

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

National Crime Authority Bill 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator the Honourable Gareth Evans,  
Attorney-General)

## OUTLINE

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

The Bill enables the relevant Commonwealth, State and Northern Territory Ministers, with the approval of an Inter-Governmental Committee, to refer particular matters involving serious breaches of the criminal law within these categories to the Authority for investigation.

The Bill provides for the Authority's three members to be nominated by the Commonwealth, the Standing Committee of Attorneys-General and the Australian Police Ministers Council respectively.

The Bill gives the Authority powers necessary to its functions; these powers are made subject to proper limitations and safeguards to protect the essential rights of individuals.

## NOTES ON CLAUSES

### PART I - PRELIMINARY

- Clause 1 - This states the title of the Bill.
- Clause 2 - The date of operation is dealt with.
- Clause 3 - Repeal of National Crimes Commission Act 1982.
- Clause 4 - Interpretation.
- Clause 5 - Act to bind the Crown in right of the Commonwealth and Norfolk Island only.
- Clause 6 - Extension of the Act to all external Territories.

### PART II - THE NATIONAL CRIME AUTHORITY

- Clause 7 - Establishment of National Crime Authority constituted by a Chairman and two (2) members, all appointed by the Governor-General.
- Clause 8 - Establishment and constitution of Inter-Governmental Committee of Ministers representing the Commonwealth and participating States.
- Clause 9 - This clause states the functions of the Inter-Governmental Committee; to consider approval of matters for reference by the relevant Commonwealth or State Ministers to the Authority for investigation; to monitor the Authority's work; to receive and transmit reports of the Authority to Governments.
- Clause 10 - This clause states the functions of the Authority : to investigate matters referred by the relevant Commonwealth or State Ministers, such matters being circumstances or allegations of certain types of offences against Commonwealth, State or Territory laws (defined in Clause 4, as being offences carrying a penalty of three (3) years imprisonment or more, committed by more than one person on a planned and organised basis, and which involve theft, fraud, tax evasion, currency violations, illegal drug dealings, obtaining financial benefit by vice engaged in by others, extortion, violence, or bribery or corruption of or by officials, and the like); when so directed by the relevant Minister, to furnish evidence for use in a prosecution to the relevant Attorney-General or law enforcement agency; to coordinate investigations by Task Forces and the like; and to collect, analyse and disseminate criminal information and intelligence in cooperation with the Australian Bureau of Criminal Intelligence; and to make, as a result of performance of its other functions, recommendations to the relevant Minister for reform of the law, administrative practices and of administration of the Courts in relation to offences of the kinds referred to above.

- Clause 11 - Provides for the giving of Commonwealth references to the Authority by the Commonwealth Minister.
- Clause 12 - Provides for the giving of State references to the Authority by relevant State Ministers.
- Clause 13 - Provides for members of the Authority, with the consent of the Inter-Governmental Committee and the approval of the Commonwealth Minister, to be able to exercise concurrent functions and powers conferred by State law.
- Clause 14 - Provides that, except in proceedings by an Attorney-General, the validity of a reference to the Authority may not be challenged on the ground of lack of approval of the Inter-Governmental Committee or consent of the Minister.
- Clause 15 - Requires the Authority, so far as practicable, to cooperate with law enforcement agencies.
- Clause 16 - Provides for the Minister (with the agreement of the State Minister where relevant) to give directions and furnish guidelines to the Authority.
- Clause 17 - Provides for necessary and incidental powers of the Authority.
- Clause 18 - Provides that the Authority may apply to a Judge for the issue of a search warrant in respect of things connected with the Authority's investigations.
- Clause 19 - Provides for the issue by a Judge of search warrants upon application by telephone in urgent cases.
- Clause 20 - The Authority may, in certain circumstances, apply to a Federal Court Judge for an order directed to a person summoned as a witness by the Authority to show cause why he should not be ordered to deliver up his passport to the Authority for a period of up to one month (which period may be extended by the Court to not more than three months). A person served with an order to show cause commits an offence if he leaves Australia before the matter is dealt with by the Court or before he has complied with its order and has had his passport returned to him. The Court may revoke the order upon application by the person.
- Clause 21 - Hearings of the Authority may be in public or in private, but in exercising this discretion, the Authority is to have regard to certain matters including the need to protect the interests of persons and to respect their wishes. Hearings are required to be held in private and the Authority is

required to give a direction for non-publication of evidence where publication might prejudice the safety, reputation or fair trial of a person charged with an offence. Offences of unauthorised presence at private hearings and publication of evidence or other information contrary to a direction of the Authority are created. As a further protection, the defence of fair report is not to be available in an action for defamation arising out of a hearing of the Authority.

- Clause 22 - Provides for payment to witnesses of attendance fees.
- Clause 23 - Provides for the provision by the Commonwealth of legal and financial assistance to witnesses in certain cases.
- Clause 24 - Powers to summon witnesses and take evidence in respect of matters referred to the Authority for investigation are provided for.
- Clause 25 - Creates offences of failure by witnesses, without reasonable excuse, to attend, to be sworn, to answer questions or produce documents or things. Except where an immunity from use in evidence has been given, self-incrimination is available to natural persons as an excuse for not answering questions or failing to produce documents or things as required by the Authority. Legal professional privilege is also recognised.
- Clause 26 - Creates an offence of giving false or misleading evidence at a hearing of the Authority.
- Clause 27 - Creates an offence of obstructing or hindering the Authority or disrupting a hearing before the Authority.
- Clause 28 - Members of the Authority and legal practitioners and witnesses before the Authority are accorded protection and immunity of the same kind as apply to a Justice, barrister or witness respectively in proceedings in the High Court.
- Clause 29 - Terms and Conditions of appointment of members of the Authority are dealt with.
- Clause 30 - Remuneration and allowances of members of the Authority are dealt with.
- Clause 31 - Provides that the appointment of a holder of a Commonwealth judicial office as a member of the Authority does not affect his tenure of that judicial office.
- Clause 32 - Granting of leave of absence by the Attorney-General to a member of the Authority is dealt with.

- Clause 33 - Resignation of members of the Authority is dealt with.
- Clause 34 - Disclosure of direct or indirect interests of members of the Authority and their consequent disqualification from deliberations or decisions of the Authority are dealt with.
- Clause 35 - Termination of the appointments of members of the Authority is dealt with.
- Clause 36 - Appointment of an Acting Chairman of the Authority in certain circumstances is provided for.
- Clause 37 - Appointment of Acting Members of the Authority in certain circumstances is provided for.
- Clause 38 - Procedures and quorum at meetings of the Authority are dealt with.
- Clause 39 - Provides that the Authority's staff are to be engaged under the Public Service Act 1922 and gives the Chairman the powers of a Public Service Permanent Head in this regard.
- Clause 40 - Engagement of consultants by the Chairman with the approval of the Minister or his delegate is dealt with.
- Clause 41 - Secondment of staff to the Authority from the Australian Federal Police, Commonwealth authorities or from State authorities by arrangement is provided for.
- Clause 42 - Appointment by the Attorney-General of Counsel assisting the Authority is dealt with.
- Clause 43 - Creates an offence of unauthorised recording, divulging or communication, by any member of the Authority or of its staff, of information acquired in the performance of duties under the Act, and provides that such persons shall not be required to divulge or communicate matters, documents or things to a Court, except in proceedings by or against the Authority, or for the purposes of the Act, or for the purposes of a prosecution resulting from an investigation by the Authority.

### PART III MISCELLANEOUS

- Clause 44 - Provides that the actions of the Authority may be subject to investigation and report by the Commonwealth Ombudsman.

- Clause 45 - The Minister may make administrative arrangements with State Ministers to make available holders of State judicial or other offices to hold office as members of the Authority, and officers or employees of State Police Forces or other State authorities to perform services for the Authority.
- Clause 46 - This requires the Authority to keep the Minister and, in relation to functions relating to a State reference, the appropriate State Minister, informed of its operations. The Authority is to furnish reports of findings of its investigations to the Inter-Governmental Committee for transmission to Governments, with the exception that where public disclosure could prejudice the safety or reputation of persons or law enforcement operations, a separate report shall be furnished to the Minister or relevant State Minister.

The Authority may furnish information as to offences to the relevant law enforcement agencies of the Commonwealth or a State or Territory.

Similarly the Authority may furnish to Departments and authorities of the Commonwealth or a State or Territory information relating to the performance of their functions.

The Authority shall not publish a report finding that an offence has been committed or recommending prosecution, unless the finding is expressed to be based on evidence admissible in a prosecution.

- Clause 47 - Provides for judicial audit and report to the Minister every 3 years on the Authority's operations, effectiveness and whether there has been any illegal action or undue trespass by it on personal rights and liberties.
- Clause 48 - Provides for the making of an Annual Report to Parliament by the Authority, covering matters referred to it, patterns and trends of criminal activity, any recommendations for changes in the law or administrative action, the general nature and the extent of information furnished to law enforcement agencies, and the extent to which prosecutions have resulted from its investigations.

However, such report shall not identify persons as having committed or being suspected of having committed offences, unless convicted. Further the Authority shall take reasonable care not to reveal a person's identity if to do so might prejudice a person's safety or reputation or the fair trial of a person who has been or may be charged with an offence.

Clause 49 - This provides for the making of necessary regulations.

Clause 50 - This provides that the Act shall cease to be in force at the expiration of 5 years from its commencement.