

Introduction

Background to the *Criminal Code (Theft, Fraud, Bribery and Related Offences) Bill 1999*

- 1.1 The possible development of uniform criminal codes for all Australian states and territories was placed on the agenda of the Standing Committee of Attorneys-General (SCAG) in June 1990. SCAG established the Criminal Law Officers Committee, later to become the Model Criminal Code Officers Committee (MCCOC), to develop a Model Criminal Code for all Australian jurisdictions.¹
- 1.2 MCCOC comprised expert officers from the states, territories and the Commonwealth. It has produced discussion papers and final reports on a number of subject areas; each of these papers and the reports contains chapters to be included in the Model Criminal Code. MCCOC issued Discussion Papers relevant to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill* in 1993² and 1994,³ and its 1995 *Final Report, Chapter 3, 'Theft, Fraud, Bribery and Related Offences'*, contains the foundation of the offences proposed in the Bill.⁴

1 *Exhibit No. 11: Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, Final Report: Chapter 3, Theft, Fraud, Bribery and Related Offences*, December 1995, (MCCOC, Chapter 3) p. iii

2 Dealing with theft, fraud, robbery and burglary, *Exhibit No. 11: MCCOC, Chapter 3*, p. vi

3 Dealing with blackmail, forgery, bribery and secret commissions, *Exhibit No. 11: MCCOC, Chapter 3*, p. vii

4 Explanatory Memorandum, p. 2

The Bill

- 1.3 The *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 1999* (the Bill) proposes to amend the *Criminal Code Act 1995*. Its introduction is another stage of the implementation of the Model Criminal Code by the Commonwealth. While the offences in Schedule 1 of the Bill are based on the 1995 Final Report of MCCOC, the Explanatory Memorandum notes the offences in the Bill also take into account recommendations of the Gibbs Committee which, in 1991, recommended an overhaul of the *Crimes Act 1914* theft, fraud, and corruption offences.⁵
- 1.4 The first schedule of the Bill proposes to amend the *Criminal Code Act 1995* by:
- inserting new provisions into Chapter 2 (General Principles of Criminal Responsibility);
 - inserting a major part (theft, fraud, bribery and related offences) of the new Chapter 7 (The Proper Administration of Government); and
 - inserting part (offences directed towards protecting postal and communications services) of the new Chapter 10 (National Infrastructure).⁶
- 1.5 The second schedule of the Bill contains amendments to other legislation and proposes to repeal more than 250 offences that will not be necessary once the *Criminal Code* offences are available.⁷
- 1.6 The first stage of the Commonwealth's *Criminal Code*—the general principles of criminal responsibility—was passed in 1995, and the remaining stages are being developed progressively. This Bill, according to the Attorney-General's Department, will represent 'the most substantial step forward towards the completion of the Commonwealth *Criminal Code*.⁸ It is also said to represent a 'major step forward in the development of the Model Criminal Code and national consistency.'⁹

5 Explanatory Memorandum, pp. 2-3. The Gibbs Committee (comprising Sir Harry Gibbs, GCMG, AC, KBE, the Hon. Justice Ray Watson and Mr Andrew Menzies, AM, OBE) carried out a Review of Commonwealth Criminal Law.

6 Explanatory Memorandum, p. 1

7 Explanatory Memorandum, p. 1

8 Attorney-General's Department (AG's), *Submissions*, p. S1

9 AG's, *Submissions*, p. S2

The inquiry

- 1.7 The Bill was introduced into the House of Representatives on 24 November 1999 and on 4 April 2000 the Minister for Justice and Customs, Senator the Hon Amanda Vanstone, asked this Committee to inquire into and report on the provisions of the Bill by 26 June 2000. The inquiry was advertised nationally on 8 April and submissions were invited from members of the public, organisations, and professional groups with an interest or responsibility in criminal law issues.
- 1.8 There has been little response to the inquiry by way of submissions or correspondence. While this may be partly a result of the short time provided for submissions to be lodged, some individuals and organisations have commented that the Bill is the product of many years' consultation and consideration by criminal law experts, and there is little to be added.
- 1.9 The Committee held one public hearing, on 15 May 2000, at which evidence was given by representatives of the Attorney-General's Department and the Director of Public Prosecutions.

The report

- 1.10 This brief report reflects the fact that there appear to be no major objections, either by interested groups or individuals, to the contents of the Bill. Broadly, the Committee's concerns relate to:
- the presence of the offence of general dishonesty in the Bill (set out in proposed s.135.1 of the Bill and discussed in Chapter 2 of this report);
 - the inclusion of the offence of organised fraud (proposed s.135.3 and discussed in Chapter 3 of the report); and
 - the breadth of proposed s.137.1 (giving information that is false or misleading if the recipient is a Commonwealth entity...). The Committee's consideration of this offence is in Chapter 3.
- 1.11 While the Committee acknowledges that it has not received evidence that causes it to have grave concerns over the provisions of the Bill, it does wish to highlight (in Chapters 2 and 3) those issues on which it has some reservations and to suggest ways in which those reservations may be addressed.