

# Independent Commissioner Against Corruption (Consequential and Related Amendments) Bill 2017

## SERIAL NO. 35

### STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

This Bill is compatible with human rights as defined in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

#### Overview of the Bill

The Bill amends a number of Acts in relation to the establishment of the Independent Commissioner Against Corruption (ICAC) and repeal of the *Public Interest Disclosures Act* (PID Act). An associated Bill to create the ICAC and repeal the PID Act is also currently before the Legislative Assembly (the ICAC Bill).

In particular, the Bill:

- amends the *Correctional Services Act* to facilitate the ICAC's access to Correctional premises and to prisoners as required;
- amends the Criminal Code to update the offences and penalties of a number of offences concerning government corruption which the ICAC can investigate;
- provides that the ICAC can handle and disclose spent convictions for certain purposes by amending the *Criminal Records (Spent Convictions) Act*;
- amends the *Legislative Assembly (Disclosure of Interests) Act* to provide that the ICAC has access to the register of interests for the Legislative Assembly;
- amends the *Procurement Act* to guarantee that the ICAC has complete independence as to who it chooses to contract to conduct investigative and legal work;
- amends the *Police (Special Investigative and Other Powers) Act* to give the ICAC the power to apply for warrants to conduct controlled operations;
- amends the *Surveillance Devices Act* to give the ICAC the power to apply for warrants to use and install surveillance devices;
- amends the *Witness Protection (Northern Territory) Act* to provide that witnesses for the ICAC can be considered for the witness protection program, and that the ICAC can apply to the court for a witness to be given an assumed identity; and
- amends the *Telecommunications (Interception) Northern Territory Act* to give the ICAC the power to intercept telecommunications.

## **Human rights implications**

This Bill engages the following rights referred to in the International Convention on Civil and Political Rights (ICCPR).

### *Equality before the law – Articles 14(1) and 26 of the ICCPR*

Article 14(1) of the ICCPR provides that all persons shall be equal before the courts and tribunals, and Article 26 provides that all persons shall be equal before the law.

The Bill allows the ICAC to authorise controlled operations. This will allow an ICAC investigator to engage in certain limited, specified criminal activity for the purpose of investigating corruption. It exempts the investigator from prosecution for the offence that has been authorised. It therefore raises questions about equality before the law.

While an authorisation to conduct a controlled operation effectively provides immunity from prosecution for a certain offence, this is done in accordance with laws that apply equally to all persons and only for a legitimate objective.

A warrant to conduct a controlled operation is issued by the ICAC in accordance with law for the limited purpose of investigating corrupt conduct or anti-democratic conduct. Before it can be authorised, it requires the ICAC to be satisfied on reasonable grounds of specified criteria. It cannot authorise conduct that involves serious risks to the health and safety of any person, or that would involve a sexual offence, or that would involve the unlawful loss of goods or serious damage to property (other than illicit goods).

The controlled operations powers given to the ICAC under this Bill are no greater than those already given to NT Police, and are similar to powers equivalent bodies have in other jurisdictions. They are subject to review and monitoring by an independent statutory officer.

### *Privacy – Article 17 of the ICCPR*

Article 17 of the ICCPR requires that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

The Bill authorises the ICAC to obtain warrants to install surveillance devices, view spent convictions, and puts in place the framework that will allow the ICAC to intercept telecommunications activities in accordance with warrants obtained under Commonwealth legislation. These are interferences with privacy and correspondence.

However, the interferences are only authorised in accordance with laws of general application, and for necessary purposes which are not arbitrary.

The installation, use, and retrieval of surveillance devices requires a warrant issued by a judicial officer, who must be satisfied that there are reasonable grounds for issuing the warrant. The Bill contains extensive reporting and oversight measures by an independent statutory authority, and also requires reporting back to the judicial officer who issued the warrant. This framework of control and accountability is consistent with the framework imposed on Police and equivalent interstate bodies in relation to surveillance devices.

The amendments to the *Telecommunications (Interception) Northern Territory Act* provides a strict accountability framework for warrants obtained under the *Telecommunications (Interception and Access) Act 1979* (Cth). This mirrors the existing framework imposed on Police, and requires regular reports both to the responsible Northern Territory and Commonwealth Ministers. It also provides for an independent statutory body to inspect and report on whether the powers are being used appropriately.

The ability of the ICAC to view spent convictions is a limited power for the purpose of satisfying the ICAC that staff entrusted with the ICAC's considerable coercive powers have integrity. While this does interfere with the usual rights of these staff, employment with the ICAC is voluntary, and the interference is justifiable in the interests of minimising the chances of unsuitable persons becoming ICAC investigators, which could lead to inappropriate use of powers. Ultimately, this is a measure to protect individual rights from inappropriate interference.

It can also be noted that controlled operations do not allow authorisation to commit an offence that would involve entering or search private premises without a suitable authorisation, such as a search warrant issued under appropriate legislation.

## **Conclusion**

This Bill confers powers that are necessary for the ICAC to be able to carry out its public interest function of preventing public sector corruption. Prevention of government corruption prevents government power being applied in an arbitrary way which would interfere with equality before the law.

While the Bill does effectively provide for immunity from prosecution in certain narrow circumstances, it does so in accordance with laws of general application for a legitimate objective. Only reasonable and proportionate uses of this power are permitted by the Bill.

The Bill does interfere with the privacy and correspondence of persons, but in a lawful, reasonable, and proportionate manner in order to achieve a legitimate objective. It does not authorise unlawful or arbitrary interferences with these rights.

The Bill is therefore compatible with human rights.