



Australian Crime Commission Establishment Act 2002

Act No. 125 of 2002 as amended

This compilation was prepared on 20 June 2003

[This Act was amended by Act No. 41 of 2003]

Amendment from Act No. 41 of 2003

[Schedule 2 (item 1AA) amended section 2(1) (item 5)
Schedule 2 (item 1AA) commenced on 10 December 2002]

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

[Assented to 10 December 2002]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	10 December 2002
2. Schedule 1	1 January 2003	1 January 2003
3. Schedule 2, items 1 to 115	1 January 2003	1 January 2003
4. Schedule 2, items 116 and 117	The later of: (a) the start of the day on which Schedule 1 to this Act commences; and (b) immediately after the commencement of section 213 of the <i>Proceeds of Crime Act 2002</i>	1 January 2003

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
5. Schedule 2, item 118	The later of: (a) the start of the day on which Schedule 1 to this Act commences; and (b) immediately after the commencement of Schedule 3 to the <i>Communications Legislation Amendment Act (No. 1) 2003</i>	
6. Schedule 2, items 119 to 226	1 January 2003	1 January 2003
7. Schedule 3, items 1 to 6	Immediately after the commencement of Schedule 1 to this Act, subject to subsection (3)	Does not commence at all
8. Schedule 3, items 7 to 14	Immediately after the commencement of section 3 of the <i>Proceeds of Crime Act 2002</i> , subject to subsection (4)	1 January 2003
9. Schedule 3, items 15 and 16	Immediately before the commencement of section 3 of the <i>Proceeds of Crime Act 2002</i> , subject to subsection (4)	1 January 2003
10. Schedule 3, item 17	Immediately after the commencement of section 3 of the <i>Proceeds of Crime Act 2002</i> , subject to subsection (4)	1 January 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If section 3 of the *Proceeds of Crime Act 2002* commences on or after 1 January 2003, the provisions covered by item 7 of the table do not commence at all.
- (4) If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, the provisions covered by items 8, 9 and 10 of the table do not commence at all.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the National Crime Authority Act 1984

Part 1—Amendments

1 Title

Omit “a National Crime Authority”, substitute “**the Australian Crime Commission, and for related purposes**”.

2 Section 1

Omit “*National Crime Authority Act 1984*”, substitute “*Australian Crime Commission Act 2002*”.

3 Subsection 4(1)

Insert:

ACC means the Australian Crime Commission established by section 7.

4 Subsection 4(1)

Insert:

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.

5 Subsection 4(1) (definition of *Authority*)

Repeal the definition.

6 Subsection 4(1)

Insert:

Board means the Board of the ACC.

7 Subsection 4(1)

Insert:

CEO means the Chief Executive Officer of the ACC.

8 Subsection 4(1) (definition of *Chair*)

Repeal the definition.

9 Subsection 4(1)

Insert:

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*.

10 Subsection 4(1) (paragraph (a) of the definition of *eligible person*)

Repeal the paragraph, substitute:

- (a) an examiner; or

11 Subsection 4(1) (paragraph (b) of the definition of *eligible person*)

Omit “Authority”, substitute “ACC”.

12 Subsection 4(1)

Insert:

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

13 Subsection 4(1) (paragraphs (a) and (b) of the definition of *federally relevant criminal activity*)

Omit “relevant offence”, substitute “serious and organised crime”.

14 Subsection 4(1) (definition of *hearing officer*)

Repeal the definition.

15 Subsection 4(1)

Insert:

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

16 Subsection 4(1) (definition of *Judge*)

Repeal the definition.

17 Subsection 4(1) (definition of *member*)

Repeal the definition.

18 Subsection 4(1)

Insert:

member of the staff of the ACC means:

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

19 Subsection 4(1) (definition of *member of the staff of the Authority*)

Repeal the definition.

20 Subsection 4(1) (definition of *original reference*)

Repeal the definition.

21 Subsection 4(1) (definition of *prescribed investigation*)

Repeal the definition.

22 Subsection 4(1) (definition of *related reference*)

Repeal the definition.

23 Subsection 4(1) (definition of *relevant criminal activity*)

Omit “a relevant offence”, substitute “a serious and organised crime”.

24 Subsection 4(1) (definition of *relevant offence*)

Repeal the definition.

25 Subsection 4(1)

Insert:

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 of a kind prescribed by the regulations or involves any of the following:
 - (i) theft;
 - (ii) fraud;
 - (iii) tax evasion;
 - (iv) money laundering;
 - (v) currency violations;
 - (vi) illegal drug dealings;
 - (vii) illegal gambling;
 - (viii) obtaining financial benefit by vice engaged in by others;
 - (ix) extortion;
 - (x) violence;
 - (xi) bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory;
 - (xii) perverting the course of justice;
 - (xiii) bankruptcy and company violations;
 - (xiv) harbouring of criminals;
 - (xv) forging of passports;
 - (xvi) firearms;
 - (xvii) armament dealings;

- (xviii) illegal importation or exportation of fauna into or out of Australia;
- (xix) cybercrime;
- (xx) matters of the same general nature as one or more of the matters listed above;

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; 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.

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

26 Subsection 4(1)

Insert:

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.

27 Subsection 4(1) (definition of *special investigation*)

Repeal the definition.

28 Subsection 4(1) (definition of *Task Force*)

Repeal the definition.

29 Subsection 4(2)

Repeal the subsection, substitute:

- (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.

30 Paragraph 4A(1)(b)

Repeal the paragraph, substitute:

- (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.

31 Paragraph 4A(2)(d)

Repeal the paragraph, substitute:

- (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).

32 Subsection 4A(6)

Insert:

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

33 Part II (heading)

Repeal the heading, substitute:

Part II—The Australian Crime Commission (the ACC)

34 Division 1 of Part II (heading)

Repeal the heading, substitute:

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

35 Section 7

Repeal the section, substitute:

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.

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

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

Special operations

- (2) The Board may determine, in writing, that an intelligence operation is a special operation. Before doing so, it must consider whether methods of collecting the criminal information and intelligence that do not involve the use of powers in this Act have been effective.

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

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

Special investigations

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

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

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

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.

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.

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).
- (4) However, the Board cannot determine that a committee has the function of determining whether an intelligence operation is a special operation or whether an investigation into matters relating to federally relevant criminal activity is a special investigation.
- (5) In performing its functions, a committee must comply with any directions given to the committee by the Board.

Voting

- (6) A question arising at a meeting of a committee is to be determined by a majority of the votes of committee members present.
- (7) However, the CEO is not entitled to vote on any question arising at a meeting of a committee of which he or she is a member.

Informing other Board members of decisions

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

Conduct of committee meetings

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

36 Before section 8

Insert:

Subdivision C—The Inter-Governmental Committee

36A At the end of subsection 8(5)

Add “There must be a minimum of 2 meetings each calendar year.”.

36B Subsection 8(7)

Repeal the subsection, substitute:

- (7) A resolution:
- (a) which, without being considered at a meeting of the Committee, is referred to all members of the Committee; and
 - (b) of which:
 - (i) if subparagraph (ii) does not apply—a majority of those members, or if a majority including a particular member or particular members is required for the resolution to have effect, a majority including that member or those members, indicate by telephone or other mode of communication to the member of the Committee representing the Commonwealth that they are in favour; or
 - (ii) if the resolution is that the Committee make a request under subsection 9(2) or that the Committee revoke a determination made under subsection 7C(2) or (3)—the member of the Committee representing the Commonwealth is in favour and at least 5 other members indicate by telephone or other mode of communication to the member of the Committee representing the Commonwealth that they are in favour;
- is as valid and effectual as if it had been passed at a meeting of the Committee duly convened and held.

37 Subsection 8(9)

Omit “The Chair and the other members of the Authority”, substitute “Any member of the Board”.

38 Section 9

Repeal the section, substitute:

9 Functions of Committee

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

Request for more information about special determination

- (2) Within the period of 30 days beginning on the day the Committee is given a copy of a determination (a *special determination*) under subsection 7C(2) or (3), the Committee may by resolution, with the agreement of the member of the Committee representing the Commonwealth and at least 5 other members of the Committee, request the Chair of the Board to give further information to the Committee in relation to the determination.
- (3) Subject to subsection (4), the Chair of the Board must comply with the request.
- (4) If the Chair of the Board considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Chair must not give the Committee the information.
- (5) If the Chair of the Board does not give the Committee information on the ground that the Chair considers that disclosure of the information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Committee may refer the request to the Minister.
- (6) If the Committee refers the request to the Minister, the Minister:
 - (a) must determine in writing whether disclosure of the information could prejudice the safety or reputation of persons or the operations of law enforcement agencies; and
 - (b) must provide copies of that determination to the Chair of the Board and the Committee; and

- (c) must not disclose his or her reasons for determining the question of whether the information could prejudice the safety or reputation of persons or the operations of law enforcement agencies in the way stated in the determination.

Revoking the special determination

- (7) Within the period of 30 days beginning on the day the Committee makes a request under subsection (2) in relation to a special determination, the Committee may by resolution, with the agreement of the member of the Committee representing the Commonwealth and at least 5 other members of the Committee, revoke the determination.
- (8) The Committee must notify the Chair of the Board and the CEO of the revocation. The revocation takes effect when the CEO is so notified.

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

- (9) To avoid doubt, the revoking of the determination does not affect the validity of any act done in connection with the ACC operation/investigation concerned before the CEO is so notified.

Committee under no duty to consider whether to exercise powers

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

39 Section 10

Repeal the section.

40 Section 11

Repeal the section.

41 Before section 12

Insert:

Division 1A—Performance of functions and exercise of powers

42 Subsection 12(1)

Omit “Where, in carrying out an investigation in relation to a federally relevant criminal activity under paragraph 11(1)(b) or subsection 11(2), the Authority”, substitute “Where the ACC, in carrying out an ACC operation/investigation,”.

43 Subsection 12(1)

Omit “the Authority must”, substitute “the CEO must”.

44 At the end of subsection 12(1)

Add:

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

45 Subsection 12(1A)

Repeal the subsection.

46 Subsection 12(2)

Repeal the subsection.

47 Subsection 12(3)

Omit “its functions, the Authority”, substitute “the ACC’s functions, the Board”.

48 Subsection 12(3)

Omit “Authority may”, substitute “Board may”.

49 Subsection 12(6)

Omit “Authority” (wherever occurring), substitute “ACC”.

50 Section 13

Repeal the section.

51 Section 14

Repeal the section.

52 Paragraph 15(a)

Omit “a member or members”, substitute “an examiner or examiners”.

Note: The heading to section 15 is altered by omitting “**Members**” and substituting “**Examiners**”.

53 Paragraph 15(b)

Omit “member or members”, substitute “examiner or examiners”.

54 Paragraph 15(b)

Omit “Authority”, substitute “ACC”.

55 Section 15

Omit “member or members referred to” (first occurring), substitute “examiner or examiners referred to”.

56 Section 15

Omit “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”, substitute “ACC of its functions or powers under this Act, and the members of the staff of the ACC may be made available by the CEO in assisting the examiner or examiners”.

57 Section 16

Repeal the section, substitute:

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.

58 Section 17

Omit “Authority” (wherever occurring), substitute “ACC”.

59 Subsection 18(1)

Omit “Subject to subsections (2) and (3), the”, substitute “The”.

Note: The heading to section 18 is altered by omitting “**Authority**” and substituting “**Board**”.

60 Subsection 18(1)

Omit “Authority” (wherever occurring), substitute “Board”.

61 Subsections 18(2) and (3)

Repeal the subsections, substitute:

- (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.

62 Subsection 18(4)

Omit “Authority”, substitute “Board”.

63 Section 19

Omit “Authority has”, substitute “ACC has”.

Note: The heading to section 19 is altered by omitting “**Authority**” and substituting “**ACC**”.

64 Section 19

Omit “general functions or of its special”.

65 Section 19

Omit “Authority by”, substitute “ACC by”.

66 Subsection 19A(1)

Omit “A member”, substitute “An examiner”.

Note: The heading to section 19A is altered by omitting “**Authority**” and substituting “**Examiner**”.

67 Subsection 19A(1)

Omit “Authority”, substitute “examiner”.

68 Paragraph 19A(1)(b)

Repeal the paragraph, substitute:

(b) is relevant to an ACC operation/investigation.

69 Subsection 19A(2)

Omit “A member”, substitute “An examiner”.

70 Subsection 19A(2)

Omit “Authority”, substitute “examiner”.

71 Subsection 19A(2)

Omit “a prescribed investigation in relation to a federally relevant criminal activity”, substitute “an ACC operation/investigation”.

72 Paragraph 19A(6)(b)

Omit “Authority”, substitute “examiner”.

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

Omit “Human Rights Commission”, substitute “Human Rights and Equal Opportunity Commission”.

74 Subsection 19A(8) (paragraph (c) of the definition of *relevant matters*)

Omit “prescribed investigation”, substitute “ACC operation/investigation”.

75 Subsection 19A(8) (paragraph (c) of the definition of *relevant request*)

Omit “Authority”, substitute “examiner”.

76 Section 19A (penalty)

Omit “\$1,000”, substitute “10 penalty units”.

77 Subsection 20(1)

Omit “A member”, substitute “An examiner”.

Note: The heading to section 20 is altered by omitting “**Authority**” and substituting “**Examiner**”.

78 Subsection 20(1)

Omit “Authority”, substitute “examiner”.

79 Paragraph 20(1)(b)

Repeal the paragraph, substitute:

(b) is relevant to an ACC operation/investigation.

80 Subsection 20(2)

Omit “A member”, substitute “An examiner”.

81 Paragraph 20(2)(a)

Omit “a member of the Authority or a member of the staff of the Authority”, substitute “the examiner or a member of the staff of the ACC”.

82 Paragraph 20(2)(b)

Omit “a prescribed investigation in relation to a federally relevant criminal activity”, substitute “an ACC operation/investigation”.

83 Section 20 (penalty)

Omit “\$1,000”, substitute “10 penalty units”.

84 Subsection 21(1)

Omit “Authority”, substitute “Board”.

Note: The heading to section 21 is altered by omitting “**Authority**” and substituting “**Board**”.

85 Subsection 21(2)

Omit “Authority” (first occurring), substitute “Board”.

86 Subsection 21(2)

Omit “Authority” (second occurring), substitute “CEO”.

87 Paragraph 22(1)(a)

Omit “a matter relating to a federally relevant criminal activity, being a matter into which the Authority is conducting a special investigation”, substitute “a special ACC operation/investigation”.

88 Paragraph 22(2)(c)

Omit “the Authority”, substitute “any person participating in the special ACC operation/investigation”.

89 Paragraph 22(5)(a)

Omit “matter relating to a federally relevant criminal activity into which the Authority is conducting a special investigation”, substitute “special ACC operation/investigation”.

90 Paragraph 22(8)(a)

Omit “Authority” (wherever occurring), substitute “head of the special ACC operation/investigation”.

91 Paragraph 22(8)(a)

Omit “a special investigation”, substitute “the special ACC operation/investigation”.

92 Paragraph 22(8)(b)

Omit “Authority” (first occurring), substitute “head of the special ACC operation/investigation”.

93 Paragraph 22(8)(b)

Omit “an eligible person”, substitute “a person participating in the special ACC operation/investigation”.

94 Subparagraph 22(8)(b)(ii)

Omit “eligible person”, substitute “person participating in the special ACC operation/investigation”.

95 Paragraph 22(8)(b)

Omit “Authority” (second occurring), substitute “CEO”.

96 Subsection 22(9)

Omit “An eligible person”, substitute “A person participating in the special ACC operation/investigation”.

97 Subsection 22(9)

Omit “the eligible person”, substitute “the person participating in the special ACC operation/investigation”.

98 Subsection 22(13)

Omit “a matter relating to a relevant criminal activity, being a matter into which the Authority is conducting a special investigation”, substitute “a special ACC operation/investigation”.

99 Subsection 22(13)

Omit “the relevant criminal activity”, substitute “the special ACC operation/investigation”.

100 At the end of subsection 22(14)

Add “The issuing officer need not accept the function conferred.”.

101 Paragraph 23(3)(d)

Omit “Authority”, substitute “CEO”.

102 Subsection 23(4)

Omit “Authority”, substitute “ACC”.

103 Subsection 24(1)

Omit “a member”, substitute “an examiner”.

Note: The heading to section 24 is altered by omitting “**Authority**” and substituting “**examiner**”.

104 Paragraph 24(1)(a)

Omit “an investigation that is being conducted by the Authority into a matter that was referred to the Authority (being a matter relating to a federally relevant criminal activity)”, substitute “a special ACC operation/investigation”.

105 Paragraph 24(1)(a)

Omit “the Authority or a hearing officer at a hearing (whether or not the summons has been served), or a person has appeared before the Authority or a hearing officer at a hearing”, substitute “an examiner at an examination (whether or not the summons has been served), or a person has appeared before an examiner at an examination”.

106 Paragraph 24(1)(b)

Omit “Authority or the hearing officer” (wherever occurring), substitute “examiner”.

107 Paragraph 24(1)(b)

Omit “matter in respect of which the Authority is conducting the investigation and could be of particular significance to the investigation”, substitute “special ACC operation/investigation and could be of particular significance to the special ACC operation/investigation”.

108 Subsection 24(1)

Omit “passport to the Authority”, substitute “passport to the examiner”.

109 Paragraph 24(2)(d)

Omit “Authority”, substitute “examiner”.

110 Subsection 24(2) (penalty)

Omit “\$5,000”, substitute “50 penalty units”.

111 Paragraph 24(3)(a)

Omit “Authority”, substitute “examiner”.

112 Paragraph 24(3)(b)

Omit “Authority”, substitute “examiner”.

113 Subsection 24(4)

Omit “a member”, substitute “the examiner”.

114 Subsection 24(4)

Omit “Authority” (wherever occurring), substitute “examiner”.

115 Subsection 24(5)

Omit “Authority”, substitute “examiner”.

116 Subsection 24(5)

Omit “a member”, substitute “the examiner”.

117 Division 2 of Part II (heading)

Repeal the heading, substitute:

Division 2—Examinations

118 Section 24A

Repeal the section, substitute:

24A Examinations

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

119 Section 25

Repeal the section.

120 Section 25A

Repeal the section, substitute:

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

Witnesses

- (6) At an examination before an examiner:
- (a) counsel assisting the examiner generally or in relation to the matter to which the ACC operation/investigation relates; or
 - (b) any person authorised by the examiner to appear before the examiner at the examination; or
 - (c) any legal practitioner representing a person at the examination in accordance with subsection (2);
- may, so far as the examiner thinks appropriate, examine or cross-examine any witness on any matter that the examiner considers relevant to the ACC operation/investigation.
- (7) If a person (other than a member of the staff of the ACC) is present at an examination before an examiner while another person (the *witness*) is giving evidence at the examination, the examiner must:
- (a) inform the witness that the person is present; and
 - (b) give the witness an opportunity to comment on the presence of the person.
- (8) To avoid doubt, a person does not cease to be entitled to be present at an examination before an examiner or part of such an examination if:
- (a) the examiner fails to comply with subsection (7); or
 - (b) a witness comments adversely on the presence of the person under paragraph (7)(b).

Confidentiality

- (9) An examiner may direct that:
- (a) any evidence given before the examiner; or
-

- (b) the contents of any document, or a description of any thing, produced to the examiner; or
- (c) any information that might enable a person who has given evidence before the examiner to be identified; or
- (d) the fact that any person has given or may be about to give evidence at an examination;

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

- (10) Subject to subsection (11), the CEO may, in writing, vary or revoke a direction under subsection (9).
- (11) The CEO must not vary or revoke a direction if to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

Courts

- (12) If:
 - (a) a person has been charged with an offence before a federal court or before a court of a State or Territory; and
 - (b) the court considers that it may be desirable in the interests of justice that particular evidence given before an examiner, being evidence in relation to which the examiner has given a direction under subsection (9), be made available to the person or to a legal practitioner representing the person;the court may give to the examiner or to the CEO a certificate to that effect and, if the court does so, the examiner or the CEO, as the case may be, must make the evidence available to the court.
- (13) If:
 - (a) the examiner or the CEO makes evidence available to a court in accordance with subsection (12); and
 - (b) the court, after examining the evidence, is satisfied that the interests of justice so require;the court may make the evidence available to the person charged with the offence concerned or to a legal practitioner representing the person.

Offence

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

End of examination

- (15) At the conclusion of an examination held by an examiner, the examiner must give the head of the special ACC operation/investigation:
- (a) a record of the proceedings of the examination; and
 - (b) any documents or other things given to the examiner at, or in connection with, the examination.

121 Subsection 26(1)

Omit “the Authority or a hearing officer”, substitute “an examiner”.

122 Subsection 26(1)

Omit “Chair”, substitute “CEO”.

123 Subsection 26(2)

Omit “Chair” (wherever occurring), substitute “CEO”.

124 Subsection 27(1)

Omit “the Authority or a hearing officer”, substitute “an examiner”.

125 Subsection 27(3)

Omit “the Authority or the hearing officer”, substitute “the examiner”.

126 Subsection 28(1)

Omit “A member”, substitute “An examiner”.

127 Subsection 28(1)

Omit “the Authority or a hearing officer at a hearing”, substitute “the examiner at an examination”.

127A After subsection 28(1)

Insert:

- (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.

128 Subsection 28(2)

Repeal the subsection, substitute:

- (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.

129 Subsection 28(3)

Omit “the Authority or a hearing officer at a hearing”, substitute “an examiner at an examination”.

130 Subsection 28(3)

Omit “the member”, substitute “the examiner”.

131 Subsection 28(3)

Omit “a special investigation to which the hearing”, substitute “the special ACC operation/investigation to which the examination”.

132 Subsection 28(3)

Omit “the special investigation”, substitute “the special ACC operation/investigation”.

133 Subsection 28(3)

Omit “the Authority or the hearing officer” (wherever occurring), substitute “the examiner”.

134 Subsection 28(3)

Omit “relates to a special investigation”, substitute “relates to a special ACC operation/investigation”.

135 Subsection 28(4)

Repeal the subsection, substitute:

- (4) The examiner who is holding an examination may require a person appearing at the examination to produce a document or other thing.

136 Subsection 28(5)

Repeal the subsection, substitute:

- (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.

137 Subsection 28(6)

Repeal the subsection, substitute:

- (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.

138 Subsection 28(7)

Omit “a special investigation”, substitute “a special ACC operation/investigation”.

139 Subsection 29(1)

Omit “A member”, substitute “An examiner”.

140 Paragraph 29(1)(a)

Repeal the paragraph, substitute:

- (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

141 Paragraph 29(1)(b)

Omit “a special investigation”, substitute “a special ACC operation/investigation”.

141A After subsection 29(1)

Insert:

- (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.

142 Subsection 29(2)

Repeal the subsection, substitute:

- (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.

143 Subsection 29(3A)

Omit “\$20,000”, substitute “200 penalty units”.

144 Subsection 29(3C)

Omit “\$2,000”, substitute “20 penalty units”.

145 Subsection 29(4)

Omit “a hearing before the Authority or a hearing officer”, substitute “an examination before an examiner”.

146 Subsection 29A(1)

Omit “member”, substitute “examiner”.

147 Paragraph 29A(2)(a)

Omit “member”, substitute “examiner”.

148 Subparagraph 29A(2)(a)(iii)

Omit “an investigation”, substitute “an operation or investigation”.

149 Paragraph 29A(2)(b)

Omit “member”, substitute “examiner”.

150 Subparagraph 29A(2)(b)(iii)

Omit “an investigation”, substitute “an operation or investigation”.

151 Paragraph 29A(2)(c)

Omit “member”, substitute “examiner”.

152 Subsection 29A(4)

Omit “Authority has concluded the investigation”, substitute “ACC has concluded the operation or investigation”.

153 Paragraph 29A(4)(a)

Omit “or (1A)”.

154 Paragraph 29A(4)(b)

Omit “or (1A) and the Authority”, substitute “and the CEO”.

155 Paragraph 29A(4)(c)

Omit “or (1A)”.

156 Paragraph 29A(4)(d)

Omit “or (1A)”.

157 Subparagraph 29A(4)(d)(ii)

Omit “Authority”, substitute “CEO”.

158 Subsection 29A(4)

Omit “relating to the investigation”, substitute “relating to the operation or investigation”.

159 Subsection 29A(5)

Omit “Authority”, substitute “CEO”.

160 Subsection 29A(6)

Repeal the subsection.

161 At the end of section 29A

Add:

(8) In this section:

official matter has the same meaning as in section 29B.

162 Subsection 29B(1) (penalty)

Omit “\$2,000”, substitute “20 penalty units”.

163 Paragraph 29B(2)(e)

Omit “a hearing before the Authority or a hearing officer”, substitute “an examination before an examiner”.

164 Subsection 29B(3) (penalty)

Omit “\$2,000”, substitute “20 penalty units”.

165 Subsection 29B(7) (paragraph (a) of the definition of *official matter*)

Repeal the paragraph, substitute:

(a) the determination referred to in subsection 28(2);

166 Subsection 29B(7) (paragraph (b) of the definition of *official matter*)

Repeal the paragraph, substitute:

(b) an ACC operation/investigation;

167 Subsection 29B(7) (paragraph (c) of the definition of *official matter*)

Repeal the paragraph, substitute:

(c) an examination held by an examiner;

168 Subsection 30(1)

Omit “a hearing before the Authority or a hearing officer”, substitute “an examination before an examiner”.

169 Paragraph 30(1)(b)

Omit “a member or the hearing officer, as the case may be”, substitute “the examiner”.

170 Subsection 30(2)

Omit “a hearing before the Authority or a hearing officer”, substitute “an examination before an examiner”.

171 Paragraph 30(2)(b)

Omit “member presiding at the hearing or the hearing officer”, substitute “examiner”.

172 Paragraph 30(3)(a)

Omit “a hearing before the Authority or a hearing officer”, substitute “an examination before an examiner”.

173 Subsection 30(3)

Omit “member presiding at the hearing or the hearing officer, furnish to the Authority or the hearing officer”, substitute “examiner, give the examiner”.

174 Subsection 30(4)

Omit “a hearing before the Authority or a hearing officer, or documents or things produced at a hearing before the Authority or a hearing officer”, substitute “an examination before an examiner, or documents or things produced at an examination before an examiner”.

175 Paragraph 30(4)(a)

Omit “a hearing before the Authority or a hearing officer”, substitute “an examination before an examiner”.

176 Subparagraph 30(4)(a)(i)

Omit “member presiding at the hearing or the hearing officer who is holding the hearing”, substitute “examiner”.

177 Subsection 30(6)

Omit “\$20,000”, substitute “200 penalty units”.

178 Subsection 30(8)

Omit “\$2,000”, substitute “20 penalty units”.

179 Subsection 31(1)

Omit “by or on behalf of the Authority”, substitute “by an examiner”.

180 Paragraph 31(1)(a)

Omit “Authority” (first occurring), substitute “examiner”.

181 Paragraph 31(1)(a)

Omit “Authority or a hearing officer”, substitute “examiner”.

182 Paragraph 31(3)(a)

Omit “Authority or the hearing officer”, substitute “examiner”.

183 Subsection 33(1)

Omit “a hearing before the Authority or a hearing officer”, substitute “an examination before an examiner”.

184 Subsection 33(2)

Omit “\$20,000”, substitute “200 penalty units”.

185 Subsection 33(4)

Omit “\$2,000”, substitute “20 penalty units”.

186 Section 34

Omit “a member or a hearing officer”, substitute “an examiner”.

187 Paragraph 34(a)

Omit “a hearing before the Authority or a hearing officer”, substitute “an examination before the examiner”.

188 Paragraph 34(b)

Omit “Authority otherwise than at a hearing before the Authority or a hearing officer”, substitute “ACC otherwise than at an examination before the examiner”.

189 Section 34

Omit “member or the hearing officer, as the case may be,”, substitute “examiner”.

190 Subsection 35(1)

Repeal the subsection, substitute:

(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.

Note: The heading to section 35 is replaced by the heading “**Obstructing or hindering the ACC or an examiner etc.**”.

191 Subsection 35(2)

Omit “\$20,000”, substitute “200 penalty units”.

192 Subsection 35(4)

Omit “\$2,000”, substitute “20 penalty units”.

193 Subsection 36(1)

Omit “A member or a hearing officer”, substitute “An examiner”.

Note: The heading to section 36 is altered by omitting “**members**” and substituting “**examiners**”.

194 Subsection 36(1)

Omit “a member or a hearing officer in relation to a hearing before the Authority or the hearing officer”, substitute “an examiner in relation to an examination before the examiner”.

195 Subsection 36(2)

Omit “Authority or a hearing officer or representing a person at a hearing before the Authority or a hearing officer”, substitute “ACC or an examiner or representing a person at an examination before an examiner”.

196 Subsection 36(3)

Omit “the Authority or a hearing officer”, substitute “an examiner”.

197 Sections 37 to 46A

Repeal the sections, substitute:

Subdivision A—Chief Executive Officer

37 Appointment of CEO

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

38 Remuneration and allowances of CEO

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

39 Leave of absence

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

40 Resignation

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

41 Disclosure of interests

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

42 Outside employment

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

43 Suspension of appointment

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

44 Termination of appointment

Misbehaviour or incapacity

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

Bankruptcy etc.

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

Unsatisfactory performance

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

Invalidity

- (4) In spite of anything contained in this section, if the CEO:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;
- then he or she is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.
- (5) In spite of anything contained in this section, if the CEO:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and

(b) is under 60 years of age;
then he or she is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

45 Other terms and conditions

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

46 Acting CEO

- (1) The Minister may appoint a person to act as the CEO:
 - (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the CEO is suspended from office, is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by a person purporting to act under an appointment under subsection (1) is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: For more information about acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

46A CEO to manage ACC etc.

- (1) The CEO is responsible for the management and administration of the ACC. The CEO is to act in accordance with any policies determined, and any directions given, in writing by the Board.
- (2) The CEO must also manage, co-ordinate and control ACC operations/investigations.

- (2A) As soon as practicable after the Board authorises, in writing, the ACC to undertake an intelligence operation or to investigate matters relating to federally relevant criminal activity, the CEO must determine, in writing, the head of such an operation or investigation.
- (2B) Before the CEO determines the head of such an operation or investigation, the CEO must consult the Chair of the Board, and such other members of the Board as the CEO thinks appropriate, in relation to the determination.
- (3) Subject to such consultation with the examiners as is appropriate and practicable, the CEO may make arrangements as to the examiner who is to be able to exercise his or her powers under this Act in relation to a special ACC operation/investigation.

Subdivision B—Examiners

46B Appointment of examiners

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

Consulting the Inter-Governmental Committee

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

Legal practitioner

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

Period of appointment

- (4) An examiner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years. In addition, the sum of an examiner's first appointment and any period or periods of re-appointment must not exceed 5 years.

Full-time appointments

- (5) An examiner is to be appointed on a full-time basis.
-

46C Remuneration and allowances of examiners

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

46D Leave of absence

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

46E Resignation

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

46F Disclosure of interests

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

46G Outside employment

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

46H Termination of appointment

Misbehaviour or incapacity

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

Bankruptcy etc.

- (2) The Governor-General must terminate the appointment of an examiner if:
- (a) the examiner:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the examiner is absent, except on leave of absence granted under section 46D, for 14 consecutive days, or for 28 days in any 12 months; or
 - (c) the examiner fails, without reasonable excuse, to comply with section 46F; or
 - (d) the examiner engages, except with the Minister's approval, in paid employment outside the duties of his or her office.

Invalidity

- (3) In spite of anything contained in this section, an examiner who:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;
- is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the 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.

198 Before section 47

Insert:

Subdivision C—Staff etc.

199 Subsection 47(1)

Omit “Authority”, substitute “ACC”.

200 Subsection 47(2)

Omit “Chair” (wherever occurring), substitute “CEO”.

201 Subsection 48(1)

Omit “Chair”, substitute “CEO”.

202 Subsection 48(1)

Omit “Authority”, substitute “ACC”.

203 Subsection 48(2)

Omit “Chair”, substitute “CEO”.

204 Section 49

Omit “Authority” (wherever occurring), substitute “ACC”.

Note: The heading to section 49 is altered by omitting “**Authority**” and substituting “**ACC**”.

205 Section 50

Omit “Chair”, substitute “CEO”.

Note: The heading to section 50 is altered by omitting “**Authority**” and substituting “**ACC**”.

206 Section 50

Omit “Authority”, substitute “ACC”.

207 Before section 51

Insert:

Subdivision D—Secrecy

208 Paragraph 51(1)(a)

Repeal the paragraph, substitute:

- (a) the CEO; and
- (aa) a member of the Board; and

209 Paragraph 51(1)(b)

Omit “Authority”, substitute “ACC”.

210 Paragraph 51(1)(c)

Repeal the paragraph, substitute:

- (c) an examiner.

211 Subsection 51(2)

Omit “\$5,000”, substitute “50 penalty units”.

212 Subsection 51(3)

Omit “Authority, or a member, acting member or hearing officer”, substitute “ACC, or the CEO, the acting CEO, a member of the Board or an examiner”.

213 Paragraph 51(3)(b)

Omit “investigation carried out by the Authority”, substitute “operation or investigation carried out by the ACC”.

214 Subsection 51(4)

Insert:

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.

215 Subsection 51(4) (definition of *member of the staff of the Authority*)

Repeal the definition.

216 Part III (heading)

Repeal the heading, substitute:

**Part III—Parliamentary Joint Committee on the
Australian Crime Commission**

217 Section 52 (definition of *the Committee*)

Omit "National Crime Authority", substitute "Australian Crime Commission".

218 Subsection 53(1)

Repeal the subsection, substitute:

- (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.

Note: The heading to section 53 is altered by omitting "National Crime Authority" and substituting "Australian Crime Commission".

219 Paragraphs 55(1)(a) and (b)

Omit "Authority", substitute "ACC".

220 Paragraph 55(1)(c)

Omit "of the Authority", substitute "on the ACC".

221 Paragraph 55(1)(d)

Omit “Authority”, substitute “ACC”.

222 Paragraph 55(2)(a)

After “to” (first occurring), insert “undertake an intelligence operation or to”.

223 Paragraph 55(2)(b)

Omit “Authority in relation to a particular investigation”, substitute “ACC in relation to a particular ACC operation/investigation”.

224 Section 55AA

Omit “Authority’s”, substitute “ACC’s”.

225 Paragraph 55A(1)(a)

Repeal the paragraph, substitute:

- (a) the ACC; or

226 Paragraph 55A(1)(b)

Repeal the paragraph, substitute:

- (b) the Board, the Chair of the Board, the CEO, an examiner or a member of the staff of the ACC; or

227 Paragraph 55A(1)(c)

After “Court”, insert “or a Federal Magistrate”.

228 Subsections 55A(2) to (5)

Repeal the subsections, substitute:

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);
 - (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.

Board, Chair of the Board, CEO, examiners and members of staff of the ACC

- (4) A law of a State may confer on the Board, the Chair 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 Board, the Chair 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 Board, the Chair of the Board, the CEO, an examiner or a member of the staff of the ACC a duty, function or power that:

- (a) relates to the undertaking of an intelligence operation in so far as the 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 Board, the Chair 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
- (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.

229 Subsection 55A(6)

Omit “Subsections (2), (4) and (5)”, substitute “Subsections (2), (4), (5), (5B) and (5C)”.

230 Subsection 55A(7)

Omit “Subsections (2), (4) and (5)”, substitute “Subsections (2), (4), (5), (5B) and (5C)”.

231 Paragraph 55A(8)(a)

Repeal the paragraph, substitute:

- (a) the ACC; or

232 Paragraph 55A(8)(b)

Repeal the paragraph, substitute:

- (b) the Board, the Chair of the Board, the CEO, an examiner or a member of the staff of the ACC; or

233 Paragraph 55A(8)(c)

After “Court”, insert “or a Federal Magistrate”.

234 Paragraph 55A(9)(a)

Repeal the paragraph, substitute:

- (a) the ACC; or

235 Paragraph 55A(9)(b)

Repeal the paragraph, substitute:

- (b) the Board, the Chair of the Board, the CEO, an examiner or a member of the staff of the ACC; or

236 Paragraph 55A(9)(c)

After “Court”, insert “or a Federal Magistrate”.

237 Subsection 55A(9)

After “federally relevant criminal activities”, insert “or to the undertaking of an intelligence operation”.

238 Subsection 55A(10)

Repeal the subsection, substitute:

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.

239 Subsection 55A(12)

Repeal the subsection, substitute:

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.

240 Subsection 55A(13)

Insert:

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

241 Subsection 55A(13) (definition of *State NCA Act*)

Repeal the definition.

242 At the end of section 55A

Add:

- (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.

243 Section 55B

Repeal the section, substitute:

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 Board, the Chair 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 Board, the Chair 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.

244 Paragraph 55C(1)(a)

Repeal the paragraph, substitute:

(a) the ACC; or

245 Paragraph 55C(1)(b)

Repeal the paragraph, substitute:

(b) the Board, the Chair of the Board, the CEO, an examiner or a member of the staff of the ACC;

246 Paragraph 55C(1)(c)

After “matter”, insert “, or to the collection, correlation, analysis or dissemination of criminal information and intelligence,”.

247 Subsection 55C(2)

After “Federal Court”, insert “or a Federal Magistrate”.

248 Subsection 55C(2)

Omit “Authority of a matter”, substitute “ACC of a matter, or to the collection, correlation, analysis or dissemination by the ACC of criminal information and intelligence,”.

249 Subsection 55C(3)

Insert:

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

250 Section 56

Repeal the section.

251 Section 57

Omit “*National Crime Authority Act 1984*”, substitute “*Australian Crime Commission Act 2002*”.

252 Subsection 58(1)

Repeal the subsection, substitute:

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

253 Subsections 59(1), (1A) and (2)

Repeal the subsections, substitute:

- (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).

254 Subsection 59(3)

Omit "Authority" (first occurring), substitute "Chair of the Board".

255 Paragraph 59(3)(a)

Omit "investigation that has been or is being conducted by the Authority", substitute "ACC operation/investigation that the ACC has conducted or is conducting".

256 Paragraph 59(3)(b)

Omit "Authority" (first occurring), substitute "Chair of the Board".

257 Paragraph 59(3)(b)

Omit “Authority” (last occurring), substitute “ACC”.

258 Subsection 59(4)

Omit “Authority” (first occurring), substitute “Chair of the Board”.

259 Subsection 59(4)

Omit “special investigation conducted by the Authority”, substitute “special ACC operation/investigation conducted by the ACC”.

260 Subsection 59(5)

Omit “Authority” (first occurring), substitute “Chair of the Board”.

261 Subsection 59(5)

Omit “Authority” (second occurring), substitute “ACC”.

262 Subsection 59(5)

Omit “Authority” (last occurring), substitute “Chair of the Board”.

263 Subsection 59(5)

Omit “Commonwealth Minister or Minister of the Crown of the State by whom the relevant reference was made”, substitute “Minister”.

264 Subsection 59(6)

Omit “Authority”, substitute “Chair of the Board”.

265 Subsection 59(6A)

Omit “Authority” (first occurring), substitute “Chair of the Board”.

266 Paragraph 59(6A)(a)

Omit “National Crime Authority”, substitute “Australian Crime Commission”.

267 Paragraph 59(6A)(a)

Omit “investigation that has been conducted by the Authority”, substitute “ACC operation/investigation that the ACC has conducted or is conducting”.

268 Paragraph 59(6A)(b)

Omit “Authority” (first occurring), substitute “Chair of the Board”.

269 Paragraph 59(6A)(b)

Omit “Authority” (last occurring), substitute “ACC”.

270 Subsection 59(6B)

After “Chair”, insert “of the Board”.

271 Subsection 59(6B)

Omit “Authority”, substitute “Chair”.

272 Subsection 59(6C)

Omit “Authority”, substitute “Chair of the Board”.

273 Paragraph 59(6D)(b)

After “Chair”, insert “of the Board”.

274 Subsection 59(7)

Repeal the subsection, substitute:

(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.

275 Subsection 59(8)

Omit “Notwithstanding section 11, the Chair”, substitute “The CEO”.

276 Subsection 59(8)

Omit “Chair” (second occurring), substitute “CEO”.

277 Subsection 59(8)

Omit “Authority”, substitute “ACC”.

278 Subsection 59(9)

Omit “Authority” (first occurring), substitute “ACC”.

279 Subsection 59(9)

Omit “investigations”, substitute “operations or investigations”.

280 Subsection 59(9)

Omit “Authority may, if it”, substitute “CEO may, if he or she”.

281 Paragraph 59(9)(e)

Omit “Authority”, substitute “CEO”.

282 Subsection 59(10)

Omit “made by the Authority”.

283 Subsection 59(11)

Omit “Notwithstanding section 11, the Chair”, substitute “The CEO”.

284 Subsection 59(11)

Omit “Chair” (second occurring), substitute “CEO”.

285 Subsection 59(11)

Omit “Authority’s”, substitute “ACC’s”.

286 Subsection 59(12)

Repeal the subsection.

287 Section 59A

Repeal the section, substitute:

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.

288 Subsection 60(1)

Repeal the subsection, substitute:

- (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.

Note: The heading to section 60 is altered by omitting "sittings" and substituting "meetings".

289 Subsections 60(2) to (3D)

Repeal the subsections.

290 Subsection 60(4)

Repeal the subsection, substitute:

- (4) The Board may publish bulletins for the purpose of informing the public about the performance of the ACC's functions.

291 Subsection 60(5)

Omit "Authority", substitute "Board".

292 Paragraph 60(5)(a)

Omit "sitting", substitute "meeting".

293 Subsection 61(1)

Omit "Authority", substitute "Chair of the Board".

294 Subsection 61(1)

Omit "its operations", substitute "the ACC's operations".

295 Subsection 61(2)

Omit "report by the Authority", substitute "report by the Chair of the Board".

296 Paragraph 61(2)(a)

Repeal the paragraph, substitute:

- (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;

297 Paragraph 61(2)(b)

Omit “Authority during that year in the course of its investigations”, substitute “ACC during that year in the performance of its functions”.

298 Paragraph 61(2)(c)

Omit “its functions, the Authority”, substitute “the ACC’s functions, the Board”.

299 Paragraph 61(2)(d)

Omit “Chair”, substitute “CEO”.

300 Paragraph 61(2)(e)

Omit “its investigations”, substitute “investigations by the ACC”.

301 Paragraph 61(2)(f)

Repeal the paragraph.

302 Subparagraph 61(2)(g)(iii)

Omit “Authority”, substitute “ACC”.

303 Subsection 61(3)

Omit “Authority”, substitute “Chair of the Board”.

304 Subsection 61(4)

Omit “Authority” (wherever occurring), substitute “Chair of the Board”.

305 Subsection 61(5)

Repeal the subsection.

306 Paragraph 61(6)(a)

Omit “of the Authority”, substitute “by the Chair of the Board”.

307 Paragraph 61(6)(a)

After “her”, insert “from the Inter-Governmental Committee”.

307A After section 61

Insert:

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.

Part 2—Transitional provisions

308 Definitions

In this Part:

ACC means the Australian Crime Commission.

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

commencement time means the time when this Part commences.

NCA means the National Crime Authority.

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

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

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

309 Appointment of first CEO of ACC

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

Note: Subsection 4(1) of the *Acts Interpretation Act 1901* would allow the appointment to occur during the period beginning on the day this Act receives the Royal Assent and ending on 31 December 2002. However, the appointment could not take effect until at least 1 January 2003: see subsection 4(2) of the *Acts Interpretation Act 1901*.

- (2) For this purpose, paragraph 37(2)(a) of the ACC Act is taken to be satisfied if the Minister invites each of the following persons to make nominations for that appointment:
- (a) the Commissioner of the Australian Federal Police;
 - (b) the Secretary of the Department;
 - (c) the Chief Executive Officer of the Australian Customs Service;
 - (d) the Chairperson of the Australian Securities and Investments Commission;

- (e) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*;
- (f) the Commissioner or head (however described) of the police force of each State and of the Northern Territory;
- (g) the Chief Police Officer of the Australian Capital Territory.

310 NCA hearing officers

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

Note: Subsection 46B(4) of the ACC Act provides that the sum of an examiner's first appointment and any period or periods of re-appointment must not exceed 5 years.

311 NCA consultants

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

312 NCA legal practitioners

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

313 Continuation of references made to the NCA

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

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

If:

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

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

315 Continuation of other NCA investigations

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

316 Assembling and giving of evidence obtained by the NCA

If:

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

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

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

317 Limitation on challenges to validity of references

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

318 Arrangements to obtain information or intelligence

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

319 Continuation of secrecy obligations

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

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

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

321 Ombudsman to brief Inter-Governmental Committee about controlled operations

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

322 Arrangements relating to person performing services for the NCA

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

323 Annual report

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

324 Transfer of records and documents etc.

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

325 Section 8 of the *Acts Interpretation Act 1901*

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

326 Transitional regulations

- (1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of the amendments made by this Schedule.
- (2) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations made under this item within 1 year after commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

Schedule 2—Other amendments

Part 1—Amendments

Archives Act 1983

1 Paragraph 33(1A)(a)

Omit “National Crime Authority”, substitute “Australian Crime Commission”.

Australian Security Intelligence Organisation Act 1979

2 Paragraph 18(3)(a)

Omit “a member, or a member of the staff, of the National Crime Authority”, substitute “the Chief Executive Officer of the Australian Crime Commission or a member of the staff of the ACC”.

3 Subparagraph 18(3)(b)(vi)

Repeal the subparagraph, substitute:

- (vi) the Chief Executive Officer of the Australian Crime Commission or a member of the staff of the ACC.

4 At the end of section 18

Add:

- (6) In this section:

member of the staff of the ACC has the same meaning as in the *Australian Crime Commission Act 2002*.

Crimes Act 1914

5 Subsection 3(1)

Insert:

ACC means the Australian Crime Commission.

6 Subsection 3(1)

Insert:

ACC authorising officer has the meaning given in subsection 15J(4).

7 Subsection 3(1) (paragraph (b) of the definition of *appropriate authorising officer*)

Omit “NCA authorising officer” (wherever occurring), substitute “ACC authorising officer”.

8 Subsection 3(1) (paragraph (c) of the definition of *law enforcement officer*)

Repeal the paragraph, substitute:

(c) a member of the staff of the ACC;

9 Subsection 3(1)

Insert:

member of the staff of the ACC has the same meaning as in the *Australian Crime Commission Act 2002*.

10 Subsection 3(1) (definition of *NCA authorising officer*)

Repeal the definition.

11 Subparagraph 15G(1)(b)(i)

Omit “Chair of the National Crime Authority”, substitute “Chief Executive Officer of the ACC”.

12 Paragraph 15J(2)(c)

Omit “National Crime Authority”, substitute “ACC”.

13 Paragraph 15J(2)(c)

Omit “NCA authorising officer”, substitute “ACC authorising officer”.

14 Subsection 15J(4)

Repeal the subsection, substitute:

(4) The following are *ACC authorising officers*:

(a) the Chief Executive Officer of the ACC;

- (b) a member of the staff of the ACC who is an SES employee and who is authorised in writing by the Chief Executive Officer of the ACC for the purposes of this paragraph.

15 Paragraph 15N(2A)(b)

Repeal the paragraph, substitute:

- (b) the Chief Executive Officer of the ACC;

16 Subsection 15OA(2)

Omit “NCA authorising officer” (wherever occurring), substitute “ACC authorising officer”.

17 Subsection 15OA(4)

Omit “NCA authorising officer”, substitute “ACC authorising officer”.

18 Paragraph 15OA(5)(b)

Omit “NCA authorising officer”, substitute “ACC authorising officer”.

19 Paragraph 15Q(1)(a)

Omit “NCA authorising officer”, substitute “ACC authorising officer”.

20 Subsection 15R(2)

Omit “Chair of the National Crime Authority”, substitute “Chief Executive Officer of the ACC”.

21 Paragraph 15R(2)(a)

Omit “NCA authorising officer”, substitute “ACC authorising officer”.

22 Subsection 15T(4)

Omit “Chair of the National Crime Authority”, substitute “Chief Executive Officer of the ACC”.

23 Subsection 15U(2)

Omit “Chair of the National Crime Authority”, substitute “Chief Executive Officer of the ACC”.

24 Paragraph 15UA(1)(b)

Repeal the paragraph, substitute:

- (b) the Chief Executive Officer of the ACC;
-

25 Subsection 15UA(2)

Omit “Chair of the National Crime Authority”, substitute “Chief Executive Officer of the ACC”.

26 Paragraph 15UB(1)(a)

Omit “National Crime Authority”, substitute “ACC”.

27 Paragraph 15UB(1)(b)

Omit “National Crime Authority”, substitute “ACC”.

28 Subsection 15XA(1) (paragraph (c) of the definition of *Commonwealth participating agency*)

Repeal the paragraph, substitute:

(c) the ACC;

29 Section 85ZL (paragraph (c) of the definition of *law enforcement agency*)

Repeal the paragraph, substitute:

(c) the ACC;

30 Section 85ZL (paragraph (d) of the definition of *law enforcement agency*)

Repeal the paragraph.

Criminal Code Act 1995

31 Section 146.1 (paragraph (b) of the definition of *Commonwealth law enforcement officer*)

Repeal the paragraph, substitute:

(b) a member of the Board of the Australian Crime Commission established under section 7B of the *Australian Crime Commission Act 2002*; or

(ba) an examiner (within the meaning of that Act); or

32 Section 146.1 (paragraph (c) of the definition of *Commonwealth law enforcement officer*)

Repeal the paragraph, substitute:

- (c) a member of the staff of the ACC (within the meaning of that Act); or

Customs Act 1901

33 Subsection 219A(1)

Insert:

ACC means the Australian Crime Commission.

34 Subsection 219A(1) (paragraph (a) of the definition of *chief officer*)

Repeal the paragraph, substitute:

- (a) where the agency is the ACC—the Chief Executive Officer of the ACC; and

35 Subsection 219A(1) (definition of *Commonwealth law enforcement agency*)

Omit “National Crime Authority”, substitute “ACC”.

36 Subsection 219A(1)

Insert:

member of the staff of the ACC has the same meaning as in the *Australian Crime Commission Act 2002*.

37 Subsection 219A(1) (paragraph (a) of the definition of *official*)

Repeal the paragraph, substitute:

- (a) where the agency is the ACC—the Chief Executive Officer of the ACC, an examiner (within the meaning of the *Australian Crime Commission Act 2002*) or a member of the staff of the ACC; and

38 Paragraph 219B(4A)(a)

Repeal the paragraph, substitute:

- (a) where the agency is the ACC—the Chief Executive Officer of the ACC, an examiner (within the meaning of the *Australian Crime Commission Act 2002*) or a member of a police force who is a member of the staff of the ACC; and

Customs Administration Act 1985

39 Subsection 16(1A) (paragraph (b) of the definition of *Commonwealth agency*)

Omit “and”.

40 Subsection 16(1A) (paragraph (c) of the definition of *Commonwealth agency*)

Repeal the paragraph.

Financial Transaction Reports Act 1988

41 Subsection 3(1)

Insert:

ACC means the Australian Crime Commission.

42 Subsection 3(1) (definition of *acting member of the NCA*)

Repeal the definition.

43 Subsection 3(1) (definition of *Australian Bureau of Criminal Intelligence*)

Repeal the definition.

44 Subsection 3(1)

Insert:

Board of the ACC means the Board of the Australian Crime Commission established under section 7B of the *Australian Crime Commission Act 2002*.

45 Subsection 3(1)

Insert:

examiner has the same meaning as in the *Australian Crime Commission Act 2002*.

46 Subsection 3(1) (definition of *Inter-Governmental Committee*)

Omit “NCA Act”, substitute “*Australian Crime Commission Act 2002*”.

47 Subsection 3(1) (definition of *member of the NCA*)

Repeal the definition.

48 Subsection 3(1)

Insert:

member of the staff of the ACC has the same meaning as in the
Australian Crime Commission Act 2002.

49 Subsection 3(1) (definition of *member of the staff of the NCA*)

Repeal the definition.

50 Subsection 3(1) (definition of *NCA*)

Repeal the definition.

51 Subsection 3(1) (definition of *NCA Act*)

Repeal the definition.

52 Subsection 16(6) (definition of *investigating officer*)

Omit “a member, or member of staff, of the NCA”, substitute “an examiner or a member of the staff of the ACC”.

53 Subsection 16(6) (paragraph (b) of the definition of *relevant authority*)

Repeal the paragraph, substitute:

(b) the Chief Executive Officer of the ACC; or

54 Paragraph 26(1)(c)

Repeal the paragraph, substitute:

(c) where the officer is an examiner or a member of the staff of the ACC—the Chief Executive Officer of the ACC; or

55 Subsection 27(1A)

Omit “the Australian Bureau of Criminal Intelligence and”.

56 Subsection 27(1A)

Omit “the Bureau or the Commission (as the case requires)”, substitute “the Commission”.

57 Subsection 27(5)

Omit “NCA obtains FTR information”, substitute “Chief Executive Officer of the ACC, an examiner or a member of the staff of the ACC obtains FTR information”.

58 Before paragraph 27(5)(a)

Insert:

- (aaa) the Chief Executive Officer of the ACC may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom the information relates, communicate the information to the Board of the ACC; and

59 Paragraph 27(5)(a)

Omit “NCA may”, substitute “Chair of the Board of the ACC may”.

60 Paragraph 27(5)(a)

Omit “NCA under subsection 59(4) of the NCA Act”, substitute “Chair under subsection 59(4) of the *Australian Crime Commission Act 2002*”.

61 Paragraph 27(5)(aa)

Omit “NCA may”, substitute “Chair of the Board of the ACC may”.

62 Paragraph 27(5)(aa)

Omit “National Crime Authority under subsection 59(6A) of the NCA Act”, substitute “Australian Crime Commission under subsection 59(6A) of the *Australian Crime Commission Act 2002*”.

63 After paragraph 27(5)(aa)

Insert:

- (ab) the Chief Executive Officer of the ACC may communicate the information to an examiner who is conducting an examination under Division 2 of Part II of the *Australian Crime Commission Act 2002*; and

64 Paragraph 27(5)(b)

Repeal the paragraph, substitute:

(b) an examiner may divulge the information in the course of such an examination before the examiner; and

65 Paragraph 27(5)(c)

Omit “the NCA may”, substitute “an examiner or a member of the staff of the ACC may”.

66 Paragraph 27(5)(d)

Omit “paragraphs (a), (aa), (b) and (c), the NCA”, substitute “paragraphs (aaa), (a), (aa), (ab), (b) and (c), the Chief Executive Officer of the ACC, the Chair of the Board of the ACC, an examiner and a member of the staff of the ACC”.

67 Subparagraph 27(6)(a)(i)

Omit “NCA”, substitute “Chief Executive Officer of the ACC, an examiner or a member of the staff of the ACC”.

68 Subparagraph 27(6)(a)(i)

Omit “its functions”, substitute “the ACC’s functions”.

69 Subsection 27(9)

Omit “NCA”, substitute “Chief Executive Officer of the ACC, the Chair of the Board of the ACC, an examiner, a member of the staff of the ACC”.

70 Subsection 27(10)

Omit “the NCA”, substitute “an examiner”.

71 Paragraph 27(14)(a)

Omit “NCA”, substitute “ACC”.

72 Paragraph 27(15)(a)

Repeal the paragraph, substitute:

(a) the Chief Executive Officer of the ACC;

73 Paragraph 27(15)(b)

Repeal the paragraph, substitute:

(b) an examiner or a member of the staff of the ACC;

74 Paragraphs 27(15)(c) and (d)

Repeal the paragraphs.

75 Paragraph 27(16)(g)

Repeal the paragraph.

76 Paragraph 27(17)(s)

Repeal the paragraph.

Human Rights and Equal Opportunity Commission Act 1986

77 Paragraph 24(2)(b)

Omit “National Crime Authority”, substitute “Australian Crime Commission”.

National Crime Authority Legislation Amendment Act 2001

78 Subsection 4(1)

After “(the *NCA Act*)”, insert “and the *Australian Crime Commission Act 2002* (the *ACC Act*)”.

79 Paragraph 4(4)(a)

After “Authority”, insert “and the Australian Crime Commission”.

80 Subsection 4(5)

After “NCA Act”, insert “and the ACC Act”.

81 After subsection 4(7)

Insert:

(7A) The Chief Executive Officer of the Australian Crime Commission, and members of the staff of the ACC (within the meaning of the ACC Act), must give all reasonable assistance requested by the responsible person in connection with the carrying out of the review and report.

82 Subsection 4(8)

Omit “that Act” (wherever occurring), substitute “the NCA Act”.

83 After subsection 4(8)

Insert:

- (8A) The following activities by the current or former Chief Executive Officer of the Australian Crime Commission or a current or former member of the staff of the ACC (within the meaning of the ACC Act) do not constitute a contravention of section 51 of the ACC Act, if they are carried out for the purposes of assisting the responsible person to carry out the review and report:
- (a) divulging or communicating information to the responsible person;
 - (b) recording information;
 - (c) providing a record of information to the responsible person.

Ombudsman Act 1976

84 Subsection 3(1)

Insert:

ACC means the Australian Crime Commission established under section 7 of the *Australian Crime Commission Act 2002*.

85 Subsection 3(1)

Insert:

Board of the ACC means the Board of the Australian Crime Commission established under section 7B of the *Australian Crime Commission Act 2002*.

86 Subsection 3(1) (definition of *law enforcement agency*)

Omit “*National Crime Authority Act 1984*”, substitute “*Australian Crime Commission Act 2002*”.

87 Subsection 3(1) (definition of *National Crime Authority*)

Repeal the definition.

88 Subsection 3(13A)

Omit “National Crime Authority”, substitute “ACC”.

89 Paragraph 5(2)(b)

Omit “other than action taken by a Justice or Judge in his or her capacity as a member of the National Crime Authority”.

90 Subparagraph 6A(1)(a)(i)

Omit “National Crime Authority”, substitute “ACC”.

Note: The heading to section 6A is altered by omitting “National Crime Authority” and substituting “ACC”.

91 Subsection 8B(1)

Omit “National Crime Authority, or a member of the staff of the Authority,”, substitute “ACC, or a member of the staff of the ACC,”.

Note: The heading to section 8B is altered by omitting “National Crime Authority” and substituting “ACC”.

92 Subsection 8B(8)

Repeal the subsection, substitute:

(8) In this section:

member of the staff of the ACC has the same meaning as in the *Australian Crime Commission Act 2002*.

93 Paragraph 9(3)(e)

Omit “National Crime Authority”, substitute “ACC or the Board of the ACC”.

94 Subsection 35B(1)

Omit “disclosure of certain NCA information”, substitute “disclosure of certain ACC information”.

Note: The heading to section 35B is altered by omitting “NCA” and substituting “ACC”.

95 Paragraph 35B(1)(c)

Repeal the paragraph, substitute:

(c) the proper performance of the functions of the ACC; or

96 Subsection 35B(1)

Omit “disclose the NCA information”, substitute “disclose the ACC information”.

97 Subsection 35B(2)

Insert:

ACC information means information or the contents of a document or a record that is, or was, in the possession or under the control of the ACC or the Board of the ACC.

98 Subsection 35B(2) (definition of *NCA information*)

Repeal the definition.

Privacy Act 1988

99 Subsection 6(1)

Insert:

ACC means the Australian Crime Commission.

100 Subsection 6(1)

Insert:

Board of the ACC means the Board of the Australian Crime Commission established under section 7B of the *Australian Crime Commission Act 2002*.

101 Subsection 6(1) (paragraph (b) of the definition of *enforcement body*)

Repeal the paragraph, substitute:

(b) the ACC; or

102 Subparagraph 7(1)(a)(iv)

Repeal the subparagraph, substitute:

(iv) the ACC; or

103 Paragraph 7(1)(h)

Repeal the paragraph, substitute:

(h) the ACC or the Board of the ACC.

104 Paragraph 7(2)(c)

Repeal the paragraph, substitute:

(c) the ACC or the Board of the ACC.

105 Subsection 18K(5) (note)

Omit “*National Crime Authority Act 1984*”, substitute “*Australian Crime Commission Act 2002*”.

106 Paragraph 70(2)(b)

Omit “National Crime Authority”, substitute “ACC”.

Proceeds of Crime Act 1987

107 Subsection 4(1)

Insert:

ACC means the Australian Crime Commission.

108 Subsection 4(1) (definition of *law enforcement authority*)

Omit “National Crime Authority”, substitute “ACC”.

109 Paragraph 39(2)(b)

Omit “a special investigation being conducted by the National Crime Authority”, substitute “a special ACC operation/investigation”.

110 Subsection 39(2)

Omit “Chair of the National Crime Authority”, substitute “Chief Executive Officer of the ACC”.

111 Subsection 39(3)

Repeal the subsection, substitute:

(3) In this section:

special ACC operation/investigation has the same meaning as in the *Australian Crime Commission Act 2002*.

112 Subsection 40(10) (paragraph (b) of the definition of *responsible custodian*)

Omit “Chair of the National Crime Authority”, substitute “Chief Executive Officer of the ACC”.

113 At the end of paragraph 74(1)(a)

Add “or”.

114 Paragraph 74(1)(b)

Repeal the paragraph, substitute:

- (b) if the order specifies the ACC as the law enforcement authority to which information is to be given—the Chief Executive Officer of the ACC, an examiner (within the meaning of the *Australian Crime Commission Act 2002*) or a member of the staff of the ACC (within the meaning of that Act); or

115 Subparagraph 74(2)(a)(i)

Omit “or a member, or member of staff, of the National Crime Authority”, substitute “or the Chief Executive Officer of the ACC, an examiner (within the meaning of the *Australian Crime Commission Act 2002*) or a member of the staff of the ACC (within the meaning of that Act)”.

Proceeds of Crime Act 2002

116 Paragraph 213(3)(d)

Repeal the paragraph, substitute:

- (d) the Chief Executive Officer of the Australian Crime Commission; or
- (e) an examiner (within the meaning of the *Australian Crime Commission Act 2002*).

117 Section 338 (paragraph (b) of the definition of *authorised officer*)

Repeal the paragraph, substitute:

- (b) any of the following:
 - (i) the Chief Executive Officer of the Australian Crime Commission;
 - (ii) an examiner (within the meaning of the *Australian Crime Commission Act 2002*) who is authorised by the Chief Executive Officer of the Australian Crime Commission;
 - (iii) a member of the staff of the ACC (within the meaning of the *Australian Crime Commission Act 2002*) who is authorised by the Chief Executive Officer of the Australian Crime Commission; or

Radiocommunications Act 1992

118 Paragraph 27(1)(bc)

Repeal the paragraph, substitute:

- (bc) the Australian Crime Commission established by section 7 of the *Australian Crime Commission Act 2002*; or

Retirement Savings Accounts Act 1997

119 Subparagraph 114(3)(c)(ii)

Repeal the subparagraph, substitute:

- (ii) the Chief Executive Officer of the Australian Crime Commission; or

Royal Commissions Act 1902

120 Section 1B (definition of *Australian Bureau of Criminal Intelligence*)

Repeal the definition.

121 Paragraph 6P(1)(da)

Repeal the paragraph.

122 Subsection 6P(2A)

Omit “an investigation being conducted by the National Crime Authority”, substitute “the performance of the functions of the Australian Crime Commission”.

123 Subsection 6P(2A)

Omit “to the National Crime Authority”, substitute “to the Chief Executive Officer of the Australian Crime Commission”.

Superannuation Industry (Supervision) Act 1993

124 Subparagraph 284(3)(c)(ii)

Repeal the subparagraph, substitute:

- (ii) the Chief Executive Officer of the Australian Crime Commission; or

Taxation Administration Act 1953

125 Subsection 2(1) (paragraph (d) of the definition of *head*)

Repeal the paragraph, substitute:

(d) in the case of the Australian Crime Commission—the Chief Executive Officer of the Commission;

126 Subsection 2(1) (paragraph (daa) of the definition of *head*)

Repeal the paragraph.

127 Subsection 2(1) (paragraph (d) of the definition of *law enforcement agency*)

Repeal the paragraph, substitute:

(d) the Australian Crime Commission;

128 Subsection 2(1) (paragraph (daa) of the definition of *law enforcement agency*)

Repeal the paragraph.

129 Subsection 3D(1)

Omit “Authority”, substitute “Chief Executive Officer of the ACC”.

Note: The heading to section 3D is altered by omitting “National Crime Authority” and substituting “Australian Crime Commission”.

130 Subsection 3D(2)

Omit “Authority”, substitute “Chief Executive Officer of the ACC”.

131 Subsection 3D(3)

Repeal the subsection.

132 Subsection 3D(4)

Omit “the Authority is conducting a special investigation and”, substitute “a special ACC operation/investigation is being carried out and the Chief Executive Officer of the ACC”.

133 Subsection 3D(4)

Omit “investigation, a member or acting member”, substitute “operation or investigation, the Chief Executive Officer of the ACC”.

134 Paragraph 3D(5)(a)

Omit “special investigation”, substitute “operation or investigation”.

135 Subsection 3D(6)

Omit “A member or acting member”, substitute “The Chief Executive Officer of the ACC”.

136 Paragraph 3D(7)(a)

Omit “Authority”, substitute “Chief Executive Officer of the ACC”.

137 Paragraph 3D(7)(b)

Omit “Authority from”, substitute “Chief Executive Officer of the ACC from”.

138 Paragraph 3D(7)(b)

Omit “Authority is”, substitute “Chief Executive Officer of the ACC is”.

139 Paragraph 3D(7)(b)

Omit “a member or acting member”, substitute “the Chief Executive Officer of the ACC”.

140 Paragraph 3D(7)(b)

Omit “Commissioner or to the Authority”, substitute “Commissioner or to the Chief Executive Officer of the ACC”.

141 Paragraph 3D(8)(b)

Omit “special investigation”, substitute “operation or investigation”.

142 Subparagraph 3D(8)(c)(i)

Omit “special investigation”, substitute “operation or investigation”.

143 Subparagraph 3D(8)(c)(ii)

Omit “Authority”, substitute “Chief Executive Officer of the ACC”.

144 Subsection 3D(9)

Omit “a special investigation is readily obtainable by the Authority”, substitute “an operation or investigation is readily obtainable by the Chief Executive Officer of the ACC”.

145 Subsection 3D(9)

Omit “the investigation that may result if the Authority”, substitute “the operation or investigation that may result if the Chief Executive Officer of the ACC”.

146 Paragraph 3D(10)(b)

Omit “Authority”, substitute “Chief Executive Officer of the ACC”.

147 Subsection 3D(11)

After “Subject to subsections (12) and (13), where”, insert “information is communicated to the Chief Executive Officer of the ACC under”.

148 Paragraphs 3D(11)(a) and (b)

Repeal the paragraphs, substitute:

- (a) subsection (1) or (2); or
- (b) an order made under subsection (7);

149 Before paragraph 3D(11)(c)

Insert:

- (ba) the Chief Executive Officer of the ACC may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom the information relates, communicate the information to the Board of the ACC;

150 Paragraph 3D(11)(c)

Omit “Authority may”, substitute “Chair of the Board of the ACC may”.

151 Paragraph 3D(11)(c)

Omit “Authority under subsection 59(4) of the relevant Act”, substitute “Chair under subsection 59(4) of the ACC Act”.

152 After paragraph 3D(11)(c)

Insert:

- (ca) the Chief Executive Officer of the ACC may communicate the information to an examiner who is conducting an examination under Division 2 of Part II of the ACC Act;

153 Paragraph 3D(11)(d)

Repeal the paragraph, substitute:

- (d) an examiner may divulge the information in the course of such an examination before the examiner;

154 Paragraph 3D(11)(e)

Omit “Authority may”, substitute “Chief Executive Officer of the ACC may”.

155 Paragraph 3D(11)(e)

Omit “Authority is”, substitute “Chief Executive Officer of the ACC is”.

156 Paragraph 3D(11)(f)

Repeal the paragraph, substitute:

- (f) subject to paragraphs (ba), (c), (ca), (d) and (e), the Chief Executive Officer of the ACC, the Chair of the Board of the ACC and an examiner must not divulge or communicate the information except to a member of the staff of the ACC for the purposes of, or in connection with:
- (i) in a case where paragraph (a) applies—a tax-related investigation; or
 - (ii) in a case where paragraph (b) applies—a special ACC operation/investigation;

157 Paragraph 3D(11)(g)

Omit “a member or acting member shall”, substitute “the Chief Executive Officer of the ACC, the Chair of the Board of the ACC or an examiner must”.

158 Paragraph 3D(11)(j)

Omit “a person of a kind referred to in subparagraph (f)(i), (ii) or (iii)”, substitute “a member of the staff of the ACC”.

159 Subparagraph 3D(11)(j)(i)

Omit “such person, or to the Authority,”, substitute “member of the staff of the ACC, or to an examiner.”.

160 Sub-subparagraph 3D(11)(j)(i)(A)

Omit “Authority”, substitute “Chief Executive Officer of the ACC”.

161 Sub-subparagraph 3D(11)(j)(i)(B)

Omit “Authority”, substitute “Chief Executive Officer of the ACC”.

162 Sub-subparagraph 3D(11)(j)(i)(B)

Omit “a special investigation”, substitute “a special ACC operation/investigation”.

163 Sub-subparagraph 3D(11)(j)(i)(C)

Repeal the sub-subparagraph.

164 Subsection 3D(13)

Omit “the Authority”, substitute “an examiner”.

165 Subsection 3D(16)

Repeal the subsection, substitute:

- (16) If information is communicated to the Chief Executive Officer of the ACC under subsection (1) or (2) or under an order made under subsection (7), then nothing in subsection (11), (14), (15) or (17) prohibits:
- (a) the communication of the information to a person for the purposes of, or in connection with, the prosecution of a person for a taxation offence; or
 - (b) if the information is admissible in a prosecution of a person for a taxation offence—the communication of the information to a court in the course of proceedings before that court against the last-mentioned person for that offence.

Note: A defendant bears an evidential burden in relation to the matters in subsection (16), see subsection 13.3(3) of the *Criminal Code*.

166 Subsection 3D(17)

Omit “paragraph (16)(c)”, substitute “paragraph (16)(a)”.

167 Subsection 3D(18)

Omit “relevant Act”, substitute “ACC Act”.

168 Subsection 3D(18)

Omit “Authority, to a member or acting member of the Authority, or to a member of the staff of the Authority”, substitute “Chief Executive Officer of the ACC, to an examiner, or to a member of the staff of the ACC”.

169 Subsection 3D(20)

Repeal the subsection.

170 Subsection 3D(22)

Insert:

ACC means the Australian Crime Commission.

171 Subsection 3D(22)

Insert:

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

172 Subsection 3D(22)

Insert:

ACC operation/investigation has the same meaning as in the ACC Act.

173 Subsection 3D(22) (definition of *acting member*)

Repeal the definition.

174 Subsection 3D(22) (definition of *Authority*)

Repeal the definition.

175 Subsection 3D(22)

Insert:

Board of the ACC means the Board of the Australian Crime Commission established under section 7B of the ACC Act.

176 Subsection 3D(22)

Insert:

examiner has the same meaning as in the ACC Act.

177 Subsection 3D(22) (definition of *Inter-Governmental Committee*)

Omit “relevant Act”, substitute “ACC Act”.

178 Subsection 3D(22) (definition of *member*)

Repeal the definition.

179 Subsection 3D(22)

Insert:

member of the staff of the ACC has the same meaning as in the ACC Act.

180 Subsection 3D(22) (definition of *member of the staff of the Authority*)

Repeal the definition.

181 Subsection 3D(22) (definition of *prescribed information*)

Repeal the definition.

182 Subsection 3D(22) (definition of *prescribed investigation*)

Repeal the definition.

183 Subsection 3D(22) (definition of *relevant Act*)

Repeal the definition.

184 Subsection 3D(22)

Insert:

special ACC operation/investigation has the same meaning as in the ACC Act.

185 Subsection 3D(22) (definition of *special investigation*)

Repeal the definition.

186 Subsection 3D(22) (definition of *taxation secrecy provision*)

Omit “relevant Act”, substitute “ACC Act”.

187 Subsection 3D(22) (definition of *tax-related investigation*)

Omit “a prescribed investigation”, substitute “an ACC operation/investigation”.

Telecommunications Act 1997

188 Section 7 (paragraph (c) of the definition of *agency*)

Repeal the paragraph, substitute:

(c) the Australian Crime Commission; or

189 Subsection 282(10) (paragraph (c) of the definition of *criminal law-enforcement agency*)

Repeal the paragraph, substitute:

(c) the Australian Crime Commission; or

Telecommunications (Interception) Act 1979

190 Subsection 5(1)

Insert:

ACC means the Australian Crime Commission.

191 Subsection 5(1)

Insert:

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

192 Subsection 5(1)

Insert:

ACC operation/investigation has the same meaning as in the ACC Act.

193 Subsection 5(1) (definition of *Authority*)

Repeal the definition.

194 Subsection 5(1) (definition of *Authority Act*)

Repeal the definition.

195 Subsection 5(1)

Insert:

Board of the ACC means the Board of the Australian Crime Commission established under section 7B of the ACC Act.

196 Subsection 5(1) (paragraph (b) of the definition of *certifying officer*)

Repeal the paragraph, substitute:

- (b) in the case of the ACC:
- (i) the Chief Executive Officer of the ACC or an examiner;
or
 - (ii) a member of the staff of the ACC who is an SES employee or acting SES employee and is authorised in writing by the Chief Executive Officer of the ACC for the purposes of this paragraph; or

197 Subsection 5(1) (paragraph (b) of the definition of *chief officer*)

Repeal the paragraph, substitute:

- (b) in the case of the ACC—the Chief Executive Officer of the ACC; or

198 Subsection 5(1) (definition of *class 1 offence*)

Omit “Authority, includes an offence in relation to which the Authority is conducting a special investigation within the meaning of the Authority Act”, substitute “ACC, includes an offence in relation to which the ACC is conducting a special investigation”.

199 Subsection 5(1) (paragraph (b) of the definition of *Commonwealth agency*)

Repeal the paragraph, substitute:

- (b) the ACC.

200 Subsection 5(1)

Insert:

examiner has the same meaning as in the ACC Act.

201 Subsection 5(1)

Insert:

federally relevant criminal activity has the same meaning as in the ACC Act.

202 Subsection 5(1) (definition of *member of the Authority*)

Repeal the definition.

203 Subsection 5(1)

Insert:

member of the staff of the ACC has the same meaning as in the ACC Act.

204 Subsection 5(1) (definition of *member of the staff of the Authority*)

Repeal the definition.

205 Subsection 5(1) (paragraph (b) of the definition of *officer*)

Repeal the paragraph, substitute:

(b) in the case of the ACC—the Chief Executive Officer of the ACC, an examiner or a member of the staff of the ACC; or

206 Subsection 5(1) (subparagraph (a)(v) of the definition of *permitted purpose*)

Omit “Chair of the Authority”, substitute “Chief Executive Officer of the ACC”.

207 Subsection 5(1) (after paragraph (a) of the definition of *permitted purpose*)

Insert:

- (aa) in the case of the ACC:
- (i) an ACC operation/investigation; or
 - (ii) a report to the Board of the ACC on the outcome of such an operation or investigation;

208 Subsection 5(1) (paragraph (a) of the definition of *prescribed investigation*)

Repeal the paragraph, substitute:

- (a) in the case of the ACC—means an ACC operation/investigation; or

209 Subsection 5(1) (paragraph (b) of the definition of *relevant offence*)

Omit “Authority”, substitute “ACC”.

210 Subsection 5(1)

Insert:

special investigation means an investigation into matters relating to federally relevant criminal activity that the ACC is conducting and that the Board of the ACC has determined to be a special investigation.

211 Subparagraph 6A(1)(c)(i)

Omit “Authority”, substitute “ACC”.

212 Paragraph 6L(2)(a)

Omit “Authority”, substitute “ACC”.

213 Paragraph 35(1)(a)

Omit “Chair of the Authority”, substitute “Chief Executive Officer of the ACC”.

214 Paragraph 39(2)(b)

Repeal the paragraph, substitute:

- (b) in the case of the ACC:
 - (i) the Chief Executive Officer of the ACC or an examiner; or
 - (ii) a member of a police force who is a member of the staff of the ACC; or

215 Paragraph 71(2)(d)

Repeal the paragraph, substitute:

- (d) the Chief Executive Officer of the ACC.

216 Subsection 80(2)

Omit “Chair of the Authority shall cause to be kept in the Authority’s records”, substitute “Chief Executive Officer of the ACC must cause to be kept in the ACC’s records”.

217 Paragraph 80(2)(a)

Omit “Authority”, substitute “ACC”.

218 Paragraph 80(2)(d)

Omit “Authority”, substitute “ACC”.

219 Paragraph 80(2)(e)

Omit “Chair”, substitute “Chief Executive Officer”.

220 Subsection 81(2)

Omit “Chair of the Authority shall”, substitute “Chief Executive Officer of the ACC must”.

221 Paragraphs 81(2)(a), (b) and (ba)

Omit “Authority”, substitute “ACC”.

222 Paragraph 81(2)(c)

Omit “Authority” (wherever occurring), substitute “ACC”.

223 Paragraphs 81(2)(d) and (e)

Omit “Authority”, substitute “ACC”.

224 Paragraph 81(2)(f)

Omit “Authority” (wherever occurring), substitute “ACC”.

Witness Protection Act 1994

225 Section 3 (paragraph (b) of the definition of *approved authority*)

Repeal the paragraph, substitute:

- (b) the Chief Executive Officer of the Australian Crime Commission; or

Part 2—Transitional provisions

226 Transitional regulations

- (1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of the amendments made by this Schedule.
- (2) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations made under this item within 1 year after commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

Schedule 3—Contingent amendments

Note: The operation of the amendments in this Schedule depends on when the *Proceeds of Crime Act 2002* commences.

Part 1—Amendments

Note: The amendments in this Part operate if section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003.

Australian Crime Commission Act 2002

1 Subsection 4(1) (paragraph (d) of the definition of *serious and organised crime*)

Omit “that is of a kind prescribed by the regulations or involves any of the following:”, substitute “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:”.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences on or after 1 January 2003, this item does not commence at all. See subsection 2(3).

2 Subsection 4(1) (after paragraph (d) of the definition of *serious and organised crime*)

Insert:

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*;

Note: If section 3 of the *Proceeds of Crime Act 2002* commences on or after 1 January 2003, this item does not commence at all. See subsection 2(3).

3 Subsection 4(1) (paragraph (f) of the definition of *serious and organised crime*)

Omit “and”.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences on or after 1 January 2003, this item does not commence at all. See subsection 2(3).

4 Subsection 4(1) (paragraph (g) of the definition of *serious and organised crime*)

Schedule 3 Contingent amendments

Part 1 Amendments

Repeal the paragraph.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences on or after 1 January 2003, this item does not commence at all. See subsection 2(3).

5 Subsection 12(1B)

Omit “Where, in carrying out or co-ordinating an investigation in relation to a relevant criminal activity, the Authority obtains evidence that would be admissible in confiscation proceedings, it may”, substitute “Where the ACC, in carrying out an ACC operation/investigation, obtains evidence that would be admissible in confiscation proceedings, the CEO may”.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences on or after 1 January 2003, this item does not commence at all. See subsection 2(3).

6 Paragraph 61(2)(ea)

Omit “its investigations”, substitute “investigations by the ACC”.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences on or after 1 January 2003, this item does not commence at all. See subsection 2(3).

Part 2—Alternative amendments

Note: The amendments in this Part operate if section 3 of the *Proceeds of Crime Act 2002* commences on or after 1 January 2003.

Australian Crime Commission Act 2002

7 Subsection 4(1)

Insert:

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.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, this item does not commence at all. See subsection 2(4).

8 Subsection 4(1) (paragraph (d) of the definition of *serious and organised crime*)

Omit “that is of a kind prescribed by the regulations or involves any of the following:”, substitute “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:”.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, this item does not commence at all. See subsection 2(4).

9 Subsection 4(1) (after paragraph (d) of the definition of *serious and organised crime*)

Insert:

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*;

Note: If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, this item does not commence at all. See subsection 2(4).

Schedule 3 Contingent amendments

Part 2 Alternative amendments

10 Subsection 4(1) (paragraph (f) of the definition of *serious and organised crime*)

Omit “and”.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, this item does not commence at all. See subsection 2(4).

11 Subsection 4(1) (paragraph (g) of the definition of *serious and organised crime*)

Repeal the paragraph.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, this item does not commence at all. See subsection 2(4).

12 After subsection 12(1)

Insert:

- (1A) Where the ACC, in carrying out an ACC operation/investigation, obtains evidence that would be admissible in confiscation proceedings, the CEO may assemble the evidence and give it to:
- (a) the Attorney-General of the Commonwealth or the State, as the case requires; or
 - (b) a relevant law enforcement agency; or
 - (c) any person or authority (other than a law enforcement authority) who is authorised to commence the confiscation proceedings.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, this item does not commence at all. See subsection 2(4).

13 Subsection 30(5)

Omit all the words from and including “other than a proceeding”, substitute:

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.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, this item does not commence at all. See subsection 2(4).

14 After paragraph 61(2)(e)

Insert:

(ea) the extent to which investigations by the ACC have resulted in confiscation proceedings;

Note: If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, this item does not commence at all. See subsection 2(4).

Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002

15 Heading before item 33 of Schedule 6

Repeal the heading.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, this item does not commence at all. See subsection 2(4).

16 Items 33 to 39 of Schedule 6

Repeal the items.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, this item does not commence at all. See subsection 2(4).

Telecommunications (Interception) Act 1979

17 Paragraph 6L(2)(a)

Omit “Authority”, substitute “ACC”.

Note: If section 3 of the *Proceeds of Crime Act 2002* commences before 1 January 2003, this item does not commence at all. See subsection 2(4).

[*Minister’s second reading speech made in—
House of Representatives on 26 September 2002
Senate on 15 November 2002*]

(215/02)
