



Australian Capital Territory

Australian Crime Commission (ACT) Act 2003

A2003-58

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Australian Capital Territory

Australian Crime Commission (ACT) Act 2003

A2003-58

An Act to make provision for the operation of the Australian Crime Commission in the ACT, to repeal the *National Crime Authority (Territory Provisions) Act 1991*, and for related purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2003 022B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Australian Crime Commission (ACT) Act 2003*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Terms used in ACC Act

If this Act uses a term that is used in the ACC Act, the term has the same meaning in this Act as it has in the ACC Act.

Note A definition applies except so far as the contrary intention appears (see Legislation Act, s 155).

7 Incidental offences may be taken to be serious and organised crime

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

Part 2 The ACC, the board and inter-governmental committee

Division 2.1 Australian Crime Commission

8 Functions of ACC

The ACC has the following functions:

- (a) to investigate a matter relating to a relevant criminal activity, so far as the serious and organised crime is, or the serious and organised crimes are or include, an offence or offences against an ACT law (irrespective of whether that offence or those offences have a federal aspect);
- (b) to undertake an intelligence operation so far as the serious and organised crime is, or the serious and organised crimes are or include, an offence or offences against an ACT law (irrespective of whether that offence or those offences have a federal aspect);
- (c) to provide a report to the board on the outcome of such an investigation or operation;
- (d) any other functions given to the ACC by this Act or any other Act.

9 CEO to manage ACC operations/investigations

- (1) The CEO is to manage, coordinate and control ACC operations/investigations.
- (2) As soon as practicable after the board consents under the ACC Act, section 55A (3) (Operation of State laws—investigation of offences against State laws) to the ACC undertaking an intelligence operation under section 8 (b) or conducting an investigation under

section 8 (a), the CEO must determine, in writing, the head of the operation or investigation.

Note Under the ACC Act, *State* includes the ACT (see s 4 (1), def *State*)

- (3) Before the CEO determines the head of the operation or investigation, the CEO must consult the chair of the board, and such other members of the board as the CEO considers appropriate, in relation to the determination.
- (4) Subject to such consultation with the examiners as is appropriate and practicable, the CEO may make arrangements about the examiner who may exercise the CEO's powers under this Act in relation to a special ACC operation/investigation.

10 Counsel assisting ACC

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

Division 2.2 Board of ACC

11 Functions of board

- (1) The board has the following functions:
 - (a) to determine, in writing, whether an ACC Territory intelligence operation is a special operation or whether an ACC Territory investigation is a special investigation;
 - (b) to determine, in writing, the class or classes of people to participate in an ACC Territory intelligence operation or ACC Territory investigation;
 - (c) to establish task forces;
 - (d) any other functions given to the board by other provisions of this Act.

- (2) The board may determine, in writing, that an ACC Territory intelligence operation is a special operation.
- (3) Before making a determination under subsection (2), the board 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.
- (4) The board may determine, in writing, that an ACC Territory investigation is a special investigation.
- (5) Before making a determination under subsection (4), the board must consider whether ordinary police methods of investigation into the matters are likely to be effective.
- (6) A determination under subsection (2) or (4) must—
 - (a) describe the general nature of the circumstances or allegations constituting the relevant criminal activity to which the operation or investigation relates; and
 - (b) state that the serious and organised crime is, or the serious and organised crimes are or include, an offence or offences against an ACT law but need not state the particular offence or offences; and
 - (c) set out the purpose of the operation or investigation.
- (7) The chair of the board must, within the period of 3 days beginning on the day a determination under subsection (2) or (4) is made, give a copy of the determination to the inter-governmental committee.
- (8) A determination under subsection (2) or (4) has effect immediately after it is made.
- (9) Sections 12 to 18 have effect in relation to the Board's functions under this Act.

12 Board meetings

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

13 Presiding at board meetings

A meeting of the board must be presided over by—

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

14 Quorum at board meetings

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

15 Voting at board meetings

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

16 Conduct of board meetings

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

17 Resolutions outside of board meetings

- (1) This section applies to a resolution—
 - (a) that, 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 (other than the CEO); or
 - (ii) if the resolution is that the board determine that an ACC Territory intelligence operation is a special operation, or that an ACC Territory investigation is a special investigation—at least 9 board members (other than 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 called and held.

18 Board committees

- (1) The board may, with the unanimous agreement of all the members of the board (other than the CEO), establish a committee or committees to assist in carrying out the functions of the board.
- (2) The board may dissolve a committee at any time.

- (3) The functions of a committee are as determined by the unanimous agreement of all the members of the board (other than the CEO).
- (4) However, the board cannot determine that a committee has the function of determining whether an ACC Territory intelligence operation is a special operation or whether an ACC Territory investigation is a special investigation.
- (5) In exercising its functions, a committee must comply with any directions given to the committee by the board.
- (6) A question arising at a meeting of a committee is to be decided 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 the CEO is a member.
- (8) A committee must inform the other members of the board of its decisions.
- (9) A committee may regulate proceedings at its meetings as it considers appropriate.
- (10) A committee must ensure that minutes of its meetings are kept.

Division 2.3 Inter-governmental committee

19 Functions of committee

- (1) Within the period of 30 days beginning on the day the committee is given a copy of a determination (a *special determination*) under section 11 (2) or (4) (Functions of board), 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.
- (2) Subject to subsection (3), the chair of the board must comply with the request.

- (3) If the chair of the board considers that disclosure of information to the public could prejudice the safety or reputation of people or the operations of law enforcement agencies, the chair must not give the committee the information.
- (4) If the chair of the board does not give the committee information on the ground that the chair considers that disclosure of the information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the committee may refer the request to the Territory Minister.
- (5) If the committee refers the request to the Territory Minister, the Territory Minister—
 - (a) must determine in writing whether disclosure of the information could prejudice the safety or reputation of people or the operations of law enforcement agencies; and
 - (b) must give copies of the determination to the chair of the board and the committee; and
 - (c) must not disclose the Minister's reasons for determining the question of whether the information could prejudice the safety or reputation of people or the operations of law enforcement agencies in the way stated in the determination.
- (6) Within the period of 30 days beginning on the day the committee makes a request under subsection (1) in relation to a special determination, the committee may by resolution, with the agreement of the member of the committee representing the Commonwealth and at least 5 other members of the committee, revoke the determination.
- (7) The committee must notify the chair of the board and the CEO of the revocation.
- (8) A revocation takes effect when the CEO is notified.

- (9) To remove any doubt, the revoking of the determination does not affect the validity of anything done in relation to the ACC operation/investigation concerned before the CEO is so notified.
- (10) The committee does not have a duty to consider whether to exercise the power under subsection (1) or (6) in relation to any special determination, whether the committee is requested to do so by anyone, or in any other circumstances.

Part 3 Examinations

20 Examinations

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

21 Conduct of examination

- (1) An examiner may regulate the conduct of proceedings at an examination as the examiner considers appropriate.
- (2) At an examination before an examiner—
 - (a) a person giving evidence may be represented by a legal practitioner; and
 - (b) if, because 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.
- (3) An examination before an examiner must be held in private and the examiner may give directions about the people 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, because 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 to be present because of a direction given by the examiner under subsection (3) or because of subsection (4).

(6) A person commits an offence if the person is present at an examination knowing that he or she is not entitled to be present.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(7) 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) someone 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 considers appropriate, examine or cross-examine any witness on any matter that the examiner considers relevant to the ACC operation/investigation.

(8) If a person (other than a member of the staff of the ACC) is present at an examination before an examiner while someone else (the *witness*) is giving evidence at the examination, the examiner must—

- (a) tell the witness that the person is present; and
- (b) give the witness an opportunity to comment on the presence of the person.

(9) To remove any 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 (8); or

- (b) a witness comments adversely on the presence of the person under subsection (8) (b).
- (10) An examiner may direct that—
- (a) any evidence given before the examiner; or
 - (b) the contents of any document, or a description of anything, 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 a way, and to people, that the examiner specifies.
- (11) The examiner must give the 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.
- (12) Subject to subsection (13), the CEO may, in writing, vary or revoke a direction under subsection (10).
- (13) 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.
- (14) If—
- (a) a person has been charged with an offence before a federal court or before an ACT court; and
 - (b) the court considers that it may be desirable in the interests of justice that particular evidence given before an examiner, in relation to which the examiner has given a direction under subsection (10) be made available to the person or to a legal practitioner representing the person;

the court may give the examiner or 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.

(15) If—

- (a) the examiner or CEO makes evidence available to a court in accordance with subsection (14); 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.

(16) A person commits an offence if—

- (a) an examiner makes a direction under subsection (10); and
- (b) the person publishes something that contravenes the direction; and
- (c) the person makes the publication reckless about whether the publication contravenes the direction.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(17) 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 relation to, the examination.

(18) In this section:

publish includes state and otherwise communicate.

22 Power to summon witnesses and take evidence

- (1) An examiner may summon a person to appear before the examiner at an examination to give evidence and to produce the documents or other things (if any) referred to in the summons.
- (2) Before issuing a summons under subsection (1), the examiner must be satisfied that it is reasonable in all the circumstances to do so.
- (3) The examiner must also record in writing the reasons for the issue of the summons.
- (4) 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 ACC Territory intelligence operation is a special operation or that the ACC Territory investigation is a special investigation.
- (5) A summons under subsection (1) requiring a person to appear before an examiner at an examination must, unless the examiner issuing the summons is satisfied that, in the particular circumstances of the special ACC operation/investigation to which the examination relates, it would prejudice the effectiveness of the special ACC operation/investigation for the summons to do so, set out, so far as is reasonably practicable, the general nature of the matters in relation to which the examiner intends to question the person, but nothing in this subsection prevents the examiner from questioning the person in relation to any matter that relates to a special ACC operation/investigation.
- (6) The examiner who is holding an examination may require a person appearing at the examination to produce a document or other thing.
- (7) 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.
- (8) In this section a reference to a person who is an authorised person, in relation to the ACC means a person authorised in writing, or a person included in a class of persons authorised in writing, for this section by the CEO.
- (9) The powers given by this section are only exercisable except for the purposes of a special ACC operation/investigation.

23 Power to obtain documents

- (1) An examiner may, by written notice served on a person, require the person—
 - (a) to attend, at a stated time and place, before a stated person, who is the examiner or a member of the staff of the ACC; and
 - (b) to produce at that time and place to the stated person a stated document or thing, being a document or thing that is relevant to a special ACC operation/investigation.
- (2) Before issuing a notice under subsection (1), the examiner must be satisfied that it is reasonable in all the circumstances to do so.
- (3) The examiner must also record in writing the reasons for the issue of the notice.
- (4) 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.

- (5) A person commits an offence if the person—
- (a) is served with a notice under subsection (1); and
 - (b) intentionally—
 - (i) fails to attend the examination at the stated time or place;
or
 - (ii) fails to produce a stated document or thing

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

Note Under the *Crimes Act 1900*, s 375 (Summary disposal of certain cases), the Magistrates Court may, in certain circumstances, deal summarily with offences (other than those involving money or other property) for which the maximum penalty does not exceed imprisonment for 10 years. However, the court may not impose a sentence of imprisonment exceeding 2 years or impose a fine exceeding \$5 000.

- (6) Section 26 (4) to (9) (Failure of witnesses to attend and answer questions) apply in relation to a person who is required to produce a document or thing by a notice served on the person under this section in the same way they apply in relation to a person who is required to produce a document or thing at an examination before an examiner.

24 Disclosure of summons or notice may be prohibited

- (1) The examiner issuing a summons under section 22 (Power to summon witnesses and take evidence) or a notice under section 23 (Power to obtain documents) 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) stated 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 given or imposed by section 25 (Offences of disclosure) 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 section 37 (1) (Exercising functions); or
 - (b) evidence of an offence or offences has been assembled and given as required by section 37 (1) and the CEO has been advised that no-one will be prosecuted; or

- (c) evidence of an offence or offences committed by only 1 person has been assembled and given as required by section 37 (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 section 37 (1) and—
 - (i) criminal proceedings have begun against all those people; or
 - (ii) criminal proceedings have begun against 1 or more of those people and the CEO has been advised that no other of those people 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.
- (6) In this section:
official matter—see section 25.

25 Offences of disclosure

- (1) A person commits an offence if—
 - (a) the person is served with, or otherwise given, a summons or notice containing a notation made under section 24; and
 - (b) the person states, communicates or otherwise publishes something that discloses—
 - (i) the existence of the summons or notice or any information about it; or

- (ii) the existence of, or any information about, any official matter connected with the summons or notice; and
- (c) the person makes the statement, publication or other communication reckless about whether it will make a disclosure of a kind mentioned in paragraph (b).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) Subsection (1) does not apply to a statement, publication or other communication made—
 - (a) in accordance with the circumstances (if any) stated 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) if the person is a corporation—to an officer or agent of the corporation for the purpose of ensuring compliance with the summons or notice; or
 - (d) if the person is a legal practitioner—for the purpose of obtaining the agreement of another person under section 26 (4) to the legal practitioner answering a question or producing a document at an examination before an examiner.
- (3) A person commits an offence if—
 - (a) a statement, publication or other communication is made to the person as allowed by subsection (2) or (4); and
 - (b) while the person is a person to whom a statement, communication or publication is allowed to be made, the person makes a statement, publication or other communication (the *later communication*) that discloses—
 - (i) the existence of, or any information about, the summons or notice; or

(ii) the existence of or, any information about, any official matter connected with the summons or notice; and

(c) the person is reckless about whether the later communication will make a disclosure of a kind mentioned in paragraph (b).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(4) Subsection (3) does not apply—

(a) if the person is an officer or agent of a corporation mentioned in subsection (2) (c)—to a statement, publication or other communication to—

(i) another officer or agent of the corporation for the purpose of ensuring compliance with the summons or notice; or

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

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

(5) A person commits an offence if—

(a) a statement, publication or other communication is made to the person as allowed by subsection (2) or (4); and

(b) after the person ceases to be a person to whom a statement, publication or other communication is allowed to be made, the person—

(i) makes a record of the summons or notice or any information about it; or

(ii) discloses (the *later disclosure*)—

- (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; and
- (c) in the case of a disclosure mentioned in paragraph (b) (ii)—the person is reckless about whether the later disclosure is a disclosure of a kind mentioned in that subparagraph.
- Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (6) This section ceases to apply to a summons or notice after—
- (a) the notation contained in the summons or notice is cancelled by section 24 (4) (Disclosure of summons or notice may be prohibited); or
 - (b) 5 years elapse after the day of issue of the summons or notice; whichever is sooner.
- (7) 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.
- (8) In this section:
- official matter*** means any of the following (whether past, present or contingent):
- (a) the determination referred to in section 22 (4) (Power to summon witnesses and take evidence);
 - (b) an ACC operation/investigation;
 - (c) an examination held by an examiner;
 - (d) court proceedings.

26 Failure of witnesses to attend and answer questions

- (1) A person commits an offence if—
- (a) the person is served, as prescribed under the regulations, with a summons to appear as a witness at an examination before an examiner; and
 - (b) the person intentionally—
 - (i) fails to attend as required by the summons; or
 - (ii) fails to attend from day-to-day.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

Note Under the *Crimes Act 1900*, s 375 (Summary disposal of certain cases), the Magistrates Court may, in certain circumstances, deal summarily with offences (other than those involving money or other property) for which the maximum penalty does not exceed imprisonment for 10 years. However, the court may not impose a sentence of imprisonment exceeding 2 years or impose a fine exceeding \$5 000.

- (2) Subsection (1) (b) (ii) does not apply if the examiner has excused or released the person from attending on a day or part of a day.
- (3) A person commits an offence if—
- (a) the person appears as a witness at an examination before an examiner; and
 - (b) the examiner requires the person—
 - (i) to either take an oath or make an affirmation in accordance with section 22 (Power to summon witnesses and take evidence); or
 - (ii) to answer a question that the examiner is entitled to require the person to answer under this Act; or

- (iii) to produce a document or thing that the person is required to produce by a summons under this Act served on the person as prescribed under the regulations; and
- (c) the person intentionally fails—
 - (i) to either take the oath or make the affirmation; or
 - (ii) to answer the question; or
 - (iii) to produce the document or thing

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

Note Under the *Crimes Act 1900*, s 375 (Summary disposal of certain cases), the Magistrates Court may, in certain circumstances, deal summarily with offences (other than those involving money or other property) for which the maximum penalty does not exceed imprisonment for 10 years. However, the court may not impose a sentence of imprisonment exceeding 2 years or impose a fine exceeding \$5 000.

- (4) Subsection (3) does not apply if—
 - (a) a legal practitioner refuses to comply with a requirement to answer a question or produce a document or thing 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; and
 - (c) the person to whom or by whom the communication was made has not agreed to the legal practitioner complying with the requirement.
- (5) If, under subsection (4), a legal practitioner refuses to comply with a requirement, the legal practitioner commits an offence if—
 - (a) the examiner requires the legal practitioner to tell the examiner the name and address of the person to or by whom the communication was made; and

- (b) the legal practitioner intentionally fails to tell the examiner the name and address.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

Note Under the *Crimes Act 1900*, s 375 (Summary disposal of certain cases), the Magistrates Court may, in certain circumstances, deal summarily with offences (other than those involving money or other property) for which the maximum penalty does not exceed imprisonment for 10 years. However, the court may not impose a sentence of imprisonment exceeding 2 years or impose a fine exceeding \$5 000.

- (6) Subsection (8) 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.
- (7) Subsection (8) applies only if—
- (a) a person appearing as a witness at an examination before an examiner—
- (i) answers a question that the person is required to answer by the examiner; or
- (ii) produces a document or thing that the person was required to produce by a summons under this Act served on the person as prescribed; and
- (b) for 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 relation to the person's 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.

- (8) The answer, or the document or thing, is not admissible in evidence against the person in—
- (a) a criminal proceeding; or
 - (b) a proceeding for the imposition of a penalty;
- other than—
- (c) confiscation proceedings; or
 - (d) a proceeding in relation to—
 - (i) for an answer—the falsity of the answer; or
 - (ii) for the production of a document—the falsity of any statement contained in the document.
- (9) Subsection (4) does not affect the law relating to legal professional privilege.

27 Warrant for arrest of witness

- (1) If, on application by an examiner, a judge of the Federal Court or the Supreme Court 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 31 (Order for giving passport of witness to examiner), to give the person's 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 section 22 (1) (Power to summon witnesses and take evidence)—
 - (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 against section 26 (1) (Failure of witnesses to attend and answer questions) 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 anyone 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.
- (3) The warrant may be executed even if the warrant is not at the time in the possession of the person executing it.
- (4) A person executing the warrant may only use such reasonable force as is necessary for the execution.
- (5) If a person is apprehended under the warrant, the person must be brought, as soon as practicable, before a judge of the Federal Court or the Supreme Court and the judge may—
- (a) admit the person to bail, with such security as the judge considers appropriate, on such conditions as the judge considers necessary to ensure the appearance of the person as a witness before the examiner; or
 - (b) order the continued detention of the person for the purposes of ensuring the person's appearance as a witness; or
 - (c) order the release of the person.
- (6) If a person is under detention under this section, the person must, within 14 days after the day the person was brought, or last brought, before a judge of the Federal Court or the Supreme Court in accordance with this section, or within the shorter or longer time that a judge has fixed on the last previous appearance of the person before a judge under this section, be again brought before a judge and the judge may then exercise any of the powers of a judge under subsection (5).

(7) In this section:

Australia includes the external Territories.

28 False or misleading evidence

(1) A person commits an offence if—

- (a) the person is at an examination before an examiner; and
- (b) the person gives evidence to the examiner; and
- (c) the person does so knowing that the evidence is false or misleading.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

Note Under the *Crimes Act 1900*, s 375 (Summary disposal of certain cases), the Magistrates Court may, in certain circumstances, deal summarily with offences (other than those involving money or other property) for which the maximum penalty does not exceed imprisonment for 10 years. However, the court may not impose a sentence of imprisonment exceeding 2 years or impose a fine exceeding \$5 000.

(2) Subsection (1) (c) does not apply if the information is not false or misleading in a material particular.

29 Protection of witnesses from harm or intimidation

If it appears to an examiner that, because 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 give or has given 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 the

arrangements (including arrangements with the Territory Minister or with members of the police force) that are necessary to avoid prejudice to the safety of the person, or to protect the person from intimidation or harassment.

30 Legal protection of examiners, counsel and witnesses

- (1) An examiner has, in the exercise of the examiner's functions 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 a proceeding 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 a proceeding in the High Court.

31 Order for giving passport of witness to examiner

- (1) If, on 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; and
 - (b) there are reasonable grounds for believing that the person can 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 the person;

the judge may make an order requiring the person to appear before a judge of the Federal Court on a stated date, and at a stated time and place, to show cause why the person should not be ordered to give the passport to the examiner.

- (2) If a person appears before a judge of the Federal Court under an order made under subsection (1), the judge may make an order—
- (a) requiring the person to give the examiner any passport issued to the person that is in the person's possession, custody or control; and
- (b) authorising the examiner to keep the passport until the end of a stated period (not longer than 1 month).
- (3) A judge of the Federal Court may, on application by the examiner, extend for a further period (not longer than 1 month) or further periods (not longer than 1 month in each case) the period for which the examiner is authorised to keep a passport under an order made under subsection (2), but so that the total period for which the examiner is authorised to keep the passport is not longer than 3 months.
- (4) A judge of the Federal Court may, at any time while the examiner is authorised under an order made under this section to keep a passport issued to a person, on application made by the person, revoke the order and, if the order is revoked, the examiner must immediately return the passport to the person.
- (5) In this section:

Australia includes the external Territories.

Part 4 Search warrants

32 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 (the *relevant day*), that is a day not later than 1 month after the day when, the application is made, there may be, on any land or on or in any premises, vessel, aircraft or vehicle, a thing or things of a particular kind connected with a special ACC operation/investigation (*things of the relevant kind*); and
 - (b) the eligible person believes on reasonable grounds that, 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) If an application under subsection (1) is made to an issuing officer, the issuing officer may issue a warrant authorising a person named in the warrant (the *authorised person*), with the assistance as the authorised person considers necessary and if necessary by force—
 - (a) to enter on the land or on or into the premises, vessel, aircraft or vehicle; and
 - (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 on the land or on or in the premises, vessel, aircraft or vehicle and deliver things so seized to anyone participating in the special ACC operation/investigation.

- (3) An issuing officer must not issue a warrant under subsection (2) unless—
- (a) an affidavit has been given to the officer setting out the grounds on which the issue of the warrant is being sought; and
 - (b) the applicant (or someone else) has given to the issuing officer, either orally or by affidavit, the further information (if any) that the issuing officer requires about 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) If an issuing officer issues a warrant under subsection (2), the officer must state on the affidavit given to the officer as mentioned in subsection (3) (a) which of the grounds stated in that affidavit the officer has relied on to justify the issue of the warrant and particulars of any other grounds relied on by the officer to justify the issue of the warrant.
- (5) A warrant issued under this section must—
- (a) include a statement of the purpose for which the warrant is issued, which must include a reference to the special ACC operation/investigation and with which the things of the relevant kind are connected; and
 - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (c) include a description of the kind of things authorised to be seized; and
 - (d) state a date, not later than 1 month after the day of issue of the warrant, when 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 beginning on the relevant day and ending on the date stated in the warrant as the date when the warrant ceases to have effect.
- (7) A person executing a warrant issued under this section may only use the reasonable force that is necessary for the execution.
- (8) If, 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 the person believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an offence against a Commonwealth, State or Territory law and the person believes on reasonable grounds that it is necessary to seize the thing to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence, the person may seize the thing and, if the person does so, the thing is to be taken, for this Act, to have been seized under the warrant.
- (9) If a thing is seized under a warrant issued under this section—
- (a) the head of the special ACC operation/investigation may keep the thing if, and for so long as, keeping the thing by the head of the special ACC operation/investigation is reasonably necessary for the purposes of the special ACC operation/investigation to which the thing is relevant; and
 - (b) if the keeping of the thing by the head of the special ACC operation/investigation is not, or ceases to be, reasonably necessary for such purposes, a person participating in the special ACC operation/investigation must give the thing to—
 - (i) if the thing may be used in evidence in a proceeding of a kind mentioned in subsection (12)—the authority or person responsible for taking the proceeding; or

(ii) if subparagraph (i) does not apply—the person who appears to the person participating in the special ACC operation/investigation to be entitled to the possession of the thing;

unless the CEO has given the thing to the Attorney-General of the Commonwealth or a State, or to a law enforcement agency, or to another person or authority, in accordance with section 37 (1) (a), (b) or (c) (Exercising functions).

- (10) A person participating in the special ACC operation/investigation may, instead of giving a thing in accordance with subsection (9) (b) (ii), give the thing to the Attorney-General of the Commonwealth or a State, or to a law enforcement agency, for the purpose of assisting in the investigation of criminal offences, if the person participating in the special ACC operation/investigation is satisfied that the thing is likely to be useful for that purpose.
- (11) This section does not affect a right of a person to apply for, or the power of a person to issue, a warrant, if the right or power exists otherwise than because of this section.
- (12) Without limiting subsection (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 a proceeding for the taking, by or on behalf of the Commonwealth or a State or Territory, of civil remedies in relation to a matter connected with, or arising out of, an offence to which the special ACC operation/investigation relates.
- (13) In this section:
thing includes a document.

33 Application by telephone for search warrants

- (1) If, because 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 32.
- (2) Before making the application, the eligible person must prepare an affidavit setting 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) If an issuing officer issues a warrant under section 32 on an application made by telephone, the officer must—
 - (a) complete and sign the warrant; and
 - (b) tell the eligible person who made the application of the terms of the warrant and the date and time it was signed; and
 - (c) record on the warrant the officer's reasons for issuing the warrant; and
 - (d) send a copy of the warrant to the CEO.
- (4) If a warrant is issued under section 32 on an application made by telephone a member of the staff of the ACC or a police officer may complete a form of warrant in the terms indicated by the issuing officer under subsection (3) and, if a form of warrant is so completed, the member or officer must write on it the name of the issuing officer who issued the warrant and the date and time it was signed.
- (5) If a person completes a form of warrant in accordance with subsection (4), the person must, not later than the day after the date of expiry of the warrant, send to the issuing officer who signed the warrant the form of warrant completed by the officer and the affidavit properly sworn in relation to the warrant.

- (6) On receipt of the documents mentioned in subsection (5), the issuing officer must attach them to the warrant signed by the officer and deal with the documents in the way the officer would have dealt with the affidavit if the application for the warrant had been made to the officer in accordance with section 32.
- (7) A form of warrant completed in accordance with subsection (4) is to be taken to be a warrant issued under section 32.

Part 5 Exercising functions

34 Consent of board may be needed before functions can be exercised

The giving of a function to a Commonwealth body or person by this Act is subject to any provision of the ACC Act that requires the consent of the board before the function can be exercised.

35 Functions not affected by Territory laws

A Commonwealth body or person is not precluded by any ACT law from exercising a function given by this Act.

36 Extent to which functions are given

- (1) This Act does not purport to impose any duty on a Commonwealth body or person to exercise a function if the imposition of the duty would be beyond the legislative power of the Legislative Assembly.
- (2) This section does not limit the operation of the Legislation Act, section 120 (Act to be interpreted not to exceed legislative powers of Assembly).

37 Exercising functions

- (1) If the ACC, in carrying out an ACC operation/investigation, obtains evidence of an offence against a Commonwealth, State or Territory law 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 a 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 under a Commonwealth, State or Territory law to prosecute the offence.
- (2) If 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 relevant 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 bring the confiscation proceedings.
- (3) If, because of the exercise 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 a participating State—
- (a) for reform of the law relating to relevant offences, including—
 - (i) evidence and procedure applying to the trials of relevant offences; and
 - (ii) relevant offences in relation to, or involving, corporations; and
 - (iii) taxation, banking and financial frauds; and
 - (iv) reception by Australian courts of evidence obtained in foreign countries about relevant offences; and
 - (v) maintenance and preservation of taxation, banking and financial records; or
 - (b) for reform of administrative practices; or
 - (c) for reform of administration of the courts in relation to trials of relevant offences;

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

- (4) If the ACC has obtained particular information or intelligence in the course of exercising 1 or more of its functions, nothing in this Act is to be taken to prevent the ACC from making use of the information or intelligence in the exercise of any of its other functions.

38 Functions of federal judicial officers

- (1) In this section:

federal judicial officer means a judge of the Federal Court or a federal magistrate.

- (2) A function given to a federal judicial officer by this Act is given to the federal judicial officer in a personal capacity and not as a court or a member of a court.
- (3) The federal judicial officer need not accept the function given.
- (4) Anything done or made by a federal judicial officer under this Act has effect only because of this Act and is not to be taken by implication to be done or made by a court.
- (5) A federal judicial officer exercising a function under this Act has the same protection and immunity as if the officer were exercising that function as, or as a member of, the court of which the federal judicial officer is a member.

39 Limitation on challenge to board determination

If—

- (a) an ACC Territory intelligence operation is determined by the board to be a special operation; or
- (b) an ACC Territory investigation is determined by the board to be a special investigation;

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

40 Cooperation with law enforcement agencies and coordination with overseas authorities

- (1) In exercising its functions under this Act, the ACC must, so far as practicable, work in cooperation with law enforcement agencies.
- (2) In exercising its functions under this Act, the ACC may coordinate its activities with the activities of authorities and people in other countries exercising functions similar to functions of the ACC.

41 Incidental powers of ACC

The ACC has power to do everything necessary to be done for or in relation to, or reasonably incidental to, the exercise of its functions under this Act, and any specific powers given to the ACC by this Act are not to be taken to limit by implication the generality of this section.

Part 6 General

42 Arrangements for board to obtain information or intelligence

The Territory Minister may make an arrangement with the Commonwealth Minister for the board to be given by the Territory, or a Territory authority, information or intelligence about relevant criminal activities.

43 Administrative arrangements with Commonwealth

The Territory Minister may make an arrangement with the Commonwealth Minister under which the Territory will, from time to time as agreed on under the arrangement, make available a person who is an officer or employee of the Territory or a Territory authority or a police officer, or people who are such officers, employees or members, to perform services for the ACC.

44 Judges to exercise functions under ACC Act

A judge of the Supreme Court may exercise functions given to the judge by the ACC Act, section 22 (Search warrants), section 23 (Application by telephone for search warrants) or section 31 (Warrant for arrest of witness).

45 Giving reports and information

- (1) The chair of the board must keep the Commonwealth Minister informed of the general conduct of the ACC in the exercise of the ACC's functions under this Act.
- (2) If the Commonwealth Minister requests the chair of the board to give the Commonwealth Minister information about a specific matter relating to the ACC's conduct in the exercise of its functions under this Act, the chair must give the Commonwealth Minister the information.

- (3) Subject to subsection (4), if a State Minister who is a member of the inter-governmental committee asks the chair of the board for information about a specific matter relating to the ACC's conduct in the exercise of its functions under this Act, the chair must give the Minister the information.
- (4) If the chair of the board considers that disclosure of information to the public could prejudice the safety or reputation of people or the operations of law enforcement agencies, the chair must not give the information under subsection (3).
- (5) Subject to subsection (7), the chair of the board—
 - (a) must, when requested by the inter-governmental committee to give information to the committee about a specific matter relating to an ACC operation/investigation that the ACC has conducted or is conducting, comply with the request; and
 - (b) must, when requested by the inter-governmental committee to do so, and may at such other times as the chair of the board considers appropriate, tell the committee about the general conduct of the ACC in the exercise of the ACC's functions under this Act.
- (6) Subject to subsection (7), the chair of the board must give 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.
- (7) The chair of the board must not give the inter-governmental committee any matter the disclosure of which to members of the public could prejudice the safety or reputation of people or the operations of law enforcement agencies and, if the findings of the ACC in an investigation include any such matter, the chair of the board must prepare a separate report in relation to the matter and give that report to the Territory Minister.

- (8) The chair of the board may include in a report given under subsection (6) a recommendation that the report be presented to the Legislative Assembly.
- (9) The CEO may give to—
- (a) any law enforcement agency; or
 - (b) any foreign law enforcement agency; or
 - (c) any other Commonwealth, State or Territory authority prescribed under the regulations;
- any information that has come into the ACC's possession under this Act and that is relevant to the activities of that agency or authority if—
- (d) it appears to the CEO to be appropriate to do so; and
 - (e) to do so would not be contrary to a Commonwealth, State or Territory law that would otherwise apply.
- (10) The CEO may, whenever it appears to the CEO to be appropriate to do so, give to authorities and people responsible for taking civil remedies by or on behalf of the Commonwealth or a State or a Territory any information that has come into the ACC's possession under this Act and that may be relevant for the purposes of taking such remedies in relation to matters connected with, or arising out of, offences against Commonwealth, State or Territory laws.
- (11) If any information relating to the exercise of the functions of an authority of the Commonwealth or a State or the Administration of a Territory comes into the ACC's possession under this Act, the CEO may—
- (a) give the information to the authority or Administration; and
 - (b) make any recommendations to the authority or Administration about the exercise of its functions that the CEO considers appropriate.

- (12) A report under this Act that sets out any finding that an offence has been committed, or makes any recommendation for bringing a prosecution for 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 the offence.
- (13) The CEO may give the Australian Security Intelligence Organisation any information that has come into the ACC's possession under this Act and that is relevant to security as defined in the *Australian Security Intelligence Organisation Act 1979* (Cwlth), section 4, definition of *security*.

46 Secrecy

- (1) This section applies to a person who is or has been—
- (a) the CEO; and
 - (b) a member of the board; and
 - (c) a member of the staff of the ACC; and
 - (d) an examiner.
- (2) A person to whom this section applies commits an offence if the person—
- (a) makes a record of any information (*restricted information*) acquired by the person because of, or in the course of, the exercise of the person's functions under this Act; or
 - (b) states, publishes or otherwise communicates restricted information reckless about whether the statement, publication or other communication divulges or communicates restricted information to anyone.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) Subsection (2) does not apply if the making of the record or divulging or communicating of information is or was done for a relevant Act or otherwise in relation to the exercise of the person's functions under a relevant Act.
- (4) A person to whom this section applies cannot be required to produce in any court any document that has come into the person's custody or control in the course of, or because of, the exercise of the person's functions under this Act, or to divulge or communicate to a court anything that has come to the person's notice in the exercise of those functions, except if the ACC, or the CEO, the acting CEO, a member of the board or an examiner in the examiner's official capacity, is a party to the relevant proceeding or it is necessary to do so—
- (a) for the purpose of carrying into effect the provisions of a relevant Act; or
- (b) for the purposes of a prosecution brought because of an operation or investigation carried out by the ACC in the exercise of its functions.
- (5) 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 mentioned in the ACC Act, section 4 (1), definition of *member of the staff of the ACC*; or
- (b) a person who assists, or performs services for or on behalf of, a legal practitioner appointed under section 10 (Counsel assisting ACC) in the exercise of the legal practitioner's functions as counsel to the ACC.

produce includes permit access to.

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

47 Delegation by CEO

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

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

48 Liability for damages

A member of the board is not liable to a proceeding for damages in relation to an act done or omitted honestly in the exercise or purported exercise of any function given or expressed to be given under this Act.

49 Obstructing, hindering or disrupting ACC or an examiner

A person commits an offence if the person—

- (a) intentionally obstructs or hinders—
 - (i) the ACC in the exercise of its functions; or
 - (ii) an examiner in the exercise of his or her functions as an examiner; or
- (b) intentionally disrupts an examination before an examiner.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

Note Under the *Crimes Act 1900*, s 375 (Summary disposal of certain cases), the Magistrates Court may, in certain circumstances, deal summarily with offences (other than those involving money or other property) for which the maximum penalty does not exceed imprisonment for 10 years. However, the court may not impose a sentence of imprisonment exceeding 2 years or impose a fine exceeding \$5 000.

50 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 exercise of the ACC's functions, including its functions under this Act.
- (2) The board may publish bulletins for the purpose of informing the public about the exercise of the ACC's functions, including its functions under this Act.
- (3) The board must not—
 - (a) divulge in the course of a meeting held under subsection (1); or
 - (b) include in a bulletin published under subsection (2);anything 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.

51 Annual report

- (1) In this section:

annual report means a report by the chair of the board under the ACC Act, section 61.
- (2) An annual report for a year must include the following:
 - (a) a description of any ACC Territory investigation 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 exercise of its functions under this Act;
 - (c) any recommendations for changes in Commonwealth, State or Territory laws, or for administrative action, that, because of the

exercise of the ACC's functions under this Act, the board considers should be made;

- (d) the general nature and the extent of any information given by the CEO during that year under this Act to a law enforcement agency;
 - (e) the extent to which ACC Territory investigations have resulted in the prosecution in that year of people for offences;
 - (f) the extent to which ACC Territory investigations have resulted in confiscation proceedings;
 - (g) particulars of the number and results of court proceedings involving the ACC in relation to its functions under this Act if the proceedings were decided, or otherwise disposed of, during that year.
- (3) An annual report must not—
- (a) identify people as being suspected of having committed offences; or
 - (b) identify people as having committed offences unless those persons have been convicted or found guilty of those offences.
- (4) In any annual report the chair of the board must take reasonable care to ensure that the identity of a person is not revealed if to reveal the person's identity might, having regard to any material appearing in the report, prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.
- (5) The Territory Minister must present the following documents to the Legislative Assembly within 6 sitting days after the day the Minister receives them:
- (a) each annual report the Territory Minister receives; and
 - (b) any comments by the inter-governmental committee on, and that accompany, the report.

52 Things done for multiple purposes

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

53 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Part 7 **Transitional provisions**

Division 7.1 **Transitional**

54 **Definitions for div 7.1**

In this division:

NCA investigation means an investigation under the NCA (Territory Provisions) Act, section 5 (1).

NCA (Territory Provisions) Act means the *National Crime Authority (Territory Provisions) Act 1991*.

55 **Certain investigations taken to be special investigations**

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

56 **Assembling and giving evidence obtained by the NCA**

If—

- (a) before 1 January 2003, the National Crime Authority obtained evidence of a kind referred to in the NCA (Territory Provisions) Act, section 6 (1); but
- (b) the National Crime Authority had not assembled and given the evidence as mentioned in that subsection before 1 January 2003;

section 37 (1) (Exercising functions) applies as if that evidence had been obtained by the ACC in carrying out an ACC operation/investigation.

57 Limitation on challenges to validity of references

The NCA (Territory Provisions) Act, section 8 (Limitation of challenges to validity of references) continues to apply in relation to a reference made under that Act as if that section had not been repealed by this Act.

58 Arrangements to obtain information or intelligence

An arrangement that was in force under the NCA (Territory Provisions) Act, section 11 immediately before 1 January 2003 is taken to have been made under this Act, section 42 (Arrangements for board to obtain information or intelligence).

59 Things seized under search warrants

If a thing seized under a warrant under the NCA (Territory Provisions) Act, section 12 is in the ACC's possession, this Act, section 32 (9) and (10) (Search warrants) apply to that thing as if it had been seized under a warrant under this Act, section 32.

60 Directions about publication

- (1) If a direction was in force under the NCA (Territory Provisions) Act, section 15 (14) (Hearings) immediately before 1 January 2003—
 - (a) the direction has effect; and
 - (b) this Act, section 21 (12), (13) and (16) (Conduct of examination) apply to the direction as if it were a direction under section 21 (10).
- (2) Section 21 (14) and (15), so far as they relate to the CEO, apply to evidence in relation to which a direction was given under the NCA (Territory Provisions) Act, section 15 (14) as if it were evidence given before an examiner in relation to which the examiner has given a direction under this Act, section 21 (10).

61 Disclosure of summons or notice

If a notation made in connection with an NCA investigation was in force under the NCA (Territory Provisions) Act, section 17A (Disclosure of notice or summons etc may be prohibited) immediately before 1 January 2003—

- (a) the notation has effect; and
- (b) this Act, section 25 (Offences of disclosure) applies to the summons or notice containing the notation; and
- (c) if there is an ACC operation/investigation relating to the matter to which the NCA investigation related—this Act, section 24 (4) and (5) (Disclosure of summons or notice may be prohibited) apply as if the notation had been made in relation to the ACC operation/investigation.

62 Witness protection

Arrangements that were in effect under the NCA (Territory Provisions) Act, section 23 (Protection of witnesses) immediately before 1 January 2003 are taken to have been made under this Act, section 29 (Protection of witnesses from harm or intimidation).

63 Administrative arrangements in relation to NCA

An arrangement that was in force under the NCA (Territory Provisions) Act, section 27 (b) (Administrative arrangements with Commonwealth) immediately before 1 January 2003 has effect as if it had been made under this Act, section 43 (Administrative arrangements with Commonwealth).

64 Administrative arrangements under Witness Protection Act 1996

An arrangement that was in force under the *Witness Protection Act 1996*, section 25 (Arrangements with approved authorities) between the chief police officer and the National Crime Authority immediately before 1 January 2003 continue in force for this Act as if they were arrangements made by the chief police officer with the CEO.

65 Secrecy obligations

(1) In this section:

former official means a person who was, at any time, a person to whom the NCA (Territory Provisions) Act, section 29 (Secrecy) applied.

(2) Section 46 (2), (3) and (4) (Secrecy) extend to a former official (whether or not the official is or has been a person to whom section 47 (Delegation by CEO) applies) as if—

(a) references in section 46 to this Act or to a corresponding Act of another State included references to the NCA (Territory Provisions) Act or to a corresponding Act of a State; and

(b) the reference in section 46 (4) (b) to an investigation carried out by the ACC included a reference to an investigation carried out by the National Crime Authority before 1 January 2003.

66 Regulations modifying pt 7

(1) The regulations may modify the operation of this part to make provision in relation to any matter that is not, or is not in the Executive's opinion adequately, dealt with in this part.

(2) This section expires 1 year after the day it commences.

Division 7.2 Repeals and consequential amendments

67 Repeals

- (1) The *National Crime Authority (Territory Provisions) Act 1991* A1991-75 is repealed.
- (2) The *National Crime Authority (Territory Provisions) Regulations 1995* SL1995-39 are repealed.

68 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

Division 7.3 Miscellaneous

69 Expiry of pt 7

This part (other than section 66) expires 2 years after the day it commences.

70 Declared law for Legislation Act, s 88

This part is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

Schedule 1 Consequential amendments

(see s 68)

Part 1.1 Administration (Interstate Agreements) Act 1997

[1.1] Schedule 1, clause 1

substitute

1. Agreements that are considered by the intergovernmental committee of the Australian Crime Commission, constituted under the *Australian Crime Commission Act 2002* (Cwlth), section 7.

Part 1.2 Gambling and Racing Control Act 1999

[1.2] Section 37 (d) (vii)

substitute

- (vii) the Australian Crime Commission;

Part 1.3 Spent Convictions Act 2000

[1.3] Dictionary, definition of *law enforcement agency*, paragraphs (d) and (e)

substitute

- (d) the Australian Crime Commission;

[1.4] Dictionary, definition of *law enforcement agency*

renumber paragraphs when Act next republished under Legislation Act

**Part 1.4 Taxation Administration Act
1999**

[1.5] Section 97 (d) (ix)

substitute

(ix) the Australian Crime Commission;

Part 1.5 Witness Protection Act 1996

[1.6] Section 3, definition of *approved authority*, paragraph (c)

substitute

(c) the chief executive officer of the Australian Crime Commission; or

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- corporation
- exercise
- fail
- function
- give
- in relation to
- judge
- law, of the Territory
- may
- under.

Note 3 Terms used in this Act have the same meaning that they have in the *Australian Crime Commission Act 2002* (Cwlth) (see Legislation Act, s 148). For example, the following terms are defined in the *Australian Crime Commission Act 2002* (Cwlth), s 4:

- legal practitioner
- serious and organised crime
- State.

ACC Act means the *Australian Crime Commission Act 2002* (Cwlth).

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

ACC operation/investigation means—

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

ACC Territory intelligence operation means an intelligence operation that the ACC is undertaking under section 8 (b) (Functions of ACC).

ACC Territory investigation means an investigation that the ACC is conducting under section 8 (a) (Functions of ACC).

authority includes a department, agency or body.

board means the Board of the ACC.

committee means the inter-governmental committee.

Commonwealth body or person means—

- (a) the ACC; or
- (b) the board; or
- (c) the chair of the board; or
- (d) a member of the board; or
- (e) the inter-governmental committee; or
- (f) the CEO; or
- (g) a member of the staff of the ACC; or
- (h) an examiner; or
- (i) a judge of the Federal Court; or
- (j) a federal magistrate.

Commonwealth Minister means the Commonwealth Minister administering the ACC Act.

federal magistrate means a Federal Magistrate (including the Chief Federal Magistrate) who holds office under the *Federal Magistrates Act 1999* (Cwlth).

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

inter-governmental committee means the Inter-Governmental Committee mentioned in the ACC Act, section 8.

issuing officer means—

- (a) a judge of the Federal Court; or
- (b) a judge of the Supreme Court ; or

Note ***Judge*** is defined in the Legislation Act to mean a resident judge, additional judge or acting judge under the *Supreme Court Act 1933* (see Legislation Act, dict, pt 1, def ***judge***).

- (c) a federal magistrate.

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 an offence of a kind prescribed under 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;
 - (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 1 or more of the matters mentioned in subparagraphs (i) to (xix); and
- (e) that is punishable by imprisonment for a period of 3 years or longer;
- but—
- (f) does not include an offence committed in the course of a genuine dispute about matters relating to the relations of employees and employers by a party to the dispute, unless the offence is committed in relation to, or as part of, a course of activity involving the commission of a serious and organised crime other than an offence so committed; and

- (g) does not include an offence the time for the bringing of a prosecution for which has ended.

special ACC operation/investigation means—

- (a) an ACC Territory intelligence operation that the board has determined to be a special operation; or
- (b) an ACC Territory investigation that the board has determined to be a special investigation.

Territory Minister means the Minister administering this Act.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 23 October 2003.

2 Notification

Notified under the Legislation Act on 17 December 2003.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Australian Crime Commission (ACT) Bill 2003 which was passed by the Legislative Assembly on 9 December 2003.

Clerk of the Legislative Assembly

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