



New South Wales Government

Department of Premier and Cabinet

M102623

22 OCT 2009

Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Hallahan

I write to provide a submission regarding the Senate Committee on Legal and Constitutional Affairs current inquiry on the *Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009 No.2* on behalf of the police portfolio in NSW, which includes the NSW Police Force and the Law Enforcement Policy Branch of the NSW Department of Premier and Cabinet.

I thank the committee for the opportunity to make this late submission and look forward to the Committee's favourable consideration of its recommendations.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Les Tree'.

Les Tree
Deputy Director-General
Law Enforcement and Security Coordination

NSW POLICE PORTFOLIO SUBMISSION
COMMONWEALTH SENATE COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS
INQUIRY ON THE CRIMES LEGISLATION AMENDMENT (SERIOUS AND
ORGANISED CRIME) BILL 2009 No. 2

The majority of recommended amendments are supported by the NSW Police Portfolio. There are, however, a number of changes that police have recommended to improve the effectiveness of the Bill. These are detailed below.

Schedule 2 – Search Warrants

The existing subsection 3K(3) on page 65 of the draft Bill requires an owner or representative of seized equipment to be informed of the time and location of where the examination will be conducted and to have an opportunity to be present. This section may present a security and methodological risk and it is recommended that it be removed. A similar clause was removed from the *Law Enforcement (Powers and Responsibilities) Act 2002* of NSW.

Schedule 4 - Criminal Organisation and Association Offences.

The NSW law enforcement and Attorney General's portfolios have made separate submissions on these matters, particularly with regard to telecommunications interception capacity, which are currently the subject of discussions between state and federal authorities.

Schedule 5 – Money Laundering

It is recommended that the provisions dealing with the calculation of a person's "total wealth" be amended to include "market value" within the definition of the worth of property, rather than just the value an item had when it was acquired.

This would avoid the possibility of an item being undervalued, if the item was originally purchased at a (perhaps, significantly) discounted price (e.g. a \$20,000 car purchased from a relative at a nominal fee of \$5.00).

Schedule 9 - Drug Importation

The proposed amendments appear to narrow the definition of import, rather than broaden it. It is noted that the intention stated within the explanatory memorandum is to broaden the definition to include persons who also deal with the imported substance once it is within Australia. The Bill states:

Repeal the definition, substitute:

import, in relation to a substance, means import the substance into Australia and includes:

- (a) bring the substance into Australia; and*
- (b) deal with the substance in connection with its importation.*

Using the conjunctive 'and' could narrow the definition of 'import'. It is recommended that the Bill use the word 'or' in place of 'and'.

Schedule 10 – Amendments consequential to enactment of new joint commission offences

The NSW Police Portfolio supports the proposed changes.

It is noted, however, that the changes may make prosecution of joint commission offences more difficult by raising the level of the test applied to proving joint commission. The test currently applied under the Common Law. At requires that a defendant in a joint commission matter must have been able to foresee the 'possibility' of the offence being committed; whereas the amendments will set the threshold higher at 'probability'.