

AUSTRALIAN CRIME COMMISSION (QUEENSLAND) BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Bill

As part of the Leader's Summit on Terrorism and Multi-Jurisdictional Crime held in Canberra on the 5 April 2002, Commonwealth and State leaders agreed to establish the Australian Crime Commission (ACC). At this Summit it was proposed that the ACC replace the National Crime Authority (NCA), and incorporate the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments. The framework for the establishment of the ACC was agreed between Police Ministers in August 2002.

The operation of the NCA in Australia was underpinned by a Commonwealth Act (the *National Crime Authority Act 1984*), and complementary enabling legislation in each State and Territory (in Queensland, the *National Crime Authority (State Provisions) Act 1985* (the NCA State Provisions Act). The purpose of the NCA State Provisions Act was to extend the jurisdiction of the NCA to include Queensland offences that had no link to an offence against Commonwealth law (no 'federal aspect').

In November 2002, the Inter-Governmental Committee on the National Crime Authority agreed to recognise that, as the ACC would be based on a national co-operative statutory scheme, there was a need for States to enact complementary legislation to the new governing legislation for the ACC.

The *Australian Crime Commission Establishment Act 2002* (Cth) commenced on 1 January 2003. This Act amended the *National Crime Authority Act 1984* (Cth) (the 'NCA Act') in a number of ways, including changing the name of that Act to the *Australian Crime Commission Act 2002* (the ACC Act). Upon commencement of the ACC Act, the NCA State Provisions Act became redundant and now requires repealing and replacing with legislation that reflects the provisions of the new Commonwealth legislation.

The objective of this Bill is to extend the jurisdiction of the ACC to include Queensland offences that have no federal aspect by conferring certain duties, powers and functions on the ACC. This proposed extension to the jurisdiction of the ACC is consistent with the extended jurisdiction that was afforded to the NCA by the NCA State Provisions Act.

Section 55A of the ACC Act gives legislative consent to the conferral of powers, duties and functions on the ACC or particular classes of persons under the ACC Act, by State laws. That section further requires that powers, duties and functions conferred under a State law on the ACC or a class of persons must be of the same kind conferred on the ACC or those persons under that Act, or by a regulation. This means that the Bill largely mirrors the ACC Act. Broadly, the Bill:

- (a) provides for the functions of the ACC under State law, including the functions of conducting intelligence operations and investigations in relation to State offences that do not have a federal aspect ('ACC State intelligence operations' and 'ACC State investigations');
- (b) provides for the functions of the Board and CEO under State law. The Board's functions will include the authorisation of the use of special powers, while the CEO is to be responsible for co-ordinating ACC State intelligence operations and investigations. These functions will complement the provisions of the Commonwealth Act that establish the ACC's governance regime;
- (c) provides for the investigative powers of the ACC under State law, including search powers under warrant and coercive examination powers. These powers will be available to the ACC in relation to both its investigatory and criminal intelligence functions;
- (d) contains requirements to ensure the appropriate use of the ACC's special powers. The Board will be empowered to authorise the use of special powers where a specified threshold test is met, and the Board's authorisation of special powers will be subject to a number of additional safeguards in the form of special requirements for the composition of the Board, special voting requirements and a power for the Inter-Governmental Committee on the ACC to revoke the authorisation of special powers;
- (e) provides for the ACC's examination powers under State law to be exercised by examiners, who will be independent statutory officers appointed under the Commonwealth Act;

- (f) creates offences under the Act to facilitate the effective performance of the ACC's functions under State law. These offences will include failing to attend an examination or to answer questions, and failing to produce documents or things when required to do so by a summons. The offences in the Bill reflect the offences contained in the Commonwealth Act and the existing NCA State Provisions Act;
- (g) repeals existing NCA State Provisions Act and contains necessary transitional provisions to ensure that the transition from the NCA to the ACC under State law is as seamless as possible; and
- (h) includes consequential amendments to other Acts.

The significant differences between the NCA Act and the ACC Act that are reflected in this Bill include:

- establishing the Board of the ACC and describing its functions;
- renaming and revising the functions of the Inter-Governmental Committee on the ACC (IGC-ACC);
- creating the positions of CEO and Examiners;
- the availability of coercive powers for the purpose of undertaking intelligence operations;
- the Board of the ACC being primarily responsible for approving investigative and operational priorities; and
- examinations are conducted by independent officers instead of being conducted by a member of the NCA.

Means of achieving policy objectives

The Bill achieves the policy objectives by repealing the NCA State Provisions Act and replacing it with legislation that, whilst achieving the same general purpose of the NCA State Provisions Act, accurately reflects the changes between the NCA Act and the ACC Act.

Alternative means of achieving policy objectives

There are no other viable alternatives that achieve the policy objectives other than the proposed Bill.

Administrative cost to Government for implementation

There is no financial impact to the State as a result of this Bill.

Consistency with fundamental legislative principles

The Bill includes a coercive examination power that is matched with appropriate safeguards, in accordance with the national scheme.

Consultation

Consultation has taken place with relevant government agencies including the Department of the Premier and Cabinet, the Department of Justice and the Attorney-General, and the Crime and Misconduct Commission. Consultation with respect to the development of the *Australian Crime Commission Establishment Bill 2002* (the Bill) was undertaken by the Australian Crime Commission Implementation Committee, Commonwealth Attorney-General's Department, overseen by a Steering Committee of Commonwealth and State representatives.

NOTES ON PROVISIONS**PART 1—PRELIMINARY****Short title**

Clause 1 specifies the short title of the Bill.

Commencement

Clause 2 provides the Bill commences on a date fixed by proclamation

Interpretation

Clause 3 identifies schedule 2 as containing definitions for the Act. The clause adopts the terms used in the *Australian Crime Commission Act 2002 (Cth)*. The clause also specifies that a note in the text is part of the Act.

Act binds all persons

Clause 4 provides that the Bill binds the Crown.

**PART 2—THE AUSTRALIAN CRIME COMMISSION,
THE BOARD AND THE INTER-GOVERNMENTAL
COMMITTEE*****Division 1—The Australian Crime Commission*****Functions of the ACC**

Clause 5 sets out the functions of the ACC with respect to State offences. These functions, which replicate some of the functions that the ACC has under the Commonwealth Act, include undertaking ACC State intelligence operations and ACC State investigations. The section compliments the functions imposed under s 7A of the ACC Act.

CEO to manage ACC operations/investigations

Clause 6 sets out the functions of the CEO of the ACC. These functions, which replicate some of the functions of the CEO under s 46A of the ACC Act, include managing, coordinating and controlling ACC State intelligence operations and investigations.

Counsel assisting ACC

Clause 7 gives the CEO of the ACC the power to appoint a lawyer to assist the ACC as counsel in relation to ACC State intelligence operations or investigations generally or in relation to a particular matter or matters. A similar authority is conferred under s 50 of the ACC Act.

Division 2—The Board of the ACC

Functions of the Board

Clause 8 sets out the functions of the Board with respect to ACC State intelligence operations and investigations. The section is similar to s 7C of the ACC Act.

The Board has the function of authorising all ACC State intelligence operations and investigations, and determining when such operations or investigations are a special operation or investigation. Such a determination by the board enables access to coercive powers under parts 3 & 4 of the Bill. Before making a determination the Board must consider the effectiveness of alternative means of gathering intelligence or conducting an investigation.

The Bill confers an authority on the IGC-ACC to revoke a determination of the Board that such an operation or investigation is special (a 'special determination').

Board meetings

Clause 9 provides the manner in which Board meetings will be held. The Chair of the Board may convene meetings of the Board, and must ensure that meetings of the Board are scheduled to meet the requirements set out in section 7D of the ACC Act.

Presiding at Board meetings

Clause 10 provides that the Chair of the Board or another eligible Commonwealth Board member (as defined in the ACC Act, section 4: 'Interpretation') nominated by the Chair must preside at Board meetings. Under the ACC Act the Commissioner of the Australian Federal Police is the Chair of the Board.

Quorum at Board meetings

Clause 11 provides that a quorum of the Board is constituted by seven members, not including the CEO.

Voting at Board meetings

Clause 12 provides that, other than for a question concerning special powers, a simple majority vote will determine decisions of the Board.

Determinations as to whether an ACC State intelligence operation or investigation is a special operation or investigation must have the agreement of at least nine Board members, including at least two eligible Commonwealth members.

This clause also provides that the CEO does not have voting rights on any question at a meeting of the Board, and that the person presiding at a Board meeting has both a deliberative vote, and if necessary, a casting vote.

Conduct of Board meetings

Clause 13 provides that the Board may regulate proceedings at its meetings as it considers appropriate, and requires the Board to ensure minutes are kept of its meetings.

Resolutions outside of Board meetings

Clause 14 enables the Board to make decisions by resolution out of session. This provision enables the Board to consider matters without having to convene a formal meeting. The special rules that apply to a determination of the Board that an ACC State intelligence operation or investigation is a special operation or investigation, will continue to apply to any such determination that is made out of session.

Board committees

Clause 15 enables the board to establish committees to carry out the functions of the board. Such a committee is subject to the control of the board and is not permitted to determine whether an investigation is a special investigation or intelligence operation is a special operation.

Division 3—The Inter-Governmental Committee**Functions of Committee**

Clause 16 relates to the Inter-Governmental Committee established under s 8 of the ACC Act. The clause enables the Committee to request

information from the Chair of the Board in relation to a determination of the Board. Additionally the Committee may, within 30 days of having made such a request, revoke the special determination of the Board.

Where the Chair of the Board does not comply with a request of the Committee made under this clause on the ground that disclosure of the information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Committee may refer the request to the State Minister. Where such a referral is made, the State Minister must determine in writing whether he or she agrees with the Chair of the Board and notify the Chair of the Board and the Committee of his or her determination.

A resolution of the Committee to revoke a special determination of the Board must be made with the agreement of the member of the Committee representing the Commonwealth and at least five other members.

Upon revoking a special determination of the Board, the Committee must notify the Chair of the Board and the CEO of the revocation. The revocation takes effect when the CEO becomes notified.

PART 3—EXAMINATIONS

Examinations

Clause 17 provides that an examiner may conduct an examination for the purpose of a special ACC State operation or investigation.

Conduct of examination

Clause 18 provides that an examiner may regulate the conduct of proceedings as he or she thinks fit. It provides for legal representation of witnesses and, in some circumstances, non-witnesses. It also regulates the presence of persons at an examination, examination of witnesses, and confidentiality of evidence. The section includes offences for being present at an examination without authority and making a publication in contravention of a direction given by the examiner under this clause.

Power to summon witnesses and take evidence

Clause 19 provides that an examiner may summon a person to appear before him or her to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

Before issuing a summons, the examiner must be satisfied that the issuing of the summons is reasonable in all the circumstances, and must also record in writing the reasons for issuing the summons.

A copy of the determination of the Board stating that the intelligence operation is a special operation or the investigation is a special investigation must accompany the summons.

Also, the summons must, unless the examiner is satisfied that to do so would prejudice the operation or investigation, set out as far as reasonably practicable, the general nature of the matters in relation to which the examiner intends to question the person. This requirement does not limit the examiner from questioning the person in relation to any matter that relates to a special State intelligence operation or investigation.

An examiner at an examination may require a person to produce a document or thing, and may take evidence on oath or affirmation.

Power to obtain documents

Clause 20 provides that an examiner may, by written notice, require a person to attend before the examiner or a member of staff of the ACC to produce specified documents or things relevant to a special ACC operation/ investigation. A notice may be issued regardless of whether an examination before an examiner is being carried out.

Before issuing a notice, the examiner must be satisfied the issuing of the notice is reasonable in all the circumstances, and must also record in writing the reasons for issuing the notice.

A person to whom a notice is issued under this clause commits an offence if they refuse or fail to comply with the notice.

The protections provided under clause 23 of the Bill apply in relation to a person required to produce a document or thing under this Clause in the same manner as if the person were required to produce that document or thing in relation to an examination before an examiner.

Disclosure of summons or notice may be prohibited

Clause 21 sets out the circumstances where an examiner may, or must, include a notation in a summons or notice issued under clause 19 ('Power to summons witness and take evidence') or clause 20 ('Power to obtain documents') to the effect that the disclosure of information about the summons or notice is prohibited except as set out in the notation.

A notation must be accompanied by a written statement setting out the rights and obligations conferred or imposed by clause 22 ('Offences of disclosure') on the person who was served or given the summons or notice.

The clause also sets out the circumstances where a notation issued under this clause is deemed to be cancelled. Where a notation is deemed to be cancelled under this clause, the CEO must serve a written notice of that fact on each person who was served or given the summons or notice containing the notation.

Offences of disclosure

Clause 22 provides for offences associated with disclosing the existence of, or anything about a summons, notice, or any official matter connected with the summons or notice, by the person to whom the summons or notice was issued or given.

This clause also stipulates the circumstances where disclosure of the information does not constitute an offence.

The clause ceases to apply to a summons or notice after a notation contained in the summons or notice pursuant to clause 21 ('Disclosure of summons or notice may be prohibited') is cancelled, or where five years have elapsed after the issue of the summons or notice.

Failure of witnesses to attend and answer questions

Clause 23 provides for offences by a person who refuses or fails to:

- attend as required by a summons to appear as a witness at an examination before an examiner;
- attend at an examination before an examiner from day to day unless excused or released from further attendance by the examiner;
- take an oath or affirmation, when required under clause 19 ('Power to summons witness and take evidence');

- answer questions that he or she is required to answer by the examiner at an examination; and
- produce a document or thing at an examination before an examiner that he or she was required to produce by summons under this Bill.

This clause also contains provisions relating to professional legal privilege and protection against self-incrimination.

Warrant for arrest of witness

Clause 24 enables, upon application by an examiner, a Judge of the Federal Court or the Supreme Court to issue a warrant for the apprehension of a person if that Judge is satisfied that there are reasonable grounds to believe that the person:

- who is a person who has been ordered to deliver their passport to the examiner under clause 28 ('Order for delivery to examiner of passport of witness') of this Bill is likely to leave Australia for the purpose of avoiding giving evidence before an examiner; or
- who is a person for whom a summons has been issued for them to appear before an examination to give evidence and/or to produce documents or things named in the summons at an examination has:
 - absconded or attempted to abscond; or
 - is otherwise attempting to evade service of the summons; or
- has failed to attend at an examination as required by a summons served on them under this proposed Bill, or is likely to do so.

This clause also contains provisions relating to the execution of the warrant and the detention of the person named in the warrant.

False or misleading evidence

Clause 25 provides for the offence of giving false or misleading evidence at an examination before an examiner.

Protection of witnesses from harm or intimidation

Clause 26 allows an examiner to make arrangements to ensure the safety of a person is not prejudiced or they are not subject to intimidation or harassment. The power applies to a person who is appearing or has appeared at an examination before an examiner or proposes to give, or has given, information or documents to the ACC other than in an examination before an examiner.

Legal protection of examiners, counsel and witnesses

Clause 27 provides legal protection and immunity to:

- an examiner in the performance of their functions or the exercise of their powers as an examiner; and
- a lawyer assisting the ACC or an examiner or representing a person at an examination.

Respectively, the protection and immunity offered are the same as for a Justice of the High Court and a barrister appearing for a party in proceedings in the High Court.

The same protections given to a witness in the High Court are given to a person summoned to appear as a witness at an examination.

Order for delivery to examiner of passport of witness

Clause 28 enables, upon application by an examiner, a Judge of the Federal Court to make an order requiring a person to appear before a Judge of the Federal Court at a later time and date and show cause why the person should not be ordered to deliver their passport to the examiner.

Such an order may only be made where the Judge is satisfied, by evidence on oath that:

- a summons has been issued under the provisions of this Bill (whether or not the summons has been served) requiring the person to appear before an examiner at an examination in connection with a special ACC State intelligence operation or investigation;
- it is reasonably believed that the person may be able to give evidence (or further evidence) or produce documents to the examiner that is or are relevant to, and of particular significance to, the special operation or investigation; and

- there are reasonable grounds for suspecting that the person intends to leave Australia and has in his or her possession, custody or control a passport issued to him or her.

The clause also a Judge to require the person to deliver their passport to the examiner, and authorise the examiner to retain the passport for a specified period of not more than one month, which may be extended by order for periods of up to one month. The clause limits the total period of retention to 3 months. Additionally, a Federal Court Judge may, upon the application of the person to whom the passport has been issued, revoke the order made under this clause authorising the examiner to retain the passport.

PART 4—SEARCH WARRANTS

Search warrants

Clause 29 enables an 'eligible person' to apply to an 'issuing officer' for a search warrant in relation to a special ACC State intelligence operation or investigation.

The eligible person must have reasonable grounds for suspecting 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 State intelligence operation or investigation. The suspicion must relate to the thing or things being on the place on a particular day including a day in the future up to one month from the date on which the application is made. Additionally, the eligible person must believe on reasonable grounds that if a summons were issued for the production of the thing or things, they might be concealed, lost, mutilated or destroyed.

The issuing officer may issue a warrant authorising a person named in the warrant, with such assistance as he or she thinks fit, to enter and search the place named in the warrant and seize any thing or things of a particular kind connected with a special ACC State intelligence operation or investigation found at the place.

The issuing officer must not issue a warrant unless he or she:

- has been provided with an affidavit setting out the grounds on which the issue of the warrant is being sought;

- has been provided with any additional information concerning the grounds that they require; and
- is satisfied that there are reasonable grounds for issuing the warrant.

If the issuing officer has issued a warrant under this clause, they must state on the affidavit furnished to him or her setting out grounds for the warrant, which of the grounds and what additional grounds they relied upon to justify the issuing of the warrant.

A warrant issued under this clause must:

- include a statement of the purpose for which the warrant is issued, including a reference to the relevant special ACC State intelligence operation or investigation;
- state when entry to the place may be made;
- include a description of the things that may be seized under the warrant; and
- state the expiry date of the warrant (which must be not more than one month from the date of the issue of the warrant).

Where a person conducting a search under a warrant issued under this clause finds a thing that they believe on reasonable grounds to be evidence of an offence against a law of the Commonwealth or a State, and they also believe that it is necessary to seize the thing to prevent its concealment, loss, mutilation or destruction, they may seize the thing, and if they do, the thing is to be taken, for the purposes of this Bill, to have been seized pursuant to the warrant. This provision allows things found during a search made under the warrant, but which are not described as things authorized to be seized under the warrant, to be seized as long as they are reasonably believed to evidence of an offence.

Things seized pursuant to a warrant issued under this clause may be retained by the head of the special ACC State intelligence operation or investigation to which the thing is relevant for as long as reasonably necessary for the purposes of the operation or investigation.

When retention of a thing so seized is no longer reasonably necessary for the purpose of the operation or investigation, a person participating in the operation or investigation must cause the thing to be delivered to:

- if the thing may be used as evidence in a civil proceeding in respect of a matter connected with, or arising out of, an offence

to which the operation or investigation relates, the authority or person responsible for taking such proceedings; or

- to a person who appears to be entitled to the possession of the thing;

unless it has been otherwise furnished to a prosecuting authority of the Commonwealth or a State as evidence of an offence in accordance with clause 34 ('Performance of functions') of this Bill.

Application by telephone for search warrants

Clause 30 enables an application for a search warrant to be made by an eligible person by telephone. This may only be done in urgent circumstances and where the eligible person considers it necessary to do so.

Prior to making the application, the eligible person must prepare an affidavit setting out the grounds on which the issue of the warrant is being sought (as required for a normal search warrant application), but may, if it is necessary to do so, make the application before the affidavit has been sworn.

This clause also prescribes steps that must be taken by the issuing officer and by the applicant for the warrant, to ensure the validity of the warrant.

PART 5—PERFORMANCE OF FUNCTIONS AND EXERCISE OF POWERS

Consent of Board may be needed before functions can be performed

Clause 31 provides that any conferral of a function on a Commonwealth body of person by the Bill is subject to provisions in the ACC Act requiring consent of the Board before the function can be performed.

For example, sections 55A(3) and 55A(5A) of the ACC Act, respectively, require the consent of the Board before:

- the ACC can undertake an intelligence operation or conduct an investigation under a law of a State; or

- the CEO or an examiner can perform a duty or function, or exercise a power, under a law of a State relating to an intelligence operation or an investigation.

Functions not affected by State laws

Clause 32 provides that a Commonwealth body or person is not precluded by any law of the State from performing a function conferred by the Bill.

Extent to which functions are conferred

Clause 33 provides that the Bill does not intend to impose a duty on a Commonwealth body or person to perform a function, if to impose that duty would be outside of the legislative power of the State Parliament.

Performance of functions

Clause 34 deals with what the ACC must do with evidence that it obtains during the course of performing its functions under this Bill.

Where the evidence relates to an offence against a Commonwealth or State law that would be admissible in a prosecution for the offence, or evidence that would be admissible in a confiscation proceeding, the CEO of the ACC is required to ensure that the evidence is provided to the relevant authority for commencing the prosecution or confiscation proceedings.

Also, the clause enables the Board to make a recommendation to the Commonwealth Minister or the relevant State Minister for the reform of the law relating to relevant offences, the reform of administrative practices, or the reform of administration of the courts in relation to trials of relevant offences, where the Board considers such recommendations should be made as a result of the performance of the ACC's functions.

Finally, the clause provides that where the ACC obtains information or intelligence in the course of performing one of its functions under this Bill, then that information or intelligence may be used for the purposes of other ACC functions. For example, information and intelligence that is obtained during the course of the ACC's general intelligence function may be used in an intelligence operation and information obtained during an intelligence operation may be used during the course of an investigation into federally relevant criminal activity.

Functions of federal judicial officers

Clause 35 clarifies the effect of the performance of functions conferred on federal judicial officers under this Bill. In particular:

- such functions are conferred on a federal judicial officer in a personal capacity and not as a court or a member of a court;
- a federal judicial officer need not accept any such functions;
- anything done or made by a federal judicial officer under this Bill has effect only by virtue of the Bill and is not to be taken by implication to be done or made by a court; and
- a federal judicial officer performing any such functions has the same protection and immunity as if he or she were performing the function as, or as a member of, a court.

Limitation on challenge to Board determination

Clause 36 provides that where a determination is made by the Board regarding the use of coercive powers by the ACC under this proposed Bill, any act or thing done by the ACC because of that determination is protected from legal challenge on the ground that the determination was not lawfully made. This protection would not extend to a proceeding instituted by the Attorney-General of the Commonwealth or of a State.

Cooperation with law enforcement agencies and coordination with overseas authorities

Clause 37 requires the ACC, in performing its functions under this proposed Bill, to, as far as practicable, work in co-operation with other law enforcement agencies. Additionally, the ACC may co-ordinate its activities with the activities of authorities and persons in other countries performing functions similar to the functions of the ACC.

Incidental powers of ACC

Clause 38 provides the ACC with the power to do all things necessary for or in connection with, or reasonably incidental to, the performance of its functions under this Bill. Further, any specific powers conferred on the ACC by this Bill should not be taken to limit the generality of this clause.

PART 6—GENERAL

Double jeopardy

Clause 39 makes it clear that where a person has been punished for an offence under the ACC Act for an offence that they could have also been punished for under this Bill, the person is not liable to be punished for the offence under this Bill.

Proceedings for an offence

Clause 40 prescribes limitations on time for summary proceedings, the election of matters as either summary or on indictment, limitations on dealing with offences summarily, and limitations on punishment when an offence is dealt with summarily.

Indictable offences

Clause 41 declares that an offence punishable by at least 5 years imprisonment is a crime.

Arrangements for Board to obtain information or intelligence

Clause 42 provides that the Minister may make an arrangement with the Commonwealth Minister for the Board to be given by the State, or an authority of the State, information or intelligence relating to relevant criminal activities.

Administrative arrangements with the Commonwealth

Clause 43 provides that the Minister may make an arrangement with the Commonwealth Minister for the State to make available suitable persons employed by the State or an authority of the State to perform services for the ACC.

Judges to perform functions under the ACC Act

Clause 44 makes it clear that a Supreme Court judge of the State may perform the functions conferred on him or her by sections 22, 23 or 31 of

the ACC Act. These sections of the ACC Act relate to search warrants and warrants for the arrest of a witness.

Providing reports and information

Clause 45 requires and/or enables the CEO of the ACC and the Chair of the ACC Board, in certain circumstances, to provide information relating to:

- the conduct of the ACC in the performance of its functions under this Bill; and
- ACC operations/investigations authorised under this Bill;

to the Commonwealth Minister, a State Minister, the ACC Inter-Governmental Committee, and law enforcement and other agencies of the Commonwealth, States and Territories.

Secrecy

Clause 46 aims to protect information acquired by the CEO, a member of the Board, a member of the Staff of the ACC, or an examiner as a result of the performance of their functions under this Bill. This is achieved by creating an offence for those persons to make a record of any of the information, or to divulge or communicate to any person any of the information, otherwise than for the purposes of this Bill, the ACC Act or a Act of another State the corresponds to this Bill.

Additionally, this clause provides that the CEO, a member of the Board, a member of the Staff of the ACC, or an examiner cannot be required to:

- produce in court any document that has come into their possession; or
- divulge or communicate to a court a matter or thing that has come to their notice;

as a result of the performance of their functions under this Bill, unless 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 for the purposes of:

- carrying into effect the provisions of this Bill, the ACC Act or a Act of another State the corresponds to this Bill; or

- a prosecution commenced as a result of an ACC intelligence operation or investigation.

Delegation

Clause 47 provides that the CEO may delegate any or all of his or her functions under this Bill to a member of the staff of the ACC who is an SES employee or an acting SES employee. Any delegation of the CEO's functions must be made in writing.

Liability for damages

Clause 48 provides protection to members of the ACC Board from an action or other proceeding for damages for any act or omission done in good faith in the performance or purported performance of a function under this Bill, by removing their liability in such cases.

Obstructing, hindering or disrupting the ACC or an examiner

Clause 49 creates an offence for persons who obstruct or hinder the ACC or an examiner in the performance of their functions under this proposed Bill, and who disrupt an examination before an examiner.

Public meetings and bulletins

Clause 50 enables the ACC Board to hold public meetings for the purpose of informing the public about, or receiving submissions in relation to, the performance of the ACC's functions, including its functions under this Bill. This clause also provides that the ACC Board may publish bulletins for the purpose of informing the public about these functions.

The Board cannot, however, disclose information at these meetings or in these bulletins that 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.

Annual report

Section 61 of the ACC Act requires the Chair of the ACC Board to prepare, as soon as practicable after each 30 June, a report of the ACC's operations during the year that ended on that 30 June. This report is

furnished to the IGC-ACC, which is to provide the report and any comments it thinks fit, to the Commonwealth Minister and appropriate State Ministers. The Commonwealth Minister must ensure that a copy of the report and any comments made by the IGC-ACC is laid before each House of the Commonwealth Parliament within 15 sitting days of that House after he or she has received the report.

Clause 51 ensures that activities by the ACC in relation to State matters are included in the same annual report prepared under s 61 of the ACC Act. Also, the clause makes it clear that the conditions governing what the annual report can and cannot contain, and the responsibilities of persons with respect to the annual report that apply under section 61 of the ACC Act equally apply to ACC activities conducted pursuant to the provisions of this Bill.

This clause also requires the State Minister to ensure a copy of any report and comments of the IGC-ACC received by him or her are tabled before State Parliament under the same terms that apply to the Commonwealth Minister.

Things done for multiple purposes

Clause 52 provides that the validity of anything done for the purposes of this Bill is not affected only because it was done also for the purposes of the Commonwealth ACC Act.

Regulation-making power

Clause 53 provides a regulation making power.

PART 7—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

Division 1—Repeal

Repeal

Clause 54 repeals the *National Crime Authority (State Provisions) Act 1985*.

Division 2—Saving and transitional provisions

Terms used in this division

Clause 55 defines two terms used in the division.

Particular investigations taken to be special investigation

Clause 56 is a transitional provision with respect to NCA investigations commenced under the NCA State Provisions Act, and that will continue under the new legislation.

Assembling and giving evidence obtained by the NCA

Clause 57 is a transitional provision with respect to evidence seized under the NCA State Provisions Act, and that was retained by the NCA until it was provided to the ACC. That evidence may be transferred to another agency in accordance with cl 34(1) of the Bill.

Limitation on challenges to validity of references

Clause 58 is a saving provision to ensure the protection given to Ministerial references under s 8 of the NCA State Provisions Act continues to have effect despite the repeal of that Act.

Arrangements to obtain information or intelligence

Clause 59 is a saving provision to ensure any Ministerial arrangement made under s 11 of the NCA State Provisions Act continues to have effect despite the repeal of that Act.

Things seized under search warrants

Clause 60 is a transitional provision with respect to evidence seized under a search warrant issued under the NCA State Provisions Act, and that was retained by the NCA until it was provided to the ACC. That evidence may be treated as if it was seized under a search warrant issued under the new legislation.

Directions as to publication

Clause 61 is a saving and transitional provision with respect to a publishing direction in force under the NCA State Provisions Act immediately before the *Australian Crime Commission Establishment Act 2002 (Cth)* commenced. These directions continue to have effect despite the repeal of the NCA State Provisions Act, and may be treated as a direction given under the new legislation.

Disclosure of summons or notice

Clause 62 is a saving and transitional provision with respect to a notation in force under the NCA State Provisions Act immediately before the *Australian Crime Commission Establishment Act 2002 (Cth)* commenced.

Witness protection

Clause 63 is a saving provision to ensure any arrangement made under s 24 of the NCA State Provisions Act continues to have effect despite the repeal of that Act.

Administrative arrangements in relation to the NCA

Clause 64 is a saving provision to ensure any Ministerial arrangement made under s 28(b) of the NCA State Provisions Act continues to have effect despite the repeal of that Act.

Secrecy obligations

Clause 65 is a saving provision to ensure the secrecy requirements imposed under s 31 of the NCA State Provisions Act continue to have effect despite the repeal of that Act.

Validation of administrative actions

Clause 66 is a saving provision to ensure the continued protection of decisions made under the NCA State Provisions Act.

Transitional regulation-making power

Clause 67 allows further transitional provisions to be made under a regulation if necessary. Any transitional regulation made expires after 12 months after the section commences.

PART 8—AMENDMENT OF ACTS**Acts amended in sch 1**

Clause 68 provides that further consequential amendments to other statutes are contained in schedule 1.

SCHEDULE 1

AMENDMENT OF ACTS

CORRECTIVE SERVICES ACT 2000

Amendment 1 to the *Corrective Services Act 2000* amends the definition of "law enforcement agency" under the *Corrective Services Act 2000*, to recognise the replacement of the NCA with the ACC.

CRIME AND MISCONDUCT ACT 2001

Amendments 1 to 6 to the *Crime and Misconduct Act 2001* amend this Act in several respects, to recognise that the CEO of the ACC now performs the functions of chairperson of the NCA. The inclusion of new subsections 278(1A) and (6) is in recognition of the limitations imposed under s 55A of the ACC Act

DRUGS MISUSE ACT 1986

Amendment 1 to the *Drugs Misuse Act 1986* amends the definition of "police officer" under this Act, to recognise the replacement of the NCA with the ACC.

FREEDOM OF INFORMATION ACT 1992

Amendment 1 to the Freedom of Information Act 1992 amends this Act to recognise the proposed replacement of the National Crime Authority (State Provisions) Act 1985 with the Australian Crime Commission (Queensland) Act 2003.

POLICE POWERS AND RESPONSIBILITIES ACT 2000

Amendments 1 to 8, 10 and 11 amend the Police Powers and Responsibilities Act 2000 (the PPRA) to recognise the replacement of the NCA with the ACC, and the proposed replacement of the National Crime Authority (State Provisions) Act 1985 with the Australian Crime Commission (Queensland) Act 2003.

Amendment 9 amends schedule 1 of the PPRA to include the proposed Australian Crime Commission (Queensland) Act 2003. Schedule 1 of the PPRA relates to ss 9 and 10. The PPRA was a consolidating statute. As s 9 of the PPRA indicates the object was that police officers generally rely on the PPRA and not a multiplicity of statutes. However, s 10 recognises that there may be special statutes which may provide a more appropriate power for a police officer. In accordance with the national scheme the Bill proposes conferring an authority on an eligible person to apply for a search warrant. Under the Commonwealth ACC Act an eligible person is defined to include a member of the staff of the ACC who is also a member of the Police Force of a State. It was not previously necessary to include the NCA State Provisions Act in sch 1 as under that Act only a member of the NCA could apply for a search warrant.

SCHEDULE 2

DICTIONARY

Schedule 2 contains definitions of terms used in the Bill