PORTFOLIO: WESTERN AUSTRALIA POLICE

ISSUE: CRIMINAL INVESTIGATION (COVERT POWERS) BILL 2011

KEY LINES:
Following is information on (i) revised consideration of prescribed relevant offences and (ii) the definition of “relevant offence” adopted in other jurisdictions.

BACKGROUND:
This information is provided as a result of committee stage debate on Thursday 14 June 2012 on the Criminal Investigation (Covert Powers) Bill 2011 (“the Bill”).

CURRENT SITUATION:

Item (i)
In regard to the power to prescribe relevant offences the revised position is as follows:

An amendment has been drafted to paragraph (b) of the definition of “relevant offence” in clause 5 of the Bill. The amendment seeks to place some restriction or limitation on the face of the Bill to the types of relevant offences that may be prescribed in regulations. The amendment is as follows:

When in Committee on the Criminal Investigation (Covert Powers) Bill 2011:

Clause 5

Attorney General — To move:

Page 6, lines 26 and 27 — To delete the lines and insert:

(b) an offence not covered by paragraph (a) that is prescribed for the purposes of this definition, being an offence under any of the following Acts —

(i) the Classification (Publications, Films and Computer Games) Enforcement Act 1996;

(ii) The Criminal Code;

(iii) the Firearms Act 1973;

(iv) the Fish Resources Management Act 1994;

(v) the Misuse of Drugs Act 1981;

(vi) the Prostitution Act 2000;

(vii) the Weapons Act 1999.

The listed Acts were included because it was acknowledged during drafting that it may be difficult to limit the scope and breadth of offences in Regulations using the 6 categories recommended by
the Joint Working Group ("JWG"), namely child pornography, gaming, fisheries, firearms, prostitution and corruption.

In regard to the offences currently under consideration for being prescribed in regulations they are as follows:

**Western Australia Police**

**The Classification (Publications, Films and Computer Games) Enforcement Act 1996**
- Section 59 – Indecent or obscene articles, offences as to
- Section 61 – Sale or supply of submittable or RC publications
- Section 62 – Possession or copying of RC publications
- Section 65D – Sale of restricted publications to minors
- Section 88 – Sale or supply of certain computer games to minors

**The Criminal Code**
- Section 69 – Forcibly entering land
- Section 191 – Procuring person to be prostitute etc.
- Section 206 – Supplying intoxicants to people likely to abuse them
- Section 338E(2) – Stalking
- Section 428 – Possession of stolen or unlawfully obtained property
- Section 436 – Unlawful fishing/taking fish
- Section 440A(3)(c) – Unlawful use of computers
- Section 557E – Possessing things to assist unlawful entry to places
- Section 557 J – Declared drug traffickers, consorting by

**The Firearms Act 1973**
- Nil.

**The Misuse of Drugs Act 1981**
- Section 5(1)(e) – Offence concerned with prohibited drugs and prohibited plants in relation to premises

**The Prostitution Act 2000**
- Section 5 – Seeking prostitute in or in view or within hearing of public place
- Section 6 – Seeking client in or in view or within hearing of public place
- Section 9 – Promoting employment in prostitution industry
- Section 15 – Acting as a prostitute for a child
- Section 20 – Prostitution at place where child present
- Section 21 – Allowing child to be at place involving prostitution

**The Weapons Act 1999**
- Nil.
An offence against:

Fish Resources Management Act 1994

Section 51 - Possession limits for fish, regulations and offences as to
Section 74 - Contravening management plan
Section 77 - Contravening condition of managed fishery licence or managed fishery permit, offence
Section 96 - Contravening licence, offence
Section 155(2)(b) - Trafficking in commercial quantity of priority fish, offence
Section 173 - Purchase or sale of fish taken unlawfully, offence
Section 199 - False or misleading information to fisheries officer, offence

An associated offence related to any offence listed in paragraph (a)

Fish Resources Management Regulations 1995

Regulation 64 - Commercial fishers etc., duties of as to records and returns

Australian Crime Commission

The Australian Crime Commission (WA Branch) has advised that at this point there are no relevant offences that would need to be prescribed to enable the ACC to utilise the provisions in the Bill.

Item (ii)

In regard to clarifying the definition of “relevant offence” provided for in clause 3 of the Model Laws Final Report it was as follows:

“relevant offence” means –

(a) an offence against the law of this jurisdiction punishable by a maximum term of imprisonment of 3 years or more; or

(b) an offence against the law of this jurisdiction that is prescribed by the regulations.

The JWG did recommend in their Final Report that the definition of “relevant offence” in clause 3 should be changed from that proposed in the Discussion Paper so that jurisdictions should be able to prescribe offences that fall below the three year threshold from the following categories: child pornography, gaming, fisheries, firearms, prostitution and corruption. However, these 6 categories were not subsequently included in the above definition.

In regard to the definition of “relevant offence” in other jurisdictions the situation is as follows:

The Australian Capital Territory and Tasmania have adopted this definition of “relevant offence” for all controlled operations. Likewise, it is proposed to be adopted by the Northern Territory.

Victoria and New South Wales have hybrid schemes. Victoria has adopted this definition for its cross-border and local major controlled operations schemes. A local minor controlled operation can
be carried out for “any offence of less than 3 years”. In New South Wales a local controlled operation may be carried out for “any offence”, whereas a cross-border controlled operation may only be authorised for a “relevant offence”.

The Commonwealth, Queensland and South Australia have not adopted the model laws definition of “relevant offence”.

COMMONWEALTH

Serious Commonwealth offence

*Meaning of serious Commonwealth offence*

(1) For the purposes of this Part, serious Commonwealth offence means a Commonwealth offence that:
(a) involves a matter mentioned in subsection (2); and
(b) is punishable on conviction by imprisonment for a period of 3 years or more.

Subsection (2) includes 28 further offences such as theft, fraud, tax evasion, illegal gambling, slavery and firearms offences.

QUEENSLAND

Section 229 of the Police Powers and Responsibilities Act 2000 defines “relevant offence”.

Relevant offence means —
(a) A seven year imprisonment offence; or
(b) An indictable offence included in schedule 2.

Schedule 2 includes a list of 30 further “relevant offences” of which 9 have a penalty of imprisonment of less than 3 years.

SOUTH AUSTRALIA

Section 3(1) of the Criminal Investigation (Covert Operations) Act 2009 defines the term “serious criminal behaviour”. South Australia does not mention the term “relevant offence”.

serious criminal behaviour means behaviour involving the commission of—
(a) an indictable offence; or
(b) an offence against the Controlled Substances Act 1984; or
(c) an offence against section 52, 53, 72 or 74 of the Fisheries Management Act 2007; or
(d) an offence against section 63 or 75 of the Lottery and Gaming Act 1936; or
(e) an offence against section 47(1), (2) or (4), 48(1), 48A(1), 51(1) or 60(1) of the National Parks and Wildlife Act 1972.

CURRENT AS AT: 11 September 2012