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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COURT SECURITY (CONSEQUENTIAL AMENDMENTS) BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Attorney-General,
the Hon Mark Dreyfus, QC MP)

COURT SECURITY (CONSEQUENTIAL AMENDMENTS) BILL 2013

GENERAL OUTLINE

The Court Security (Consequential Amendments) Bill 2013 (the Bill) contains amendments to the *Public Order (Protection of Persons and Property) Act 1971* (Public Order Act) arising from the development of the Court Security Bill 2013.

The Court Security Bill provides a new framework for court security arrangements for federal courts and tribunals. The new framework will meet the security needs of the modern court environment by providing a range of powers for security officers and limited powers for authorised court officers to ensure that court premises are safe and secure environments. The Court Security Bill replaces the current security framework for federal courts and tribunals under Part IIA of the Public Order Act. Therefore, a number of consequential amendments are made to the Public Order Act.

The Bill repeals section 13A of the Public Order Act, which only applies to the Federal Court, and removes the courts and tribunals covered by the Court Security Bill from the application of overlap provisions of the Public Order Act. Regulation changes to remove these courts and tribunals from the operation of Part IIA will also be made separately.

As a result of these proposed amendments, Part IIA of the Public Order Act will deal with security of prescribed 'investigative authorities', which have power to require the production of documents or answering of questions. Currently the Integrity Commissioner and the Australian Crime Commission are prescribed for this purpose.

FINANCIAL IMPACT

There will be no significant financial implications in implementing the Bill.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Court Security (Consequential Amendments) Bill 2013

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Bill 2013 contains amendments to the Public Order Act arising from the development of the Court Security Bill 2013.

The Bill repeals Section 13A of the Public Order Act, which only applies to the Federal Court, and removes the courts and tribunals covered by the Court Security Bill from the application of overlap provisions of the Public Order Act.

Human Rights Implications

The Bill makes a number of relatively minor consequential amendments. The only applicable right or freedom engaged is Article 14(2) of the International Covenant on Civil and Political Rights. This Article protects the right of a person charged with a criminal offence ‘to be presumed innocent until proved guilty according to law’.

The Bill puts a reverse evidential burden on a defendant in relation to whether an offence under subsection 12(2) of the Public Order Act did not occur due to the premises being used exclusively in connection with a court as defined under the Court Security Act. The reverse burden provision is consistent with Commonwealth criminal law policy and the existing provisions in the Public Order Act, and is reasonable, necessary and proportionate in the circumstances. The penalties for the offences are low and the offences only impose an evidential burden, as the prosecution must still disprove the matters beyond reasonable doubt if the defendant discharges the evidential burden.

Conclusion

This Bill is compatible with human rights as to the extent that it may limit human rights, those limitations are reasonable and proportionate.

NOTES ON CLAUSES

Part 1 – Preliminary

Clause 1 – Short title

1. This clause specifies that when the Bill is enacted, it is to be cited as the *Court Security (Consequential Amendments) Act 2013*.

Clause 2 – Commencement

2. This clause contains a table setting out when the various parts of the Bill are to commence. Proposed sections 1 to 3 of the Bill (and anything else in the Bill not otherwise covered in the table) will commence on the day on which the Bill receives the Royal Assent. Proposed Schedule 1 will commence at the same time as section 3 of the *Court Security Act 2013* (Court Security Act).

3. Section 3 of the Court Security Act is to commence on a day to be fixed by proclamation. However, if the provisions do not commence within 6 months of the day on which the Court Security Act receives the Royal Assent, they are to commence on the day after the end of that period.

4. These commencement provisions allow time for the courts to put in place the necessary practices and procedures for the exercise of security powers by officers under the Bill, as well as time for the Government to amend the *Public Order (Protection of Persons and Property) Regulations 1999* to remove references to the courts and tribunals covered by the Court Security Act.

Clause 3 – Schedule(s)

5. The Schedule to this Bill will amend the Public Order Act as set out in the Schedule.

Schedule 1 – Amendments

Public Order (Protection of Persons and Property) Act 1971

Item 1 – At the end of section 12

6. This item provides that the offences contained in section 12(2) of the Public Order Act do not apply to Commonwealth premises being used exclusively in connection with a court as defined in the Court Security Act. Relevant provisions of the Court Security Act will instead apply. In particular, proposed section 42 of the Court Security Act provides that it is an offence to unreasonably obstruct entry to, or activity on, court premises. Proposed Divisions 3 and 4 of the Court Security Act deal with the powers of security officers or authorised court officers appointed under that Act to give directions to persons on court premises.

7. The note to item 1A cross-references subsection 13.3(3) of the *Criminal Code* and clarifies that the defendant bears an evidential burden if he or she wants to rely on the

exception that an offence under this item did not occur due to the premises being used exclusively in connection with a court as defined under the Court Security Act. This is consistent with Commonwealth criminal law policy as set out in the Criminal Code.

Item 2 – Part IIA (heading)

8. This item amends the title of Part IIA to refer to investigatory authorities. This terminology appropriately reflects the bodies that will remain prescribed under Part IIA once the courts covered by the Court Security Act are removed from the operation of the Public Order Act.

Item 3 – Section 13A (definition of *authorised officer*), Item 4 – Section 13A (paragraph (b) of the definition of *authorised officer*)

9. Items 3 and 4 amend the definition of authorised officer to refer to the new terminology of ‘investigatory authority’ rather than ‘court’.

Item 5 – Section 13A

10. This item inserts a new definition for ‘authority premises’ for an investigatory authority. This definition is intended to replace the definition of court premises and reflects the nature of the bodies that will remain prescribed under Part IIA once the courts covered by the Court Security Act are removed from the operation of the Public Order Act.

Item 6 Section 13A (definition of *court*)

11. This item repeals the definition of ‘court’. This term will be replaced by ‘investigating authority’.

Item 7 – Section 13A (definition of *court premises*)

12. This item repeals the definition of ‘court premises’. This term will be replaced by ‘authority premises’.

Item 8 – Section 13A

13. This item inserts a new definition for ‘investigatory authority’. This definition is intended to replace the definition of court and reflects the nature of the bodies that will remain prescribed under Part IIA once the courts covered by the Court Security Act are removed from the operation of the Public Order Act.

Item 9 – Section 13AA

14. This item repeals section 13AA of the Public Order Act as it only applies to the Federal Court. It will be replaced by proposed section 6 of the Court Security Act.

Items 10 to 19 – Sections 13B, 13C, 13D and 13E

15. Items 10 to 19 replace references to ‘court’ and ‘court premises’ with ‘investigatory authority’ and ‘authority premises’ respectively.

Item 20 – Subsection 13E(2)

16. Section 13E deals with directing a person to leave court or authority premises, including if the authorising officer is not satisfied that the person has a proper reason for being on the premises. Unamended subsection 13E(2) provides that a person has a proper reason for being on court premises if they want to attend the hearing of the proceedings in the court.

17. Unlike court hearings, which are generally open to the public, not all investigatory authorities will hold public hearings. Therefore, item 20 updates terminology as well as making it clear that the ‘proper reason’ provision in subsection 13E(2) only applies if the hearing is in public. This reflects the nature of the bodies that will remain prescribed under Part IIA once the courts covered by the Court Security Act are removed from the operation of the Public Order Act.

Item 21 – Paragraph 13E(3)(b)

18. This item replaces references to ‘court premises’ with ‘authority premises’.

Item 22 – Subsection 13E(4)

19. Unamended subsection 13E(4) provides that except as provided in subsection (1), a person is entitled to enter and remain on court premises if there is room for the person on the premises.

20. Item 21 replaces the term ‘court premises’ with ‘authority premises’ and as with item 20 above, clarifies that subsection 13E(4) only applies in relation to public hearings of investigatory bodies. This reflects the nature of the bodies that will remain prescribed under Part IIA once the courts covered by the Court Security Act are removed from the operation of the Public Order Act.

Item 23 – 13F (heading) and Item 24 – Section 13F

21. These items replace references to ‘court premises’ with ‘authority premises’.

Item 25 – Subsection 13G(1) and Item 26 – Subsection 13G(2)

22. Items 25 and 26 replace references to ‘court’ and ‘court premises’ with ‘investigatory authority’ and ‘authority premises’ respectively.