

Crimes (Custody and Investigation) Bill

EXPLANATORY MEMORANDUM

Outline

The Bill deals with the powers and duties of the police and other investigating officials in relation to persons suspected of criminal offences. It implements recommendations made by the Consultative Committee on Police Powers of Investigation in its report entitled *Custody and Investigation*. In accordance with those recommendations, when a suspect is taken into custody, investigators will be empowered to delay bringing him or her before a court for a reasonable time. During that time they will be authorised to conduct questioning or to carry out investigations involving the suspect with his or her consent.

This power is accompanied by two important safeguards. The first is statutory recognition of certain basic rights of suspects which are presently recognized by the common law or by Police Standing Orders. These rights include the right—

- to notify a friend or relative of the suspect's whereabouts;
- to obtain legal advice;
- to have an interpreter present, if the suspect's English is insufficient;
- for a young person to have a parent, guardian or independent person present during questioning;
- for a foreign national to contact the consular office of his or her country; and
- to be notified of the relevant rights.

The Bill does not diminish any additional protection given to suspects at common law.

The second safeguard is a requirement that questioning of a suspect be tape-recorded before an admission made during the questioning can be used in evidence in proceedings for an indictable offence. Evidence of an admission obtained before questioning begins is only admissible if the admission is confirmed and the confirmation is recorded. The court may admit evidence of an admission which was not tape-recorded if there are exceptional circumstances.

NOTES ON CLAUSES

Part 1—Preliminary

Clause 1 sets out the purposes of the Bill.

Clause 2 states that the Act comes into operation when proclaimed. Because it is a package, the whole Act will come into operation at the same time.

Clause 3 states that the *Crimes Act 1958* is called the Principal Act.

Part 2—Amendment of the *Crimes Act 1958*

Clause 4 repeals s. 460 of the *Crimes Act*.

Clause 5 inserts a new Division 30A in Division 1 of Part III of the Act.

New s. 464 defines the terms used in the new provisions. A wide meaning is given to the term "custody", although it excludes suspects in the de facto custody of undercover operatives. "Investigating official" includes police and other Commonwealth or State investigators.

New s. 464A requires that a person taken into custody for an offence must be released (unconditionally or on bail) or brought before a court or justice within a reasonable time. *New s. 464A (2)* allows questioning and consensual investigations involving the suspect during the reasonable time. *New s. 464A (3)* requires investigators to caution suspects. *New s. 464A (4)* sets out matters to be considered in determining what constitutes a reasonable time.

New s. 464B allows questioning and consensual investigations involving a suspect already in prison or a police gaol in relation to other offences. Upon application to, and order by, an appropriate court (a Magistrates' Court or, in relation to persons under 17 years, a children's court), the suspect may, with his or her consent, be remanded into the custody of an investigating official for a period determined by the court.

New s. 464C gives a suspect in custody a statutory right to communicate with a friend or relative and a legal practitioner before any questioning or investigation begins.

Exceptions are provided for cases in which—

- an accomplice would be likely to escape; or
- evidence would be likely to be destroyed or fabricated; or
- delay in questioning or investigation would endanger people's safety.

New s. 464D requires investigators to arrange for an interpreter to be present during questioning or investigation of a person in custody who does not have sufficient knowledge of English to understand the questioning.

New s. 464E relates to the questioning of persons under 17 who are in custody. Investigators must arrange for a parent or guardian, or if neither is available, an independent person, to be present. This requirement is subject to similar exceptions to those in *s. 464C*.

New s. 464F gives foreign nationals a right to communicate with their consular office. This right is also subject to similar exceptions to those in *s. 464C*.

New s. 464G requires the cautioning and notification of rights to be tape-recorded, if the person is suspected of an indictable offence.

New s. 464H deals with the admissibility of admissions made by suspects to investigators. In proceedings for an indictable offence, evidence of an admission is not admissible unless it was tape-recorded or is confirmed on tape. If the admission is made during questioning, the whole of the questioning must be recorded. A court may, however, admit evidence which would otherwise be inadmissible under this section if it is satisfied that there are exceptional circumstances which justify the reception of the evidence.

New s. 464I makes it clear that the requirements of the sections dealing with suspects' rights are cumulative.

New s. 464J states that the new provisions do not affect:

- the right to silence; or
- the requirement that an admission must be voluntary; or
- the discretion of the courts to exclude evidence obtained unfairly, illegally or improperly.

Part 3—Transitional Provisions

Clause 6 contains transitional provisions.