



# **Australian Crime Commission Act 2002**

**Act No. 41 of 1984 as amended**

This compilation was prepared on 29 November 2012  
taking into account amendments up to Act No. 136 of 2012

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

Prepared by the Office of Parliamentary Counsel, Canberra



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# An Act to establish the Australian Crime Commission, and for related purposes

## Part I—Preliminary

### 1 Short title *[see Note 1]*

This Act may be cited as the *Australian Crime Commission Act 2002*.

### 2 Commencement *[see Note 1]*

This Act shall come into operation on a day to be fixed by Proclamation.

### 3 Repeal

The *National Crimes Commission Act 1982* is repealed.

### 4 Interpretation

- (1) In this Act, unless the contrary intention appears:

*ACC* means the Australian Crime Commission established by section 7.

*ACC information* means information that is in the ACC's possession.

*ACC operation/investigation* means:

- (a) an intelligence operation that the ACC is undertaking; or
- (b) an investigation into matters relating to federally relevant criminal activity that the ACC is conducting.

*acting SES employee* has the same meaning as in the *Public Service Act 1999*.

*appoint* includes re-appoint.

*Board* means the Board of the ACC.

**business** includes:

- (a) any profession, trade, employment or vocational calling;
- (b) any transaction or transactions, whether lawful or unlawful, in the nature of trade or commerce (including the making of a loan); and
- (c) any activity, whether lawful or unlawful, carried on for the purposes of gain, whether or not the gain is of a pecuniary nature and whether the gain is direct or indirect.

**CEO** means the Chief Executive Officer of the ACC.

**child** means any person who is under 18 years of age.

**child abuse** means an offence relating to the abuse or neglect of a child (including a sexual offence) that is punishable by imprisonment for a period of 3 years or more.

**Commonwealth officer:**

- (a) has the meaning given by subsection 3(1) of the *Crimes Act 1914*; and
- (b) includes members of the staff of the ACC.

**confiscation proceeding** means a proceeding under the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*, or under a corresponding law within the meaning of either of those Acts, but does not include a criminal prosecution for an offence under either of those Acts or a corresponding law.

**constable** means a member or special member of the Australian Federal Police or a member of the police force or police service of a State.

**CSC** (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

**document** has the same meaning as in the *Evidence Act 1995*.

**eligible Commonwealth Board member** means the following members of the Board:

- (a) the Commissioner of the Australian Federal Police;
- (b) the Secretary of the Department;
- (c) the Chief Executive Officer of Customs;

- (d) the Chairperson of the Australian Securities and Investments Commission;
- (e) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*;
- (f) the Commissioner of Taxation.

***eligible person*** means:

- (a) an examiner; or
- (b) a member of the staff of the ACC who is also a member of:
  - (i) the Australian Federal Police; or
  - (ii) the Police Force of a State.

***examiner*** means a person appointed under subsection 46B(1).

***federal aspect***, in relation to an offence against a law of a State, has the meaning given by subsection 4A(2).

***Federal Court*** means the Federal Court of Australia.

***federally relevant criminal activity*** means:

- (a) a relevant criminal activity, where the relevant crime is an offence against a law of the Commonwealth or of a Territory;  
or
- (b) a relevant criminal activity, where the relevant crime:
  - (i) is an offence against a law of a State; and
  - (ii) has a federal aspect.

***foreign law enforcement agency*** means:

- (a) a police force (however described) of a foreign country; or
- (b) any other authority or person responsible for the enforcement of the laws of the foreign country.

***in contempt of the ACC*** has the meaning given by section 34A.

***Indigenous person*** means a person (including a child) who is:

- (a) a person of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

***Indigenous violence or child abuse*** means serious violence or child abuse committed against an Indigenous person.

***intelligence operation*** means an operation that is primarily directed towards the collection, correlation, analysis or dissemination of criminal information and intelligence relating to federally relevant criminal activity, but that may involve the investigation of matters relating to federally relevant criminal activity.

***Inter-Governmental Committee*** or ***Committee*** means the Inter-Governmental Committee referred to in section 8.

***issuing officer*** means:

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

***law enforcement agency*** means:

- (a) the Australian Federal Police;
- (b) a Police Force of a State; or
- (c) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of the States.

***legal practitioner*** means a barrister, a solicitor, a barrister and solicitor, or a legal practitioner, of the High Court or of the Supreme Court of a State or Territory.

***member of the staff of the ACC*** means:

- (a) a member of the staff referred to in subsection 47(1); or
- (b) a person participating in an ACC operation/investigation; or
- (c) a member of a task force established by the Board under paragraph 7C(1)(f); or
- (d) a person engaged under subsection 48(1); or
- (e) a person referred to in section 49 whose services are made available to the ACC; or
- (f) a legal practitioner appointed under section 50 to assist the ACC as counsel.

***officer of a State*** includes:

- (a) a Minister of the Crown of a State;
- (b) a member of either House of the Parliament of a State or, if there is only one House of the Parliament of a State, a member of that House;

- (c) a person holding or acting in an office (including a judicial office) or appointment, or employed, under a law of a State; and
- (d) a person who is, or is a member of, an authority or body established for a public purpose by or under a law of a State or is an officer or employee of such an authority or body.

***officer of a Territory*** includes:

- (a) a person holding or acting in an office (including a judicial office) or appointment, or employed, under a law of a Territory; and
- (b) a person who is, or is a member of, an authority or body established for a public purpose by or under a law of a Territory or is an officer or employee of such an authority or body.

***officer of the Commonwealth*** includes:

- (a) a Minister of State of the Commonwealth;
- (b) a member of either House of the Parliament of the Commonwealth;
- (c) a person holding or acting in an office (including a judicial office) or appointment, or employed, under a law of the Commonwealth; and
- (d) a person who is, or is a member of, an authority or body established for a public purpose by or under a law of the Commonwealth or is an officer or employee of such an authority or body;

but does not include an officer of a Territory.

***Ombudsman*** means the Commonwealth Ombudsman.

***participating State*** means a State the Premier of which:

- (a) has notified the Prime Minister that the State will participate in the activities of the Inter-Governmental Committee; and
- (b) has not subsequently notified the Prime Minister that the State will not participate in the activities of the Committee.

***passport*** means an Australian passport or a passport issued by the Government of a country other than Australia.

***permissible purpose*** means one or more of the following purposes:

- (a) performing functions referred to in section 7A or 7C;

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- (b) preventing, detecting, investigating, prosecuting or punishing:
  - (i) criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); or
  - (ii) contraventions of a law of the Commonwealth, a State or a Territory imposing a penalty or sanction (including taking civil remedies in relation to contraventions of such laws); or
  - (iii) seriously improper conduct (including professional misconduct or misconduct by a public official);
- (c) preventing, detecting or investigating threats to national security;
- (d) preventing serious threats to an individual's life, health or safety, or to public health or public safety;
- (e) enforcing laws (including laws of foreign countries) relating to proceeds of crime;
- (f) enforcing laws (including laws of foreign countries) relating to unexplained wealth;
- (g) protecting public revenue;
- (h) developing government policy;
- (i) researching criminology;
- (j) any other purpose prescribed by the regulations.

**relevant crime** means:

- (a) serious and organised crime; or
- (b) Indigenous violence or child abuse.

Note: See also subsection (2) (which expands the meaning of **relevant crime** in certain circumstances).

**relevant criminal activity** means any circumstances implying, or any allegations, that a relevant crime may have been, may be being, or may in future be, committed against a law of the Commonwealth, of a State or of a Territory.

**returnable item** means:

- (a) a thing seized under a warrant issued under section 22; or
- (b) a thing, or a document, produced:
  - (i) under a notice given under section 29; or

- (ii) during an examination conducted under Division 2 of Part II.

**secrecy provision** means:

- (a) a provision of a law of the Commonwealth, of a State or of a Territory, being a provision that purports to prohibit; or
- (b) anything done, under a provision of a law of the Commonwealth, of a State or of a Territory, to prohibit; the communication, divulging or publication of information, the production of, or the publication of the contents of, a document, or the production of a thing.

**serious and organised crime** means an offence:

- (a) that involves 2 or more offenders and substantial planning and organisation; and
- (b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques; and
- (c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and
- (d) that is a serious offence, an offence against Subdivision B or C of Division 471, or D or F of Division 474, of the *Criminal Code*, an offence of a kind prescribed by the regulations or an offence that involves any of the following:
  - (i) theft;
  - (ii) fraud;
  - (iii) tax evasion;
  - (iv) money laundering;
  - (v) currency violations;
  - (vi) illegal drug dealings;
  - (vii) illegal gambling;
  - (viii) obtaining financial benefit by vice engaged in by others;
  - (ix) extortion;
  - (x) violence;
  - (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;
  - (xiv) harbouring of criminals;

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- (xv) forging of passports;
  - (xvi) firearms;
  - (xvii) armament dealings;
  - (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
- (da) that is:
- (i) punishable by imprisonment for a period of 3 years or more; or
  - (ii) a serious offence;
- but:
- (e) 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
  - (f) does not include an offence the time for the commencement of a prosecution for which has expired.

***serious misconduct***, by a member of the staff referred to in subsection 47(1), has the meaning given by subsection 47A(8).

***serious offence***:

- (a) in the definition of ***serious and organised crime***—has the meaning given by the *Proceeds of Crime Act 2002*; and
- (b) otherwise—has the meaning given by subsection 3C(1) of the *Crimes Act 1914*.

***serious violence*** means an offence involving violence against a person (including a child) that is punishable by imprisonment for a period of 3 years or more.

***SES employee*** has the same meaning as in the *Public Service Act 1999*.

***special ACC operation/investigation*** means:

- (a) an intelligence operation that the ACC is undertaking and that the Board has determined to be a special operation; or

- (b) an investigation into matters relating to federally relevant criminal activity that the ACC is conducting and that the Board has determined to be a special investigation.

**State** includes the Australian Capital Territory and the Northern Territory.

**State or Territory law enforcement agency** has the meaning given by subsection 3ZQU(7) of the *Crimes Act 1914*.

**taxation secrecy provision** means a secrecy provision that is a provision of a law that is a taxation law for the purposes of the *Taxation Administration Act 1953*.

**Territory** does not include the Australian Capital Territory or the Northern Territory.

**terrorism offence** has the same meaning as in subsection 3(1) of the *Crimes Act 1914*.

**terrorist act** has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

**the Commonwealth Minister** or **the Minister** means the Minister of State administering this Act.

- (2) If the head of an ACC operation/investigation suspects that an offence (the **incidental offence**) that is not a relevant crime may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a relevant crime (whether or not the head has identified the nature of that relevant 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 relevant crime.
- (3) In this Act:
- (a) a reference to the Parliament of a State is to be read as:
    - (i) in relation to the Australian Capital Territory—a reference to the Legislative Assembly for that Territory; and
    - (ii) in relation to the Northern Territory—a reference to the Legislative Assembly of that Territory; and
  - (b) a reference to the Governor of a State is to be read as:
    - (i) in relation to the Australian Capital Territory—a reference to the Governor-General; and
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- (ii) in relation to the Northern Territory—a reference to the Administrator of that Territory; and
- (c) a reference to the Premier of a State is to be read as:
  - (i) in relation to the Australian Capital Territory—a reference to the Chief Minister of that Territory; and
  - (ii) in relation to the Northern Territory—a reference to the Chief Minister of that Territory; and
- (d) a reference to a Minister of the Crown of a State is to be read as:
  - (i) in relation to the Australian Capital Territory—a reference to a person appointed as a Minister under section 41 of the *Australian Capital Territory (Self-Government) Act 1988*; and
  - (ii) in relation to the Northern Territory—a reference to a person holding Ministerial office within the meaning of the *Northern Territory (Self-Government) Act 1978*.

#### 4A When a State offence has a federal aspect

*Object*

- (1) The object of this section is to identify State offences that have a federal aspect because:
  - (a) they potentially fall within Commonwealth legislative power because of:
    - (i) the elements of the State offence; or
    - (ii) the circumstances in which the State offence was committed (whether or not those circumstances are expressed to be elements of the offence); or
  - (b) either:
    - (i) the ACC investigating them is incidental to the ACC investigating an offence against a law of the Commonwealth or a Territory; or
    - (ii) the ACC undertaking an intelligence operation relating to them is incidental to the ACC undertaking an intelligence operation relating to an offence against a law of the Commonwealth or a Territory.

*Federal aspect*

- (2) For the purposes of this Act, a State offence has a *federal aspect* if, and only if:
- (a) both:
    - (i) the State offence is not an ancillary offence; and
    - (ii) assuming that the provision creating the State offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
  - (b) both:
    - (i) the State offence is an ancillary offence that relates to a particular primary offence; and
    - (ii) assuming that the provision creating the primary offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
  - (c) assuming that the Parliament of the Commonwealth had enacted a provision that created an offence penalising the specific acts or omissions involved in committing the State offence—that provision would have been a valid law of the Commonwealth; or
  - (d) both:
    - (i) the ACC is investigating a matter relating to a relevant criminal activity that relates to an offence against a law of the Commonwealth or a Territory; and
    - (ii) if the ACC is investigating, or were to investigate, a matter relating to a relevant criminal activity that relates to the State offence—that investigation is, or would be, incidental to the investigation mentioned in subparagraph (i); or
  - (e) both:
    - (i) the ACC is undertaking an intelligence operation relating to an offence against a law of the Commonwealth or a Territory; and
    - (ii) if the ACC is undertaking, or were to undertake, an intelligence operation relating to the State offence—that
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operation is, or would be, incidental to the operation mentioned in subparagraph (i).

*Specificity of acts or omissions*

- (3) For the purposes of paragraph (2)(c), the specificity of the acts or omissions involved in committing a State offence is to be determined having regard to the circumstances in which the offence was committed (whether or not those circumstances are expressed to be elements of the offence).

*State offences covered by paragraph (2)(c)*

- (4) A State offence is taken to be covered by paragraph (2)(c) if:
- (a) the State offence affects the interests of:
    - (i) the Commonwealth; or
    - (ii) an authority of the Commonwealth; or
    - (iii) a constitutional corporation; or
  - (b) the State offence was committed by a constitutional corporation; or
  - (c) the State offence was committed in a Commonwealth place; or
  - (d) the State offence involved the use of a postal service or other like service; or
  - (e) the State offence involved an electronic communication; or
  - (f) the State offence involved trade or commerce:
    - (i) between Australia and places outside Australia; or
    - (ii) among the States; or
    - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
  - (g) the State offence involved:
    - (i) banking (other than State banking not extending beyond the limits of the State concerned); or
    - (ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or
  - (h) the State offence relates to a matter outside Australia.
- (5) Subsection (4) does not limit paragraph (2)(c).

*Definitions*

(6) In this section:

***ancillary offence***, in relation to an offence (the ***primary offence***), means:

- (a) an offence of conspiring to commit the primary offence; or
- (b) an offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of the primary offence; or
- (c) an offence of attempting to commit the primary offence.

***Commonwealth place*** has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

***constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

***electronic communication*** means a communication of information:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms;

by means of guided and/or unguided electromagnetic energy.

***intelligence operation*** means an operation that is primarily directed towards the collection, correlation, analysis or dissemination of criminal information and intelligence relating to relevant criminal activity, but that may involve the investigation of matters relating to relevant criminal activity.

***State offence*** means an offence against a law of a State.

## **5 Act to bind Crown**

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory, of the Australian Capital Territory, and of Norfolk Island.

**6 Extension to external Territories**

This Act extends to all the external Territories.

**6A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

## **Part II—The Australian Crime Commission (the ACC)**

### **Division 1—Establishment and functions of the Australian Crime Commission, the Board and the Inter-Governmental Committee**

#### **Subdivision A—The Australian Crime Commission**

##### **7 Establishment of the Australian Crime Commission**

- (1) The Australian Crime Commission is established by this section.
- (2) The ACC consists of:
  - (a) the CEO; and
  - (b) the examiners; and
  - (c) the members of the staff of the ACC.

##### **7A Functions of the ACC**

The ACC has the following functions:

- (a) to collect, correlate, analyse and disseminate criminal information and intelligence and to maintain a national database of that information and intelligence;
- (b) to undertake, when authorised by the Board, intelligence operations;
- (c) to investigate, when authorised by the Board, matters relating to federally relevant criminal activity;
- (d) to provide reports to the Board on the outcomes of those operations or investigations;
- (e) to provide strategic criminal intelligence assessments, and any other criminal information and intelligence, to the Board;
- (f) to provide advice to the Board on national criminal intelligence priorities;
- (g) such other functions as are conferred on the ACC by other provisions of this Act or by any other Act.

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**Subdivision B—The Board of the ACC**

**7B Establishment of the Board**

- (1) The Board of the ACC is established by this section.

*Board members*

- (2) The Board consists of the following members:
- (a) the Commissioner of the Australian Federal Police;
  - (b) the Secretary of the Department;
  - (c) the Chief Executive Officer of Customs;
  - (d) the Chairperson of the Australian Securities and Investments Commission;
  - (e) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*;
  - (f) the Commissioner or head (however described) of the police force of each State and of the Northern Territory;
  - (g) the Chief Police Officer of the Australian Capital Territory;
  - (h) the CEO;
  - (i) the Commissioner of Taxation.

*Chair*

- (3) The Commissioner of the Australian Federal Police is the Chair of the Board.

**7C Functions of the Board**

- (1) The Board has the following functions:
- (a) to determine national criminal intelligence priorities;
  - (b) to provide strategic direction to the ACC and to determine the priorities of the ACC;
  - (c) to authorise, in writing, the ACC to undertake intelligence operations or to investigate matters relating to federally relevant criminal activity;
  - (d) to determine, in writing, whether such an operation is a special operation or whether such an investigation is a special investigation;

- (e) to determine, in writing, the class or classes of persons to participate in such an operation or investigation;
- (f) to establish task forces;
- (g) to disseminate to law enforcement agencies or foreign law enforcement agencies, or to any other agency or body of the Commonwealth, a State or a Territory prescribed by the regulations, strategic criminal intelligence assessments provided to the Board by the ACC;
- (h) to report to the Inter-Governmental Committee on the ACC's performance;
- (i) such other functions as are conferred on the Board by other provisions of this Act.

Note: The CEO must determine, in writing, the head of an intelligence operation or an investigation into matters relating to federally relevant criminal activity: see subsection 46A(2A).

#### *Special operations*

- (2) The Board may determine, in writing, that an intelligence operation is a special operation. 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.

Note 1: See also subsection 7G(4) for the voting rule that applies in relation to such a determination.

Note 2: See also Division 2 for the examination powers available if there is a special operation.

#### *Special investigations*

- (3) The Board may determine, in writing, that an investigation into matters relating to federally relevant criminal activity is a special investigation. Before doing so, it must consider whether ordinary police methods of investigation into the matters are likely to be effective.

Note 1: See also subsection 7G(4) for the voting rule that applies in relation to such a determination.

Note 2: See also Division 2 for the examination powers available if there is a special investigation.

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*Further details*

- (4) A determination under subsection (2) or (3) must:
- (a) describe the general nature of the circumstances or allegations constituting the federally relevant criminal activity; and
  - (b) state that the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of the Commonwealth, a law of a Territory or a law of a State but need not specify the particular offence or offences; and
  - (c) set out the purpose of the operation or investigation.

*Informing the Inter-Governmental Committee*

- (5) The Chair of the Board must, within the period of 7 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.

*When determination takes effect*

- (6) A determination under subsection (2) or (3) has effect immediately after it is made.

**7D 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 following requirements:
- (a) the first meeting of the Board must be within 2 months after the commencement of this section;
  - (b) there must be a minimum of 2 meetings each calendar year;
  - (c) the Board must meet in accordance with the schedule of Board meetings determined by the Board under this section.
- (3) The Board, at its first meeting, must determine, in writing, a schedule of Board meetings.

**7E Presiding at Board meetings**

A meeting of the Board must be presided over by:

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- (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.

### **7F Quorum at Board meetings**

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

### **7G Voting at Board meetings**

- (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.

*Person presiding has a casting vote*

- (2) The person presiding at a meeting has:
  - (a) a deliberative vote; and
  - (b) if necessary, also a casting vote.

*CEO is not a voting member*

- (3) The CEO is not entitled to vote on any question arising at a meeting of the Board.

*Voting for special ACC operations/investigations*

- (4) The Board cannot determine that an intelligence operation is a special operation, or that an investigation into matters relating to federally relevant criminal activity 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.

### **7H Conduct of Board meetings**

- (1) The Board may regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for people to participate in meetings by various means of communication (e.g. telephone).

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- (2) The Board must ensure that minutes of its meetings are kept.

**7J Resolutions outside of Board meetings**

- (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
    - (ii) if the resolution is that the Board determine that an intelligence operation is a special operation, or that an investigation into matters relating to federally relevant criminal activity 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.
- (2) The resolution is as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.

**7K Board committees**

- (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.

*Functions*

- (3) The functions of a committee are as determined by the unanimous agreement of all the members of the Board (not including the CEO).
- (4) However, the Board cannot determine that a committee has the function of determining whether an intelligence operation is a special operation or whether an investigation into matters relating to federally relevant criminal activity is a special investigation.
- (5) In performing its functions, a committee must comply with any directions given to the committee by the Board.

*Voting*

- (6) A question arising at a meeting of a committee is to be determined by a majority of the votes of committee members present.
- (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.

*Informing other Board members of decisions*

- (8) A committee must inform the other members of the Board of its decisions.

*Conduct of committee meetings*

- (9) A committee may regulate proceedings at its meetings as it considers appropriate.
- (10) A committee must ensure that minutes of its meetings are kept.

## **Subdivision C—The Inter-Governmental Committee**

### **8 Establishment and constitution of Inter-Governmental Committee**

- (1) There is hereby established an Inter-Governmental Committee consisting of:
  - (a) a member to represent the Commonwealth, being the Commonwealth Minister; and
  - (b) in the case of each participating State—a member to represent that State, being a Minister of the Crown of that State nominated by the Premier of that State.
- (2) The Commonwealth Minister may appoint a person as his or her delegate to attend a meeting of the Committee at which the Commonwealth Minister is not present.
- (3) A member of the Committee for the time being representing a State may appoint a person as his or her delegate to attend a meeting of the Committee at which that member is not present.
- (4) Where a person attends a meeting of the Committee as the delegate of the member representing the Commonwealth or as the delegate of a member representing a State, the delegate shall be deemed to

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be the member representing the Commonwealth or that State, as the case may be.

- (5) Meetings of the Committee shall be held at such times and places as are from time to time agreed upon by the members of the Committee. There must be a minimum of 2 meetings each calendar year.
- (6) At a meeting of the Committee:
- (a) a quorum is constituted by:
    - (i) if every State is a participating State—5 members of the Committee; or
    - (ii) in any other case—not less than one-half of the members of the Committee;
  - (b) the member representing the Commonwealth shall preside;
  - (c) each member of the Committee (including the member presiding) has a deliberative vote but the member of the Committee presiding does not have a casting vote; and
  - (d) subject to this Act, questions arising shall be decided by a majority of the votes of the members of the Committee present.
- (7) A resolution:
- (a) which, without being considered at a meeting of the Committee, is referred to all members of the Committee; and
  - (b) of which:
    - (i) if subparagraph (ii) does not apply—a majority of those members, or if a majority including a particular member or particular members is required for the resolution to have effect, a majority including that member or those members, indicate by telephone or other mode of communication to the member of the Committee representing the Commonwealth that they are in favour; or
    - (ii) if the resolution is that the Committee make a request under subsection 9(2) or that the Committee revoke a determination made under subsection 7C(2) or (3)—the member of the Committee representing the Commonwealth is in favour and at least 5 other members indicate by telephone or other mode of

communication to the member of the Committee representing the Commonwealth that they are in favour; is as valid and effectual as if it had been passed at a meeting of the Committee duly convened and held.

- (8) Subject to the foregoing provisions of this section, the Committee may determine its procedure and for that purpose may make rules of procedure, including rules relating to the convening of meetings and the conduct of business at meetings, and may from time to time alter rules so made.
- (9) Any member of the Board may, with the consent of the members of the Committee present at a meeting of the Committee, attend that meeting and participate in the discussion of matters arising at the meeting.

## 9 Functions of Committee

- (1) The Committee has the following functions:
  - (a) to monitor generally the work of the ACC and the Board;
  - (b) to oversee the strategic direction of the ACC and the Board;
  - (c) to receive reports from the Board for transmission to the Governments represented on the Committee and to transmit those reports accordingly;
  - (d) such other functions as are conferred on the Committee by other provisions of this Act.

### *Request for more information about special determination*

- (2) Within the period of 30 days beginning on the day the Committee is given a copy of a determination (a **special determination**) under subsection 7C(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 determination.
- (3) Subject to subsection (4), the Chair of the Board must comply with the request.
- (4) If the Chair of the Board considers that disclosure of information to the public could prejudice the safety or reputation of persons or the

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operations of law enforcement agencies, the Chair must not give the Committee the information.

- (5) 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 safety or reputation of persons or the operations of law enforcement agencies, the Committee may refer the request to the Minister.
- (6) If the Committee refers the request to the Minister, the Minister:
  - (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; and
  - (b) must provide copies of that determination to the Chair of the Board and the Committee; and
  - (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.

*Revoking the special determination*

- (7) Within the period of 30 days beginning on the day the Committee makes a request under subsection (2) in relation to a special determination, 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, revoke the determination.
- (8) The Committee must notify the Chair of the Board and the CEO of the revocation. The revocation takes effect when the CEO is so notified.

Note: One of the effects of the revocation is that the coercive powers in Division 2 of Part II are no longer able to be exercised in relation to the ACC operation/investigation concerned.
- (9) 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.

*Committee under no duty to consider whether to exercise powers*

- (10) The Committee does not have a duty to consider whether to exercise the power under subsection (2) or (7) in respect of any special determination, whether the Committee is requested to do so by any person, or in any other circumstances.

## **Division 1A—Performance of functions and exercise of powers**

### **12 Performance of functions**

- (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:
- (a) the Attorney-General of the Commonwealth or the State, as the case requires; or
  - (b) the relevant law enforcement agency; or
  - (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.

Note 1: The CEO may also disseminate information in certain circumstances to law enforcement agencies and other bodies: see sections 59AA and 59AB.

Note 2: This subsection is subject to any relevant direction given under subsection 25A(9) (see subsection (2) of this section).

- (1A) 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:
- (a) the Attorney-General of the Commonwealth or the State, as the case requires; or
  - (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.

Note: This subsection is subject to any relevant direction given under subsection 25A(9) (see subsection (2) of this section).

- (2) Subsections (1) and (1A) are subject to any relevant direction given under subsection 25A(9) (confidentiality in relation to examinations).

- (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 Minister of the Crown of a participating State, being a recommendation:
- (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;
    - (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;
  - (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 Minister of the Crown of that State, as the case may be.
- (6) Where the ACC has obtained particular information or intelligence in the course of performing one or more of its functions, nothing in this Act shall be taken to prevent the ACC from making use of the information or intelligence in the performance of any of its other functions.

## **16 Limitation on challenge to Board determination**

If:

- (a) an intelligence operation is determined by the Board to be a special operation; or
- (b) an investigation into matters relating to federally relevant criminal activity is determined by the Board to be a special investigation;

then, except in a proceeding instituted by the Attorney-General of the Commonwealth or the Attorney-General 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 on the ground that the determination was not lawfully made.

### **17 Co-operation with law enforcement agencies and co-ordination with overseas authorities**

- (1) In performing its functions under this Act, the ACC shall, so far as is practicable, work in co-operation with law enforcement agencies.
- (2) In performing its functions under this Act, the ACC may co-ordinate its activities with the activities of authorities and persons in other countries performing functions similar to functions of the ACC.

### **18 Directions and guidelines to Board**

- (1) The Minister may, by notice in writing to the Board, give directions or furnish guidelines to the Board with respect to the performance of its functions and the Board shall comply with any such directions or guidelines.
- (2) However, the Minister must not, without the approval of a resolution passed at a meeting of the Inter-Governmental Committee, being a resolution as to which all the members of the Committee present at the meeting have voted in favour, give any directions or furnish any guidelines to the Board under subsection (1) with respect to particular ACC operations/investigations.
- (4) Where the Minister gives a direction or furnishes a guideline to the Board under subsection (1), the Minister shall:
  - (a) as soon as practicable after giving the direction or furnishing the guideline, cause a copy of the direction or guideline to be published in the *Gazette*; and
  - (b) cause a copy of the direction or guideline to be laid before each House of the Parliament within 15 sitting days of that House after the copy is published in the *Gazette*.

### **19 Incidental powers of ACC**

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, and any specific powers conferred on the ACC by this Act shall not be taken to limit by implication the generality of this section.

### **19A Examiner may request information from agencies**

- (1) Subject to section 20A, an examiner may, by writing served on the principal officer of an agency, or on a person who is, or has been, a member, officer or employee of an agency, request that principal officer, or that person, as the case may be, to furnish to the examiner, by writing signed by that principal officer, or by that person, information specified in the request, being information that:
  - (a) was acquired by the first-mentioned agency in the ordinary course of performing its functions, or was acquired by that person in that person's capacity as a member, officer or employee of the second-mentioned agency, as the case may be; and
  - (b) is relevant to an ACC operation/investigation.
- (2) Subject to section 20A, an examiner may, by writing served on the principal officer of an agency, request that principal officer to send to the examiner a document or thing specified in the request, being a document or thing that relates to the performance by the agency of its functions and is relevant to an ACC operation/investigation.
- (3) Where:
  - (a) a relevant request in relation to an agency has been served on a prescribed officer of the agency; and
  - (b) the prescribed officer considers it appropriate, having regard to the relevant matters in relation to the request, to comply with the request;the prescribed officer may comply with the request.
- (4) Where:
  - (a) a relevant request in relation to an agency has been served on a person who is, or has been, a member, officer or employee of the agency but who is not a prescribed officer of the agency; and
  - (b) a prescribed officer of the agency considers it appropriate, having regard to the relevant matters in relation to the request, for the person to comply with the request;the prescribed officer may direct the person in writing to comply with the request and, if the prescribed officer does so, the person shall not refuse or fail to comply with the request.

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(5) Subsections (3) and (4) have effect subject to:

- (a) subsection (6); and
- (b) a taxation secrecy provision; and
- (c) a secrecy provision specified in an arrangement under section 20A; and
- (d) sections 63 and 133 of the *Telecommunications (Interception and Access) Act 1979*;

but have effect despite any other secrecy provision.

Note: If the information is protected information (within the meaning of section 355-30 in Schedule 1 to the *Taxation Administration Act 1953*), the officer or person may decline to disclose that information unless an exception in Division 355 in that Schedule covers the disclosure.

(6) Where:

- (a) a relevant request in relation to the Security Appeals Tribunal has been served on a person who is, or has been, a member, officer or employee of that tribunal; and
- (b) if subsections (3) and (4) of this section had not been enacted, section 81 of the *Australian Security Intelligence Organisation Act 1979* would prohibit the person from furnishing or sending to the examiner, in compliance with the request, particular information, or a particular document or thing, that originated with, or was directly or indirectly received by that tribunal or by such a member, officer or employee from, the Australian Security Intelligence Organisation;

subsection (3) or (4), as the case requires, of this section does not entitle or require the person so to furnish the information or send the document or thing.

(7A) An action, suit or proceeding does not lie against:

- (a) a prescribed officer of an agency; or
- (b) a person who is, or has been, a member, officer or employee of an agency;

in relation to any action taken by such an officer or person in compliance, in accordance with this section, with a request under this section.

(8) In this section:

**agency** means a Commonwealth agency or a State agency.

**Commonwealth agency** means an agency within the meaning of the *Freedom of Information Act 1982* and includes an exempt agency.

**exempt agency** means a body specified, or the person holding an office specified, in Part I of Schedule 2 to the *Freedom of Information Act 1982* (other than such a body that is specified in Schedule 2 to this Act) and includes the Inter-State Commission.

**officer**, in relation to an agency, includes the principal officer, and a prescribed officer, of the agency.

**prescribed agency** means an agency prescribed for the purposes of this definition and includes Fair Work Australia, the Australian Human Rights Commission and the Inter-State Commission.

**prescribed officer**, in relation to an agency, means:

- (a) except in a case where paragraph (b), (c), (d) or (e) applies—the principal officer of the agency;
- (b) in the case of a court—the holder of a judicial office pertaining to the court, being an office established by the legislation establishing the court;
- (c) in the case of a tribunal (other than the Security Appeals Tribunal) or prescribed agency that consists of one person—that person;
- (d) in the case of a tribunal (other than the Security Appeals Tribunal) or prescribed agency that consists of 2 or more persons—any of those persons; or
- (e) in the case of the Security Appeals Tribunal—the President of that tribunal.

**principal officer** means:

- (a) in relation to a Commonwealth agency other than an exempt agency—the person who is the principal officer of the agency for the purposes of the *Freedom of Information Act 1982*; or
- (b) in relation to an exempt agency:
  - (i) in a case where the regulations declare an office to be the principal office in respect of the agency—the person holding that office; or
  - (ii) in any other case—the person who constitutes the agency or, if the agency is constituted by 2 or more persons, the person who is entitled to preside at any

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meeting of the agency at which the last-mentioned person is present; or

- (c) in relation to a State agency—the person holding office or acting as head (however described) of the agency.

**relevant matters**, in relation to a relevant request in relation to an agency, means the following matters:

- (a) the nature of the information, document or thing to which the request relates;
- (b) the functions of the agency;
- (c) the nature of the ACC operation/investigation to which the information, document or thing, as the case may be, is relevant;
- (d) the public interest.

**relevant request**, in relation to an agency, means a request under this section, being:

- (a) a request to the principal officer of the agency to furnish particular information that was acquired by the agency in the ordinary course of performing its functions;
- (b) a request to a person who is, or has been, a member, officer or employee of the agency to furnish particular information that was acquired by the person in the person's capacity as such a member, officer or employee; or
- (c) a request to the principal officer of the agency to send to the examiner a document or thing that relates to the performance by the agency of its functions.

Penalty: 10 penalty units or imprisonment for 6 months.

**State agency** means the following agencies:

- (a) a Department of a State;
- (b) an instrumentality of a State, including a body corporate established for a public purpose by or under a law of a State;
- (c) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together:
- (i) the Crown in right of a State;
- (ii) a person or body covered by paragraph (b);
- (iii) a person or body covered by either of the above subparagraphs.

## **20 Examiner may require information from agencies in certain cases**

- (1) Subject to section 20A, an examiner may, by notice in writing served on the principal officer of an agency, or on a person who is, or has been, a member, officer or employee of an agency, require that principal officer, or that person, as the case may be, to furnish to the examiner, by writing signed by that principal officer, or by that person, within the time and in the manner specified in the notice, information so specified, being information that:
  - (a) was acquired by the first-mentioned agency in the ordinary course of performing its functions, or was acquired by that person in that person's capacity as a member, officer or employee of the second-mentioned agency, as the case may be; and
  - (b) is relevant to an ACC operation/investigation.
- (2) Subject to section 20A, an examiner may, by notice in writing served on the principal officer of an agency, require that principal officer:
  - (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 relates to the performance by the agency of its functions and is relevant to an ACC operation/investigation.
- (4) Subject to a prescribed provision, but notwithstanding a secrecy provision other than a prescribed provision, a person shall not refuse or fail to comply with a notice served on the person under this section.

Note: If the information is protected information (within the meaning of section 355-30 in Schedule 1 to the *Taxation Administration Act 1953*), the officer or person may decline to disclose that information unless an exception in Division 355 in that Schedule covers the disclosure.

- (5) In this section:

**agency** means a Commonwealth agency or a State agency.

**Commonwealth agency** means an agency within the meaning of the *Freedom of Information Act 1982*.

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*law of the Commonwealth* includes a law of a Territory.

*prescribed provision* means:

- (a) a taxation secrecy provision; or
- (aa) a secrecy provision specified in an arrangement under section 20A; or
- (b) a provision of a law of the Commonwealth that is specified in Schedule 1; or
- (c) anything done under a provision of the kind referred to in paragraph (b).

*principal officer* means:

- (a) in relation to a Commonwealth agency—the person who is the principal officer of the agency for the purposes of the *Freedom of Information Act 1982*; or
- (b) in relation to a State agency—the person holding office or acting as head (however described) of the agency.

*State agency* means the following agencies:

- (a) a Department of a State;
  - (b) an instrumentality of a State, including a body corporate established for a public purpose by or under a law of a State;
  - (c) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together:
    - (i) the Crown in right of a State;
    - (ii) a person or body covered by paragraph (b);
    - (iii) a person or body covered by either of the above subparagraphs.
- (6) The regulations may amend Schedule 1 by inserting in Schedule 1, or by omitting from Schedule 1, a reference to a provision of a law of the Commonwealth.

Penalty: 10 penalty units or imprisonment for 6 months.

**20A Arrangements for an examiner to obtain information etc. from State agencies**

- (1) Without limiting section 21, the Commonwealth Minister may make an arrangement, in writing, with the appropriate Minister of the Crown of a State, in relation to the provision of information,
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documents or things by a person or class of persons under section 19A or 20.

- (2) The arrangement may specify conditions to which the provision of the information, documents or things is subject.
- (3) Without limiting subsection (2), the arrangement may specify:
  - (a) the State agency or State agencies from which an examiner may or may not request or require information, documents or things; and
  - (b) any information, documents or things which an examiner may or may not request or require; and
  - (c) any secrecy provisions to which the provision of information, documents or things is subject.
- (4) A copy of an arrangement made under subsection (1) must be published in the *Gazette*.
- (5) The Commonwealth Minister may, at any time, give a written notice to the Minister of the Crown of the State revoking an arrangement under subsection (1).
- (6) The Commonwealth Minister must revoke an arrangement under subsection (1) if the Minister of the Crown of the State so requests in writing.
- (7) The Commonwealth Minister and the Minister of the Crown of the State may, by written agreement, vary the terms of an arrangement under subsection (1).
- (8) A copy of the revocation or variation of an arrangement under subsection (5), (6) or (7) must be published in the *Gazette*.
- (9) A revocation or variation under subsection (5), (6) or (7) takes effect at the time specified in the revocation or variation.
- (10) An arrangement under subsection (1), and a revocation or variation under subsection (5), (6) or (7), are not legislative instruments.
- (11) A written request or requirement for information, documents or things under section 19A or 20 must not be served on a principal officer of a State agency, or a person who is, or has been, a member, officer or employee of a State agency, except in accordance with an arrangement made under subsection (1) that:

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- (a) has been published in the *Gazette*; and
- (b) is in force.

**21 Arrangements for Board to obtain information or intelligence**

- (1) The Commonwealth Minister may make an arrangement with the appropriate Minister of the Crown of a State for the Board to receive from the State, or from an authority of the State, information or intelligence relating to relevant criminal activities.
- (2) The Board may make an arrangement with a body or person, not being a State or an authority of a State, for the CEO to obtain from that body or person information or intelligence relating to relevant criminal activities.

**22 Search warrants**

- (1) An eligible person may apply to an issuing officer for the issue of a warrant under subsection (2) if:
  - (a) the eligible person has reasonable grounds for suspecting that, on a particular day (in this section referred to as 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 premises, vessel, aircraft or vehicle, a thing or things of a particular kind connected with a special ACC operation/investigation (in this section referred to as *things of the relevant kind*); and
  - (b) the eligible person believes on reasonable grounds that, 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 authorizing a member of the Australian Federal Police or of the Police Force of a State, or any other person, named in the warrant, with such assistance as he or she thinks necessary and if necessary by force:
  - (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
  - (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 participating in the special ACC operation/investigation.
- (3) An issuing officer shall not issue a warrant under subsection (2) unless:
- (a) an affidavit has been furnished to him or her setting out the grounds on which the issue of the warrant is being sought;
  - (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.
- (4) Where an issuing officer issues a warrant under subsection (2), he or she shall state on the affidavit furnished to him or her as mentioned in paragraph (3)(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.
- (5) A warrant issued under this section shall:
- (a) include a statement of the purpose for which the warrant is issued, which shall include a reference to the special ACC operation/investigation and with which the things of the relevant kind are connected;
  - (b) state whether entry is authorized 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 authorized to be seized; and
  - (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.
- (6) 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.

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- (6A) A person executing a warrant issued under this section may only use such reasonable force as is necessary for the execution.
- (7) 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, of a State or of a 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 shall be deemed, for the purposes of this Act, to have been seized pursuant to the warrant.
- (10) 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.
- (11) In this section:  
*thing* includes a document.
- (13) Without limiting the generality of paragraph (1)(a), a reference 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 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) A function of issuing a warrant conferred on an issuing officer by this section is conferred on the issuing officer in a personal capacity and not as a court or a member of a court. The issuing officer need not accept the function conferred.
- (15) Without limiting the generality of subsection (14), the issue of a warrant has effect only by virtue of this Act and is not to be taken by implication to be made by a court.
- (16) An issuing officer performing a function of, or connected with, issuing a warrant under this section 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 issuing officer is a member).

### **23 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 22.
- (2) Before so making application, the eligible person shall 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.
- (3) Where an issuing officer issues a warrant under section 22 upon an application made by telephone, he or she shall:
  - (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 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 22 upon an application made by telephone, a member of the staff of the ACC or a member of the Australian Federal Police or of the Police Force of a 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 shall write on it the name of the issuing officer who 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 shall, not later than the day next 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 issuing officer shall attach them to the warrant signed by him or

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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 22.

- (7) A form of warrant duly completed in accordance with subsection (4) shall be deemed to be a warrant issued under section 22.
- (8) A function of issuing a warrant conferred on an issuing officer by this section is conferred on the issuing officer in a personal capacity and not as a court or a member of a court.
- (9) Without limiting the generality of subsection (8), the issue of a warrant has effect only by virtue of this Act and is not to be taken by implication to be made by a court.
- (10) An issuing officer performing a function of, or connected with, issuing a warrant under this section 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 issuing officer is a member).

**24 Order for delivery to examiner of passport of witness**

- (1) Where, upon application by an examiner, a Judge of the Federal Court sitting in Chambers is satisfied by evidence on oath that:
  - (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;
  - (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 operation/investigation and could be of particular significance to the special ACC operation/investigation; and

- (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;
- the Judge may make an order requiring the person to appear before 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) an order under subsection (1) or a corresponding provision of a law of a State has been made in respect of a person; and
  - (b) a copy of that order has been served upon the person;
- the person shall not leave Australia unless:
- (c) he or she has appeared before the Federal Court as required by the order referred to in paragraph (a); and
  - (d) if the Court makes an order in respect of him or her under paragraph (3)(a)—he or she has complied with the terms of that order and any passport delivered by him or her to the examiner in accordance with that order has been returned to him or her.
- Penalty: 50 penalty units or imprisonment for 2 years.
- (3) Where a person appears before the Federal Court in pursuance of an order made under subsection (1), the Court may, if it 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
  - (b) authorizing the examiner to retain the passport until the expiration of such period (not exceeding one month) as is specified in the order.
- (4) The Federal Court may, upon application by the examiner, extend for a further period (not exceeding one month) or further periods (not exceeding one month in each case) the period for which the examiner is authorized to retain a passport in pursuance of an order made under subsection (3), but so that the total period for which the examiner is authorized to retain the passport does not exceed 3 months.

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- (5) The Federal Court may, at any time while the examiner is authorized in pursuance of 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 shall forthwith return the passport to the person.
- (6) The Federal Court has jurisdiction with respect to matters arising under this section.
- (7) In this section, *Australia* includes the external Territories.

**24AA Use of and sharing returnable items**

*Use of returnable items by persons who are not members of the staff of the ACC*

- (1) The CEO may make a returnable item available to a constable, or Commonwealth officer, who is not a member of the staff of the ACC, to use for any or all of the following purposes if it is necessary to do so for that purpose:
  - (a) a purpose referred to in subsection 3ZQU(1) of the *Crimes Act 1914*;
  - (b) the performance of the functions of the ACC referred to in section 7A of this Act;
  - (c) the performance of the functions of the Board referred to in section 7C of this Act.
- (2) A constable or Commonwealth officer, who is not a member of the staff of the ACC, may use a returnable item for all or any of the purposes referred to in subsection (1) if it is necessary to do so for that purpose.

*Use of returnable items by members of the staff of the ACC*

- (3) The head of the special ACC operation/investigation to which a returnable item relates may make the item available to another member of the staff of the ACC to use for the purpose of the performance of all or any of the functions referred to in section 7A or 7C.
- (4) A member of the staff of the ACC may use a returnable item for the purpose of the performance of all or any of the functions referred to in section 7A or 7C.

*Use of returnable items for State or Territory purposes*

- (5) The CEO may make a returnable item available to a constable or Commonwealth officer to use for any purpose for which the making available of the item is required or authorised by a law of a State or Territory.
- (6) A constable or Commonwealth officer may use a returnable item for any other use that is required or authorised by or under a law of a State or a Territory.

*Section does not limit any other law of the Commonwealth*

- (7) To avoid doubt, this section does not limit any other law of the Commonwealth that:
  - (a) requires or authorises the use of a document or other thing; or
  - (b) requires or authorises the making available (however described) of a document or other thing.

*Sharing returnable item for use by State, Territory or foreign agency*

- (8) The CEO may make a returnable item available to:
  - (a) a State or Territory law enforcement agency; or
  - (b) an agency that has responsibility for:
    - (i) law enforcement in a foreign country; or
    - (ii) intelligence gathering for a foreign country; or
    - (iii) the security of a foreign country;to be used by that agency for a purpose mentioned in subsection (1), (5) or (6) and the purpose of any or all of the following (but not for any other purpose):
  - (c) preventing, investigating or prosecuting an offence against a law of a State or Territory;
  - (d) proceedings under a corresponding law (within the meaning of the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*);
  - (e) proceedings for the forfeiture of the item under a law of a State or Territory;
  - (f) deciding whether to institute proceedings or to take any other action mentioned in any of paragraphs 3ZQU(1)(a) to (l)

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(inclusive) of the *Crimes Act 1914*, subsection (5) or (6) of this section, or paragraph (c), (d) or (e) of this subsection.

*Ministerial arrangements for sharing*

- (9) This section does not prevent the Minister from making an arrangement with a Minister of a State or Territory for:
- (a) the making available to a State or Territory law enforcement agency of that State or Territory, for purposes mentioned in subsections (1), (6) and (8), of returnable items; and
  - (b) the disposal by the agency of such items when they are no longer of use to that agency for those purposes.

Note: This subsection does not empower the Minister to make such an arrangement.

**24AB When returnable items must be returned**

- (1) If the CEO is satisfied that a returnable item is not required (or is no longer required) for a purpose mentioned in section 24AA or for other judicial or administrative review proceedings, the CEO must take reasonable steps to return the item to:
- (a) the person from whom the item was seized, or the person who produced the item; or
  - (b) the owner, if the person mentioned in paragraph (a) is not entitled to possess it.
- (2) However, the CEO does not have to take those steps if:
- (a) either:
    - (i) the returnable item may be retained because of an order under subsection 24AC(2), or any other order under that subsection has been made in relation to the item; or
    - (ii) the CEO has applied for such an order and the application has not been determined; or
  - (b) the returnable item may otherwise be retained, destroyed or disposed of under a law, or an order of a court or tribunal, of the Commonwealth or of a State or a Territory; or
  - (c) the returnable item is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (3) To avoid doubt, if the returnable item is a document, the CEO is required to take reasonable steps to return the document only if the ACC took possession of that document.
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**24AC Issuing officer may permit a returnable item to be retained, forfeited etc.**

- (1) An issuing officer may, on application by the CEO, make an order under subsection (2) in relation to a returnable item.

*Preventing use in committing terrorist act, terrorism offence or serious offence*

- (2) The issuing officer may make any of the orders referred to in subsection (3) if the issuing officer is satisfied that there are reasonable grounds to suspect that, if the returnable item is returned to either of the following persons, the item is likely to be used by that person or another person in the commission of a terrorist act, a terrorism offence or a serious offence:

- (a) the owner of the item;
- (b) the person from whom the item was seized, or the person who produced the item.

- (3) The orders are as follows:

- (a) an order that the item may be retained for the period specified in the order;
- (b) an order that the item is forfeited to the Commonwealth;
- (c) if the item is not a document—an order that:
  - (i) the item be sold and the proceeds given to the owner of the item; or
  - (ii) the item be sold in some other way;
- (d) an order that the item is to be destroyed or otherwise disposed of.

*Item must be returned if issuing officer not satisfied*

- (4) The issuing officer must order that the returnable item be returned to the following person if the issuing officer is not satisfied as mentioned in subsection (2):

- (a) the person from whom the item was seized, or the person who produced the item;
- (b) if the person referred to in paragraph (a) is not entitled to possess the item—the owner of the item.

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*CEO to notify persons with an interest in returnable item*

- (5) Before making the application, the CEO must:
- (a) take reasonable steps to discover who has an interest in the returnable item; and
  - (b) if it is practicable to do so, notify each person who the CEO believes to have such an interest of the proposed application.

*Person with interest may appear and be heard*

- (6) The issuing officer must allow a person who has an interest in the returnable item to appear and be heard in determining the application.

*Function conferred in personal capacity*

- (7) A function of making an order under this section is conferred on an issuing officer in a personal capacity and not as a court or a member of a court.
- (8) An issuing officer performing a function of, or connected with, making an order under this section 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 issuing officer is a member).

## **Division 2—Examinations**

### **24A Examinations**

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

### **25A Conduct of examination**

#### *Conduct of proceedings*

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

#### *Representation at examination*

- (2) At an examination before an examiner:
  - (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.

#### *Persons present at examination*

- (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.
- (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.
- (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

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to be present by reason of a direction given by the examiner under subsection (3) or by reason of subsection (4).

*Witnesses*

- (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; or
  - (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);
- 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, 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:
- (a) the examiner fails to comply with subsection (7); or
  - (b) a witness comments adversely on the presence of the person under paragraph (7)(b).

*Confidentiality*

- (9) An examiner may direct that:
- (a) any evidence given before the examiner; or
  - (b) the contents of any document, or a description of any thing, produced to the examiner; or
  - (c) any information that might enable a person who has given evidence before the examiner to be identified; or

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

*Courts*

- (12) If:
- (a) a person has been charged with an offence before a federal court or before a court of a State or Territory; 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;
- 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.
- (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.

*Offence*

- (14) A person who:
- (a) is present at an examination in contravention of subsection (5); or
  - (b) makes a publication in contravention of a direction given under subsection (9);
- is guilty of an offence punishable, upon summary conviction, by a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 12 months.

*End of examination*

- (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.

**26 Reimbursement of expenses**

- (1) A witness appearing before an examiner shall be paid by the Commonwealth in respect of the expenses of his or her attendance an amount ascertained in accordance with the prescribed scale or, if there is no prescribed scale, such amount as the CEO determines.
- (2) The CEO may direct that a person producing a document or thing pursuant to a notice issued under section 29 shall be paid by the Commonwealth in respect of the expenses of his or her attendance an amount ascertained in accordance with the prescribed scale or, if there is no prescribed scale, such amount as the CEO determines.

**27 Legal and financial assistance**

- (1) A witness who is appearing or is about to appear before an examiner may make an application to the Attorney-General for the provision of assistance under this section in respect of his or her appearance.
- (2) A person who proposes to make, or has made, an application to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter

arising under this Act may make an application to the Attorney-General for the provision of assistance under this section in respect of the application to the Federal Court.

(2A) A person who proposes to make, or has made, an application to the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act may make an application to the Attorney-General for the provision of assistance under this section in respect of the application to the Federal Magistrates Court.

- (3) Where an application is made by a person under subsection (1), (2) or (2A), the Attorney-General may, if he or she is satisfied that:
- (a) it would involve substantial hardship to the person to refuse the application; or
  - (b) the circumstances of the case are of such a special nature that the application should be granted;

authorize the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in respect of the appearance of that person before the examiner, or the application by that person to the Federal Court, as the case may be, as the Attorney-General determines.

## **28 Power to summon witnesses and take evidence**

- (1) An examiner may summon a person to appear before an examiner at an examination to give evidence and to produce such documents or other things (if any) as are referred to in the summons.
- (1A) 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. The record is to be made:
- (a) before the issue of the summons; or
  - (b) at the same time as the issue of the summons.
- (2) 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 intelligence operation is a special operation or that the investigation into

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matters relating to federally relevant criminal activity is a special investigation.

- (3) A summons under subsection (1) requiring a person to appear before an examiner at an examination shall, 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 person is to be questioned, but nothing in this subsection prevents an examiner from questioning the person in relation to any matter that relates to a special ACC operation/investigation.
- (4) The examiner who is holding an examination may require a person appearing at the examination to produce a document or other thing.
- (5) An examiner may, at an examination, take evidence on oath or affirmation and for that purpose:
  - (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.
- (6) 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.
- (7) The powers conferred by this section are not exercisable except for the purposes of a special ACC operation/investigation.
- (8) A failure to comply with section 29A, so far as section 29A relates to a summons under subsection (1) of this section, does not affect the validity of the summons.

**29 Power to obtain documents**

- (1) An examiner may, by notice in writing served on a person, require the person:
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- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being an 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 ACC operation/investigation.
- (1A) 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. The record is to be made:
- (a) before the issue of the notice; or
  - (b) at the same time as the issue of the notice.
- (2) 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.
- (3) A person shall not refuse or fail to comply with a notice served on him or her under this section.
- (3A) A person who contravenes subsection (3) is guilty of an indictable offence that, subject to this section, is punishable, upon conviction, by a fine not exceeding 200 penalty units or imprisonment for a period not exceeding 5 years.
- (3B) Notwithstanding that an offence against subsection (3) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (3C) Where, in accordance with subsection (3B), a court of summary jurisdiction convicts a person of an offence against subsection (3), the penalty that the court may impose is a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 1 year.
- (4) Subsections 30(3) to (5) and (9) 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 produce a document or thing at an examination before an examiner.
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- (5) A failure to comply with section 29A, so far as section 29A relates to a notice under subsection (1) of this section, does not affect the validity of the notice.

**29A Disclosure of summons or notice etc. may be prohibited**

- (1) The examiner issuing a summons under section 28 or a notice under section 29 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 any, specified in the notation.
- (2) A notation must not be included in the summons or notice except as follows:
- (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; or
    - (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;
  - (b) the examiner may include the notation if satisfied that failure to do so might prejudice:
    - (i) the safety or reputation of a person; or
    - (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;
  - (c) the examiner may include the notation if satisfied that failure to do so might otherwise be contrary to the public interest.
- (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 29B 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:
- (a) no evidence of an offence has been obtained as described in subsection 12(1); or

- (b) evidence of an offence or offences has been assembled and given as required by subsection 12(1) and the CEO has been advised that no person will be prosecuted; or
  - (c) evidence of an offence or offences committed by only one person has been assembled and given as required by subsection 12(1) and criminal proceedings have begun against that person; or
  - (d) evidence of an offence or offences committed by 2 or more persons has been assembled and given as required by subsection 12(1) and:
    - (i) criminal proceedings have begun against all those persons; or
    - (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;
- 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.
- (7) If:
- (a) under this section, a notation in relation to the disclosure of information about:
    - (i) a summons issued under section 28; or
    - (ii) a notice issued under section 29; or
    - (iii) any official matter connected with the summons or notice;has been made and not cancelled; and
  - (b) apart from this subsection, a credit reporting agency (within the meaning of section 11A of the *Privacy Act 1988*) would be required, under subsection 18K(5) of the *Privacy Act 1988*, to make a note about the disclosure of the information; such a note must not be made until the notation is cancelled.
- (8) In this section:
- official matter*** has the same meaning as in section 29B.

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**29B Offences of disclosure**

- (1) A person who is served with, or otherwise given, a summons or notice containing a notation made under section 29A must not disclose:
- (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.

Penalty: 20 penalty units or imprisonment for one year.

- (2) Subsection (1) does not prevent the person from making a disclosure:
- (a) in accordance with the circumstances, if any, specified in the notation; or
  - (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
  - (c) to a legal aid officer for the purpose of obtaining assistance under section 27 relating to the summons, notice or matter; or
  - (d) 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
  - (e) if the person is a legal practitioner—for the purpose of obtaining the agreement of another person under subsection 30(3) to the legal practitioner answering a question or producing a document at an examination before an examiner; or
  - (f) to the Ombudsman for the purpose of making a complaint under the *Ombudsman Act 1976*; or
  - (g) to the Australian Law Enforcement Integrity Commission for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue.
- (3) If a disclosure is made to a person as permitted by subsection (2) or (4), the following provisions apply:
- (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.

Penalty: 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:
  - (a) if the person is an officer or agent of a body corporate referred to in paragraph (2)(d):
    - (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
    - (ii) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
    - (iii) to a legal aid officer for the purpose of obtaining assistance under section 27 relating to the summons, notice or matter; or
  - (b) if the person is a legal practitioner—for the purpose of giving or obtaining legal advice or legal representation, making representations, or obtaining assistance under section 27, relating to the summons, notice or matter; or
  - (c) if the person is a legal aid officer—for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
  - (d) to the Ombudsman for the purpose of making a complaint under the *Ombudsman Act 1976*; or
  - (e) to the Australian Law Enforcement Integrity Commission for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue.
- (5) This section ceases to apply to a summons or notice after:
  - (a) the notation contained in the summons or notice is cancelled by subsection 29A(4); or
  - (b) 5 years elapse after the issue of the summons or notice; whichever is sooner.

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(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.

(7) In this section:

*legal aid officer* means:

- (a) a member, or member of staff, of an authority established by or under a law of a State or Territory for purposes including the provision of legal assistance; or
- (b) a person to whom the Attorney-General has delegated his or her powers and functions under section 27.

*official matter* means any of the following (whether past, present or contingent):

- (a) the determination referred to in subsection 28(2);
- (b) an ACC operation/investigation;
- (c) an examination held by an examiner;
- (d) court proceedings.

### **30 Failure of witnesses to attend and answer questions**

*Failure to attend*

- (1) A person served, as prescribed, with a summons to appear as a witness at an examination before an examiner shall 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.

*Failure to answer questions etc.*

- (2) A person appearing as a witness at an examination before an examiner shall not:
- (a) when required pursuant to section 28 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 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.

- (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 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 shall, 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.

*Use immunity available in some cases if self-incrimination claimed*

- (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; and
  - (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:
  - (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.

*Offence for contravention of subsection (1), (2) or (3)*

- (6) A person who contravenes subsection (1), (2) or (3) is guilty of an indictable offence that, subject to this section, is punishable, upon conviction, by a fine not exceeding 200 penalty units or imprisonment for a period not exceeding 5 years.
- (7) Notwithstanding that an offence against subsection (1), (2) or (3) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (8) Where, in accordance with subsection (7), a court of summary jurisdiction convicts a person of an offence against subsection (1), (2) or (3), the penalty that the court may impose is a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 1 year.

*Legal professional privilege*

- (9) Subsection (3) does not affect the law relating to legal professional privilege.

**31 Warrant for arrest of witness**

- (1) Where, upon application by an examiner, a Judge of the Federal Court or of the Supreme Court of a State or Territory sitting in chambers is satisfied by evidence on oath that there are reasonable grounds to believe:
  - (a) that a person who has been ordered, under section 24, 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; or

- (b) that a person in relation to whom a summons has been issued under subsection 28(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 subsection 30(1) or is likely to do so;

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

- (2) The warrant may be executed by any member of the Australian Federal Police or of the Police Force of a State or Territory, or 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.
- (2A) The warrant may be executed notwithstanding that the warrant is not at the time in the possession of the person executing it.
- (2B) A person executing a warrant under this section may only use such reasonable force as is necessary for the execution.
- (3) Where a person is apprehended in pursuance of a warrant under this section, he or she shall be brought, as soon as practicable, before a Judge of the Federal Court or of the Supreme Court of a State or Territory and the Judge may:
  - (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;
  - (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.
- (4) Where a person is under detention in pursuance of this section, he or she shall, within 14 days after he or she was brought, or last brought, before a Judge of the Federal Court or of the Supreme Court of a State or Territory 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

thereupon exercise any of the powers of a Judge under subsection (3).

- (5) In this section, *Australia* includes the external Territories.

### **33 False or misleading evidence**

- (1) A person shall not, at an examination before an examiner, give evidence that is to his or her knowledge false or misleading in a material particular.
- (2) A contravention of subsection (1) is an indictable offence and, subject to this section, is punishable, upon conviction, by imprisonment for a period not exceeding 5 years or by a fine not exceeding 200 penalty units.
- (3) Notwithstanding that an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (4) Where, in accordance with subsection (3), a court of summary jurisdiction convicts a person of an offence against subsection (1), the penalty that the court may impose is a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 1 year.

### **34 Protection of witnesses etc.**

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 Minister or with members of the Australian Federal Police or of the Police Force of a State) as are necessary to avoid prejudice to the safety of

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

### **34A Contempt of the ACC**

A person is *in contempt of the ACC* if he or she:

- (a) when appearing as a witness at an examination before an examiner:
  - (i) refuses or fails to take an oath or affirmation when required to do so under section 28; or
  - (ii) refuses or fails to answer a question that he or she is required to answer by the examiner; or
  - (iii) refuses or fails to produce a document or thing that he or she was required to produce by a summons or notice under this Act that was served to him or her as prescribed; or
- (b) is a legal practitioner who is required to answer a question or produce a document at an examination before an examiner, and both of the following apply:
  - (i) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner;
  - (ii) he or she refuses to comply with the requirement and does not, when required by the examiner, give the examiner the name and address of the person to whom or by whom the communication was made; or
- (c) gives evidence at an examination before an examiner that he or she knows is false or misleading in a material particular; or
- (d) obstructs or hinders an examiner in the performance of his or her functions as an examiner; or
- (e) disrupts an examination before an examiner; or
- (f) threatens a person present at an examination before an examiner.

### **34B Federal Court or Supreme Court to deal with contempt**

- (1) If an examiner is of the opinion that, during an examination before the examiner, a person is in contempt of the ACC, the examiner

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may apply to either of the following courts for the person to be dealt with in relation to the contempt:

- (a) the Federal Court;
  - (b) the Supreme Court of the State or Territory in which the examination to which the contempt relates is being conducted.
- (2) Before making the application, the examiner must inform the person that the examiner proposes to make the application.
  - (3) The application must be accompanied by a certificate that states:
    - (a) the grounds for making the application; and
    - (b) evidence in support of the application.
  - (4) A copy of the certificate must be given to the person before, or at the same time as, the application is made.
  - (5) If, after:
    - (a) considering the matters specified in the certificate; and
    - (b) hearing or receiving any evidence or statements by or in support of the ACC; and
    - (c) hearing or receiving any evidence or statements by or in support of the person;the Court to which the application was made finds that the person was in contempt of the ACC, the Court may deal with the person as if the acts or omissions involved constituted a contempt of that Court.
  - (6) For the purposes of determining whether a person is in contempt of the ACC under subsection (1), Chapter 2 of the *Criminal Code* applies as if:
    - (a) contempt of the ACC were an offence; and
    - (b) references to a person being criminally responsible for an offence were references to a person being responsible for contempt of the ACC.

**34C Conduct of contempt proceedings**

- (1) This section applies if an application for a person to be dealt with in relation to a contempt of the ACC is made to the Federal Court or to the Supreme Court of a State or Territory under section 34B.

- (2) Proceedings in relation to the application are, subject to this Act, to be instituted, carried on, heard and determined in accordance with the laws (including any Rules of Court) that apply in relation to the punishment of a contempt of the Court to which the application was made.
- (3) In proceedings in relation to the application, a certificate under subsection 34B(3) is prima facie evidence of the matters specified in the certificate.

### **34D Person in contempt may be detained**

- (1) If an examiner proposes to make an application under subsection 34B(1) in respect of a person, he or she may, during the hearing concerned, direct a constable to detain the person for the purpose of bringing the person before the Court to which the application was made for the hearing of the application.
- (2) If the person is detained under subsection (1):
  - (a) the examiner must apply to the Court as soon as practicable under subsection 34B(1) in respect of the person; and
  - (b) the person must, subject to subsection (3) of this section, be brought before the Court as soon as practicable.
- (3) The Court may:
  - (a) direct that the person be released from detention on condition that he or she will appear before the Court in relation to the application; or
  - (b) order that the person continue to be detained until the application is determined.
- (4) The Court may also impose any other condition on the release, for example:
  - (a) that the person surrenders his or her passport; or
  - (b) that the person gives an undertaking as to his or her living arrangements; or
  - (c) that the person reports as required to a law enforcement agency.
- (5) The Court may at any time vary or revoke a condition imposed under subsection (4).

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**34E Examiner may withdraw contempt application**

- (1) An examiner may at any time withdraw an application in relation to a person under subsection 34B(1).
- (2) If:
  - (a) the examiner does so; and
  - (b) the person is in detention under section 34D;the person must be released from detention immediately.

**34F Relationship with section 12**

To avoid doubt, evidence relating to an application under subsection 34B(1) is not required to be given to a person or authority under subsection 12(1).

**35 Obstructing or hindering the ACC or an examiner etc.**

- (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 functions as an examiner; or
  - (b) disrupt an examination before an examiner; or
  - (c) threaten any person present at an examination before an examiner.
- (2) A person who contravenes subsection (1) is guilty of an indictable offence that, subject to this section, is punishable, upon conviction, by a fine not exceeding 200 penalty units or imprisonment for a period not exceeding 5 years.
- (3) Notwithstanding that an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (4) Where, in accordance with subsection (3), a court of summary jurisdiction convicts a person of an offence against subsection (1), the penalty that the court may impose is a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 1 year.

### **35A Double jeopardy**

- (1) Where an act or omission by a person is an offence against this Act and is also an offence against a law of a State, the person may be prosecuted and convicted under this Act or under that law of that State in respect of that act or omission, but nothing in this Act renders a person liable to be punished twice in respect of the same act or omission.
- (2) If:
  - (a) an application is made to the Federal Court or a Supreme Court under subsection 34B(1) in respect of an act or omission by a person; and
  - (b) the person is dealt with by the Court under that section in respect of the act or omission;the person is not liable to be prosecuted for an offence in respect of that act or omission.
- (3) If a person is prosecuted for an offence in respect of an act or omission referred to in subsection 34B(1), an application must not be made under subsection 34B(1) in respect of that act or omission.

### **36 Protection of examiners etc.**

- (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.
- (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.
- (4) To avoid doubt, this section does not limit the powers of the Ombudsman under the *Ombudsman Act 1976*.

## **Division 3—Administrative provisions**

### **Subdivision A—Chief Executive Officer**

#### **37 Appointment of CEO**

- (1) The Chief Executive Officer of the ACC is to be appointed by the Governor-General by written instrument.
- (2) Before the Governor-General makes such an appointment, the Minister must:
  - (a) invite the Board to make nominations for appointment; and
  - (b) consult the members of the Inter-Governmental Committee in relation to the appointment.
- (3) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (4) The CEO is to be appointed on a full-time basis.

#### **38 Remuneration and allowances of CEO**

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **39 Leave of absence**

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the CEO leave of absence (other than recreation leave) on the terms and conditions, as to remuneration or otherwise, that the Minister determines in writing.

#### **40 Resignation**

The CEO may resign his or her appointment by giving the Governor-General a written resignation.

#### **41 Disclosure of interests**

The CEO must give written notice to the Minister, and to the Chair of the Board, of all interests, pecuniary or otherwise, that the CEO has or acquires and that could conflict with the proper performance of the CEO's duties.

#### **42 Outside employment**

The CEO must not engage in paid employment outside the duties of his or her office without the Minister's approval.

#### **43 Suspension of appointment**

- (1) The Minister may, by notice in writing, suspend the appointment of the CEO if the Minister is of the opinion:
  - (a) that the performance of the CEO has been unsatisfactory; or
  - (b) that the CEO should be suspended while allegations of misbehaviour against the CEO are investigated.
- (1A) However, the Minister must not suspend the appointment of the CEO unless the Minister has:
  - (a) asked the Board for its advice in relation to the proposed suspension; and
  - (b) considered the Board's advice.
- (2) The Minister must specify in the notice whether the suspension is with or without remuneration and allowances.
- (3) The appointment is suspended for such period (not exceeding 3 months) as the Minister considers appropriate in all of the circumstances. That period must be specified in the notice.

#### **44 Termination of appointment**

*Misbehaviour or incapacity*

- (1) The Governor-General may terminate the appointment of the CEO for misbehaviour or physical or mental incapacity.

*Bankruptcy etc.*

- (2) The Governor-General must terminate the appointment of the CEO if:
- (a) the CEO:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the CEO is absent, except on leave of absence granted under section 39, for 14 consecutive days, or for 28 days in any 12 months; or
  - (c) the CEO fails, without reasonable excuse, to comply with section 41; or
  - (d) the CEO engages, except with the Minister's approval, in paid employment outside the duties of his or her office.

*Unsatisfactory performance*

- (3) The Governor-General may terminate the appointment of the CEO if the Minister is of the opinion that the performance of the CEO has been unsatisfactory.

*Invalidity*

- (4) In spite of anything contained in this section, if the CEO:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
  - (b) has not reached his or her maximum retiring age (within the meaning of that Act);

then he or she is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.

- (5) In spite of anything contained in this section, if the CEO:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
  - (b) is under 60 years of age;

then he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.

- (6) In spite of anything contained in this section, if the CEO:
- (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
  - (b) is under 60 years of age;

then he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

#### **45 Other terms and conditions**

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General in writing.

#### **46 Acting CEO**

The Minister may appoint a person to act as the CEO:

- (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO is suspended from office, is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

**46A CEO to manage ACC etc.**

- (1) The CEO is responsible for the management and administration of the ACC. The CEO is to act in accordance with any policies determined, and any directions given, in writing by the Board.
- (2) The CEO must also manage, co-ordinate and control ACC operations/investigations.
- (2A) As soon as practicable after the Board authorises, in writing, the ACC to undertake an intelligence operation or to investigate matters relating to federally relevant criminal activity, the CEO must determine, in writing, the head of such an operation or investigation.
- (2B) Before the CEO determines the head of such an 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.
- (3) 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 an ACC operation/investigation.
- (4) The CEO must, as soon as practicable after 30 June and 31 December each year, notify the Minister in writing of:
  - (a) each arrangement that the CEO has made with an examiner under subsection (3) during the previous 6 months; and
  - (b) the nature of the ACC operation/investigation to which the arrangement relates.

**Subdivision B—Examiners**

**46B Appointment of examiners**

- (1) An examiner is to be appointed by the Governor-General by written instrument.

*Consulting the Inter-Governmental Committee*

- (2) Before the Governor-General makes such an appointment, the Minister must consult the members of the Inter-Governmental Committee in relation to the appointment.
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*Legal practitioner*

- (3) A person must not be appointed as an examiner unless he or she is enrolled as a legal practitioner, and has been so for at least 5 years.

*Period of appointment*

- (4) An examiner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: An examiner is eligible for reappointment: see the *Acts Interpretation Act 1901*.

*Basis of appointment*

- (5) An examiner may be appointed on a full-time basis or on a part-time basis.

#### **46C Remuneration and allowances of examiners**

- (1) An examiner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, an examiner is to be paid the remuneration that is prescribed by the regulations.
- (2) An examiner is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **46D Leave of absence**

*Full-time examiners*

- (1) A full-time examiner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The CEO may grant a full-time examiner leave of absence (other than recreation leave) on the terms and conditions, as to remuneration or otherwise, that the CEO determines in writing.

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*Part-time examiners*

- (3) The CEO may grant a part-time examiner leave of absence on the terms and conditions that the CEO determines in writing.

**46E Resignation**

An examiner may resign his or her appointment by giving the Governor-General a written resignation.

**46F Disclosure of interests**

An examiner must give written notice to the CEO of all interests, pecuniary or otherwise, that the examiner has or acquires and that could conflict with the proper performance of the examiner's duties.

**46G Outside employment**

*Full-time examiners*

- (1) A full-time examiner must not engage in paid employment outside the duties of his or her office without the Minister's approval.

*Part-time examiners*

- (2) A part-time examiner must not engage in any paid employment that, in the CEO's opinion, conflicts or may conflict with the proper performance of his or her duties.
- (3) The CEO may, by written notice given to a part-time examiner, require the examiner to give the CEO the details specified in the notice, about the examiner's employment, by the time specified in the notice. The examiner must comply with the requirement.

**46H Termination of appointment**

*Misbehaviour or incapacity*

- (1) The Governor-General may terminate the appointment of an examiner for misbehaviour or physical or mental incapacity.

*Bankruptcy etc.*

- (2) The Governor-General must terminate the appointment of an examiner if:
- (a) the examiner:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the examiner (being a full-time examiner) is absent, except on leave of absence granted under section 46D, for 14 consecutive days, or for 28 days in any 12 months; or
  - (c) the examiner fails, without reasonable excuse, to comply with section 46F; or
  - (d) the examiner (being a full-time examiner) engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see subsection 46G(1)); or
  - (e) the examiner (being a part-time examiner):
    - (i) engages in paid employment that, in the CEO's opinion, conflicts or may conflict with the proper performance of his or her duties (see subsection 46G(2)); or
    - (ii) does not comply with a requirement under subsection 46G(3) (notifying the CEO of employment details).

*Invalidity*

- (3) In spite of anything contained in this section, an examiner who:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
  - (b) has not reached his or her maximum retiring age (within the meaning of that Act);
- is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.
- (4) In spite of anything contained in this section, an examiner who:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and

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- (b) is under 60 years of age;  
is not capable of being retired from office on the ground of  
invalidity (within the meaning of that Act) unless CSC has given a  
certificate under section 13 of that Act.
- (5) In spite of anything contained in this section, an examiner who:
- (a) is an ordinary employer-sponsored member of PSSAP,  
within the meaning of the *Superannuation Act 2005*; and
  - (b) is under 60 years of age;
- is not capable of being retired from office on the ground of  
invalidity (within the meaning of that Act) unless CSC has given  
an approval and certificate under section 43 of that Act.

**46J Other terms and conditions—general**

An examiner holds office on the terms and conditions (if any) in  
relation to matters not covered by this Act that are determined by  
the Governor-General in writing.

**Subdivision C—Staff etc.**

**47 Staff**

- (1) Subject to sections 48 and 49, the staff of the ACC shall be persons  
engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
- (a) the CEO and the APS employees assisting the CEO together  
constitute a Statutory Agency; and
  - (b) the CEO is the Head of that Statutory Agency.

**47A Termination of employment of member of staff for serious  
misconduct**

*CEO may make declaration*

- (1) This section applies if the CEO terminates the employment of a  
member of the staff referred to in subsection 47(1) and the CEO  
believes, on reasonable grounds, that the staff member's conduct or  
behaviour, or any part of it:
- (a) amounts to serious misconduct by the staff member; and

- (b) is having, or is likely to have, a damaging effect on:
- (i) the professional self-respect or morale of some or all of the members of the staff of the ACC; or
  - (ii) the reputation of the ACC with the public, or any section of the public, or with an Australian or overseas government, or with a person or body (however described) to whom the CEO may disclose ACC information under section 59AA.

Note: See section 29 of the *Public Service Act 1999* for termination of the employment of a member of the staff referred to in subsection 47(1) of this Act.

- (2) The CEO may, in accordance with subsection (5), make a declaration that he or she has the belief referred to in subsection (1) in relation to the staff member.

*Effect of declaration on Fair Work Act*

- (3) If the CEO makes the declaration for the staff member, the *Fair Work Act 2009* (other than Part 3-1 and Division 9 of Part 3-3 of that Act) does not apply in relation to:
- (a) the termination of the staff member's employment; or
  - (b) the making of the declaration.

Note 1: This means, for example, that the provisions of the *Fair Work Act 2009* dealing with unfair dismissal, and notice of termination or payment in lieu, do not apply in relation to the staff member.

Note 2: Part 3-1 of the *Fair Work Act 2009* deals with general protections, and Division 9 of Part 3-3 of that Act deals with payments relating to periods of industrial action.

- (4) To avoid doubt, subsection (3) applies despite section 8 of the *Public Service Act 1999*.

*Procedural requirements*

- (5) The declaration must be:
- (a) in writing; and
  - (b) made within 24 hours of the CEO's decision to terminate the staff member's employment.
- (6) The CEO must give the staff member a copy of the declaration.

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*CEO to give report after making declaration*

- (7) The CEO must give the Minister and the Board a written report containing the following, as soon as practicable after making the declaration:
- (a) the grounds for the CEO's belief referred to in subsection (1) in relation to the staff member;
  - (b) the nature and findings of any investigation of, or inquiry into, the staff member's conduct or behaviour;
  - (c) details of any other matter the CEO considers relevant.

*Meaning of serious misconduct*

- (8) In this section:

*serious misconduct*, by a member of the staff referred to in subsection 47(1), means:

- (a) corruption, a serious abuse of power, or a serious dereliction of duty, by the staff member; or
- (b) any other seriously reprehensible act or behaviour by the staff member, whether or not acting, or purporting to act, in the course of his or her duties as such a staff member.

**48 Employment of consultants etc.**

- (1) The CEO may, on behalf of the Commonwealth, engage, under agreements in writing, persons having suitable qualifications and experience as consultants to, or to perform services for, the ACC.
- (2) The terms and conditions of engagement of persons engaged under subsection (1) are such as are from time to time determined by the CEO.

**49 Staff to be seconded to ACC**

In addition to the members of the staff referred to in subsection 47(1) and persons engaged under subsection 48(1), the ACC shall be assisted in the performance of its functions by:

- (a) members of the Australian Federal Police whose services are made available to the ACC;
- (b) officers and employees of authorities of the Commonwealth whose services are made available to the ACC; and

- (c) persons whose services are made available to the ACC pursuant to arrangements made under section 58.

## **50 Counsel assisting ACC**

The CEO may appoint a legal practitioner to assist the ACC as counsel, either generally or in relation to a particular matter or matters.

## **Subdivision D—Secrecy**

### **51 Secrecy**

- (1) This section applies to:
  - (a) the CEO; and
  - (aa) a member of the Board; and
  - (b) a member of the staff of the ACC; and
  - (c) an examiner.
- (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 duties 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; being information acquired by him or her by reason of, or in the course of, the performance of his or her duties under this Act, is guilty of an offence punishable on summary conviction by a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 1 year, or both.
- (3) A person to whom this section applies shall not 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 duties 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 his or her duties under this Act, 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:

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- (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.
- (4) In this section:

***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 subsection 4(1); or
- (b) a person who assists, or performs services for or on behalf of, a legal practitioner appointed under section 50 in the performance of the legal practitioner's duties as counsel to the ACC.

***produce*** includes permit access to, and ***production*** has a corresponding meaning.

***relevant Act*** means:

- (a) this Act; or
- (b) a law of a State under which the ACC performs a duty or function, or exercises a power, in accordance with section 55A; or
- (c) the *Law Enforcement Integrity Commissioner Act 2006* or regulations under that Act; or
- (d) the *Parliamentary Joint Committee on Law Enforcement Act 2010* or regulations under that Act.

**Part IV—Miscellaneous****55A Operation of State laws—investigation of offences against State laws***Object*

- (1) The main object of this section is to give legislative consent to the conferral on:
  - (a) the ACC; or
  - (b) the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC; or
  - (c) a Judge of the Federal Court or a Federal Magistrate; of certain duties, functions and powers under State laws.

*ACC*

- (2) A law of a State may confer on the ACC any or all of the following duties, functions or powers:
  - (a) the function of investigating a matter relating to a relevant criminal activity in so far as the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of the State (irrespective of whether that offence or those offences have a federal aspect);
  - (b) a duty, function or power that is for the purposes of an investigation referred to in paragraph (a) and that is either:
    - (i) of the same kind as a duty, function or power conferred on the ACC by this Act or any other Act (whether or not the last-mentioned duty, function or power relates to the investigation of that matter); or
    - (ii) of a kind specified in regulations made for the purposes of this subparagraph;
  - (c) the function of undertaking an intelligence operation in so far as the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of the State (irrespective of whether that offence or those offences have a federal aspect);

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- (d) a duty, function or power that is for the purposes of an operation referred to in paragraph (c) and that is either:
  - (i) of the same kind as a duty, function or power conferred on the ACC by this Act or any other Act (whether or not the last-mentioned duty, function or power relates to that operation); or
  - (ii) of a kind specified in regulations made for the purposes of this subparagraph.
- (3) The ACC cannot, under a law of a State:
  - (a) investigate a matter relating to a relevant criminal activity; or
  - (b) undertake an intelligence operation;unless the Board has consented to the ACC doing so.

*Inter-Governmental Committee, Board, Chair of the Board, members of the Board, CEO, examiners and members of staff of the ACC*

- (4) A law of a State may confer on the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC a duty, function or power that:
  - (a) relates to the investigation of a matter relating to a relevant criminal activity in so far as the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of the State (irrespective of whether that offence or those offences have a federal aspect); and
  - (b) is either:
    - (i) of the same kind as a duty, function or power conferred on the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC by this Act or any other Act (whether or not the last-mentioned duty, function or power relates to the investigation of that matter); or
    - (ii) of a kind specified in regulations made for the purposes of this subparagraph.
- (5) A law of a State may confer on the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the

Board, the CEO, an examiner or a member of the staff of the ACC a duty, function or power that:

- (a) relates to the undertaking of an intelligence operation in so far as the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of the State (irrespective of whether that offence or those offences have a federal aspect); and
  - (b) is either:
    - (i) of the same kind as a duty, function or power conferred on the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC by this Act or any other Act (whether or not the last-mentioned duty, function or power relates to that operation); or
    - (ii) of a kind specified in regulations made for the purposes of this subparagraph.
- (5A) The CEO or an examiner cannot perform a duty or function, or exercise a power, under a law of a State:
- (a) relating to the investigation of a matter relating to a relevant criminal activity; or
  - (b) relating to the undertaking of an intelligence operation;
- unless the Board has consented to the CEO or the examiner doing so.

*Judge of the Federal Court or Federal Magistrate*

- (5B) A law of a State may confer on a Judge of the Federal Court or a Federal Magistrate a duty, function or power that:
- (a) relates to the investigation of a matter relating to a relevant criminal activity in so far as the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of the State (irrespective of whether that offence or those offences have a federal aspect); and
  - (b) is either:
    - (i) of the same kind as a duty, function or power conferred on a Judge of the Federal Court or a Federal Magistrate by this Act or any other Act (whether or not the last-mentioned duty, function or power relates to the investigation of that matter); or

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- (ii) of a kind specified in regulations made for the purposes of this subparagraph.
- (5C) A law of a State may confer on a Judge of the Federal Court or a Federal Magistrate a duty, function or power that:
- (a) relates to the undertaking of an intelligence operation in so far as the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of the State (irrespective of whether that offence or those offences have a federal aspect); and
  - (b) is either:
    - (i) of the same kind as a duty, function or power conferred on a Judge of the Federal Court or a Federal Magistrate by this Act or any other Act (whether or not the last-mentioned duty, function or power relates to that operation); or
    - (ii) of a kind specified in regulations made for the purposes of this subparagraph.

*Ancillary provisions*

- (6) Subsections (2), (4), (5), (5B) and (5C) do not extend to a duty, function or power of a kind specified in regulations made for the purposes of this subsection.
- (7) Subsections (2), (4), (5), (5B) and (5C) do not extend to a law of a State to the extent to which that law purports to confer any duty that is in contravention of any constitutional doctrine restricting the duties that may be conferred on:
  - (a) authorities of the Commonwealth; or
  - (b) members of authorities of the Commonwealth; or
  - (c) Judges of a court created by the Parliament.

*Concurrent operation of State laws*

- (8) This Act is not intended to exclude or limit the operation of a law of a State that confers any duties, functions or powers on:
  - (a) the ACC; or
  - (b) the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC; or

- (c) a Judge of the Federal Court or a Federal Magistrate;  
to the extent that that law is consistent with subsections (2) to (7)  
(inclusive) and is capable of operating concurrently with this Act.
- (9) Without limiting subsection (8), this Act is not intended to prevent:
- (a) the ACC; or
  - (b) the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC; or
  - (c) a Judge of the Federal Court or a Federal Magistrate;  
from having concurrent duties, functions or powers under a law of a State in relation to the investigation of a matter or matters relating to federally relevant criminal activities or to the undertaking of an intelligence operation, so long as the relevant law of the State is consistent with subsections (2) to (7) (inclusive).

*State officers do not lose State powers*

- (10) Nothing in this Act results in a person, who is an officer of a State and who becomes a member of the staff of the ACC, ceasing to be able to perform any duty or function, or to exercise any power, that is conferred on the person under a law of the State in his or her capacity as such an officer.

*Interpretation*

- (12) A reference in this section to a law of a State conferring a duty, function or power includes a reference to the conferral of a duty, function or power under a law of a State.

*Definitions*

- (13) In this section:

***confer***, in relation to a duty, includes impose.

***Federal Magistrate*** means a Federal Magistrate in a personal capacity and not as a court or a member of a court.

***Judge of the Federal Court*** means a Judge of the Federal Court in a personal capacity and not as a court or a member of a court.

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(14) In this section (other than subsection (9)):

*intelligence operation* means the collection, correlation, analysis or dissemination of criminal information and intelligence relating to a relevant criminal activity.

**55B Choice of Commonwealth and State powers**

If:

- (a) the ACC is investigating a matter relating to federally relevant criminal activity, or is undertaking an intelligence operation, in so far as the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of a State; and
- (b) for the purposes of that investigation or operation, the ACC or the Inter-Governmental Committee or the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC has a choice between exercising powers conferred by this Act or any other Act, and exercising powers conferred by a law of the State;

this Act or that other Act does not require the ACC or the Inter-Governmental Committee or the Board, the Chair of the Board, the member of the Board, the CEO, the examiner or the member of the staff of the ACC to favour exercising the powers conferred by this Act or that other Act.

**55C No obligation to perform duties etc. in relation to a relevant criminal activity that is not a federally relevant criminal activity**

- (1) To avoid doubt, neither this Act nor any other law of the Commonwealth imposes any obligation on:
  - (a) the ACC; or
  - (b) the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC;to perform a duty or function, or exercise a power:
  - (c) in relation to an investigation of a matter, or to the collection, correlation, analysis or dissemination of criminal information and intelligence, relating to a relevant criminal activity that is not a federally relevant criminal activity; or

- (d) that is otherwise in contravention of any constitutional doctrine restricting the duties that may be conferred on:
  - (i) authorities of the Commonwealth; or
  - (ii) members of authorities of the Commonwealth.
- (2) To avoid doubt, neither this Act nor any other law of the Commonwealth imposes any obligation on a Judge of the Federal Court or a Federal Magistrate to perform a duty or function, or exercise a power, that relates to an investigation by the ACC of a matter, or to the collection, correlation, analysis or dissemination by the ACC of criminal information and intelligence, relating to a relevant criminal activity if:
  - (a) the relevant criminal activity is not a federally relevant criminal activity; or
  - (b) the imposition of the obligation is otherwise in contravention of any constitutional doctrine restricting the duties that may be conferred on Judges of a court created by the Parliament.
- (3) In this section:

***Federal Magistrate*** means a Federal Magistrate in a personal capacity and not as a court or a member of a court.

***Judge of the Federal Court*** means a Judge of the Federal Court in a personal capacity and not as a court or a member of a court.

### **55D Transition from NCA to ACC**

- (1) Despite the repeal of section 7 by item 35 of Schedule 1 to the *Australian Crime Commission Establishment Act 2002* (the ***establishment Act***), section 25B of the *Acts Interpretation Act 1901* has effect in relation to the amendments made by the establishment Act as if the body known as the National Crime Authority continued in existence with the altered name Australian Crime Commission.
- (2) If:
  - (a) the *National Crime Authority Act 1984* (as in force before the commencement of Schedule 1 to the *Australian Crime Commission Establishment Act 2002*) made provision for a thing to be done, or a matter to be dealt with, by or in relation to the National Crime Authority; and

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- (b) a provision (the *corresponding provision*) of the *Australian Crime Commission Act 2002* provides for such a thing to be done, or matter to be dealt with, by or in relation to the ACC (whether or not by the same, or a similar, person or body); then the thing may be done, or matter dealt with, for, or in relation to, the National Crime Authority, under the corresponding provision.

**57 Application of Administrative Decisions (Judicial Review) Act**

Section 11 of the *Administrative Decisions (Judicial Review) Act 1977* has effect in relation to matters arising under this Act as if subsections (1) to (5), inclusive, of that section were omitted and the following subsection were substituted:

- “(1) An application to the Federal Court or the Federal Magistrates Court for an order of review in respect of a matter arising under the *Australian Crime Commission Act 2002*:
- (a) shall be made in such manner, and shall contain such particulars, as are prescribed by:
    - (i) in the case of an application to the Federal Court—Federal Court Rules; or
    - (ii) in the case of an application to the Federal Magistrates Court—Federal Magistrates Rules;and must contain such other particulars (if any) as the court concerned directs; and
  - (b) shall set out the grounds of the application; and
  - (c) shall be lodged with a Registry of the court concerned within the period of 5 days (excluding days on which the Registry is closed) after the day on which the applicant becomes aware of the matter or within such further period as the court concerned (whether before or after the expiration of the first-mentioned period) in special circumstances allows.”.

**58 Administrative arrangements with States**

- (1) The Minister may make an arrangement with the appropriate Minister of the Crown of a State 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.

- (2) An arrangement under subsection (1) may provide for the Commonwealth to reimburse a State with respect to the services of a person or persons to whom the arrangement relates.

## **59 Providing reports and information to members of Parliament**

### *Information for Minister*

- (1) The Chair of the Board and the CEO must keep the Minister informed of the general conduct of the ACC in the performance of the ACC's functions. If the Minister requests the Chair or the CEO to provide to him or her information concerning a specific matter relating to the ACC's conduct in the performance of its functions, the Chair or the CEO (as the case requires) must comply with the request.

Note: This section is subject to any relevant direction given under subsection 25A(9) (see section 59AC).

### *Information for Inter-Governmental Committee*

- (1A) Subject to subsection (2), if a Minister of the Crown of a State who is a member of the Inter-Governmental Committee requests the Chair of the Board or the CEO to provide him or her with information concerning a specific matter relating to the ACC's conduct in the performance of its functions, being conduct that occurred within the jurisdiction of that State, the Chair of the Board or the CEO (as the case requires) must comply with the request.
- (2) If the Chair of the Board or the CEO (as the case requires) considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, he or she must not provide the information under subsection (1A).
- (3) Subject to subsection (5), the Chair of the Board or the CEO:
- (a) shall, when requested by the Inter-Governmental Committee to furnish information to the Committee concerning a specific matter relating to an ACC operation/investigation

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that the ACC has conducted or is conducting, comply with the request; and

- (b) shall when requested by the Inter-Governmental Committee to do so, and may at such other times as the Chair of the Board or the CEO thinks appropriate, inform the Committee concerning the general conduct of the operations of the ACC.
- (4) Subject to subsection (5), the Chair of the Board shall 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) The Chair of the Board or the CEO (as the case requires) shall 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 shall prepare a separate report in relation to the matter and furnish that report to the Minister.
- (6) The Chair of the Board may include in a report furnished under subsection (4) a recommendation that the report be laid before each House of the Parliament.

*Information for members of Parliament*

- (7) The Chair of the Board or the CEO may inform one or more of the following persons of the general conduct of the operations of the ACC if the Chair or the CEO (as the case requires) considers that it is in the public interest to do so:
  - (a) a member of either House of the Parliament;
  - (b) a member of the Parliament of a State.

Note: A reference to the Parliament of a State includes a reference to the Legislative Assemblies of the Australian Capital Territory and the Northern Territory (see paragraph 4(3)(a)).

**59AA Disclosing information to government bodies**

*Commonwealth, State, Territory and foreign agencies etc.*

- (1) The CEO may disclose ACC information to:
-

- (a) a body of the Commonwealth, a State or a Territory; or
  - (b) a person who holds an office or appointment under a law of the Commonwealth, a State or a Territory; or
  - (c) an agency that has responsibility for:
    - (i) law enforcement in a foreign country; or
    - (ii) intelligence gathering for a foreign country; or
    - (iii) the security of a foreign country; or
  - (d) an international body that:
    - (i) has functions relating to law enforcement or gathering intelligence; and
    - (ii) is prescribed by the regulations for the purposes of this paragraph; or
  - (e) an international judicial body that is prescribed by the regulations for the purposes of this paragraph;
- if:
- (f) the CEO considers it appropriate to do so; and
  - (g) the CEO considers that the information is relevant to a permissible purpose; and
  - (h) disclosing the ACC information would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.

Note 1: For the definition of *body*, see subsection (3).

Note 2: This section is subject to any relevant direction given under subsection 25A(9) (see section 59AC).

#### *ASIO*

- (2) The CEO may disclose ACC information to the Australian Security Intelligence Organisation if:
  - (a) the CEO considers it appropriate to do so; and
  - (b) the information is relevant to security (as defined in section 4 of the *Australian Security Intelligence Organisation Act 1979*); and
  - (c) disclosing the ACC information would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.

#### *Definitions*

- (3) In this section:
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**body** includes:

- (a) a body however described; and
- (b) a Department of State; and
- (c) a body (whether incorporated or not) established for a public purpose by or under a law of the Commonwealth, a State or a Territory; and
- (d) a law enforcement agency.

**59AB Disclosing information to private sector bodies**

- (1) The CEO may disclose ACC information to a body corporate that is prescribed, or is included in a class of bodies corporate that is prescribed, by the regulations for the purposes of this section if:
  - (a) the CEO considers it appropriate to do so; and
  - (b) the CEO considers that disclosing the information to the body is necessary for a permissible purpose; and
  - (c) the body has undertaken, in writing, not to use or further disclose the information except:
    - (i) as referred to in subsection (3); or
    - (ii) as required by a law of the Commonwealth, a State or a Territory; and
  - (d) the body has undertaken, in writing, to comply with any conditions the CEO specifies under subsection (4) or (5); and
  - (e) disclosing the ACC information:
    - (i) would not prejudice the safety of a person, or prejudice the fair trial of a person who has been charged with an offence; and
    - (ii) would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.

Note: This section is subject to any relevant direction given under subsection 25A(9) (see section 59AC).

*Limitations on disclosing information under subsection (1)*

- (2) The CEO may disclose ACC information to a body corporate under subsection (1) only if:
  - (a) for information that is personal information (within the meaning of the *Privacy Act 1988*)—the CEO considers that disclosing the information is necessary for the purposes of:

- (i) preventing criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); or
  - (ii) detecting criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); or
  - (iii) facilitating the collection of criminal information and intelligence in relation to criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); and
- (b) in any case—the information is not confidential commercial information relating to another body or person.

*Specifying purposes and conditions etc.*

- (3) The CEO must specify, in writing, any permissible purpose for which the ACC information may be used or further disclosed.
- (4) If the CEO discloses ACC information that is personal information (within the meaning of the *Privacy Act 1988*) to a body corporate, the CEO must specify, in writing:
  - (a) one or more conditions that the body corporate must meet in relation to monitoring and controlling any further disclosure of that information by an employee or officer of the body corporate; and
  - (b) a condition that the information is not to be disclosed to a person who is not an employee or officer of the body corporate, other than in any circumstances specified; and
  - (c) one or more conditions that the body corporate must meet in order to ensure that the information is not used or disclosed in a way that might prejudice the reputation of a person.
- (5) The CEO may specify, in writing, any other conditions that the CEO considers appropriate in relation to ACC information that is disclosed under, or in accordance with, this section (whether in relation to personal information or any other ACC information).
- (6) An instrument made under subsection (3), (4) or (5) is not a legislative instrument.

*Offence—disclosure etc. for unauthorised purposes*

- (7) A person commits an offence if:
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- (a) ACC information is disclosed to the person under, or in accordance with, this section; and
- (b) the person (directly or indirectly):
  - (i) makes a record of the information; or
  - (ii) discloses the information to any other person; and
- (c) the record or disclosure referred to in paragraph (b) is not:
  - (i) for a purpose specified under subsection (3) in relation to the information; or
  - (ii) required by any other law.

Penalty: 50 penalty units, or imprisonment for 12 months, or both.

Note: For a defence to this offence, see subsection (9).

*Offence—breach of conditions*

- (8) A person commits an offence if:
  - (a) ACC information is disclosed to the person under, or in accordance with, this section; and
  - (b) the CEO specifies a condition under subsection (4) or (5) in relation to the information; and
  - (c) the person does an act or omits to do an act in relation to the information; and
  - (d) the act or omission breaches the condition.

Penalty: 50 penalty units, or imprisonment for 12 months, or both.

Note: For a defence to this offence, see subsection (9).

*Defence—information legitimately made public*

- (9) Subsections (7) and (8) do not apply to a person in relation to ACC information if:
  - (a) the information is in the public domain before the person:
    - (i) makes the record, or discloses the information (if subsection (7) applies); or
    - (ii) does the act or omits to do the act in relation to the information (if subsection (8) applies); and
  - (b) the original disclosure of the information into the public domain (before the person does the thing referred to in subparagraph (a)(i) or (ii) of this subsection) was not:

- (i) in contravention of section 51 or subsection (7) or (8) of this section; or
- (ii) in breach of an undertaking given under subsection (1) of this section.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

### **59AC Confidentiality in relation to examinations**

Sections 59, 59AA and 59AB are subject to any relevant direction as in force under subsection 25A(9) (confidentiality in relation to examinations).

### **59AD Publication of reports in relation to offences**

A report under this Act that:

- (a) sets out a finding that an offence has been committed; or
- (b) makes a recommendation to institute a prosecution in respect of an offence;

must not be made available to the public unless the finding or recommendation is expressed to be based on evidence that would be admissible in the prosecution of a person for that offence.

### **59A Delegation**

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 powers or functions under this Act (other than a power or function under section 47A).

### **59B Liability for damages**

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, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under this Act.

Section 60

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**60 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.
- (4) The Board or the CEO may publish bulletins for the purpose of informing the public about the performance of the ACC's functions.
- (5) The Board and the CEO must not:
  - (a) divulge in the course of a meeting held under subsection (1);  
or
  - (b) include in a bulletin published under subsection (4);  
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.

**61 Annual report**

- (1) The Chair of the Board shall, as soon as practicable after each 30 June, prepare a report of the ACC's operations during the year that ended on that 30 June and furnish the report to the Inter-Governmental Committee for transmission, together with such comments on the report as the Committee thinks fit, to the Commonwealth Minister and to the appropriate Minister of the Crown of each participating State.
- (2) A report by the Chair of the Board under this section in relation to a year shall include the following:
  - (a) a description of any investigation into matters relating to federally relevant criminal activity that the ACC conducted during the year and that the Board determined to be a special investigation;
  - (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;
  - (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, the Board considers should be made;

- (d) the general nature and the extent of any information furnished by the CEO during that year to a law enforcement agency;
  - (da) the general nature and the extent of any information disclosed by the CEO during that year to a body corporate under section 59AB;
  - (e) the extent to which investigations by the ACC have resulted in the prosecution in that year of persons for offences;
  - (ea) the extent to which investigations by the ACC have resulted in confiscation proceedings;
  - (g) particulars of the number and results of:
    - (ii) applications made to the Federal Court or the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for orders of review in respect of matters arising under this Act; and
    - (iii) other court proceedings involving the ACC;  
being applications and proceedings that were determined, or otherwise disposed of, during that year.
- (3) A report by the Chair of the Board under this section shall not:
- (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 report by the Chair of the Board under this section the Chair of the Board shall take 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.
- (6) The Minister shall cause a copy of:
- (a) a report by the Chair of the Board under this section that is received by him or her from the Inter-Governmental Committee; and
  - (b) any comments made on the report by the Inter-Governmental Committee, being comments that accompanied the report;
- to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by him or her.
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### **61A Review of operation of Act**

- (1) The Minister must cause an independent review to be undertaken of:
  - (a) the operation of this Act during the 5 year period beginning at the commencement of Schedule 7 to the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010*; and
  - (b) the operation of this Act during each subsequent 5 year period.
- (2) A review under subsection (1) must be undertaken as soon as practicable after the end of the 5 year period to which the review is to relate.
- (3) If, before the Minister undertakes a review of the operation of this Act in relation to a particular 5 year period referred to in subsection (1), a committee of one or both Houses of the Parliament starts such a review, the Minister need not undertake such a review.

### **62 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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## **Schedule 1—Prescribed provisions**

Section 20

*Administrative Appeals Tribunal Act 1975*, section 36  
*Air Navigation Act 1920*, section 27A  
*Australian Security Intelligence Organisation Act 1979*,  
 sections 18, 81 and 92  
*Census and Statistics Act 1905*, section 19  
*Crimes Act 1914*, section 85B  
*Epidemiological Studies (Confidentiality) Act 1981*,  
 sections 4, 6, 8 and 9  
*Fair Work (Registered Organisations) Act 2009*, section 356  
*Federal Court of Australia Act 1976*, section 50  
*Federal Magistrates Act 1999*, section 61  
*Health Insurance Act 1973*, section 130  
*Human Rights Commission Act 1981*, section 34  
*Inspector-General of Taxation Act 2003*, section 37  
*National Health Act 1953*, section 135A  
*Ombudsman Act 1976*, section 35  
*Social Security Act 1991*, sections 1312 to 1321  
*Telecommunications (Interception and Access) Act 1979*,  
 sections 63 and 133  
*Reserve Bank Act 1959*, section 79B  
 Sub-regulation 283(1) of the *Air Navigation Regulations*  
 Sections 60 and 61 of the *Adoption of Children Ordinance 1965* of the  
 Australian Capital Territory  
 Section 14 of the *Social Services Act 1980* of Norfolk Island

## **Schedule 2—Certain bodies not subject to section 19A**

Subsection 19A(8)  
(definition of *agency*)

**Table of Acts****Notes to the *Australian Crime Commission Act 2002*****Note 1**

The *Australian Crime Commission Act 2002* as shown in this compilation comprises Act No. 41, 1984 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Freedom of Information Amendment (Reform) Act 2010*, see Act No. 51, 2010.

All relevant information pertaining to application, saving or transitional provisions prior to 30 May 2000 is not included in this compilation. For subsequent information see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>National Crime Authority Act 1984</i>	41, 1984	15 June 1984	1 July 1984 (see <i>Gazette</i> 1984, No. S245)	
<i>Taxation Laws Amendment Act 1984</i>	123, 1984	19 Oct 1984	Ss. 1 and 2: Royal Assent S. 319(1): 14 Feb 1983 (see s. 2(2)) Remainder: 14 Dec 1984	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1984</i>	165, 1984	25 Oct 1984	S. 3: (a)	Ss. 2(32) and 6(1)
<i>National Crime Authority (Miscellaneous Amendments) Act 1985</i>	104, 1985	16 Oct 1985	S. 14(1): 1 July 1984 Remainder: Royal Assent	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1985</i>	193, 1985	16 Dec 1985	S. 3: Royal Assent (b)	S. 16
<i>Telecommunications (Interception) Amendment Act 1987</i>	89, 1987	5 June 1987	Ss. 1 and 2: Royal Assent Ss. 5(1)(a), (2), 6 and 8: 16 Dec 1987 (see s. 2(1A)) Remainder: 1 Sept 1988 (see <i>Gazette</i> 1988, No. S256)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Crimes Legislation Amendment Act 1987</i>	120, 1987	16 Dec 1987	Part X (ss. 53, 54): Royal Assent (c)	—
<i>Statute Law (Miscellaneous Provisions) Act 1987</i>	141, 1987	18 Dec 1987	S. 3: Royal Assent (d)	S. 5(1)
<i>Crimes Legislation Amendment Act 1988</i>	65, 1988	15 June 1988	Ss. 9–11: 1 Sept 1988 (see s. 2(2), (3) and <i>Gazette</i> 1988, No. S256) Remainder: Royal Assent	—
<i>Crimes Legislation Amendment Act (No. 2) 1988</i>	66, 1988	15 June 1988	Ss. 20–22: Royal Assent (e)	—
<i>Commonwealth Employees' Rehabilitation and Compensation Act 1988</i>	75, 1988	24 June 1988	Ss. 1 and 2: Royal Assent Ss. 4(1), 68–97, 99 and 100: 1 July 1988 (see <i>Gazette</i> 1988, No. S196) Remainder: 1 Dec 1988 (see <i>Gazette</i> 1988, No. S196)	—
<i>Industrial Relations (Consequential Provisions) Act 1988</i>	87, 1988	8 Nov 1988	Ss. 1 and 2: Royal Assent Remainder: 1 Mar 1989 (see s. 2(2) and <i>Gazette</i> 1989, No. S53)	—
<i>National Crime Authority Amendment Act 1988</i>	110, 1988	9 Dec 1988	9 Dec 1988	S. 4(2)
<i>Crimes Legislation Amendment Act 1989</i>	108, 1989	30 June 1989	Part 8 (ss. 36–43): 1 July 1989 (f)	—
<i>Crimes Legislation Amendment Act (No. 2) 1989</i>	4, 1990	17 Jan 1990	Part 4 (ss. 54, 55): Royal Assent (g)	—
<i>Commonwealth Banks Restructuring Act 1990</i>	118, 1990	28 Dec 1990	S. 62: (h)	—
<i>Crimes Legislation Amendment Act 1991</i>	28, 1991	4 Mar 1991	S. 74(1): Royal Assent (i)	—
<i>Social Security (Rewrite) Transition Act 1991</i>	70, 1991	25 June 1991	(j)	—
<i>Industrial Relations Legislation Amendment Act 1991</i>	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (see <i>Gazette</i> 1991, No. S332) Remainder: Royal Assent	S. 31(2)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Crimes Legislation Amendment Act (No. 2) 1991</i>	123, 1991	23 Aug 1991	Part 8 (ss. 35–37): 6 Dec 1991 (see <i>Gazette</i> 1991, No. S330) (k)	—
<i>National Crime Authority Amendment Act 1991</i>	209, 1991	24 Dec 1991	21 Jan 1992	—
<i>National Crime Authority Amendment Act 1992</i>	44, 1992	11 June 1992	11 June 1992	—
<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992</i>	94, 1992	30 June 1992	S. 3: 1 July 1990 Remainder: Royal Assent	—
<i>Snowy Mountains Engineering Corporation Limited Sale Act 1993</i>	54, 1993	27 Oct 1993	Ss. 5–36 and 39–44: 9 Nov 1993 (see <i>Gazette</i> 1993, No. S334) S. 37: 9 Nov 1993 (see <i>Gazette</i> 1993, No. S371) Remainder: Royal Assent	—
<i>CSL Sale Act 1993</i>	88, 1993	30 Nov 1993	Part 1 (ss. 1–4), ss. 7 and 47: Royal Assent Ss. 5 and 6: 22 Feb 1991 Remainder: 3 June 1994 (see <i>Gazette</i> 1994, No. S209)	—
<i>ANL Sale Act 1995</i>	136, 1995	5 Dec 1995	(l)	—
<i>Commonwealth Bank Sale Act 1995</i>	161, 1995	16 Dec 1995	Schedule (item 53): (m)	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 4 (item 99) and Schedule 5 (items 87–89): Royal Assent (n)	—
<i>Workplace Relations and Other Legislation Amendment Act 1996</i>	60, 1996	25 Nov 1996	Schedule 19 (item 31): Royal Assent (o)	—
<i>AIDC Sale Act 1997</i>	67, 1997	5 June 1997	Schedule 2 (item 9): 22 Apr 2011 (see F2011L00637) (p)	—
<i>Australian National Railways Commission Sale Act 1997</i>	96, 1997	30 June 1997	Schedule 4 (item 7): 1 Nov 2000 (see <i>Gazette</i> 2000, No. S562) (q)	—
<i>Statute Stocktake Act 1999</i>	118, 1999	22 Sept 1999	22 Sept 1999	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 620–622): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (r)	—
<i>Australian Security Intelligence Organisation Legislation Amendment Act 1999</i>	161, 1999	10 Dec 1999	Schedule 3 (items 1, 44–46): (s)	—
<i>Federal Magistrates (Consequential Amendments) Act 1999</i>	194, 1999	23 Dec 1999	Schedule 20: 23 Dec 1999 (t)	—
<i>National Crime Authority Amendment Act 1999</i>	195, 1999	23 Dec 1999	Schedule 1: 1 July 1984 (u) Remainder: Royal Assent	—
<i>Jurisdiction of Courts Legislation Amendment Act 2000</i>	57, 2000	30 May 2000	Schedule 1 (items 70–76): 1 July 2000 (see <i>Gazette</i> 2000, No. GN25) (v)	Sch. 1 (item 76) [see Table A]
<i>National Crime Authority Amendment Act 2000</i>	133, 2000	24 Nov 2000	24 Nov 2000	Sch. 1 (items 38–45) [see Table A]
<i>Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001</i>	121, 2001	24 Sept 2001	Ss. 1–3: Royal Assent Remainder: 1 July 2002 (see s. 2(2) and <i>Gazette</i> 2002, No. GN24)	—
<i>National Crime Authority Legislation Amendment Act 2001</i>	135, 2001	1 Oct 2001	Schedules 1–7 and 9–12: 12 Oct 2001 (see <i>Gazette</i> 2001, No. S428) Schedule 8: 13 Oct 2001 (see <i>Gazette</i> 2001, No. S428) Remainder: Royal Assent	Sch. 1 (items 17, 51, 59) S. 4 (am. by 125, 2002, Sch. 2 [items 78–83]) [see Table A]
<b>as amended by</b>				
<i>Australian Crime Commission Establishment Act 2002</i>	125, 2002	10 Dec 2002	Schedule 2 (items 78–83): 1 Jan 2003	—
<i>Measures to Combat Serious and Organised Crime Act 2001</i>	136, 2001	1 Oct 2001	Schedule 1 (item 52): 12 Oct 2001 (see <i>Gazette</i> 2001, No. S428) (w)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [see Table A]
<i>Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002</i>	86, 2002	11 Oct 2002	Ss. 1–3: Royal Assent Remainder: 1 Jan 2003 (see s. 2(1) and <i>Gazette</i> 2002, No. GN44)	—
<b>as amended by</b>				
<i>Australian Crime Commission Establishment Act 2002</i>	125, 2002	10 Dec 2002	Schedule 3 (items 15, 16): (see 125, 2002 below)	—
<i>Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002</i>	105, 2002	14 Nov 2002	Schedule 3 (item 56): 12 May 2003 (see <i>Gazette</i> 2002, No. GN49)	—
<i>Australian Crime Commission Establishment Act 2002</i>	125, 2002	10 Dec 2002	Schedule 1: 1 Jan 2003 Schedule 3 (items 7–14): (x) Schedule 3 (items 15, 16): (x)	Sch. 1 (items 308–326) [see Table A]
<i>Inspector-General of Taxation Act 2003</i>	28, 2003	15 Apr 2003	Schedule 1 (item 2): 16 Apr 2003	—
<i>Trade Practices Legislation Amendment Act 2003</i>	134, 2003	17 Dec 2003	Schedules 1 and 2: 1 Mar 2004 (see <i>Gazette</i> 2004, No. GN8) Remainder: Royal Assent	—
<i>Australian Crime Commission Amendment Act 2004</i>	30, 2004	2 Apr 2004	Schedule 1 (item 17): (y) Remainder: Royal Assent	—
<i>Law and Justice Legislation Amendment Act 2004</i>	62, 2004	26 May 2004	Schedule 1 (items 6–9): 27 May 2004	—
<i>Telecommunications (Interception) Amendment Act 2006</i>	40, 2006	3 May 2006	Schedule 1 (items 11, 12): 13 June 2006 (see F2006L01623)	—
<i>Law Enforcement (AFP Professional Standards and Related Measures) Act 2006</i>	84, 2006	30 June 2006	Schedule 3 (item 2): 30 Dec 2006 (see s. 2(1))	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006</i>	86, 2006	30 June 2006	Schedule 1 (item 3): 30 Dec 2006 (see s. 2(1))	—
<i>Statute Law Revision Act 2007</i>	8, 2007	15 Mar 2007	Schedule 1 (item 1): (z)	—
<i>Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007</i>	128, 2007	17 Aug 2007	Ss. 3–5: Royal Assent Schedule 2 (items 1–33): 18 Aug 2007	S. 3 and Sch. 2 (items 12, 31, 33) Ss. 4 and 5 (rep. by 93, 2010, Sch. 1 [item 1]) [see Table A]
<b>as amended by</b>				
<i>Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010</i>	93, 2010	29 June 2010	Schedule 1 (items 1, 4): 31 Dec 2010	Sch. 1 (item 4) [see Table A]
<i>Australian Crime Commission Amendment Act 2007</i>	168, 2007	28 Sept 2007	Schedule 1 (items 1–12): 29 Sept 2007 Schedule 1 (items 13, 14): (za) Remainder: Royal Assent	Sch. 1 (items 9–12) [see Table A]
<i>Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008</i>	26, 2008	23 June 2008	Schedule 1 (items 17–22): Royal Assent	—
<i>Customs Legislation Amendment (Name Change) Act 2009</i>	33, 2009	22 May 2009	Schedule 2 (items 6, 7): 23 May 2009	—
<i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i>	54, 2009	25 June 2009	Schedule 5 (items 5–7, 83): (zb)	Sch. 5 (item 83) [see Table A]
<i>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009</i>	70, 2009	8 July 2009	Schedule 3 (item 14): 5 Aug 2009	—
<i>Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010</i>	4, 2010	19 Feb 2010	Schedule 7 (items 1–22, 26–28): 20 Feb 2010	Sch. 7 (items 26–28) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010</i>	42, 2010	14 Apr 2010	Schedule 1 (item 61): 15 Apr 2010	—
<i>Freedom of Information Amendment (Reform) Act 2010</i>	51, 2010	31 May 2010	Schedule 6 (item 42) and Schedule 7: (zc)	Sch. 7 [see Note 1]
<i>Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010</i>	93, 2010	29 June 2010	Schedule 7: 1 July 2010	Sch. 7 (item 2) [see Table A]
<i>National Security Legislation Amendment Act 2010</i>	127, 2010	24 Nov 2010	Schedule 10 (items 4–7): 25 Nov 2010	Sch. 10 (item 7) [see Table A]
<i>Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010</i>	145, 2010	16 Dec 2010	Schedule 2 (items 5, 6): 17 Dec 2010	—
<i>Crimes Legislation Amendment Act 2011</i>	2, 2011	2 Mar 2011	Schedule 1 (items 1–4, 8) and Schedule 2: Royal Assent	Sch. 1 (items 3, 8) and Sch. 2 (items 2, 4, 6, 18) [see Table A]
<i>Acts Interpretation Amendment Act 2011</i>	46, 2011	27 June 2011	Schedule 2 (items 139–141) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11) [see Table A]
<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011</i>	58, 2011	28 June 2011	Schedule 1 (items 12–14): (zd)	—
<i>Crimes Legislation Amendment (Powers and Offences) Act 2012</i>	24, 2012	4 Apr 2012	Schedule 2 (items 1–16) and Schedule 3: 5 Apr 2012 Schedule 2 (items 17–29): 25 June 2012 (see F2012L01243)	Sch. 2 (items 16, 29) and Sch. 3 (item 11) [see Table A]
<b>as amended by</b>				
<i>Statute Law Revision Act 2012</i>	136, 2012	22 Sept 2012	Schedule 2 (items 6–11): (ze)	—
<i>Statute Law Revision Act 2012</i>	136, 2012	22 Sept 2012	Schedule 1 (items 13, 14): Royal Assent	—

## Act Notes

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- (a) The *Australian Crime Commission Act 2002* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(14) of which provides as follows:
- (14) The amendments of the *National Crime Authority Act 1984* made by this Act shall be deemed to have come into operation on 1 July 1984.
- (b) The *Australian Crime Commission Act 2002* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (c) The *Telecommunications (Interception) Amendment Act 1987* was amended by Part X (sections 53 and 54) only of the *Crimes Legislation Amendment Act 1987*, subsection 2(3) of which provides as follows:
- (3) Sections 53, 54, 55 and 59 shall come into operation on the day on which this Act receives the Royal Assent.
- (d) The *Australian Crime Commission Act 2002* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (e) The *Australian Crime Commission Act 2002* was amended by sections 20–22 only of the *Crimes Legislation Amendment Act (No. 2) 1988*, subsection 2(1) of which provides as follows:
- (1) Sections 1, 2, 3, 12, 20, 21, 22 and 23 commence on the day on which this Act receives the Royal Assent.
- (f) The *Australian Crime Commission Act 2002* was amended by Part 8 (sections 36–43) only of the *Crimes Legislation Amendment Act 1989*, subsection 2(4) of which provides as follows:
- (4) Part 8 commences on 1 July 1989.
- (g) The *Australian Crime Commission Act 2002* was amended by Part 4 (sections 54 and 55) only of the *Crimes Legislation Amendment Act (No. 2) 1989*, subsection 2(1) of which provides as follows:
- (1) Sections 1, 2, 36, 37, 38, 46, 47, 51, 52 and 53, subsection 50(2), and Part 4, commence on the day on which this Act receives the Royal Assent.
- (h) The *Australian Crime Commission Act 2002* was amended by section 62 only of the *Commonwealth Banks Restructuring Act 1990*, subsection 2(3) of which provides as follows:
- (3) Each of the remaining provisions of this Act commences on a day, or at a time, fixed by Proclamation in relation to the provision concerned.
- Section 62 in so far as it relates to the *Australian Crime Commission Act 2002* commences immediately after section 20.
- Section 20 commences on 17 April 1991 (see *Gazette* 1991, No. S72).
- (i) The *Australian Crime Commission Act 2002* was amended by subsection 74(1) only of the *Crimes Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (j) Section 2 of the *Social Security (Rewrite) Transition Act 1991* provides as follows:
2. This Act commences immediately after the *Social Security Act 1991* commences.
- The *Social Security Act 1991* came into operation on 1 July 1991.
- (k) The *Australian Crime Commission Act 2002* was amended by Part 8 (sections 35–37) only of the *Crimes Legislation Amendment Act (No. 2) 1991*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) and (5), section 51 and Part 8 commence on a day or days to be fixed by Proclamation.

**Act Notes**

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- (l) The *ANL Sale Act 1995* was repealed by section 79 of the Act before coming into operation.
- (m) The *Australian Crime Commission Act 2002* was amended by the Schedule (item 53) only of the *Commonwealth Bank Sale Act 1995*, subsection 2(2) of which provides as follows:
- (2) Part 3, and all the items of the Schedule (except items 1, 12, 16, 17, 21, 22, 23, 26, 27, 31, 37 and 48), commence at the transfer time.
- The transfer time occurred on 19 July 1996.
- (n) The *Australian Crime Commission Act 2002* was amended by Schedule 4 (item 99) and Schedule 5 (items 87–89) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (o) The *Australian Crime Commission Act 2002* was amended by Schedule 19 (item 31) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (p) The *Australian Crime Commission Act 2002* was amended by Schedule 2 (item 9) only of the *AIDC Sale Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedule 2 commences on a day to be fixed by Proclamation. The day must not be earlier than the day on which the Minister gives the Governor-General a written certificate stating that the Minister is satisfied that the Australian Industry Development Corporation has no assets and no liabilities.
- (q) The *Australian Crime Commission Act 2002* was amended by Schedule 4 (item 7) only of the *Australian National Railways Commission Sale Act 1997*, subsection 2(5) of which provides as follows:
- (5) The remaining items of Schedule 3 and Schedule 4 commence on a day to be fixed by Proclamation. The day must not be earlier than the later of the day proclaimed for the purposes of subsection (2) and the day proclaimed for the purposes of subsection (3).
- (r) The *Australian Crime Commission Act 2002* was amended by Schedule 1 (items 620–622) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (s) The *Australian Crime Commission Act 2002* was amended by Schedule 3 (items 1 and 44–46) only of the *Australian Security Intelligence Organisation Legislation Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) This Act (other than Schedule 3) commences on the day on which it receives the Royal Assent.
  - (2) Subject to subsections (3) to (6), Schedule 3 commences immediately after the commencement of the other Schedules to this Act.
- The other Schedules to this Act commenced on 10 December 1999.
- (t) The *Australian Crime Commission Act 2002* was amended by Schedule 20 only of the *Federal Magistrates (Consequential Amendments) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the commencement of the *Federal Magistrates Act 1999*.
- (u) Subsection 2(2) of the *National Crime Authority Amendment Act 1999* provides as follows:
- (2) The amendment made as set out in Schedule 1 is taken to have commenced on 1 July 1984, immediately after the commencement of the amendments of the *National Crime Authority Act 1984* that were made as set out in Schedule 1 to the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*.
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**Act Notes**

- (v) The *Australian Crime Commission Act 2002* was amended by Schedule 1 (items 70–75) only of the *Jurisdiction of Courts Legislation Amendment Act 2000*, subsection 2(2) of which provides as follows:
- (2) The items in Schedule 1, other than items 77 to 90, commence on a day or days to be fixed by Proclamation.
- (w) The *Australian Crime Commission Act 2002* was amended by Schedule 1 (item 52) only of the *Measures to Combat Serious and Organised Crime Act 2001*, subsection 2(2) of which provides as follows:
- (2) Subject to subsection (3), Schedules 1 and 2 commence on a day or days to be fixed by Proclamation.
- (x) Subsections 2(1) (items 8 and 9) and (4) of the *Australian Crime Commission Establishment Act 2002* provide as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
8. Schedule 3, items 7 to 14	Immediately after the commencement of section 3 of the <i>Proceeds of Crime Act 2002</i> , subject to subsection (4)	1 January 2003
9. Schedule 3, items 15 and 16	Immediately before the commencement of section 3 of the <i>Proceeds of Crime Act 2002</i> , subject to subsection (4)	1 January 2003

(4) If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, the provisions covered by items 8, 9 and 10 of the table do not commence at all.

- (y) Subsection 2(1) (item 3) of the *Australian Crime Commission Amendment Act 2004* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
3. Schedule 1, item 17	Immediately after the commencement of Schedule 1 to the <i>Australian Crime Commission Establishment Act 2002</i> .	1 January 2003

- (z) Subsection 2(1) (item 2) of the *Statute Law Revision Act 2007* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
2. Schedule 1, item 1	Immediately after the commencement of item 5 of Schedule 1 to the <i>Surveillance Devices Act 2004</i> .	15 December 2004

**Act Notes**

(za) Subsection 2(1) (item 4) of the *Australian Crime Commission Amendment Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Schedule 1, Part 2	The later of: (a) the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 32 of Schedule 3 to the <i>Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Act 2007</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	Does not commence

(zb) Subsection 2(1) (item 11) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
11. Schedule 5, items 1 to 30	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009

(zc) Subsection 2(1) (item 7) of the *Freedom of Information Amendment (Reform) Act 2010* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
7. Schedules 4 to 7	Immediately after the commencement of section 3 of the <i>Australian Information Commissioner Act 2010</i> .  However, if section 3 of the <i>Australian Information Commissioner Act 2010</i> does not commence, the provision(s) do not commence at all.	1 November 2010

(zd) Subsection 2(1) (item 2) of the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

**Act Notes**

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<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 and 2	Immediately after the commencement of section 2 of the <i>Governance of Australian Government Superannuation Schemes Act 2011</i> .	1 July 2011

- (ze) Subsection 2(1) (items 10 and 11) of the *Statute Law Revision Act 2012* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
10. Schedule 2, items 6 to 10	Immediately after the time specified in the <i>Crimes Legislation Amendment (Powers and Offences) Act 2012</i> for the commencement of Part 1 of Schedule 2 to that Act.	5 April 2012
11. Schedule 2, item 11	Immediately after the time specified in the <i>Crimes Legislation Amendment (Powers and Offences) Act 2012</i> for the commencement of Schedule 3 to that Act.	5 April 2012

**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Title .....	am. No. 125, 2002
<b>Part I</b>	
S. 1 .....	am. No. 125, 2002
S. 4 .....	am. No. 104, 1985; No. 141, 1987; No. 110, 1988; No. 108, 1989; No. 123, 1991; No. 44, 1992; No. 133, 2000; No. 135, 2001; No. 86, 2002 (as rep. by No. 125, 2002); No. 125, 2002; No. 128, 2007; No. 33, 2009; Nos. 4, 42 and 93, 2010; Nos. 2 and 58, 2011; No. 24, 2012 (as am. by No. 136, 2012); No. 136, 2012
S. 4A .....	ad. No. 133, 2000 am. No. 125, 2002; No. 4, 2010
S. 5 .....	rs. No. 128, 2007
S. 6A .....	ad. No. 135, 2001
<b>Part II</b>	
Heading to Part II .....	rs. No. 125, 2002
<b>Division 1</b>	
Heading to Div. 1 of Part II.....	rs. No. 125, 2002
<b>Subdivision A</b>	
Subdiv. A of Div. 1 of..... Part II	ad. No. 125, 2002
S. 7 .....	am. No. 110, 1988; No. 123, 1991; No. 44, 1992; No. 133, 2000; No. 135, 2001 rs. No. 125, 2002
S. 7A .....	ad. No. 125, 2002
<b>Subdivision B</b>	
Subdiv. B of Div. 1 of..... Part II	ad. No. 125, 2002
S. 7B .....	ad. No. 125, 2002 am. No. 33, 2009; No. 4, 2010
S. 7C .....	ad. No. 125, 2002 am. No. 128, 2007; No. 4, 2010
Ss. 7D–7H.....	ad. No. 125, 2002
Ss. 7J, 7K.....	ad. No. 125, 2002
<b>Subdivision C</b>	
Heading to Subdiv. C of..... Div. 1 of Part II	ad. No. 125, 2002
S. 8 .....	am. No. 44, 1992; No. 43, 1996; No. 135, 2001; No. 125, 2002
S. 9 .....	am. No. 165, 1984; No. 110, 1988; No. 133, 2000 rs. No. 125, 2002
S. 10.....	am. No. 165, 1984; No. 133, 2000 rep. No. 125, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 11.....	am. No. 133, 2000 rep. No. 125, 2002
<b>Division 1A</b>	
Heading to Div. 1A of..... Part II	ad. No. 125, 2002
S. 12.....	am. No. 165, 1984; No. 28, 1991; No. 43, 1996; No. 133, 2000; No. 135, 2001; No. 86, 2002 (as rep. by No. 125, 2002); No. 125, 2002; No. 24, 2012
Note to s. 12(1).....	ad. No. 125, 2002 am. No. 24, 2012
Renumbered Note 1 .....	No. 24, 2012
Note 2 to s. 12(1).....	ad. No. 24, 2012
Note to s. 12(1A) .....	ad. No. 24, 2012
Ss. 13, 14 .....	am. No. 110, 1988; No. 133, 2000 rep. No. 125, 2002
Note to s. 14(1).....	ad. No. 133, 2000 rep. No. 125, 2002
Heading to s. 15 .....	am. No. 125, 2002 rep. No. 30, 2004
S. 15.....	am. No. 43, 1996; No. 133, 2000; No. 125, 2002 rep. No. 30, 2004
S. 16.....	rs. No. 125, 2002
S. 17.....	am. No. 104, 1985; No. 125, 2002
Heading to s. 18 .....	am. No. 125, 2002
S. 18.....	am. No. 125, 2002
Heading to s. 19 .....	am. No. 125, 2002
S. 19.....	am. No. 125, 2002
Heading to s. 19A.....	am. No. 125, 2002; No. 128, 2007
S. 19A .....	ad. No. 104, 1985 am. No. 89, 1987; No. 87, 1988; No. 108, 1989; No. 161, 1999; No. 133, 2000; No. 135, 2001; No. 125, 2002; No. 40, 2006; No. 128, 2007; Nos. 54 and 70, 2009
Note to s. 19A(5) .....	ad. No. 145, 2010
Heading to s. 20 .....	am. No. 125, 2002; No. 128, 2007
S. 20.....	am. No. 104, 1985; No. 108, 1989; No. 43, 1996; No. 133, 2000; No. 135, 2001; No. 125, 2002; No. 128, 2007
Note to s. 20(4).....	ad. No. 145, 2010
S. 20A .....	ad. No. 128, 2007
Heading to s. 21 .....	am. No. 125, 2002
S. 21.....	am. No. 125, 2002
S. 22.....	am. No. 165, 1984; No. 193, 1985; No. 108, 1989; No. 43, 1996; No. 133, 2000; No. 135, 2001; No. 125, 2002; No. 24, 2012
S. 23.....	am. No. 165, 1984; No. 108, 1989; No. 43, 1996; No. 135, 2001; No. 125, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to s. 24 .....	am. No. 125, 2002
S. 24.....	am. No. 165, 1984; No. 108, 1989; No. 43, 1996; No. 133, 2000; No. 135, 2001; No. 125, 2002
Ss. 24AA–24AC .....	ad. No. 24, 2012
<b>Division 2</b>	
Heading to Div. 2 of Part II.....	rs. No. 125, 2002
S. 24A .....	ad. No. 135, 2001 rs. No. 125, 2002
Heading to s. 25 .....	rs. No. 135, 2001 rep. No. 125, 2002
S. 25.....	am. No. 165, 1984; No. 141, 1987; No. 108, 1989; No. 44, 1992; No. 135, 2001 rep. No. 125, 2002
S. 25A .....	ad. No. 135, 2001 rs. No. 125, 2002
S. 26.....	rs. No. 65, 1988 am. No. 108, 1989; No. 44, 1992; No. 135, 2001; No. 125, 2002
S. 27.....	am. No. 165, 1984; No. 43, 1996; No. 194, 1999; No. 57, 2000; No. 135, 2001; No. 125, 2002
S. 28.....	am. No. 165, 1984; No. 108, 1989; No. 44, 1992; No. 135, 2001; No. 125, 2002; No. 168, 2007; No. 4, 2010
S. 29.....	am. No. 108, 1989; No. 43, 1996; No. 135, 2001; No. 125, 2002; No. 168, 2007; No. 4, 2010
S. 29A .....	ad. No. 209, 1991 am. No. 135, 2001; No. 125, 2002
S. 29B .....	ad. No. 209, 1991 am. No. 118, 1999; No. 135, 2001; No. 125, 2002; No. 4, 2010
Subheads. to s. 30(1), (2).....	ad. No. 135, 2001
S. 30.....	am. No. 108, 1989; No. 43, 1996; No. 135, 2001; No. 86, 2002 (as rep. by No. 125, 2002); No. 125, 2002
S. 31.....	am. No. 165, 1984; No. 141, 1987; No. 4, 1990; No. 209, 1991; No. 43, 1996; No. 135, 2001; No. 125, 2002
Heading to s. 32 .....	am. No. 57, 2000 rep. No. 135, 2001
S. 32.....	am. No. 165, 1984; No. 108, 1989; No. 43, 1996 rep. No. 135, 2001
Heading to s. 32A.....	am. No. 57, 2000 rep. No. 135, 2001
S. 32A .....	ad. No. 165, 1984 rep. No. 135, 2001
Ss. 32B, 32C .....	ad. No. 57, 2000 rep. No. 135, 2001
S. 33.....	am. No. 43, 1996; No. 135, 2001; No. 125, 2002
S. 34.....	am. No. 108, 1989; No. 135, 2001; No. 125, 2002
Ss. 34A–34F .....	ad. No. 4, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to s. 35 .....	rs. No. 125, 2002
S. 35.....	am. No. 108, 1989; No. 135, 2001; No. 125, 2002; No. 4, 2010
S. 35A .....	ad. No. 165, 1984 am. No. 4, 2010
Heading to s. 36 .....	am. No. 125, 2002
S. 36.....	am. No. 108, 1989; No. 43, 1996; No. 135, 2001; No. 125, 2002
<b>Division 3</b>	
<b>Subdivision A</b>	
Subdiv. A of Div. 3 of..... Part II	ad. No. 125, 2002
S. 37.....	am. Nos. 65 and 110, 1988; No. 44, 1992; No. 43, 1996; Nos. 135 and 159, 2001 rs. No. 125, 2002
S. 38.....	am. No. 43, 1996; No. 135, 2001 rs. No. 125, 2002
S. 39.....	am. No. 108, 1989; No. 43, 1996 rs. No. 125, 2002
S. 39A .....	ad. No. 110, 1988 rep. No. 125, 2002
S. 40.....	rs. No. 122, 1991 am. No. 146, 1999 rs. No. 125, 2002
S. 41.....	am. No. 43, 1996; No. 135, 2001 rs. No. 125, 2002
S. 42.....	am. No. 108, 1989; No. 43, 1996; No. 135, 2001 rs. No. 125, 2002
S. 43.....	am. No. 94, 1992; No. 43, 1996; No. 135, 2001 rs. No. 125, 2002 am. No. 30, 2004
S. 43A .....	ad. No. 110, 1988 rep. No. 125, 2002
Heading to s. 44 .....	am. No. 135, 2001 rs. No. 125, 2002
S. 44.....	am. No. 44, 1992; No. 43, 1996; No. 135, 2001 rs. No. 125, 2002 am. No. 26, 2008; No. 58, 2011
S. 45.....	am. No. 110, 1988; No. 44, 1992; No. 43, 1996; No. 135, 2001 rs. No. 125, 2002
S. 46.....	am. No. 108, 1989; No. 44, 1992; No. 135, 2001 rs. No. 125, 2002 am. No. 46, 2011
Note to s. 46.....	ad. No. 46, 2011

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to s. 46A.....	am. No. 135, 2001 rs. No. 125, 2002
S. 46A .....	ad. No. 108, 1989 am. No. 44, 1992; No. 135, 2001 rs. No. 125, 2002 am. No. 2, 2011
<b>Subdivision B</b>	
Subdiv. B of Div. 3 of..... Part II	ad. No. 125, 2002
S. 46B .....	ad. No. 125, 2002 am. No. 128, 2007; No. 2, 2011
Note to s. 46B(4) .....	ad. No. 2, 2011
S. 46C.....	ad. No. 125, 2002
Subhead. to s. 46D(1) .....	ad. No. 2, 2011
S. 46D.....	ad. No. 125, 2002 am. No. 2, 2011
Ss. 46E, 46F .....	ad. No. 125, 2002
Subhead. to s. 46G(1) .....	ad. No. 2, 2011
S. 46G.....	ad. No. 125, 2002 am. No. 2, 2011
S. 46H.....	ad. No. 125, 2002 am. No. 26, 2008; Nos. 2 and 58, 2011
S. 46J.....	ad. No. 125, 2002
<b>Subdivision C</b>	
Heading to Subdiv. C of..... Div. 3 of Part II	ad. No. 125, 2002
S. 47.....	am. No. 44, 1992; No. 146, 1999; No. 135, 2001; No. 125, 2002
S. 47A .....	ad. No. 2, 2011 am. No. 24, 2012
S. 48.....	am. No. 104, 1985; No. 108, 1989; No. 44, 1992; No. 135, 2001; No. 125, 2002
Heading to s. 49 .....	am. No. 125, 2002
S. 49.....	am. No. 125, 2002
Heading to s. 50 .....	am. No. 125, 2002
S. 50.....	am. No. 209, 1991; No. 44, 1992; No. 135, 2001; No. 125, 2002
<b>Subdivision D</b>	
Heading to Subdiv. D of..... Div. 3 of Part II	ad. No. 125, 2002
S. 51.....	am. No. 141, 1987; No. 108, 1989; No. 43, 1996; No. 135, 2001; No. 125, 2002; No. 30, 2004; No. 86, 2006; No. 127, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to Part III .....	rs. No. 125, 2002 rep. No. 127, 2010
Part III .....	rep. No. 127, 2010
S. 52.....	am. No. 125, 2002 rep. No. 127, 2010
Heading to s. 53 .....	am. No. 125, 2002 rep. No. 127, 2010
S. 53.....	am. No. 104, 1985; No. 43, 1996; No. 125, 2002 rep. No. 127, 2010
S. 54.....	rep. No. 127, 2010
S. 55.....	am. No. 135, 2001; No. 125, 2002 rep. No. 127, 2010
S. 55AA.....	ad. No. 136, 2001 am. No. 125, 2002 rep. No. 127, 2010
<b>Part IV</b>	
Subhead. to s. 55A(4).....	am. No. 30, 2004
S. 55A .....	ad. No. 165, 1984 am. No. 195, 1999; No. 57, 2000 rs. No. 133, 2000 am. No. 125, 2002; No. 30, 2004; No. 128, 2007; No. 136, 2012
S. 55B .....	ad. No. 133, 2000 rs. No. 125, 2002 am. No. 30, 2004; No. 128, 2007
S. 55C .....	ad. No. 133, 2000 am. No. 125, 2002; No. 30, 2004
S. 55D.....	ad. No. 30, 2004
S. 56.....	rep. No. 125, 2002
S. 57.....	am. No. 194, 1999; No. 125, 2002
S. 58.....	am. No. 125, 2002
Heading to s. 59 .....	rs. No. 24, 2012
Subhead. to s. 59(1).....	ad. No. 24, 2012
Subhead. to s. 59(1A).....	ad. No. 24, 2012
S. 59.....	am. No. 66, 1988; No. 108, 1989; No. 209, 1991; No. 44, 1992; No. 43, 1996; No. 161, 1999; No. 133, 2000; No. 135, 2001; No. 125, 2002; No. 127, 2010; No. 24, 2012 (as am. by No. 136, 2012)
Note to s. 59(1).....	ad. No. 24, 2012
S. 59AA.....	ad. No. 24, 2012
S. 59AB.....	ad. No. 24, 2012
S. 59AC.....	ad. No. 24, 2012
S. 59AD.....	ad. No. 24, 2012
S. 59A .....	ad. No. 66, 1988 am. No. 108, 1989; No. 44, 1992; No. 135, 2001 rs. No. 125, 2002 am. No. 2, 2011

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 59B .....	ad. No. 125, 2002
Heading to s. 60 .....	am. No. 125, 2002
S. 60.....	am. No. 108, 1989; No. 44, 1992; No. 135, 2001; No. 125, 2002; No. 24, 2012 (as am. by No. 136, 2012)
S. 61.....	am. No. 108, 1989; No. 44, 1992; No. 43, 1996; No. 194, 1999; No. 57, 2000; No. 135, 2001; No. 86, 2002 (as rep. by No. 125, 2002); No. 125, 2002; No. 24, 2012
S. 61A .....	ad. No. 125, 2002 rs. No. 4, 2010
S. 63.....	rep. No. 65, 1988
Heading to Schedule .....	rep. No. 108, 1989
<b>Schedule 1</b>	
Heading to Schedule 1 .....	ad. No. 108, 1989
Schedule .....	am. No. 123, 1984 rs. No. 104, 1985 am. No. 89, 1987; Nos. 75 and 87, 1988
Schedule 1 .....	am. No. 70, 1991; No. 60, 1996; Nos. 161 and 194, 1999; Nos. 121 and 135, 2001; No. 105, 2002; Nos. 28 and 134, 2003; Nos. 40 and 84, 2006; No. 8, 2007; No. 54, 2009; No. 51, 2010
<b>Schedule 2</b>	
Schedule 2 .....	ad. No. 108, 1989 am. No. 118, 1990; Nos. 54 and 88, 1993; No. 161, 1995; Nos. 67 and 96, 1997; No. 62, 2004

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Jurisdiction of Courts Legislation Amendment Act 2000* (No. 57, 2000)

**Schedule 1**

**76 Effect of amendments in relation to reviewable State and Territory requirements**

*Definitions*

(1) In this item:

***amended Act*** means the *National Crime Authority Act 1984* as in force after the commencement, including as it has effect because of sections 32B and 32C of that Act.

***commencement*** means the commencement of the amendments of the *National Crime Authority Act 1984* made by this Schedule.

***reviewable State requirement*** means:

- (a) a requirement, made before the commencement, to answer a question, or to produce a document, at a hearing before the Authority under a law of a State; or
- (b) a requirement, made before the commencement, to produce a document pursuant to a notice under a provision of a law of a State that corresponded to section 29 of the *National Crime Authority Act 1984* as then in force.

***reviewable Territory requirement*** means:

- (a) a requirement, made before the commencement, to answer a question, or to produce a document, at a hearing before the Authority under a law of the Australian Capital Territory or the Northern Territory; or
- (b) a requirement, made before the commencement, to produce a document pursuant to a notice under a provision of a law of the Australian Capital Territory or the Northern Territory that corresponded to section 29 of the *National Crime Authority Act 1984* as then in force.

***State*** does not include the Australian Capital Territory or the Northern Territory.

**Table A***Reviewable State requirements—situations in which period for applying under subsection 32(2) of the amended Act is extended*

- (2) For the purpose of a person making an application under subsection 32(2) of the amended Act concerning a decision made before the commencement in relation to a reviewable State requirement under a provision of a law of a State that corresponded to subsection 32(1) of the *National Crime Authority Act 1984* as then in force, paragraph 32(12)(c) of the amended Act applies in each of the following situations as if the 5 day period referred to in that paragraph began on the commencement:
- (a) the first situation—the decision was made during the period starting on 12 June 1999 and ending immediately before the commencement;
  - (b) the second situation—before 17 June 1999, a court, purporting to Act under a provision of a law of a State that corresponded to subsection 32(12) of the *National Crime Authority Act 1984* as then in force, made an order allowing the person further time to make an application in relation to the decision and that period of time had not expired by 17 June 1999;
  - (c) the third situation—immediately before 17 June 1999, proceedings by way of an application by the person in relation to the decision under a provision of a law of a State that corresponded to subsection 32(2) of the *National Crime Authority Act 1984* as then in force were before a court.

Note: The power under subsection 32(12) of the amended Act to extend the time for applying under subsection 32(2) of that Act in relation to a decision is available even if the decision relates to a reviewable State requirement and the 28 day time limit that would otherwise apply expired before the commencement.

*Reviewable State requirements—situations in which period for applying under subsection 32(8) of the amended Act is extended*

- (3) For the purpose of a person making an application under subsection 32(8) of the amended Act concerning a reviewable State requirement in relation to which a notice was given before the commencement under a provision of a law of a State that corresponded to subsection 32(8A) of the *National Crime Authority Act 1984* as then in force, paragraph 32(12)(c) of the amended Act applies in each of the following situations as if the 5 day period referred to in that paragraph began on the commencement:

**Table A**

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- (a) the first situation—the notice was given during the period starting on 12 June 1999 and ending immediately before the commencement;
- (b) the second situation—before 17 June 1999, a court, purporting to Act under a provision of a law of a State that corresponded to subsection 32(12) of the *National Crime Authority Act 1984* as then in force, made an order allowing the person further time to make an application in relation to the requirement and that period of time had not expired by 17 June 1999;
- (c) the third situation—immediately before 17 June 1999, proceedings by way of an application by the person in relation to the requirement under a provision of a law of a State that corresponded to subsection 32(8) of the *National Crime Authority Act 1984* as then in force were before a court.

Note: The power under subsection 32(12) of the amended Act to extend the time for applying under subsection 32(8) of that Act in relation to a decision is available even if the decision relates to a reviewable State requirement and the 28 day limit that would otherwise apply expired before the commencement.

*Reviewable State requirements—if subitem (3) applies, notice is taken to have been given under subsection 32(8A) of amended Act*

- (4) In a situation to which subitem (3) applies, the notice referred to in that subitem is, for the purposes of section 32 of the amended Act, taken to have been given under subsection 32(8A) of that Act.

*Reviewable Territory requirements—ACT and NT provisions that correspond to sections 32 and 32A no longer operate*

- (5) A provision of a law of the Australian Capital Territory or the Northern Territory that corresponds to a provision of section 32 or 32A of the amended Act is of no effect after the commencement so far as it provides for applications to be made to a court in relation to reviewable Territory requirements, or for how such applications are to be dealt with.

Note 1: Section 32 (as modified by section 32B) and section 32A (as modified by section 32C) of the amended Act provide for applications to courts in relation to reviewable Territory requirements.

**Table A**

Note 2: A provision of a law of the ACT or NT that corresponds to subsection 32(1), (6) or (11) is still effective as these subsections do not provide for applications to be made to, or dealt with by, a court.

*Reviewable Territory requirements—proceedings under ACT and NT provisions that correspond to sections 32 and 32A continue after the commencement under the amended Act*

- (6) If, immediately before the commencement, proceedings in relation to a reviewable Territory requirement were before a court under a provision of a law of the Australian Capital Territory or the Northern Territory that corresponded to section 32 or 32A of the *National Crime Authority Act 1984* as then in force, then, from the commencement, those proceedings continue as if they had been commenced in that court under whichever of sections 32 and 32A of the amended Act is applicable.

*Reviewable Territory requirements—continued effect of orders made before the commencement under ACT and NT provisions that correspond to sections 32 and 32A*

- (7) An order that relates to a reviewable Territory requirement and that was made by a court before the commencement under a provision of a law of the Australian Capital Territory or the Northern Territory that corresponded to section 32 or 32A of the *National Crime Authority Act 1984* as then in force has effect, from the commencement, as if it had been made by that court under whichever of sections 32 and 32A of the amended Act is applicable.

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*National Crime Authority Amendment Act 2000* (No. 133, 2000)

## **Schedule 1**

### **38 Transitional—section 13 of the *National Crime Authority Act 1984***

To avoid doubt, the amendments made by this Schedule do not affect the validity of a notice in force under subsection 13(1) of the *National Crime Authority Act 1984* immediately before the commencement of this item.

**Table A**

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**39 Transitional—section 14 of the *National Crime Authority Act 1984***

- (1) This item applies if a notice was in force under subsection 14(1) of the *National Crime Authority Act 1984* immediately before the commencement of this item.
- (2) The amendments made by this Schedule do not affect the validity of the notice. This subitem has effect subject to subitems (3) and (4).
- (3) In determining the scope of the special functions conferred on the Authority by the *National Crime Authority Act 1984*:
  - (a) if some, but not all, of the offences to which the notice relates have a federal aspect—disregard any offences that do not have a federal aspect; and
  - (b) if none of the offences to which the notice relates have a federal aspect—disregard the notice.
- (4) If the notice was given under a law of a State, section 55A of the *National Crime Authority Act 1984* as amended by this Schedule applies to a duty, function or power conferred, or purporting to be conferred, by that law in connection with the giving of that notice.
- (5) In this item:

*confer*, in relation to a duty, includes impose.

**40 Transitional—section 19A of the *National Crime Authority Act 1984***

To avoid doubt, the amendments made by this Schedule do not affect the validity of a request in force under section 19A of the *National Crime Authority Act 1984* immediately before the commencement of this item, so long as the investigation to which the request relates is an investigation relating to a federally relevant criminal activity.

**41 Transitional—section 20 of the *National Crime Authority Act 1984***

To avoid doubt, the amendments made by this Schedule do not affect the validity of a notice in force under section 20 of the *National Crime Authority Act 1984* immediately before the commencement of this item, so long as the investigation to which the notice relates is an investigation relating to a federally relevant criminal activity.

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**42 Transitional—section 22 of the *National Crime Authority Act 1984***

To avoid doubt, the amendments made by this Schedule do not affect the validity of a warrant in force under section 22 of the *National Crime Authority Act 1984* immediately before the commencement of this item, so long as the investigation to which the warrant relates is an investigation relating to a federally relevant criminal activity.

**43 Transitional—section 24 of the *National Crime Authority Act 1984***

To avoid doubt, the amendments made by this Schedule do not affect the validity of an order in force under section 24 of the *National Crime Authority Act 1984* immediately before the commencement of this item, so long as the investigation to which the order relates is an investigation relating to a federally relevant criminal activity.

**44 Transitional—section 28 of the *National Crime Authority Act 1984***

To avoid doubt, the amendments made by this Schedule do not affect the validity of a summons in force under section 28 of the *National Crime Authority Act 1984* immediately before the commencement of this item, so long as the investigation to which the summons relates is an investigation relating to a federally relevant criminal activity.

**45 Transitional—section 29 of the *National Crime Authority Act 1984***

To avoid doubt, the amendments made by this Schedule do not affect the validity of a notice in force under section 29 of the *National Crime Authority Act 1984* immediately before the commencement of this item, so long as the investigation to which the notice relates is an investigation relating to a federally relevant criminal activity.

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*National Crime Authority Legislation Amendment Act 2001*  
(No. 135, 2001)

**4 Review of effect of this Act**

- (1) The Minister must cause a person (the *responsible person*) to review, and to report in writing about, the operation of the *National*

**Table A**

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*Crime Authority Act 1984* (the *NCA Act*) and the *Australian Crime Commission Act 2002* (the *ACC Act*) as affected by the following provisions of this Act:

- (a) items 1, 3, 5, 11 and 13 of Schedule 1 (the *provisions that remove the defence of reasonable excuse*);
  - (b) item 12 of Schedule 1 (the *provision that removes the derivative-use immunity*);
  - (c) items 7, 12 and 15 of Schedule 1 (the *provisions that increase the penalties for non-compliance*).
- (2) The responsible person must be someone who, in the Minister's opinion, is suitably qualified and appropriate to conduct the review and make the report.
- (3) The review and report must relate to the 5 year period (the *review period*) beginning on the commencement of Part 1 of Schedule 1.
- (4) The review and report must include an assessment of:
- (a) the effects of the following provisions in facilitating the performance of the functions of the Authority and the Australian Crime Commission:
    - (i) the provisions that remove the defence of reasonable excuse;
    - (ii) the provision that removes the derivative-use immunity;
    - (iii) the provisions that increase the penalties for non-compliance; and
  - (b) the extent (if any) to which persons have been unjustifiably prejudiced because of the enactment of:
    - (i) the provisions that remove the defence of reasonable excuse; and
    - (ii) the provision that removes the derivative-use immunity; and
  - (c) the extent (if any) to which courts have imposed increased penalties allowed for by the provisions that increase the penalties for non-compliance.
- (5) The review and report must also include an assessment of any other matter that the responsible person considers relevant to the operation of the provisions of the *NCA Act* and the *ACC Act* as affected by the provisions referred to in paragraphs (1)(a) to (c).
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**Table A**

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- (6) The report must not:
- (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; or
  - (c) reveal the identity of a person, if doing so might prejudice:
    - (i) the safety or reputation of a person; or
    - (ii) the fair trial of a person who has been or may be charged with an offence.
- (7) The Authority must give all reasonable assistance requested by the responsible person in connection with the carrying out of the review and report.
- (7A) The Chief Executive Officer of the Australian Crime Commission, and members of the staff of the ACC (within the meaning of the ACC Act), must give all reasonable assistance requested by the responsible person in connection with the carrying out of the review and report.
- (8) The following activities by a current or former member of the Authority (within the meaning of the NCA Act) or a current or former member of staff of the Authority (within the meaning of the NCA Act) do not constitute a contravention of section 51 of the NCA Act, if they are carried out for the purposes of assisting the responsible person to carry out the review and report:
- (a) divulging or communicating information to the responsible person;
  - (b) recording information;
  - (c) providing a record of information to the responsible person.
- (8A) The following activities by the current or former Chief Executive Officer of the Australian Crime Commission or a current or former member of the staff of the ACC (within the meaning of the ACC Act) do not constitute a contravention of section 51 of the ACC Act, if they are carried out for the purposes of assisting the responsible person to carry out the review and report:
- (a) divulging or communicating information to the responsible person;
  - (b) recording information;
  - (c) providing a record of information to the responsible person.
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**Table A**

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- (9) The responsible person must provide a reasonable opportunity for members of the public to make submissions to him or her about matters to which the review and report relate. However, the review process must not include any hearings.
- (10) The responsible person must give the report to the Inter-Governmental Committee no later than 6 months after the end of the review period. The report is then to be considered by the Committee and given by the Committee, together with such comments on the report as the Committee thinks fit, to:
  - (a) the Minister; and
  - (b) the appropriate Minister of the Crown of each participating State.
- (11) After the Minister receives the report and comments from the Inter-Governmental Committee, the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House.

**Schedule 1**

**17 Saving of sections 32, 32A, 32B and 32C in relation to relevant claims**

- (1) Despite the repeal of sections 32, 32A, 32B and 32C of the *National Crime Authority Act 1984* by item 13, those sections continue to have effect on and after the commencement of that item as if they had not been repealed, in relation to a relevant claim.
- (2) In this item:

**relevant claim** means a claim, made before the commencement of item 13, that a person is entitled to refuse:

  - (a) to furnish information, or produce a document, pursuant to a notice under section 20 of the *National Crime Authority Act 1984*; or
  - (b) to produce a document pursuant to a notice under section 29 of that Act; or
  - (c) to answer a question put to him or her, or produce a document that he or she was required to produce, under section 30 of that Act; or

**Table A**

- (d) to comply with a requirement:
- (i) to answer a question, or to produce a document, at a hearing before the Authority under a law of a State; or
  - (ii) to produce a document pursuant to a notice under a provision of a law of a State that corresponds to section 29 of that Act;
- to which section 32 of that Act applied, because of section 32B of that Act, before the commencement of item 13.

**51 Application**

If:

- (a) under section 29A of the *National Crime Authority Act 1984*, a notation was made before the commencement of item 50 in relation to the disclosure of information about:
  - (i) a summons issued under section 28 of that Act; or
  - (ii) a notice issued under section 29 of that Act; or
  - (iii) any official matter connected with the summons or notice; and
- (b) before the commencement of that item, a body made a note about the disclosure of the information about a person in accordance with the *Privacy Act 1988*; and
- (c) after the commencement of that item, an individual seeks access to that file in accordance with section 18H of the *Privacy Act 1988* before the notation is cancelled;

then the note must be removed before such access is given and neither the note nor any information in the note may be disclosed to the individual when such access is given.

**59 Application**

The amendments made by items 57 and 58 apply to a person executing a warrant on or after the commencement of those items, regardless of whether the warrant was issued before, on or after the commencement.

## Table A

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*Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001*  
(No. 159, 2001)

### Schedule 1

#### 97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

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*Australian Crime Commission Establishment Act 2002* (No. 125, 2002)

### Schedule 1

#### 308 Definitions

In this Part:

**ACC** means the Australian Crime Commission.

**ACC Act** means the *Australian Crime Commission Act 2002*.

**commencement time** means the time when this Part commences.

**NCA** means the National Crime Authority.

**NCA Act** means the *National Crime Authority Act 1984* as in force before the commencement time.

**NCA consultant** means a person in respect of whom an engagement was in force under section 48 of the NCA Act immediately before the commencement time.

**NCA hearing officer** means a person who held an appointment under subsection 25A(1) of the NCA Act immediately before the commencement time.

#### 309 Appointment of first CEO of ACC

- (1) The first appointment of the Chief Executive Officer of the ACC under section 37 of the ACC Act may be made in accordance with section 4 of the *Acts Interpretation Act 1901*.

Note: Subsection 4(1) of the *Acts Interpretation Act 1901* would allow the appointment to occur during the period beginning on the day this Act receives the Royal Assent and ending on 31 December 2002. However, the

**Table A**

appointment could not take effect until at least 1 January 2003: see subsection 4(2) of the *Acts Interpretation Act 1901*.

- (2) For this purpose, paragraph 37(2)(a) of the ACC Act is taken to be satisfied if the Minister invites each of the following persons to make nominations for that appointment:
- (a) the Commissioner of the Australian Federal Police;
  - (b) the Secretary of the Department;
  - (c) the Chief Executive Officer of the Australian Customs Service;
  - (d) the Chairperson of the Australian Securities and Investments Commission;
  - (e) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*;
  - (f) the Commissioner or head (however described) of the police force of each State and of the Northern Territory;
  - (g) the Chief Police Officer of the Australian Capital Territory.

**310 NCA hearing officers**

- (1) At the commencement time, an NCA hearing officer is taken to be appointed as an examiner under subsection 46B(1) of the ACC Act.
- (2) A person who becomes an examiner under this item holds that office:
- (a) subject to Subdivision B of Division 3 of Part II of the ACC Act, on the same terms and conditions as applied to his or her appointment as an NCA hearing officer immediately before the commencement time; and
  - (b) for the unexpired part of the term of his or her appointment under the NCA Act.
- (3) This item does not prevent those terms and conditions being varied after the commencement time.
- (4) An appointment of a person as an examiner under this item is taken, for the purposes of subsection 46B(4) of the ACC Act, to be the person's first appointment.
- Note: Subsection 46B(4) of the ACC Act provides that the sum of an examiner's first appointment and any period or periods of re-appointment must not exceed 5 years.

**Table A**

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**311 NCA consultants**

- (1) At the commencement time, a person who is an NCA consultant is taken to be engaged as a consultant under section 48 of the ACC Act.
- (2) The person is taken to have been engaged on the same terms and conditions that applied in relation to the person immediately before the commencement time.

**312 NCA legal practitioners**

An appointment in force under section 50 of the NCA Act immediately before the commencement time is taken, at that time, to be an appointment made under section 50 of the ACC Act.

**313 Continuation of references made to the NCA**

- (1) This item applies to an investigation (the *NCA investigation*) under subsection 11(2) of the NCA Act that the NCA had commenced but not completed before the commencement time.
- (2) At and after the commencement time:
  - (a) the ACC may complete the NCA investigation; and
  - (b) the NCA investigation is taken, for the purposes of the ACC Act, to be an investigation into matters relating to federally relevant criminal activity.
- (3) For the purposes of the ACC completing the NCA investigation, at the commencement time:
  - (a) the Board of the ACC is taken to have authorised, in writing, the ACC to investigate the matters; and
  - (b) the Board of the ACC is taken to have determined, in writing, that the investigation is a special investigation; and
  - (c) the persons who were carrying out the NCA investigation immediately before the commencement time are taken to be persons participating in the special investigation; and
  - (d) the person in charge of the NCA investigation immediately before the commencement time is taken to be the head of the special investigation.

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**314 Continuation of duties, functions or powers conferred on the NCA by State laws**

If:

- (a) a law of a State conferred on the NCA a duty, function or power of the kind referred to in subsection 55A(2) of the NCA Act in relation to a matter relating to a relevant criminal activity; and
- (b) subsection 55A(3) of the NCA Act was satisfied in relation to that conferral; and
- (c) a law of a State confers on the ACC that duty, function or power in relation to that matter;

then the Board of the ACC is taken to have consented to the ACC investigating that matter.

**315 Continuation of other NCA investigations**

- (1) This item applies to an investigation (the *NCA investigation*) in relation to a federally relevant criminal activity under paragraph 11(1)(b) of the NCA Act that the NCA had commenced but not completed before the commencement time.
- (2) At and after the commencement time:
  - (a) the ACC may complete the NCA investigation; and
  - (b) the NCA investigation is taken, for the purposes of the ACC Act, to be an investigation into matters relating to federally relevant criminal activity.
- (3) For the purposes of the ACC completing the NCA investigation, at the commencement time:
  - (a) the Board of the ACC is taken to have authorised, in writing, the ACC to investigate the matters; and
  - (b) the persons who were carrying out the NCA investigation immediately before the commencement time are taken to be persons participating in the investigation of those matters; and
  - (c) the person in charge of the NCA investigation immediately before the commencement time is taken to be the head of the investigation into those matters.

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**Table A**

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**316 Assembling and giving of evidence obtained by the NCA**

If:

- (a) before the commencement time, the NCA obtained evidence of a kind referred to in subsection 12(1) or (1A) of the NCA Act; but
- (b) the NCA had not assembled and given the evidence as mentioned in that subsection before the commencement time;

then, at and after the commencement time, subsection 12(1) of the ACC Act applies as if that evidence had been obtained by the ACC in carrying out an ACC operation/investigation.

Note: Subsection 12(1) of the ACC Act requires the Chief Executive Officer of the ACC to assemble and give the evidence to particular persons or bodies.

**317 Limitation on challenges to validity of references**

Despite the repeal and substitution of section 16 of the NCA Act made by this Schedule, that section continues to apply in relation to a reference made before the commencement time as if that repeal and substitution had not been made.

**318 Arrangements to obtain information or intelligence**

An arrangement in force under section 21 of the NCA Act immediately before the commencement time continues to be in force after that time as if it had been made under section 21 of the ACC Act.

**319 Continuation of secrecy obligations**

Section 51 of the NCA Act continues to apply at and after the commencement time to a person who, immediately before the commencement time, was a person to whom that section applied as if the amendments to that section made by this Schedule had not been made.

**320 Continuation of the Parliamentary Joint Committee on the National Crime Authority**

The Parliamentary Joint Committee on the National Crime Authority, as constituted under Part III of the NCA Act immediately before the commencement time, continues in existence after that time under Part III of the ACC Act and is to be known as the Parliamentary Joint Committee on the Australian Crime Commission.

**321 Ombudsman to brief Inter-Governmental Committee about controlled operations**

The first briefing provided by the Ombudsman under section 55AA of the ACC Act must also cover the NCA's involvement in controlled operations under Part IAB of the *Crimes Act 1914* during the preceding 12 months.

**322 Arrangements relating to person performing services for the NCA**

An arrangement in force under paragraph 58(1)(b) of the NCA Act immediately before the commencement time continues to be in force after that time as if it had been made under subsection 58(1) of the ACC Act.

**323 Annual report**

The first report on the operations of the ACC under section 61 of the ACC Act must also include, in relation to the year to which the report relates, details of the matters referred to in subsection 61(2) of the NCA Act as in force immediately before the commencement time.

**324 Transfer of records and documents etc.**

Any evidence (including oral evidence in any form), records, documents, information or other things (including those in electronic form) that were in the possession of the NCA immediately before the commencement time are to be transferred to the ACC.

**325 Section 8 of the *Acts Interpretation Act 1901***

This Part does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**326 Transitional regulations**

- (1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of the amendments made by this Schedule.

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- (2) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations made under this item within 1 year after commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

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*Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (No. 128, 2007)

**3 Northern Territory (Self-Government) Act**

Section 49 of the *Northern Territory (Self-Government) Act 1978* does not apply in relation to the provisions of this Act.

**Schedule 2**

**12 Application**

The amendment made by item 11 applies to determinations made under subsection 7C(2) or (3) of the *Australian Crime Commission Act 2002* on or after the day on which this item commences.

**31 Application of offences**

The offences affected by this Division apply to conduct engaged in on or after the 28th day after the day on which this Act receives the Royal Assent.

**33 Application**

Subsection 46B(4) of the *Australian Crime Commission Act 2002*, as in force immediately after the commencement of this item, applies to examiners who hold office immediately before that commencement, and to examiners who are appointed or reappointed on or after that commencement.

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*Australian Crime Commission Amendment Act 2007* (No. 168, 2007)

**Schedule 1**

**9 Application of amendments—section 28 of the *Australian Crime Commission Act 2002***

The amendments of section 28 of the *Australian Crime Commission Act 2002* made by this Part apply in relation to a summons issued after the commencement of this item.

**10 Validation—summons under subsection 28(1) of the *Australian Crime Commission Act 2002***

- (1) This item applies to a summons under subsection 28(1) of the *Australian Crime Commission Act 2002* if:
  - (a) the summons was issued before the commencement of this item; and
  - (b) apart from this item, the summons would be invalid because the record referred to in subsection 28(1A) of that Act was made after the summons was issued.
- (2) The summons is as valid, and is taken always to have been as valid, as it would have been if that Act had provided that the record could be made after the issue of the summons.

**11 Application of amendments—section 29 of the *Australian Crime Commission Act 2002***

The amendments of section 29 of the *Australian Crime Commission Act 2002* made by this Part apply in relation to a notice issued after the commencement of this item.

**12 Validation—notice under subsection 29(1) of the *Australian Crime Commission Act 2002***

- (1) This item applies to a notice under subsection 29(1) of the *Australian Crime Commission Act 2002* if:
  - (a) the notice was issued before the commencement of this item; and
  - (b) apart from this item, the notice would be invalid because the record referred to in subsection 29(1A) of that Act was made after the notice was issued.

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**Table A**

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- (2) The notice is as valid, and is taken always to have been as valid, as it would have been if that Act had provided that the record could be made after the issue of the notice.

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*Fair Work (State Referral and Consequential and Other Amendments) Act 2009*  
(No. 54, 2009)

**Schedule 5**

**83 Application of item 5**

Despite the amendment made by item 5 of this Schedule, section 19A of the *Australian Crime Commission Act 2002* continues to apply, on and after the WR Act repeal day, in relation to the Australian Industrial Relations Commission as it continues in existence because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, as if that amendment had not been made.

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*Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010* (No. 4, 2010)

**Schedule 7**

**26 Application of amendments relating to contempt**

The amendments made by item 3 and items 18 to 21 of this Schedule apply to an act or omission engaged in by a person in relation to an examination that began on or after the commencement of this item.

**27 Application of amendment made by item 4**

The amendment made by item 4 of this Schedule applies to operations that began before, on or after the commencement of this item.

**28 Application of amendments relating to reasons for summons or notice**

The amendments made by items 9, 10, 11, 12, 13 and 14 of this Schedule apply to a summons or notice issued on or after the commencement of this item.

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**Table A**


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*Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010*  
(No. 93, 2010)

**Schedule 1****4 Effect of repeal of sections of Acts by this Schedule**

To avoid doubt:

- (a) the repeal of sections of an Act by this Schedule does not have retrospective effect; and
- (b) section 8 of the *Acts Interpretation Act 1901* applies to the repeal (unaffected by any contrary intention).

**Schedule 7****2 Application**

The amendment made by item 1 applies in relation to an ACC operation/investigation begun on or after the commencement of this item.

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*National Security Legislation Amendment Act 2010* (No. 127, 2010)

**Schedule 10****7 Transitional—Committee on the Australian Crime Commission**

- (1) This item applies to the Parliamentary Joint Committee on the Australian Crime Commission (the *Committee*) that was in existence under the *Australian Crime Commission Act 2002* immediately before the commencement of this item.
- (2) The Committee continues in existence by force of this item, after the commencement of this item, as the Parliamentary Joint Committee on Law Enforcement under the *Parliamentary Joint Committee on Law Enforcement Act 2010*.
- (3) A person who held office as a member of the Committee immediately before the commencement of this item is taken to have been appointed,

**Table A**

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- immediately after that commencement, as a member of the Parliamentary Joint Committee on Law Enforcement.
- (4) The person who held office as Chair of the Committee immediately before the commencement of this item is taken to have been elected, immediately after that commencement, as Chair of the Parliamentary Joint Committee on Law Enforcement.
- (5) If the Committee was conducting a review immediately before commencement:
- (a) the Parliamentary Joint Committee on Law Enforcement may continue the review after that commencement; and
  - (b) anything done for the purposes of the review before commencement is taken to have been done for the purposes of the review as continued in accordance with this item.
- (6) Section 10 of the *Parliamentary Joint Committee on Law Enforcement Act 2010* does not apply in relation to the year ending on 31 December 2010 if, in that year, the Ombudsman has provided to the Committee a briefing under subsection 55AA(1) of the *Australian Crime Commission Act 2002* as in force immediately before the commencement of this item.
- (7) For the avoidance of doubt, subitem (6) does not prevent the Ombudsman from providing a briefing to the Parliamentary Joint Committee on Law Enforcement about the involvement of the Australian Crime Commission or the Australian Federal Police in controlled operations under Part IAB of the *Crimes Act 1914* during the year ending on 31 December 2010.

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*Crimes Legislation Amendment Act 2011* (No. 2, 2011)

**Schedule 1**

**3 Application of item 2**

Section 47A of the *Australian Crime Commission Act 2002* (as inserted by item 2 of this Schedule) applies in relation to a decision to terminate the employment of a member of the staff referred to in subsection 47(1) of that Act, where that decision is made after the commencement of this item.

## **8 Review of operation of amendments relating to serious misconduct by staff member**

- (1) The Minister must cause an independent review to be undertaken of the operation of section 47A of the *Australian Crime Commission Act 2002*, as inserted by this Schedule, and the amendments made by Part 2 of this Schedule.
- (2) The review must be undertaken as soon as practicable after the end of the period of 2 years after the commencement of this Schedule.

## **Schedule 2**

### **2 Savings provision for item 1**

To avoid doubt, the amendment made by item 1 does not affect an arrangement made under subsection 46A(3) of the *Australian Crime Commission Act 2002* before the commencement of this item.

### **4 Transitional provision for item 3**

Despite subsection 46A(4) of the *Australian Crime Commission Act 2002* (as inserted by item 3 of this Schedule), the first notification under that subsection must relate to arrangements made during the period:

- (a) starting at the commencement of this item; and
- (b) ending at the end of the first 30 June or 31 December (as the case requires) after that time.

### **6 Application of item 5**

The amendment made by item 5 of this Schedule applies to the appointment of an examiner after the commencement of this item, whether or not the person has previously been appointed as an examiner.

### **18 Savings provision for items 5 to 17**

To avoid doubt, the amendments made by items 5 to 17 of this Schedule do not affect the validity of an appointment of an examiner made before the commencement of this item.

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## **Table A**

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*Acts Interpretation Amendment Act 2011* (No. 46, 2011)

### **Schedule 3**

#### **10 Saving—appointments**

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

#### **11 Transitional regulations**

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.

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*Crimes Legislation Amendment (Powers and Offences) Act 2012*  
(No. 24, 2012)

### **Schedule 2**

#### **16 Application of this Part**

The amendments made by this Part apply to any information in the possession of the ACC, whether the information comes into the possession of the ACC before or after this item commences.

#### **29 Application of this Part**

The amendments made by this Part apply to any ACC information, whether the information comes into the possession of the ACC before or after this item commences.

### **Schedule 3**

#### **11 Application of this Schedule**

The amendments made by this Schedule apply to any returnable item, whether seized or produced before or after this Schedule commences.