

1982

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

National Crimes Commission Bill 1982

EXPLANATORY MEMORANDUM

(Circulated by authority of the Acting Attorney-General,
The Honourable N.A. Brown, Q.C., M.P.)

General Outline

This Bill establishes a National Crimes Commission with the function of investigating organized crime and official corruption, with a view to prosecution action where appropriate.

While the Bill provides for investigation of breaches of Commonwealth law by the Commission, provision is also made for participating States to give the Commission functions relating to the investigation of offences against State law.

In addition to its main function of investigating offences and assembling evidence with a view to prosecution, the Commission may be authorized to conduct investigations of a more general nature relating to criminal activity and to make reports and recommendations thereon to Governments.

The Bill gives the Commission important powers necessary to its functions; however these powers are made subject to appropriate safeguards to protect the rights of individuals.

PART I - PRELIMINARY

- Clause 1 - This states the title of the Bill
- Clause 2 - The date of operation is dealt with
- Clause 3 - Interpretation
- Clause 4 - Act to bind the Crown in right of the Commonwealth and Norfolk Island only
- Clause 5 - Extension of the Act to all external territories

PART II - THE NATIONAL CRIMES COMMISSION

- Clause 6 - Establishment of National Crimes Commission constituted by a Chairman and between 1 and 4 members, appointed by the Governor-General
- Clause 7 - Sub-clause (1) states the functions of the Commission in relation to investigation of offences and other breaches of Commonwealth law and activities impeding implementation or enforcement of Commonwealth law; the assembly and furnishing of evidence to prosecuting authorities; co-ordination as required with like authorities overseas, and furnishing advice to the Attorney-General as to the effect on crime of proposed laws and practices.
- Sub-clause (2) requires the Commission to direct its activities so far as practicable to organized or sophisticated criminal activity, bribery or corruption, and other offences presenting special difficulty to law enforcement agencies.
- Clause 8 - Provision is made for the Commission to perform functions relating to the investigation of offences against State law conferred on it by State law.
- Clause 9 - Provides that members of the Commission may perform and exercise concurrent functions and powers under State laws.
- Clause 10 - Allows the Commission to be authorized by the Commonwealth or a State to conduct general investigations as to the nature, extent and cause of criminal activity and to report thereon without identifying persons as having committed offences or as suspected thereof, unless convicted.
- Clause 11 - Provides that the Commission is to work in co-operation with Police Forces and other law enforcement authorities.
- Clause 12 - Provides that the Attorney-General may give written directions and guidelines to the Commission but not in relation to the conduct of particular investigations; such guidelines to be published in the Gazette.
- Clause 13 - Allows the Commission either to furnish evidence as to offences to the appropriate Police authorities on an interim basis or to furnish it to the Attorney-General or appropriate State Ministers on conclusion of the investigation.

- Clause 14 - Provides that the Commission may apply to a Judge for the issue of search warrants in respect of things connected with the Commission's investigations.

- Clause 15 - The Commission may in certain circumstances, apply to a Federal Court Judge for an order directed to a person summoned as a witness by the Commission to show cause why he should not be ordered to deliver up his passport to the Commission 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.

- Clause 16 - Hearings of the Commission may be in public or in private, but in exercising this discretion, the Commission is to have regard to the need to protect the rights, reputation or safety of persons. Offences of unauthorized presence at private hearings and publication of evidence or other information contrary to a direction of the Commission are created.

- Clause 17 - Powers to summon witnesses and take evidence are dealt with.

- Clause 18 - 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 prosecution has been given, self-incrimination is a reasonable excuse for not answering questions before the Commission. Legal professional privilege is also recognized.

 Sub-clauses (10), (11) and (12) provide a procedure under which the Commission may certify a witness' failure to attend or refusal to comply with due requirements, to a superior court which may order such attendance or compliance.

- Clause 19 - An offence of giving false or misleading evidence is created.

- Clause 20 - An offence of contempt of the Commission is created.

- Clause 21 - Members of the Commission, legal practitioners or witnesses before the Commission are accorded protection and immunity of a like kind as would apply to a Justice, barrister or witness respectively in proceedings in the High Court.

- Clause 22 - Terms and Conditions of appointment of members of the Commission are dealt with.

- Clause 23 - Remuneration and allowances of members of the Commission are dealt with.

- Clause 24 - Provides that the appointment of a holder of a Commonwealth judicial office as a member of the Commission does not affect his tenure of that judicial office.

- Clause 25 - Granting of leave of absence by the Attorney-General to a member of the Commission is dealt with.

- Clause 26 - Resignation of members of the Commission is dealt with.

- Clause 27 - Disclosure of pecuniary interests of members of the Commission and their disqualification from deliberations or decisions of the Commission in certain circumstances are dealt with.

- Clause 28 - Termination of the appointments of members of the Commission is dealt with.

- Clause 29 - Appointment of an Acting Chairman of the Commission in certain circumstances is provided for.

- Clause 30 - Appointment of Acting Members of the Commission in certain circumstances is provided for.

- Clause 31 - Procedures and quorum at meetings of the Commission are dealt with.

- Clause 32 - Secondment of staff to the Commission from the Commonwealth Public Service or authorities, Australian Federal Police, or from State authorities by arrangement is provided for.

- Clause 33 - Employment of additional staff and consultants by the Chairman of the Commission with the approval of the Attorney-General or his delegate is dealt with.

Clause 34 - Appointment by the Attorney-General of Counsel assisting the Commission is dealt with.

PART III - MISCELLANEOUS

- Clause 35 - Attorney-General may make administrative arrangements with State Ministers to make available holders of State judicial or other offices to hold office as members of the Commission, and officers or employees of State Police Forces or other State authorities to perform services for the Commission.
- Clause 36 - This requires the Commission to keep the Attorney-General informed of its operations.
- Clause 37 - This provides for the making of an annual report to Parliament by the Commission, covering patterns and trends of criminal activity, recommendations for changes in the law, the general nature and the extent of information furnished to Police and other authorities, and the extent of prosecutions resulting from investigations. However, such report shall not identify persons as having committed offences or as suspected thereof, unless convicted.
- Clause 38 - This provides for the making of necessary regulations.
- Clause 39 - This provides that the Act shall cease to be in force at the expiration of 5 years from its commencement.