OPENING STATEMENT by Civil Liberties Australia, Bill Rowlings CEO

to the House of Representatives

Standing Committee on Social Policy and Legal Affairs'

consideration of the

Crimes Legislation Amendment (Powers and Offences) Bill 2011

Thank you for the opportunity to provide a few opening remarks.

Our submission comments in detail on the proposed provisions, and Benjamin Smith will be happy to answer questions on the detail.

But Civil Liberties Australia would like to make some general points, not able to be covered in responses to itemized provisions.

Overall, this proposed legislation would take Australia significantly further down a path where a centralized database – or linked series of databases – controlled by a bureaucratic and police/security elite, is one of the ways the nation is administered, how it is "policed".

And the proposed increased centralized powers do not come in isolation. They build on the National Criminal Intelligence Fusion Capability, which already exists. Not to mention the Criminal Assets Confiscation Taskforce, which already exists.

Data held by these bodies confiscated $41 million worth of assets in the past year, according to a media release by then Justice Minister Brendan O'Connor as recently as November 2011.

Given those successes by the police and the Fusion Centre and the Assets Confiscation Taskforce, it is difficult to understand how the departments and agencies and the police appearing before this Committee can justify the need for any extra powers. They are already having enormous success, as the Minister has reported.

If the argument is that the powers are needed to target national criminal groups, then it is difficult to understand how. For example, in October, the Australian Crime Commission's annual report said the ACC had disrupted 34 criminal groups and identified 50 previously unknown criminal targets in 2010-11.

They achieved those outcomes using the current legislation, and intelligence sharing, and data matching – there is no evidence, from their own annual report, that they need more powers. At this success rate, it is highly likely they will have all major criminal groups under control within five years, ten at most.

In the past few months, Queensland has come into the national intelligence sharing arrangement through amendments to the Criminal Organisation Act. But even before that, from 2002 to 2011, Queensland alone had seized more than $31 million in assets and frozen $125 million.

Under Proceeds of Crime legislation, all states and territories are achieving seizures of assets and freezing of funds of similar or even larger amounts. As well, they and the Australian

federal police and associated agencies are using Unexplained Wealth laws to seize even more funds.

So, there is no evidence available to CLA, or to this committee we would suggest, that the legislative changes proposed here to increase the rate of assets seizure and forfeiture of funds are at all needed.

Quite the contrary. All the published evidence shows that the existing legislation is more than adequate to tackle organized crime and the Mr Bigs of crime, if the agencies continue to operate competently under existing laws, as their reported recent successes indicate.

There is one other major point that I think gets lost when we appear before Committees like this one…and like the Law Enforcement Committee which is right at this very moment considering major expansion to the Unexplained Wealth laws in another committee room in this building.

That point is that the Committees, the Parliament , are changing the Australian democracy by introducing increasingly intrusive legislation which strips away layers of privacy with each new set of amendments, or each new sets of clauses. Each evolution diminishes what we all know as a "fair go", and allows more prying by more uncontrolled eyes into our personal and private lives.

The Prime Minister made a statement at CHOGM in Perth in October 2011. I will, with permission, table our Australia Day letter which congratulates her and puts her statement in context. She said.

> *"We in our country have had to work through our own domestic responses and international work on counter-terrorism. But we've always brought the perspective to that, that the purpose of terrorism is to cause us to be afraid to live our lives and enjoy our freedoms. We shouldn't, in any response to terrorism, effectively give terrorists what they were seeking in the first place, which is driving us to live differently, or with less democracy, or less freedom than we had initially."*

You can replace the word "terrorism" with "organised crime". We should not allow organised crime to drive the overwhelming majority of innocent Australians to live differently, or with less democracy or less freedom – or less privacy, or less security of our personal information and data – than we have now.

To allow massive cross-matching of personal data, which is what is envisaged in this legislation, would be to directly fly in the face of the decisions made by hundreds of parliamentarians in this place for many decades, for more than half a century at least.

They have legislated actively to keep apart the records of the various departments and agencies by not permitting cross-matching…which was entirely possible and even practical using card systems before the advent of computers.

There is no demonstrated reason – or need – to now go against the wisdom of hundreds of your predecessor MPs and allow an open slather approach to data-matching of the lives of all Australians across major government departments and agencies.

Civil Liberties Australia sides with all those parliamentarians who have gone before you, who have not permitted the type of wholesale data cross-matching that these provisions would

allow. We ask you to make your decisions in favour of the Australian people, their privacy, and the basic notion of a "fair go" free of government surveillance…and not on the basis of the administrative convenience of the bureaucracy, the police and the agencies of government.

The thin blue line of police protects us from crime.

But it is the thin line of a mere few hundred MPs in this place who protect us from unreasonable intrusion by the police and the bureaucrats into the lives of the overwhelming majority of Australians who are innocent, who are not the Mr Bigs of crime, and who are not members of organized crime gangs.

ENDS

CLA Civil Liberties Australia
Box 7438 Fisher ACT Australia
Email: secretary [at] cla.asn.au
Web: www.cla.asn.au

To: Standing Committee on Social Policy and Legal Affairs, House of Representatives

From: Civil Liberties Australia CLA *9 January 2012*

By email: spla.reps@aph.gov.au

Crimes Legislation Amendment (Powers and Offences) Bill 2011

Thank you for the opportunity to review the Crimes Legislation Amendments (Powers and Offences) Bill 2011 (Cth). We appreciate the chance to actively participate in the democratic process. We support the legislature's attempt to prosecute serious and organised crime. We also support the attempts at combating corruption and generally making the prosecution and investigation of such a more efficient and consistent process.

We would, however, submit that in the drafting process of this Bill a number of the proposed amendments, either by design or oversight, create situations which are cause for significant concern to us an organisation attempting to safeguard civil liberties.

Executive Summary

The Bill attempts to resolve what are generally described as administrative inefficiencies within the legal process, as well as to address what are seen as inconsistencies within the sentencing and parole supervision areas of law. Some of these measures are described within the Bill at one point as being purely arbitrary. Whilst we would concede that some of the provisions the Bill attempts to remove are both administrative and arbitrary in nature, we would submit that this is how much of the law operates, in some instances how it must operate and in some instances how it is intended to operate. We would agree that many of these administrative measures do, in fact, inhibit the swift operation of justice, but that adequate time is necessary to ensure the law's full and thorough execution.

Civil Liberties Australia is primarily concerned about the effects of the Bill from three main perspectives.

1) The Bill's attempt to circumvent the crucial role the courts play in providing oversight and review into the conduct of law enforcement agencies and their officials;
2) The Schedules and Sections of the Bill which provide for the sharing of foreseeably sensitive information, without providing for scrutiny or security; and
3) The provisions which both create the opportunity for discretion in sentencing for some areas, and remove it in others...both to the detriment of fundamental notions of the rule of law.

Whilst we would concur that is necessary to curb and infringe upon some of these notions of fundamental liberties to ensure order and safety within our communities, we feel it necessary to observe that two conditions must first be satisfied for this to be justifiable. Firstly, the state must show, with due certainty, that to abrogate each liberty in its own right

is absolutely necessary for the administration of justice. Secondly, we would argue that the state must also demonstrate, without doubt, that the abrogation of each right will be unquestionably effective in achieving this end. We argue that in some cases further conditions would arise, but that unless both of these two are fully satisfied, it is inappropriate to proceed. We suggest that many of the Bill's proposed amendments fail to satisfy these requirements. This is discussed in detail below, but it is important to note that CLA considers this an extremely dangerous piece of legislation and one which requires significant adjustment before being acceptable to enact within a free and liberal democracy.

Schedule 1:

Item 1 of Schedule 1:

To increase transparency and reduce complexity contained in provisions governing the collection and use of DNA forensic material.

Prima facie, the section of the Bill dealing with accreditation of DNA testing laboratories can only be viewed as positive. This will not only lead to a greater degree of certainty within the testing process but will also lead to higher levels of confidence within the community regarding the accuracy of the process.

However, section 23WA(1) (listed in the explanatory memoranda as items 4, 5, 6 and 7) purports to reclassify the procedure of taking DNA samples – by buccal swab and pinprick taking of blood into vials – from 'intimate procedures' to 'non intimate procedures'. This is for the purpose of removing the role of the courts in deciding whether to order the procedure or not, and is a dangerous step in further removing scrutiny from the process. Essentially the Bill purports to devolve discretion from the courts to the arresting or investigating AFP officer. Far from being a purely administrative measure, the role of the courts here is to weigh the evidence and determine whether compelling reasons exist to justify subjecting a suspect to this procedure. The reasons given for the proposed change are that it will make the process more efficient and that, regardless, the procedures are neither painful nor overly invasive and should therefore not be subject to the same regulation as more intrusive ones.

This however is negated by several points, the first being that if sticking something inside someone's body, for the purpose of removing fluids, is 'non intimate' then what type of procedure is intimate? Whether the procedure is painful, or particularly uncomfortable, is irrelevant: it is an invasion upon the bodily integrity of a human being, and as such should not be trivialised. An increase in the efficiency of the justice system is to be welcomed, but that increase should not come at the expense of the fundamental tenets and human rights of the system itself. To create obstacles and burden the process is precisely the reason the courts possess the legislated power of review in the first place. If compelling evidence exists, the law provides a means whereby suspects can be forced to submit to testing. The Government has failed to provide any evidence which would justify removing this safeguard, and there are no safeguards in the proposed legislation which would prevent abuses by law enforcement officials. Another justification advanced in the explanatory

memorandum is that these changes would bring the Commonwealth in line with the approach taken by other jurisdictions. This is unsatisfactory. The Commonwealth, as the overarching jurisdiction, should provide a leading example, rather than following what is already questionable policy.

One final question is whether this provision is acceptable in light of Australia's obligations under Article 7 of the International Convention on Civil and Political Rights, which protects individuals from 'cruel, inhuman or degrading treatment'. CLA notes that the Commonwealth Attorney-General recognises this right as an 'absolute' right, not subject to any derogation. CLA is of the opinion that the proposed provision is not acceptable in light of Article 7.

Item 10 of Schedule 1: Paragraph 23WG(3)(c) provides for the acquiring of informed consent from an Aboriginal or Torres Strait Islander suspect. The Bill requires that consent must not be sought if it is believed that the suspect will be at a disadvantage by comparison with the rest of the community, with regards to education and understanding. The proposed changes are about who can make a request: if the Bill is being reviewed an opportunity exists to assess each of its provisions. The primary concerns here are that:

One question is: are AFP officers provided with some appropriate form of cultural or language training for dealing with indigenous persons, relative to the task? If not are 'senior police officers' being asked to perform tasks and make decisions without first being properly equipped to perform such a task? If so, this would put both the suspect and the officer in a precarious position, and have possibly serious ramifications for the administration of justice. Also with new provisions that allow 'senior police officers' to override any refusal of a request for consent, the need for Indigenous Australians to understand what it is they are consenting to – or not – is done away with. In light of communication issues regarding Aborigines and Torres Strait Islanders (ATSI) and the justice system, any amendments to this legislation that further erode the opportunity for ATSI people to be as well informed as possible, and to make free choices based on knowledge, should have no place in new laws in 2012.

Item 12 of Schedule 1: 23WR (a) and (b), and 23XWNA: To insert whether or not consent has been sought when making an order for a procedure to be performed.

This section attempts to remove the need for a magistrate to consider whether consent has been sought when ordering a forensic procedure. Again, the reasons for this change have been generally explained in terms of expedience only. But why should the provision be dispensed with? This provision provides an opportunity to review the reasons why consent to the procedure is being sought and why it has been refused. Again, this is an opportunity for the courts to review the evidence and ensure justice is being served with respect to due process. Efficiency of operation and expedience are insufficient justification for removing the balancing counterweight of people's rights and liberties. The provision requiring consideration of consent requests should remain in place.

Items 24 and 25 of Schedule 1: The clause inserts the word 'constables' into the list of persons who may perform the DNA and blood procedures as listed above. Although the

measure is a question of classification, proposed changes reclassify such procedures as non-intimate and therefore allow them to be performed by a police officer as well as medically trained and qualified professionals. Such a change is problematic for a number of reasons. Firstly, it is important that these procedures be performed by medical staff to give the suspect confidence that the procedure is in fact medical/forensic, and that they collect the necessary evidence in the proper medical/forensic manner. Such reinforcement is particularly important when dealing with persons from backgrounds that may have included incidents of torture and mistreatment by law enforcement officials. Uncertainty and suspicion can arise when language becomes a barrier. The ability to identify medical staff, as opposed to law enforcement staff, may decrease the traumatic effects of being forced to submit to the procedure.

Secondly, while being relatively simple, the taking of an intimate sample, like all medical procedures, is vulnerable to complications, either due to circumstance or the healthy (or otherwise) condition of the suspect. As such, regardless of whether the procedure is deemed intimate or non-intimate, it should still be performed by a person with appropriate medical training to ensure it is achieved without negligent, reckless or malicious conduct.

Item 27 of Schedule 1: Proposes to amend Section 23XU to allow suspects to request a sample be made available for testing by the accredited laboratory of his or her choosing.

In principle this is a welcome change which provides greater transparency within the testing process and provides another opportunity for justice to be served thoroughly. However, it is necessary to note that the law requires that the suspect bear the burden of any additional testing to be performed at his or her request (and cost). In practical terms, this means that most suspects will be denied the opportunity to utilise this option due to the prohibitive costs associated with DNA testing. The clause further widens the gap between people with adequate access to justice and those without. An additional clause should provide opportunity for those without the capacity to pay to be afforded the same level of justice/choice.

Item 32 of Schedule 1: 23XUA (1) Sets out the process by which a suspect may request an attendee may be present during DNA testing where insufficient material exists to provide samples for independent testing at the suspect's request. This is another example of a provision which is in many ways a positive change to the law, with benefits to the administration of justice.

It is notable, though, that paragraphs (4), (5), (6) (7) and (8) of 23XUA provide conditions with which the attendee must comply or be forcibly removed and be guilty of an offence, in strict liability terms. There are no mitigating clauses, or clauses accomodating the inevitable situation where such compliance would be considered unreasonable. That is to say the law merely provides that an attendee may be given instructions and failure to comply with those instructions is an offence punishable by up to 30 penalty points. Without more specific reference to what types of requests can be made and under what circumstances, this section of the legislation provides too many loopholes which could be misused, or be perceived as being misused, by the authorities. Until this is rectified the ability to have an attendee present is completely at the will of the analyst, and therefore

ceases to have any real effect in terms of ensuring the integrity of the process. These provisions are supposedly justified by the need to prevent accidental or deliberate interference with the testing process and the contamination of samples. However, contamination is just as likely in to occur from someone other than the attendee, quite possibly the analyst, and therefore is not sufficiently convincing.

Furthermore, the amendment contains the wording “unless the testing needs to occur immediately”. It is also conceivable that this could be used to deny suspects the opportunity to have the procedure supervised. It is an ambiguity that requires further consideration before being enacted as law. Viewed in concert with amendments in other areas of the criminal law, this matter becomes of even greater importance. For example, the amendments to anti-terror legislation and the ASIO act which provide for ongoing detention, without access to legal counsel, mean that the need to scrutinise the process for the purpose of proving innocence, or at least maintaining an opportunity to do so, becomes urgent. Is it not preferable to have testing performed by an independent laboratory and allow supervised observation by both a representative from the Crown and the suspect?

Item 33 of Schedule 1: Section 23XW(a) (b) (c) and (d) allow for the increased sharing of information with suspects and offenders, and for that reason is supported.

Item 54 and 55 of schedule 1: Section 23YDAC (a) provides for the sharing of NCIDD information with other agencies. Sharing such information could be misused by foreign law enforcement agencies determined to prosecute an individual to harass Australian citizens or residents. At particular risk would be political asylum seekers and those escaping political persecution.

Item 65 of Schedule 1: This clause extends the period by which a suspect must be provided with access to material from 7 to 14 days. Such an extension may be used to delay, and therefore frustrate, justice. Again, no compelling case has been advanced as to why this is necessary, other than for the convenience of authorities (and therefore, by definition, the inconvenience of people who have not been convicted of a crime).

Item 66 of Schedule 1: This section removes any restrictions on providing information to other (foreign) agencies. The Commonwealth has a responsibility to protect its citizens, residents and those it has detained. Removing any restrictions on the disclosure of such information removes any recourse an individual might have to request protection from the Commonwealth. We suggest that it is not in the Commonwealth’s interest for this clause to stand, as there may well be cases where the Commonwealth itself does not want to provide information to foreigners.

Item 73 of Schedule 1: This section removes any impediments to Commonwealth personnel entering State or Territory facilities for the purpose of gaining access to suspects, and performing testing or gaining information. It is suggested that this was due to an absence of arrangements regarding the conditions of entry. If this is the case it is both safer and more logical to negotiate agreements as to conditions, if necessary uniform conditions, rather than provide unfettered access, unchecked by the desirable safeguards.

Schedule 2

Schedule 2 of the Bill proposes to relax the regulations which govern the manner in which the Australian Crime Commission (ACC) shares and discloses information.

Item 18 of Schedule 2: This section of the Bill provides law enforcement, via the ACC, with specific legislative permission to share information about a suspect even though "there does not have to be a specific criminal offence in mind". This is of major concern to in relation to people's and human rights civil liberties. If a person is suspected of no "specific criminal offence" they have a clear and inalienable right to a reasonable expectation of privacy. It is conceivable that this type of information sharing may be justifiable in certain circumstances. It is unconscionable to permit government (or any other) organisations to secretly collate, store and share information about citizens who are not suspected of any specific wrongdoing. Such a practice fundamentally offends notions of a free society on which Australia is based. The definitions of "permissible purpose" are in fact so broad as provide restrictions in name only. That is to say that the guidelines effectively allow for any suspicion to be justified in terms of "permissible purpose". Clearly, this clause must be re-written before the Bill would be acceptable to the Australian people: we assume the people's Parliamentary representatives will be insisting on a rewrite.

Item 27 of Schedule 2 : To allow for the sharing of information with private sector bodies. Section 59AB provides statutory authority for the sharing of information with private sector bodies, again with the concept of 'permissible purpose' being introduced as grounds for this dissemination of information. The language here is so broad as to cover any situation and any organisation. Of central concern is the concept of privacy, as well as of accountability. Such considerations have become particularly pertinent recently with the "News of the World" hacking scandal and the "Telstra" leaking of private customer information (and many, many other leaks and inadvertent release of private data). Until greater security standards can be ensured, it is contrary to the public interest to allow sensitive information to be shared with organisations which are either vulnerable to this type of securities breach or which have an interest in the sharing of the information beyond a proper interest. As with much of the amendments suggested by the Bill, the greatest concern is the legislative legitimisation of the reversal of the presumption of innocence. This type of law creates a culture of suspicion, and normalises the practice of assuming citizens are guilty for the purposes of investigation. It considers a suspect to be guilty first, and seeks to impose on a citizen the burden of proving him/herself innocent. The Australian system used to be, and should continue to be, based on a person being innocent until proven guilty by the state.

Schedule 3

Schedule 3 covers "the use of returnable items seized under warrant". These provisions allow for the sharing of an item with other agencies for other investigations. This effectively means that a warrant could be gained for one purpose by one government agency with the specific intention of using it in another investigation for which a warrant has not been issued and for which one may not be issued for a lack of evidence, or lack of the ability to

do so under the laws applying to the second agency. Essentially a real concern exists that this provision could be used to circumvent legislative safeguards. The possibility also exists that a warrant could be gained for one purpose and the information shared universally in “fishing” terms. None of these practices accord with the rule of law in Australia. They are contrary to necessary limitations on government agencies and forces to operate under the proper constraints that parliaments for decades have thought necessary.

Schedule 4

Schedule 4 attempts to broaden the powers of the Australian Commissioner for Law Enforcement Integrity.

Item 1 of Schedule 4 This item proposes to broaden the definition of to whom and when force can be applied, and by whom. The basis of the amendment is to allow 'assisting officers”, as well as “authorised officers” to use force on persons as well as objects. The major issue here is that again, no compelling cause has been demonstrated as to justify the existence of the changes. Although the powers to investigate must be higher for law enforcement than for private citizens, this amendment provides no proper explanation and evidence as to why or how these changes might make the agency more effective. For the most part this section deals with extension of the powers of ACLEI in an attempt to reduce corruption and to investigate its existence and extent. The clauses comprise more wishful thinking than proven benefit: it is unlikely the changes suggested here will be effective for the purported but unjustified purpose, and they would – once again – whittle away at the traditional rule of law and equality of treatment in Australia.

Items 12-14 of Schedule 4: proposes changes to the use of legal professional privilege. Although this section of the Bill proposes to allow for the sharing of privileged information, it allows for a claim of privilege to be asserted over the information when it is to be used for other purposes, to encourage the sharing of information 'even where a person would not be compelled to do so”. Any weakening of the privilege rule will not only prevent practitioners from providing effective advice but will also mean clients will be less likely to disclose the full story to practitioners. The practical effect of such clauses would therefore be to make the truth harder to reveal – surely an unintentional and to-be-avoided outcome.

Item 21 of Schedule 4: Amends subsection 83 (I) to enable a single summons to be issued for a requirement to appear and to produce documents and information. The requirement that separate summons' be ordered ensures that each piece of evidence and information sought must be assessed on its own merits, so that changes to the practice are a matter of expedience, not a matter of justice. This also applies to the changes set out in Item 29 of schedule 4.

Another concern is represented in Item 29, which essentially makes it an offence of contempt to insult or denigrate the Integrity Commissioner. Whilst it is necessary for the administration of justice that those before the courts, particularly law enforcement officials, be required to respect and cooperate with the court, it is not necessary to give the Integrity

Commissioner carte blanche and for the position to be unimpeachable. The Commissioner would have the ability to cite for contempt any person who objects to his conduct and voices objections. The power to punish objectors for 'insulting' the commissioner would appear to be an archaic concept in the 21st century. The other powers proposed in this section limit free speech, remove the right of assembly and in general have no place in legislation enacted by the Australian Parliament in 2012. This entire section of the proposed legislation requires complete re-writing. These clauses and sub-clauses (as well as others in this Bill) are not compatible with the human rights conventions to which Australia is a signatory.

Schedule 5

Drugs, plants and precursors. This schedule proposes to allow customs officials to seize certain items in certain situations without warrants. The ability to seize without a warrant already exists for other officials and with a warrant for customs officials. For this reason the changes are unnecessary. As with many of the changes in the Bill, the concern is that civil liberties are slightly diminished with each enacting provision. Much of the amending represents notional change. That is, it would entitle one department to do what another can already do, and is promoted as simply removing red tape. But the changes in fact simple attempt to make law enforcement's job easier, not better. It may mean that law enforcement has less administrative work before it, but no evidence has been provided as to how it will better the administration of justice.

Schedule 6

Schedule 6 changes the Proceeds of Crime Act to allow the granting of freezing orders on the publication of certain information. Item 7 of Schedule 6 amends Section 14F, and empowers the courts to make freezing orders to prevent trials or investigations being compromised. However it is just as foreseeable that this provision could be used to compromise the necessary flow of information to the public which is just as important for justice to be fully served. The element of transparency is vital to maintaining faith in the courts.

In relation to Proceeds of Crime legislation, CLA has argued before a number of parliamentary committees that this particular law is being abused to persecute the “Mr Littles” of crime, when it was promoted on introduction to all parliaments (federal, state and territory) as being aimed at the Mr Bigs of crime. If the PoC Act is to be changed, clauses are required to ensure that Public Prosecutors do not use the Act in a way which was not intended by the MPs who voted for it.

Schedule 7

Schedule 7 proposes changes to parole orders for federal offenders.

Section 19AL removes what is known as 'automatic parole', which makes all parole decisions discretionary. The concern is that this power could be used to delay the release of unpopular prisoners, for example sex offenders, who have served their sentences but are deemed insufficiently punished by sectors of the community. This is especially likely

around election times when “tough on crime' becomes a popular political catch-cry. Also this could be used to further detain a person who maintains his or her innocence. If a sentence has been passed and served, justice – and inalienable human rights provisions to which Australia is signatory – requires that the offender be released without being subject to indefinite surveillance.

Similar criticisms apply equally to provisions to extend supervision periods. The Bill proposes to remove the legislative maximums. These provisions have been described as arbitrary. They are in fact not arbitrary they are in place to prevent a person who has served his or sentence from being subject to surveillance in perpetuity. It is particularly important since the constant feeling of being under scrutiny has in fact often been cited as a reason for recidivism.

The Bill also proposes to extend licence periods for when parole orders are given in 'exceptional circumstances'. Again, justice stands to be frustrated through an unnecessary and unjustified intrusion into current process.

Item 5 proposes to provide the ability to alter the end date of prisoner's supervision, which would create uncertainty for prisoners and could inhibit their rehabilitation and reintegration process.

19AMA 2 (b) requires that an offender 'accept parole conditions'. What exactly this entails and what limitations exist to prevent unreasonable conditions being imposed is unclear from the wording of the legislation.

Overall, clauses in this section impose new, arbitrary provisions at the whim of a member of government. They do not comprise justice as it has normally been perceived in Australia.

Schedule 8

As with previous sections of the Bill, the purpose of this section is to remove the requirement for a warrant to be issued by the courts, and to place discretion in the hands of law enforcement. The reasons given are that this will remove some of the barriers to Federal-State law enforcement cooperation. But these barriers exist for a purpose. They provide a checkpoint whereby the process of justice can be scrutinised. They are a safeguard for society. They are a check and balance: giving law enforcement authorities unfettered ability to act as they wish has not normally been the wish of the parliaments who enact this type of legislation; quite rightly, they have put in place proper checks, and it would do Australian justice no service to remove those that have been in place for many years.

Recommendation:

It is the recommendation of CLA that the provisions in this Bill be redrafted against more human rights-compliant criteria, commensurate with the principles both enshrined and implied in the Australian legal and governance systems.

Increases in the scope of information sharing are unnecessary, and are against the personal privacy that Australian expect. The proposed changes to parole and supervision cannot better facilitate the administration of justice. Such changes represent an attempt to legitimise populism in sentencing, the dangers of which are well publicised.

In general CLA is concerned about the legislative trend towards extending power to law enforcement...particularly at the expense of judicial oversight. Such oversight is vital to justice and must not be undermined, as many previous parliaments have demonstrated in their legislating in the past..

There is no evidence. merely opinions, provided to suggest the extensions of power proposed would improve the effectiveness of law enforcement. For example, some the legislation proposed for amendment in this Bill was originally put in place so that law enforcement authorities could deliver on earlier promises, which have not been realised. The ramping up of laws simply for the convenience of law enforcement authorities is a dangerous slope on which to embark.

Finally, recent examples of misconduct by employees of law enforcement agencies, – including ASIO, the ACC and the AFP – provide sufficient cause for hesitation when considering such significant broadening of legislated powers as proposed in this Bill. Greater consultation with a broader spectrum of community representation is needed before this Bill is endorsed by the Committee, CLA strongly suggests.

CLA also believes that this Bill should go through a formal parliamentary process of being compared against the human rights provisions to which Australia is a signatory. All Bills from 2012 are now obliged to go through such a process. Should that not happen, it would appear this Bill has been rushed through the Committee phase over the 2011/12 Christmas/New Year holiday period so as to avoid proper human rights scrutiny by the Parliament.

CLA Civil Liberties Australia
Box 7438 Fisher ACT Australia
Email: secretary [at] cla.asn.au
Web: www.cla.asn.au

Lead author: Benjamin Smith; associate author: Bill Rowlings