

Crimes, Confiscation and Evidence Acts (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Act.

Clause 2 provides for the Act (except Parts 3 and 4) to come into operation on the day on which it receives the Royal Assent.

Part 3 is deemed to have come into operation on 1 July 1998.

Part 4 is deemed to have come into operation on 20 October 1998.

PART 2—CRIMES ACT 1958

Clause 3 The amendments made by clause 3 to section 464ZD of the **Crimes Act 1958** ensure that all persons on whom forensic procedures are conducted pursuant to the provisions of Subdivision (30A) are provided with a copy of every forensic report as soon as practicable. The main provisions under which forensic procedures currently are conducted are specified so that the scope of this requirement is clear.

In addition, section 464ZE is amended to provide that a failure to provide a copy of every forensic report to the person within 7 days of its receipt by the prosecution will result in evidence obtained by the forensic procedure being inadmissible subject to the exceptions provided in sub-sections 464ZE(2) and (2A)).

With these general requirements in place, the particular requirements of section 464ZF(11) (concerning the provision of forensic reports to those found guilty of forensic sample offences) and 464ZGE(12) (concerning the provision of analyses to persons volunteering samples in accordance with sections 464ZGB to 464ZGD) are repealed.

- Clause 4 inserts new section 590 into the **Crimes Act 1958**. New section 590 contains a transitional provision in relation to the amendments made by clause 3.

PART 3—CONFISCATION ACT 1997

- Clause 5 The amendments made by clause 5 to section 157 of the **Confiscation Act 1997** clarify the operation of these transitional provisions. They ensure that the **Crimes (Confiscation of Profits) Act 1986** continues to apply to serious offences (within the meaning of that Act) for which a criminal proceeding was begun prior to the commencement of Part 2 of the **Confiscation Act 1997** (being 1 July 1998), regardless of whether the defendant was convicted before or after that commencement.

The amended provisions expressly provide that in such circumstances, any application or order may be made, direction given, warrant issued or other thing done under the **Crimes (Confiscation of Profits) Act 1986** that could have been made, given, issued or done under that Act had it not been repealed. Further, they provide that anything made, given, issued or done under that Act after its repeal by virtue of this section has the like effect as it would have had if that Act had not been repealed.

These amendments are deemed to operate from 1 July 1998.

PART 4—EVIDENCE ACT 1958

- Clause 6 inserts new sections 19A to 19E into Division 5 of Part I of the **Evidence Act 1958**. These sections provide additional powers to commissions established by the Governor in Council. They are deemed to have come into operation on 20 October 1998.

Section 19A provides that, in relation to commissions, references in Division 5 of Part I to a "document" includes a reference to a thing. The provisions of Division 5 are also applied to coroners, the WorkCover Authority and various other statutory authorities, agencies and office holders, with the effect that no other statute or law can restrict or prevent these bodies or persons from complying with their obligations under Division 5.

Section 19B allows the presiding commissioner to exclude the public or specified persons from a hearing, where this will facilitate the conduct of the inquiry or is in the public interest.

The commissioner may also prohibit publication of reports of proceedings or information gained from the hearing. Orders prohibiting publication must be conspicuously displayed and a breach of such an order attracts a penalty of 30 penalty units or 3 months imprisonment.

Section 19C provides that persons providing evidence to a commissioner may not refuse to do so on grounds of the privilege against self-incrimination. However, such evidence will not be admissible against the person in any criminal proceedings other than for perjury or giving false information.

Section 19D provides that persons are not excused from providing evidence to a commissioner on the grounds of legal professional privilege. However, if a person does refuse to provide the evidence on that basis, the commissioner may require the provision of the evidence at a closed hearing.

Section 19E confers on the commissioners of a commission powers to enter and inspect any place and to take possession of documents and things located there and to copy documents. A commissioner may also provide written authorisation to a member of the police force to carry out these functions, subject to various time limits being imposed. A commissioner may then release documents or things taken into his or her possession and may require an undertaking from the person to whom they are being released. Failure to comply with an undertaking attracts a penalty of 10 penalty units.

