

1991

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

NATIONAL CRIME AUTHORITY (TERRITORY PROVISIONS) BILL 1991

EXPLANATORY MEMORANDUM

CIRCULATED BY AUTHORITY OF

TERRY CONNOLLY
ATTORNEY-GENERAL

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**(THIS EXPLANATORY MEMORANDUM RELATES TO THE ABOVE BILL
AS INTRODUCED INTO THE LEGISLATIVE ASSEMBLY)**

OUTLINE

The object of this Bill is to enact provisions that are complementary to the National Crime Authority Act 1984 of the Commonwealth for the purposes of the operation of the National Crime Authority ("the Authority") in the ACT and in particular in connection with the Authority's function of investigating matters relating to criminal activities that are the subject of a reference made to the Authority by the Minister administering the proposed Act. Such a function is referred to in the proposed Act as a "special function". There are no direct financial implications of this Bill.

The following is a brief outline of the powers available to the Authority when it is acting pursuant to a reference to investigate relevant criminal activity. The Authority is able to obtain search warrants to look for and seize anything which is relevant to any investigation, and in urgent circumstances search warrants may be obtained by telephone.

The Authority can compel people to appear before it to give evidence on oath and to produce documents. The Authority is also given a right of access to information held by Commonwealth agencies including, most importantly, the records of the Australian Taxation Office.

The legislation includes a number of safeguards to protect unwarranted attacks on the reputation of witnesses. For example, hearings are held in private and there is power to prohibit public disclosure of material which could prejudice the safety or reputation of a person or prejudice the trial of persons who have been or may be charged with offences. There are certain rights of appeal against decisions of the Authority. The Bill applies these safeguards to ACT references. The Authority is also required to report to both the IGC generally and the Commonwealth, State and Territory Ministers in respect of relevant references.

The Bill also deals with various administrative matters. For example, provision is made for the Act to supply staff to the Authority and the status of members is recognised for the purposes of ACT law.

The Bill contains the following provisions:-

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, if enacted, commence on the day it is assented to.

Clause 3 defines certain expressions, and also provides that expressions used in the Commonwealth Act have the same meanings when used in the proposed Act.

Clause 4 provides that the proposed Act binds the Crown.

Clause 5 authorises the Minister to refer certain matters relating to criminal activities and subsequent matters which may have arisen out of that initial reference to the National Crime Authority, so far as the activities relate to offences against laws of the ACT.

Clause 6 contains various provisions as to how the Authority is to exercise its functions following a reference to it by the Minister. One of its functions is to furnish, to the relevant law enforcement agency, evidence that would be admissible in proceedings for a prosecution for an offence against a law of the Territory.

Clause 7 authorises members of the Authority to exercise functions concurrently under Commonwealth law and the law of this Territory and any other State/Territory.

Clause 8 limits the challenges that may be made to the validity of any reference made to the Authority by the Minister with the approval of the Intergovernmental Committee established under the Commonwealth Act.

Clause 9 requires the Authority to co-operate with law enforcement agencies nationally and internationally in performing its special functions.

Clause 10 confers on the Authority any incidental powers that are necessary to perform its special functions.

Clause 11 authorises the Minister to make arrangements with the Commonwealth Minister of the Authority to be given relevant information or intelligence.

Clause 12 provides that a member of the Authority may apply to a Judge for the issue of a search warrant in respect of things connected with the member's investigations.

Clause 13 provides for the issue by a Judge of search warrants upon application by telephone in urgent cases.

Clause 14 provides for a Judge of the Federal Court to make an order requiring a person to deliver up the person's passport in appropriate circumstances.

Clause 15 authorises the Authority to hold hearings for the purposes of an investigation being conducted in connection with its special function.

Clause 16 provides powers to summon witnesses and take evidence in respect of matters referred to the Authority for investigation.

Clause 17 creates offences of failure by witnesses, without reasonable excuse, to attend, to be sworn, to answer questions or produce documents or things.

Clause 18 makes it an offence for a witness to fail to attend and answer questions or produce documents. The Clause also sets out what constitutes and does not constitute sufficient grounds for a refusal to do so.

Clause 19 empowers a Judge of the Federal Court to issue a warrant for the arrest of a witness in certain circumstances.

Clause 20 authorises a person who claims to be entitled to refuse to produce a document or to answer a question at a hearing before the Authority to apply to the Federal Court for an order of review in respect of the decision of the Authority on the claim.

Clause 21 authorises an application of the kind referred to in Clause 20 to be made to the Supreme Court where the matter being investigated relates only to the ACT.

Clause 22 makes it an offence to give false or misleading evidence to the Authority.

Clause 23 provides that the Authority may arrange for a witness to receive protection from intimidation and the like.

Clause 24 makes it an offence to obstruct, hinder or disrupt a hearing before the Authority.

Clause 25 provides that a person may not be punished twice for an offence under the proposed Act as well as under the Commonwealth Act.

Clause 26 provides for an acting Chairman of the Authority.

Clause 27 authorises the Minister to make certain administrative arrangements with the Commonwealth Minister.

Clause 28 provides protection and immunity for members of the Authority and for legal practitioners and witnesses at hearings before the Authority.

Clause 29 requires members and staff of the Authority to observe secrecy in certain matters.

Clause 30 requires various reports and comments of the Authority to be laid before Parliament.

Clause 31 empowers the Executive to make regulations for the purposes of the proposed Act.