

Australian Crime Commission (Western Australia) Bill 2003

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Defined Terms

Western Australia

LEGISLATIVE COUNCIL

**Australian Crime Commission (Western
Australia) Bill 2003**

A Bill for

An Act to —

- **provide for the operation of the Australian Crime Commission in Western Australia;**
- **repeal the *National Crime Authority (State Provisions) Act 1985*;**
and
- **make consequential amendments to various written laws, and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Australian Crime Commission (Western Australia) Act 2003*.

5 **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used in this Act

- 10 (1) In this Act unless the contrary intention appears —
- “ACC Act”** means the *Australian Crime Commission Act 2002* of the Commonwealth;

Note: That Act was originally known as the *National Crime Authority Act 1984*.

15 **“ACC operation/investigation”** means —

- (a) an ACC State intelligence operation; or
- (b) an ACC State investigation;

“ACC State intelligence operation” means an intelligence operation that the ACC is undertaking under section 5(b);

20 **“ACC State investigation”** means an investigation that the ACC is conducting under section 5(a);

“authority” includes a department, agency or body;

“Commonwealth body or person” means —

- (a) the ACC;
- 25 (b) the Board;
- (c) the Chair of the Board;
- (d) a member of the Board;
- (e) the Inter-Governmental Committee;

- (f) the CEO;
- (g) a member of the staff of the ACC;
- (h) an examiner;
- (i) a Judge of the Federal Court; or
- (j) a Federal Magistrate;

5

“Commonwealth Minister” means the Commonwealth Minister administering the ACC Act;

“confer” includes to impose;

10

“Federal Magistrate” means a Federal Magistrate (including the Chief Federal Magistrate) who holds office under the *Federal Magistrates Act 1999* of the Commonwealth;

“function” has a meaning affected by subsection (4);

15

“intelligence operation” means the collection, correlation, analysis or dissemination of criminal information and intelligence relating to a relevant criminal activity;

“issuing officer” means —

- (a) a Judge of the Federal Court;
- (b) a Judge of a court of the State; or
- (c) a Federal Magistrate;

20

“perform” includes to exercise;

“serious and organised crime” means an offence —

25

- (a) that involves 2 or more offenders and substantial planning and organisation;
- (b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques;
- (c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind;

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- (d) that is an offence of a kind prescribed by the regulations or an offence that involves any of the following —
- (i) theft;
 - 5 (ii) fraud;
 - (iii) tax evasion;
 - (iv) money laundering;
 - (v) currency violations;
 - (vi) illegal drug dealings;
 - 10 (vii) illegal gambling;
 - (viii) obtaining financial benefit by vice engaged in by others;
 - (ix) extortion;
 - (x) violence;
 - 15 (xi) bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory;
 - (xii) perverting the course of justice;
 - (xiii) bankruptcy and company violations;
 - 20 (xiv) harbouring of criminals;
 - (xv) forging of passports;
 - (xvi) firearms;
 - (xvii) armament dealings;
 - 25 (xviii) illegal importation or exportation of fauna into or out of Australia;
 - (xix) cybercrime;
 - (xx) matters of the same general nature as one or more of the matters listed above;
- and

(e) that is punishable by imprisonment for a period of 3 years or more,

but —

5

(f) does not include an offence committed in the course of a genuine dispute as to matters pertaining to the relations of employees and employers by a party to the dispute, unless the offence is committed in connection with, or as part of, a course of activity involving the commission of a serious and organised crime other than an offence so committed; and

10

(g) does not include an offence the time for the commencement of a prosecution for which has expired;

“special ACC operation/investigation” means —

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(a) an ACC State intelligence operation that the Board has determined to be a special operation; or

(b) an ACC State investigation that the Board has determined to be a special investigation;

“State Minister” means the State Minister administering this Act.

20

(2) If this Act uses a term that is used in the ACC Act, the term has the same meaning in this Act as it has in the ACC Act unless the contrary intention appears in this Act.

25

(3) If the head of an ACC operation/investigation suspects that an offence (the **“incidental offence”**) that is not a serious and organised crime may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a serious and organised crime (whether or not the head has identified the nature of that serious and organised crime), then the incidental offence is, for so long only as the head so suspects, taken, for the purposes of this Act, to be a serious and organised crime.

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- (4) A reference in this Act, other than Part 2, to a “**function**” includes a reference to a power or duty.
- (5) In this Act a fine expressed as a number of “**penalty units**” is a fine of the amount calculated in accordance with the following formula —
- 5 $A \times B$
- where —
- A** is that number of penalty units; and
- 10 **B** is the amount (in dollars) that is for the time being a penalty unit under section 4AA of the *Crimes Act 1914* of the Commonwealth.
- (6) The words “**Summary conviction penalty**” appearing in this Act in respect of an offence have the meaning and effect provided for in section 5 of *The Criminal Code*.

15 **4. Act to bind the Crown**

This Act binds the Crown in right of the State and, so far as the legislative power of the State permits, the Crown in its other capacities.

Part 2 — The Australian Crime Commission, the Board and the Inter-Governmental Committee

Division 1 — The Australian Crime Commission

5. Functions of ACC

- 5 The ACC has the following functions —
- (a) to investigate a matter relating to a relevant criminal activity, in so far as the serious and organised crime is, or the serious and organised crimes are or include, an offence or offences against a law of the State
10 (irrespective of whether that offence or those offences have a federal aspect);
- (b) to undertake an intelligence operation in so far as the serious and organised crime is, or the serious and organised crimes are or include, an offence or offences
15 against a law of the State (irrespective of whether that offence or those offences have a federal aspect);
- (c) to provide a report to the Board on the outcome of such an investigation or operation;
- 20 (d) such other functions as are conferred on the ACC by other provisions of this Act or any other Act.

6. CEO to manage ACC operations/investigations

- (1) The CEO is to manage, coordinate and control ACC operations/investigations.
- 25 (2) As soon as practicable after the Board consents under section 55A(3) of the ACC Act to the ACC undertaking an intelligence operation under section 5(b) or conducting an investigation under section 5(a), the CEO must determine, in writing, the head of the operation or investigation.
- 30 (3) Before the CEO determines the head of the operation or investigation, the CEO must consult the Chair of the Board, and

such other members of the Board as the CEO thinks appropriate, in relation to the determination.

- 5 (4) Subject to such consultation with the examiners as is appropriate and practicable, the CEO may make arrangements as to the examiner who is to be able to exercise his or her powers under this Act in relation to a special ACC operation/investigation.

7. Counsel assisting ACC

10 The CEO may appoint a legal practitioner to assist the ACC as counsel in relation to ACC operations/investigations generally or in relation to a particular matter or matters.

Division 2 — The Board of the ACC

8. Functions of the Board

- 15 (1) The Board has the following functions —
- (a) to determine, in writing, whether an ACC State intelligence operation is a special operation or whether an ACC State investigation is a special investigation;
 - (b) to determine, in writing, the class or classes of persons to participate in an ACC State intelligence operation or
20 ACC State investigation;
 - (c) to establish task forces;
 - (d) such other functions as are conferred on the Board by other provisions of this Act.
- 25 (2) The Board may determine, in writing, that an ACC State intelligence operation is a special operation but, before doing so, it must consider whether methods of collecting the criminal information and intelligence that do not involve the use of powers in this Act have been effective.
- 30 (3) The Board may determine, in writing, that an ACC State investigation is a special investigation but, before doing so, it

must consider whether ordinary police methods of investigation into the matters are likely to be effective.

- (4) A determination under subsection (2) or (3) must —
- (a) describe the general nature of the circumstances or allegations constituting the relevant criminal activity to which the operation or investigation relates;
 - (b) state that the serious and organised crime is, or the serious and organised crimes are or include, an offence or offences against a law of the State but need not specify the particular offence or offences; and
 - (c) set out the purpose of the operation or investigation.
- (5) The Chair of the Board must, within the period of 3 days beginning on the day a determination under subsection (2) or (3) is made, give a copy of the determination to the Inter-Governmental Committee.
- (6) A determination under subsection (2) or (3) has effect immediately after it is made.
- (7) Sections 9 to 15 have effect in relation to the Board's functions under this Act.

9. Board meetings

- (1) The Chair of the Board may convene meetings of the Board.
- (2) The Chair, in exercising his or her power to convene meetings, must ensure that meetings of the Board are scheduled to meet the requirements set out in section 7D of the ACC Act.

10. Presiding at Board meetings

A meeting of the Board must be presided over by —

- (a) if the Chair of the Board is present — the Chair; or
- (b) otherwise — another eligible Commonwealth Board member who is present and who is nominated, in writing, by the Chair to preside.

11. Quorum at Board meetings

At a meeting of the Board a quorum is constituted by 7 Board members (not including the CEO).

12. Voting at Board meetings

- 5 (1) Subject to this section, a question arising at a meeting of the Board is to be determined by a majority of the votes of Board members present.
- (2) The person presiding at a meeting has —
- 10 (a) a deliberative vote; and
- (b) if necessary, also a casting vote.
- (3) The CEO is not entitled to vote on any question arising at a meeting of the Board.
- (4) The Board cannot determine that an ACC State intelligence operation is a special operation, or that an ACC State
- 15 investigation is a special investigation, unless at least 9 Board members (including at least 2 eligible Commonwealth Board members) vote in favour of making the determination.

13. Conduct of Board meetings

- 20 (1) The Board may regulate proceedings at its meetings as it considers appropriate.
- (2) The Board must ensure that minutes of its meetings are kept.

14. Resolutions outside of Board meetings

- 25 (1) This section applies to a resolution —
- (a) which, without being considered at a meeting of the Board, is referred to all members of the Board; and
- (b) of which —
- (i) if subparagraph (ii) does not apply — a majority of those members (not including the CEO); or

- 5 (ii) if the resolution is that the Board determine that
 an ACC State intelligence operation is a special
 operation, or that an ACC State investigation is a
 special investigation — at least 9 Board
 members (not including the CEO but including at
 least 2 eligible Commonwealth Board members),
 indicate by telephone or other mode of communication
 to the Chair of the Board that they are in favour.
- 10 (2) The resolution is as valid and effectual as if it had been passed
 at a meeting of the Board duly convened and held.

15. Board committees

- 15 (1) The Board may, with the unanimous agreement of all the
 members of the Board (not including the CEO), establish a
 committee or committees to assist in carrying out the functions
 of the Board.
- (2) The Board may dissolve a committee at any time.
- (3) The functions of a committee are as determined by the
 unanimous agreement of all the members of the Board (not
 including the CEO).
- 20 (4) However, the Board cannot determine that a committee has the
 function of determining whether an ACC State intelligence
 operation is a special operation or whether an ACC State
 investigation is a special investigation.
- (5) In performing its functions, a committee must comply with any
25 directions given to the committee by the Board.
- (6) A question arising at a meeting of a committee is to be
 determined by a majority of the votes of committee members
 present.
- 30 (7) However, the CEO is not entitled to vote on any question
 arising at a meeting of a committee of which he or she is a
 member.

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Part 2 The Australian Crime Commission, the Board and the Inter-Governmental Committee

Division 3 The Inter-Governmental Committee

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- (8) A committee must inform the other members of the Board of its decisions.
- (9) A committee may regulate proceedings at its meetings as it considers appropriate.
- 5 (10) A committee must ensure that minutes of its meetings are kept.

Division 3 — The Inter-Governmental Committee

16. Functions of Committee

- 10 (1) Within the period of 30 days beginning on the day the Committee is given a copy of a determination (a “**special determination**”) under section 8(2) or (3), the Committee may by resolution, with the agreement of the member of the Committee representing the Commonwealth and at least 5 other members of the Committee, request the Chair of the Board to give further information to the Committee in relation to the
- 15 determination.
- (2) Subject to subsection (3), the Chair of the Board must comply with the request.
- (3) If the Chair of the Board considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Chair must not give the Committee the
- 20 information.
- (4) If the Chair of the Board does not give the Committee information on the ground that the Chair considers that disclosure of the information to the public could prejudice the
- 25 safety or reputation of persons or the operations of law enforcement agencies, the Committee may refer the request to the State Minister.

- (5) If the Committee refers the request to the State Minister, he or she —
- 5 (a) must determine in writing whether disclosure of the information could prejudice the safety or reputation of persons or the operations of law enforcement agencies;
- (b) must provide copies of that determination to the Chair of the Board and the Committee; and
- 10 (c) must not disclose his or her reasons for determining the question of whether the information could prejudice the safety or reputation of persons or the operations of law enforcement agencies in the way stated in the determination.
- (6) Within the period of 30 days beginning on the day the Committee makes a request under subsection (1) in relation to a special determination, the Committee may by resolution, with 15 the agreement of the member of the Committee representing the Commonwealth and at least 5 other members of the Committee, revoke the determination.
- (7) The Committee must notify the Chair of the Board and the CEO 20 of the revocation. The revocation takes effect when the CEO is so notified.
- (8) To avoid doubt, the revoking of the determination does not affect the validity of any act done in connection with the ACC operation/investigation concerned before the CEO is so notified.
- 25 (9) The Committee does not have a duty to consider whether to exercise the power under subsection (1) or (6) in respect of any special determination, whether the Committee is requested to do so by any person, or in any other circumstances.

Part 3 — Examinations

17. Examinations

An examiner may conduct an examination for the purposes of a special ACC operation/investigation.

5 18. Conduct of examination

(1) An examiner may regulate the conduct of proceedings at an examination as the examiner thinks fit.

(2) At an examination before an examiner —

10 (a) a person giving evidence may be represented by a legal practitioner; and

(b) if, by reason of the existence of special circumstances, the examiner consents to a person who is not giving evidence being represented by a legal practitioner — the person may be so represented.

15 (3) An examination before an examiner must be held in private and the examiner may give directions as to the persons who may be present during the examination or a part of the examination.

20 (4) Nothing in a direction given by the examiner under subsection (3) prevents the presence, when evidence is being taken at an examination before the examiner, of —

(a) a person representing the person giving evidence; or

(b) a person representing, in accordance with subsection (2), a person who, by reason of a direction given by the examiner under subsection (3), is entitled to be present.

25 (5) If an examination before an examiner is being held, a person (other than a member of the staff of the ACC approved by the examiner) must not be present at the examination unless the person is entitled to be present by reason of a direction given by the examiner under subsection (3) or by reason of
30 subsection (4).

- (6) At an examination before an examiner —
- (a) counsel assisting the examiner generally or in relation to the matter to which the ACC operation/investigation relates;
 - 5 (b) any person authorised by the examiner to appear before the examiner at the examination; or
 - (c) any legal practitioner representing a person at the examination in accordance with subsection (2),
- 10 may, so far as the examiner thinks appropriate, examine or cross-examine any witness on any matter that the examiner considers relevant to the ACC operation/investigation.
- (7) If a person (other than a member of the staff of the ACC) is present at an examination before an examiner while another person (the “**witness**”) is giving evidence at the examination,
- 15 the examiner must —
- (a) inform the witness that the person is present; and
 - (b) give the witness an opportunity to comment on the presence of the person.
- (8) To avoid doubt, a person does not cease to be entitled to be present at an examination before an examiner or part of such an examination if —
- 20
- (a) the examiner fails to comply with subsection (7); or
 - (b) a witness comments adversely on the presence of the person under subsection (7)(b).
- (9) An examiner may direct that —
- 25
- (a) any evidence given before the examiner;
 - (b) the contents of any document, or a description of any thing, produced to the examiner;
 - 30 (c) any information that might enable a person who has given evidence before the examiner to be identified; or

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(d) the fact that any person has given or may be about to give evidence at an examination,

must not be published, or must not be published except in such manner, and to such persons, as the examiner specifies. The examiner must give such a direction if the failure to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been, or may be, charged with an offence.

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(10) Subject to subsection (11), the CEO may, in writing, vary or revoke a direction under subsection (9).

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(11) The CEO must not vary or revoke a direction if to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

15

(12) If —

(a) a person has been charged with an offence before a federal court or before a court of the State; and

(b) the court considers that it may be desirable in the interests of justice that particular evidence given before an examiner, being evidence in relation to which the examiner has given a direction under subsection (9), be made available to the person or to a legal practitioner representing the person,

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the court may give to the examiner or to the CEO a certificate to that effect and, if the court does so, the examiner or the CEO, as the case may be, must make the evidence available to the court.

25

(13) If —

(a) the examiner or the CEO makes evidence available to a court in accordance with subsection (12); and

(b) the court, after examining the evidence, is satisfied that the interests of justice so require,

the court may make the evidence available to the person charged with the offence concerned or to a legal practitioner representing the person.

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(14) A person who —

(a) is present at an examination in contravention of subsection (5); or

10

(b) makes a publication in contravention of a direction given under subsection (9),

is guilty of an offence.

Penalty: A fine of 20 penalty units or imprisonment for one year.

15

(15) At the conclusion of an examination held by an examiner, the examiner must give the head of the special ACC operation/investigation —

(a) a record of the proceedings of the examination; and

(b) any documents or other things given to the examiner at, or in connection with, the examination.

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19. Power to summon witnesses and take evidence

(1) An examiner may summon a person to appear before the examiner at an examination to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

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(2) Before issuing a summons under subsection (1), the examiner must be satisfied that it is reasonable in all the circumstances to do so. The examiner must also record in writing the reasons for the issue of the summons.

30

(3) A summons under subsection (1) requiring a person to appear before an examiner at an examination must be accompanied by a copy of the determination of the Board that the State ACC

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intelligence operation is a special operation or that the State ACC investigation is a special investigation.

- 5 (4) A summons under subsection (1) requiring a person to appear before an examiner at an examination must, unless the examiner issuing the summons is satisfied that, in the particular circumstances of the special ACC operation/investigation to which the examination relates, it would prejudice the effectiveness of the special ACC operation/investigation for the summons to do so, set out, so far as is reasonably practicable, the general nature of the matters in relation to which the examiner intends to question the person, but nothing in this subsection prevents the examiner from questioning the person in relation to any matter that relates to a special ACC operation/investigation.
- 10
- 15 (5) The examiner who is holding an examination may require a person appearing at the examination to produce a document or other thing.
- (6) An examiner may, at an examination, take evidence on oath or affirmation and for that purpose —
- 20 (a) the examiner may require a person appearing at the examination to give evidence either to take an oath or to make an affirmation in a form approved by the examiner; and
- (b) the examiner, or a person who is an authorised person in relation to the ACC, may administer an oath or affirmation to a person so appearing at the examination.
- 25
- (7) In this section, a reference to a person who is an authorised person in relation to the ACC is a reference to a person authorised in writing, or a person included in a class of persons authorised in writing, for the purposes of this section by the CEO.
- 30 (8) The powers conferred by this section are not exercisable except for the purposes of a special ACC operation/investigation.

20. Power to obtain documents

- (1) An examiner may, by notice in writing served on a person, require the person —
- 5 (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being the examiner or a member of the staff of the ACC; and
- (b) to produce at that time and place to the person so specified a document or thing specified in the notice, being a document or thing that is relevant to a special
- 10 ACC operation/investigation.
- (2) Before issuing a notice under subsection (1), the examiner must be satisfied that it is reasonable in all the circumstances to do so. The examiner must also record in writing the reasons for the issue of the notice.
- 15 (3) A notice may be issued under this section in relation to a special ACC operation/investigation, whether or not an examination before an examiner is being held for the purposes of the operation or investigation.
- (4) A person must not refuse or fail to comply with a notice served
- 20 on the person under this section.
- (5) A person who contravenes subsection (4) is guilty of a crime.
Penalty: A fine of 200 penalty units or imprisonment for 5 years.
Summary conviction penalty: A fine of 20 penalty units or
- 25 imprisonment for one year.
- (6) The provisions of section 23(3) to (5) and (7) apply in relation to a person who is required to produce a document or thing by a notice served on him or her under this section in the same manner as they apply in relation to a person who is required to
- 30 produce a document or thing at an examination before an examiner.

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- (7) If there is a contravention of section 23(3) as applied by subsection (6), the provisions of section 23(6) apply to that contravention.

21. Disclosure of summons or notice may be prohibited

- 5 (1) The examiner issuing a summons under section 19 or a notice under section 20 must, or may, as provided in subsection (2), include in it a notation to the effect that disclosure of information about the summons or notice, or any official matter connected with it, is prohibited except in the circumstances, if
10 any, specified in the notation.

- (2) A notation must not be included in the summons or notice except as follows —

- 15 (a) the examiner must include the notation if satisfied that failure to do so would reasonably be expected to prejudice —
- (i) the safety or reputation of a person;
 - (ii) the fair trial of a person who has been or may be charged with an offence; or
 - (iii) the effectiveness of an operation or investigation;
- 20 (b) the examiner may include the notation if satisfied that failure to do so might prejudice —
- (i) the safety or reputation of a person;
 - (ii) the fair trial of a person who has been or may be charged with an offence; or
 - (iii) the effectiveness of an operation or investigation;
- 25 (c) the examiner may include the notation if satisfied that failure to do so might otherwise be contrary to the public interest.

- 30 (3) If a notation is included in the summons or notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 22 on the person

who was served with, or otherwise given, the summons or notice.

(4) If, after the ACC has concluded the operation or investigation concerned —

- 5 (a) no evidence of an offence has been obtained as described in section 34(1);
- (b) evidence of an offence or offences has been assembled and given as required by section 34(1) and the CEO has been advised that no person will be prosecuted;
- 10 (c) evidence of an offence or offences committed by only one person has been assembled and given as required by section 34(1) and criminal proceedings have begun against that person; or
- 15 (d) evidence of an offence or offences committed by 2 or more persons has been assembled and given as required by section 34(1) and —
- (i) criminal proceedings have begun against all those persons; or
- 20 (ii) criminal proceedings have begun against one or more of those persons and the CEO has been advised that no other of those persons will be prosecuted,

25 all the notations that were included under this section in any summonses or notices relating to the operation or investigation are cancelled by this subsection.

(5) If a notation is cancelled by subsection (4), the CEO must serve a written notice of that fact on each person who was served with, or otherwise given, the summons or notice containing the notation.

30 (6) In this section —

“official matter” has the same meaning as in section 22.

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22. Offences of disclosure

(1) A person who is served with, or otherwise given, a summons or notice containing a notation made under section 21 must not disclose —

- 5
- (a) the existence of the summons or notice or any information about it; or
 - (b) the existence of, or any information about, any official matter connected with the summons or notice.

10 Penalty: A fine of 20 penalty units or imprisonment for one year.

(2) Subsection (1) does not prevent the person from making a disclosure —

- 15
- (a) in accordance with the circumstances, if any, specified in the notation;
 - (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter;
 - (c) if the person is a body corporate — to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
 - (d) if the person is a legal practitioner — for the purpose of obtaining the agreement of another person under section 23(3) to the legal practitioner answering a question or producing a document at an examination before an examiner.
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(3) If a disclosure is made to a person as permitted by subsection (2) or (4), the following provisions apply —

- 30
- (a) while he or she is a person of a kind to whom a disclosure is so permitted to be made, he or she must not disclose the existence of, or any information about, the summons or notice, or any official matter connected with it, except as permitted by subsection (4);

- (b) while he or she is no longer such a person, he or she must not, in any circumstances, make a record of, or disclose the existence of, the summons, notice or matter, or disclose any information about any of them.

5 Penalty: A fine of 20 penalty units or imprisonment for one year.

- (4) A person to whom information has been disclosed, as permitted by subsection (2) or this subsection, may disclose that information —

10 (a) if the person is an officer or agent of a body corporate referred to in subsection (2)(c) —

- (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or

15 (ii) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter;

or

20 (b) if the person is a legal practitioner — for the purpose of giving legal advice, or making representations, relating to the summons, notice or matter.

- (5) This section ceases to apply to a summons or notice after —

- (a) the notation contained in the summons or notice is cancelled by section 21(4); or

25 (b) 5 years elapse after the issue of the summons or notice, whichever is sooner.

- (6) A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.

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(7) In this section —

“official matter” means any of the following (whether past, present or contingent) —

- (a) the determination referred to in section 19(3);
- 5 (b) an ACC operation/investigation;
- (c) an examination held by an examiner;
- (d) court proceedings.

23. Failure of witnesses to attend and answer questions

10 (1) A person served, as prescribed, with a summons to appear as a witness at an examination before an examiner must not —

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by the examiner.

15 (2) A person appearing as a witness at an examination before an examiner must not —

- (a) when required pursuant to section 19 either to take an oath or make an affirmation — refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he or she is
20 required to answer by the examiner; or
- (c) refuse or fail to produce a document or thing that he or she was required to produce by a summons under this Act served on him or her as prescribed.

25 (3) Where —

- (a) a legal practitioner is required to answer a question or produce a document at an examination before an examiner; and
- (b) the answer to the question would disclose, or the document contains, a privileged communication made
30 by or to the legal practitioner in his or her capacity as a legal practitioner,

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by whom the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner refuses to comply with the requirement, he or she must, if so required by the examiner, give the examiner the name and address of the person to whom or by whom the communication was made.

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- (4) Subsection (5) limits the use that can be made of any answers given at an examination before an examiner, or documents or things produced at an examination before an examiner. That subsection only applies if —
- (a) a person appearing as a witness at an examination before an examiner —
 - (i) answers a question that he or she is required to answer by the examiner; or
 - (ii) produces a document or thing that he or she was required to produce by a summons under this Act served on him or her as prescribed;
 - (b) in the case of the production of a document that is, or forms part of, a record of an existing or past business — the document sets out details of earnings received by the person in respect of his or her employment and does not set out any other information; and
 - (c) before answering the question or producing the document or thing, the person claims that the answer, or the production of the document or thing, might tend to incriminate the person or make the person liable to a penalty.
- (5) The answer, or the document or thing, is not admissible in evidence against the person in —
- (a) a criminal proceeding; or

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- (b) a proceeding for the imposition of a penalty,
other than —
- (c) confiscation proceedings; or
- (d) a proceeding in respect of —
 - 5 (i) in the case of an answer — the falsity of the
answer; or
 - (ii) in the case of the production of a document —
the falsity of any statement contained in the
document.
- 10 (6) A person who contravenes subsection (1), (2) or (3) is guilty of
a crime.
Penalty: A fine of 200 penalty units or imprisonment for
5 years.
Summary conviction penalty: A fine of 20 penalty units or
15 imprisonment for one year.
- (7) Subsection (3) does not affect the law relating to legal
professional privilege.

24. Warrant for arrest of witness

- 20 (1) Where, upon application by an examiner, a Judge of the Federal
Court or the Supreme Court is satisfied by evidence on oath that
there are reasonable grounds to believe —
 - 25 (a) that a person who has been ordered, under section 28, to
deliver his or her passport to the examiner, whether or
not the person has complied with the order, is
nevertheless likely to leave Australia for the purpose of
avoiding giving evidence before the examiner;
 - (b) that a person in relation to whom a summons has been
issued under section 19(1) —
 - (i) has absconded or is likely to abscond; or

(ii) is otherwise attempting, or is otherwise likely to attempt, to evade service of the summons;

or

(c) that a person has committed an offence under section 23(1) or is likely to do so,

5

the Judge may issue a warrant for the apprehension of the person.

(2) The warrant may be executed by any person to whom it is addressed and the person executing it has power to break into and enter any premises, vessel, aircraft or vehicle for the purpose of executing it.

10

(3) A member of the Australian Federal Police cannot execute the warrant unless he or she is also a member of the staff of the ACC.

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(4) The warrant may be executed even if the warrant is not at the time in the possession of the person executing it.

(5) A person executing the warrant may only use such reasonable force as is necessary for the execution.

(6) Where a person is apprehended under the warrant, he or she must be brought, as soon as practicable, before a Judge of the Federal Court or the Supreme Court and the Judge may —

20

(a) admit the person to bail, with such security as the Judge thinks fit, on such conditions as he or she thinks necessary to ensure the appearance of the person as a witness before the examiner;

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(b) order the continued detention of the person for the purposes of ensuring his or her appearance as such a witness; or

(c) order the release of the person.

30

(7) Where a person is under detention under this section, he or she must, within 14 days after he or she was brought, or last brought, before a Judge of the Federal Court or the Supreme

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Court in accordance with this section, or within such shorter or longer time as a Judge has fixed upon the last previous appearance of the person before a Judge under this section, be again brought before a Judge and the Judge may then exercise any of the powers of a Judge under subsection (6).

- (8) In this section —
“Australia” includes the external Territories.

25. False or misleading evidence

(1) A person must not, at an examination before an examiner, give evidence that the person knows is false or misleading in a material particular.

(2) A person who contravenes subsection (1) is guilty of a crime.
Penalty: A fine of 200 penalty units or imprisonment for 5 years.

Summary conviction penalty: A fine of 20 penalty units or imprisonment for one year.

26. Protection of witnesses from harm or intimidation

Where it appears to an examiner that, by reason of the fact that a person —

- (a) is to appear, is appearing or has appeared at an examination before the examiner to give evidence or to produce a document or thing; or
(b) proposes to furnish or has furnished information, or proposes to produce or has produced a document or thing, to the ACC otherwise than at an examination before the examiner,

the safety of the person may be prejudiced or the person may be subjected to intimidation or harassment, the examiner may make such arrangements (including arrangements with the State Minister or with members of the Australian Federal Police or of the Police Force of the State) as are necessary to avoid prejudice

to the safety of the person, or to protect the person from intimidation or harassment.

27. Legal protection of examiners, counsel and witnesses

- 5 (1) An examiner has, in the performance of his or her functions or the exercise of his or her powers as an examiner in relation to an examination before the examiner, the same protection and immunity as a Justice of the High Court.
- 10 (2) A legal practitioner assisting the ACC or an examiner or representing a person at an examination before an examiner has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) Subject to this Act, a person summoned to attend or appearing before an examiner as a witness has the same protection as a witness in proceedings in the High Court.

15 **28. Order for delivery to examiner of passport of witness**

- (1) Where, upon application by an examiner, a Judge of the Federal Court is satisfied by evidence on oath that —
- 20 (a) in connection with a special ACC operation/investigation, a summons has been issued under this Act requiring a person to appear before an examiner at an examination (whether or not the summons has been served), or a person has appeared before an examiner at an examination, to give evidence or to produce documents or other things;
- 25 (b) there are reasonable grounds for believing that the person may be able to give to the examiner evidence or further evidence that is, or to produce to the examiner documents or other things or further documents or other things that are, relevant to the special ACC
- 30 operation/investigation and could be of particular significance to the special ACC operation/investigation; and

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- (c) there are reasonable grounds for suspecting that the person intends to leave Australia and has in his or her possession, custody or control a passport issued to him or her,
- 5 the Judge may make an order requiring the person to appear before a Judge of the Federal Court on a date, and at a time and place, specified in the order to show cause why he or she should not be ordered to deliver the passport to the examiner.
- (2) Where a person appears before a Judge of the Federal Court
10 under an order made under subsection (1), the Judge may, if he or she thinks fit, make an order —
- (a) requiring the person to deliver to the examiner any passport issued to him or her that is in his or her possession, custody or control; and
- 15 (b) authorising the examiner to retain the passport until the expiration of such period (not exceeding one month) as is specified in the order.
- (3) A Judge of the Federal Court may, upon application by the examiner, extend for a further period (not exceeding one month)
20 or further periods (not exceeding one month in each case) the period for which the examiner is authorised to retain a passport under an order made under subsection (2), but so that the total period for which the examiner is authorised to retain the passport does not exceed 3 months.
- 25 (4) A Judge of the Federal Court may, at any time while the examiner is authorised under an order made under this section to retain a passport issued to a person, upon application made by the person, revoke the order and, if the order is revoked, the examiner must forthwith return the passport to the person.
- 30 (5) In this section —
“**Australia**” includes the external Territories.

Part 4 — Search warrants

29. Search warrants

- (1) An eligible person may apply to an issuing officer for the issue of a warrant under subsection (2) if —
- 5 (a) the eligible person has reasonable grounds for suspecting that, on a particular day (the “**relevant day**”), being the day on which, or a particular day within one month after the day on which, the application is made, there may be, upon any land or upon or in any
- 10 premises, vessel, aircraft or vehicle, a thing or things of a particular kind connected with a special ACC operation/investigation (“**things of the relevant kind**”); and
- (b) the eligible person believes on reasonable grounds that,
- 15 if a summons were issued for the production of the thing or things, the thing or things might be concealed, lost, mutilated or destroyed.
- (2) Where an application under subsection (1) is made to an issuing officer, the issuing officer may issue a warrant authorising a
- 20 person named in the warrant (the “**authorised person**”), with such assistance as the authorised person thinks necessary and if necessary by force —
- (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
- 25 (b) to search the land, premises, vessel, aircraft or vehicle for things of the relevant kind; and
- (c) to seize any things of the relevant kind found upon the land or upon or in the premises, vessel, aircraft or vehicle and deliver things so seized to any person
- 30 participating in the special ACC operation/investigation.
- (3) A member of the Australian Federal Police cannot be an authorised person unless he or she is also a member of the staff of the ACC.

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- (4) An issuing officer must not issue a warrant under subsection (2) unless —
- 5 (a) an affidavit has been furnished to him or her setting out the grounds on which the issue of the warrant is being sought;
 - 10 (b) the applicant (or some other person) has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought; and
 - (c) the issuing officer is satisfied that there are reasonable grounds for issuing the warrant.
- (5) Where an issuing officer issues a warrant under subsection (2), he or she must state on the affidavit furnished to him or her as mentioned in subsection (4)(a) which of the grounds specified in that affidavit he or she has relied on to justify the issue of the warrant and particulars of any other grounds relied on by him or her to justify the issue of the warrant.
- (6) A warrant issued under this section must —
- 20 (a) include a statement of the purpose for which the warrant is issued, which must include a reference to the special ACC operation/investigation with which the things of the relevant kind are connected;
 - 25 (b) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
 - (c) include a description of the kind of things authorised to be seized; and
 - 30 (d) specify a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.
- (7) A warrant issued under this section may be executed, in accordance with its terms, at any time during the period

commencing on the relevant day and ending on the date specified in the warrant as the date upon which the warrant ceases to have effect.

- 5 (8) A person executing a warrant issued under this section may only use such reasonable force as is necessary for the execution.
- 10 (9) Where, in the course of searching, in accordance with the terms of a warrant issued under this section, for things of the relevant kind, the person executing the warrant finds a thing that he or she believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an offence against a law of the Commonwealth or of a State or Territory and he or she believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence, the person may seize the thing and, if he or she does so, the thing is to be taken, for the purposes of this Act, to have been seized pursuant to the warrant.
- 15 (10) Where a thing is seized pursuant to a warrant issued under this section —
- 20 (a) the head of the special ACC operation/investigation may retain the thing if, and for so long as, retention of the thing by the head of the special ACC operation/investigation is reasonably necessary for the purposes of the special ACC operation/investigation to which the thing is relevant; and
- 25 (b) if the retention of the thing by the head of the special ACC operation/investigation is not, or ceases to be, reasonably necessary for such purposes, a person participating in the special ACC operation/investigation must cause the thing to be delivered to —
- 30 (i) if the thing may be used in evidence in proceedings of a kind referred to in subsection (13) — the authority or person responsible for taking the proceedings; or

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- (ii) if subparagraph (i) does not apply — the person who appears to the person participating in the special ACC operation/investigation to be entitled to the possession of the thing,
5 unless the CEO has furnished the thing to the Attorney-General of the Commonwealth or of a State, or to a law enforcement agency, or to another person or authority, in accordance with section 34(1)(a), (b) or (c).
- (11) A person participating in the special ACC
10 operation/investigation may, instead of delivering a thing in accordance with subsection (10)(b)(ii), deliver the thing to the Attorney-General of the Commonwealth or of a State, or to a law enforcement agency, for the purpose of assisting in the investigation of criminal offences, where the person
15 participating in the special ACC operation/investigation is satisfied that the thing is likely to be useful for that purpose.
- (12) Nothing in this section affects a right of a person to apply for, or the power of a person to issue, a warrant, being a right or power existing otherwise than by virtue of this section.
- (13) Without limiting the generality of subsection (1)(a), a reference
20 in this section to a thing connected with a special ACC operation/investigation, includes a reference to a thing that may be used in evidence in proceedings for the taking, by or on behalf of the Crown in right of the Commonwealth, of a State or
25 of a Territory, of civil remedies in respect of a matter connected with, or arising out of, an offence to which the special ACC operation/investigation relates.
- (14) In this section —
“**thing**” includes a document.
- 30 **30. Application by telephone for search warrants**
- (1) Where, by reason of circumstances of urgency, an eligible person considers it necessary to do so, the eligible person may make application by telephone for a warrant under section 29.

- (2) Before so making application, the eligible person must prepare an affidavit that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the affidavit has been sworn.
- 5 (3) Where an issuing officer issues a warrant under section 29 upon an application made by telephone, he or she must —
- (a) complete and sign the warrant;
 - (b) inform the eligible person who made the application of the terms of the warrant and the date on which and the
10 time at which it was signed;
 - (c) record on the warrant his or her reasons for issuing the warrant; and
 - (d) send a copy of the warrant to the CEO.
- (4) Where a warrant is issued under section 29 upon an application
15 made by telephone a member of the staff of the ACC or a member of the Police Force of the State may complete a form of warrant in the terms indicated by the issuing officer under subsection (3) and, where a form of warrant is so completed, he or she must write on it the name of the issuing officer who
20 issued the warrant and the date on which and the time at which it was signed.
- (5) Where a person completes a form of warrant in accordance with subsection (4), the person must, not later than the day next
25 following the date of expiry of the warrant, send to the issuing officer who signed the warrant the form of warrant completed by him or her and the affidavit duly sworn in connection with the warrant.
- (6) Upon receipt of the documents referred to in subsection (5) the
30 issuing officer must attach them to the warrant signed by him or her and deal with the documents in the manner in which he or she would have dealt with the affidavit if the application for the warrant had been made to him or her in accordance with section 29.

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- (7) A form of warrant duly completed in accordance with subsection (4) is to be taken to be a warrant issued under section 29.

Part 5 — Performance of functions and exercise of powers

31. Consent of Board may be needed before functions can be performed

5 The conferral of a function on a Commonwealth body or person by this Act is subject to any provision of the ACC Act that requires the consent of the Board before the function can be performed.

32. Functions not affected by State laws

10 A Commonwealth body or person is not precluded by any law of the State from performing a function conferred by this Act.

33. Extent to which functions are conferred

15 (1) This Act does not purport to impose any duty on a Commonwealth body or person to perform a function if the imposition of the duty would be beyond the legislative power of the Parliament of the State.

 (2) This section does not limit the operation of section 7 of the *Interpretation Act 1984* or section 35.

34. Performance of functions

20 (1) Where the ACC, in carrying out an ACC operation/investigation, obtains evidence of an offence against a law of the Commonwealth or of a State or Territory, being evidence that would be admissible in a prosecution for the offence, the CEO must assemble the evidence and give it to —

25 (a) the Attorney-General of the Commonwealth or the State, as the case requires;

 (b) the relevant law enforcement agency; or

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- (c) any person or authority (other than a law enforcement agency) who is authorised by or under a law of the Commonwealth or of the State or Territory to prosecute the offence.
- 5 (2) Where the ACC, in carrying out an ACC operation/investigation, obtains evidence that would be admissible in confiscation proceedings, the CEO may assemble the evidence and give it to —
- 10 (a) the Attorney-General of the Commonwealth or the relevant State, as the case requires;
- (b) a relevant law enforcement agency; or
- (c) any person or authority (other than a law enforcement authority) who is authorised to commence the confiscation proceedings.
- 15 (3) Where, as a result of the performance of any of the ACC's functions, the Board considers that a recommendation should be made to the Commonwealth Minister or to the appropriate State Minister of a participating State, being a recommendation —
- 20 (a) for reform of the law relating to relevant offences, including —
- (i) evidence and procedure applicable to the trials of relevant offences;
- (ii) relevant offences in relation to, or involving, corporations;
- 25 (iii) taxation, banking and financial frauds;
- (iv) reception by Australian courts of evidence obtained in foreign countries as to relevant offences; and
- (v) maintenance and preservation of taxation, banking and financial records;
- 30 (b) for reform of administrative practices; or

- (c) for reform of administration of the courts in relation to trials of relevant offences,

the Board may make the recommendation to the Commonwealth Minister, or to that State Minister, as the case may be.

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- (4) Where the ACC has obtained particular information or intelligence in the course of performing one or more of its functions, nothing in this Act is to be taken to prevent the ACC from making use of the information or intelligence in the performance of any of its other functions.

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35. Functions of federal judicial officers

- (1) In this section —

“federal judicial officer” means a Judge of the Federal Court or a Federal Magistrate.

15

- (2) A function conferred on a federal judicial officer by this Act is conferred on the federal judicial officer in a personal capacity and not as a court or a member of a court. The federal judicial officer need not accept the function conferred.

20

- (3) Anything done or made by a federal judicial officer under this Act has effect only by virtue of this Act and is not to be taken by implication to be done or made by a court.

25

- (4) A federal judicial officer performing a function under this Act has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the federal judicial officer is a member).

36. Limitation on challenge to Board determination

If —

- (a) an ACC State intelligence operation is determined by the Board to be a special operation; or

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(b) an ACC State investigation is determined by the Board to be a special investigation,

5 then, except in a proceeding instituted by the Attorney-General of the Commonwealth or of a State, any act or thing done by the ACC because of that determination must not be challenged, reviewed, quashed or called in question in any court of the State on the ground that the determination was not lawfully made.

37. Cooperation with law enforcement agencies and coordination with overseas authorities

10 (1) In performing its functions under this Act, the ACC must, so far as is practicable, work in cooperation with law enforcement agencies.

15 (2) In performing its functions under this Act, the ACC may coordinate its activities with the activities of authorities and persons in other countries performing functions similar to functions of the ACC.

38. Incidental powers of ACC

20 The ACC has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the performance of its functions under this Act, and any specific powers conferred on the ACC by this Act are not to be taken to limit by implication the generality of this section.

Part 6 — General

39. Double jeopardy

If —

- 5
- (a) an act or omission by a person is an offence under this Act and is also an offence under the ACC Act; and
 - (b) the person has been punished for the offence under the ACC Act,

the person is not liable to be punished for the offence under this Act.

10 40. Arrangements for Board to obtain information or intelligence

15 The State Minister may make an arrangement with the Commonwealth Minister for the Board to be given by the State, or an authority of the State, information or intelligence relating to relevant criminal activities.

41. Administrative arrangements with the Commonwealth

20 The State Minister may make an arrangement with the Commonwealth Minister under which the State will, from time to time as agreed upon under the arrangement, make available a person who is an officer or employee of the State or of an authority of the State or a member of the Police Force of the State, or persons who are such officers, employees or members, to perform services for the ACC.

42. Judges to perform functions under the ACC Act

25 A Judge of a court of the State may perform functions conferred on the Judge by section 22, 23 or 31 of the ACC Act.

43. Furnishing of reports and information

- (1) The Chair of the Board must keep the Commonwealth Minister informed of the general conduct of the ACC in the performance

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- 5 of the ACC's functions under this Act. If the Commonwealth Minister requests the Chair of the Board to provide to him or her information concerning a specific matter relating to the ACC's conduct in the performance of its functions under this Act, the Chair must comply with the request.
- 10 (2) Subject to subsection (3), if a State Minister who is a member of the Inter-Governmental Committee requests the Chair of the Board to provide to him or her information concerning a specific matter relating to the ACC's conduct in the performance of its functions under this Act, the Chair must comply with the request.
- 15 (3) If the Chair of the Board considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Chair must not provide the information under subsection (2).
- 20 (4) Subject to subsection (6), the Chair of the Board —
- (a) must, when requested by the Inter-Governmental Committee to furnish information to the Committee concerning a specific matter relating to an ACC operation/investigation that the ACC has conducted or is conducting, comply with the request; and
- 25 (b) must when requested by the Inter-Governmental Committee to do so, and may at such other times as the Chair of the Board thinks appropriate, inform the Committee concerning the general conduct of the ACC in the performance of the ACC's functions under this Act.
- 30 (5) Subject to subsection (6), the Chair of the Board must furnish to the Inter-Governmental Committee, for transmission to the Governments represented on the Committee, a report of the findings of any special ACC operation/investigation conducted by the ACC.

- 5 (6) The Chair of the Board must not furnish to the
Inter-Governmental Committee any matter the disclosure of
which to members of the public could prejudice the safety or
reputation of persons or the operations of law enforcement
agencies and, if the findings of the ACC in an investigation
include any such matter, the Chair of the Board must prepare a
separate report in relation to the matter and furnish that report to
the State Minister.
- 10 (7) The Chair of the Board may include in a report furnished under
subsection (5) a recommendation that the report be laid before
each House of the Parliament of the State.
- (8) The CEO may give to —
- 15 (a) any law enforcement agency;
(b) any foreign law enforcement agency; or
(c) any other authority of the Commonwealth, a State or a
Territory prescribed by the regulations,
- any information that has come into the ACC's possession under
this Act and that is relevant to the activities of that agency or
authority if —
- 20 (d) it appears to the CEO to be appropriate to do so; and
(e) to do so would not be contrary to a law of the
Commonwealth, a State or a Territory that would
otherwise apply.
- 25 (9) The CEO may, whenever it appears to the CEO to be
appropriate to do so, furnish to authorities and persons
responsible for taking civil remedies by or on behalf of the
Crown in right of the Commonwealth, of a State or of a
Territory any information that has come into the ACC's
possession under this Act and that may be relevant for the
30 purposes of so taking such remedies in respect of matters
connected with, or arising out of, offences against the laws of
the Commonwealth, of a State or of a Territory, as the case may
be.

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- 5 (10) Where any information relating to the performance of the functions of an authority of the Commonwealth or a State or the Administration of a Territory comes into the ACC's possession under this Act, the CEO may, if he or she considers it desirable to do so —
- (a) furnish that information to the authority or Administration; and
- (b) make any recommendations to the authority or Administration as to the performance of its functions that the CEO considers appropriate.
- 10
- (11) A report under this Act that sets out any finding that an offence has been committed, or makes any recommendation for the institution of a prosecution in respect of an offence, must not be made available to the public unless the finding or
- 15 recommendation is expressed to be based on evidence that would be admissible in the prosecution of a person for that offence.
- (12) The CEO may, whenever it appears to the CEO to be appropriate to do so, furnish to the Australian Security
- 20 Intelligence Organisation any information that has come into the ACC's possession under this Act and that is relevant to security as defined in section 4 of the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth.

44. Secrecy

- 25 (1) This section applies to —
- (a) the CEO;
- (b) a member of the Board;
- (c) a member of the staff of the ACC; and
- (d) an examiner.
- 30 (2) A person to whom this section applies who, either directly or indirectly, except for the purposes of a relevant Act or otherwise in connection with the performance of his or her functions under

a relevant Act, and either while he or she is or after he or she ceases to be a person to whom this section applies —

- (a) makes a record of any information; or
- (b) divulges or communicates to any person any information,

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being information acquired by him or her by reason of, or in the course of, the performance of his or her functions under this Act, is guilty of an offence.

Penalty: A fine of 50 penalty units or imprisonment for one year, or both.

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- (3) A person to whom this section applies cannot be required to produce in any court any document that has come into his or her custody or control in the course of, or by reason of, the performance of his or her functions under this Act, or to divulge or communicate to a court a matter or thing that has come to his or her notice in the performance of those functions, except where the ACC, or the CEO, the acting CEO, a member of the Board or an examiner in his or her official capacity, is a party to the relevant proceeding or it is necessary to do so —

15

- (a) for the purpose of carrying into effect the provisions of a relevant Act; or
- (b) for the purposes of a prosecution instituted as a result of an operation or investigation carried out by the ACC in the performance of its functions.

20

- (4) In this section —

25

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“member of the staff of the ACC” means —

- (a) a person referred to in the definition of “member of the staff of the ACC” in section 4(1) of the ACC Act; or

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s. 45

- (b) a person who assists, or performs services for or on behalf of, a legal practitioner appointed under section 7 in the performance of the legal practitioner's functions as counsel to the ACC;

5 **"produce"** includes permit access to, and **"production"** has a corresponding meaning;

"relevant Act" means the ACC Act, this Act or any corresponding Act of another State.

45. Delegation

10 The CEO may, by writing, delegate to a member of the staff of the ACC who is an SES employee, or an acting SES employee, all or any of the CEO's functions under this Act.

46. Liability for damages

15 A member of the Board is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance or purported performance of any function conferred or expressed to be conferred by or under this Act.

47. Obstructing, hindering or disrupting the ACC or an examiner

- 20 (1) A person must not —
- (a) obstruct or hinder —
- (i) the ACC in the performance of its functions; or
- (ii) an examiner in the performance of his or her
- 25 functions as an examiner;
- or
- (b) disrupt an examination before an examiner.

- (2) A person who contravenes subsection (1) is guilty of a crime.

Penalty: A fine of 200 penalty units or imprisonment for 5 years.

Summary conviction penalty: A fine of 20 penalty units or imprisonment for one year.

5

48. Public meetings and bulletins

- (1) The Board may hold meetings in public for the purpose of informing the public about, or receiving submissions in relation to, the performance of the ACC's functions, including its functions under this Act.

10

- (2) The Board may publish bulletins for the purpose of informing the public about the performance of the ACC's functions, including its functions under this Act.

- (3) The Board must not —

15

(a) divulge in the course of a meeting held under subsection (1); or

(b) include in a bulletin published under subsection (2),

any matter the disclosure of which to members of the public could prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

20

49. Annual report

- (1) In this section —

“**annual report**” means a report by the Chair of the Board under section 61 of the ACC Act.

25

- (2) An annual report in relation to a year must include the following —

(a) a description of any ACC State investigation that the ACC conducted during the year and that the Board determined to be a special investigation;

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- 5
- (b) a description, which may include statistics, of any patterns or trends, and the nature and scope, of any criminal activity that have come to the attention of the ACC during that year in the performance of its functions under this Act;
- 10
- (c) any recommendations for changes in the laws of the Commonwealth, of a participating State or of a Territory, or for administrative action, that, as a result of the performance of the ACC's functions under this Act, the Board considers should be made;
- (d) the general nature and the extent of any information furnished by the CEO during that year under this Act to a law enforcement agency;
- 15
- (e) the extent to which ACC State investigations have resulted in the prosecution in that year of persons for offences;
- (f) the extent to which ACC State investigations have resulted in confiscation proceedings;
- 20
- (g) particulars of the number and results of court proceedings involving the ACC in relation to its functions under this Act being proceedings that were determined, or otherwise disposed of, during that year.
- (3) An annual report must not —
- 25
- (a) identify persons as being suspected of having committed offences; or
- (b) identify persons as having committed offences unless those persons have been convicted of those offences.
- (4) In any annual report the Chair of the Board must take
- 30
- reasonable care to ensure that the identity of a person is not revealed if to reveal his or her identity might, having regard to any material appearing in the report, prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

- (5) The State Minister is to cause a copy of —
- (a) each annual report that he or she receives; and
 - (b) any comments made on the report by the Inter-Governmental Committee, being comments that accompanied the report,

5

to be laid before each House of the Parliament of the State within 15 sitting days of that House after he or she receives the report.

50. Things done for multiple purposes

10

The validity of anything done for the purposes of this Act is not affected only because it was done also for the purposes of the ACC Act.

51. Regulations

15

The Governor may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Part 7 — Transitional

52. Terms used in this Part

In this Part —

5 “NCA investigation” means an investigation under section 5(4)
of the NCA (State Provisions) Act;

“NCA (State Provisions) Act” means the *National Crime
Authority (State Provisions) Act 1985*.

53. Certain investigations taken to be special investigations

10 If an ACC State investigation relates to a matter into which an
NCA investigation had been commenced but not completed
before 1 January 2003, the Board of the ACC is taken to have
determined, in writing, that the ACC State investigation is a
special investigation.

54. Assembling and giving evidence obtained by the NCA

15 If —

(a) before 1 January 2003, the National Crime Authority
obtained evidence of a kind referred to in subsection (1)
of section 6 of the NCA (State Provisions) Act; but

20 (b) the National Crime Authority had not assembled and
given the evidence as mentioned in that subsection
before 1 January 2003,

section 34(1) applies as if that evidence had been obtained by
the ACC in carrying out an ACC operation/investigation.

55. Limitation on challenges to validity of references

25 Section 8 of the NCA (State Provisions) Act continues to apply
in relation to a reference made under that Act as if that section
had not been repealed by this Act.

56. Arrangements to obtain information or intelligence

An arrangement that was in force under section 11 of the NCA (State Provisions) Act immediately before 1 January 2003 has effect as if it had been made under section 40.

5 **57. Things seized under search warrants**

If a thing seized pursuant to a warrant under section 12 of the NCA (State Provisions) Act is in the ACC's possession, section 29(10) and (11) apply to that thing as if it had been seized pursuant to a warrant under section 29.

10 **58. Directions as to publication**

(1) If a direction was in force under section 16(9) of the NCA (State Provisions) Act immediately before 1 January 2003 —

- 15 (a) the direction has effect; and
(b) section 18(10), (11) and (14)(b) apply to the direction as if it were a direction under section 18(9).

20 (2) Section 18(12) and (13), so far as they relate to the CEO, apply to evidence in relation to which a direction was given under section 16(9) of the NCA (State Provisions) Act as if it were evidence given before an examiner in relation to which the examiner has given a direction under section 18(9).

59. Disclosure of summons or notice

If a notation made in connection with an NCA investigation was in force under section 18A of the NCA (State Provisions) Act immediately before 1 January 2003 —

- 25 (a) the notation has effect;
(b) section 22 applies to the summons or notice containing the notation; and

s. 60

- 5 (c) if there is an ACC operation/investigation relating to the matter to which the NCA investigation related, section 21(4) and (5) apply as if the notation had been made in connection with the ACC operation/investigation.

60. Witness protection

Arrangements that were in effect under section 24 of the NCA (State Provisions) Act immediately before 1 January 2003 have effect as if they had been made under section 26.

10 **61. Administrative arrangements in relation to the NCA**

An arrangement that was in force under section 28(b) of the NCA (State Provisions) Act immediately before 1 January 2003 has effect as if it had been made under section 41.

62. Secrecy obligations

- 15 (1) In this section —

“**former official**” means a person who was, at any time, a person to whom section 31 of the NCA (State Provisions) Act applied.

- 20 (2) Section 44(2) and (3) extend to a former official (whether or not he or she is or has been a person to whom section 44 applies) as if —

- 25 (a) references in section 44 to this Act or to a corresponding Act of another State included references to the NCA (State Provisions) Act or to a corresponding Act of another State; and

- (b) the reference in section 44(3)(b) to an investigation carried out by the ACC included a reference to an investigation carried out by the National Crime Authority before 1 January 2003.

63. Validation of administrative actions

The *Co-operative Schemes (Administrative Actions) Act 2001* (the “**validation Act**”) applies to administrative actions that have been taken, or have purportedly been taken, under the NCA (State Provisions) Act as if —

5

(a) the NCA (State Provisions) Act were still a relevant State Act for the purposes of the validation Act; and

10

(b) for the purposes of the validation Act, the “commencement time” in relation to the NCA (State Provisions) Act were the time when section 65 comes into operation.

64. Transitional regulations

15

(1) If there is no sufficient provision in this Part for dealing with a transitional matter, regulations may prescribe all matters that are required, necessary or convenient to be prescribed in relation to that matter.

(2) In subsection (1) —

“**transitional matter**” includes a savings or application matter.

20

(3) If regulations made under subsection (1) provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than 1 January 2003, the regulations have effect according to their terms.

25

(4) Regulations that contain a provision referred to in subsection (3) cannot be made more than 12 months after the day on which section 65 comes into operation.

30

(5) If regulations contain a provision referred to in subsection (3), the provision does not operate so as to —

(a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that

s. 64

person existing before the day of publication of those regulations; or

- (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

5

Part 8 — Repeal of the *National Crime Authority (State Provisions) Act 1985* and amendments to other written laws

65. *National Crime Authority (State Provisions) Act 1985* repealed

5

The *National Crime Authority (State Provisions) Act 1985* is repealed.

66. *Anti-Corruption Commission Act 1988* amended

10

- (1) The amendments in this section are to the *Anti-Corruption Commission Act 1988**.

[* *Reprinted as at 6 July 2001.*]

- (2) Section 12(1)(f) is amended by deleting subparagraph (iii) and “and” after it and inserting instead —

“

15

- (iii) the Chair of the Board of the Australian Crime Commission established by the *Australian Crime Commission Act 2002* of the Commonwealth; and

”.

20

67. *Co-operative Schemes (Administrative Actions) Act 2001* amended

- (1) The amendments in this section are to the *Co-operative Schemes (Administrative Actions) Act 2001**.

[* *Act No. 31 of 2001.*

25

For subsequent amendments see Act No. 30 of 2003.]

- (2) Section 3 is amended in paragraph (a) of the definition of “commencement time” by deleting “or the *National Crime Authority (State Provisions) Act 1985*”.

s. 68

(3) Section 4(1) is amended in the definition of “relevant State Act” as follows:

(a) after paragraph (aa) by inserting —
“ and ”;

5 (b) by deleting paragraph (b) and “and” after it.

68. Federal Courts (State Jurisdiction) Act 1999 amended

(1) The amendments in this section are to the *Federal Courts (State Jurisdiction) Act 1999**.

[* Act No. 32 of 1999.

10 *For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 131.]*

(2) Section 3 is amended in the definition of “relevant State Act” as follows:

(a) after paragraph (a) by inserting —

15 “
(aa) *Australian Crime Commission (Western Australia) Act 2003*;
”;

(b) by deleting paragraph (h).

20 **69. First Home Owner Grant Regulations 2000 amended**

(1) The amendments in this section are to the *First Home Owner Grant Regulations 2000**.

[* Published in Gazette 30 June 2000 p. 3433-7.

25 *For amendments to 13 November 2003 see Western Australian Legislation Information Tables for 2002, Table 4, p. 120 and Gazette 30 June 2003 p. 2581-638.]*

- (2) Regulation 11(1) is amended by deleting “National Crime Authority established under the *National Crime Authority Act 1984*” and inserting instead —

“

5 Australian Crime Commission established by the
 Australian Crime Commission Act 2002

”.

70. *Royal Commission (Custody of Records) Act 1992* amended

- 10 (1) The amendments in this section are to the *Royal Commission (Custody of Records) Act 1992**.

[* *Act No. 43 of 1992.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2002, Table 1, p. 345.]*

- 15 (2) Section 4(1) is amended in paragraph (c) of the definition of “regulatory body” by deleting “National Crime Authority” and inserting instead —

“ Australian Crime Commission ”.

71. *Surveillance Devices Act 1998* amended

- 20 (1) The amendments in this section are to the *Surveillance Devices Act 1998**.

[* *Reprint 1 as at 12 September 2003.*]

- (2) Section 3(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical position —

“

25 **“Australian Crime Commission”** means the
 Australian Crime Commission established by the
 Australian Crime Commission Act 2002 of the
 Commonwealth;

”;

s. 71

- (b) by deleting paragraph (c) of the definition of “authorised person” and inserting instead —
- “
- 5 (c) in the case of the Australian Crime Commission, a person authorised for the purpose by the Chair of the Board of the Australian Crime Commission;
- ”;
- (c) in —
- 10 (i) the definition of “emergency authorisation”; and
- (ii) paragraph (c) of the definition of “law enforcement officer”,
- by deleting “National Crime Authority” and inserting instead —
- 15 “ Australian Crime Commission ”;
- (d) by deleting the definition of “member of the staff of the National Crime Authority” and inserting instead —
- “
- 20 **“member of the staff of the Australian Crime Commission”** has the meaning given to the term “member of the staff of the ACC” in section 4(1) of the *Australian Crime Commission Act 2002* of the Commonwealth;
- ”;
- 25 (e) by deleting the definition of “National Crime Authority”.

- (3) The provisions set out in the Table to this subsection are amended by deleting “National Crime Authority” and inserting instead —

“ Australian Crime Commission ”.

5

Table

s. 4A	s. 17(2)(d)(ii)
s. 11	s. 20 (in both places where it occurs)
s. 15(1)(c)	s. 31(3)(b)(iv)
s. 15(3)(c) (in the first place where it occurs)	s. 40(3)
s. 15(3)(f)(i)	s. 41(1), (1)(a), (2) and (3)
s. 16(4)	s. 43(3) (in the second place where it occurs)

Note: The heading to section 4A will be altered to read “**State Police working for Australian Crime Commission**”.

- (4) The provisions set out in the Table to this subsection are amended by deleting “Chairperson of the National Crime Authority” and inserting instead —

10

“ Chair of the Board of the Australian Crime Commission ”.

Table

s. 9(2)(a)(iii)	s. 43(3) and (4)
s. 15(3)(c) (in both places where it occurs)	s. 44(1)(f)

72. Surveillance Devices Regulations 1999 amended

- (1) The amendments in this section are to the *Surveillance Devices Regulations 1999**.

15

[* *Published in Gazette 18 November 1999 p. 5767-86. For amendments to 13 November 2003 see Western Australian Legislation Information Tables for 2002, Table 4, p. 374.*]

s. 73

(2) Regulation 7(1), (2) and (3) are amended by deleting “National Crime Authority” and inserting instead —

“ Australian Crime Commission ”.

(3) The forms of Warrant, Application for emergency authorization, Emergency authorization and Application for tracking device warrant or tracking device (maintenance/retrieval) warrant in Schedule 1 are amended by deleting “staff of National Crime Authority” in each place where it occurs and inserting instead —

“ staff of Australian Crime Commission ”.

(4) The form of Emergency authorization in Schedule 1 is amended by deleting “Chairperson of National Crime Authority” and inserting instead —

“ Chair of Board of Australian Crime Commission ”.

73. *Telecommunications (Interception) Western Australia Act 1996 amended*

(1) The amendments in this section are to the *Telecommunications (Interception) Western Australia Act 1996**.

[* *Reprint 1 as at 22 August 2003.*]

(2) Section 3(1) is amended in paragraph (b) of the definition of “agency” by deleting “National Crime Authority” and inserting instead —

“ Australian Crime Commission ”.

74. *Witness Protection (Western Australia) Act 1996 amended*

(1) The amendments in this section are to the *Witness Protection (Western Australia) Act 1996* *.

[* *Reprint 1 as at 10 October 2003.*]

- (2) Section 3(1) is amended by deleting paragraph (c) of the definition of “approved authority” and inserting instead —

“

5

- (c) the Chair of the Board of the Australian Crime Commission established by the *Australian Crime Commission Act 2002* of the Commonwealth;

”.

=====

Defined Terms

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
ACC Act	3(1)
ACC operation/investigation.....	3(1)
ACC State intelligence operation	3(1)
ACC State investigation	3(1)
annual report	49(1)
Australia	24(8), 28(5)
authorised person	29(2)
authority.....	3(1)
Commonwealth body or person	3(1)
Commonwealth Minister	3(1)
confer.....	3(1)
court	44(4)
federal judicial officer	35(1)
Federal Magistrate.....	3(1)
former official	62(1)
function.....	3(1), 3(4)
incidental offence	3(3)
intelligence operation	3(1)
issuing officer	3(1)
member of the staff of the ACC.....	44(4)
NCA (State Provisions) Act.....	52
NCA investigation.....	52
official matter.....	21(6), 22(7)
penalty units.....	3(5)
perform	3(1)
produce.....	44(4)
production.....	44(4)
relevant Act.....	44(4)
relevant day.....	29(1)
serious and organised crime.....	3(1)
special ACC operation/investigation	3(1)
special determination.....	16(1)
State Minister.....	3(1)
Summary conviction penalty.....	3(6)
thing	29(14)
things of the relevant kind	29(1)
transitional matter.....	64(2)

Defined Terms

validation Act.....	63
witness.....	18(7)