

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY



10 No S.100 of 2012

BETWEEN

X7

Plaintiff

AUSTRALIAN CRIME COMMISSION

First Defendant

THE COMMONWEALTH OF AUSTRALIA

Second Defendant

PLAINTIFF'S SUBMISSIONS

30 **PART I: CERTIFICATION SUBMISSIONS IN REDACTED FORM**

The Plaintiff certifies that the submission is in a form suitable for publication on the Internet.

PART II: CONCISE STATEMENT OF ISSUES

40 II.1 As a matter of statutory construction does Div 2 of Part II of the Australian Crime Commission Act 2002 (Cth) Reprint 4 ("the ACC Act") empower an examiner appointed under s.46B (1) of the ACC Act to conduct an examination of a person charged with a Commonwealth indictable offence where that examination concerns the subject matter of the offence so charged?

50 Date of Document:

4.10. 2012

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10 II.2 Whether Div. 2 of Part II of the ACC Act to the extent it permits an examiner appointed under s 46B (1) of the ACC Act to conduct a compulsory secret inquisitorial interrogation of a person directed to the very offence(s) charged is invalid by reason of an impermissible interference with the administration of justice and thus the invocation and exercise of Commonwealth judicial power and further is contrary to s80 of the Constitution.

PART III: CERTIFICATION RE: 78B JUDICIARY ACT 1903

20 The Plaintiff certifies that pursuant to the High Court's interlocutory orders dated 21 August 2012 the Plaintiff has complied with the requirements of s78B of the Judiciary Act 1903(Cth) and notified all Attorneys General throughout the Commonwealth that the Stated Case involves matters concerning the Constitution and its interpretation.

PART IV: AUTHORISED REPORTS

30 As this matter was commenced by Writ of Summons invoking the original jurisdiction of the Court pursuant to s39 of the Judiciary Act 1903(Cth) there are no reasons for judgment from either a primary or intermediate Court.

PART V: NARRATIVE STATEMENT OF RELEVANT FACTS

V.1 The Plaintiff is an Australian citizen

40 V.2 The first Defendant ("ACC") is established by s 7(1) of the Australian Crime Commission Act 2002("the ACC Act") and comprises the Chief Executive Officer, examiners and members of staff of the Commission.

V.3 By instrument under s 7C of the ACC Act made on 30 April 2009 and amended on 9 June 2010 the Board of the ACC authorised the ACC to investigate specified matters relating to federally relevant criminal activity and determined the investigation to be a special investigation. Copies of the instrument and amending instrument are Exhibits 1&2 to this Case Stated- reproduced at pp 27&36 of CSB.

50 V.4 By arrangement in writing under s 46A (3) of the ACC Act made on 1 May 2009 the Chief Executive Officer of the ACC ("CEO") arranged for specified examiners appointed under s 46B (1) of the ACC Act to exercise their powers under the ACC

Act in relation to the special investigation. A copy of the arrangement is Exhibit 3 to this Case Stated-reproduced at p38 of the Case Stated Book ("CSB")

10 V.5 By summons under s28 of the ACC Act issued on 22 November 2010("ACC summons") an examiner of the ACC appointed under s 46B (1) of the ACC Act and specified in the arrangement ("Examiner") required the Plaintiff to attend before an examiner to give evidence on 14 December 2010.A redacted copy of the ACC summons is Exhibit 4 to this Case Stated-reproduced at p 40 of CSB.

V.6 The Plaintiff was arrested by officers of the Australian Federal Police on 23 November 2010. Whilst in custody the Plaintiff was served with the ACC summons.

20 The Plaintiff was subsequently charged with conspiracy to import a commercial quantity of a boarder controlled drug contrary to ss11.5 and 307.1 of the Criminal Code Act ("the Act"); conspiracy to traffic in a commercial quantity of a controlled drug contrary to ss 11.5 and 302.2 of the Act and conspiracy to deal with money being the proceeds of crime contrary to ss 11.5 and 400.3(1) of the Act.

V.7 Before 14 December 2010 and after a request from the Plaintiff's then lawyer, the examination of the Plaintiff was adjourned to 1 February 2011.

30 V.8 On 1February 2011 the Plaintiff attended a compulsory examination before the Examiner. The Plaintiff was not represented by a lawyer. Pursuant to s25A of the ACC Act the examination was held in private and the examiner gave directions for the following persons to be present: counsel assisting the Examiner; an interpreter; an ACC Examinations Assistant; an ACC lawyer.

40 V.9 Before the examination commenced the Plaintiff informed the Examiner that he had recently changed solicitors. The Plaintiff did not have a lawyer and requested the assistance of one. However it was explained to the Plaintiff by the Examiner that the examination had been adjourned previously and that the Plaintiff had had ample opportunity to engage a lawyer and therefore in the circumstances no adjournment of the examination would be granted. The Examiner made the following statement to the Plaintiff at the outset of the examination:

50 *"Your rights will be protected today. I want you to understand at the outset that I am not allowing anyone associated with the charges you face, anyone associated with the prosecution of those charges to either sit here [or]observe the proceedings and I'm not permitting any of those persons to get a copy of the record of these proceedings. And I will also be offering you what's known as the privilege against self-incrimination which I will explain to you shortly. So your rights will be protected*

10 *because no one associated with your prosecution or charges, investigation of your charges will be able to learn what you tell the Australian Crime Commission today, that's because you are facing current charges which haven't been dealt with. And the law is that in those circumstances your rights ought to be protected so that those persons associated with you, the investigation and prosecution do not either hear or learn subsequently what it is you told the Australian Crime Commission that is one protection. The next is the fact that you have available to you what's known as the privilege against self-incrimination"*

20 V.10 The Examiner informed the Plaintiff that the Plaintiff could not refuse to answer questions or produce documents sought by the Examiner. The Examiner then told the Plaintiff that he was able to claim under s30(4) of the ACC Act that his answers to questions might tend to incriminate him and the Plaintiff made that claim in respect of all answers given by him during the course of the examination.

30 V.11 The Plaintiff was then administered an affirmation under s28(5) of the ACC Act and was asked and answered questions which included detailed questions about matters concerning the subject matter of the offences with which he had been charged. The examination was then adjourned.

V12 On 2 February 2011 the examination resumed and the Plaintiff was represented by a lawyer. The Examiner directed the Plaintiff to answer questions about matters concerning the subject matter of the offences with which he had been charged. The Plaintiff declined to answer those questions.

40 V.13 After the Plaintiff indicated to the examiner that the Plaintiff would not answer any further questions the Examiner informed the Plaintiff that the Plaintiff would in due course be charged with failing to answer questions. The Examiner then made an oral direction under s25A (9) of the Act in the Following terms:

50 *"I direct that the evidence given by you, the contents of documents produced to the commission during this examination, any evidence that might enable you to be identified and the fact that you've given evidence at this examination shall not be published, except only to the Chief Executive Officer examiners and members of staff of the Australian Crime Commission and for the purposes only of any charges which may result from your evidence to the Office of the Director of Public Prosecutions for the Commonwealth, to the staff of any court or courts in respect of which proceedings might be brought as a result of your evidence yesterday and today and to any legal*

representative or representatives you may care to engage to look after your interest in respect of any charge or charges”

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V.14 Before the conclusion of the examination on 2 February 2011 the Examiner clarified the direction by stating that officers of the Commonwealth Director of Public Prosecutions or police officers associated with the prosecution of the offences with which the Plaintiff had been charged at the time of the examination were not entitled by the direction to receive a copy of the evidence given by the Plaintiff at the examination.

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V15 The direction given by the Examiner under s25A (9) of the ACC Act was subsequently varied by a delegate of the CEO under s25A (10) of the ACC Act.

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V16 Nothing in the direction as varied authorises publication to any person connected with the investigation or prosecution of the offences with which the Plaintiff had been charged at the time of the examination of any evidence given before the Examiner, the contents of any document produced to the Examiner, any information that might enable the Plaintiff to be identified or the fact the Plaintiff had given evidence at the examination.

PART VI: PLAINTIFF'S SUCCINT ARGUMENT

VI.1 The statutory construction question

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Does Part II Div 2 of the ACC Act impliedly abrogate the principle of non interference with the administration of criminal justice by empowering an examiner appointed pursuant to s46B(1) to compel an examinee charged with an offence against a law of the Commonwealth to answer questions concerning the very subject matter of the offence charged?

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VI.2 Sections 25A (1) of Part II of Div 2 of the ACC Act gives an examiner *carte blanche* to regulate the conduct of proceedings at an examination. S25 (2) provides that a person giving evidence may be represented by a legal practitioner. Section 25A(3) mandates that an examination of a person be held in private however gives an examiner a discretion to direct which person(s) is/are entitled to be present during an examination or part of an examination. Sub section 5 prevents any person being present during an examination without the fiat of the examiner.

10 VI.3 Sections 25A (9) (d) (10) (11) (12) of the ACC Act empowers an examiner to direct that any evidence given in an examination be subject to confidentiality however such confidentiality is discretionary save for the qualification that there must not be any publication of the evidence if publication would prejudice the fair trial, and or threaten the safety or reputation of the examinee. Importantly it is submitted that s25 A (9) only prohibits publication and not derivative use of the examination evidence. Further s12 (6) of the ACC Act circumscribes any suggestion of a broader quarantining of the examination evidence because it does not "*prevent the ACC from making use of the information or intelligence in the performance of its functions*". By 20 the combined operation of ss 28, 29 &30 of the ACC Act an examiner of the first Defendant has wide discretion to compel attendance of a person before the first Defendant, compel that person to produce documents and submit to interrogation by the first Defendant.

30 VI.4 Section 30 (6) of the ACC Act provides that a person who contravenes subsections (1)(2)(3) of s. 30 is guilty of an indictable offence and is liable to punishment of a fine not exceeding 200 penalty units or imprisonment for 5 years. Section 34A of the Act provides, inter alia, that a person is in contempt of the Commission if the person appearing before the Commission fails to be sworn as a witness, refuses to answer questions, refuses or fails to produce documents. Section 34D of the Act provides that a person in contempt of the Commission may be 40 detained by order of an examiner of the first Defendant for the purpose of bringing that person before a Court as soon as practicable. Section 34B of the Act permits an examiner of the first Defendant to apply to either the Federal Court or a Supreme Court of a State or Territory to deal with an alleged contempt of the Commission as if the contempt occurred before either a Federal Court or Court of a State or Territory. If the Court happens to be the Federal Court of Australia then by the combined operation of s31 of the Federal Court Act 1976(Cth) and Reg. 11.04 of the High Court Rules 2004 (Cth) the punishment is at large.

50 VI.5 Sections 30(4) and (5) of the ACC Act provides "*use immunity*" in circumstances where self – incrimination is claimed by a person. Such "*use immunity*" is limited to criminal proceedings or proceedings for the imposition of a penalty. The Plaintiff accepts that the legal effect of s.30 is to abrogate the privilege

against self-incrimination-an established principle of the common law for over 300 years; **Sorby v The Commonwealth (1983)152 CLR 281**. At this point it should be noted that despite the “*use immunity*” provisions in s30, sections 12 (1) (a) - (c) (6) allied with 59 (7) appears to permit the dissemination of evidence generated by executive interrogation to a “*relevant law enforcement agency*” such as Federal or State police.

VI.6 Section 30 of the ACC Act imposes an obligation upon a person served with an ACC summons to appear before an examiner and submit to interrogation and produce documents. Despite s 30(5) providing protection against self incrimination and direct use of the evidence does s 30 nevertheless impliedly abrogate the principle of non interference with the administration of justice by way of compulsion to answer questions about the very offence charged? The compulsion to answer questions concerning the very offence charged creates a “*real risk that the administration of justice will be interfered with*” per Gibbs CJ; **Hammond v The Commonwealth (1982) 152 CLR 18 at p 198** (contra **Sorby’s Case** where the Plaintiffs’ had not been charged with any offence when interrogated by the Royal Commissioner).The contempt of court doctrine is fundamental to the protection of the integrity and authority of a court when administering the criminal and civil justice systems. “*Any interference with the course of the administration of justice is a contempt of court and is unlawful*” per Griffith CJ, **Clough v Leahy (1905) 2CLR 139 at 161**. Unmistakably clear and express statutory language is required to abrogate a fundamental right such as right to silence and prohibition against interference with administration of justice by interrogation about the very offence charged. In **Bropho v WA (1990)171CLR 1 at 17** the Court when dealing with the construction of a statute alleged by the respondents not to bind the Crown in right of the State of Western Australia noted:

“*One can point to other “rules of construction” which require clear and unambiguous words before a statutory provision will be construed as displaying a legislative intent to achieve a particular result. Examples of such “rules” are those relating to the construction of a statute which would abolish or modify fundamental common law principles or rights...*” *The rationale of all such rules lies in an assumption that the legislature would, if it intended to achieve the particular effect have made its intention in that regard unambiguously clear. Thus the rationale of the*

presumption against the modification or abolition of fundamental rights or principles is to be found in the assumption that it is "in the last degree improbable that the legislature would overthrow fundamental principles infringe rights, or depart from the general system of law without expressing its intention with irresistible clearness; and give to give any such effect to general words simply because they have that meaning in their widest, or usual, or natural sense would be to give them a meaning in which they were not really used" (*Porter v Minahan* (1908) 7 CLR 277 at p 304;.."

In *Coco v R* (1993-1994) 179 CLR 427 at 437 the Court said:

"The insistence on express authorization of an abrogation or curtailment of a fundamental right, freedom or immunity must be understood as a requirement for some manifestation or indication that the legislature has not only directed its intention to the question of the abrogation or curtailment of such basic rights freedoms or immunities but has also determined upon abrogation or curtailment of them. The courts should not impute to the legislature an intention to interfere with fundamental rights. Such an intention must be clearly manifested by unmistakable and unambiguous language. General words will rarely be sufficient for that purpose if they do not specifically deal with the question because in the context in which they appear they will often be ambiguous on the aspect of interference with fundamental rights" per Mason CJ, Brennan, Gaudron, McHugh JJJ. Earlier in *Plenty v Dillon* (1991) 171 CLR at p 654 Gaudron and McHugh JJ observed:

"Inconvenience in carrying out an object authorised by legislation is not a ground for eroding fundamental common law rights ; see also generally Heydon J re abrogation of common law privilege against spousal incrimination at paras 165-168 *ACC v Stoddart* [2011] HCA 47 (30/11/2011)

VI.7 The Plaintiff submits the approaches concerning the construction of Div 2 Part II of the ACC Act by Mansfield J at first instance in *OK v ACC* (2009) 258 ALR 507 and Spender J dissenting in the Full Court of the Federal Court in *ACC v OK* (2010) 268 ALR 281 are correct. Mansfield J observed at p 519 supra:

"As was explained in *Hammond* the public interest in the administration of justice is a central feature of our society. It is not a principle to be lightly qualified. Other provisions of the ACC Act, as noted, recognise that principle: ss 25A(9) and 29A (2). I do not consider that the obligation of a person to answer questions at an examination under s30 (2)(b), in the overall context of the ACC Act impliedly qualifies that

principle". His Honour explained that the abrogation of the privilege against self-incrimination in s30 (4) & (5) of the ACC Act was limited in the sense of not excluding the principle enunciated in *Hammond supra*- this was despite the operation of s 25A (9). Put another way, the Plaintiff submits s30 read with s25 A(9) of the ACC Act evinces a legislative intention to fully accommodate the *Hammond* principle of a public interest in a prohibition against interference with the administration of criminal justice.

In the Full Federal Court Spender J did not embrace the majority joint judgment of Emmett & Jacobson JJ whereby their Honours held at p 300 supra:

"Under the Commission Act generally, and s25A in particular, the risk of prejudice to a fair trial is to be managed by confining the questions that might be put to a witness. The Commission Act provides its own statutory safe guards to avoid risk to a fair trial of such a charge. On its true construction the Commission Act permits an examination to continue on a subject matter directly related to a pending charge so long as the protective prohibitions contemplated by s25A(3) and (9) have been put in place".

"The objects of the Commission Act could be seriously impaired if its investigations had to stop for an indeterminate period because charges had been laid. The public interest requires the investigation of a federally relevant criminal activity to continue. The right to a fair trial will not be compromised merely by asking questions of an accused person in circumstances where appropriate confidentiality is ensured".

In summary the majority of the Full Federal Court held that as a matter of construction Div 2 Part II of the ACC Act authorised an examiner to inquire into the very charges pending against the examinee and further by its terms immunised an examinee against prejudice. According to the purposive approach by the majority to the construction of Div 2 Part II:

"Such principle as might relevantly be drawn from Hammond's Case is displaced by the express provisions of the Commission Act" at p.300 supra.

Thus, their Honours reasoned, if there was no practical prejudice to the examinee because any such potential prejudice arising from any derivative use of the evidence was mandated by the Act to be monitored and confined by the examiner, thus there was no interference with the administration of justice and threat to a fair trial. Section

25A (3)(9) was a panacea against prejudice arising from parallel interrogation.

Effectively this reasoning was adopted and applied by the NSW Court of Criminal

10 Appeal in **R v CB 7 MP v R A NSWCCA 264 9 December 2011** whereby the Court set aside an order by the NSW District Criminal Court staying the prosecution of CB as an abuse of process because of an impermissible interference with the administration of justice. Following **CB & MP** Garling J in the Supreme Court of NSW ordered the indictments in the prosecutions of Seller & McCarthy be permanently stayed because of a wholesale failure by the ACC to abide by the ACC Act; see **Seller & McCarthy [2012] NSWSC 934 17 August 2012**. This resulted in the dissemination to prosecutorial authorities of evidence obtained under compulsion and thus interfered with the administration of criminal justice rendering illusory the right not to be tried unfairly.

In a vibrant and powerful dissent Spender J at pp283-4 supra evaluated the legal effect of the High Court's judgment in **Hammond supra** as applied to in the circumstances of **OK**:

30 *"... the questioning and the compulsion to answer about the charges that was likely to prejudice him in his defence and would constitute an interference with the due administration of criminal justice and the continuance of the inquiry would amount to a contempt of court. A parallel inquisitorial enquiry by the executive when the person summoned is compelled to be sworn as a witness and is subject to questioning about a pending criminal charge constitutes in itself injustice and prejudice to the person summoned who has been charged with that criminal offence"*

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VI.8 In summary on the construction question the Plaintiff submits that the judgment of the majority in **OK** supra is wrong in so far as it holds that the **Hammond** principle has been abrogated by the terms of Div 2 Part II of the ACC Act in particular, s25A(9). The Plaintiff submits that a scrutiny of the legislative history leading up to the enactment of the ACC Act reveals the starting point to be the enactment of the National Crimes Commission Act 1982 No.138 of 1982 ("the NCCA Act"). This legislation concerned investigative powers in relation to Commonwealth, Territorial and State offences referred to the Commission by a law of a State. Section 7(2) of the NCCA Act concerned investigations into alleged organised criminal activity. It was contemplated by s13 that any evidence of the commission of either Commonwealth, State or Territory offences would be transferred to the relevant law enforcement

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authority. In broad terms s 21(1) - (12) of the NCCA Act provided that a person served with a summons was compelled to attend the Commission and submit to an examination. The right to silence in the face of incriminating questions was preserved and could be maintained unless the Attorney General (Cth) or State had given an undertaking concerning use immunity. Section 17(5)(6) of the NCCA Act provided a discretion to take the evidence in public or private. The manner of taking the evidence was informed by considerations of any prejudice to the fair trial of the examinee.

There was nothing in the NCCA Act suggesting authority to interrogate an examinee of the very offences charged. This issue was specifically dealt with in the later

National Crime Authority Act no.41 ("the NCA Act") which repealed the NCCA Act in July 1984. This Act was more extensive in its operation because it gave

investigative powers in respect of Federal, Territorial and State offences in any case that involved 2 or more offenders and substantial planning and organization including organised crime, corruption, bribery, vice, tax evasion, illegal drug offences and extortion. It also sought to establish Commonwealth and State Task Forces in order to co-ordinate intelligence gathering, analysis and dissemination of "criminal

information" to all law enforcement authorities throughout the Commonwealth. Like its predecessor the NCA Act by s30 compelled attendance before the Authority and submission to interrogation but recognised the right to silence in the face of incriminating questions but only if there was no undertaking by the either the DPP

(Cth) in respect of offences against a law of the Commonwealth and the DPP of a State in respect to a State offence; s30 (4)(5)(6)(7). Importantly the National Crime Authority Act 1984 contained a qualification in s 30(10) that a person was not

compelled to answer questions concerning the very offence(s) charged. Section 25(9) of the 1984 Act is in practically identical terms to s 25A (9) of the ACC Act. Given

the specific qualification of s25 (9) of the 1984 Act by s30 (10) (in the nature of an explanatory note) the Plaintiff submits that that qualification has been implicitly

embedded in the later s 25A (9) of the ACC Act. Therefore the Plaintiff submits the mischief of s 25A (9), having regard to its legislative pedigree, is directed solely at

publication of the examination evidence to avoid potential prejudice to the trial of an examinee. The Plaintiff submits the **Hammond** principle is not abrogated- certainly it

cannot be said that s25A is without ambiguity. Clear and unmistakable statutory language is required before it can confidently be asserted the **Hammond** principle has

been abrogated by Part II Div 2 of the ACC Act. Therefore on the occasion the

10 Plaintiff was examined by the first Defendant in early February 2011 the practical effect of Div II Part 2 of the ACC Act was that it transmogrified the Plaintiff into a contributor to the case against the Plaintiff leaving the Plaintiff to rely on the executive to secure his fair trial rights. This was, within the **Hammond** principle, an impermissible interference with curial proceedings in progress against the Plaintiff.

VI. 9 The question concerning the Constitution

20 The Plaintiff submits the inviolable rule, identified in s71 of the Constitution, that assigns the judicial power of the Commonwealth to the closed category of courts identified in CH III not only prohibits the legislature from constituting itself or any other functionary unauthorised by the Constitution as a court but strictly prohibits the Parliament of the Commonwealth from enacting legislation which in effect takes away from the judiciary its exclusivity and proper functions or interferes with them. Part II Div 2 of the ACC Act is ultra vires the power of the Parliament of the

30 Commonwealth to the extent its legal effect is to sub contract to a non judicial examiner appointed under the Act, a parallel investigative pseudo curial process concerning the very charges alleged against the Plaintiff. Further the discretion given to the examiner by s 25 A (9) of the ACC Act concerning publication of the Plaintiff's evidence is beyond the control of a court. The court must rely upon the examiner's discretion as to the fairness of the criminal trial process concerning the Plaintiff. The court has no power to protect itself from the examiner. Thus to borrow the words of

40 Dixon & EvattJJ, albeit in another context: "*The question is not one of the wisdom, propriety or justice of the course laid down by the provision. It is entirely a question of the nature of legislative power*". **The King v Federal Court of Bankruptcy ex parte Lowenstein (1937-38)59 CLR 556 at 588**

50 In **Dietrich v R (1992)177 CLR 293 at 326** Dean J observed: "*The fundamental prescript of the criminal law of this country is that no person shall be convicted of a crime except after a trial according to law. In so far as the exercise of the judicial power of the Commonwealth is concerned that principle is entrenched by the Constitution's requirement of the observance of the judicial process and fairness that is implicit in the vesting of the judicial power of the Commonwealth exclusively in the courts which CH III of the Constitution designates.*" .

10 *"The fundamental requirement that a trial be fair is entrenched in the Commonwealth Constitution by ChIII's implicit requirement that judicial power be exercised in accordance with the judicial process"* Gaudron J at 362 supra. Earlier In **Petty and Maiden v R (1991)173 CLR 95 at 128-9** her Honour had observed: *"It is fundamental to our system of criminal justice that it is for the prosecution to establish guilt beyond reasonable doubt .The corollary of that – and it is equally fundamental- is that insanity and statutory exceptions apart, it is never for an accused person to prove his innocence. See **Wollmington v DPP [1935] AC 462.**Therein lies an important aspect of the right to silence which right also encompasses the privilege against incrimination"*

20 In **Katsuno v R (1999)199CLR 40 at 60** Gaudron Gummow & Callinan JJJ found that *"a failure to observe the requirement of the criminal process in a fundamental respect"* included the failure to observe mandatory provisions relating to the Constitution. Later in **SA v Totani (2010) 242 CLR 1 at 20** French CJ identified and explained the principle of judicial independence that underpins ChIII of the Constitution:

30 *"Courts and judges decide cases independently of the executive government. That is part of Australia's common law heritage which is antecedent to the Constitution and supplies principles for its interpretation and operation. Judicial independence is an assumption which underlies ChIII of the Constitution; concerning the exercise of the judicial power of the Commonwealth.....It is a requirement of the Constitutional that judicial independence be maintained in reality and appearance for the courts created by the Commonwealth and for the courts of the States and Territories. Observance of that requirement is never more important than when decisions affecting personal liberty and liability to criminal penalties are to be made"*

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50 VI.10 The Plaintiff submits that the administration of criminal justice can conveniently be divided into two separate stages namely; the non judicial investigative stage culminating in the charging of a person followed by the judicial investigative stage. The charging of a person with an offence is an executive act; **ex Parte Lowenstein**. The judicial investigative stage commenced following upon the Plaintiff being charged with the Commonwealth indictable offences described in para 6 p 23 CSB and para 4 of the Statement of Claim dated 19 April 2012.at p 7 CSB.

10 VI.11 The administration of an accusatorial system of criminal justice promises and
 recognises certain fundamental principles in particular, a presumption of innocence,
 right to silence, right to give or not give evidence, right to confront an accuser by
 cross-examination, an obligation upon the prosecution to carry the persuasive and
 evidentiary burdens of proof, the obligation upon the prosecution to put its whole case
 before the defence decides whether to make answer to the charge, the right to reserve
 and not reveal one's defence to the charge(s), to have all the elements of an offence
 20 proved beyond reasonable doubt, and in the case of every Commonwealth offence
 prosecuted on indictment a trial by jury returning nothing less than a unanimous
 verdict. The Plaintiff submits the aforementioned criminal process rights in respect of
 offences against the laws of the Commonwealth are entrenched in CHIII of the
 Constitution because the exercise of Commonwealth judicial power and power
 incidental to it is constitutionally mandated to be exercised in accordance with the
 observance of the judicial process. **Wilde v R (1988)164 CLR 365 at 375; Jago v**
District Court (1989)168 CLR 23 at 56; Glennon v R (1992)173 CLR 592 at 623;
 30 **Subramanian v R (2004) 29 ALJR 116, Shaw v R (1952)85CLR at 379; Cheatle v**
R (1993) 177 CLR 541. Further the aforementioned criminal process *rights* are
 implicit in ss 68(1)-(11) and 79 of the Judiciary Act 1901(Cth). In so far as the
 committal for trial process is concerned it is incidental and inviolably connected to the
 invocation of Commonwealth judicial power; **Murphy v R (1985-85) 158 CLR 596**
at 612. The vesting of a State court with Federal jurisdiction pursuant to s 77iii of the
 Constitution includes power incidental to the exercise of Commonwealth judicial
 40 power; **Pearce v Cocchiaro (1977) 137 CLR 600; Cominos v Cominos (1972) 127**
CLR 588.

50 VI. 12 In **Hammond** the Plaintiff at the time he was examined by the Royal
 Commissioner had been committed for trial. Despite the fact that the Royal
 Commissions Act 1902 (Cth) provided *use immunity* concerning evidence given by
 the Plaintiff before the Commission and abrogated the privilege against self
 incrimination Gibbs CJ observed at p 198 supra: "*Once it is accepted that the plaintiff*
will be bound, on pain of punishment to answer questions designed to establish that
he is guilty of the offence with which he is charged it seems to me inescapably to
follow in the circumstances of this case that there is a real risk that the
administration of justice will be interfered with. It is clear that questions will be put

10 and pressed. It is true that the examination will take place in private and that the answers may not be used at the criminal trial. Nevertheless the fact that the plaintiff has been examined in detail as to the circumstances of the alleged offence is very likely to prejudice him in his defence". Dean J at p 206 supra noted: "Where a court is exercising the judicial power of the Commonwealth pursuant to s 71 of the Constitution such interference involves a derogation of the constitutional guarantees that flow from the vesting of the judicial power of the Commonwealth in courts of law" The Plaintiff submits the aforementioned statement of principle by Dean J
 20 applies equally prior to the invocation of Commonwealth judicial power where a person has been charged and interrogated on the very charges to be committed for trial.

In **Melbourne Steamship Co Ltd v Moorehead (1912)15 CLR 333 at 346** Barton J wrote:

30 "If s15B were read as an interference with judicial proceedings it would be an exercise by the legislature of a power vested by the Constitution in the judiciary. It cannot therefore be so read if it is, as without doubt it is, open to an interpretation consistent with the Constitution. Such interpretation removes it altogether from the area of judicial proceedings. When the point has been reached at which the Crown institutes such proceedings in respect of the subject matter of the questions there is no right in the Comptroller-General to institute an enquiry. **That subject matter has passed into the hands of the courts alone"**

40 In **RPS v R (2000) 199 CLR 620 at 643** McHugh J observed:

50 "The right to silence derives from the privilege against self incrimination. That privilege is one of the bulwarks of liberty. History, and not only the history of totalitarian societies, shows that all too frequently those who have a right to obtain an answer soon believe that they have a right to the answer that they believe should be forthcoming. Because they hold that belief, often they do not hesitate to use physical and psychological means to obtain the answer they want. The privilege against self-incrimination helps to avoid this socially undesirable consequence". In **Ullmann v US [1956]350 US 422 at 426-428** Frankfurter J defined the spirit of the Fifth Amendment privilege against self – incrimination as "one of the great landmarks in man's struggle to make himself civilized". In **Rees v Kratzmann (1965)114 CLR 63 at 80** Windeyer J explained that:

10 *"There is in the common law a traditional objection to compulsory interrogations. Blackstone explained it: "For at common law, nemo tenebatur prodere seipsum: and his fault was not wrung out of himself, but rather to be discovered by other means and other men": Comm. iv, 296. The continuing regard for this element in the lawyer's notion of justice may be, as has been suggested, in the common law of hatred of the Star Chamber and its works. It is linked with the cherished view of English lawyers that their methods are more just than are the inquisitorial procedures of other countries"* Further W J V Windeyer in his valuable monograph "Lectures on Legal History"^{2nd} edition at p 173 (written before his Honour was appointed a justice of the High Court) noted that:

20 *"The inquisitorial methods, extremely harsh sentences and the secrecy of its proceedings, especially in political cases, made the Star Chamber, under the Stuarts a by-word for tyranny"* Historically at least by the late 17th Century in England the common law right to silence had become entrenched - the rejection of the excesses of the Court of Star Chamber which, under the Stuarts, evolved to become the long and enthusiastic prosecutorial arm of the Curia Regis.

30 The Plaintiff relies upon the observation by Murphy J in **Hammond at p 201 supra**:

40 *"For the purposes of this case therefore it is assumed that the plaintiff has no privilege against self-incrimination. He is awaiting his trial on indictment for conspiracy against the laws of the Commonwealth. He has a constitutional right to trial by jury (see Constitution, s 80) It is inconsistent with that right that he now be subject to interrogation by the executive government or that his trial be prejudiced in any manner. I would take this view whether or not he has privilege against self-incrimination"*. The Plaintiff submits that Part II of Div 2 of the Act is contrary to or

50 inconsistent with one of the inviolable features of the institution of trial by jury mandated by s 80 of the Constitution. This inviolable feature was identified by Murphy J in the passage quoted above as immunity against parallel executive interrogation once a person has been charged. Theoretically it would be possible pursuant to Part II Div 2 for the first Defendant to compel any person to attend before one of its examiners for examination during the actual committal or trial of that person. Historically the High Court has identified the institution of trial by jury in s80 to be attended with certain inviolable features e.g. **Cheatle v R (1993) 177 CLR 541-**

unanimity of verdict; **Brown v R (1986) 160 CLR 171**-prohibition on a trial by judge alone.

14. In summary the Plaintiff submits that the judicial power of the Commonwealth vested by s71 of the Constitution in the closed category of courts described in CHIII is vested on the axiom of obedience to the judicial process. Following a person being charged with an offence against a law of the Commonwealth a curial investigative process commences and continues until the federal controversy joined between the Commonwealth and the person so charged is finally quelled by either a verdict of a jury, a plea of guilty or discontinuance of the charge(s). To repeat and borrow the words of Barton J in **Melbourne Steamship supra** at 346 "*The subject matter has passed into the hands of the courts alone*" Parallel executive interference with the process described is inimical to the exclusivity of the exercise of Commonwealth judicial power and contrary to an inviolable feature of the institution of trial by jury in s80 of the Constitution. The Plaintiff accepts that s15A of the Acts Interpretation Act (Cth) may operate to read down Part II Div 2 of the ACC Act so as to confine an examiner of the first Defendant to an examination which does not touch on the federal matter charged.

PART VII: APPLICABLE CONSTITUTIONAL AND STATUTORY PROVISIONS

VII.1 The application of Chapter III of the Constitution concerns this matter.

VII.2 Australian Crime Commission Act 2002(Cth) Reprint 4 ss 1-6A, Part II Div 1 ss7-7K, Div1A ss12-22, Part 11 Div2 ss24A-36, Part II Div 3 ss 37-51 Part III ss52-62.

VII.3 National Crime Commission Act 1982 No.138 of 1982(repealed) ss1-23

VII.4National Crime Authority Act No.41 of 1984 Reprint 3 (repealed)ss1-7,11-16, 25-36

VII.3 The aforementioned provisions of the ACC Act are still in force and are attached as an annexure. The NCC Act and the NCA Act have been repealed but the relevant sections are also attached as an annexure.

PART VIII: ORDERS SOUGHT

VIII.1 Answer question 1 in the stated case "No"

10

VIII.2 If the answer to question 1 in the stated case is "Yes",
Answer question 2 "Yes".

20

VIII.3 Declare Div 2 Part II of the ACC Act 2002(Cth) invalid to the extent it permits
an examiner appointed under s 46 B (1) of the Act to conduct an examination of a
person charged with a Commonwealth indictable offence where that examination
concerns the subject matter of the offence so charged.

VIII.4 Restrain the first Defendant by their officers, examiners, servants, agents, and
employees from further examining or resuming the examination on oath or
affirmation of the Plaintiff until determination by curial process of the alleged
Commonwealth indictable offences charged.

30

VIII.5 Restrain the first Defendant by their officers, examiners, servants, agents, and
employees from preserving or keeping any recordings, transcripts, tapes, computer
discs or computer records of the examination conducted by the first Defendant on the
1st and 2nd of February 2011.

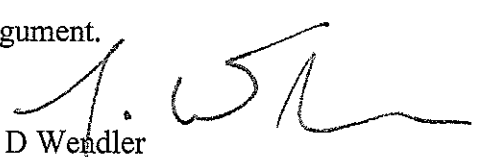
VIII.6 Costs

40

**PART IX: ESTIMATED TIME REQUIRED FOR PLAINTIFF'S ORAL
ARGUMENT**

XI.1 The Plaintiff estimates that 1 hour will be sufficient to present the Plaintiff's oral
argument.

50


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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No S.100 of 2012

BETWEEN

X7

Plaintiff

AUSTRALIAN CRIME COMMISSION

First Defendant

THE COMMONWEALTH OF AUSTRALIA

Second Defendant

PLAINTIFF'S ANNEXED LEGISLATION

1. Australian Crime commission Act 2002 (Cth) Reprint 4 ss1-6A,Part II Div 1ss7-7K, Div 1A ss 12-22, Part II Div2 ss24A-36, PartIIDiv3 ss37-51,PartIIIss52-62
2. National Crime Commission Act 1982(Cth)(repealed) ss1-23
3. National Crime Authority Act 1984 Reprint 3(repealed) ss1-7 11-16, 25-36

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4.10 2012

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AUSTRALIAN
CRIME
COMMISSION
ACT 2002

*Reprinted on 1 July 2007
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including those made by Act No. 8, 2007)*

Reprint 4

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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 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;

Section 4

- (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.

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.

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 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*.

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.

Section 4

federally relevant criminal activity means:

- (a) a relevant criminal activity, where the serious and organised crime is an offence against a law of the Commonwealth or of a Territory; or
- (b) a relevant criminal activity, where the serious and organised 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.

intelligence operation means the collection, correlation, analysis or dissemination of criminal information and intelligence 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

Section 4

- (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.

Section 4

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.

relevant criminal activity means any circumstances implying, or any allegations, that a serious and organised 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.

secrecy provision means:

- (a) a provision of a law of the Commonwealth or of a Territory, being a provision that purports to prohibit; or
- (b) anything done, under a provision of a law of the Commonwealth 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 within the meaning of the *Proceeds of Crime Act 2002*, 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;

Section 4

- (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 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 within the meaning of the *Proceeds of Crimes Act 2002*;

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.

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

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

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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.

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.

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

(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 of 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
 - (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:

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- (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

Section 4A

- (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 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

Section 4A

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

Section 5

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

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

5 Act to bind the Commonwealth and Norfolk Island

This Act binds the Crown in right of the Commonwealth and of Norfolk Island but does not bind the Crown in right of a State.

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.

Section 7

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.

Section 7B

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 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;
 - (h) the CEO.

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;

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- (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 7C(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 7C(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.

Section 7D

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 serious and organised crime is, or the serious and organised 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 3 days beginning on the day a determination under subsection (2) or (3) is made, give a copy of the determination to the Inter-Governmental Committee.

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.

Section 7E

7E 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.

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.

Section 7H

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).

- (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).

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- (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.

Section 12

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: The CEO may also disseminate information in certain circumstances to law enforcement agencies and other bodies: see section 59.

- (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.
- (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;

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- (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

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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 Commonwealth agencies

- (1) 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

Section 19A

- 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) 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.
- (5) Subsections (3) and (4) have effect subject to subsection (6), subject to a taxation secrecy provision and subject to sections 63 and 133 of the *Telecommunications (Interception and Access) Act 1979*, but notwithstanding any other secrecy provision.

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- (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 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 the Australian Industrial Relations Commission, the Human Rights and Equal Opportunity Commission and the Inter-State Commission.

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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, in relation to an agency, means:

- (a) in the case of an 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 the case of 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 meeting of the agency at which the last-mentioned person is present.

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.

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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.

20 Examiner may require information from Commonwealth agencies in certain cases

- (1) 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) 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.

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(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.

(5) In this section:

agency has the same meaning as that expression has in the *Freedom of Information Act 1982*.

law of the Commonwealth includes a law of a Territory.

prescribed provision means:

- (a) a taxation secrecy provision;
- (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, in relation to an agency, means the person who is the principal officer of the agency for the purposes of the *Freedom of Information Act 1982*.

(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.

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.

Section 22

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

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- (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.
- (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

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- deemed, for the purposes of this Act, to have been seized pursuant to the warrant.
- (8) Where a thing is seized pursuant to a warrant issued under this section:
- (a) the head of the special ACC operation/investigation may retain the thing if, and for so long as, retention of the thing by the head of the special ACC operation/investigation is reasonably necessary for the purposes of the special ACC operation/investigation to which the thing is relevant; and
 - (b) if the retention of the thing by the head of the special ACC operation/investigation is not, or ceases to be, reasonably necessary for such purposes, a person participating in the special ACC operation/investigation shall cause the thing to be delivered to:
 - (i) if the thing may be used in evidence in proceedings of a kind referred to in subsection (13)—the authority or person responsible for taking the proceedings; or
 - (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 furnished the thing to the Attorney-General of the Commonwealth or of a State, or to a law enforcement agency, in accordance with paragraph 12(1)(a).
- (9) A person participating in the special ACC operation/investigation may, instead of delivering a thing in accordance with subparagraph (8)(b)(ii), deliver the thing to the Attorney-General of the Commonwealth or of a State, or to a law enforcement agency, for the purpose of assisting in the investigation of criminal offences, where the person participating in the special ACC operation/investigation is satisfied that the thing is likely to be useful for that purpose.
- (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.

Section 24A

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

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

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

(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.

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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

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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 the examiner at an examination to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

(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.

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

Section 29

(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 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.

(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.

29 Power to obtain documents

(1) An examiner may, by notice in writing served on a person, require the person:

(a) to attend, at a time and place specified in the notice, before a person specified in the notice, being the examiner or a member of the staff of the ACC; and

(b) to produce at that time and place to the person so specified a document or thing specified in the notice, being a document or thing that is relevant to a special ACC operation/investigation.

Section 29A

- (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.
- (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.

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.

Section 29A

- (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

Section 29B

- (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.

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.

Section 29B

- (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.
- (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

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- (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 legal advice, 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.
- (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.
- (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.

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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

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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
 - (b) a proceeding for the imposition of a penalty; or
- 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

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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.

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- (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.

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- (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.

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.
- (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.

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- (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

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.

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*.

Section 37

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.

Section 46J

Commonwealth Superannuation Board of Trustees No. 2 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
 - (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 the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 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.

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.

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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.

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(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:

- (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.

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Part III—Parliamentary Joint Committee on the
Australian Crime Commission

52 Interpretation

In this Part, unless the contrary intention appears:

member means a member of the Committee.

the Committee means the Parliamentary Joint Committee on the Australian Crime Commission for the time being constituted under this Part.

53 Joint Committee on the Australian Crime Commission

- (1) As soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of the Parliament to be known as the Parliamentary Joint Committee on the Australian Crime Commission is to be appointed according to the practice of the Parliament with reference to the appointment of members to serve on joint select committees of both Houses of the Parliament.
- (2) The Committee shall consist of 10 members, namely, 5 members of the Senate appointed by the Senate, and 5 members of the House of Representatives appointed by that House.
- (3) A member of the Parliament is not eligible for appointment as a member of the Committee if he or she is:
 - (a) a Minister;
 - (b) the President of the Senate;
 - (c) the Speaker of the House of Representatives; or
 - (d) the Deputy-President and Chairman of Committees of the Senate or the Chairman of Committees of the House of Representatives.
- (4) A member ceases to hold office:
 - (a) when the House of Representatives expires by effluxion of time or is dissolved;

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- (b) if he or she becomes the holder of an office specified in any of the paragraphs of subsection (3);
 - (c) if he or she ceases to be a member of the House of the Parliament by which he or she was appointed; or
 - (d) if he or she resigns his or her office as provided by subsection (5) or (6).
- (5) A member appointed by the Senate may resign his or her office by writing signed by him or her and delivered to the President of the Senate.
- (6) A member appointed by the House of Representatives may resign his or her office by writing signed by him or her and delivered to the Speaker of that House.
- (7) Either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the Committee appointed by that House.

54 Powers and proceedings of the Committee

All matters relating to the powers and proceedings of the Committee shall be determined by resolution of both Houses of the Parliament.

55 Duties of the Committee

- (1) The duties of the Committee are:
- (a) to monitor and to review the performance by the ACC of its functions;
 - (b) to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the ACC or connected with the performance of its functions to which, in the opinion of the Committee, the attention of the Parliament should be directed;
 - (c) to examine each annual report on the ACC and report to the Parliament on any matter appearing in, or arising out of, any such annual report;
 - (d) to examine trends and changes in criminal activities, practices and methods and report to both Houses of the Parliament any change which the Committee thinks desirable

Section 55AA

- to the functions, structure, powers and procedures of the ACC; and
- (e) to inquire into any question in connection with its duties which is referred to it by either House of the Parliament, and to report to that House upon that question.
- (2) Nothing in this Part authorizes the Committee:
- (a) to undertake an intelligence operation or to investigate a matter relating to a relevant criminal activity; or
 - (b) to reconsider the findings of the ACC in relation to a particular ACC operation/investigation.
- (3) To avoid doubt, the Committee may examine, and report to both Houses of the Parliament on, information given to it under section 59.

55AA Ombudsman to brief committee about controlled operations

- (1) At least once in each year the Ombudsman must provide a briefing to the Committee about the ACC's involvement in controlled operations under Part IAB of the *Crimes Act 1914* during the preceding 12 months.
- (2) For the purposes of receiving a briefing from the Ombudsman under subsection (1), the Committee must meet in private.

Section 55A

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 serious and organised crime is, or the serious and organised 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 serious and organised crime is, or the serious and organised 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 serious and organised crime is, or the serious and organised 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

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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 serious and organised crime is, or the serious and organised 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 serious and organised crime is, or the serious and organised 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 serious and organised crime is, or the serious and organised 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;

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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.

This section does not limit section 15

- (11) This section does not limit section 15.

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 serious and organised crime is, or the serious and organised 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

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- (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

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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 Furnishing of reports and information

- (1) The Chair of the Board 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 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 must comply with the request.
- (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 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 must comply with the request.
- (2) If the Chair of the Board considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Chair must not provide the information under subsection (1A).
- (3) Subject to subsection (5), the Chair of the Board:
- (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 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 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

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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 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.
- (6A) Subject to subsection (6B), the Chair of the Board:
- (a) must comply with a request by the Parliamentary Joint Committee on the Australian Crime Commission for the time being constituted under Part III (the *PJC*) to give the *PJC* information relating to an ACC operation/investigation that the ACC has conducted or is conducting; and
 - (b) must when requested by the *PJC*, and may at such other times as the Chair of the Board thinks appropriate, inform the *PJC* concerning the general conduct of the operations of the ACC.
- (6B) If the Chair of the Board considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Chair must not give the *PJC* the information.
- (6C) If the Chair of the Board does not give the *PJC* 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 *PJC* may refer the request to the Minister.
- (6D) If the *PJC* 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 *PJC*; and

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(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.

(7) The CEO may give to:

- (a) any law enforcement agency; or
- (b) any foreign law enforcement agency; or
- (c) any other agency or body of the Commonwealth, a State or a Territory prescribed by the regulations;

any information that is in the ACC's possession and that is relevant to the activities of that agency or body if:

- (d) it appears to the CEO to be appropriate to do so; and
- (e) to do so would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.

(8) The CEO may, whenever it appears to the CEO to be appropriate to do so, furnish to authorities and persons responsible for taking civil remedies by or on behalf of the Crown in right of the Commonwealth, of a State or of a Territory any information that has come into the possession of the ACC and that may be relevant for the purposes of so taking such remedies in respect of matters connected with, or arising out of, offences against the laws of the Commonwealth, of a State or of a Territory, as the case may be.

(9) Where any information relating to the performances of the functions of:

- (a) a Department of State of the Commonwealth or of a State;
- (b) the Administration of a Territory; or
- (c) an instrumentality of the Commonwealth, of a State or of a Territory;

comes into the possession of the ACC in the course of any operations or investigations conducted by it, the CEO may, if he or she considers it desirable to do so:

- (d) furnish that information to the Department, the Administration or the instrumentality; and
- (e) make to the Department, the Administration or the instrumentality such recommendations (if any) relating to the performance of the functions of the Department, of the

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Administration or of the instrumentality as the CEO considers appropriate.

(10) A report under this Act that sets out any finding that an offence has been committed, or makes any recommendation for the institution of a prosecution in respect of an offence, shall 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.

(11) The CEO may, whenever it appears to the CEO to be appropriate to do so, furnish to the Australian Security Intelligence Organisation any information that has come into the ACC's possession and that is relevant to security as defined in section 4 of the *Australian Security Intelligence Organisation Act 1979*.

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.

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.

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 may publish bulletins for the purpose of informing the public about the performance of the ACC's functions.

(5) The Board shall not:

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

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(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;
 - (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

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- (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.

61A Review of operation of Act

- (1) The Minister must cause an independent review of the operation of this Act to be undertaken as soon as practicable after 1 January 2006.
- (2) The persons who undertake such a review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of each report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.
- (4) However, this section does not apply if a committee of one or both Houses of the Parliament has reviewed the operation of this Act, or started such a review, before 1 January 2006.

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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.

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
Federal Court of Australia Act 1976, section 50
Federal Magistrates Act 1999, section 61
Freedom of Information Act 1982, section 58
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
Workplace Relations Act 1996, section 355, and section 356 of Schedule 1B
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

TABLE OF PROVISIONS—*continued*

Section	<i>Division 3—Administrative Provisions</i>
25.	Terms and conditions of appointment
26.	Remuneration and allowances
27.	Appointment of Judge as member not to affect tenure, &c.
28.	Leave of absence
29.	Resignation
30.	Disclosure of interests
31.	Termination of appointment
32.	Acting Chairman
33.	Acting member
34.	Meetings of Commission
35.	Staff to be seconded to Commission
36.	Employment of additional staff, consultants, &c.
37.	Counsel assisting Commission
38.	Secrecy
	PART III—MISCELLANEOUS
39.	Administrative arrangements with States
40.	Commission to keep Attorney-General informed of its operations
41.	Annual report
42.	Regulations
43.	Cessation of operation of Act



National Crimes Commission Act 1982

No. 138 of 1982

An Act to establish a National Crimes Commission to investigate criminal activities, in particular organized criminal activities, with a view to the prosecution of offenders

[Assented to 24 December 1982]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *National Crimes Commission Act 1982*.

Commencement

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

Interpretation

- 10 3. (1) In this Act, unless the contrary intention appears—
 “acting member” means a person, not being a member, who is acting as
 Chairman or as a member other than the Chairman;
 “appoint” includes re-appoint;
 “Chairman” means Chairman of the Commission;

"document" includes any book, register or other record of information, however compiled, recorded or stored;

"Federal Court" means the Federal Court of Australia;

"Governor of a State" includes the Administrator of the Northern Territory;

"Judge" means—

(a) a Judge of a court created by the Parliament or of a court of a State or Territory; or

(b) a person who has the same designation and status as a Judge of a court created by the Parliament;

"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" means member of the Commission and includes the Chairman;

"member of the staff of the Commission" means a person assisting the Commission under section 35 or a person employed or engaged under section 36;

"officer of a Territory" includes—

(a) a person holding an 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" has the same meaning as in paragraph 75 (v) of the Constitution and includes 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;

"participating State" means a State by or under the law of which functions are conferred on the Commission in relation to the investigation of alleged offences against laws of the State;

"passport" means an Australian passport or a passport issued by the Government of a country other than Australia;

"State" includes the Northern Territory;

"Territory" does not include the Northern Territory.

(2) A reference in this Act to the Parliament of a State, shall, in relation to the Northern Territory, be construed as a reference to the Legislative Assembly of that Territory.

Act to bind the Commonwealth

4. This Act binds the Crown in right of the Commonwealth and of Norfolk Island but does not bind the Crown in right of a State.

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Extension to external Territories

5. This Act extends to all the external Territories.

PART II—THE NATIONAL CRIMES COMMISSION

Division 1—Establishment, Functions and Powers

5 Establishment and constitution of Commission

6. (1) There is established by this Act a Commission by the name of the National Crimes Commission.

(2) The Commission shall consist of a Chairman and not less than 1 nor more than 4 other members.

(3) The Chairman and the other member or members shall be appointed by the Governor-General.

(4) A member other than a member who is, and is expected to continue to be, a Judge may be appointed as a full-time member or as a part-time member.

(5) A person shall not be appointed as Chairman unless—

(a) he is or has been a Judge; or

(b) he is enrolled as a legal practitioner, and has been so enrolled for not less than 5 years.

(6) A person shall not be appointed as a member unless he appears to the Governor-General to be suitable for appointment by reason of his having expertise, or having had experience, relevant to the work of the Commission.

(7) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only of a vacancy or vacancies in the membership of the Commission.

Functions

7. (1) Subject to sections 8 and 10, the functions of the Commission are—

(a) to investigate of its own motion or at the request of the Attorney-General—

(i) any circumstance suggesting that an offence may have been, or may be being, committed against a law of the Commonwealth or of a Territory;

(ii) any allegation that an offence has been, or is being, committed against a law of the Commonwealth or of a Territory;

(iii) any circumstance suggesting that a person has or may have, or any allegation that a person has, influenced or attempted to influence an officer of the Commonwealth or an officer of a Territory to do any act or thing contrary to law or to his duty or authority as such an officer; and

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- (iv) any activity that is, or appears to be, impeding the implementation or enforcement of a law of the Commonwealth or of a Territory;
 - (b) to assemble, with a view to the prosecution of the offender, any evidence of the commission of an offence against a law of the Commonwealth or of a Territory that it obtains in the course of its investigations and to furnish any such evidence in accordance with this Act to the Commissioner of the Australian Federal Police or to the Attorney-General or a person nominated by him;
 - (c) as required, to coordinate its activities with the activities of authorities and persons in other countries performing functions similar to the functions of the Commission; and
 - (d) when requested by the Attorney-General, to furnish advice to him as to the likely effect (if any) on the incidence of crime of proposed laws of the Commonwealth or of a Territory, or of existing or proposed administrative practices or arrangements, referred to in the request.
- (2) The Commission shall, in the course of investigating circumstances, allegations and activities referred to in paragraph (1) (a), seek, so far as practicable, to direct its activities in relation to—
- (a) organized criminal activities, that is to say, offences that appear to be connected with one another and involve several offenders and substantial planning and organization;
 - (b) offences involving the use of sophisticated methods, planning or techniques; and
 - (c) bribery or corruption involving officers of the Commonwealth or officers of a Territory.

Functions under State laws

8. In addition to its functions under section 7, the Commission shall perform any functions in relation to the investigation of an offence or offences, however described or referred to, against the laws of a State that are conferred upon it by or under any law of a State.

Members may have concurrent functions and powers under State laws

9. If—

- (a) with the consent of the Attorney-General, any functions or powers are conferred on a member or members by the Governor of a State or a Minister of a State; and
- (b) the Attorney-General informs the member or members in writing that he is satisfied that those functions or powers may conveniently be performed or exercised in conjunction with the performance or exercise by the Commission of its functions or powers under this Act,

then, notwithstanding anything contained in any other provision of this Act, the member or members referred to in paragraph (a) shall perform the functions, or may exercise the powers, referred to in that paragraph in conjunction with

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the performance or exercise by the Commission of its functions or powers under this Act, and the members of the staff of the Commission may be employed by the Commission in assisting the member or members referred to in paragraph (a) in the performance of the functions or the exercise of the powers referred to in that paragraph.

General investigations by the Commission

10. (1) If the Attorney-General of the Commonwealth, or the appropriate Minister of a participating State with the consent of the Attorney-General of the Commonwealth, by notice in writing to the Commission, requests the Commission to conduct a general investigation into a particular matter, being a matter with respect to which powers are vested in the Parliament or the Government of the Commonwealth or of that State, as the case may be, for the purpose of ascertaining the nature, extent and cause of any criminal activity connected with that matter, the Commission shall conduct an investigation accordingly and shall report to the Attorney-General or State Minister, as the case may be, its findings and any recommendations for the enactment of laws, or the taking of administrative action, that it considers appropriate to reduce, or remove the cause of, that criminal activity.

(2) A report by the Commission 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.

(3) In any report by the Commission under this section the Commission shall take reasonable care to ensure that the identity of a person is not revealed if to reveal his identity might, in light of any material appearing in the report, prejudice the safety or reputation of a person or the fair trial of a person who has been or may be charged with an offence.

Commission to work in co-operation with Police Forces, &c.

11. In performing its functions the Commission shall, so far as practicable, work in co-operation with the Australian Federal Police and the Police Forces of the States and any other authorities or persons responsible for the enforcement of the laws of the Commonwealth or of the States.

Directions and guidelines to Commission

12. (1) The Attorney-General may, by notice in writing to the Commission, give directions or furnish guidelines to the Commission, including directions or guidelines with respect to the priority to be accorded by the Commission to particular investigations or classes of investigations but the Attorney-General is not entitled to give directions or furnish guidelines in relation to the conduct of a particular investigation.

(2) Where the Attorney-General gives any directions or furnishes any guidelines to the Commission under sub-section (1), the Attorney-General shall cause a copy of the directions or guidelines to be published in the *Gazette*.

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(3) If the Commission has functions conferred on it by or under a law of a State as mentioned in section 8, the Attorney-General shall not give any directions or furnish any guidelines to the Commission under sub-section (1) with respect to the performance of those functions unless the appropriate Minister of that State has agreed to the giving of the directions or the furnishing of the guidelines.

Evidence obtained in course of investigation

13. (1) Where in the course of an investigation it appears to the Commission that there is evidence of the commission of an offence against the laws of the Commonwealth or of a Territory, or against the laws of a State, the Commission may either—

- (a) terminate the investigation, or the part of the investigation that relates to the commission of that offence, and furnish the evidence to the Commissioner of the Australian Federal Police or to the Commissioner of the Police Force of the State, as the case may be; or
- (b) to the extent to which it is within the scope of the functions of the Commission to do so, continue the investigation, or the part of the investigation that relates to the commission of that offence, with a view to assembling evidence required for the prosecution of the offender and furnish the evidence that it obtains to the Attorney-General of the Commonwealth or to the appropriate Minister of the State, as the case may be, or to a person nominated by that Attorney-General or Minister to receive the evidence.

(2) Where in the course of an investigation it appears to the Commission that there is evidence of the commission of an offence against a law of the Commonwealth or of a State, the Commission may, whether or not the Commission has taken, or proposes to take, action with respect to the evidence in accordance with sub-section (1), furnish the evidence to the authority or person responsible for the administration or enforcement of that law.

Search warrants

14. (1) Where—

- (a) the Commission has reasonable grounds for suspecting that there may be, at that time or within the next following 24 hours, upon any land or upon or in any premises, vessel, aircraft or vehicle, a thing or things of a particular kind connected with a matter in respect of which the Commission is conducting an investigation (in this section referred to as "things of the relevant kind"); and
- (b) the Commission 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,

the Commission may apply to a Judge of a prescribed court for the issue of a search warrant under sub-section (3).

(2) A reference in sub-section (1) to the Commission includes a reference to a member authorized by the Commission to act under that sub-section.

(3) Where an application under sub-section (1) is made to a Judge of a prescribed court, the Judge may, if he is satisfied that there are reasonable grounds for issuing the warrant, issue a search 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 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 the Commission.

(4) There shall be stated in a warrant issued under this section—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the matter in respect of which the Commission is conducting an investigation and with which the things of the relevant kind are connected;
- (b) 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) a description of the kind of things authorized to be seized; and
- (d) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

(5) If, in the course of searching, in accordance with a warrant issued under this section, for things of a particular kind connected with a matter in respect of which the Commission is conducting an investigation, the person executing the warrant finds—

- (a) any thing of another kind that he believes on reasonable grounds to be connected with that matter; or
- (b) any thing that he believes on reasonable grounds to be connected with another matter into which the Commission is conducting an investigation,

and he believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss, mutilation or destruction, the warrant shall be deemed to authorize him to seize that thing.

(6) Where a thing is seized pursuant to a warrant issued under this section—

- (a) the Commission may retain the thing so long as is reasonably necessary for the purposes of the investigation to which the thing is relevant; and
- (b) when the retention of the thing by the Commission ceases to be reasonably necessary for those purposes, the Commission shall cause the thing to be delivered to the person who appears to the Commission to be entitled to possession of the thing unless the Commission has

furnished the thing to a person referred to in paragraph 13 (1) (a) or (b), as the case requires.

(7) A reference in this section to a Judge of a prescribed court shall be construed as a reference to—

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

(8) In this section "thing" includes a document.

Application by telephone for search warrants

15. (1) Where, by reason of circumstances of urgency, the Commission considers it necessary to do so, the Commission may make application by telephone for a search warrant under sub-section 14 (1).

(2) Where a Judge issues a search warrant upon an application made by telephone, he shall—

- (a) complete and sign that warrant;
- (b) inform the Commission of the terms of the warrant and the date on which and the time at which it was signed; and
- (c) forward a copy of the warrant to the Commission.

(3) Where a search warrant is issued upon an application made by telephone, a member of the staff of the Commission 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 a Judge under sub-section (2).

(4) A form of warrant duly completed in accordance with sub-section (3) shall be deemed to be a warrant issued under section 14.

Order for delivery to Commission of passport of witness

16. (1) Where, upon application by the Commission, a Judge of the Federal Court sitting in Chambers is satisfied by evidence on oath that—

- (a) in connection with an investigation that is being conducted by the Commission, a summons has been issued under this Act requiring a person to appear before the Commission at a hearing (whether or not the summons has been served), or a person has appeared before the Commission at a hearing, 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 Commission evidence or further evidence that is, or to produce to the Commission documents or other things or further documents or other things that are, relevant to the matter in respect of which the Commission is conducting the investigation and could be of particular significance to the investigation; and
- (c) there are reasonable grounds for suspecting that the person intends to leave Australia and has in his possession, custody or control a passport issued to him,

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 should not be ordered to deliver the passport to the Commission.

(2) Where—

- (a) an order under sub-section (1) 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 has appeared before the Federal Court as required by the order under sub-section (1); and
- (d) if the Court makes an order in respect of him under paragraph (3) (a) —he has complied with the terms of that order and any passport delivered by him to the Commission in accordance with that order has been returned to him.

Penalty: \$5,000 or imprisonment for 2 years.

(3) Where a person appears before the Federal Court in pursuance of an order made under sub-section (1), the Court may, if it thinks fit, make an order—

- (a) requiring the person to deliver to the Commission any passport issued to him that is in his possession, custody or control; and
- (b) authorizing the Commission 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 Commission, extend for a further period (not exceeding one month) or further periods (not exceeding one month in each case) the period for which the Commission is authorized to retain a passport in pursuance of an order made under sub-section (3), but so that the total period for which the Commission is authorized to retain the passport does not exceed 3 months.

(5) The Federal Court has jurisdiction with respect to matters arising under this section.

(6) In this section, "Australia" includes the external Territories.

Division 2—Hearings

Hearings

17. (1) For the purposes of an investigation under this Act the Commission may hold hearings.

(2) At a hearing, the Commission may be constituted by one or more members or acting members.

(3) Subject to sub-section (2), section 34 applies, so far as it is capable of application, at a hearing before the Commission as if the hearing were a meeting of the Commission.

(4) At a hearing before the Commission, any person giving evidence may be represented by a legal practitioner, and any other person may, with the consent of the Commission, be represented by a legal practitioner.

(5) The Commission may, in its discretion, direct that a hearing before the Commission shall, in whole or in part, be held either in public or in private.

(6) In exercising its discretion under sub-section (5) in relation to a hearing or part of a hearing, the Commission shall have regard to—

- (a) whether it is necessary or desirable for evidence that is to be given to the Commission at the hearing to be taken in private in order to ensure that a person who has been or may be charged with an offence will or would receive a fair trial for the offence or in order to avoid prejudice to the safety or reputation of a person;
- (b) whether the evidence that is to be given to the Commission includes, or is likely to include, evidence that relates to the profits or financial position of any person and the taking of the evidence in public would be unfairly prejudicial to the interests of the person;
- (c) the wishes of any person appearing as a witness at the hearing; and
- (d) any other matter which in the opinion of the Commission is relevant.

(7) An application by a person that his evidence, or any part of his evidence, should be taken in private shall, if the person making the application so desires, be heard in private.

(8) Where the Commission directs that a hearing or a part of a hearing before the Commission be held in private, the Commission may give directions as to the persons who may be present.

(9) Nothing in any direction given by the Commission under sub-section (8) prevents the presence, when evidence is being taken at a hearing or a part of a hearing that is being held in private, of a person representing the person giving evidence or representing a person who, by reason of a direction given by the Commission under sub-section (8), is entitled to be present.

(10) Where the Commission directs that a hearing or a part of a hearing before the Commission be held in private, a person (other than a member or an acting member, counsel assisting the Commission in relation to the matter that is the subject of the hearing or a member of the staff of the Commission approved by the Commission) shall not be present at that hearing or part of a hearing unless he is entitled to be present by virtue of the direction or by virtue of sub-section (9).

(11) At a hearing before the Commission for the purposes of an investigation under this Act—

- (a) counsel assisting the Commission generally or in relation to the matter to which the investigation relates;
- (b) any person authorized by the Commission to appear before it at the hearing; or

(c) any legal practitioner representing a person at the hearing pursuant to sub-section (4), may, so far as the Commission thinks appropriate, examine or cross-examine any witness on any matter that the Commission considers relevant to the investigation.

(12) The Commission may direct that—

- (a) any evidence given before it;
- (b) the contents of any document, or a description of any thing, produced to the Commission or seized pursuant to a search warrant issued under section 14;
- (c) any information that might enable a person who has given evidence before the Commission to be identified; or
- (d) the fact that any person has given or may be about to give evidence at a hearing,

shall not be published, or shall not be published except in such manner, and to such persons, as the Commission specifies.

(13) A person who—

- (a) is present at a hearing or a part of a hearing in contravention of sub-section (10); or
- (b) makes a publication in contravention of a direction given under sub-section (12),

is guilty of an offence punishable, upon summary conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months.

Reimbursement of expenses of witnesses

18. A witness appearing before the Commission shall be paid by the Commonwealth in respect of the expenses of his attendance an amount ascertained in accordance with the prescribed scale or, if there is no prescribed scale, such amount as the Commission determines.

Legal and financial assistance

19. (1) A witness who is appearing or who is about to appear before the Commission may make an application to the Attorney-General for the provision of assistance under this section in respect of his appearance.

(2) Where an application is made by a person under sub-section (1), the Attorney-General may, if he is satisfied that—

- (a) it would involve hardship to the person to refuse the application; and
- (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 Commission as the Attorney-General determines.

Power to summon witnesses and take evidence

20. (1) A member or an acting member may summon a person to appear before the Commission at a hearing to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

(2) A summons under sub-section (1) requiring a person to appear before the Commission to give evidence shall set out, as far as is reasonably practicable, the general nature of the matters in relation to which the Commission intends to question the person, but nothing in this sub-section prevents the Commission from questioning the person in relation to any other matter that the Commission may, in the proper performance of its functions, investigate.

(3) The member or acting member presiding at a hearing before the Commission may require a person appearing at the hearing to produce a document or other thing.

(4) The Commission may, at a hearing, take evidence on oath or affirmation and for that purpose—

(a) a member or acting member may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member or acting member presiding at the hearing; and

(b) a member or acting member, or a person who is an authorized person in relation to the Commission, may administer an oath or affirmation to a person so appearing at the hearing.

(5) In this section, a reference to a person who is an authorized person in relation to the Commission is a reference to a person authorized in writing, or a person included in a class of persons authorized in writing, for the purposes of this section by the Chairman or a person acting as Chairman.

Failure of witnesses to attend and answer questions

21. (1) A person served, as prescribed, with a summons to appear as a witness at a hearing before the Commission shall not, without reasonable excuse—

- (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 a member or an acting member.

(2) A person appearing as a witness at a hearing before the Commission shall not, without reasonable excuse—

- (a) when required pursuant to section 20 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 is required to answer by the member or acting member presiding at the hearing; or
- (c) refuse or fail to produce a document or thing that he was required to produce by a summons under this Act served on him as prescribed.

(3) Where—

- (a) a legal practitioner is required to answer a question or produce a document at a hearing before the Commission; 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 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 shall, if so required by the member or acting member presiding at the hearing, furnish to the Commission the name and address of the person to whom or by whom the communication was made.

(4) Subject to sub-sections (5) and (7), it is a reasonable excuse for the purposes of sub-section (2) for a natural person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Commission; or
- (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Commission,

that the answer to the question, or the production of the document or thing, as the case may be, might tend to incriminate him.

(5) It is not a reasonable excuse for the purposes of sub-section (2) for a person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Commission; or
- (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Commission,

that the answer to the question or the production of the document or thing might tend to prove his guilt of an offence against a law of the Commonwealth or of a Territory if the Attorney-General has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, will not be used in evidence in any proceedings against him for an offence against a law of the Commonwealth or of a Territory and if the Attorney-General states in the undertaking—

- (c) that, in his opinion, there are special grounds which in the public interest require that answers be given or documents or things be produced by that person; and
- (d) the general nature of those grounds.

(6) The Commission may recommend to the Attorney-General that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Commission or to produce a document or thing at a hearing before the Commission be given an undertaking by the Attorney-General in accordance with sub-section (5).

(7) It is not a reasonable excuse for the purposes of sub-section (2) for a person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Commission; or
- (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Commission,

that the answer to the question or the production of the document or thing might tend to prove his guilt of an offence against the law of a State if the Attorney-General of that State has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, will not be used in evidence in any proceedings against him for an offence against a law of that State and if the Attorney-General of that State states in the undertaking—

- (c) that, in his opinion, there are special grounds which in the public interest require that answers be given or documents or things be produced by that person; and
- (d) the general nature of those grounds.

(8) The Commission may recommend to the Attorney-General of a State that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Commission or to produce a document or thing at a hearing before the Commission be given an undertaking by the Attorney-General of that State in accordance with sub-section (7).

(9) A person who contravenes sub-section (1), (2) or (3) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.

(10) Where the Commission is satisfied that—

- (a) a person served, as prescribed, with a summons to appear as a witness at a hearing before the Commission has, without reasonable excuse, failed to attend as required by paragraph (1) (a) or (b); or
- (b) a person appearing as a witness at a hearing before the Commission has, without reasonable excuse—
 - (i) when required pursuant to section 20 either to take an oath or make an affirmation;
 - (ii) when required by the member or acting member presiding at the hearing to answer a question; or
 - (iii) when required to produce a document or any other thing by a summons under this Act served on him as prescribed,

refused or failed to comply with the requirement, a member or acting member may, by instrument in writing, certify the failure to attend or the refusal or failure to comply with the requirement, as the case may be, to the Federal Court or to the Supreme Court of a State or Territory.

(11) Where a certificate is given under sub-section (10), the court, upon application by the Attorney-General, may inquire into the case and, if it is

satisfied that the person to whom the certificate relates has, without reasonable excuse, failed to attend or refused or failed to comply with a requirement as mentioned in the certificate, may order the person to attend or to comply with the requirement at a hearing before the Commission to be held on a date, and at a time and place, specified in the order.

(12) The Federal Court and, subject to the Constitution, the Supreme Courts of the Territories (including the Supreme Court of the Northern Territory) have jurisdiction with respect to matters arising under sub-section (11).

False or misleading evidence

22. (1) A person shall not, at a hearing before the Commission, give evidence that is to his knowledge false or misleading in a material particular.

(2) An offence against sub-section (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 \$20,000.

(3) Notwithstanding that an offence against sub-section (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 sub-section (3), a court of summary jurisdiction convicts a person of an offence against sub-section (1), the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months.

Contempt of Commission

23. (1) A person shall not—

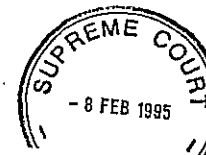
- (a) insult a member or an acting member in the performance of his functions or the exercise of his powers as a member or acting member at a hearing before the Commission;
- (b) interrupt a hearing before the Commission;
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Commission is holding a hearing; or
- (d) do any other act that would, if the Commission were a court of record, constitute contempt of that court.

Penalty: \$2,000 or imprisonment for 12 months.

(2) An offence against sub-section (1) is punishable on summary conviction.

Protection of members, &c.

24. (1) A member or an acting member has, in the performance of his functions or the exercise of his powers as a member or acting member in

**SUPERSEDED**By the reprint as at
01 JULY 2007

REPRINT No. 3

AUSTRALIAN CRIME COMMISSION
TITLE CHANGE PLEASE SEE:
ACT NO.125 2002 SCH 1

NATIONAL CRIME AUTHORITY ACT 1984

Reprinted as at 31 October 1994

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NATIONAL CRIME AUTHORITY ACT 1984

An Act to establish a National Crime Authority

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *National Crime Authority Act 1984*.¹

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.¹

Repeal

3. The *National Crimes Commission Act 1982* is repealed.

Interpretation

4. (1) In this Act, unless the contrary intention appears:
“appoint” includes re-appoint;
“Authority” means the National Crime Authority established by section 7;
“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;

"Chairperson" means Chairperson of the Authority;

"document" includes any book, register or other record of information, however compiled, recorded or stored;

"Federal Court" means the Federal Court of Australia;

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

"Judge" means:

- (a) a Judge of a court created by the Parliament or of a court of a State or Territory; or
- (b) a person who has the same designation and status as a Judge of a court created by the Parliament;

"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" means member of the Authority and includes the Chairperson;

"member of the staff of the Authority" means:

- (a) a member of the staff referred to in subsection 47 (1);
- (b) a person engaged under subsection 48 (1);
- (c) a person referred to in section 49 whose services are made available to the Authority;
- (d) a member of a Task Force established pursuant to paragraph 11 (1) (c); or
- (e) a legal practitioner appointed under section 50 to assist the Authority 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;

"original reference", in relation to a member holding an office created under subsection 7 (8AA), means the reference under section 13 or 14 because of which the office was created;

"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;

"prescribed investigation" means an investigation that the Authority, in the performance of any of the functions referred to in paragraphs 11 (1) (b) and (d) and in subsection 11 (2), is conducting or co-ordinating;

"related reference", in relation to a reference under section 13 or 14, means another reference under either of those sections that is, pursuant to subsection 13 (2A) or 14 (3), stated to be related to the first-mentioned reference;

"relevant criminal activity" means any circumstances implying, or any allegations, that a relevant offence may have been, or may be being, committed against a law of the Commonwealth, of a State or of a Territory;

"relevant offence" means an offence:

- (a) that involves 2 or more offenders and substantial planning and organization;
- (b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques;
- (c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and
- (d) that involves theft, fraud, tax evasion, currency violations, illegal drug dealings, illegal gambling, obtaining financial benefit by vice engaged in by others, extortion, violence, bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory, bankruptcy and company violations, harbouring of criminals, forging of passports, armament dealings or illegal importation or exportation of fauna into or out of Australia, or that involves matters of the same general nature as one or more of the foregoing, or that is of any other prescribed kind;

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 relevant offence other than an offence so committed;
- (f) does not include an offence the time for the commencement of a prosecution for which has expired; and
- (g) does not include an offence that is not punishable by imprisonment or is punishable by imprisonment for a period of less than 3 years;

"secrecy provision" means:

- (a) a provision of a law of the Commonwealth or of a Territory, being a provision that purports to prohibit; or
- (b) anything done, under a provision of a law of the Commonwealth 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;

"special investigation" means an investigation that the Authority is conducting in the performance of its special functions;

"State" includes the Australian Capital Territory and the Northern Territory;

"Task Force" includes a body of persons that is similar to a Task Force, however the body is described;

"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;

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

(2) Where the Authority suspects that an offence that is not a relevant offence as defined in subsection (1) may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a relevant offence as so defined, whether or not the Authority has identified the nature of that relevant offence, the first-mentioned offence shall, for so long only as the Authority so suspects, be deemed, for the purposes of this Act, to be a relevant offence.

(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 of 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
 - (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*.

Act to bind the Commonwealth and Norfolk Island

5. This Act binds the Crown in right of the Commonwealth and of Norfolk Island but does not bind the Crown in right of a State.

Extension to external Territories

6. This Act extends to all the external Territories.

PART II—THE NATIONAL CRIME AUTHORITY**Division 1—Establishment, Functions and Powers****Establishment and constitution of Authority**

7. (1) There is established by this Act an Authority by the name of the National Crime Authority.

(2) The Authority shall consist of the following members:

- (a) a Chairperson;
- (b) a member holding the office to which subsection (7) applies;
- (c) a member holding the office to which subsection (8) applies;
- (d) any member or members holding an office or offices created under subsection (8AA).

(3) The Chairperson and the other members shall be appointed by the Governor-General.

(4) If the Chairperson is not a person who is, and is expected to continue to be, a Judge, he or she shall be appointed as a full-time member.

(5) The members other than the Chairperson shall be appointed as full-time members.

(7) If:

- (a) there is a vacancy in the office of a member to which this subsection applies, whether or not an appointment has previously been made to the office;
- (b) within the recommendation period for the vacancy the Attorney-General of the Commonwealth and the Attorneys-General of the participating States unanimously recommend a person for appointment to the office; and

(c) the person so recommended agrees to be appointed; any advice to the Governor-General with respect to the appointment of a person to fill the vacancy shall be consistent with the recommendation.

(8) If:

- (a) there is a vacancy in the office of a member to which this subsection applies, whether or not an appointment has previously been made to the office;
- (b) within the recommendation period for the vacancy:
 - (i) the Minister of State of the Commonwealth who administers the *Australian Federal Police Act 1979*; and
 - (ii) the Minister of the Crown of each participating State who is responsible for:

(A) if the State has no Police Force—police affairs in that State; and

(B) in every other case—matters relating to the Police Force of that State;

unanimously recommend a person for appointment to the office; and

(c) the person so recommended agrees to be appointed; any advice to the Governor-General with respect to the appointment of a person to fill the vacancy shall be consistent with the recommendation.

(8AA) Where:

(a) a reference to the Authority made under section 13 or 14 is in force; and

(b) having regard to that reference and any related references, the Inter-Governmental Committee thinks that the appointment of another member of the Authority is necessary to enable the Authority to perform its functions;

the Inter-Governmental Committee may, by resolution, create an office of member.

(8AB) Where:

(a) the members of the Inter-Governmental Committee unanimously recommend a person for appointment to an office created under subsection (8AA); and

(b) the person so recommended agrees to be appointed; any advice to the Governor-General with respect to the appointment of a person to the office shall be consistent with the recommendation.

(8AC) An office created under subsection (8AA) ceases to exist when:

(a) the person appointed to the office ceases for any reason to hold the office; and

(b) that person is not immediately re-appointed to that office.

- (i) may, with the consent of the members of the Committee present at the meeting of the Committee at which the matter is considered, make at the meeting such oral submissions to the Committee concerning the request under subsection (4A) as the Authority thinks fit; and
- (ii) shall, if requested to do so by the Committee, or by a member of the Committee, consult with the Committee, or with that member, as the case may be, concerning the request under subsection (4A).

(5) Notwithstanding subsection 59 (5), where the Authority proposes to include in a submission under subsection (3), (4), (4C) or (4D) any matter the disclosure of which could prejudice a person's reputation, the Authority is not prohibited by reason only of that fact from including the matter in the submission.

(6) In this section, "Minister" means a Minister of the Crown of a State.

Functions of Authority

11. (1) The general functions of the Authority are:
- (a) to collect and analyse criminal information and intelligence relating to relevant criminal activities and disseminate that information and intelligence to:
 - (i) law enforcement agencies; and
 - (ii) any person authorized by the Governor-General, the Governor of a State, a Minister of State of the Commonwealth or a Minister of the Crown of a State to hold an inquiry to which the information or intelligence is relevant;
 - (b) to investigate, otherwise than pursuant to a reference made under section 13 or in accordance with section 14, matters relating to relevant criminal activities;
 - (c) where the Authority considers it appropriate to do so for the purpose of investigating matters relating to relevant criminal activities:
 - (i) to arrange for the establishment of Commonwealth Task Forces;
 - (ii) to seek the establishment by a State, or the joint establishment by 2 or more States, of State Task Forces; and

- (iii) with the concurrence of the States concerned, to arrange for the establishment of joint Commonwealth and State Task Forces, or for co-operation between Commonwealth Task Forces and State Task Forces; and
 - (d) to co-ordinate investigations by Commonwealth Task Forces, and, with the concurrence of the States concerned, to co-ordinate investigation by State Task Forces and by joint Commonwealth and State Task Forces, being investigations into matters relating to relevant criminal activities, but not so as to preclude the making of separate bilateral or multilateral arrangements between such Task Forces.
- (2) The special functions of the Authority are:
- (a) where a reference to the Authority made under section 13 is in force in respect of a matter relating to a relevant criminal activity—to investigate the matter in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the Commonwealth or of a Territory; and
 - (b) where a reference to the Authority made in accordance with section 14 by a Minister of the Crown of a State is in force in respect of a matter relating to a relevant criminal activity—subject to subsection 14 (1), to investigate the matter in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the State.

Performance of functions

12. (1) Where, in carrying out an investigation under paragraph 11 (1) (b) or subsection 11 (2), the Authority 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 Authority 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.
- (1A) Where any evidence is obtained of an offence against a law of the Commonwealth or of a State or Territory, being evidence that:
- (a) is obtained in the course of investigations co-ordinated by the Authority under paragraph 11 (1) (d); and
 - (b) would be admissible in a prosecution for the offence;

the Authority must do its best to ensure that the evidence is assembled and given to:

- (c) the Attorney-General of the Commonwealth or the State, as the case requires; or
- (d) the relevant law enforcement agency; or
- (e) 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.

(2) The Authority shall, in performing its functions, co-operate and consult with the Australian Bureau of Criminal Intelligence.

(3) Where, as a result of the performance of any of its functions, the Authority 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 Authority may make the recommendation to the Commonwealth Minister, or to that Minister of the Crown of that State, as the case may be.

(4) In relation to the performance by the Authority of the functions referred to in paragraph 11 (1) (b) and subsection 11 (2), nothing in this Act (other than section 28):

- (a) shall be taken to confer on a member, or on a member of the staff of the Authority (other than a member of the Australian Federal Police or a member of the Police Force of a State), a power to interview a person in relation to an offence that the person is suspected of having committed, except in a case where the person has been served, as prescribed, with a summons to appear as a witness at a hearing before the Authority and has not yet so appeared; or

- (b) shall be taken to confer on a member of the staff of the Authority who is a member of the Australian Federal Police or of the Police Force of a State a power to interview a person that the member of the staff of the Authority does not have in his capacity as a member of the Australian Federal Police or of the Police Force of that State, as the case may be.

(5) Nothing in paragraph (4) (a) shall be taken to affect a power of a member, or of a member of the staff of the Authority, to interview a person otherwise than in relation to an offence that the person is suspected of having committed.

(6) Where the Authority 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 Authority from making use of the information or intelligence in the performance of any of its other functions.

References by Commonwealth

13. (1) The Minister may, after consulting the Inter-Governmental Committee, by notice in writing to the Authority, refer a matter relating to a relevant criminal activity to the Authority for investigation in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the Commonwealth or of a Territory.

(2) A notice under subsection (1) referring a matter to the Authority for investigation:

- (a) shall describe the general nature of the circumstances or allegations constituting the relevant criminal activity;
- (b) shall state that the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the Commonwealth or a law of a Territory but need not specify the particular offence or offences; and
- (c) shall set out the purpose of the investigation.

(2A) The Minister may, after consulting the Inter-Governmental Committee:

- (a) in a notice under subsection (1) referring a matter to the Authority, state that the reference is related to another reference; or
- (b) in a notice in writing to the Authority, state that a reference already made to the Authority by the Minister is related to another reference.

(3) A reference of a matter to the Authority under this section may, with the approval of each House of the Parliament given by resolution of that House, be withdrawn by the Minister at any time by notice in writing to the Authority.

(4) Where the Minister gives notice to the Authority under subsection (3), the Minister shall:

- (a) as soon as practicable after giving the notice to the Authority, cause a copy of the notice to be published in the *Gazette*; and
- (b) cause a copy of the notice to be laid before each House of the Parliament within 15 sitting days of that House after the Minister gives the notice to the Authority.

Functions under State laws

14. (1) If a Minister of the Crown of a State has, whether or not pursuant to a law of the State, with the approval of the Inter-Governmental Committee, by notice in writing to the Authority referred a matter relating to a relevant criminal activity to the Authority for investigation in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of that State and has not, by notice in writing to the Authority, withdrawn the reference, the Authority shall, with the consent of the Minister, perform the function of investigating that matter.

(2) A notice referred to in subsection (1) referring a matter to the Authority:

- (a) shall describe the general nature of the circumstances or allegations constituting the relevant criminal activity;
- (b) shall state that the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the State but need not specify the particular offence or offences; and
- (c) shall set out the purpose of the investigation.

(3) A Minister of the Crown of a State may, with the approval of the Inter-Governmental Committee:

- (a) in a notice under subsection (1) referring a matter to the Authority, state that the reference is related to another reference; or
- (b) in a notice in writing to the Authority, state that a reference already made to the Authority by that Minister is related to another reference.

Members may have concurrent functions and powers under State laws

15. If:

- (a) with the consent of the Inter-Governmental Committee, any functions or powers in relation to the investigation of matters relating to relevant criminal activities are conferred on a member or members by the Governor of a State or a Minister of the Crown of a State; and
- (b) the Minister informs the member or members in writing that he is satisfied that those functions or powers may conveniently be performed or exercised in conjunction with the performance or exercise by the Authority of its functions or powers under this Act;

then, notwithstanding anything contained in any other provision of this Act, the member or members referred to in paragraph (a) shall perform the functions, or may exercise the powers, referred to in that paragraph in conjunction with the performance or exercise by the Authority of its functions or powers under this Act, and the members of the staff of the Authority may be employed by the Authority in assisting the member or members referred to in paragraph (a) in the performance of the functions or the exercise of the powers referred to in that paragraph.

Limitation on challenges to validity of references

16. Where, with the approval of the Inter-Governmental Committee, the Minister, or a Minister of the Crown of a State, refers a matter to the Authority for 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 Authority in pursuance of the reference shall not be challenged, reviewed, quashed or called in question in any court on the ground that any necessary approval of the Inter-Governmental Committee or consent of the Minister has not been obtained or was not lawfully given.

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

17. (1) In performing its functions under this Act, the Authority shall, so far as is practicable, work in co-operation with law enforcement agencies.

(2) In performing its functions under this Act, the Authority may co-ordinate its activities with the activities of authorities and persons in other countries performing functions similar to functions of the Authority.

- (a) requiring the person to deliver to the Authority any passport issued to him that is in his possession, custody or control; and
 - (b) authorizing the Authority 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 a member, extend for a further period (not exceeding one month) or further periods (not exceeding one month in each case) the period for which the Authority is authorized to retain a passport in pursuance of an order made under subsection (3), but so that the total period for which the Authority is authorized to retain the passport does not exceed 3 months.
- (5) The Federal Court may, at any time while the Authority 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, a member 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.

Division 2—Hearings

Hearings

25. (1) For the purposes of a special investigation the Authority may hold hearings.
- (2) At a hearing, the Authority may be constituted by one or more members.
- (3) The Chairperson shall preside at all hearings at which the Chairperson is present.
- (3A) If the Chairperson is not present at a hearing at which there are 2 or more members, the members present shall elect one of their number to preside at that hearing.
- (3B) Questions arising at a hearing shall be determined by a majority of the votes of the members present.
- (3C) The person presiding at a hearing has a deliberative vote, and, if necessary, also has a casting vote.
- (3D) The Authority may regulate the conduct of proceedings at a hearing as it thinks fit.

- (4) At a hearing before the Authority:
- (a) a person giving evidence may be represented by a legal practitioner; and
 - (b) if, by reason of the existence of special circumstances, the Authority consents to a person who is not giving evidence being represented by a legal practitioner—the person may be so represented.
- (5) A hearing before the Authority shall be held in private and the Authority may give directions as to the persons who may be present during the hearing or a part of the hearing.
- (6) Nothing in a direction given by the Authority under subsection (5) prevents the presence, when evidence is being taken at a hearing before the Authority, of:
- (a) a person representing the person giving evidence; or
 - (b) a person representing, pursuant to subsection (4), a person who, by reason of a direction given by the Authority under subsection (5), is entitled to be present.
- (7) Where a hearing before the Authority is being held, a person (other than a member or a member of the staff of the Authority approved by the Authority) shall not be present at the hearing unless the person is entitled to be present by reason of a direction given by the Authority under subsection (5) or by reason of subsection (6).
- (8) At a hearing before the Authority for the purposes of a special investigation:
- (a) counsel assisting the Authority generally or in relation to the matter to which the investigation relates;
 - (b) any person authorized by the Authority to appear before it at the hearing; or
 - (c) any legal practitioner representing a person at the hearing pursuant to subsection (4);
- may, so far as the Authority thinks appropriate, examine or cross-examine any witness on any matter that the Authority considers relevant to the special investigation.
- (9) The Authority may direct that:
- (a) any evidence given before it;
 - (b) the contents of any document, or a description of any thing, produced to the Authority or seized pursuant to a warrant issued under section 22;
 - (c) any information that might enable a person who has given evidence before the Authority to be identified; or
 - (d) the fact that any person has given or may be about to give evidence at a hearing;

shall not be published, or shall not be published except in such manner, and to such persons, as the Authority specifies, and the Authority shall 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.

(9A) Subject to subsection (9B), the Chairperson may, in writing, vary or revoke a direction under subsection (9).

(9B) The Chairperson shall 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.

(10) Where:

- (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 the Authority, being evidence in relation to which the Authority 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 Authority a certificate to that effect and, if the court does so, the Authority shall make the evidence available to the court.

(11) Where:

- (a) the Authority makes evidence available to a court in accordance with subsection (10); 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.

(12) A person who:

- (a) is present at a hearing in contravention of subsection (7); 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 \$2,000 or imprisonment for a period not exceeding 12 months.

Reimbursement of expenses

26. (1) A witness appearing before the Authority 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 Chairperson determines.

(2) The Chairperson 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 Chairperson determines.

Legal and financial assistance

27. (1) A witness who is appearing or is about to appear before the Authority may make an application to the Attorney-General for the provision of assistance under this section in respect of his appearance.

(2) A person who proposes to make, or has made, an application to the Federal Court:

- (a) under subsection 32 (2) for an order of review in respect of a decision of the Authority;
- (aa) under subsection 32 (8) in relation to a document; or
- (b) 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.

(3) Where an application is made by a person under subsection (1) or (2), the Attorney-General may, if he 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 Authority, or the application by that person to the Federal Court, as the case may be, as the Attorney-General determines.

Power to summon witnesses and take evidence

28. (1) A member may summon a person to appear before the Authority at a hearing to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

(2) A summons under subsection (1) requiring a person to appear before the Authority at a hearing shall be accompanied by a copy of the notice, or of each of the notices, by which the matter or matters to which the hearing relates was or were referred to the Authority under section 13 or in accordance with section 14.

(3) A summons under subsection (1) requiring a person to appear before the Authority at a hearing shall, unless the member issuing the summons is satisfied that, in the particular circumstances of a special investigation to which the hearing relates, it would prejudice the effectiveness of the special 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 Authority intends to question the person, but nothing in this subsection prevents the Authority from questioning the person in relation to any matter that relates to a special investigation.

(4) The member presiding at a hearing before the Authority may require a person appearing at the hearing to produce a document or other thing.

(5) The Authority may, at a hearing, take evidence on oath or affirmation and for that purpose:

- (a) a member may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member presiding at the hearing; and
- (b) a member, or a person who is an authorized person in relation to the Authority, may administer an oath or affirmation to a person so appearing at the hearing.

(6) In this section, a reference to a person who is an authorized person in relation to the Authority is a reference to a person authorized in writing, or a person included in a class of persons authorized in writing, for the purposes of this section by the Chairperson.

(7) The powers conferred by this section are not exercisable except for the purposes of a special investigation.

Power to obtain documents

29. (1) A member may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Authority or a member of the staff of the Authority; 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 investigation.

(2) A notice may be issued under this section in relation to a special investigation whether or not a hearing before the Authority is being held for the purposes of the investigation.

(3) A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on him under this section.

Penalty: \$1,000 or imprisonment for 6 months.

(4) Subsections 30 (3) to (10), inclusive, apply in relation to a person who is required to produce a document or thing by a notice served on him 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 a hearing before the Authority and so apply as if a reference in those subsections to subsection 30 (2) were a reference to subsection (3) of this section.

(5) If a person who is required to produce a document or thing by a notice served on him under this section claims to the person (in this subsection referred to as the "relevant person") to whom he is required to produce it that he is entitled to refuse to produce the document or thing, the relevant person shall:

- (a) if he is satisfied that the claim is justified—inform the claimant that the requirement will not be insisted upon; or
- (b) in any other case—inform the claimant that he is not so satisfied and, if the document or thing is not produced forthwith, refer the claim to the Authority for decision under section 32.

Disclosure of summons or notice etc. may be prohibited

29A. (1) The member 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 member 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 investigation;
 - (b) the member 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 investigation;
 - (c) the member 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 Authority has concluded the investigation concerned:
- (a) no evidence of an offence has been obtained as described in subsection 12 (1) or (1A); or
 - (b) evidence of an offence or offences has been assembled and given as required by subsection 12 (1) or (1A) and the Authority 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) or (1A) 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) or (1A) 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 Authority 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 investigation are cancelled by this subsection.

(5) If a notation is cancelled by subsection (4), the Authority 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) If a notation made under subsection (1) is inconsistent with a direction given under subsection 25 (9), a notation has no effect to the extent of the inconsistency.

Offences of disclosure

29B. (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: \$2,000 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:
 - (i) for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client; or
 - (ii) 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 a hearing before the Authority.

(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: \$2,000 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 legal advice, 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.

(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.

(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 a legal aid commission within the meaning of the *Commonwealth Legal Aid Act 1977*; 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) a reference under section 13 or 14;
- (b) an investigation conducted or co-ordinated by the Authority;
- (c) a hearing held by the Authority;
- (d) court proceedings.

Failure of witnesses to attend and answer questions

30. (1) A person served, as prescribed, with a summons to appear as a witness at a hearing before the Authority shall not, without reasonable excuse:

- (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 a member.

(2) A person appearing as a witness at a hearing before the Authority shall not, without reasonable excuse:

- (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 is required to answer by the member presiding at the hearing; or
- (c) refuse or fail to produce a document or thing that he was required to produce by a summons under this Act served on him as prescribed.

(3) Where:

- (a) a legal practitioner is required to answer a question or produce a document at a hearing before the Authority; 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 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 shall, if so required by the member presiding at the hearing, furnish to the Authority the name and address of the person to whom or by whom the communication was made.

(4) Subject to subsections (5), (7) and (9), it is a reasonable excuse for the purposes of subsection (2) for a natural person:

- (a) to refuse or fail to answer a question put to him at a hearing before the Authority; or

(b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Authority; that the answer to the question, or the production of the document or thing, as the case may be, might tend to incriminate him.

(5) It is not a reasonable excuse for the purposes of subsection (2) for a person:

(a) to refuse or fail to answer a question put to him at a hearing before the Authority; or

(b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Authority;

that the answer to the question or the production of the document or thing might tend to prove his guilt of an offence against a law of the Commonwealth or of a Territory if the Director of Public Prosecutions has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against him for an offence against a law of the Commonwealth or of a Territory other than proceedings in respect of the falsity of evidence given by the person and the Director of Public Prosecutions states in the undertaking:

(c) that, in his opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by that person; and

(d) the general nature of those grounds.

(6) The Authority may recommend to the Director of Public Prosecutions that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Authority or to produce a document or thing at a hearing before the Authority be given an undertaking in accordance with subsection (5).

(7) It is not a reasonable excuse for the purposes of subsection (2) for a person:

(a) to refuse or fail to answer a question put to him at a hearing before the Authority; or

(b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Authority;

that the answer to the question or the production of the document or thing might tend to prove his guilt of an offence against a law of a State if the Attorney-General of that State, or a person authorized by him, being the person holding the office of Director of Public Prosecutions, or a similar office, of that State, has given to the person an undertaking in writing that any answer given or document or thing

produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against him for an offence against a law of that State other than proceedings in respect of the falsity of evidence given by the person and the Attorney-General of that State, or the person so authorized, states in the undertaking:

(c) that, in his opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by that person; and

(d) the general nature of those grounds.

(8) The Authority may recommend to the Attorney-General of a State that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Authority or to produce a document or thing at a hearing before the Authority be given an undertaking in accordance with subsection (7).

(9) For the purposes of subsection (2):

(a) it is not a reasonable excuse for a corporation to refuse or fail to produce a document or thing that the production of the document or thing might tend to incriminate the corporation; and

(b) it is not a reasonable excuse for a natural person to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, in the case of a person who is or has been an employee, a document that sets out details of earnings received by the person in respect of his employment and does not set out any other information) that the production of the document might tend to incriminate the person.

(10) Subsections (5), (7) and (9) do not apply where the offence in respect of which the answer to a question or the production of a document or thing, as the case requires, might tend to incriminate a person is an offence with which the person has been charged and the charge has not been finally dealt with by a court or otherwise disposed of.

(11) A person who contravenes subsection (1), (2) or (3) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.

Warrant for arrest of witness

31. (1) Where, upon application by or on behalf of the Authority, 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 Authority, 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 Authority; 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.

(3) Where a person is apprehended in pursuance of a warrant under this section, he 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 thinks necessary to ensure the appearance of the person as a witness before the Authority;
- (b) order the continued detention of the person for the purposes of ensuring his 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 shall, within 14 days after he 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.

Applications to Federal Court of Australia

32. (1) Where:

- (a) a person claims to be entitled to refuse to furnish information or produce a document that he is required to furnish or produce pursuant to a notice under section 20;
- (b) a person claims to be entitled to refuse to produce a document that he is required to produce pursuant to a notice under section 29; or
- (c) a person claims to be entitled to refuse to answer a question put to him, or to produce a document that he was required to produce, at a hearing before the Authority;

the Authority shall decide as soon as practicable whether in its opinion the claim is justified and notify the person of its decision.

(2) If the person is dissatisfied with the decision, he may apply to the Federal Court for an order of review in respect of the decision.

(3) Where the Authority decides that a claim by a person that he is entitled to refuse to produce a document is not justified, the person is not entitled to make an application to the Federal Court under subsection (2) in respect of the decision unless the person has produced the document to the Authority or placed the document in the custody of the Registrar of that Court, and where the person has so produced the document and makes such an application, the Authority shall cause the document to be placed in the custody of the Registrar of that Court.

(4) On an application for an order of review in respect of a decision of the Authority under subsection (1), the Federal Court may, in its discretion, make an order:

- (a) affirming the decision; or
- (b) setting aside the decision.

(5) Where the Federal Court makes an order under subsection (4) setting aside a decision by the Authority that a claim by a person that he was entitled to refuse to produce a document is not justified:

- (a) unless paragraph (b) applies—the Federal Court shall make a further order directing that the document be delivered to the person;
- (b) if the Federal Court:

- (i) makes the first-mentioned order for the reason that the person was entitled, on the ground that production of the document might tend to incriminate him, to refuse to produce the document;
- (ii) is satisfied that the person was not entitled on any other ground to refuse to produce the document; and
- (iii) is satisfied that an undertaking of a kind referred to in subsection 30 (5) or (7) has, or 2 or more such undertakings have, been given to the person and that the person, if now required to produce the document at a hearing before the Authority, would not be entitled to refuse so to produce it;

the Federal Court shall make a further order directing that the document be delivered to the Authority; and

(c) if the Federal Court:

- (i) makes the first-mentioned order for the reason that, or for reasons including the reason that, the person was entitled, on the ground that production of the document might tend to incriminate him, to refuse to produce the document; and
- (ii) makes a further order directing that the document be delivered to the person;

evidence of production of the document by the person to the Authority, or of the placing of the document by the person in the custody of the Registrar of the Federal Court, as the case may be, for the purposes of the application on which the orders were made is not admissible in proceedings against the person for an offence against a law of the Commonwealth, of a State or of a Territory, other than proceedings in respect of the falsity of evidence given by the person.

- (6) A prosecution for an offence under section 20, 29 or 30 shall not be commenced in respect of a refusal or failure by a person to furnish information, produce a document or answer a question:
 - (a) if the person has claimed to be entitled to refuse to furnish the information, produce the document or answer the question, as the case may be, and the Authority decides that, in its opinion, the claim is not justified—until the expiration of the period of 5 days (excluding days on which the Registry of the Federal Court is closed) immediately after the relevant day in relation to the decision; or
 - (b) if the person has made an application to the Federal Court under subsection (2) for an order of review in respect of a decision by the Authority that, in its opinion, a claim by the person to be entitled to refuse to furnish the information,

produce the document or answer the question is not justified—until the application, and any appeal from an order made by the Federal Court on the application, have been determined or otherwise disposed of.

(7) An order of the Federal Court under subsection (4) is, subject to any appeal from that order, conclusive for the purposes of any other proceedings.

(8) Where a person who is required to produce a document pursuant to a notice under section 29, or who is required to produce a document at a hearing before the Authority, claims that:

(a) the document contains:

- (i) particular matter (in this subsection referred to as the "relevant matter") relating to the personal affairs of the person, not being matter relating to the activities of an existing or past business; or
- (ii) in the case of a person who is or has been an employee—particular matter (in this subsection also referred to as the "relevant matter"), being details of earnings received by the person in respect of his employment; and

(b) the person would, if the document had contained only the relevant matter, have been entitled, on the ground that production of the document might tend to incriminate him, to refuse so to produce the document;

the person may, whether or not he has made an application to the Federal Court under subsection (2) in respect of a decision by the Authority in relation to the document, make an application to the Federal Court for an order under this subsection and, if such an application is made and the document is produced to that Court, then, subject to paragraph (5) (a), that Court:

- (c) if it is satisfied that the claim is justified—may, subject to paragraph (d) of this subsection, make such order as it thinks fit for the excision or concealment of the part of the document that contains the relevant matter and shall, if it makes such an order, make a further order directing that the document be delivered to the Authority after the first-mentioned order has been complied with;
- (d) if it is satisfied that an undertaking of a kind referred to in subsection 30 (5) or (7) has, or 2 or more such undertakings have, been given to the person and that the person would not, if the document contained only the relevant matter and the person were now required to produce the document to the Authority, be entitled, on the ground that production of the

document might tend to incriminate him, to refuse so to produce it—shall make an order directing that the document be delivered to the Authority; and

- (e) if paragraph (d) does not apply and that Court does not make an order of the kind first referred to in paragraph (c)—shall make an order directing that the document be delivered to the Authority.

(8A) A person is not entitled to make an application under subsection (8) in relation to a document unless the person has, on the day on which the document was to be produced to the Authority or on such later day as a member (whether on or after the first-mentioned day) allows, given to the Authority a notice in writing stating that the person proposes to make an application for an excision or concealment order in relation to the document.

(9) A person is not entitled to make an application to the Federal Court under subsection (8) in relation to a document unless the person has produced the document to the Authority or placed the document in the custody of the Registrar of that Court, and where the person has so produced the document and makes such an application, the Authority shall cause the document to be placed in the custody of the Registrar of that Court.

(10) Where:

- (a) a person makes a claim as mentioned in subsection (8) in relation to particular matter (in this subsection referred to as the “relevant matter”) contained in a document; and
- (b) the Federal Court, being satisfied that the claim is justified, makes in relation to the document an order of the kind first referred to in paragraph (8) (c);

evidence of production of the document by the person to the Authority, or of the placing of the document by the person in the custody of the Registrar of the Federal Court, as the case may be, for the purposes of the application on which the order is made is, in so far as the document contains the relevant matter, not admissible in any proceedings against the person for an offence against a law of the Commonwealth, of a State or of a Territory, other than proceedings in respect of the falsity of evidence given by the person.

(11) A prosecution for an offence under section 29 or 30 shall not be commenced in respect of a refusal or failure by a person to produce a document:

- (a) if the person has given to the Authority in accordance with subsection (8A) a notice relating to the document—until the expiration of the period of 5 days (excluding days on which the Registry of the Federal Court is closed) immediately after the relevant day in relation to the notice; or
- (b) if the person has made an application under subsection (8) in relation to the document—until the application, and any appeal from an order made by the Federal Court on the application, have been determined or otherwise disposed of.

(12) An application to the Federal Court under subsection (2) or (8):

- (a) shall be made in such manner as is prescribed by Rules of Court made under the *Federal Court of Australia Act 1976*;
- (b) shall set out the grounds of the application; and
- (c) shall be lodged with a Registry of the Federal Court within the period of 5 days (excluding days on which the Registry is closed) immediately after:
- (i) in the case of an application under subsection (2)—the relevant day in relation to the decision to which the application relates; or
- (ii) in the case of an application under subsection (8)—the relevant day in relation to the notice given in accordance with subsection (8A) in relation to the application;

or within such further period as that Court (whether before or after the expiration of the first-mentioned period) allows.

(13) In this section, unless the contrary intention appears:

“document” includes any thing;

“prescribed notice” means a notice stating as mentioned in paragraph 32A (2) (c);

“relevant day” means:

- (a) in relation to a decision of the Authority under subsection (1) in respect of a claim by a person to be entitled to refuse to furnish information, or to produce a document, that the person is required to furnish or produce pursuant to a notice under section 20—the day on which the Authority notifies the person of the decision;
- (b) in relation to a decision of the Authority under subsection (1) other than a decision of the kind referred to in paragraph (a) of this definition—the day on which the Authority gives to the person to whom the decision relates a prescribed notice relating to the decision; or

(c) in relation to a notice given by a person in accordance with subsection (8A)—the day on which the Authority gives to the person a prescribed notice relating to the notice so given by the person.

(14) Where a decision of the Authority under subsection (1) relates to 2 or more questions, or to 2 or more documents, the decision shall, to the extent to which it relates to a particular question or document, be deemed, for the purposes of this Act, to constitute a separate decision relating to that question or document only.

(15) Where a person gives to the Authority in accordance with subsection (8A) a notice relating to 2 or more documents, the notice shall, to the extent to which it relates to a particular document, be deemed, for the purposes of this Act, to constitute a separate notice relating to that document only.

Applications to Supreme Court of State

32A. (1) Where:

- (a) a person is required:
 - (i) to answer a question, or to produce a document, at a hearing before the Authority; or
 - (ii) to produce a document pursuant to a notice under section 29;
- (b) the Authority, at a particular time (in this subsection referred to as the "relevant time"):
 - (i) decides under subsection 32 (1) that a claim by the person to be entitled to refuse to answer the question, or to produce the document, as the case may be, is not justified; or
 - (ii) in a case where the person is required to produce a document—receives from the person a notice given in accordance with subsection 32 (8A) relating to the document; and
- (c) the Authority, at the relevant time:
 - (i) in a case where subparagraph (a) (i) applies—is holding the hearing for the purposes of a special investigation, or of 2 or more special investigations; or
 - (ii) in a case where subparagraph (a) (ii) applies—considers the document to be relevant to a special investigation, or to 2 or more special investigations;

then, for the purposes of this section:

- (d) if a reference to the Authority made by the Commonwealth Minister is at the relevant time in force in respect of a matter to which the special investigation, or any of the special investigations, relates—prescribed circumstances shall be taken not to apply;
- (e) if a reference to the Authority made by a Minister of the Crown of a State is at the relevant time in force in respect of a matter to which the special investigation, or any of the special investigations, relates and a reference to the Authority made by a Minister of the Crown of another State is at the relevant time in force in respect of such a matter—prescribed circumstances shall be taken not to apply; or
- (f) if a reference to the Authority made by a Minister of the Crown of a State is at the relevant time in force in respect of a matter to which the special investigation, or any of the special investigations, relates and neither paragraph (d) nor (e) applies—prescribed circumstances shall be taken to apply, in relation to the last-mentioned State;

in relation to the decision of the Authority, or in relation to the notice given by the person in accordance with subsection 32 (8A), as the case may be.

(2) Where the Authority:

- (a) decides under subsection 32 (1) that a claim by a person to be entitled to refuse to answer a question, or to produce a document (other than a document that the person is required to produce pursuant to a notice under section 20), is not justified; or
- (b) receives from a person a notice given in accordance with subsection 32 (8A);

the Authority shall give to the person a notice:

- (c) stating that prescribed circumstances:
 - (i) do not apply; or
 - (ii) apply in relation to a specified State;
 as the case requires, in relation to the decision of the Authority, or in relation to the notice given by the person in accordance with subsection 32 (8A), as the case may be; and
- (d) stating:
 - (i) in a case where subparagraph (c) (i) applies—that the effect of prescribed circumstances not so applying is that the Federal Court has jurisdiction; or

- (ii) in a case where subparagraph (c) (ii) applies—that the effect of prescribed circumstances so applying in relation to that State is that the Supreme Court of that State has jurisdiction;

with respect to:

- (iii) an application under subsection 32 (2) for an order of review in respect of the decision of the Authority; or
- (iv) an application under subsection 32 (8) in relation to the claim to which the notice given by the person in accordance with subsection 32 (8A) relates;

as the case may be;

but failure of a notice to state as mentioned in paragraph (d) does not affect the validity of the notice.

(3) A notice that is given by the Authority to a person and that states as mentioned in paragraph (2) (c) is *prima facie* evidence of the matter so stated.

(4) Subject to subsection (5), where prescribed circumstances apply, in relation to a particular State, in relation to:

- (a) a decision of the Authority under subsection 32 (1); or
- (b) a notice given in accordance with subsection 32 (8A);

section 32 has effect in relation to the decision, or in relation to the claim to which the notice relates, as the case may be, subject to the following modifications:

- (c) a reference in section 32 to the Federal Court shall be taken to be a reference to the Supreme Court of that State;
- (d) a reference in section 32 to the Registrar of the Federal Court shall be taken to be a reference to the proper officer of the Supreme Court of that State;
- (e) a reference in section 32 to a Registry of the Federal Court shall be taken to be a reference to a Registry of the Supreme Court of that State; and
- (f) the words “made under the *Federal Court of Australia Act 1976*” shall be deemed to be omitted from paragraph 32 (12) (a).

(5) Where an application is made to the Supreme Court of a State under section 32 as that section has effect by virtue of subsection (4) of this section and it appears to that Court that it would be more appropriate for the application to be heard and determined by the Federal Court, the Supreme Court may transfer the application to the Federal Court and, upon an application being so transferred:

- (a) the modifications of section 32 mentioned in subsection (4) of this section cease to have effect in relation to the application;

- (b) the Federal Court may hear and determine the application as if the application had been duly made to the Federal Court under section 32; and

(c) if a document has been placed in the custody of the Registrar of the Supreme Court for the purposes of the application:

(i) the Registrar of the Supreme Court shall send the document to the Registrar of the Federal Court; and

(ii) paragraph 32 (5) (c) or subsection 32 (10), as the case requires, applies in relation to the application as if the reference in that paragraph or subsection to the placing of the document in the custody of the Registrar of the Federal Court were a reference to the placing of the document in the custody of the Registrar of the Supreme Court.

(6) The Supreme Court of a State has jurisdiction with respect to matters arising under section 32 in respect of which an application has been duly made to that Court under that section as it has effect by virtue of subsection (4) of this section.

(7) The Federal Court has jurisdiction with respect to matters arising under section 32 in respect of which an application has been duly transferred to that Court under this section.

(8) In this section, unless the contrary intention appears, “document” includes any thing.

False or misleading evidence

33. (1) A person shall not, at a hearing before the Authority, give evidence that is to his 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 \$20,000.

(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 \$2,000 or imprisonment for a period not exceeding 1 year.

- (ii) in a case where subparagraph (c) (ii) applies—that the effect of prescribed circumstances so applying in relation to that State is that the Supreme Court of that State has jurisdiction;

with respect to:

- (iii) an application under subsection 32 (2) for an order of review in respect of the decision of the Authority; or
 (iv) an application under subsection 32 (8) in relation to the claim to which the notice given by the person in accordance with subsection 32 (8A) relates;

as the case may be;

but failure of a notice to state as mentioned in paragraph (d) does not affect the validity of the notice.

(3) A notice that is given by the Authority to a person and that states as mentioned in paragraph (2) (c) is *prima facie* evidence of the matter so stated.

(4) Subject to subsection (5), where prescribed circumstances apply, in relation to a particular State, in relation to:

- (a) a decision of the Authority under subsection 32 (1); or
 (b) a notice given in accordance with subsection 32 (8A);

section 32 has effect in relation to the decision, or in relation to the claim to which the notice relates, as the case may be, subject to the following modifications:

- (c) a reference in section 32 to the Federal Court shall be taken to be a reference to the Supreme Court of that State;
 (d) a reference in section 32 to the Registrar of the Federal Court shall be taken to be a reference to the proper officer of the Supreme Court of that State;
 (e) a reference in section 32 to a Registry of the Federal Court shall be taken to be a reference to a Registry of the Supreme Court of that State; and
 (f) the words “made under the *Federal Court of Australia Act 1976*” shall be deemed to be omitted from paragraph 32 (12) (a).

(5) Where an application is made to the Supreme Court of a State under section 32 as that section has effect by virtue of subsection (4) of this section and it appears to that Court that it would be more appropriate for the application to be heard and determined by the Federal Court, the Supreme Court may transfer the application to the Federal Court and, upon an application being so transferred:

- (a) the modifications of section 32 mentioned in subsection (4) of this section cease to have effect in relation to the application;

- (b) the Federal Court may hear and determine the application as if the application had been duly made to the Federal Court under section 32; and

(c) if a document has been placed in the custody of the Registrar of the Supreme Court for the purposes of the application:

- (i) the Registrar of the Supreme Court shall send the document to the Registrar of the Federal Court; and
 (ii) paragraph 32 (5) (c) or subsection 32 (10), as the case requires, applies in relation to the application as if the reference in that paragraph or subsection to the placing of the document in the custody of the Registrar of the Federal Court were a reference to the placing of the document in the custody of the Registrar of the Supreme Court.

(6) The Supreme Court of a State has jurisdiction with respect to matters arising under section 32 in respect of which an application has been duly made to that Court under that section as it has effect by virtue of subsection (4) of this section.

(7) The Federal Court has jurisdiction with respect to matters arising under section 32 in respect of which an application has been duly transferred to that Court under this section.

(8) In this section, unless the contrary intention appears, “document” includes any thing.

False or misleading evidence

33. (1) A person shall not, at a hearing before the Authority, give evidence that is to his 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 \$20,000.

(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 \$2,000 or imprisonment for a period not exceeding 1 year.

Protection of witnesses etc.

34. Where it appears to a member that, by reason of the fact that a person:

- (a) is to appear, is appearing or has appeared at a hearing before the Authority 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 Authority otherwise than at a hearing before the Authority;

the safety of the person may be prejudiced or the person may be subjected to intimidation or harassment, the member 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.

Contempt of Authority

35. (1) A person shall not:

- (a) obstruct or hinder the Authority or a member in the performance of the functions of the Authority; or
- (b) disrupt a hearing before the Authority.

Penalty: \$2,000 or imprisonment for 1 year.

(2) An offence against subsection (1) is punishable on summary conviction.

Double jeopardy

35A. 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.

Protection of members etc.

36. (1) A member has, in the performance of his functions or the exercise of his powers as a member in relation to a hearing before the Authority, the same protection and immunity as a Justice of the High Court.

(2) A legal practitioner assisting the Authority or representing a person at a hearing before the Authority 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 the Authority as a witness has the same protection as a witness in proceedings in the High Court.

Division 3—Administrative Provisions**Terms and conditions of appointment**

37. (1) Subject to this Division, the Chairperson and each of the other members holds office for such period, not exceeding 4 years, as is specified in the instrument of his or her appointment.

(1A) The Chairperson and the other members are eligible for re-appointment.

(1B) The Chairperson may be re-appointed for one or more periods.

(1C) The sum of the period of the Chairperson's first appointment and any period or periods of re-appointment must not exceed 4 years.

(1D) A member other than the Chairperson may be re-appointed to any office of member for one or more periods.

(1E) The sum of the period of a member's first appointment and any period or periods of re-appointment must not exceed 4 years.

Remuneration and allowances

38. (1) Subject to subsection (4), a member shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration is in operation, he shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

(4) If a person who is a Judge is appointed as a member, he is not, while he receives salary or annual allowance as a Judge, entitled to remuneration under this Act.

Appointment of Judge as member not to affect tenure etc.

39. (1) The appointment of the holder of a judicial office as a member, or service by the holder of a judicial office as a member, does not affect his tenure of that judicial office or his rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, his service as a member shall be taken to be service as the holder of that judicial office.

(b) if the reference or any of the references is a reference by a Minister of the Crown of a State—the member of the Committee representing that State voted in favour of the resolution.

(4) Where, by reason that a member (in this sub-section referred to as the "relevant member") or members (in this sub-section referred to as the "relevant members") of the Committee did not vote in favour of a resolution of the Committee purporting to approve a reference or references to the Authority of a matter for investigation, the resolution does not have any effect for the purposes of this Act, nothing in sub-section (3) prevents the Committee from passing a further resolution approving a reference or references to the Authority of the matter for investigation other than—

(a) if the relevant member was, or the relevant members included, the member representing the Commonwealth—a reference of the matter by the Commonwealth Minister; or

(b) if the relevant member was, or the relevant members were or included, a member representing a State, or members representing States—a reference of the matter by a Minister of the Crown of that State, or of any of those States, as the case may be.

(5) In this section, "Minister" means the Commonwealth Minister or a Minister of the Crown of a State.

Authority may request approval of references

10. (1) The Authority, if it considers it appropriate to do so, may request the Inter-Governmental Committee to give approval for a matter relating to a relevant criminal activity to be referred by a Minister or Ministers to the Authority for investigation.

(2) Where the Authority has made a request under sub-section (1) in relation to a matter relating to a relevant criminal activity, the Committee may, whether or not the Minister concerned, or all the Ministers concerned, have proposed to refer the matter to the Authority for investigation, give approval for the matter to be so referred by a Minister or Ministers.

(3) A request by the Authority under sub-section (1) shall be in writing and may be accompanied by such written submissions as the Authority thinks fit.

(4) Where the Authority has made a request under sub-section (1), the Authority—

(a) may, with the consent of the members of the Committee present at a meeting of the Committee at which the matter is considered, make at the meeting such oral submissions to the Committee concerning the request as the Authority thinks fit; and

(b) shall, if requested to do so by the Committee, or by a member of the Committee, consult with the Committee, or with that member, as the case may be, concerning the request under sub-section (1).

(5) Notwithstanding sub-section 59 (5), where the Authority proposes to include in a submission under sub-section (3) or (4) any matter the disclosure of which could prejudice a person's reputation, the Authority is not prohibited by reason only of that fact from including the matter in the submission.

(6) In this section, "Minister" means the Commonwealth Minister or a Minister of the Crown of a State.

Functions of Authority

11. (1) The general functions of the Authority are—

(a) to collect and analyse criminal information and intelligence relating to relevant criminal activities and disseminate that information and intelligence to—

(i) law enforcement agencies; and

(ii) any person authorized by the Governor-General, the Governor of a State, a Minister of State of the Commonwealth or a Minister of the Crown of a State to hold an inquiry to which the information or intelligence is relevant;

(b) to investigate, otherwise than pursuant to a reference made under section 13 or in accordance with section 14, matters relating to relevant criminal activities;

(c) where the Authority considers it appropriate to do so for the purpose of investigating matters relating to relevant criminal activities—

(i) to arrange for the establishment of Commonwealth Task Forces;

(ii) to seek the establishment by a State, or the joint establishment by 2 or more States, of State Task Forces; and

(iii) with the concurrence of the States concerned, to arrange for the establishment of joint Commonwealth and State Task Forces, or for co-operation between Commonwealth Task Forces and State Task Forces; and

(d) to co-ordinate investigations by Commonwealth Task Forces, and, with the concurrence of the States concerned, to co-ordinate investigations by State Task Forces and by joint Commonwealth and State Task Forces, being investigations into matters relating to relevant criminal activities, but not so as to preclude the making of separate bilateral or multilateral arrangements between such Task Forces.

(2) The special functions of the Authority are—

(a) where a reference to the Authority made under section 13 is in force in respect of a matter relating to a relevant criminal activity—to investigate the matter in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the Commonwealth or of a Territory; and

(b) where a reference to the Authority made in accordance with section 14 by a Minister of the Crown of a State is in force in respect of a matter relating to a relevant criminal activity—subject to sub-section 14 (1),

Division 2—Hearings

Hearings

25. (1) For the purposes of a special investigation the Authority may hold hearings.
- (2) At a hearing, the Authority may be constituted by one or more members or acting members.
- (3) Subject to sub-section (2), section 46 applies, so far as it is capable of application, at a hearing before the Authority as if the hearing were a meeting of the Authority.
- (4) At a hearing before the Authority—
- a person giving evidence may be represented by a legal practitioner; and
 - if, by reason of the existence of special circumstances, the Authority consents to a person who is not giving evidence being represented by a legal practitioner—the person may be so represented.
- (5) A hearing before the Authority shall be held in private and the Authority may give directions as to the persons who may be present during the hearing or a part of the hearing.
- (6) Nothing in a direction given by the Authority under sub-section (5) prevents the presence, when evidence is being taken at a hearing before the Authority, of—
- a person representing the person giving evidence; or
 - a person representing, pursuant to sub-section (4), a person who, by reason of a direction given by the Authority under sub-section (5), is entitled to be present.
- (7) Where a hearing before the Authority is being held, a person (other than a member or an acting member, counsel assisting the Authority in relation to the matter that is the subject of the hearing or a member of the staff of the Authority approved by the Authority) shall not be present at the hearing unless the person is entitled to be present by virtue of a direction given by the Authority under sub-section (5) or by virtue of sub-section (6).
- (8) At a hearing before the Authority for the purposes of a special investigation—
- counsel assisting the Authority generally or in relation to the matter to which the investigation relates;
 - any person authorized by the Authority to appear before it at the hearing; or
 - any legal practitioner representing a person at the hearing pursuant to sub-section (4),
- may, so far as the Authority thinks appropriate, examine or cross-examine any witness on any matter that the Authority considers relevant to the special investigation.

(9) The Authority may direct that—

- any evidence given before it;
- the contents of any document, or a description of any thing, produced to the Authority or seized pursuant to a warrant issued under section 22;
- any information that might enable a person who has given evidence before the Authority to be identified; or
- the fact that any person has given or may be about to give evidence at a hearing,

shall not be published, or shall not be published except in such manner, and to such persons, as the Authority specifies, and the Authority shall 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) Where—

- a person has been charged with an offence before a federal court or before a court of a State or Territory; and
- the court considers that it may be desirable in the interests of justice that particular evidence given before the Authority, being evidence in relation to which the Authority has given a direction under sub-section (9), be made available to the person or to a legal practitioner representing the person,

the court may give to the Authority a certificate to that effect and, if the court does so, the Authority shall make the evidence available to the court.

(11) Where—

- the Authority makes evidence available to a court in accordance with sub-section (10); and
- 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.

(12) A person who—

- is present at a hearing in contravention of sub-section (7); or
- makes a publication in contravention of a direction given under sub-section (9),

is guilty of an offence punishable, upon summary conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months.

Reimbursement of expenses of witnesses

26. A witness appearing before the Authority shall be paid by the Commonwealth in respect of the expenses of his attendance an amount ascertained in accordance with the prescribed scale or, if there is no prescribed scale, such amount as the Authority determines.

Legal and financial assistance

27. (1) A witness who is appearing or is about to appear before the Authority may make an application to the Attorney-General for the provision of assistance under this section in respect of his appearance.

(2) A person who proposes to make, or has made, an application to the Federal Court—

- (a) under sub-section 32 (2) for an order of review in respect of a decision of the Authority; or
- (b) 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.

(3) Where an application is made by a person under sub-section (1) or (2), the Attorney-General may, if he 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 Authority, or the application by that person to the Federal Court, as the case may be, as the Attorney-General determines.

Power to summon witnesses and take evidence

28. (1) A member or an acting member may summon a person to appear before the Authority at a hearing to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

(2) A summons under sub-section (1) requiring a person to appear before the Authority at a hearing shall be accompanied by a copy of the notice by which the matter to which the hearing relates was referred to the Authority under section 13 or in accordance with section 14.

(3) A summons under sub-section (1) requiring a person to appear before the Authority at a hearing shall, unless the Authority is satisfied that, in the particular circumstances of the special investigation to which the hearing relates, it would prejudice the effectiveness of the special 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 Authority intends to question the person, but nothing in this sub-section prevents the Authority from questioning the person in relation to any matter that relates to the special investigation.

(4) The member or acting member presiding at a hearing before the Authority may require a person appearing at the hearing to produce a document or other thing.

(5) The Authority may, at a hearing, take evidence on oath or affirmation and for that purpose—

- (a) a member or acting member may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member or acting member presiding at the hearing; and
- (b) a member or acting member, or a person who is an authorized person in relation to the Authority, may administer an oath or affirmation to a person so appearing at the hearing.

(6) In this section, a reference to a person who is an authorized person in relation to the Authority is a reference to a person authorized in writing, or a person included in a class of persons authorized in writing, for the purposes of this section by the Chairman or by a person acting as Chairman.

(7) The powers conferred by this section are not exercisable except for the purposes of a special investigation.

Power to obtain documents

29. (1) A member or acting member may, by notice in writing served on a person, require the person—

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member or acting member of the Authority or a member of the staff of the Authority; 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 investigation.

(2) A notice may be issued under this section in relation to a special investigation whether or not a hearing before the Authority is being held for the purposes of the investigation.

(3) A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on him under this section.

Penalty: \$1,000 or imprisonment for 6 months.

(4) Sub-sections 30 (3) to (10), inclusive, apply in relation to a person who is required to produce a document or thing by a notice served on him 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 a hearing before the Authority and so apply as if a reference in those sub-sections to sub-section 30 (2) were a reference to sub-section (3) of this section.

(5) If a person who is required to produce a document or thing by a notice served on him under this section claims to the person (in this sub-section referred to as the "relevant person") to whom he is required to produce it that he is entitled to refuse to produce the document or thing, the relevant person shall—

- (a) if he is satisfied that the claim is justified—inform the claimant that the requirement will not be insisted upon; or

- (b) in any other case—inform the claimant that he is not so satisfied and, if the document or thing is not produced forthwith, refer the claim to the Authority for decision under section 32.

Failure of witnesses to attend and answer questions

30. (1) A person served, as prescribed, with a summons to appear as a witness at a hearing before the Authority shall not, without reasonable excuse—

- (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 a member or an acting member.

(2) A person appearing as a witness at a hearing before the Authority shall not, without reasonable excuse—

- (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 is required to answer by the member or acting member presiding at the hearing; or
 (c) refuse or fail to produce a document or thing that he was required to produce by a summons under this Act served on him as prescribed.

(3) Where—

- (a) a legal practitioner is required to answer a question or produce a document at a hearing before the Authority; 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 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 shall, if so required by the member or acting member presiding at the hearing, furnish to the Authority the name and address of the person to whom or by whom the communication was made.

(4) Subject to sub-sections (5), (7) and (9), it is a reasonable excuse for the purposes of sub-section (2) for a natural person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Authority; or
 (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Authority, that the answer to the question, or the production of the document or thing, as the case may be, might tend to incriminate him.

(5) It is not a reasonable excuse for the purposes of sub-section (2) for a person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Authority; or

- (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Authority,

that the answer to the question or the production of the document or thing might tend to prove his guilt of an offence against a law of the Commonwealth or of a Territory if the Director of Public Prosecutions has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against him for an offence against a law of the Commonwealth or of a Territory other than proceedings in respect of the falsity of evidence given by the person and the Director of Public Prosecutions states in the undertaking—

- (c) that, in his opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by that person; and
 (d) the general nature of those grounds.

(6) The Authority may recommend to the Director of Public Prosecutions that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Authority or to produce a document or thing at a hearing before the Authority be given an undertaking in accordance with sub-section (5).

(7) It is not a reasonable excuse for the purposes of sub-section (2) for a person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Authority; or
 (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Authority,

that the answer to the question or the production of the document or thing might tend to prove his guilt of an offence against a law of a State if the Attorney-General of that State, or a person authorized by him, being the person holding the office of Director of Public Prosecutions, or a similar office, of that State, has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against him for an offence against a law of that State other than proceedings in respect of the falsity of evidence given by the person and the Attorney-General of that State, or the person so authorized, states in the undertaking—

- (c) that, in his opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by that person; and
 (d) the general nature of those grounds.

(8) The Authority may recommend to the Attorney-General of a State that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Authority or to produce a document or thing at a hearing before the Authority be given an undertaking in accordance with sub-section (7).

(9) For the purposes of sub-section (2)—

(a) it is not a reasonable excuse for a corporation to refuse or fail to produce a document or thing that the production of the document or thing might tend to incriminate the corporation; and

(b) it is not a reasonable excuse for a natural person to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, in the case of a person who is or has been an employee, a document that sets out details of earnings received by the person in respect of his employment and does not set out any other information) that the production of the document might tend to incriminate the person.

(10) Sub-sections (5), (7) and (9) do not apply where the offence in respect of which the answer to a question or the production of a document or thing, as the case requires, might tend to incriminate a person is an offence with which the person has been charged and the charge has not been finally dealt with by a court or otherwise disposed of.

(11) A person who contravenes sub-section (1), (2) or (3) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.

Warrant for arrest of witness

31. (1) Where, upon application by or on behalf of the Authority, a Judge of the Federal Court sitting in chambers is satisfied by evidence on oath that there are reasonable grounds to believe that a person who has been ordered, under section 24, to deliver his passport to the Authority, whether or not he has complied with the order, is nevertheless likely to leave Australia for the purpose of avoiding giving evidence before the Authority, 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 place, building or vessel for the purpose of executing it.

(3) Where a person is apprehended in pursuance of a warrant under this section, he shall be brought, as soon as practicable, before a Judge of the Federal Court and the Judge may—

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

- (b) order the continued detention of the person for the purposes of ensuring his 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 shall, within 14 days after he was brought, or last brought, before a Judge of the Federal Court in accordance with this section, or within such shorter or longer time as a Judge has fixed upon the last previous appearance of the person before a Judge under this section, be again brought before a Judge and the Judge may thereupon exercise any of the powers of a Judge under sub-section (3).

Applications to Federal Court of Australia

32. (1) Where—

- (a) a person claims to be entitled to refuse to furnish information or produce a document or thing that he is required to furnish or produce pursuant to a notice under section 20;
(b) a person claims to be entitled to refuse to produce a document or thing that he is required to produce pursuant to a notice under section 29; or
(c) a person claims to be entitled to refuse to answer a question put to him, or to produce a document or thing that he was required to produce, at a hearing before the Authority,

the Authority shall decide as soon as practicable whether in its opinion the claim is justified and notify the person of its decision.

(2) If the person is dissatisfied with the decision, he may apply to the Federal Court for an order of review in respect of the decision.

(3) Where the Authority decides that a claim by a person that he is entitled to refuse to produce a document is not justified, the person is not entitled to make an application to the Federal Court under sub-section (2) in respect of the decision unless the person has produced the document to the Authority or placed the document in the custody of the Registrar of that Court, and where the person has so produced the document and makes such an application, the Authority shall cause the document to be placed in the custody of the Registrar of that Court.

(4) On an application for an order of review in respect of a decision of the Authority under sub-section (1), the Federal Court may, in its discretion, make an order—

- (a) affirming the decision; or
(b) setting aside the decision.

(5) Where the Federal Court makes an order under sub-section (4) setting aside a decision by the Authority that a claim by a person that he was entitled to refuse to produce a document is not justified—

- (a) unless paragraph (b) applies—the Federal Court shall make a further order directing that the document be delivered to the person;