

ADDITIONAL COMMENTS BY LIBERAL SENATORS

1.1 Liberal Senators support the aim of the Bill to enhance the capacity of the Commonwealth to prevent, investigate and prosecute organised criminal activity. We also endorse the view of the committee that some provisions in the Bill go further than necessary to achieve this purpose and, in doing so, unnecessarily intrude on the rights of individuals. Liberal Senators support the recommendations in the committee's report which seek to remedy this but query whether those recommendations go far enough. We consider that some additional changes to the Bill proposed by the Law Council are worthy of consideration. In particular, the Law Council proposed:

- (a) defining the term 'facilitate', which is used in the proposed association offences, to ensure it does not capture activities that are only of peripheral relevance to the commission of an offence;¹
- (b) making the test under subsection 3L(1A) of the Crimes Act, for when data accessible from electronic equipment located at search premises may be copied, 'reasonable grounds to *believe* that the data constitutes evidential material';²
- (c) limiting the power of an ACC examiner to detain an uncooperative witness to circumstances where the examiner believes, on reasonable grounds, that it is necessary to detain the person in order to secure that person's attendance before the court;³ and
- (d) deleting proposed subsection 34C(3) of the ACC Act which would provide that a certificate issued by an ACC examiner in relation to an alleged contempt is *prima facie* evidence of the matters it sets out.⁴

1.2 In relation to the organised crime offences proposed by the Bill, the Law Council pointed out that:

In recent years, in the name of tackling serious and organised crime, law enforcement agencies have been provided with significantly enhanced investigative powers and new offences and civil proceedings have been created to allow law enforcement agencies to target the money trail.

It is of concern that despite the reported success of these measures, there is a suggestion that there is still a need for further fundamental law reform, to alter the very principles of criminal responsibility.

1 *Submission 12*, p. 9. Under proposed subparagraphs 390.3(1)(c) and 390.3(2)(d) of the Criminal Code, to constitute an offence, the associations must 'facilitate' the other person engaging in crime.

2 *Submission 12*, p. 22-23.

3 *Submission 12*, p. 21.

4 *Submission 12*, pp 18-19.

If every time law enforcement agencies feel impotent in the face of a particular type of offending, we amend not just the content of our laws but the manner in which we apportion criminal responsibility and adjudicate guilt, then the integrity of our criminal justice system will quickly be compromised.⁵

1.3 This caution applies equally to the provisions of the Bill proposing expanded search and information gathering powers and new powers for the ACC to deal with uncooperative witnesses. It is not sufficient justification for a continual expansion in the powers available to law enforcement agencies and the reach of criminal offences to point simply to the difficulties allegedly faced in pursuing particular groups of offenders. The task of law enforcement officers and prosecutors may well be challenging, but to address this by diluting basic criminal justice principles, and oversimplifying the arrest, prosecution and imprisonment of people⁶ would jeopardise the most fundamental individual rights.

1.4 Liberal Senators consider that changes proposed by the Bill and the Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009 ought to be viewed as being at the outer limit of the powers the Parliament will countenance for law enforcement agencies. Furthermore, we intend to monitor closely through the Estimates process whether these powers are being exercised appropriately and whether practice bears out arguments that they are necessary to tackle organised crime.

1.5 Finally, this Bill was referred to the committee for inquiry in mid-September during a period in which the committee has been conducting several other legislation inquiries. The capacity of the committee to properly scrutinise legislation is hampered by the imposition of short deadlines when multiple inquiries are referred. As Professor Roderic Broadhurst and Ms Julie Ayling noted in their submission, the imposition of short timeframes for inquiries also impedes individuals and organisations providing the committee with their views on the proposed legislation.⁷ There is only one schedule in the Bill which contains urgent amendments. It is unclear to Liberal Senators why these amendments could not have been dealt with separately to enable more thorough consideration of a Bill which introduces major new offences and powers.

Senator Guy Barnett
Deputy Chair

Senator Mary Jo Fisher

5 *Submission 12*, p. 7.

6 *Submission 12*, p. 21.

7 *Submission 6*, p. 7.