

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

NATIONAL CRIME AUTHORITY AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Lionel Bowen MP
Deputy Prime Minister and Attorney-General)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE
OF REPRESENTATIVES TO THE BILL AS INTRODUCED.

The first of these is the fact that the Government has not yet decided whether it will accept the offer of the United States to purchase the Hawaiian Islands. The second is the fact that the Government has not yet decided whether it will accept the offer of the United States to purchase the Hawaiian Islands. The third is the fact that the Government has not yet decided whether it will accept the offer of the United States to purchase the Hawaiian Islands.

OUTLINE

The National Crime Authority Amendment Bill amends the National Crime Authority Act 1984 to allow the Inter-Governmental Committee to create additional offices of member of the National Crime Authority. These additional offices can be created where a reference to the National Crime Authority has been made by the Commonwealth or a State and the Inter-Governmental Committee, having regard to that reference and any related reference, thinks that the appointment of an additional member of the Authority is necessary to enable the Authority to perform its functions. Provision is also made for the appointment of persons to the additional offices of member. The Inter-Governmental Committee may unanimously recommend a person for appointment as the additional member.

The Bill also provides that the functions and powers under the National Crime Authority Act of such an additional member may only be performed and exercised for the purposes of, or in relation to, the original reference in relation to that member or any related reference. It is intended that the additional member not be diverted from the reference for which he or she was appointed to other references made to the Authority. Further, the additional member can only form part of a quorum or vote at a meeting of the Authority to the extent that the Authority is performing functions or exercising powers arising out of the original reference in relation to that member or any related reference.

The Bill also provides for the terms and conditions of appointment of the additional members, the termination of the appointment where the original reference is withdrawn or the original reference and related references completed and the cessation of the additional office.

The Bill also contains amendments relating to when a recommendation for the appointment of a member under paragraphs 7(7)(b) and 7(8)(b) can occur and the insertion of a reference to the Minister of State of the Commonwealth who administers the Australian Federal Police Act 1979.

Financial Impact Statement

The amendments made to the **National Crime Authority Act 1984** by this Bill are not expected to have any immediate budgetary impact.

The Bill provides for the appointment of an additional member or members. It is anticipated that one member may be appointed in relation to a South Australian reference in the near future. The South Australian Government has agreed to meet the cost of any additional member and its reference. South Australia will thus offset any costs incurred by the Authority and the Commonwealth.

Although the Bill will allow the appointment of further members, the Commonwealth has no intention at this stage to use these provisions this financial year or in the foreseeable future.

Notes on Clauses

Clauses 1 and 2

The first 2 clauses of the Bill provide for the short title, that "Principal Act" means the National Crime Authority Act 1984 and the commencement of the legislation. The Bill will come into operation on Royal Assent.

Clause 3 Interpretation

This clause is definitional. Section 4 is amended by inserting definitions of 'original reference' which in relation to a member holding an office created under new subsection 7(8AA) ('an additional member') means the reference under section 13 or 14 because of which the office was created and 'related reference' in relation to which a reference under section 13 or 14 means another reference under section 13 or 14 that is stated by the relevant Minister to be related.

Clause 4

Paragraph (a) of subclause 4 (1) omits subsection 7(2) and substitutes a new subsection 7(2) which provides that the Authority shall consist of:

- (a) a Chairman
- (b) a member holding the office to which subsection (7) applies;
- (c) a member holding the office to which subsection (8) applies;
- (d) any member or members holding an office or offices created under subsection (8AA).

Paragraph 4(1)(b) provides for the repeal of subsection 7(6), which limits the offices that can be held by members, as a consequence of new subsection 7(8AA) which permits the creation of additional offices of member.

Paragraph 4(1)(c) omits from paragraph 7(7)(b) the words '3 months after the occurrence of' and substitutes the words 'the recommendation period for.'

Paragraph 4(1)(d) omits paragraph 7(8)(b) and substitutes a new paragraph 7(8)(b) which refers to 'the recommendation period' and replaces the reference to 'the Special Minister of State of the Commonwealth' (a title which no longer exists) with a reference to Minister of State of the Commonwealth who administers the Australian Federal Police Act 1979. This is in accordance with the modern drafting practice of not referring to specific Ministers by title wherever possible.

Paragraph 4(1)(e) inserts new subsections 7(8AA), (8AB) and (8AC).

New subsection 7(8AA) provides for the creation of additional offices of member by the Inter-Governmental Committee where a reference to the Authority under section 13 or 14 is in force, and having regard to that reference and any related references, the Inter-Governmental Committee thinks that the appointment of another member of the Authority is necessary to enable the Authority to perform its functions. For example, where the Inter-Governmental Committee concludes that the Chairman and 2 members are fully utilised in relation to a number of current references then it can create an additional office to conduct a particular reference where the nature of a reference requires special skills or expertise.

New subsection 7(8AB) provides for the appointment of a person to the additional office created under subsection 7(8AA). Under new paragraph 7(8AB)(a) the Inter-Governmental Committee is required to unanimously recommend a person for appointment to the additional member office and where there is such a recommendation any advice to the Governor-General with respect to the appointment is required to be consistent with the recommendation.

New subsection 7(8AC) ensures that an additional office is only temporary by providing that an office created under subsection 7(8AA) ceases to exist when the person appointed to the office ceases, for any reason, to hold the office and that person is not immediately reappointed. A person ceases to hold office when the person resigns or dies, when the period of the person's appointment expires, when a person's appointment is terminated under section 43 or the member ceases to hold office under new section 43A. The office created under subsection 7(8AA) would continue in existence where the period of the person's appointment expires and the person is re-appointed to that office.

Paragraph 4(1)(f) adds new subsection 7(11) which defines 'recommendation period' for the purposes of paragraphs 7(7)(b) and 7(8)(b) to allow recommendations for the appointment of members to the Authority to be made during the period beginning 3 months before and ending 3 months after the vacancy occurs.

Subclause 4(2) provides that the amendments made by paragraphs 4(1)(c), (d) and (f) only apply in relation to vacancies occurring after the commencement of clause 4.

Clause 5 Functions of Committee

This clause amends section 9 by omitting subsection (1) and inserting a new subsection (1) which sets out the functions of the Inter-Governmental Committee.

New paragraphs 9(1)(b), (c), (e) and (f) are the functions of the Inter-Governmental Committee in the existing subsection 9(1).

New paragraph 9(1)(a) provides that one of the functions of the Inter-Governmental Committee is to create additional offices of member and recommend persons for appointment to those offices.

New paragraph 9(1)(d) provides that the functions of the Inter-Governmental Committee include such other functions as are conferred on it by other provisions of the Act. Clauses 6, 7 and 10 of this Bill will confer additional functions on the Inter-Governmental Committee.

Clause 6 Reference by Commonwealth

This clause amends section 13 by inserting a new subsection (2A) which provides that the Commonwealth Minister may, after consulting the Inter-Governmental Committee, state that the reference is related to another reference. This provision enables the additional member to undertake related references.

Clause 7 Function under State laws

This clause amends section 14 by inserting a new subsection (3) which provides that a State Minister who refers a matter to the Authority under section 14 may, with the approval of the Inter-Governmental Committee, state that the reference is related to another reference. This provision enables the additional member to undertake related references.

Clause 8 Terms and conditions of appointment

This clause amends section 37 by amending subsection (1) so that it refers to new subsection (1C) and inserts new subsection (1C) which provides that an additional member may be re-appointed to that office, another additional member office or any other office of member (including the office of Chairman). The period or periods of reappointment cannot exceed the difference between 4 years and the period of the member's first appointment.

Clause 9

This clause inserts a new section 39A which limits the application of the functions and powers of additional members. Under new subsection 39A(1) the functions and powers under the Act of an additional member are limited to the original reference in relation to that member or any related references. Similarly, new subsection 39A(2) provides that an additional member can only form part of a quorum or vote at a meeting of the Authority to the extent that the meeting is concerned with performing functions, or exercising powers, of the Authority that arise out of the original reference in relation to that member or a related reference. Thus, there

is a nexus between the performance of functions, exercising powers, forming part of a quorum and voting powers of an additional member and the original reference and any related references and the additional member is precluded from involvement in other references.

Clause 10

This clause inserts a new section 43A which provides that an additional member ceases to hold that office where the original reference in relation to that member has been withdrawn (subsections 13(3) and 14(1) allow references to be withdrawn) or where the Inter-Governmental Committee gives notice to the Authority stating that the performance of the Authority's functions in relation to the original reference or any related references has been completed. This provision is necessary to prevent a situation arising where a member has no work to perform because the reference for which he or she was appointed has ended and he or she is precluded from work on other references.

Clause 11. Acting member

This clause omits subsection 45(5) and inserts a new subsection (5) which links the powers and functions of a person acting in an office of member to the powers and functions of a person appointed to hold that office.