisfied that in the circumstances compliance was not practicable.

Proposed subsection 23V(7) requires a judge who admits evidence pursuant to proposed subsections 23V(5) or (6) to inform, and if considered appropriate, warn, the jury about the non-compliance (or the insufficient evidence of compliance) with the requirements of proposed section 23V.

Proposed section 23W - Proof of Belief

Proposed Section 23W places on the prosecution the burden of proving in any proceedings, where relevant under the new Part, that a relevant belief was held on reasonable grounds.

Clause 4 - Schedule

This provision adds a Schedule to the Principal Act which contains a form of explanation in plain language to be given as required by proposed subparagraph 23V(1)(b)(v).

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