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About this compilation

This compilation

This is a compilation of the *Australian Crime Commission Act 2002* that shows the text of the law as amended and in force on 22 June 2022 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

Part I—Preliminary

1 Short title

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

2 Commencement

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

3 Repeal

The *National Crimes Commission Act 1982* is repealed.

4 Interpretation

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

ACC means the Australian Crime Commission established by section 7.

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

accredited body: see subsection 46A(5).

against: a confiscation proceeding is **against** a person if:

- (a) for a proceeding under the *Proceeds of Crime Act 2002*—the person is a suspect (within the meaning of that Act) for the proceeding; or
- (b) for a proceeding under a law of a State or Territory—the person is in a corresponding category for that law.

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appoint includes re-appoint.

Australian travel document has the same meaning as in the *Australian Passports Act 2005*.

Board means the Board of the ACC.

business includes:

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

CEO means the Chief Executive Officer of the ACC.

charged: a person is ***charged*** with an offence if a process for prosecuting the person for the offence commences.

Charges Act means the *Australian Crime Commission (National Policing Information Charges) Act 2016*.

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

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

Commonwealth officer:

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

Comptroller-General of Customs means the person who is the Comptroller-General of Customs in accordance with subsection 11(3) or 14(2) of the *Australian Border Force Act 2015*.

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

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

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

derivative material means any evidence, information, document or thing obtained directly or indirectly from examination material.

disclose, for examination material or derivative material, includes:

- (a) to make available; and
- (b) to disclose copies, contents or descriptions of that material.

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

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

- (a) the Commissioner of the Australian Federal Police;
- (b) the Secretary of the Department;
- (c) the Comptroller-General of Customs;
- (d) the Chairperson of the Australian Securities and Investments Commission;
- (e) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*;
- (f) the Commissioner of Taxation.

eligible person means:

- (a) an examiner; or
- (b) a member of the staff of the ACC who is also a constable.

examination means an examination under Division 2 of Part II.

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examination material has the meaning given by subsection 4B(1).

examinee has the meaning given by subsection 4B(3).

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

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

Federal Court means the Federal Court of Australia.

federally relevant criminal activity means:

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

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

foreign law enforcement agency means:

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

Immigration and Border Protection Department means the Department administered by the Minister administering the *Australian Border Force Act 2015*.

imminent:

- (a) a charge against a person is **imminent** if:
 - (i) the person is a protected suspect; or
 - (ii) the person is under arrest for an offence, but has not been charged with the offence; or
 - (iii) a person with authority to commence a process for prosecuting the person for an offence has decided to commence, but not yet commenced, the process; or

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- (b) a confiscation proceeding against a person is **imminent** if a person with authority to commence the proceeding has decided to commence, but has not yet commenced, the proceeding.

Note: Subparagraph (a)(iii) applies, for example, if a person with authority to lay the charge has decided to lay, but not yet laid, the charge.

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

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

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

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

integrity authority means:

- (a) an integrity testing controlled operations authority under Part IAB of the *Crimes Act 1914* authorising a controlled operation under that Part; or
- (b) an integrity testing authority under Part IABA of the *Crimes Act 1914* authorising an integrity testing operation under that Part.

integrity operation means:

- (a) a controlled operation authorised by an integrity testing controlled operation authority granted under Part IAB of the *Crimes Act 1914*; or
- (b) an integrity testing operation authorised by an integrity testing authority granted under Part IABA of the *Crimes Act 1914*.

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

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However, an *intelligence operation* does not include an integrity operation.

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

issuing officer means:

- (a) a Judge of the Federal Court; or
- (aa) a Judge of the Federal Circuit and Family Court of Australia (Division 2); or
- (b) a Judge of a court of a State or Territory.

law enforcement agency means:

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

legal aid officer means:

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

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

member of the staff of the ACC means:

- (a) a member of the staff referred to in subsection 47(1); or
- (b) a person participating in a special 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

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- (f) a legal practitioner appointed under section 50 to assist the ACC as counsel.

national policing information means information that:

- (a) is collected by any of the following in the performance or exercise of its functions or powers:
 - (i) the Australian Federal Police;
 - (ii) the police force of a State;
 - (iii) a body prescribed by the regulations; and
 - (b) is of a kind prescribed by the regulations;
- but does not include the following:
- (c) any further information, opinion, interpretation or conclusion derived by the ACC from collected information;
 - (d) any collected information included in an analysis, report or other presentation by the ACC of material referred to in paragraph (c).

national policing information functions means the ACC's functions set out in paragraph 7A(fa).

officer of a State includes:

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

officer of a Territory includes:

- (a) a person holding or acting in an office (including a judicial office) or appointment, or employed, under a law of a Territory; and

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- (b) a person who is, or is a member of, an authority or body established for a public purpose by or under a law of a Territory or is an officer or employee of such an authority or body.

officer of the Commonwealth includes:

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

but does not include an officer of a Territory.

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

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

Ombudsman means the Commonwealth Ombudsman.

ONI means the Office of National Intelligence.

participating State means a State the Premier of which:

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

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

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permissible purpose means one or more of the following purposes:

- (a) performing functions referred to in section 7A or 7C;
- (b) preventing, detecting, investigating, prosecuting or punishing:
 - (i) criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); or
 - (ii) contraventions of a law of the Commonwealth, a State or a Territory imposing a penalty or sanction (including taking civil remedies in relation to contraventions of such laws); or
 - (iii) seriously improper conduct (including professional misconduct or misconduct by a public official);
- (c) preventing, detecting or investigating threats to national security;
- (d) preventing serious threats to an individual's life, health or safety, or to public health or public safety;
- (e) enforcing laws (including laws of foreign countries) relating to proceeds of crime;
- (f) enforcing laws (including laws of foreign countries) relating to unexplained wealth;
- (g) protecting public revenue;
- (h) developing government policy;
- (i) researching criminology;
- (j) any other purpose prescribed by the regulations.

post-charge:

- (a) a use or disclosure of examination material or derivative material is a ***post-charge*** use or disclosure if the use or disclosure happens at a time when:
 - (i) the examinee has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (b) material is ***post-charge*** examination material if the material becomes examination material at a time when:

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- (i) the examinee has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (c) an examination is a ***post-charge*** examination if the examination commences at a time when:
 - (i) the examinee has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (d) a summons is a ***post-charge*** summons if the summons is issued to a person at a time when:
 - (i) the person has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent.

post-confiscation application:

- (a) a use or disclosure of examination material or derivative material is a ***post-confiscation application*** use or disclosure if the use or disclosure happens at a time when:
 - (i) a related confiscation proceeding has commenced against the examinee and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent; or
- (b) material is ***post-confiscation application*** examination material if the material becomes examination material at a time when:
 - (i) a related confiscation proceeding has commenced against the examinee and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent; or
- (c) an examination is a ***post-confiscation application*** examination if the examination commences at a time when:
 - (i) a related confiscation proceeding has commenced against the examinee and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent; or

- (d) a summons is a ***post-confiscation application*** summons if the summons is issued to a person at a time when:
 - (i) a related confiscation proceeding has commenced against the person and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent.

pre-charge:

- (a) a use or disclosure of examination material or derivative material is a ***pre-charge*** use or disclosure if the use or disclosure happens at a time when:
 - (i) the examinee has not been charged with a related offence, and such a charge is not imminent; or
 - (ii) all such charges have been resolved; or
- (b) material is ***pre-charge*** examination material if the material becomes examination material at a time when:
 - (i) the examinee has not been charged with a related offence, and such a charge is not imminent; or
 - (ii) all such charges have been resolved; or
- (c) an examination is a ***pre-charge*** examination if the examination commences at a time when:
 - (i) the examinee has not been charged with a related offence, and such a charge is not imminent; or
 - (ii) all such charges have been resolved.

pre-confiscation application:

- (a) a use or disclosure of examination material or derivative material is a ***pre-confiscation application*** use or disclosure if the use or disclosure happens at a time when:
 - (i) a related confiscation proceeding has not commenced against the examinee, and such a proceeding is not imminent; or
 - (ii) all such proceedings have been resolved; or
- (b) material is ***pre-confiscation application*** examination material if the material becomes examination material at a time when:

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- (i) a related confiscation proceeding has not commenced against the examinee, and such a proceeding is not imminent; or
- (ii) all such proceedings have been resolved; or
- (c) an examination is a ***pre-confiscation application*** examination if the examination commences at a time when:
 - (i) a related confiscation proceeding has not commenced against the examinee, and such a proceeding is not imminent; or
 - (ii) all such proceedings have been resolved.

proceeds of crime authority means:

- (a) a proceeds of crime authority within the meaning of the *Proceeds of Crime Act 2002*; or
- (b) an authority of a State or Territory responsible for conducting a confiscation proceeding under a corresponding law (within the meaning of the *Proceeds of Crime Act 2002*).

prosecuting authority means an individual, or authority, authorised by or under a law of the Commonwealth or a State or Territory to prosecute an offence.

prosecutor, of an examinee, means an individual:

- (a) who is a prosecuting authority or is employed or engaged by a prosecuting authority; and
- (b) who:
 - (i) makes, or is involved in the making of, a decision whether to prosecute the examinee for a related offence; or
 - (ii) is one of the individuals engaging in such a prosecution of the examinee.

protected suspect means:

- (a) a protected suspect (within the meaning of Part IC of the *Crimes Act 1914*); or
- (b) a person who would be covered by paragraph (a) if the definition of ***Commonwealth offence*** in section 23B of that

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Act included any offence against a law of a State or Territory.

related confiscation proceeding means:

- (a) for examination material, derivative material or an examinee—a confiscation proceeding if the subject matter of the relevant examination relates to the subject matter of the proceeding; or
- (b) for a summons—a confiscation proceeding if the subject matter of the summons relates to the subject matter of the proceeding.

related offence means:

- (a) for examination material, derivative material or an examinee—an offence if the subject matter of the relevant examination relates to the subject matter of the offence; or
- (b) for a summons—an offence if the subject matter of the summons relates to the subject matter of the offence.

relevant crime means:

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

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

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

resolved has the meaning given by section 4C.

returnable item means:

- (a) a thing seized under a warrant issued under section 22; or
- (b) a thing, or a document, produced:
 - (i) under a notice issued under section 21A; or
 - (ii) during an examination conducted under Division 2 of Part II.

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secrecy provision means:

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

serious and organised crime means an offence:

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

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- (xiv) harbouring of criminals;
 - (xv) forging of passports;
 - (xvi) firearms;
 - (xvii) armament dealings;
 - (xviii) illegal importation or exportation of fauna into or out of Australia;
 - (xix) cybercrime;
 - (xx) matters of the same general nature as one or more of the matters listed above; and
- (da) that is:
- (i) punishable by imprisonment for a period of 3 years or more; or
 - (ii) a serious offence;
- but:
- (e) does not include an offence committed in the course of a genuine dispute as to matters pertaining to the relations of employees and employers by a party to the dispute, unless the offence is committed in connection with, or as part of, a course of activity involving the commission of a serious and organised crime other than an offence so committed; and
 - (f) does not include an offence the time for the commencement of a prosecution for which has expired.

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

serious offence:

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

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

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special ACC investigation means an investigation relating to federally relevant criminal activity that the Board has authorised to occur.

Note: The Board authorises such an investigation by making a determination under subsection 7C(3). A special ACC investigation can occur only while the determination is in force (see subsection 7C(4F)).

special ACC operation means an intelligence operation that the Board has authorised to occur.

Note: The Board authorises such an operation by making a determination under subsection 7C(2). A special ACC operation can occur only while the determination is in force (see subsection 7C(4E)).

special ACC operation/investigation means:

- (a) a special ACC operation; or
- (b) a special ACC investigation.

However, a ***special ACC operation/investigation*** does not include an integrity operation.

State includes the Australian Capital Territory and the Northern Territory.

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

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

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

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

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

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

Section 4

use, for examination material or derivative material, includes use of copies, contents or descriptions of that material.

- (1A) For all purposes, if an expression defined in subsection (1) contains “ACC”, the expression when used as so defined may also be referred to by replacing “ACC” with any name or acronym specified under subsection 7(1A).

Example: Expressions to which this subsection applies, including the following, may be used in a document by replacing “ACC” with any name or acronym by which the ACC may also be known:

- (a) ACC information;
- (b) special ACC operation/investigation;
- (c) member of the staff of the ACC.

- (1B) Subsection (1A) does not limit subsection 7(1A).

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

- (3) In this Act:

- (a) a reference to the Parliament of a State is to be read as:
 - (i) in relation to the Australian Capital Territory—a reference to the Legislative Assembly for that Territory; and
 - (ii) in relation to the Northern Territory—a reference to the Legislative Assembly of that Territory; and
- (b) a reference to the Governor of a State is to be read as:
 - (i) in relation to the Australian Capital Territory—a reference to the Governor-General; and
 - (ii) in relation to the Northern Territory—a reference to the Administrator of that Territory; and
- (c) a reference to the Premier of a State is to be read as:

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- (i) in relation to the Australian Capital Territory—a reference to the Chief Minister of that Territory; and
- (ii) in relation to the Northern Territory—a reference to the Chief Minister of that Territory; and
- (d) a reference to a Minister of the Crown of a State is to be read as:
 - (i) in relation to the Australian Capital Territory—a reference to a person appointed as a Minister under section 41 of the *Australian Capital Territory (Self-Government) Act 1988*; and
 - (ii) in relation to the Northern Territory—a reference to a person holding Ministerial office within the meaning of the *Northern Territory (Self-Government) Act 1978*.

4A When a State offence has a federal aspect

Object

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

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Federal aspect

- (2) For the purposes of this Act, a State offence has a ***federal aspect*** if, and only if:
- (a) both:
 - (i) the State offence is not an ancillary offence; and
 - (ii) assuming that the provision creating the State offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
 - (b) both:
 - (i) the State offence is an ancillary offence that relates to a particular primary offence; and
 - (ii) assuming that the provision creating the primary offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
 - (c) assuming that the Parliament of the Commonwealth had enacted a provision that created an offence penalising the specific acts or omissions involved in committing the State offence—that provision would have been a valid law of the Commonwealth; or
 - (d) both:
 - (i) the ACC is undertaking an investigation 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 undertaking, or were to undertake, an investigation 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

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- (e) both:
 - (i) the ACC is undertaking an intelligence operation relating to an offence against a law of the Commonwealth or a Territory; and
 - (ii) if the ACC is undertaking, or were to undertake, an intelligence operation relating to the State offence—that operation is, or would be, incidental to the operation mentioned in subparagraph (i).

Specificity of acts or omissions

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

State offences covered by paragraph (2)(c)

- (4) A State offence is taken to be covered by paragraph (2)(c) if:
 - (a) the State offence affects the interests of:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; or
 - (iii) a constitutional corporation; or
 - (b) the State offence was committed by a constitutional corporation; or
 - (c) the State offence was committed in a Commonwealth place; or
 - (d) the State offence involved the use of a postal service or other like service; or
 - (e) the State offence involved an electronic communication; or
 - (f) the State offence involved trade or commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or

Section 4A

- (g) the State offence involved:
 - (i) banking (other than State banking not extending beyond the limits of the State concerned); or
 - (ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or
 - (h) the State offence relates to a matter outside Australia.
- (5) Subsection (4) does not limit paragraph (2)(c).

Definitions

- (6) In this section:

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

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

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

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

electronic communication means a communication of information:

- (a) whether in the form of text; or
 - (b) whether in the form of data; or
 - (c) whether in the form of speech, music or other sounds; or
 - (d) whether in the form of visual images (animated or otherwise); or
 - (e) whether in any other form; or
 - (f) whether in any combination of forms;
- by means of guided and/or unguided electromagnetic energy.

Section 4B

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

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

4B Examination material and examinee

(1) ***Examination material*** is:

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

(2) To avoid doubt, information, a document or a thing is not covered by paragraph (1)(a) or (b) to the extent that it is obtained otherwise than at an examination.

Example: Before a document is produced at an examination, a law enforcement agency obtains a copy of the document when executing a search warrant. The copy obtained under the warrant is not examination material.

(3) The ***examinee*** is:

- (a) for an examination or examination material—the person referred to in paragraph (1)(a), (b), (c) or (d); or
- (b) for derivative material—the person who is the examinee for the examination material from which the derivative material was obtained.

4C Resolved

- (1) A charge for an offence is **resolved** in relation to a person at the later of the following times:
- (a) when:
 - (i) the charge is withdrawn; or
 - (ii) the charge is dismissed; or
 - (iii) the person is not committed on the charge following a committal hearing; or
 - (iv) the person is acquitted of the offence; or
 - (v) the person is sentenced for the offence; or
 - (vi) the person is dealt with by being the subject of an order made as a consequence of a finding of guilt; or
 - (vii) the charge is otherwise finally dealt with;
 - (b) if an appeal relating to the charge is not lodged within the period for lodging such an appeal—when that period ends;
 - (c) if an appeal relating to the charge is lodged—when the appeal lapses or is finally determined.

Despite paragraph (b), if an appeal relating to the charge is lodged after that period ends, the charge ceases to be **resolved** until that appeal lapses or is finally determined.

- (2) A confiscation proceeding is **resolved** in relation to a person at the later of the following times:
- (a) when the proceeding is discontinued;
 - (b) if an appeal relating to the proceeding is not lodged within the period for lodging such an appeal—when that period ends;
 - (c) if an appeal relating to the proceeding is lodged—when the appeal lapses or is finally determined.

Despite paragraph (b), if an appeal relating to the proceeding is lodged after that period ends, the proceeding ceases to be **resolved** until that appeal lapses or is finally determined.

Section 5

5 Act to bind Crown

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

6 Extension to external Territories

This Act extends to all the external Territories.

6A Application of the *Criminal Code*

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

Part II—The Australian Crime Commission (the ACC)

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

Subdivision A—The Australian Crime Commission

7 Establishment of the Australian Crime Commission

- (1) The Australian Crime Commission is established by this section.
- (1A) The ACC may also be known by one or more names or acronyms specified in the regulations.

Note: See also subsections 4(1A) and (1B), 7B(1A) and 37(5).
- (2) The ACC consists of:
 - (a) the CEO; and
 - (b) the examiners; and
 - (c) the members of the staff of the ACC.
- (3) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
 - (a) the ACC is a listed entity; and
 - (b) the CEO is the accountable authority of the ACC; and
 - (c) the following persons are officials of the ACC:
 - (i) the CEO;
 - (ii) the examiners;
 - (iii) the staff of the ACC referred to in subsection 47(1);
 - (iv) consultants engaged under subsection 48(1);
 - (v) persons whose services are made available to the ACC under section 49; and
 - (d) the purposes of the ACC include:

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Section 7A

- (i) the functions of the ACC referred to in section 7A; and
- (ii) the functions of the CEO referred to in section 46A.

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) when authorised by a determination made by the Board—to undertake special ACC operations;
- (c) when authorised by a determination made by the Board—to undertake special ACC investigations;
- (ca) to do any of the following (whether in its own name or through officers or members of staff of the ACC), as permitted or required for the purposes of Part IAB or IABA of the *Crimes Act 1914* or any other law of the Commonwealth:
 - (i) to apply for, and to grant, integrity authorities in relation to members of staff of the ACC;
 - (ii) to conduct and participate in integrity operations in relation to members of staff of the ACC;
 - (iii) to assist the Australian Federal Police, the Immigration and Border Protection Department or the Australian Commission for Law Enforcement Integrity in making applications for integrity authorities;
 - (iv) to assist those agencies in the conduct of integrity operations;
- (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;
- (fa) to provide systems and services relating to national policing information, including the following:

Section 7B

- (i) collecting, correlating and organising national policing information;
- (ii) providing access to national policing information;
- (iii) supporting and facilitating the exchange of national policing information;
- (iv) providing nationally coordinated criminal history checks on payment of a charge imposed by the Charges Act;
- (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.
- (1A) The Board of the ACC may also refer to itself, and be referred to, by replacing “ACC” with any name or acronym specified under subsection 7(1A).

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 Comptroller-General of Customs;
 - (d) the Chairperson of the Australian Securities and Investments Commission;
 - (e) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*;
 - (f) the Commissioner or head (however described) of the police force of each State and of the Northern Territory;
 - (g) the Chief Police Officer of the Australian Capital Territory;
 - (h) the CEO;
 - (i) the Commissioner of Taxation.

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

Section 7C

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;
 - (aa) to determine priorities in relation to national policing information systems and services;
 - (b) to provide strategic direction to the ACC and to determine the priorities of the ACC;
 - (c) to authorise, by determination, a special ACC operation to occur;
 - (d) to authorise, by determination, a special ACC investigation to occur;
 - (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;
 - (ga) to make recommendations to the Minister about expenditure from the National Policing Information Systems and Services Special Account;
 - (gb) to make recommendations to the Minister about charges for national policing information services (including criminal history checks);
 - (gc) to determine, in writing, policies and give directions to the CEO in relation to the following:
 - (i) disclosing national policing information;
 - (ii) approving a body as an accredited body;

Section 7C

- (gd) to determine, in writing, any conditions or restrictions in relation to providing nationally coordinated criminal history checks;
- (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 relating to federally relevant criminal activity: see subsection 46A(2A).

Special ACC operations/investigations

- (2) The Board may make a determination, in writing, authorising a special ACC operation to occur.

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 a determination is made.

- (3) The Board may make a determination, in writing, authorising a special ACC investigation to occur.

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 a determination is made.

- (4) A determination under subsection (2) or (3) may identify the federally relevant criminal activity to which the determination relates at whatever level of generality the Board considers appropriate including (without limitation) by reference to:
 - (a) categories of relevant criminal activities; or
 - (b) categories of suspected offender; or
 - (c) specific allegations of crime; or
 - (d) specific offenders; or
 - (e) any combination of the above.

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Section 7C

- (4A) The only condition for the exercise of the power under subsection (2) or (3) is that the Board considers, on the basis of the collective experience of the Board members voting at the meeting when a determination is made, that it is in the public interest that the Board authorise the special ACC operation or special ACC investigation to occur.
- (4B) To avoid doubt, a determination under subsection (2) or (3) can be made, and has effect, regardless of whether the ACC:
- (a) is, at the time the determination is made, already investigating any or all of the federally relevant criminal activity to which the determination relates; or
 - (b) subsequently investigates any or all of the federally relevant criminal activity to which the determination relates by any means other than through the exercise by an examiner of the powers under Division 2; or
 - (c) decides to investigate some part of the federally relevant criminal activity to which the determination relates because of a request for assistance by another law enforcement agency.
- (4C) A determination under subsection (2) or (3) must, to the extent that the Board reasonably considers appropriate having regard to the level of generality at which it has authorised a special ACC investigation or special ACC operation to occur:
- (a) describe the general nature of the circumstances or allegations constituting the federally relevant criminal activity to which the determination relates; and
 - (b) set out the purpose of the investigation or operation;
- but, to avoid doubt, the determination is not required to specify:
- (c) any particular offence or offences; or
 - (d) any particular conduct, transaction or person to which the investigation or operation relates; or
 - (e) any timeframe within which:
 - (i) any federally relevant criminal activity may have occurred; or

Section 7C

- (ii) the investigation or operation must commence or be completed.
- (4D) The Board may, at any time, revoke a determination made under subsection (2) or (3).
- (4E) A special ACC operation can be undertaken only while a determination under subsection (2) is in force.
- (4F) A special ACC investigation can be undertaken only while a determination under subsection (3) is in force.
- (4G) A determination under subsection (2) or (3) is in force during the period:
 - (a) beginning immediately after the determination is made; and
 - (b) ending at the earliest of the following:
 - (i) the end of the period of 3 years beginning immediately after the determination is made;
 - (ii) the end of the day on which the determination is revoked under subsection (4D);
 - (iii) if the determination is revoked under subsection 9(7)—when the CEO is notified of the revocation.
- (4H) Paragraph (4G)(b) does not prevent the making of another determination under subsection (2) or (3) in the same terms as the expired or revoked determination.
- (4J) The validity of the determination is not affected by any failure to comply with subsection (4C).
- (4K) A determination made under subsection (2) or (3) is not a legislative instrument.

Informing the Inter-Governmental Committee

- (5) The Chair of the Board must, within the period of 7 days beginning on the day a determination under subsection (2) or (3) is made, give a copy of the determination to the Inter-Governmental Committee.

Part II The Australian Crime Commission (the ACC)

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

Section 7D

Recommendations about charges for national policing information services

- (7) Before the end of each financial year, the Board must recommend to the Minister in writing that the Minister either:
 - (a) vary the legislative instrument under section 7 of the Charges Act in accordance with the recommendation; or
 - (b) not vary the legislative instrument made under section 7 of the Charges Act.
- (8) In making the recommendation, the Board:
 - (a) must have regard to the principle that the charges and other fees imposed for national policing information services should cover the costs to the ACC of providing national policing information systems and services; and
 - (b) may have regard to any other matter the Board considers relevant.
- (9) If the Board recommends that the Minister vary the instrument, the recommendation must set out the matters considered by the Board.

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 9 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 make a determination under subsection 7C(2) or (3) unless at least 9 Board members (including at least 2 eligible Commonwealth Board members) vote in favour of making the determination.

Part II The Australian Crime Commission (the ACC)

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

Section 7H

7H Conduct of Board meetings

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

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

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

7J Resolutions outside of Board meetings

- (1) This section applies to a resolution:

(a) which, without being considered at a meeting of the Board, is referred to all members of the Board; and

(b) of which:

(i) if subparagraph (ii) does not apply—a majority of those members (not including the CEO); or

(ii) if the resolution is that the Board make a determination under subsection 7C(2) or (3)—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.

Section 7L

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 making a determination under subsection 7C(2) or (3).
- (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.

7L Recommendations to Inter-Governmental Committee in relation to Board

- (1) The Board may make recommendations to the Inter-Governmental Committee in relation to the composition and functioning of the Board.

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Section 8

- (2) If the Board recommends that the composition of the Board be changed, the Board must also recommend what changes (if any) should be made to section 7F (quorum at Board meetings), section 7G (voting at Board meetings) and section 7J (resolutions outside of Board meetings).

Subdivision C—The Inter-Governmental Committee

8 Establishment and constitution of Inter-Governmental Committee

- (1) There is hereby established an Inter-Governmental Committee consisting of:
- (a) a member to represent the Commonwealth, being the Commonwealth Minister; and
 - (b) in the case of each participating State—a member to represent that State, being a Minister of the Crown of that State nominated by the Premier of that State.
- (2) The Commonwealth Minister may appoint a person as his or her delegate to attend a meeting of the Committee at which the Commonwealth Minister is not present.
- (3) A member of the Committee for the time being representing a State may appoint a person as his or her delegate to attend a meeting of the Committee at which that member is not present.
- (4) Where a person attends a meeting of the Committee as the delegate of the member representing the Commonwealth or as the delegate of a member representing a State, the delegate shall be deemed to be the member representing the Commonwealth or that State, as the case may be.
- (5) Meetings of the Committee shall be held at such times and places as are from time to time agreed upon by the members of the Committee. There must be a minimum of 2 meetings each calendar year.
- (6) At a meeting of the Committee:
- (a) a quorum is constituted by:

Section 8

- (i) if every State is a participating State—5 members of the Committee; or
 - (ii) in any other case—not less than one-half of the members of the Committee;
 - (b) the member representing the Commonwealth shall preside;
 - (c) each member of the Committee (including the member presiding) has a deliberative vote but the member of the Committee presiding does not have a casting vote; and
 - (d) subject to this Act, questions arising shall be decided by a majority of the votes of the members of the Committee present.
- (7) A resolution:
- (a) which, without being considered at a meeting of the Committee, is referred to all members of the Committee; and
 - (b) of which:
 - (i) if subparagraph (ii) does not apply—a majority of those members, or if a majority including a particular member or particular members is required for the resolution to have effect, a majority including that member or those members, indicate by telephone or other mode of communication to the member of the Committee representing the Commonwealth that they are in favour; or
 - (ii) if the resolution is that the Committee make a request under subsection 9(2) or that the Committee revoke a determination made under subsection 7C(2) or (3)—the member of the Committee representing the Commonwealth is in favour and at least 5 other members indicate by telephone or other mode of communication to the member of the Committee representing the Commonwealth that they are in favour;
- is as valid and effectual as if it had been passed at a meeting of the Committee duly convened and held.
- (8) Subject to the foregoing provisions of this section, the Committee may determine its procedure and for that purpose may make rules
-

Part II The Australian Crime Commission (the ACC)

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

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of procedure, including rules relating to the convening of meetings and the conduct of business at meetings, and may from time to time alter rules so made.

- (9) Any member of the Board may, with the consent of the members of the Committee present at a meeting of the Committee, attend that meeting and participate in the discussion of matters arising at the meeting.

9 Functions of Committee

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

Request for more information about special determination

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

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- (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.
- (9) To avoid doubt, the revoking of the determination does not affect the validity of any act done in connection with the special 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

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special determination, whether the Committee is requested to do so by any person, or in any other circumstances.

Division 1A—Performance of functions and exercise of powers

12 Performance of operations/investigations functions

- (1) Where the ACC, in carrying out a special ACC operation/investigation, obtains evidence of an offence against a law of the Commonwealth or of a State or Territory, being evidence that would be admissible in a prosecution for the offence, the CEO must assemble the evidence and give it to:
- (a) the Attorney-General of the Commonwealth or the State, as the case requires; or
 - (b) the relevant law enforcement agency; or
 - (c) any person or authority (other than a law enforcement agency) who is authorised by or under a law of the Commonwealth or of the State or Territory to prosecute the offence.

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

(1AA) Subsection (1) has effect subject to:

- (a) any relevant direction given under subsection 25A(9) (about confidentiality for examinations); and
- (b) the CEO complying with sections 25B to 25G to the extent that the evidence is examination material or derivative material.

(1A) Where the ACC, in carrying out a special 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

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- (c) any person or authority (other than a law enforcement authority) who is authorised to commence the confiscation proceedings.
- (2) Subsection (1A) has effect subject to:
 - (a) any relevant direction given under subsection 25A(9) (about confidentiality for examinations); and
 - (b) the CEO complying with sections 25B and 25H to the extent that the evidence is examination material or derivative material.

13 Performance of national policing information functions

- (1) The ACC must not perform its national policing information functions other than:
 - (a) for purposes related to matters that are peculiarly adapted to the government of a nation and that cannot otherwise be carried on for the benefit of the nation; or
 - (b) for purposes involving, or for purposes related to, the collection and transmission of information by a communication using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
 - (c) in, or for purposes related to, a Territory; or
 - (d) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
 - (e) for purposes related to trade or commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory, or between 2 Territories; or
 - (f) for purposes related to external affairs, including:
 - (i) giving effect to an international agreement to which Australia is a party; or
 - (ii) addressing matters of international concern; or

- (iii) by way of the performance of its functions in a place outside Australia; or
 - (g) for purposes related to preventing the influx of criminals into Australia; or
 - (h) for purposes related to the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States; or
 - (i) by way of the provision of a service, for a purpose of the Commonwealth, to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; or
 - (j) for purposes related to the executive power of the Commonwealth; or
 - (k) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.
- (2) In providing a nationally coordinated criminal history check, the ACC must comply with any condition or restriction determined by the Board.
- (3) In this section:

Territory means a Territory referred to in section 122 of the Constitution.

14 Performance of functions—general

- (1) Where, as a result of the performance of any of the ACC's functions, the Board considers that a recommendation should be made to the Commonwealth Minister or to the appropriate Minister of the Crown of a participating State, being a recommendation:
- (a) for reform of the law relating to relevant offences, including:
 - (i) evidence and procedure applicable to the trials of relevant offences;
 - (ii) relevant offences in relation to, or involving, corporations;

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- (iii) taxation, banking and financial frauds;
 - (iv) reception by Australian courts of evidence obtained in foreign countries as to relevant offences; and
 - (v) maintenance and preservation of taxation, banking and financial records;
 - (b) for reform of administrative practices; or
 - (c) for reform of administration of the courts in relation to trials of relevant offences;
- the Board may make the recommendation to the Commonwealth Minister, or to that Minister of the Crown of that State, as the case may be.
- (2) Where the ACC has obtained particular information or intelligence in the course of performing one or more of its functions, nothing in this Act shall be taken to prevent the ACC from making use of the information or intelligence in the performance of any of its other functions.

15 Fees in relation to national policing information functions

- (1) The ACC may charge a fee for goods or services that are provided by the ACC in the course of performing its national policing information functions.
- (2) A fee charged under subsection (1) must not be such as to amount to taxation.
- (3) A fee charged under subsection (1):
 - (a) is a debt due to the Commonwealth; and
 - (b) is recoverable by the ACC, on behalf of the Commonwealth, in a court of competent jurisdiction.

15A National policing information charges

Payment of charge

- (1) Charge imposed by the Charges Act on an application for, or the provision of, a kind of national policing information service is payable to the ACC, on behalf of the Commonwealth.
- (2) If charge is imposed by the Charges Act on an application for, or the provision of, a kind of national policing information service, the amount of the charge:
 - (a) is a debt due to the Commonwealth; and
 - (b) is recoverable by the ACC, on behalf of the Commonwealth, in a court of competent jurisdiction.

Waiver etc. of charge

- (3) The ACC may, on behalf of the Commonwealth:
 - (a) waive or reduce, in a particular case or in particular cases, charge imposed by the Charges Act on an application for, or the provision of, a kind of national policing information service; or
 - (b) refund, in whole or in part, in a particular case or in particular cases, charge imposed by the Charges Act on an application for, or the provision of, a kind of national policing information service.

Commonwealth liability for charge

- (4) The Commonwealth is not liable to pay charge imposed by the Charges Act. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay such a charge.
- (5) The Finance Minister may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (4) and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth.

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- (6) Directions under subsection (5) have effect, and must be complied with, despite any other Commonwealth law.
- (7) Directions under subsection (5) are not legislative instruments.
- (8) In subsections (4) and (5):

Commonwealth includes a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that cannot be made liable to taxation by a Commonwealth law.

16 Limitation on challenge to Board determination

If a determination is made under:

- (a) subsection 7C(2); or
- (b) subsection 7C(3);

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

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

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

18 Directions and guidelines to Board

- (1) The Minister may, by notice in writing to the Board, give directions or furnish guidelines to the Board with respect to the

performance of its functions and the Board shall comply with any such directions or guidelines.

- (2) However, the Minister must not, without the approval of a resolution passed at a meeting of the Inter-Governmental Committee, being a resolution as to which all the members of the Committee present at the meeting have voted in favour, give any directions or furnish any guidelines to the Board under subsection (1) with respect to:
 - (a) particular special ACC operations/investigations; or
 - (b) a matter related to national policing information systems and services (including expenditure from the National Policing Information Systems and Services Special Account).
- (4) Where the Minister gives a direction or furnishes a guideline to the Board under subsection (1), the Minister shall:
 - (a) as soon as practicable after giving the direction or furnishing the guideline, cause a copy of the direction or guideline to be published in the *Gazette*; and
 - (b) cause a copy of the direction or guideline to be laid before each House of the Parliament within 15 sitting days of that House after the copy is published in the *Gazette*.

19 Incidental powers of ACC

The ACC has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the performance of its functions, and any specific powers conferred on the ACC by this Act shall not be taken to limit by implication the generality of this section.

19A Examiner may request information from agencies

- (1) Subject to section 20A, an examiner may, by writing served on the principal officer of an agency, or on a person who is, or has been, a member, officer or employee of an agency, request that principal officer, or that person, as the case may be, to furnish to the examiner, by writing signed by that principal officer, or by that

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person, information specified in the request, being information that:

- (a) was acquired by the first-mentioned agency in the ordinary course of performing its functions, or was acquired by that person in that person's capacity as a member, officer or employee of the second-mentioned agency, as the case may be; and
 - (b) is relevant to a special ACC operation/investigation.
- (2) Subject to section 20A, an examiner may, by writing served on the principal officer of an agency, request that principal officer to send to the examiner a document or thing specified in the request, being a document or thing that relates to the performance by the agency of its functions and is relevant to a special ACC operation/investigation.
- (3) Where:
 - (a) a relevant request in relation to an agency has been served on a prescribed officer of the agency; and
 - (b) the prescribed officer considers it appropriate, having regard to the relevant matters in relation to the request, to comply with the request;the prescribed officer may comply with the request.
- (4) Where:
 - (a) a relevant request in relation to an agency has been served on a person who is, or has been, a member, officer or employee of the agency but who is not a prescribed officer of the agency; and
 - (b) a prescribed officer of the agency considers it appropriate, having regard to the relevant matters in relation to the request, for the person to comply with the request;the prescribed officer may direct the person in writing to comply with the request and, if the prescribed officer does so, the person shall not refuse or fail to comply with the request.
- (5) Subsections (3) and (4) have effect subject to:
 - (a) subsection (6); and

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- (b) a taxation secrecy provision; and
- (c) a secrecy provision specified in an arrangement under section 20A; and
- (d) sections 63 and 133 of the *Telecommunications (Interception and Access) Act 1979* and clause 152 of Schedule 1 to that Act;

but have effect despite any other secrecy provision.

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

(6) Where:

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

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

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

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

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

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(8) In this section:

agency means a Commonwealth agency or a State agency.

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

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

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

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

prescribed officer, in relation to an agency, means:

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

principal officer means:

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

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

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

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

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

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- (c) a request to the principal officer of the agency to send to the examiner a document or thing that relates to the performance by the agency of its functions.

State agency means the following agencies:

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

Penalty: 10 penalty units or imprisonment for 6 months.

20 Examiner may require information from agencies in certain cases

- (1) Subject to section 20A, an examiner may, by notice in writing served on the principal officer of an agency, or on a person who is, or has been, a member, officer or employee of an agency, require that principal officer, or that person, as the case may be, to furnish to the examiner, by writing signed by that principal officer, or by that person, within the time and in the manner specified in the notice, information so specified, being information that:
 - (a) was acquired by the first-mentioned agency in the ordinary course of performing its functions, or was acquired by that person in that person's capacity as a member, officer or employee of the second-mentioned agency, as the case may be; and
 - (b) is relevant to a special ACC operation/investigation.
- (2) Subject to section 20A, an examiner may, by notice in writing served on the principal officer of an agency, require that principal officer:

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being the examiner or a member of the staff of the ACC; and
 - (b) to produce at that time and place to the person so specified a document or thing specified in the notice, being a document or thing that relates to the performance by the agency of its functions and is relevant to a special ACC operation/investigation.
- (4) Subject to a prescribed provision, but notwithstanding a secrecy provision other than a prescribed provision, a person shall not refuse or fail to comply with a notice served on the person under this section.

Penalty: Imprisonment for 6 months or 10 penalty units.

- (5) In this section:

agency means a Commonwealth agency or a State agency.

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

law of the Commonwealth includes a law of a Territory.

prescribed provision means:

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

principal officer means:

- (a) in relation to a Commonwealth agency—the person who is the principal officer of the agency for the purposes of the *Freedom of Information Act 1982*; or

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

State agency means the following agencies:

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

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

- (1) Without limiting section 21, the Commonwealth Minister may make an arrangement, in writing, with the appropriate Minister of the Crown of a State, in relation to the provision of information, documents or things by a person or class of persons under section 19A or 20.
- (2) The arrangement may specify conditions to which the provision of the information, documents or things is subject.
- (3) Without limiting subsection (2), the arrangement may specify:
 - (a) the State agency or State agencies from which an examiner may or may not request or require information, documents or things; and
 - (b) any information, documents or things which an examiner may or may not request or require; and

- (c) any secrecy provisions to which the provision of information, documents or things is subject.
- (4) A copy of an arrangement made under subsection (1) must be published in the *Gazette*.
- (5) The Commonwealth Minister may, at any time, give a written notice to the Minister of the Crown of the State revoking an arrangement under subsection (1).
- (6) The Commonwealth Minister must revoke an arrangement under subsection (1) if the Minister of the Crown of the State so requests in writing.
- (7) The Commonwealth Minister and the Minister of the Crown of the State may, by written agreement, vary the terms of an arrangement under subsection (1).
- (8) A copy of the revocation or variation of an arrangement under subsection (5), (6) or (7) must be published in the *Gazette*.
- (9) A revocation or variation under subsection (5), (6) or (7) takes effect at the time specified in the revocation or variation.
- (10) An arrangement under subsection (1), and a revocation or variation under subsection (5), (6) or (7), are not legislative instruments.
- (11) A written request or requirement for information, documents or things under section 19A or 20 must not be served on a principal officer of a State agency, or a person who is, or has been, a member, officer or employee of a State agency, except in accordance with an arrangement made under subsection (1) that:
 - (a) has been published in the *Gazette*; and
 - (b) is in force.

21 Arrangements for Board to obtain information or intelligence

- (1) The Commonwealth Minister may make an arrangement with the appropriate Minister of the Crown of a State for the Board to

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receive from the State, or from an authority of the State, information or intelligence relating to relevant criminal activities.

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

21A Notices to produce a document or thing

- (1) An examiner may, by issuing a written notice served on a person, require the person:
- (a) to attend, at a specified time and place, before an examiner or member of the staff of the ACC; and
 - (b) to produce to that person at that time and place a specified document or thing relevant to a special ACC operation/investigation;

if the examiner is satisfied that issuing the notice is reasonable in all the circumstances.

Note: The examiner may need to include a notation in the notice (see section 21B).

- (2) The examiner must record in writing the reasons for the notice. The record must be made at or before the time the notice is issued.
- (3) A notice may be issued under subsection (1) whether or not an examination is being held for the purposes of the special ACC operation/investigation.
- (4) A person commits an offence if:
- (a) the person is served with a notice under subsection (1); and
 - (b) the person fails to comply with a notice.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

- (5) A failure to comply with section 21B does not affect the validity of a notice issued under subsection (1).

Note 1: A legal practitioner may refuse to comply with the notice in certain circumstances: see section 21D.

Note 2: Subsection (4) is not subject to the privilege against self-incrimination but there are limits on the uses to which the document or thing may be put: see section 21E.

21B Notices—disclosing information about a notice may be prohibited

Notations prohibiting disclosures of information about a notice

- (1) Subsections (2) to (4) provide when a notice under subsection 21A(1) can include a notation to the effect that disclosure of information about:
 - (a) the notice; or
 - (b) any official matter connected with it;is prohibited except in any circumstances specified in the notation.
- (2) The notice must include such a notation if the examiner issuing the notice is satisfied that the failure to do so would reasonably be expected to prejudice:
 - (a) a person's safety or reputation; or
 - (b) a person's fair trial, if the person has been charged with an offence or such a charge is imminent; or
 - (c) the effectiveness of an operation or investigation.
- (3) The notice may include such a notation if the examiner issuing the notice is satisfied that the failure to do so:
 - (a) might prejudice:
 - (i) a person's safety or reputation; or
 - (ii) a person's fair trial, if the person has been charged with an offence or such a charge is imminent; or
 - (iii) the effectiveness of an operation or investigation; or
 - (b) might otherwise be contrary to the public interest.
- (4) The notice must not include such a notation in any other case.

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Written statement to accompany notation

- (5) If such a notation is included in the notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 21C on the person who was served the notice.

When notations are cancelled

- (6) Such a notation included in the notice is cancelled if:
- (a) the ACC concludes the special ACC operation/investigation to which the notice relates; and
 - (b) all criminal proceedings (if any) resulting from the operation or investigation have commenced.
- (7) If a notation is cancelled by subsection (6), the CEO must give written advice of the cancellation to the person who was served the notice.

Relationship with the Privacy Act 1988

- (8) For the purposes of the *Privacy Act 1988*, if:
- (a) a notation has been included under, but not cancelled by, this section; and
 - (b) apart from this subsection, a credit reporting body (within the meaning of that Act) would be required, under subsection 20E(5) of that Act, to make a note about the disclosure of information to which the notation relates;
- such a note must not be made until the notation is cancelled.

21C Notices—offences of disclosure

- (1) A person commits an offence if:
- (a) the person is served with a notice under section 21A that includes a notation under section 21B; and
 - (b) the person discloses the existence of, or any information about:
 - (i) the notice; or

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- (ii) any official matter connected with the notice; and
- (c) when the disclosure is made:
 - (i) the notation has not been cancelled by subsection 21B(6); and
 - (ii) the period of 5 years after the notice is served under section 21A has not ended.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if the person makes the disclosure:
- (a) in any circumstances permitted by the notation; or
 - (b) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the notice; or
 - (c) to a legal aid officer for the purpose of seeking assistance under section 27 in relation to the notice; or
 - (d) if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the notice; or
 - (e) if the person is a legal practitioner—for the purpose of obtaining the agreement of another person under subsection 21D(2) to the legal practitioner producing a document or thing; or
 - (f) to the Ombudsman for the purpose of making a complaint under the *Ombudsman Act 1976*; or
 - (g) to the Australian Law Enforcement Integrity Commission for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) A person commits an offence if:
- (a) a disclosure is made to a person about:
 - (i) a notice under section 21A that includes a notation under section 21B; or
 - (ii) any official matter connected with such a notice; and

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- (b) the disclosure is permitted under subsection (2) or (4) because the person is a person of a particular kind; and
- (c) while the person is a person of that kind, the person discloses the existence of, or any information about:
 - (i) the notice; or
 - (ii) any official matter connected with the notice; and
- (d) when the disclosure by the person is made:
 - (i) the notation has not been cancelled by subsection 21B(6); and
 - (ii) the period of 5 years after the notice is served under section 21A has not ended.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (4) Subsection (3) does not apply if the person discloses the information:
 - (a) if the person is an officer or agent of a body corporate referred to in paragraph (2)(d):
 - (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the notice; or
 - (ii) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the notice; or
 - (iii) to a legal aid officer for the purpose of seeking assistance under section 27 in relation to the notice; or
 - (b) if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or seeking assistance under section 27, in relation to the notice; or
 - (c) if the person is a legal aid officer—for the purpose of obtaining legal advice or representation in relation to the notice; or
 - (d) to the Ombudsman for the purpose of making a complaint under the *Ombudsman Act 1976*; or
 - (e) to the Australian Law Enforcement Integrity Commission for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue.

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Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (5) A person commits an offence if:
- (a) a disclosure is made to a person about:
 - (i) a notice under section 21A that includes a notation under section 21B; or
 - (ii) any official matter connected with such a notice; and
 - (b) the disclosure is permitted under subsection (2) or (4) because the person is a person of a particular kind; and
 - (c) when the person is no longer a person of that kind, the person:
 - (i) makes a record of the notice; or
 - (ii) discloses the existence of the notice; or
 - (iii) discloses any information about the notice or the existence of it; and
 - (d) when the record, or disclosure, is made by the person:
 - (i) the notation has not been cancelled by subsection 21B(6); and
 - (ii) the period of 5 years after the notice is served under section 21A has not ended.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (6) A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.

21D Notices—legal practitioner not required to disclose privileged communications

- (1) A legal practitioner may refuse to produce a document or thing, when served with a notice to do so under section 21A, if the document contains a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner.

Section 21E

- (2) Subsection (1) does not apply if the person to or by whom the communication was made agrees to the legal practitioner producing the document or thing.
- (3) If the legal practitioner refuses to produce the document or thing, he or she must, if required by the examiner who issued the notice, give the examiner the name and address of the person to or by whom the communication was made.
- (4) If a legal practitioner gets agreement, as mentioned in subsection (2):
 - (a) the fact that he or she produces a document or thing does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that document or thing; and
 - (b) the document does not cease to be the subject of legal professional privilege merely because it is produced or referred to.

21E Notices—self-incrimination etc.

- (1) A person is not excused from producing a document or thing, when served with a notice to do so under section 21A, on the ground that doing so would tend to incriminate the person or expose the person to a penalty.
- (2) If the person is an individual, the document or thing produced is not admissible in evidence against the person in:
 - (a) a criminal proceeding; or
 - (b) a proceeding for the imposition or recovery of a penalty; or
 - (c) a confiscation proceeding.
- (3) Subsection (2) does not affect whether the document or thing is admissible in evidence against the person in:
 - (a) a confiscation proceeding, if the document or thing was produced at a time when the proceeding had not commenced and is not imminent; or
 - (b) a proceeding about:
 - (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: For paragraph (a), the court may order otherwise (see subsection 25H(4)).

- (4) Subsection (3) does not, by implication, affect the admissibility or relevance of the document or thing for any other purpose.

21F Notices—allowances for expenses

A person complying with a notice under section 21A is entitled to be paid by the Commonwealth any allowances, for travelling and other expenses, that are prescribed by regulations made for the purposes of this section.

22 Search warrants

- (1) An eligible person may apply to an issuing officer for the issue of a warrant under subsection (2) if:
 - (a) the eligible person has reasonable grounds for suspecting that, on a particular day (in this section referred to as the **relevant day**), being the day on which, or a particular day within one month after the day on which, the application is made, there may be, upon any land or upon or in any premises, vessel, aircraft or vehicle, a thing or things of a particular kind connected with a special ACC operation/investigation (in this section referred to as **things of the relevant kind**); and
 - (b) the eligible person believes on reasonable grounds that, if a summons were issued for the production of the thing or things, the thing or things might be concealed, lost, mutilated or destroyed.
- (2) Where an application under subsection (1) is made to an issuing officer, the issuing officer may issue a warrant authorizing a member of the Australian Federal Police or of the Police Force of a State, or any other person, named in the warrant, with such assistance as he or she thinks necessary and if necessary by force:

Section 22

- (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
 - (b) to search the land, premises, vessel, aircraft or vehicle for things of the relevant kind; and
 - (c) to seize any things of the relevant kind found upon the land or upon or in the premises, vessel, aircraft or vehicle and deliver things so seized to any person participating in the special ACC operation/investigation.
- (3) An issuing officer shall not issue a warrant under subsection (2) unless:
 - (a) an affidavit has been furnished to him or her setting out the grounds on which the issue of the warrant is being sought;
 - (b) the applicant (or some other person) has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought; and
 - (c) the issuing officer is satisfied that there are reasonable grounds for issuing the warrant.
- (4) Where an issuing officer issues a warrant under subsection (2), he or she shall state on the affidavit furnished to him or her as mentioned in paragraph (3)(a) which of the grounds specified in that affidavit he or she has relied on to justify the issue of the warrant and particulars of any other grounds relied on by him or her to justify the issue of the warrant.
- (5) A warrant issued under this section shall:
 - (a) include a statement of the purpose for which the warrant is issued, which shall include a reference to the special ACC operation/investigation and with which the things of the relevant kind are connected;
 - (b) state whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
 - (c) include a description of the kind of things authorized to be seized; and

- (d) specify a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.
- (6) A warrant issued under this section may be executed, in accordance with its terms, at any time during the period commencing on the relevant day and ending on the date specified in the warrant as the date upon which the warrant ceases to have effect.
- (6A) A person executing a warrant issued under this section may only use such reasonable force as is necessary for the execution.
- (7) Where, in the course of searching, in accordance with the terms of a warrant issued under this section, for things of the relevant kind, the person executing the warrant finds a thing that he or she believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an offence against a law of the Commonwealth, of a State or of a Territory, and he or she believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence, the person may seize the thing and, if he or she does so, the thing shall be deemed, for the purposes of this Act, to have been seized pursuant to the warrant.
- (10) Nothing in this section affects a right of a person to apply for, or the power of a person to issue, a warrant, being a right or power existing otherwise than by virtue of this section.
- (11) In this section:
thing includes a document.
- (13) Without limiting the generality of paragraph (1)(a), a reference in this section to a thing connected with a special ACC operation/investigation, includes a reference to a thing that may be used in evidence in proceedings for the taking, by or on behalf of the Crown in right of the Commonwealth, of a State or of a Territory, of civil remedies in respect of a matter connected with,

Section 23

or arising out of, an offence to which the special ACC operation/investigation relates.

- (14) A function of issuing a warrant conferred on an issuing officer by this section is conferred on the issuing officer in a personal capacity and not as a court or a member of a court. The issuing officer need not accept the function conferred.
- (15) Without limiting the generality of subsection (14), the issue of a warrant has effect only by virtue of this Act and is not to be taken by implication to be made by a court.
- (16) An issuing officer performing a function of, or connected with, issuing a warrant under this section has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the issuing officer is a member).

23 Application by telephone for search warrants

- (1) Where, by reason of circumstances of urgency, an eligible person considers it necessary to do so, the eligible person may make application by telephone for a warrant under section 22.
- (2) Before so making application, the eligible person shall prepare an affidavit that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the affidavit has been sworn.
- (3) Where an issuing officer issues a warrant under section 22 upon an application made by telephone, he or she shall:
 - (a) complete and sign the warrant;
 - (b) inform the eligible person who made the application of the terms of the warrant and the date on which and the time at which it was signed;
 - (c) record on the warrant his or her reasons for issuing the warrant; and
 - (d) send a copy of the warrant to the CEO.

- (4) Where a warrant is issued under section 22 upon an application made by telephone, a member of the staff of the ACC or a member of the Australian Federal Police or of the Police Force of a State may complete a form of warrant in the terms indicated by the issuing officer under subsection (3) and, where a form of warrant is so completed, he or she shall write on it the name of the issuing officer who issued the warrant and the date on which and the time at which it was signed.
- (5) Where a person completes a form of warrant in accordance with subsection (4), the person shall, not later than the day next following the date of expiry of the warrant, send to the issuing officer who signed the warrant the form of warrant completed by him or her and the affidavit duly sworn in connection with the warrant.
- (6) Upon receipt of the documents referred to in subsection (5), the issuing officer shall attach them to the warrant signed by him or her and deal with the documents in the manner in which he or she would have dealt with the affidavit if the application for the warrant had been made to him or her in accordance with section 22.
- (7) A form of warrant duly completed in accordance with subsection (4) shall be deemed to be a warrant issued under section 22.
- (8) A function of issuing a warrant conferred on an issuing officer by this section is conferred on the issuing officer in a personal capacity and not as a court or a member of a court.
- (9) Without limiting the generality of subsection (8), the issue of a warrant has effect only by virtue of this Act and is not to be taken by implication to be made by a court.
- (10) An issuing officer performing a function of, or connected with, issuing a warrant under this section has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the issuing officer is a member).

Section 24

24 Order for delivery to examiner of travel documents of witness

- (1) Where, upon application by an examiner, a Judge of the Federal Court sitting in Chambers is satisfied by evidence on oath that:
- (a) in connection with a special ACC operation/investigation, a summons has been issued under this Act requiring a person to appear before an examiner at an examination (whether or not the summons has been served), or a person has appeared before an examiner at an examination, to give evidence or to produce documents or other things;
 - (b) there are reasonable grounds for believing that the person may be able to give to the examiner evidence or further evidence that is, or to produce to the examiner documents or other things or further documents or other things that are, relevant to the special ACC operation/investigation and could be of particular significance to the special ACC operation/investigation; and
 - (c) there are reasonable grounds for suspecting that the person intends to leave Australia and has in his or her possession, custody or control:
 - (i) an Australian travel document that has been issued to him or her; or
 - (ii) a passport or other travel document that has been issued to him or her by or on behalf of the government of a foreign country;

the Judge may make an order requiring the person to appear before the Federal Court on a date, and at a time and place, specified in the order to show cause why he or she should not be ordered to deliver the travel document to the examiner.

- (2) Where:
- (a) an order under subsection (1) or a corresponding provision of a law of a State has been made in respect of a person; and
 - (b) a copy of that order has been served upon the person;
- the person shall not leave Australia unless:
- (c) he or she has appeared before the Federal Court as required by the order referred to in paragraph (a); and

- (d) if the Court makes an order in respect of him or her under paragraph (3)(a)—he or she has complied with the terms of that order and any travel document delivered by him or her to the examiner in accordance with that order has been returned to him or her.

Penalty: 50 penalty units or imprisonment for 2 years.

- (3) Where a person appears before the Federal Court in pursuance of an order made under subsection (1), the Court may, if it thinks fit, make an order:
 - (a) requiring the person to deliver to the examiner any travel document issued to him or her that is in his or her possession, custody or control; and
 - (b) authorizing the examiner to retain the travel document until the expiration of such period (not exceeding one month) as is specified in the order.
- (4) The Federal Court may, upon application by the examiner, extend for a further period (not exceeding one month) or further periods (not exceeding one month in each case) the period for which the examiner is authorized to retain a travel document in pursuance of an order made under subsection (3), but so that the total period for which the examiner is authorized to retain the travel document does not exceed 3 months.
- (5) The Federal Court may, at any time while the examiner is authorized in pursuance of an order made under this section to retain a travel document issued to a person, upon application made by the person, revoke the order and, if the order is revoked, the examiner shall forthwith return the travel document to the person.
- (6) The Federal Court has jurisdiction with respect to matters arising under this section.
- (7) In this section, *Australia* includes the external Territories.

Section 24AA

24AA Use of and sharing returnable items

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

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

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

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

Use of returnable items for State or Territory purposes

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

Section 24AA

- (6) A constable or Commonwealth officer may use a returnable item for any other use that is required or authorised by or under a law of a State or a Territory.

Section does not limit any other law of the Commonwealth

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

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

- (8) The CEO may make a returnable item available to:
- (a) a State or Territory law enforcement agency; or
 - (b) an agency that has responsibility for:
 - (i) law enforcement in a foreign country; or
 - (ii) intelligence gathering for a foreign country; or
 - (iii) the security of a foreign country;
- to be used by that agency for a purpose mentioned in subsection (1), (5) or (6) and the purpose of any or all of the following (but not for any other purpose):
- (c) preventing, investigating or prosecuting an offence against a law of a State or Territory;
 - (d) proceedings under a corresponding law (within the meaning of the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*);
 - (e) proceedings for the forfeiture of the item under a law of a State or Territory;
 - (f) deciding whether to institute proceedings or to take any other action mentioned in any of paragraphs 3ZQU(1)(a) to (l) (inclusive) of the *Crimes Act 1914*, subsection (5) or (6) of this section, or paragraph (c), (d) or (e) of this subsection.

Section 24AB

Ministerial arrangements for sharing

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

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

Returnable items that are examination material or derivative material

- (10) This section has effect subject to:
- (a) any relevant direction given under subsection 25A(9) (about confidentiality for examinations); and
 - (b) the person making available, or using, the returnable item complying with sections 25B to 25H to the extent that the returnable item is examination material or derivative material.

24AB When returnable items must be returned—general

- (1) If the CEO is satisfied that a returnable item is not required (or is no longer required) for a purpose mentioned in section 24AA or for other judicial or administrative review proceedings, the CEO must take reasonable steps to return the item to:
- (a) the person from whom the item was seized, or the person who produced the item; or
 - (b) the owner, if the person mentioned in paragraph (a) is not entitled to possess it.
- (2) However, the CEO does not have to take those steps if:
- (a) either:

Section 24ABA

- (i) the returnable item may be retained because of an order under subsection 24AC(2), or any other order under that subsection has been made in relation to the item; or
 - (ii) the CEO has applied for such an order and the application has not been determined; or
- (b) the returnable item may otherwise be retained, destroyed or disposed of under a law, or an order of a court or tribunal, of the Commonwealth or of a State or a Territory; or
- (c) the returnable item is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (3) To avoid doubt, if the returnable item is a document, the CEO is required to take reasonable steps to return the document only if the ACC took possession of that document.

24ABA Examiner may direct that returnable items be returned

- (1) If an examiner conducting an examination is satisfied that a returnable item produced by a person during the examination:
 - (a) is not required (or is no longer required) for the purposes of the special ACC operation/investigation to which the examination relates; or
 - (b) will no longer be so required once certain conditions (the *return conditions*) have been met;the examiner may, at or before the time the person is excused or released from further attendance at the examination, direct that the item be returned to:
 - (c) the person; or
 - (d) the owner, if the person is not entitled to possess it.
- (2) The direction may specify that the return of the item is subject to any return conditions being met.
- (3) Members of the staff of the ACC, or any person who has been present at the examination and is in possession of the item, must comply with the direction.
- (4) The examiner or the CEO may vary or revoke the direction.

Section 24AC

24AC Issuing officer may permit a returnable item to be retained, forfeited etc.

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

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

- (2) The issuing officer may make any of the orders referred to in subsection (3) if the issuing officer is satisfied that there are reasonable grounds to suspect that, if the returnable item is returned to either of the following persons, the item is likely to be used by that person or another person in the commission of a terrorist act, a terrorism offence or a serious offence:
- (a) the owner of the item;
 - (b) the person from whom the item was seized, or the person who produced the item.
- (3) The orders are as follows:
- (a) an order that the item may be retained for the period specified in the order;
 - (b) an order that the item is forfeited to the Commonwealth;
 - (c) if the item is not a document—an order that:
 - (i) the item be sold and the proceeds given to the owner of the item; or
 - (ii) the item be sold in some other way;
 - (d) an order that the item is to be destroyed or otherwise disposed of.

Item must be returned if issuing officer not satisfied

- (4) The issuing officer must order that the returnable item be returned to the following person if the issuing officer is not satisfied as mentioned in subsection (2):
- (a) the person from whom the item was seized, or the person who produced the item;

- (b) if the person referred to in paragraph (a) is not entitled to possess the item—the owner of the item.

CEO to notify persons with an interest in returnable item

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

Person with interest may appear and be heard

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

Function conferred in personal capacity

- (7) A function of making an order under this section is conferred on an issuing officer in a personal capacity and not as a court or a member of a court.
- (8) An issuing officer performing a function of, or connected with, making an order under this section has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the issuing officer is a member).

Division 2—Examinations

24A Examinations

- (1) An examiner may conduct an examination for the purposes of a special ACC operation/investigation.
- (2) The examination may be:
 - (a) a pre-charge examination or a post-charge examination; or
 - (b) a pre-confiscation application examination or a post-confiscation application examination.
- (3) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:
 - (a) paragraph (2)(a) were, by express provision, confined to pre-charge examinations; or
 - (b) paragraph (2)(b) were, by express provision, confined to pre-confiscation application examinations.

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.

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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 special 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 special ACC operation/investigation.
- (6A) For the purposes of subsection (6), the matters relevant to the special ACC operation/investigation may include:
 - (a) the subject matter of any charge, or imminent charge, against the witness; and

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- (b) the subject matter of any confiscation proceeding, or imminent confiscation proceeding, against the witness.
- (6B) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:
 - (a) subsection (6A) had not been enacted; or
 - (b) subsection (6A) were, by express provision, confined to dealing with a charge against the witness or such a charge that is imminent; or
 - (c) subsection (6A) were, by express provision, confined to dealing with a confiscation proceeding against the witness that has commenced or is imminent.
- (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 examination material:
 - (a) must not be used or disclosed; or
 - (b) may only be used by, or disclosed to, specified persons in specified ways or on specified conditions.
- (9A) An examiner must give a direction under subsection (9) about examination material if the failure to do so:
 - (a) might prejudice a person's safety; or

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- (b) would reasonably be expected to prejudice the examinee's fair trial, if the examinee has been charged with a related offence or such a charge is imminent.
- (10) A direction under subsection (9) about examination material may, in writing, be varied or revoked by:
 - (a) the CEO; or
 - (b) the examiner conducting the examination, if the examinee for the examination material has neither been excused nor released from further attendance at the examination.
- (11) However, the direction cannot be varied or revoked if the variation or revocation:
 - (a) might prejudice a person's safety; or
 - (b) would reasonably be expected to prejudice the examinee's fair trial, if the examinee has been charged with a related offence or such a charge is imminent.

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

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(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.

Offences

- (14) A person commits an offence if the person contravenes subsection (5) by being present at an examination.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (14A) A person commits an offence if:

- (a) the person uses or discloses examination material (whether or not the person is the first to do so); and
- (b) the use or disclosure contravenes a direction given under subsection (9) about the examination material; and
- (c) the use or disclosure is not under subsection (12) or (13) or paragraph 25C(1)(b).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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.

25B Obtaining derivative material

- (1) An entity mentioned in subsection (3), that may lawfully use or disclose examination material, may lawfully use or disclose the material for the purpose of obtaining derivative material if the use or disclosure is:
- (a) a pre-charge use or disclosure of the material; or

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- (b) a post-charge use or disclosure of pre-charge examination material; or
 - (c) a post-charge use or disclosure of post-charge examination material; or
 - (d) a pre-confiscation application use or disclosure of the examination material; or
 - (e) a post-confiscation application use or disclosure of pre-confiscation application examination material; or
 - (f) a post-confiscation application use or disclosure of post-confiscation application examination material.
- (2) Subsection (1) has effect subject to:
- (a) any relevant direction given under subsection 25A(9); and
 - (b) paragraph 25C(1)(b), in the case of a disclosure to a prosecutor of the examinee.
- Subsection (1) does not, by implication, limit the use or disclosure of the examination material for any other purpose.
- (3) The entities are as follows:
- (a) an examiner;
 - (b) the CEO or a member of the staff of the ACC;
 - (c) a person or body investigating whether the examinee committed an offence against a law of the Commonwealth, or of a State or Territory;
 - (d) a prosecutor of the examinee;
 - (e) a prosecuting authority;
 - (f) a proceeds of crime authority;
 - (g) any other person or body lawfully in possession of the examination material.
- (4) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:
- (a) one or more of paragraphs (1)(b), (c), (e) and (f) had not been enacted; or
 - (b) subsection (3) were, by express provision, confined to persons or bodies other than either or both of the following:

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- (i) prosecutors of the examinee;
- (ii) proceeds of crime authorities.

25C Disclosing examination material to prosecutors of the examinee

- (1) A person or body, that may lawfully disclose examination material, may lawfully disclose the material to a prosecutor of the examinee if the disclosure is:
 - (a) a pre-charge disclosure of the material; or
 - (b) a post-charge disclosure of:
 - (i) pre-charge examination material; or
 - (ii) post-charge examination material;under an order made under subsection 25E(1).
- (2) Subsection (1) has effect subject to any relevant direction given under subsection 25A(9), in the case of a pre-charge disclosure of the material.

Note: In the case of a post-charge disclosure, the court will have regard to any direction under subsection 25A(9) in deciding whether to make an order under subsection 25E(1).
- (3) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (1)(b), or either of its subparagraphs, had not been enacted.

25D Disclosing derivative material to prosecutors of the examinee

- (1) A person or body, that may lawfully disclose derivative material, may lawfully disclose the material to a prosecutor of the examinee if the disclosure is:
 - (a) a pre-charge disclosure of the material; or
 - (b) a post-charge disclosure of derivative material obtained from pre-charge examination material (whether from a pre-charge use of that examination material or otherwise); or
 - (c) a post-charge disclosure of derivative material obtained from post-charge examination material, and the disclosure is under an order made under subsection 25E(1).

- (2) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (1)(b) or (c), or both, had not been enacted.

25E Court's powers to order disclosure and to ensure a fair trial

Court may order that material may be disclosed

- (1) A court may, on application or on its own initiative, order that examination material or derivative material may be disclosed to prosecutors of the examinee if the court is satisfied that the disclosure is required:
- (a) in the interests of justice; and
 - (b) despite any relevant direction given under subsection 25A(9).
- The order may specify the prosecutors (by any means), and the uses to which they may put the material.
- (2) Subsection (1) applies to:
- (a) if the examinee has been charged with a related offence before a federal court or a court of a State or Territory—that court; or
 - (b) otherwise—a federal court (other than the Federal Circuit and Family Court of Australia (Division 1)) or a court of a State or Territory.

Court's powers to ensure the examinee's fair trial

- (3) Subsection (1) and sections 25B, 25C, 25D, 25F and 25G do not, by implication, restrict a court's power to make any orders necessary to ensure that the examinee's fair trial is not prejudiced by the possession or use of examination material or derivative material by a prosecutor of the examinee.
- (4) However, a person's trial for:
- (a) an offence against a law of the Commonwealth or a Territory; or
 - (b) an offence against a law of a State that has a federal aspect;

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is not unfair merely because the person has been an examinee. This applies whether the person became an examinee:

- (c) before being charged with the offence and before such a charge was imminent; or
 - (d) after being charged with the offence or after such a charge was imminent.
- (5) Without limiting its effect apart from this subsection, this Act also has the effect it would have if subsection (4), or paragraph (4)(d), had not been enacted.

25F Certain material may always be disclosed to prosecutors of the examinee

- (1) A person or body, that may lawfully disclose examination material of a kind covered by paragraph 4B(1)(c) or (d), may lawfully disclose the material to a prosecutor of the examinee.
- (2) A person or body, that may lawfully disclose examination material or derivative material, may lawfully disclose the material to a prosecutor of the examinee if the examinee:
 - (a) is suspected of; or
 - (b) has been charged with;an offence against subsection 30(1), (2) or (3), 33(1) or 35(1) in relation to the examination.
- (3) Subsection (1) or (2) has effect subject to any relevant direction given under subsection 25A(9).
- (4) Subsection (1) or (2) applies whether the disclosure is:
 - (a) a pre-charge disclosure of the material; or
 - (b) a post-charge disclosure of:
 - (i) pre-charge examination material; or
 - (ii) derivative material obtained from pre-charge examination material (whether from a pre-charge use of the examination material or otherwise); or
 - (c) a post-charge disclosure of:

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- (i) post-charge examination material; or
 - (ii) derivative material obtained from post-charge examination material;
- and whether or not an order has been made under subsection 25E(1).
- (5) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (4)(b) or (c), or both, had not been enacted.

25G Other matters about prosecutors and examinees

- (1) If a prosecutor of the examinee lawfully possesses examination material or derivative material, the prosecutor may use that material for purposes that include:
- (a) making a decision whether to prosecute the examinee; and
 - (b) prosecuting the examinee.
- This use of the examination material is subject to subsection 30(5) and any relevant direction given under subsection 25A(9).
- (2) If material is lawfully in the possession of a prosecutor of the examinee, the fact that the material is examination material or derivative material does not prevent it from being admissible in evidence against the examinee in a criminal proceeding.
- Note: The material may be inadmissible for other reasons (for example, because of subsection 30(5)).
- (3) Sections 25B to 25F and subsection (1) of this section do not, by implication, restrict the use of examination material or derivative material by, or the disclosure of that material to:
- (a) a prosecuting authority; or
 - (b) an individual employed or engaged by a prosecuting authority;
- who is not a prosecutor of the examinee.
- (4) This section has effect subject to any law of the Commonwealth, a State or Territory.

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25H Proceeds of crime authorities and examinations

- (1) A person or body, that may lawfully disclose examination material or derivative material, may lawfully disclose the material to a proceeds of crime authority if the disclosure is:
 - (a) a pre-confiscation application disclosure of the material; or
 - (b) a post-confiscation application disclosure of:
 - (i) pre-confiscation application examination material; or
 - (ii) derivative material obtained from pre-confiscation application examination material (whether from a pre-confiscation application use of the examination material or otherwise); or
 - (c) a post-confiscation application disclosure of:
 - (i) post-confiscation application examination material; or
 - (ii) derivative material obtained from post-confiscation application examination material.
- (2) Subsection (1) has effect subject to any relevant direction given under subsection 25A(9).
- (3) If material is lawfully in the possession of a proceeds of crime authority, the fact that the material is examination material or derivative material does not prevent it from being admissible in evidence against the examinee in a confiscation proceeding.

Note: The material may be inadmissible for other reasons (for example, because of subsection 30(5)).
- (4) Subsections (3), 21E(3) and 30(5A) do not, by implication, restrict a court's power to make any orders necessary to prevent prejudice to the proper administration of justice.
- (5) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (1)(b) or (c), or both, had not been enacted.

26 Reimbursement of expenses

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

27 Legal and financial assistance

- (1) A witness who is appearing or is about to appear before an examiner may make an application to the Attorney-General for the provision of assistance under this section in respect of his or her appearance.
- (2) A person who proposes to make, or has made, an application to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act may make an application to the Attorney-General for the provision of assistance under this section in respect of the application to the Federal Court.
- (2A) A person who proposes to make, or has made, an application to the Federal Circuit and Family Court of Australia (Division 2) under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act may make an application to the Attorney-General for the provision of assistance under this section in respect of the application to the Federal Circuit and Family Court of Australia (Division 2).
- (3) Where an application is made by a person under subsection (1), (2) or (2A), the Attorney-General may, if he or she is satisfied that:
 - (a) it would involve substantial hardship to the person to refuse the application; or
 - (b) the circumstances of the case are of such a special nature that the application should be granted;authorize the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in respect of the appearance of that person before the examiner, or

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the application by that person to the Federal Court, as the case may be, as the Attorney-General determines.

28 Power to summon witnesses and take evidence

- (1) An examiner may summon a person to appear before an examiner at an examination to do either or both of the following:
 - (a) give evidence;
 - (b) produce any documents or other things referred to in the summons;if the examiner is satisfied that issuing the summons is:
 - (c) in all cases—reasonable in all the circumstances; and
 - (d) in the case of a post-charge, or post-confiscation application, summons—reasonably necessary for the purposes of the relevant special ACC operation/investigation even though:
 - (i) the person has been charged or the confiscation proceeding has commenced; or
 - (ii) that charge or proceeding is imminent.
- (1A) The examiner must also record in writing the reasons for the issue of the summons. The record is to be made:
 - (a) before the issue of the summons; or
 - (b) at the same time as the issue of the summons.
- (2) A summons under subsection (1) requiring a person to appear before an examiner at an examination must be accompanied by a copy of the determination made by the Board under subsection 7C(2) or (3).
- (3) A summons under subsection (1) requiring a person to appear before an examiner at an examination shall, unless the examiner issuing the summons is satisfied that, in the particular circumstances of the special ACC operation/investigation to which the examination relates, it would prejudice the effectiveness of the special ACC operation/investigation for the summons to do so, set out, so far as is reasonably practicable, the general nature of the matters in relation to which the person is to be questioned, but nothing in this subsection prevents an examiner from questioning

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the person in relation to any matter that relates to a special ACC operation/investigation.

Note: Those matters could relate to a charge or confiscation proceeding against the person (see subsection 25A(6A)).

- (4) The examiner who is holding an examination may require a person appearing at the examination to produce a document or other thing.
- (5) An examiner may, at an examination, take evidence on oath or affirmation and for that purpose:
 - (a) the examiner may require a person appearing at the examination to give evidence either to take an oath or to make an affirmation in a form approved by the examiner; and
 - (b) the examiner, or a person who is an authorised person in relation to the ACC, may administer an oath or affirmation to a person so appearing at the examination.
- (6) In this section, a reference to a person who is an authorised person in relation to the ACC is a reference to a person authorised in writing, or a person included in a class of persons authorised in writing, for the purposes of this section by the CEO.
- (7) The powers conferred by this section are not exercisable except for the purposes of a special ACC operation/investigation.
- (8) A failure to comply with section 29A, so far as section 29A relates to a summons under subsection (1) of this section, does not affect the validity of the summons.

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- (9) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:
 - (a) paragraph (1)(d) had not been enacted; or
 - (b) paragraph (1)(d) were, by express provision, confined to dealing with a charge against the person or such a charge that is imminent; or

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- (c) paragraph (1)(d) were, by express provision, confined to dealing with a confiscation proceeding against the person that has commenced or is imminent.

29A Summons—disclosing information about a summons may be prohibited

- (1) The examiner issuing a summons under section 28 must, or may, as provided in subsection (2), include in it a notation to the effect that disclosure of information about the summons, or any official matter connected with it, is prohibited except in the circumstances, if any, specified in the notation.
- (2) A notation must not be included in the summons except as follows:
 - (a) the examiner must include the notation if satisfied that failure to do so would reasonably be expected to prejudice:
 - (i) the safety or reputation of a person; or
 - (ii) a person's fair trial, if the person has been charged with an offence or such a charge is imminent; or
 - (iii) the effectiveness of an operation or investigation;
 - (b) the examiner may include the notation if satisfied that failure to do so might prejudice:
 - (i) the safety or reputation of a person; or
 - (ii) a person's fair trial, if the person has been charged with an offence or such a charge is imminent; or
 - (iii) the effectiveness of an operation or investigation;
 - (c) the examiner may include the notation if satisfied that failure to do so might otherwise be contrary to the public interest.
- (3) If a notation is included in the summons, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 29B on the person who was served with, or otherwise given, the summons.

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- (4) If, after the ACC has concluded the operation or investigation concerned:
- (a) no evidence of an offence has been obtained as described in subsection 12(1); or
 - (b) evidence of an offence or offences has been assembled and given as required by subsection 12(1) and the CEO has been advised that no person will be prosecuted; or
 - (c) evidence of an offence or offences committed by only one person has been assembled and given as required by subsection 12(1) and criminal proceedings have begun against that person; or
 - (d) evidence of an offence or offences committed by 2 or more persons has been assembled and given as required by subsection 12(1) and:
 - (i) criminal proceedings have begun against all those persons; or
 - (ii) criminal proceedings have begun against one or more of those persons and the CEO has been advised that no other of those persons will be prosecuted;
- all the notations that were included under this section in any summonses relating to the operation or investigation are cancelled by this subsection.
- (5) If a notation is cancelled by subsection (4), the CEO must serve a written notice of that fact on each person who was served with, or otherwise given, the summons containing the notation.
- (7) If:
- (a) under this section, a notation in relation to the disclosure of information about:
 - (i) a summons issued under section 28; or
 - (iii) any official matter connected with the summons; has been made and not cancelled; and
 - (b) apart from this subsection, a credit reporting body (within the meaning of the *Privacy Act 1988*) would be required, under subsection 20E(5) of the *Privacy Act 1988*, to make a note about the disclosure of the information;

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such a note must not be made until the notation is cancelled.

29B Summonses—offences of disclosure

- (1) A person who is served with, or otherwise given, a summons containing a notation made under section 29A must not disclose:
- (a) the existence of the summons or any information about it; or
 - (b) the existence of, or any information about, any official matter connected with the summons.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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

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- (3) If a disclosure is made to a person as permitted by subsection (2) or (4), the following provisions apply:
- (a) while he or she is a person of a kind to whom a disclosure is so permitted to be made, he or she must not disclose the existence of, or any information about, the summons, or any official matter connected with it, except as permitted by subsection (4);
 - (b) while he or she is no longer such a person, he or she must not, in any circumstances, make a record of, or disclose the existence of, the summons or matter, or disclose any information about any of them.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (4) A person to whom information has been disclosed, as permitted by subsection (2) or this subsection, may disclose that information:
- (a) if the person is an officer or agent of a body corporate referred to in paragraph (2)(d):
 - (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons; or
 - (ii) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons or matter; or
 - (iii) to a legal aid officer for the purpose of obtaining assistance under section 27 relating to the summons or matter; or
 - (b) if the person is a legal practitioner—for the purpose of giving or obtaining legal advice or legal representation, making representations, or obtaining assistance under section 27, relating to the summons or matter; or
 - (c) if the person is a legal aid officer—for the purpose of obtaining legal advice or representation relating to the summons or matter; or
 - (d) to the Ombudsman for the purpose of making a complaint under the *Ombudsman Act 1976*; or
 - (e) to the Australian Law Enforcement Integrity Commission for the purpose of referring to the Integrity Commissioner, under

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the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue.

- (5) This section ceases to apply to a summons after:
- (a) the notation contained in the summons is cancelled by subsection 29A(4); or
 - (b) 5 years elapse after the issue of the summons;
- whichever is sooner.
- (6) A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.

30 Failure of witnesses to attend and answer questions

Failure to attend

- (1) A person served, as prescribed, with a summons to appear as a witness at an examination before an examiner shall not:
- (a) fail to attend as required by the summons; or
 - (b) fail to attend from day to day unless excused, or released from further attendance, by the examiner.

Failure to answer questions etc.

- (2) A person appearing as a witness at an examination before an examiner shall not:
- (a) when required pursuant to section 28 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
 - (b) refuse or fail to answer a question that he or she is required to answer by the examiner; or
 - (c) refuse or fail to produce a document or thing that he or she was required to produce by a summons under this Act served on him or her as prescribed.

- (3) Where:
- (a) a legal practitioner is required to answer a question or produce a document at an examination before an examiner; and
 - (b) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner;
- the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by whom the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner refuses to comply with the requirement, he or she shall, if so required by the examiner, give the examiner the name and address of the person to whom or by whom the communication was made.

Use immunity available in some cases if self-incrimination claimed

- (4) Subsection (5) limits the use that can be made of any answers given at an examination before an examiner, or documents or things produced at an examination before an examiner. Subsections (5) and (5A) only apply if:
- (a) a person appearing as a witness at an examination before an examiner:
 - (i) answers a question that he or she is required to answer by the examiner; or
 - (ii) produces a document or thing that he or she was required to produce by a summons under this Act; or
 - (iii) produces a document or thing that he or she was required to produce under subsection 28(4); and
 - (b) in the case of the production of a document that is, or forms part of, a record of an existing or past business—the document sets out details of earnings received by the person in respect of his or her employment and does not set out any other information; and
 - (c) before answering the question or producing the document or thing, the person claims that the answer, or the production of

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the document or thing, might tend to incriminate the person or make the person liable to a penalty.

(5) The answer, document or thing is not admissible in evidence against the person in:

- (a) a criminal proceeding; or
- (b) a proceeding for the imposition of a penalty; or
- (c) a confiscation proceeding.

(5A) Subsection (5) does not affect whether the answer, document or thing is admissible in evidence against the person in:

- (a) a confiscation proceeding, if the answer was given, or the document or thing was produced, at the examination at a time when the proceeding had not commenced and is not imminent; or
- (b) a proceeding about:
 - (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: For paragraph (a), the court may order otherwise (see subsection 25H(4)).

(5B) Subsection (5A) does not, by implication, affect the admissibility or relevance of the answer, document or thing for any other purpose.

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

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

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- (8) Where, in accordance with subsection (7), a court of summary jurisdiction convicts a person of an offence against subsection (1), (2) or (3), the penalty that the court may impose is a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 1 year.

Legal professional privilege

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

31 Warrant for arrest of witness

- (1) Where, upon application by an examiner, a Judge of the Federal Court or of the Supreme Court of a State or Territory sitting in chambers is satisfied by evidence on oath that there are reasonable grounds to believe:
- (a) that a person who has been ordered, under section 24, to deliver a travel document to the examiner, whether or not the person has complied with the order, is nevertheless likely to leave Australia for the purpose of avoiding giving evidence before the examiner; or
 - (b) that a person in relation to whom a summons has been issued under subsection 28(1):
 - (i) has absconded or is likely to abscond; or
 - (ii) is otherwise attempting, or is otherwise likely to attempt, to evade service of the summons; or
 - (c) that a person has committed an offence under subsection 30(1) or is likely to do so;
- the Judge may issue a warrant for the apprehension of the person.
- (2) The warrant may be executed by any member of the Australian Federal Police or of the Police Force of a State or Territory, or by any person to whom it is addressed, and the person executing it has power to break into and enter any premises, vessel, aircraft or vehicle for the purpose of executing it.

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- (2A) The warrant may be executed notwithstanding that the warrant is not at the time in the possession of the person executing it.
- (2B) A person executing a warrant under this section may only use such reasonable force as is necessary for the execution.
- (3) Where a person is apprehended in pursuance of a warrant under this section, he or she shall be brought, as soon as practicable, before a Judge of the Federal Court or of the Supreme Court of a State or Territory and the Judge may:
 - (a) admit the person to bail, with such security as the Judge thinks fit, on such conditions as he or she thinks necessary to ensure the appearance of the person as a witness before the examiner;
 - (b) order the continued detention of the person for the purposes of ensuring his or her appearance as such a witness; or
 - (c) order the release of the person.
- (4) Where a person is under detention in pursuance of this section, he or she shall, within 14 days after he or she was brought, or last brought, before a Judge of the Federal Court or of the Supreme Court of a State or Territory in accordance with this section, or within such shorter or longer time as a Judge has fixed upon the last previous appearance of the person before a Judge under this section, be again brought before a Judge and the Judge may thereupon exercise any of the powers of a Judge under subsection (3).
- (5) In this section, *Australia* includes the external Territories.

33 False or misleading evidence

- (1) A person shall not, at an examination before an examiner, give evidence that is to his or her knowledge false or misleading in a material particular.
- (2) A contravention of subsection (1) is an indictable offence and, subject to this section, is punishable, upon conviction, by

imprisonment for a period not exceeding 5 years or by a fine not exceeding 200 penalty units.

- (3) Notwithstanding that an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (4) Where, in accordance with subsection (3), a court of summary jurisdiction convicts a person of an offence against subsection (1), the penalty that the court may impose is a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 1 year.

34 Protection of witnesses etc.

Where it appears to an examiner that, by reason of the fact that a person:

- (a) is to appear, is appearing or has appeared at an examination before the examiner to give evidence or to produce a document or thing; or
- (b) proposes to furnish or has furnished information, or proposes to produce or has produced a document or thing, to the ACC otherwise than at an examination before the examiner;

the safety of the person may be prejudiced or the person may be subjected to intimidation or harassment, the examiner may make such arrangements (including arrangements with the Minister or with members of the Australian Federal Police or of the Police Force of a State) as are necessary to avoid prejudice to the safety of the person, or to protect the person from intimidation or harassment.

34A Contempt of the ACC

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

- (a) when appearing as a witness at an examination before an examiner:

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- (i) refuses or fails to take an oath or affirmation when required to do so under section 28; or
- (ii) refuses or fails to answer a question that he or she is required to answer by the examiner; or
- (iii) refuses or fails to produce a document or thing that he or she was required to produce by a summons or notice under this Act that was served to him or her as prescribed; or
- (iv) refuses or fails to produce a document or thing that he or she was required to produce under subsection 28(4); or
- (b) is a legal practitioner who is required to answer a question or produce a document at an examination before an examiner, and both of the following apply:
 - (i) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner;
 - (ii) he or she refuses to comply with the requirement and does not, when required by the examiner, give the examiner the name and address of the person to whom or by whom the communication was made; or
- (c) gives evidence at an examination before an examiner that he or she knows is false or misleading in a material particular; or
- (d) obstructs or hinders an examiner in the performance of his or her functions as an examiner; or
- (e) disrupts an examination before an examiner; or
- (f) threatens a person present at an examination before an examiner.

34B Federal Court or Supreme Court to deal with contempt

- (1) If an examiner is of the opinion that, during an examination before the examiner, a person is in contempt of the ACC, the examiner may apply to either of the following courts for the person to be dealt with in relation to the contempt:

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

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34C Conduct of contempt proceedings

- (1) This section applies if an application for a person to be dealt with in relation to a contempt of the ACC is made to the Federal Court or to the Supreme Court of a State or Territory under section 34B.
- (2) Proceedings in relation to the application are, subject to this Act, to be instituted, carried on, heard and determined in accordance with the laws (including any Rules of Court) that apply in relation to the punishment of a contempt of the Court to which the application was made.
- (3) In proceedings in relation to the application, a certificate under subsection 34B(3) is prima facie evidence of the matters specified in the certificate.

34D Person in contempt may be detained

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

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- (a) that the person surrenders the following documents:
 - (i) any Australian travel document that has been issued to him or her;
 - (ii) any passport or other travel document that has been issued to him or her by or on behalf of the government of a foreign country; or
 - (b) that the person gives an undertaking as to his or her living arrangements; or
 - (c) that the person reports as required to a law enforcement agency.
- (5) The Court may at any time vary or revoke a condition imposed under subsection (4).

34E Examiner may withdraw contempt application

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

34F Relationship with section 12

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

35 Obstructing or hindering the ACC or an examiner etc.

- (1) A person must not:
 - (a) obstruct or hinder:
 - (i) the ACC in the performance of its functions; or
 - (ii) an examiner in the performance of his or her functions as an examiner; or

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

35A Double jeopardy

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

- (3) If a person is prosecuted for an offence in respect of an act or omission referred to in subsection 34B(1), an application must not be made under subsection 34B(1) in respect of that act or omission.

36 Protection of examiners etc.

- (1) An examiner has, in the performance of his or her functions or the exercise of his or her powers as an examiner in relation to an examination before the examiner, the same protection and immunity as a Justice of the High Court.
- (2) A legal practitioner assisting the ACC or an examiner or representing a person at an examination before an examiner has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) Subject to this Act, a person summoned to attend or appearing before an examiner as a witness has the same protection as a witness in proceedings in the High Court.
- (4) To avoid doubt, this section does not limit the powers of the Ombudsman under the *Ombudsman Act 1976*.

Division 2A—Criminal intelligence assessments

Subdivision A—Preliminary

36A Definitions

In this Division:

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

adverse criminal intelligence assessment means a criminal intelligence assessment in respect of a person that contains:

- (a) any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of the person; and
- (b) a recommendation that prescribed administrative action be taken or not be taken in respect of the person, being a recommendation the implementation of which would be prejudicial to the interests of the person.

applicant means a person who has applied to the Tribunal for a review of an adverse criminal intelligence assessment.

authorised member has the same meaning as in the AAT Act.

background check has the same meaning as in section 5 of the *AusCheck Act 2007*.

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

criminal intelligence assessment or **assessment** means a written statement prepared by the ACC expressing any recommendation, opinion or advice on, or otherwise referring to, the question whether it is necessary or desirable for prescribed administrative action to be taken in respect of a person, having regard to whether there is intelligence or information that suggests that the person:

- (a) may commit a serious and organised crime; or
- (b) may assist another person to commit a serious and organised crime;

and includes any qualification or comment expressed in connection with any such recommendation, opinion or advice, being a qualification or comment that relates, or that could relate, to the question.

exempt agency means a body specified, or the person holding an office specified, in Part I of Schedule 2 to the *Freedom of Information Act 1982*.

law enforcement interests includes interests in the following:

- (a) avoiding disruption to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation, foreign intelligence and security intelligence;
- (b) protecting the technologies and methods used to collect, analyse, secure or otherwise deal with, criminal intelligence, foreign intelligence or security intelligence;
- (c) the protection and safety of informants and of persons associated with informants;
- (d) ensuring that intelligence and law enforcement agencies are not discouraged from giving information to a nation's government and government agencies;
- (e) avoiding disclosure of lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures.

member has the same meaning as in the AAT Act.

officer of the Tribunal has the same meaning as in the AAT Act.

prescribed administrative action means action that relates to or affects:

- (a) access by a person to any information or place, access to which is controlled or limited under:

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- (i) the *Aviation Transport Security Act 2004* or regulations under that Act; or
 - (ii) the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act; or
- (b) a person's ability to perform an activity in relation to, or involving, a thing (other than information or a place), if that ability is controlled or limited under:
 - (i) the *Aviation Transport Security Act 2004* or regulations under that Act; or
 - (ii) the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act.

President has the same meaning as in the AAT Act.

presidential member has the same meaning as in the AAT Act.

Registrar has the same meaning as in the AAT Act.

security has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

Tribunal means the Administrative Appeals Tribunal.

Subdivision B—Criminal intelligence assessments

36B Conduct of criminal intelligence assessments

- (1) The ACC has the function of conducting criminal intelligence assessments for purposes related to background checks required or permitted by any of the following:
 - (a) the *Aviation Transport Security Act 2004* or regulations under that Act;
 - (b) the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act.

Note 1: The CEO is responsible for conducting criminal intelligence assessments (see subsection 46A(8)).

Note 2: The function of conducting criminal intelligence assessments is separate to, and does not affect, the ACC's function of providing strategic criminal intelligence assessments to the Board (as referred to

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in paragraph 7A(f)) and the Board's function of disseminating those strategic criminal intelligence assessments (as referred to in paragraph 7C(1)(g)).

- (2) The CEO may, by legislative instrument, determine the following in relation to the making of criminal intelligence assessments:
 - (a) the matters that must be taken into account;
 - (b) the manner in which those matters are to be taken into account;
 - (c) the matters that are not to be taken into account.
- (3) The CEO must not make a determination under subsection (2) unless the CEO has consulted the Minister.
- (4) If the ACC, in conducting a criminal intelligence assessment, considers that making an adverse criminal intelligence assessment in respect of a person would prejudice law enforcement interests, the ACC may decide not to make the assessment.

36C Giving of adverse criminal intelligence assessments to certain Commonwealth agencies

- (1) The ACC may give an adverse criminal intelligence assessment in respect of a person to a Commonwealth agency for purposes related to a background check of the person that is required or permitted by any of the following:
 - (a) the *Aviation Transport Security Act 2004* or regulations under that Act;
 - (b) the *Maritime Transport and Offshore Facilities Security Act 2003* or regulations under that Act.
- (2) If the ACC considers that giving a Commonwealth agency an adverse criminal intelligence assessment in respect of a person would prejudice law enforcement interests, the ACC may decide not to give the assessment to the agency.
- (3) An adverse criminal intelligence assessment given to a Commonwealth agency under subsection (1) must be accompanied by:

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- (a) a statement of the grounds for the assessment (which is taken to be part of the assessment); and
 - (b) if, under subsection (5), the CEO makes a certificate in relation to information contained in the assessment—a copy of the certificate.
- (4) The statement of the grounds for the assessment must contain all information that the ACC relied on in making the assessment, other than:
 - (a) subject to subsection (6), information in relation to which the CEO has made a certificate under subsection (5); and
 - (b) information the disclosure of which would be contrary to a law of the Commonwealth, a State or a Territory.
- (5) The CEO may certify, in writing, that the CEO is satisfied that disclosing particular information contained in an adverse criminal intelligence assessment, including particular information contained in the statement of the grounds for the assessment, to the person in respect of whom the assessment was made would prejudice law enforcement interests or security.
- (6) If the CEO makes a certificate under subsection (5) in relation to information, the ACC may decide not to give the information to a Commonwealth agency under subsection (1). However, the Minister may, after consulting the CEO, direct the ACC to give the information to the Commonwealth agency.
- (7) A certificate made under subsection (5) is not a legislative instrument.
- (8) If the direction under subsection (6) is made in writing, the direction is not a legislative instrument.

36D Person to be notified of adverse criminal intelligence assessment

- (1) If an adverse criminal intelligence assessment in respect of a person is given to a Commonwealth agency under subsection 36C(1), the Commonwealth agency must give written

notice of the assessment to the person, unless a certificate made under subsection (4) is in force in relation to the assessment.

- (2) The written notice must:
- (a) be given to the person within the period of 14 days beginning on the day after:
 - (i) unless subparagraph (ii) applies—the day the assessment is given to the Commonwealth agency; or
 - (ii) if a certificate under subsection (4) that was in force in relation to the assessment is subsequently revoked—the day the certificate is revoked; and
 - (b) inform the person of the making of the assessment; and
 - (c) include the statement of the grounds for the assessment that was given to the Commonwealth agency (other than information in relation to which the CEO has made a certificate under subsection 36C(5)); and
 - (d) contain information concerning the person's right to apply to the Tribunal for a review of the assessment.
- (3) A written notice may be given to the person by delivering it to the person personally, or by sending it to the person by registered post at the person's address last known to the Commonwealth agency.
- (4) The Minister may certify, in writing, that the Minister is satisfied that the withholding of notice to a person of the making of an adverse criminal intelligence assessment in respect of the person is essential to either or both of the following:
- (a) the protection of law enforcement interests;
 - (b) the security of the nation.
- (5) If the Minister makes a certificate under subsection (4) in relation to an adverse criminal intelligence assessment, the Minister must:
- (a) give a copy of the certificate to the Commonwealth agency to which the assessment was given under subsection 36C(1); and
 - (b) before the end of the following periods, consider whether to revoke the certificate:

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- (i) the period of 12 months beginning on the day on which the certificate was made;
 - (ii) each subsequent 12 month period.
- (6) A certificate made under subsection (4) is not a legislative instrument.

36E Effect of preliminary advice by the ACC

A Commonwealth agency must not take, refuse to take or refrain from taking prescribed administrative action on the basis of any communication in relation to a person made by the ACC not amounting to a criminal intelligence assessment.

Subdivision C—Review of adverse criminal intelligence assessments

36F Applications to Tribunal

- (1) Applications may be made to the Tribunal for review of a decision of the ACC under section 36B to make an adverse criminal intelligence assessment.
 - Note: Paragraph 29(1)(d) of the AAT Act generally requires an application for review of a decision to be made within 28 days after the applicant has been given a copy of the decision.
- (2) An application under subsection (1) may be made by the person in respect of whom the assessment was made and who has been given notice of the assessment under section 36D.
- (3) At any time after the completion of a review by the Tribunal of an adverse criminal intelligence assessment, applications may be made to the Tribunal for review of the findings of the Tribunal on the ground that the applicant has fresh evidence of material significance that was not available at the time of the previous review.
- (4) An application under subsection (3) for review of the findings of the Tribunal on a review of an adverse criminal intelligence

assessment may be made by the person who applied for the review in which the findings were made.

- (5) If the Tribunal is satisfied that an application under subsection (3) is justified, the Tribunal may review its previous findings and:
- (a) this Act; and
 - (b) the AAT Act;
- apply in relation to such a review, and the findings of such a review, as if it were a review of an adverse criminal intelligence assessment.

Interaction with the AAT Act

- (6) Subsections (2) and (4) have effect despite subsection 27(1) of the AAT Act.

36G Requirements for applications

- (1) An application made to the Tribunal for review of an adverse criminal intelligence assessment must be accompanied by:
- (a) a copy of the assessment as given to the applicant; and
 - (b) a statement indicating any part or parts of the assessment with which the applicant does not agree and setting out the grounds on which the application is made.

Note: See also subsection 29(1) of the AAT Act, which contains other requirements for making an application to the Tribunal.

- (2) An application made under subsection 36F(3) must be accompanied by a statement setting out the grounds on which the application is made.

Interaction with the AAT Act

- (3) This section has effect despite paragraph 29(1)(c) of the AAT Act.

36H Notice of application

- (1) If an application is made to the Tribunal for review of an adverse criminal intelligence assessment:

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- (a) the Registrar must give the applicant written notice of receipt of the application; and
- (b) the Tribunal must cause the following to be given to the CEO, and to the Commonwealth agency to which the assessment was given under subsection 36C(1):
 - (i) a copy of the application;
 - (ii) a copy of the statement lodged with the application in accordance with section 36G.
- (2) If the application relates to an adverse criminal intelligence assessment that contains information in relation to which the CEO has made a certificate under subsection 36C(5), the CEO must lodge with the Tribunal:
 - (a) a copy of the certificate; and
 - (b) a copy of the whole assessment.
- (3) The CEO must lodge the copies with the Tribunal within the period of 30 days beginning on the day the copy of the application was given to the CEO under subsection (1).
- (4) The Tribunal must not, at any time, tell the applicant of the existence of, or permit the applicant to have access to any copy, or particulars of, a certificate of the CEO referred to in subsection (2), or any matter to which the certificate relates.

Interaction with the AAT Act

- (5) This section has effect despite section 29AC of the AAT Act.

36J Reviews to be conducted by Security Division of Tribunal

- (1) Despite subsection 17B(1) of the AAT Act, the powers of review in respect of applications referred to in section 36F may be exercised by the Tribunal only in the Security Division of the Tribunal.
- (2) Despite subsection 19E(2) of the AAT Act, for the purposes of a proceeding in the Security Division of the Tribunal in which the Tribunal is exercising the powers mentioned in subsection (1) of

this section, the Security Division is to be constituted by one or more members, at least one of which must be a presidential member.

36K Procedure for review

- (1) If an application for a review of an adverse criminal intelligence assessment is made to the Tribunal, the Tribunal is to review the assessment in accordance with this section.

Parties

- (2) Despite section 30 of the AAT Act, the parties to the proceeding are the CEO and the applicant, but the Commonwealth agency to which the assessment was given under subsection 36C(1) is entitled to adduce evidence and make submissions.

CEO must present all relevant information used to make assessment

- (3) In adducing evidence or making submissions, it is the duty of the CEO to present to the Tribunal all relevant information (whether favourable or unfavourable to the applicant) that:
 - (a) was used to make the assessment; and
 - (b) is available to the CEO.

Member may require parties to attend etc.

- (4) A member who is to participate, or who is participating, in the hearing may, at any time, require either or both of the parties to attend or be represented before the member at a directions hearing for the purpose of conferring with the member concerning the conduct of the review with a view to identifying the matters in issue or otherwise facilitating the conduct of the proceedings.

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Proceedings to be in private

- (5) Despite section 35 of the AAT Act, the proceedings are to be in private and, subject to this section, the Tribunal is to determine the people who may be present at any time.

Right of parties etc. to be present

- (6) Subject to subsection (9), the applicant and a person representing the applicant may be present when the Tribunal is hearing submissions made or evidence adduced by the CEO or the Commonwealth agency to which the assessment was given under subsection 36C(1).
- (7) The CEO or a person representing the CEO, and a person representing the Commonwealth agency to which the assessment was given under subsection 36C(1), may be present when the Tribunal is hearing submissions made or evidence adduced by the applicant.

Certificate regarding prejudice to law enforcement interests or security

- (8) The Minister may, in writing, certify that evidence proposed to be adduced or a submission proposed to be made by or on behalf of the CEO or the Commonwealth agency to which the assessment was given under subsection 36C(1) is of such a nature that the disclosure of the evidence or submission would be contrary to the public interest because it would prejudice law enforcement interests or security.
- (9) If such a certificate is made:
- (a) the applicant must not be present when the evidence is adduced or the submission is made; and
 - (b) a person representing the applicant must not be present when the evidence is adduced or the submission is made, unless the Minister consents.
- (10) A person representing the applicant commits an offence if:

- (a) a certificate is made under subsection (8) in relation to evidence or a submission; and
- (b) the person is present when the evidence is adduced or the submission is made; and
- (c) the person discloses the evidence or submission, or information contained in the evidence or submission, to the applicant or to any other person.

Penalty: Imprisonment for 2 years.

- (11) A certificate made under subsection (8) is not a legislative instrument.

Protection of identity of person giving evidence

- (12) If the CEO requests the Tribunal to do so, the Tribunal must do all things necessary to ensure that the identity of a person giving evidence on behalf of the CEO is not revealed.

Evidence and submissions

- (13) The Tribunal must first hear evidence adduced, and submissions made, by or on behalf of the CEO and any evidence or submissions that the Commonwealth agency to which the assessment was given under subsection 36C(1) may wish to adduce or make.
- (14) The Tribunal must next permit the applicant, if the applicant so desires, to adduce evidence before, and make submissions to, the Tribunal.
- (15) The Tribunal may, on its own initiative and at any stage of the proceedings, invite a person to give evidence, or cause a person to be summoned to give evidence.
- (16) If a person invited or summoned to give evidence under subsection (15) is:
- (a) a member of the staff of the ACC; or
 - (b) a member of the Board; or
 - (c) an examiner; or

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(d) an officer or employee of the Commonwealth agency to which the assessment was given under subsection 36C(1); subsection (8) applies as if any evidence to be given by the person were evidence proposed to be adduced by or on behalf of the CEO or that Commonwealth agency.

(17) If:

- (a) a party presents that party's case to the Tribunal; and
- (b) after that case has been presented, the other party adduces evidence; and
- (c) the Tribunal thinks that, because of evidence adduced by the other party, the first-mentioned party should be further heard; the Tribunal must give the first-mentioned party an opportunity of adducing further evidence, but must not give to the applicant any particulars of any evidence to which a certificate made under subsection (8) relates.

(18) A member of the Tribunal may ask questions of a witness before the Tribunal, and the presiding member may require a witness to answer any such questions.

Dismissal of application

(19) If the applicant fails within a reasonable time:

- (a) to proceed with the application; or
- (b) to comply with a direction of the Tribunal in relation to the application;

the President or an authorised member may dismiss the application without proceeding to review the assessment.

36L Certain documents and information not to be disclosed in review

Scope

(1) This section applies to a proceeding to which section 36K applies.

Minister may make public interest certificate

- (2) If the Minister certifies, in writing, that the disclosure of information with respect to a matter stated in the certificate, or the disclosure of the contents of a document, would be contrary to the public interest:
- (a) because it would prejudice security or the defence or international relations of Australia; or
 - (b) because it would prejudice law enforcement interests; or
 - (c) because it would involve the disclosure of deliberations or decisions of the Cabinet or a Committee of the Cabinet or of the Executive Council; or
 - (d) for any other reason stated in the certificate that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information or the contents of the document should not be disclosed;
- the following provisions of this section have effect.
- (3) A certificate made under subsection (2) is not a legislative instrument.

Protection of information etc.

- (4) A person who is required by or under this Act to disclose the information or to produce the document to the Tribunal for the purposes of a proceeding is not excused from the requirement, but the Tribunal must, subject to subsections (5), (6) and (8) of this section and section 46 of the AAT Act, do all things necessary to ensure:
- (a) that the information or the contents of the document are not disclosed to anyone other than a member of the Tribunal as constituted for the purposes of the proceeding; and
 - (b) in respect of a document produced to the Tribunal—that the document is returned to the person who produced it.
- (5) Subsection (4) does not apply in relation to disclosure to the CEO or the CEO's representative if the reason stated in the certificate is the reason referred to in paragraph (2)(a) or (b).

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Disclosure of information etc.

- (6) If:
- (a) the Minister has certified in accordance with subsection (2) that the disclosure of information, or of the contents of a document, would be contrary to the public interest, but the certificate does not state a reason referred to in any of paragraphs (2)(a) to (c); and
 - (b) the presiding member is satisfied that the interests of justice outweigh the reason stated by the Minister;
- the presiding member may authorise the disclosure of the information, or of the contents of the document, to the applicant.

What presiding member must consider

- (7) In considering whether information or the contents of a document should be disclosed as mentioned in subsection (6):
- (a) the presiding member must take as the basis of the presiding member's consideration the principle that it is desirable, in the interest of ensuring that the Tribunal performs its functions effectively, that the parties should be made aware of all relevant matters; but
 - (b) the presiding member must pay due regard to any reason stated by the Minister in the certificate as a reason why the disclosure of the information or of the contents of the document, as the case may be, would be contrary to the public interest.

Disclosure of information etc. to staff of Tribunal

- (8) This section does not prevent the disclosure of information or of the contents of a document to a member of the Tribunal's staff in the course of the performance of that person's duties as a member of the Tribunal's staff.

Public interest

- (9) This section excludes the operation, apart from this section, of any rules of law relating to the public interest that would otherwise

apply in relation to the disclosure of information or of the contents of documents in a proceeding.

Copy of document

- (10) If the Minister has made a certificate under subsection (2) in respect of a document, this section applies in relation to a document that is a copy of the first-mentioned document as if the copy were the original document.

Certificate lodged under subsection 36H(2)

- (11) For the purposes of this section, if the CEO, in accordance with subsection 36H(2), has lodged with the Tribunal a certificate of the CEO made under subsection 36C(5) in relation to information, the Minister is taken to have certified, in accordance with subsection (2) of this section, that the disclosure of the information would be contrary to the public interest because of a reason referred to in paragraph (2)(a) or (b) of this section.

Duty of Tribunal

- (12) It is the duty of the Tribunal, even though there may be no relevant certificate under this section, to ensure, so far as it is able to do so, that, in or in connection with a proceeding, information is not communicated or made available to a person contrary to law enforcement interests or the requirements of security.

36M Orders for non-publication and non-disclosure

- (1) This section applies to a proceeding to which section 36K applies.
- (2) The Tribunal may, by order, give directions prohibiting or restricting the publication or other disclosure of:
- (a) information tending to reveal the identity of:
 - (i) a party to or witness in the proceeding; or
 - (ii) any person related to or otherwise associated with any party to or witness in the proceeding; or

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- (b) information otherwise concerning a person referred to in paragraph (a); or
 - (c) information that relates to the proceeding and is any of the following:
 - (i) information that comprises evidence or information about evidence;
 - (ii) information lodged with or otherwise given to the Tribunal; or
 - (d) the whole or any part of its findings on the review.
- (3) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes an order under subsection (2).
- Penalty: Imprisonment for 12 months or 60 penalty units, or both.

36N Findings of Tribunal

- (1) Upon the conclusion of a review of an adverse criminal intelligence assessment, the Tribunal must make and record its findings in relation to the assessment, and those findings may state the opinion of the Tribunal as to the correctness of, or justification for, any opinion, advice or information contained in the assessment.
- (2) The Tribunal must not make findings in relation to an adverse criminal intelligence assessment that would, under subsection (8) of this section, have the effect of superseding any information that is, under subsection 36C(3), taken to be part of the assessment unless those findings state that, in the Tribunal's opinion, the information:
 - (a) is incorrect; or
 - (b) is incorrectly represented; or
 - (c) could not reasonably be relevant for the purposes of having regard to whether there is intelligence or information that suggests that the person:
 - (i) may commit a serious and organised crime; or

- (ii) may assist another person to commit a serious and organised crime.

Copies of findings to be given to parties etc.

- (3) Subject to subsection (4), the Tribunal must cause copies of its findings to be given to:
 - (a) the applicant; and
 - (b) the CEO; and
 - (c) the Commonwealth agency to which the assessment was given under subsection 36C(1); and
 - (d) the Minister.
- (4) The Tribunal may direct that the whole or a particular part of its findings, so far as they relate to a matter that has not already been disclosed to the applicant, is not to be given to the applicant or is not to be given to the Commonwealth agency to which the assessment was given under subsection 36C(1).

Applicant may publish findings

- (5) Subject to any direction of the Tribunal, the applicant is entitled to publish, in any manner that the applicant thinks fit, the findings of the Tribunal so far as they have been given to the applicant.

Tribunal may attach comments to findings

- (6) The Tribunal may attach to a copy of findings to be given to the CEO under this section any comments the Tribunal wishes to make on matters relating to procedures or practices of the ACC that have come to the Tribunal's attention as a result of a review.
- (7) The Tribunal must give the Minister a copy of any comments attached as mentioned in subsection (6).

Treatment of findings

- (8) If an adverse criminal intelligence assessment has been reviewed by the Tribunal, the following are to treat the findings of the

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Tribunal, to the extent that they do not confirm the assessment, as superseding the assessment:

- (a) any Commonwealth agency concerned with prescribed administrative action to which the assessment is relevant;
- (b) any tribunal, person or authority having power to hear appeals from, or to review, a decision with respect to any prescribed administrative action to which the assessment is relevant.

Interaction with AAT Act

- (9) Section 43 of the AAT Act applies subject to this section, and this section has effect despite section 43AAA of that Act.

36P Restriction on further assessments after review

If the Tribunal has made findings upon a review of an adverse criminal intelligence assessment, the ACC must not make a further criminal intelligence assessment in respect of the person concerned that is not in accordance with those findings except on the basis of matters occurring after the review or of which evidence was not available at the time of the review.

36Q Secrecy—criminal intelligence assessment information

- (1) A person commits an offence if:
 - (a) the person is, or has been:
 - (i) a member or an officer of the Tribunal; or
 - (ii) an officer or employee of a Commonwealth agency to which an adverse criminal intelligence assessment has been given under subsection 36C(1); and
 - (b) the person makes a record of, discloses or otherwise uses information; and
 - (c) the information was obtained by the person by reason of, or in the course of, the performance or exercise of the person's functions, duties or powers as a member or an officer of the Tribunal, or as an officer or employee of the agency; and

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- (d) the information is, is contained in, or relates to, a criminal intelligence assessment.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if the making of the record, disclosure or use:
 - (a) is for the purposes of this Division; or
 - (b) is for the purposes of, or in connection with, the performance or exercise of the person's functions, duties or powers as a member or an officer of the Tribunal, or as an officer or employee of the agency.

Note 1: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Section 66 of the AAT Act also deals with the disclosure of certain information and documents by members and officers of the Tribunal.

Note 3: Section 51 of this Act deals with secrecy requirements for the CEO, members of the Board, members of the staff of the ACC and examiners.

36R Costs

- (1) If:
 - (a) a person makes an application under section 36F for review of an adverse criminal intelligence assessment in respect of the person; and
 - (b) the applicant was, in the opinion of the Tribunal, successful, or substantially successful, in the application for review; and
 - (c) the Tribunal is satisfied that it is appropriate to do so in all the circumstances of the case;the Tribunal may order that the costs reasonably incurred by the applicant in connection with the application, or any part of those costs that is determined by the Tribunal, be paid by the Commonwealth.

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Interaction with AAT Act

- (2) For the purposes of section 69A of the AAT Act, the Commonwealth is taken to be a party to the proceeding referred to in subsection (1) of this section.

36S Interaction with AAT Act

The following do not apply in relation to a proceeding to which section 36K of this Act applies:

- (a) sections 30A and 31 of the AAT Act;
- (b) Division 3 of Part IV of the AAT Act;
- (c) sections 36, 36A, 36B, 36C, 36D, 37, 38 and 39 of the AAT Act.

Note: Certain other provisions of the AAT Act do not apply to a proceeding to which section 36K of this Act applies because of the operation of other provisions in this Division (see, for example, subsection 36K(2)).

Division 3—Administrative provisions

Subdivision A—Chief Executive Officer

37 Appointment of CEO

- (1) The Chief Executive Officer of the ACC is to be appointed by the Governor-General by written instrument.
- (2) Before the Governor-General makes such an appointment, the Minister must:
 - (a) invite the Board to make nominations for appointment; and
 - (b) consult the members of the Inter-Governmental Committee in relation to the appointment.
- (3) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (4) The CEO is to be appointed on a full-time basis.
- (5) The Chief Executive Officer of the ACC may also refer to himself or herself, and be referred to, by replacing “ACC” with any name or acronym specified under subsection 7(1A).

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*.

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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

- (1) A disclosure by the CEO under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Chair of the Board.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the CEO is taken not to have complied with section 29 of that Act if the CEO does not comply with subsection (1) of this section.

42 Outside employment

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

43 Suspension of appointment

- (1) The Minister may, by notice in writing, suspend the appointment of the CEO if the Minister is of the opinion:
 - (a) that the performance of the CEO has been unsatisfactory; or

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

44 Termination of appointment

Misbehaviour or incapacity

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

Bankruptcy etc.

- (2) The Governor-General must terminate the appointment of the CEO if:
 - (a) the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the CEO is absent, except on leave of absence granted under section 39, for 14 consecutive days, or for 28 days in any 12 months; or

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- (c) the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
- (d) the CEO engages, except with the Minister's approval, in paid employment outside the duties of his or her office.

Unsatisfactory performance

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

Invalidity

- (4) In spite of anything contained in this section, if the CEO:
 - (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age (within the meaning of that Act);then he or she is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.
- (5) In spite of anything contained in this section, if the CEO:
 - (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;then he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.
- (6) In spite of anything contained in this section, if the CEO:
 - (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
 - (b) is under 60 years of age;

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

45 Other terms and conditions

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

46 Acting CEO

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

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

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

46A CEO to manage ACC etc.

- (1) The CEO is responsible for the management and administration of the ACC. The CEO is to act in accordance with any policies determined, and any directions given, in writing by the Board.

Special ACC operations/investigations

- (2) The CEO must also manage, co-ordinate and control special ACC operations/investigations.
- (2A) As soon as practicable after the Board makes a determination under subsection 7C(2) or (3), the CEO must determine, in writing, the head of the special ACC operation or the special ACC investigation.

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- (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.
- (4) The CEO must, as soon as practicable after 30 June and 31 December each year, notify the Minister in writing of:
 - (a) each arrangement that the CEO has made with an examiner under subsection (3) during the previous 6 months; and
 - (b) the nature of the special ACC operation/investigation to which the arrangement relates.

Accredited bodies

- (5) The CEO may, in writing, approve any of the following as an **accredited body** for the purposes of receiving nationally coordinated criminal history checks:
 - (a) a body of the Commonwealth, a State or a Territory;
 - (b) any other body or organisation however described (including bodies or organisations outside Australia).
- (6) In deciding whether to approve a body or organisation, the CEO must act in accordance with any policy determined, and any direction given, in writing by the Board.
- (7) An instrument approving a body or organisation as an accredited body is not a legislative instrument.

Criminal intelligence assessments

- (8) The CEO is responsible for conducting criminal intelligence assessments under Division 2A of Part II.

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.

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

Basis of appointment

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

46C Remuneration and allowances of examiners

- (1) An examiner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, an examiner is to be paid the remuneration that is prescribed by the regulations.
- (2) An examiner is to be paid the allowances that are prescribed by the regulations.

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

46D Leave of absence

Full-time examiners

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

Part-time examiners

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

46E Resignation

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

46F Disclosure of interests

- (1) A disclosure by an examiner under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the CEO.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the examiner is taken not to have complied with section 29 of that Act if the examiner does not comply with subsection (1) of this section.

46G Outside employment

Full-time examiners

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

Part-time examiners

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

46H Termination of appointment

Misbehaviour or incapacity

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

Bankruptcy etc.

- (2) The Governor-General must terminate the appointment of an examiner if:
 - (a) the examiner:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

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- (b) the examiner (being a full-time examiner) is absent, except on leave of absence granted under section 46D, for 14 consecutive days, or for 28 days in any 12 months; or
- (c) the examiner fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
- (d) the examiner (being a full-time examiner) engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see subsection 46G(1)); or
- (e) the examiner (being a part-time examiner):
 - (i) engages in paid employment that, in the CEO's opinion, conflicts or may conflict with the proper performance of his or her duties (see subsection 46G(2)); or
 - (ii) does not comply with a requirement under subsection 46G(3) (notifying the CEO of employment details).

Invalidity

- (3) In spite of anything contained in this section, an examiner who:
 - (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age (within the meaning of that Act);is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.
- (4) In spite of anything contained in this section, an examiner who:
 - (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.

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

46J Other terms and conditions—general

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

Subdivision C—Staff etc.

47 Staff

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

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

CEO may make declaration

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

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

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

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

Effect of declaration on Fair Work Act

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

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

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

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

Procedural requirements

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

- (6) The CEO must give the staff member a copy of the declaration.

CEO to give report after making declaration

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

Meaning of serious misconduct

- (8) In this section:

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

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

48 Employment of consultants etc.

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

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49 Staff to be seconded to ACC

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

- (a) members of the Australian Federal Police whose services are made available to the ACC;
- (b) officers and employees of authorities of the Commonwealth whose services are made available to the ACC; and
- (c) persons whose services are made available to the ACC pursuant to arrangements made under section 58.

50 Counsel assisting ACC

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

Subdivision D—Secrecy

51 Secrecy

- (1) This section applies to:
 - (a) the CEO; and
 - (aa) a member of the Board; and
 - (b) a member of the staff of the ACC; and
 - (c) an examiner.
- (2) A person to whom this section applies who, either directly or indirectly, except for the purposes of a relevant Act or otherwise in connection with the performance of his or her duties under a relevant Act, and either while he or she is or after he or she ceases to be a person to whom this section applies:
 - (a) makes a record of any information; or
 - (b) divulges or communicates to any person any information; being information acquired by him or her by reason of, or in the course of, the performance of his or her duties under this Act,

commits an offence punishable on conviction by imprisonment for a period not exceeding 2 years, a fine not exceeding 120 penalty units, or both.

- (3) A person to whom this section applies shall not be required to produce in any court any document that has come into his or her custody or control in the course of, or by reason of, the performance of his or her duties under this Act, or to divulge or communicate to a court a matter or thing that has come to his or her notice in the performance of his or her duties under this Act, except where the ACC, or the CEO, the acting CEO, a member of the Board or an examiner in his or her official capacity, is a party to the relevant proceeding or it is necessary to do so:
- (a) for the purpose of carrying into effect the provisions of a relevant Act; or
 - (b) for the purposes of a prosecution instituted as a result of an operation or investigation carried out by the ACC in the performance of its functions.
- (4) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

member of the staff of the ACC means:

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

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

relevant Act means:

- (a) this Act; or

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- (b) a law of a State under which the ACC performs a duty or function, or exercises a power, in accordance with section 55A; or
- (c) the *Law Enforcement Integrity Commissioner Act 2006* or regulations under that Act; or
- (d) the *Parliamentary Joint Committee on Law Enforcement Act 2010* or regulations under that Act; or
- (e) the *Inspector-General of Intelligence and Security Act 1986*, or any other Act, or instrument made under an Act, that confers functions, duties or powers on the Inspector-General of Intelligence and Security.

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

- (1) The main object of this section is to give legislative consent to the conferral on:
- (a) the ACC; or
 - (b) the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC; or
 - (c) a Judge of the Federal Court or a Judge of the Federal Circuit and Family Court of Australia (Division 2);
- of certain duties, functions and powers under State laws.

ACC

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

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- 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;
- (e) a duty, function or power relating to national policing information.
- (3) The ACC cannot, under a law of a State:
- (a) undertake an investigation relating to a relevant criminal activity; or
 - (b) undertake an intelligence operation; or
 - (c) perform a duty or function, or exercise a power, relating to national policing information;
- unless the Board has consented to the ACC doing so.
- Inter-Governmental Committee, Board, Chair of the Board, members of the Board, CEO, examiners and members of staff of the ACC*
- (4) A law of a State may confer on the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC a duty, function or power that:
- (a) relates to an investigation relating to a relevant criminal activity in so far as the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of the State (irrespective of whether that offence or those offences have a federal aspect); and
 - (b) is either:

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

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- (b) relating to the undertaking of an intelligence operation; or
 - (c) relating to national policing information;
- unless the Board has consented to the CEO or the examiner doing so.

Judge of the Federal Court or Judge of the Federal Circuit and Family Court of Australia (Division 2)

- (5B) A law of a State may confer on a Judge of the Federal Court or a Judge of the Federal Circuit and Family Court of Australia (Division 2) a duty, function or power that:
- (a) relates to an investigation relating to a relevant criminal activity in so far as the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of the State (irrespective of whether that offence or those offences have a federal aspect); and
 - (b) is either:
 - (i) of the same kind as a duty, function or power conferred on a Judge of the Federal Court or a Judge of the Federal Circuit and Family Court of Australia (Division 2) by this Act or any other Act (whether or not the last-mentioned duty, function or power relates to the investigation); 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 Judge of the Federal Circuit and Family Court of Australia (Division 2) a duty, function or power that:
- (a) relates to the undertaking of an intelligence operation in so far as the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of the State (irrespective of whether that offence or those offences have a federal aspect); and
 - (b) is either:
 - (i) of the same kind as a duty, function or power conferred on a Judge of the Federal Court or a Judge of the

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Federal Circuit and Family Court of Australia
(Division 2) by this Act or any other Act (whether or
not the last-mentioned duty, function or power relates to
that operation); or

- (ii) of a kind specified in regulations made for the purposes
of this subparagraph.

Ancillary provisions

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

Concurrent operation of State laws

- (8) This Act is not intended to exclude or limit the operation of a law
of a State that confers any duties, functions or powers on:
 - (a) the ACC; or
 - (b) the Inter-Governmental Committee, the Board, the Chair of
the Board, a member of the Board, the CEO, an examiner or
a member of the staff of the ACC; or
 - (c) a Judge of the Federal Court or a Judge of the Federal Circuit
and Family Court of Australia (Division 2);
 to the extent that that law is consistent with subsections (2) to (7)
(inclusive) and is capable of operating concurrently with this Act.
- (9) Without limiting subsection (8), this Act is not intended to prevent:
 - (a) the ACC; or

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- (b) the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC; or
- (c) a Judge of the Federal Court or a Judge of the Federal Circuit and Family Court of Australia (Division 2);

from having concurrent duties, functions or powers under a law of a State in relation to undertaking investigations relating to federally relevant criminal activities, to the undertaking of an intelligence operation or to national policing information, so long as the relevant law of the State is consistent with subsections (2) to (7) (inclusive).

State officers do not lose State powers

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

Interpretation

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

Definitions

- (13) In this section:

confer, in relation to a duty, includes impose.

Judge of the Federal Circuit and Family Court of Australia (Division 2) means a Judge of the Federal Circuit and Family Court of Australia (Division 2) in a personal capacity and not as a court or a member of a court.

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

Section 55B

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

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

55B Choice of Commonwealth and State powers

(1) If:

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

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

(2) If:

- (a) the ACC, the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC is performing a duty or function, or exercising a power, relating to national policing information; and
- (b) the body or person has a choice between exercising powers conferred by this Act or any other Act, and exercising powers conferred by a law of a State;

this Act or that other Act does not require the body or person to favour exercising the powers conferred by this Act or that other Act.

Section 55C

55C No obligation to perform duties etc.

- (1) To avoid doubt, neither this Act nor any other law of the Commonwealth imposes any obligation on:
- (a) the ACC; or
 - (b) the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC;
- to perform a duty or function, or exercise a power:
- (c) in relation to an investigation, or to the collection, correlation, analysis or dissemination of criminal information and intelligence, relating to a relevant criminal activity that is not a federally relevant criminal activity; or
 - (d) that is otherwise in contravention of any constitutional doctrine restricting the duties that may be conferred on:
 - (i) authorities of the Commonwealth; or
 - (ii) members of authorities of the Commonwealth.
- (2) To avoid doubt, neither this Act nor any other law of the Commonwealth imposes any obligation on a Judge of the Federal Court or a Judge of the Federal Circuit and Family Court of Australia (Division 2) to perform a duty or function, or exercise a power, that relates to an investigation by the ACC, or to the collection, correlation, analysis or dissemination by the ACC of criminal information and intelligence, relating to a relevant criminal activity if:
- (a) the relevant criminal activity is not a federally relevant criminal activity; or
 - (b) the imposition of the obligation is otherwise in contravention of any constitutional doctrine restricting the duties that may be conferred on Judges of a court created by the Parliament.
- (2A) To avoid doubt, neither this Act nor any other law of the Commonwealth imposes any obligation on:
- (a) the ACC; or

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

to perform a duty or function, or exercise a power, that relates to national policing information if the imposition of the obligation is in contravention of any constitutional doctrine restricting the duties that may be conferred on authorities of the Commonwealth or members of authorities of the Commonwealth.

- (3) In this section:

Judge of the Federal Circuit and Family Court of Australia (Division 2) means a Judge of the Federal Circuit and Family Court of Australia (Division 2) in a personal capacity and not as a court or a member of a court.

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

55D Transition from NCA to ACC

- (1) Despite the repeal of section 7 by item 35 of Schedule 1 to the *Australian Crime Commission Establishment Act 2002* (the ***establishment Act***), section 25B of the *Acts Interpretation Act 1901* has effect in relation to the amendments made by the establishment Act as if the body known as the National Crime Authority continued in existence with the altered name Australian Crime Commission.
- (2) If:
- (a) the *National Crime Authority Act 1984* (as in force before the commencement of Schedule 1 to the *Australian Crime Commission Establishment Act 2002*) made provision for a thing to be done, or a matter to be dealt with, by or in relation to the National Crime Authority; and
 - (b) a provision (the ***corresponding provision***) of the *Australian Crime Commission Act 2002* provides for such a thing to be done, or matter to be dealt with, by or in relation to the ACC (whether or not by the same, or a similar, person or body);

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then the thing may be done, or matter dealt with, for, or in relation to, the National Crime Authority, under the corresponding provision.

57 Application of Administrative Decisions (Judicial Review) Act

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

- “(1) An application to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) for an order of review in respect of a matter arising under the *Australian Crime Commission Act 2002*:
- (a) shall be made in such manner, and shall contain such particulars, as are prescribed by:
 - (i) in the case of an application to the Federal Court—Federal Court Rules; or
 - (ii) in the case of an application to the Federal Circuit and Family Court of Australia (Division 2)—Federal Circuit and Family Court of Australia (Division 2) Rules;and must contain such other particulars (if any) as the court concerned directs; and
 - (b) shall set out the grounds of the application; and
 - (c) shall be lodged with a Registry of the court concerned within the period of 5 days (excluding days on which the Registry is closed) after the day on which the applicant becomes aware of the matter or within such further period as the court concerned (whether before or after the expiration of the first-mentioned period) in special circumstances allows.”.

58 Administrative arrangements with States

- (1) The Minister may make an arrangement with the appropriate Minister of the Crown of a State under which the State will, from

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time to time as agreed upon under the arrangement, make available a person who is an officer or employee of the State or of an authority of the State or a member of the Police Force of the State, or persons who are such officers, employees or members, to perform services for the ACC.

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

59 Providing reports and information to members of Parliament*Information for Minister*

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

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

Information for Inter-Governmental Committee

- (1A) Subject to subsection (2), if a Minister of the Crown of a State who is a member of the Inter-Governmental Committee requests the Chair of the Board or the CEO to provide him or her with information concerning a specific matter relating to the ACC's conduct in the performance of its functions, being conduct that occurred within the jurisdiction of that State, the Chair of the Board or the CEO (as the case requires) must comply with the request.
- (2) If the Chair of the Board or the CEO (as the case requires) considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of

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law enforcement agencies, he or she must not provide the information under subsection (1A).

- (3) Subject to subsection (5), the Chair of the Board or the CEO:
 - (a) shall, when requested by the Inter-Governmental Committee to furnish information to the Committee concerning a specific matter relating to a special ACC operation/investigation that the ACC has conducted or is conducting, comply with the request; and
 - (b) shall when requested by the Inter-Governmental Committee to do so, and may at such other times as the Chair of the Board or the CEO thinks appropriate, inform the Committee concerning the general conduct of the operations of the ACC.
- (4) Subject to subsection (5), the Chair of the Board shall furnish to the Inter-Governmental Committee, for transmission to the Governments represented on the Committee, a report of the findings of any special ACC operation/investigation conducted by the ACC.
- (5) The Chair of the Board or the CEO (as the case requires) shall not furnish to the Inter-Governmental Committee any matter the disclosure of which to members of the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies and, if the findings of the ACC in an investigation include any such matter, the Chair of the Board shall prepare a separate report in relation to the matter and furnish that report to the Minister.
- (6) The Chair of the Board may include in a report furnished under subsection (4) a recommendation that the report be laid before each House of the Parliament.

Information for members of Parliament

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

Section 59AA

- (a) a member of either House of the Parliament;
- (b) a member of the Parliament of a State.

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

59AA Disclosing information to government bodies

Commonwealth, State, Territory and foreign agencies etc.

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

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

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

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- (1A) In deciding whether to disclose national policing information under subsection (1), the CEO must act in accordance with any policy determined, and any direction given, in writing by the Board.
- (1B) The CEO must obtain the approval of the Board before disclosing national policing information under subsection (1) to a body that is not one of the following:
- (a) the Australian Federal Police;
 - (b) a Police Force of a State;
 - (c) the Department administered by the Minister who administers the *Australian Border Force Act 2015*;
 - (d) the Australian Securities and Investments Commission;
 - (e) the Australian Security Intelligence Organisation;
 - (f) the Australian Taxation Office;
 - (fa) the Inspector-General of Intelligence and Security;
 - (g) a body prescribed by the regulations.

ASIO

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

ONI

- (2B) The CEO may disclose ACC information to ONI if:
- (a) the CEO considers it appropriate to do so; and
 - (b) the information is relevant to the performance of ONI's functions under section 7 of the *Office of National Intelligence Act 2018*; and

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- (c) disclosing the ACC information would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.

Definitions

- (3) In this section:

body includes:

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

59AAA Disclosure of information from criminal history checks

The CEO may disclose information from a nationally coordinated criminal history check to an accredited body, or to the person to whom the check relates, if:

- (a) disclosing the information would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply; and
- (b) disclosing the information would not be contrary to any conditions or restrictions determined by the Board in relation to providing nationally coordinated criminal history checks.

59AB Disclosing information to private sector bodies

- (1) The CEO may disclose ACC information to a body corporate that is prescribed, or is included in a class of bodies corporate that is prescribed, by the regulations for the purposes of this section if:
 - (a) the CEO considers it appropriate to do so; and
 - (b) the CEO considers that disclosing the information to the body is necessary for a permissible purpose; and

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- (c) the body has undertaken, in writing, not to use or further disclose the information except:
 - (i) as referred to in subsection (3); or
 - (ii) as required by a law of the Commonwealth, a State or a Territory; and
- (d) the body has undertaken, in writing, to comply with any conditions the CEO specifies under subsection (4) or (5); and
- (e) disclosing the ACC information would not prejudice:
 - (i) a person's safety; or
 - (ii) a person's fair trial if the person has been charged with an offence or such a charge is imminent; and
- (f) disclosing the ACC information would not be contrary to a law of the Commonwealth, a State or Territory that would otherwise apply.

Limitations on disclosing information under subsection (1)

- (2) The CEO may disclose ACC information to a body corporate under subsection (1) only if:
 - (a) for information that is personal information (within the meaning of the *Privacy Act 1988*)—the CEO considers that disclosing the information is necessary for the purposes of:
 - (i) preventing criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); or
 - (ii) detecting criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); or
 - (iii) facilitating the collection of criminal information and intelligence in relation to criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); and
 - (b) in any case—the information is not confidential commercial information relating to another body or person.

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- (2A) In deciding whether to disclose national policing information under subsection (1), the CEO must act in accordance with any policy determined, and any direction given, in writing by the Board.
- (2B) The CEO must obtain the approval of the Board before disclosing national policing information under subsection (1).

Specifying purposes and conditions etc.

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

Offence—disclosure etc. for unauthorised purposes

- (7) A person commits an offence if:
 - (a) ACC information is disclosed to the person under, or in accordance with, this section; and

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- (b) the person (directly or indirectly):
 - (i) makes a record of the information; or
 - (ii) discloses the information to any other person; and
- (c) the record or disclosure referred to in paragraph (b) is not:
 - (i) for a purpose specified under subsection (3) in relation to the information; or
 - (ii) required by any other law.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Offence—breach of conditions

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

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Defence—information legitimately made public

- (9) Subsections (7) and (8) do not apply to a person in relation to ACC information if:
 - (a) the information is in the public domain before the person:
 - (i) makes the record, or discloses the information (if subsection (7) applies); or
 - (ii) does the act or omits to do the act in relation to the information (if subsection (8) applies); and
 - (b) the original disclosure of the information into the public domain (before the person does the thing referred to in subparagraph (a)(i) or (ii) of this subsection) was not:
 - (i) in contravention of section 51 or subsection (7) or (8) of this section; or

Section 59AC

- (ii) in breach of an undertaking given under subsection (1) of this section.

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

59AC Restrictions on disclosing examination material or derivative material

- (1) Section 59 has effect subject to:
 - (a) any relevant direction given under subsection 25A(9) (about confidentiality for examinations); and
 - (b) the Chair of the Board or the CEO (as applicable) complying with sections 25B to 25H to the extent that the information to be provided or disclosed is examination material or derivative material.
- (2) Sections 59AA and 59AB have effect subject to:
 - (a) any relevant direction given under subsection 25A(9) (about confidentiality for examinations); and
 - (b) the CEO complying with sections 25B to 25H to the extent that the ACC information is examination material or derivative material.

59AD Publication of reports in relation to offences

A report under this Act that:

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

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

59A Delegation

The CEO may, by writing, delegate to a member of the staff of the ACC who is an SES employee, or an acting SES employee, all or

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any of the CEO's powers, functions or duties under this Act (other than a power, function or duty under subsection 36B(2) or section 47A).

59B Liability for damages

A member of the Board is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under this Act.

59C National Policing Information Systems and Services Special Account

- (1) The National Policing Information Systems and Services Special Account is continued in existence.

Note: The Account was established by *Financial Management and Accountability Determination 2006/07 — National Policing Information Systems and Services Special Account Establishment 2006*.

- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

59D Credits to the Account

There must be credited to the Account amounts equal to the following:

- (a) amounts paid to the ACC by way of charge imposed by the Charges Act;
- (b) amounts received by way of fees referred to in section 15 of this Act;
- (c) any other amounts received by the ACC in connection with the performance of national policing information functions.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly

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refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

59E Purposes of the Account

The purposes of the Account are as follows:

- (a) paying for scoping, developing, procuring, implementing and operating information technology systems and services in connection with the national policing information functions;
- (b) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the national policing information functions;
- (c) paying any remuneration and allowances payable to any person under this Act in relation to the national policing information functions;
- (d) meeting the expenses of administering the Account;
- (e) repaying to a State all or part of an amount received from the State in connection with the performance of national policing information functions, if it is not required for a purpose for which it was paid;
- (f) paying refunds in accordance with section 15A;
- (g) reducing the balance of the Account (and therefore the available appropriation for the Account) without making a real or notional payment.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

60 Public meetings and bulletins

- (1) The Board may hold meetings in public for the purpose of informing the public about, or receiving submissions in relation to, the performance of the ACC's functions.
- (4) The Board or the CEO may publish bulletins for the purpose of informing the public about the performance of the ACC's functions.
- (5) The Board and the CEO must not:

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- (a) divulge in the course of a meeting held under subsection (1);
or
 - (b) include in a bulletin published under subsection (4);
- any matter the disclosure of which to members of the public could prejudice the safety or reputation of a person, or prejudice a person's fair trial if the person has been charged with an offence or such a charge is imminent.

61 Annual report by the Chair of the Board

- (1) The Chair of the Board shall, as soon as practicable after each 30 June, prepare a report of the ACC's operations during the year that ended on that 30 June and furnish the report to the Inter-Governmental Committee for transmission, together with such comments on the report as the Committee thinks fit, to the Commonwealth Minister and to the appropriate Minister of the Crown of each participating State.
- (2) A report by the Chair of the Board under this section in relation to a year shall include the following:
 - (a) a description of any special ACC investigations undertaken during the year;
 - (b) a description, which may include statistics, of any patterns or trends, and the nature and scope, of any criminal activity that have come to the attention of the ACC during that year in the performance of its functions;
 - (c) any recommendations for changes in the laws of the Commonwealth, of a participating State or of a Territory, or for administrative action, that, as a result of the performance of the ACC's functions, the Board considers should be made;
 - (d) the general nature and the extent of any information furnished by the CEO during that year to a law enforcement agency;
 - (da) the general nature and the extent of any information disclosed by the CEO during that year to a body corporate under section 59AB;

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- (e) the extent to which investigations by the ACC have resulted in the prosecution in that year of persons for offences;
- (ea) the extent to which investigations by the ACC have resulted in confiscation proceedings;
- (g) particulars of the number and results of:
 - (ii) applications made to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) under the *Administrative Decisions (Judicial Review) Act 1977* for orders of review in respect of matters arising under this Act; and
 - (iii) other court proceedings involving the ACC; being applications and proceedings that were determined, or otherwise disposed of, during that year.
- (3) A report by the Chair of the Board under this section shall not:
 - (a) identify persons as being suspected of having committed offences; or
 - (b) identify persons as having committed offences unless those persons have been convicted of those offences.
- (4) In any report by the Chair of the Board under this section the Chair of the Board shall take reasonable care to ensure that the identity of a person is not revealed if to reveal his or her identity might, having regard to any material appearing in the report, prejudice the safety or reputation of a person, or prejudice a person's fair trial if the person has been charged with an offence or such a charge is imminent.
- (6) The Minister shall cause a copy of:
 - (a) a report by the Chair of the Board under this section that is received by him or her from the Inter-Governmental Committee; and
 - (b) any comments made on the report by the Inter-Governmental Committee, being comments that accompanied the report; to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by him or her.

Section 61AA

61AA Corporate plans

Subsection 35(3) of the *Public Governance, Performance and Accountability Act 2013* (which deals with the Australian Government's key priorities and objectives) does not apply to a corporate plan prepared by the CEO.

61A Review of operation of Act

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

62 Regulations

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

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

Schedule 1—Prescribed provisions

Section 20

Administrative Appeals Tribunal Act 1975, section 36
Air Navigation Act 1920, section 27A
Australian Human Rights Commission Act 1986, section 49.
Australian Security Intelligence Organisation Act 1979,
sections 18, 18A, 18B, 81 and 92
Census and Statistics Act 1905, section 19, 19A or 19B
Epidemiological Studies (Confidentiality) Act 1981,
sections 4, 6, 8 and 9
Fair Work (Registered Organisations) Act 2009, section 356
Family Law Act 1975, Part XIA
Federal Circuit and Family Court of Australia Act 2021, Part 7 of Chapter 4
Federal Court of Australia Act 1976, Part VAA
Health Insurance Act 1973, section 130
Inspector-General of Taxation Act 2003, section 37
Judiciary Act 1903, Part XAA
National Health Act 1953, section 135A
Ombudsman Act 1976, section 35
Reserve Bank Act 1959, section 79B
Social Security (Administration) Act 1999, Division 3 of Part 5
Telecommunications (Interception and Access) Act 1979,
sections 63 and 133 and clause 152 of Schedule 1
Transport Safety Investigation Act 2003, section 53 or 60
Section 14 of the *Social Services Act 1980* of Norfolk Island

Schedule 2—Certain bodies not subject to section 19A

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

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Endnotes

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Crime Authority Act 1984	41, 1984	15 June 1984	1 July 1984 (s 2 and gaz 1984, No. S245)	
Taxation Laws Amendment Act 1984	123, 1984	19 Oct 1984	s 177: 14 Dec 1984 (s 2(3))	—
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	s 2(32): 25 Oct 1984 (s 2(2)) s 6(1): 22 Nov 1984 (s 2(1)) Sch 1: 1 July 1984 (s 2(14))	s 2(32) and 6(1)
National Crime Authority (Miscellaneous Amendments) Act 1985	104, 1985	16 Oct 1985	s 4–9 and Sch: 16 Oct 1985 (s 2(1))	—
Statute Law (Miscellaneous Provisions) Act (No. 2) 1985	193, 1985	16 Dec 1985	s 16 and Sch 1: 16 Dec 1985 (s 2(1))	s 16
Telecommunications (Interception) Amendment Act 1987	89, 1987	5 June 1987	Sch 2: 1 Sept 1988 (s 2(2) and gaz 1988, No S256)	—
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	s 5(1) and Sch 1: 18 Dec 1987 (s 2(1))	s 5(1)
Crimes Legislation Amendment Act 1988	65, 1988	15 June 1988	s 4–6: 15 June 1988 (s 2(1))	—
Crimes Legislation Amendment Act (No. 2) 1988	66, 1988	15 June 1988	s 21 and 22: 15 June 1988 (s 2(1))	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Commonwealth Employees' Rehabilitation and Compensation Act 1988	75, 1988	24 June 1988	Sch: 1 Dec 1988 (s 2(2) and gaz 1988, No S196)	—
Industrial Relations (Consequential Provisions) Act 1988	87, 1988	8 Nov 1988	Sch 2: 1 Mar 1989 (s 2(2))	—
National Crime Authority Amendment Act 1988	110, 1988	9 Dec 1988	9 Dec 1988 (s 2)	s 4(2)
Crimes Legislation Amendment Act 1989	108, 1989	30 June 1989	s 37–43: 1 July 1989 (s 2(4))	—
Crimes Legislation Amendment Act (No. 2) 1989	4, 1990	17 Jan 1990	s 55: 17 Jan 1990 (s 2(1))	—
Commonwealth Banks Restructuring Act 1990	118, 1990	28 Dec 1990	Sch: 17 Apr 1991 (s 2(3) and gaz 1991, No S72)	—
Crimes Legislation Amendment Act 1991	28, 1991	4 Mar 1991	Sch 2: 4 Mar 1991 (s 2(1))	—
Social Security (Rewrite) Transition Act 1991	70, 1991	25 June 1991	Sch 3: 1 July 1991 (s 2)	—
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	s 31(2) and Sch: 10 Dec 1991 (s 2(3) and gaz 1991, No S332)	s 31(2)
Crimes Legislation Amendment Act (No. 2) 1991	123, 1991	23 Aug 1991	s 36 and 37: 6 Dec 1991 (s 2(3) and gaz 1991, No S330)	—
National Crime Authority Amendment Act 1991	209, 1991	24 Dec 1991	21 Jan 1992	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Crime Authority Amendment Act 1992	44, 1992	11 June 1992	11 June 1992 (s 2)	—
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992	94, 1992	30 June 1992	Sch: 1 July 1990 (s 2(2))	—
Snowy Mountains Engineering Corporation Limited Sale Act 1993	54, 1993	27 Oct 1993	Sch: 9 Nov 1993 (s 2(2) and gaz 1993, No S334)	—
CSL Sale Act 1993	88, 1993	30 Nov 1993	Sch 2: 3 June 1994 (s 2(2) and gaz 1994, No S209)	—
ANL Sale Act 1995	136, 1995	5 Dec 1995	Sch 2 (item 3): repealed before commencing (s 2(3), 79)	—
Commonwealth Bank Sale Act 1995	161, 1995	16 Dec 1995	Sch (item 53): 19 July 1996 (s 2(2))	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 4 (items 1, 99) and Sch 5 (items 87–89): 25 Oct 1996 (s 2(1))	—
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Sch 19 (item 31): 25 Nov 1996 (s 2(1))	—
AIDC Sale Act 1997	67, 1997	5 June 1997	Sch 2 (item 9): 22 Apr 2011 (s 2(2) and F2011L00637)	—
Australian National Railways Commission Sale Act 1997	96, 1997	30 June 1997	Sch 4 (item 7): 1 Nov 2000 (s 2(5) and gaz 2000, No S562)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Stocktake Act 1999	118, 1999	22 Sept 1999	Sch 2 (item 4): 22 Sept 1999 (s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 620–622): 5 Dec 1999 (s 2(1), (2))	—
Australian Security Intelligence Organisation Legislation Amendment Act 1999	161, 1999	10 Dec 1999	Sch 3 (items 1, 44–46): 10 Dec 1999 (s 2(2))	—
Federal Magistrates (Consequential Amendments) Act 1999	194, 1999	23 Dec 1999	Sch 20: 23 Dec 1999 (s 2(1))	—
National Crime Authority Amendment Act 1999	195, 1999	23 Dec 1999	Sch 1: 1 July 1984 (s 2(2))	—
Jurisdiction of Courts Legislation Amendment Act 2000	57, 2000	30 May 2000	Sch 1 (items 70–76): 1 July 2000 (s 2(2) and gaz 2000, No GN25)	Sch 1 (item 76)
National Crime Authority Amendment Act 2000	133, 2000	24 Nov 2000	24 Nov 2000 (s 2)	Sch 1 (items 38–45)
Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001	121, 2001	24 Sept 2001	Sch 2 (item 161): 1 July 2002 (s 2(2))	—
National Crime Authority Legislation Amendment Act 2001	135, 2001	1 Oct 2001	s 4: 1 Oct 2001 (s 2(1)) Sch 1: 12 Oct 2001 (s 2(2) and gaz 2001, No S428)	s 4 and Sch 1 (items 17, 51, 59)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Sch 2 (items 78–83): 1 Jan 2003 (s 2(1) item 3)	—
Measures to Combat Serious and Organised Crime Act 2001	136, 2001	1 Oct 2001	Sch 1 (item 52): 12 Oct 2001 (s 2(2) and gaz 2001, No S428)	—
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	Sch 1 (items 67, 97): 29 Oct 2001 (s 2(1))	Sch 1 (item 97)
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	Sch 6 (items 33–39): 1 Jan 2003 (s 2(1) item 5)	—
as amended by				
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Sch 3 (items 15, 16): 1 Jan 2003 (s 2(1) item 9)	—
Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002	105, 2002	14 Nov 2002	Sch 3 (item 56): 12 May 2003 (s 2(1) item 27)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Sch 1 and Sch 3 (items 7–14): 1 Jan 2003 (s 2(1) items 2, 8) Sch 3 (items 1–6): never commenced (s 2(1) item 7)	Sch 1 (items 308–326)
Inspector-General of Taxation Act 2003	28, 2003	15 Apr 2003	Sch 1 (item 2): 16 Apr 2003 (s 2)	—
Trade Practices Legislation Amendment Act 2003	134, 2003	17 Dec 2003	Sch 2 (items 19, 44–58): 1 Mar 2004 (s 2(1) item 2)	Sch 2 (items 44–58)
Australian Crime Commission Amendment Act 2004	30, 2004	2 Apr 2004	Sch 1 (items 1–16): 2 Apr 2004 (s 2(1) item 2) Sch 1 (item 17): 1 Jan 2003 (s 2(1) item 3)	—
Law and Justice Legislation Amendment Act 2004	62, 2004	26 May 2004	Sch 1 (items 6–9): 27 May 2004 (s 2(1) item 4)	—
Telecommunications (Interception) Amendment Act 2006	40, 2006	3 May 2006	Sch 1 (items 11, 12): 13 June 2006 (s 2(1) item 2)	—
Law Enforcement (AFP Professional Standards and Related Measures) Act 2006	84, 2006	30 June 2006	Sch 3 (item 2): 30 Dec 2006 (s 2(1) item 2)	—
Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006	86, 2006	30 June 2006	Sch 1 (item 3): 30 Dec 2006 (s 2(1) item 2)	—
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Sch 1 (item 1): 15 Dec 2004 (s 2(1) item 2)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007	128, 2007	17 Aug 2007	s 3–5: 17 Aug 2007 (s 2(1) item 1) Sch 2 (items 1–33): 18 Aug 2007 (s 2(1) item 3)	s 3–5 and Sch 2 (items 12, 31, 33)
as amended by				
Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010	93, 2010	29 June 2010	Sch 1 (items 1, 4): 31 Dec 2010 (s 2(1) item 2)	Sch 1 (item 4)
Australian Crime Commission Amendment Act 2007	168, 2007	28 Sept 2007	Sch 1 (items 1–12): 29 Sept 2007 (s 2(1) items 2, 3) Sch 1 (items 13, 14): never commenced (s 2(1) item 4)	Sch 1 (items 9–12, 14)
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Sch 1 (items 17–22): 23 June 2008 (s 2(1) item 2)	—
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Sch 2 (items 6, 7): 23 May 2009 (s 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 5 (items 5–7, 83): 1 July 2009 (s 2(1) items 11, 21)	Sch 5 (item 83)
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Sch 3 (item 14): 5 Aug 2009 (s 2(1) item 7)	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Sch 7 (items 1–22, 26–28): 20 Feb 2010 (s 2(1) item 12)	Sch 7 (items 26–28)
Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010	42, 2010	14 Apr 2010	Sch 1 (item 61): 15 Apr 2010 (s 2(1) item 2)	—
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 6 (item 42) and Sch 7: 1 Nov 2010 (s 2(1) item 7)	Sch 7
Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010	93, 2010	29 June 2010	Sch 7: 1 July 2010 (s 2(1) item 12)	Sch 7 (item 2)
National Security Legislation Amendment Act 2010	127, 2010	24 Nov 2010	Sch 10 (items 4–7): 25 Nov 2010 (s 2(1) item 16)	Sch 10 (item 7)

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Sch 2 (items 5, 6): 17 Dec 2010 (s 2(1) item 2)	—
Crimes Legislation Amendment Act 2011	2, 2011	2 Mar 2011	Sch 1 (items 1–4, 8) and Sch 2: 2 Mar 2011 (s 2(1) item 2)	Sch 1 (items 3, 8) and Sch 2 (items 2, 4, 6, 18)
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 139–141) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Sch 1 (items 12–14): 1 July 2011 (s 2(1) item 2)	—
Crimes Legislation Amendment (Powers and Offences) Act 2012	24, 2012	4 Apr 2012	Sch 2 (items 1–16) and Sch 3: 5 Apr 2012 (s 2(1) items 4, 6) Sch 2 (items 17–29): 25 June 2012 (s 2(1) item 5)	Sch 2 (items 16, 29) and Sch 3 (item 11)
as amended by				
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 2 (items 6–11): 5 Apr 2012 (s 2(1) items 10, 11)	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (items 13, 14): 22 Sept 2012 (s 2(1) item 2)	—
Fair Work Amendment Act 2012	174, 2012	4 Dec 2012	Sch 9 (item 1259): 1 Jan 2013 (s 2(1) item 5)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Access to Justice (Federal Jurisdiction) Amendment Act 2012	186, 2012	11 Dec 2012	Sch 2 (items 9, 10, 13): 12 Dec 2012 (s 2(1) item 2)	Sch 2 (item 13)
as amended by				
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 3 (item 43): never commenced (s 2(1) item 5)	—
Law Enforcement Integrity Legislation Amendment Act 2012	194, 2012	12 Dec 2012	Sch 1 (items 41–46): 13 Dec 2012 (s 2(1) item 4)	—
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (item 128) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16)	Sch 6 (items 1, 15–19)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 31–45), Sch 2 (item 1) and Sch 3 (item 44): 12 Apr 2013 (s 2(1) items 2, 3, 6) Sch 3 (items 45, 46): never commenced (s 2(1) item 7)	Sch 1 (item 45)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (items 5, 6): 24 June 2014 (s 2(1) item 9)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (item 15), Sch 7 (items 215–220) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
National Security Legislation Amendment Act (No. 1) 2014	108, 2014	2 Oct 2014	Sch 1 (items 78–87) and Sch 6 (item 24): 30 Oct 2014 (s 2(1) item 2)	Sch 1 (items 78–87)
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (items 7, 8), Sch 6 (items 11–13) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 9
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 65): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 2)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Law Enforcement Legislation Amendment (Powers) Act 2015	109, 2015	30 June 2015	Sch 1 (items 1–62): 28 July 2015 (s 2(1) item 2)	Sch 1 (items 37, 38)
Passports Legislation Amendment (Integrity) Act 2015	122, 2015	10 Sept 2015	Sch 1 (items 71–78): 8 Oct 2015 (s 2(1) item 2)	—
Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015	153, 2015	26 Nov 2015	Sch 12: 27 Nov 2015 (s 2(1) item 2)	Sch 12 (item 12)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (item 1, 22): 10 Mar 2016 (s 2(1) item 6)	—
Australian Crime Commission Amendment (National Policing Information) Act 2016	45, 2016	5 May 2016	Sch 1: 1 July 2016 (s 2(1) item 1)	—
Home Affairs and Integrity Agencies Legislation Amendment Act 2018	31, 2018	9 May 2018	Sch 2 (items 40, 41, 284): 11 May 2018 (s 2(1) items 3, 7)	Sch 2 (item 284)

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018	34, 2018	22 May 2018	Sch 10: 23 May 2018 (s 2(1) item 11)	—
National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018	67, 2018	29 June 2018	Sch 2 (item 12): 29 Dec 2018 (s 2(1) item 3)	—
Office of National Intelligence (Consequential and Transitional Provisions) Act 2018	156, 2018	10 Dec 2018	Sch 2 (items 18, 19) and Sch 4: 20 Dec 2018 (s 2(1) items 2, 4)	Sch 4
Australian Crime Commission Amendment (Special Operations and Special Investigations) Act 2019	114, 2019	10 Dec 2019	Sch 1 (items 1–56): 10 Dec 2019 (s 2(1) item 1)	Sch 1 (items 53–56)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (items 73–89): 1 Sept 2021 (s 2(1) item 5)	—
Transport Security Amendment (Serious Crime) Act 2021	44, 2021	22 June 2021	Sch 2 (items 7–10): 22 June 2022 (s 2(1) item 3)	Sch 2 (item 10)
Telecommunications Legislation Amendment (International Production Orders) Act 2021	78, 2021	23 July 2021	Sch 1 (items 1, 2): 24 July 2021 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Surveillance Legislation Amendment (Identify and Disrupt) Act 2021	98, 2021	3 Sept 2021	Sch 2 (items 33, 34): 4 Sept 2021 (s 2(1) item 3)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Title	am No 125, 2002
Part I	
s 1	am No 125, 2002
s 4	am No 104, 1985; No 141, 1987; No 110, 1988; No 108, 1989; No 123, 1991; No 44, 1992; No 133, 2000; No 135, 2001; No 86, 2002 (as rep by No 125, 2002); No 125, 2002; No 128, 2007; No 33, 2009; No 4, 2010; No 42, 2010; No 93, 2010; No 2, 2011; No 58, 2011; No 24, 2012 (as am by No 136, 2012); No 136, 2012; No 194, 2012; No 13, 2013; No 31, 2014; No 41, 2015; No 109, 2015; No 122, 2015; No 153, 2015; No 45, 2016; No 34, 2018; No 156, 2018; No 114, 2019; No 13, 2021
s 4A	ad No 133, 2000 am No 125, 2002; No 4, 2010; No 114, 2019
s 4B	ad No 109, 2015
s 4C	ad No 109, 2015
s 5	rs No 128, 2007 am No 59, 2015
s 6A	ad No 135, 2001
Part II	
Part II heading	rs No 125, 2002
Division 1	
Division 1 heading.....	rs No 125, 2002
Subdivision A	
Subdivision A	ad No 125, 2002
s 7	am No 110, 1988; No 123, 1991; No 44, 1992; No 133, 2000; No 135, 2001 rs No 125, 2002 am No 62, 2014; No 45, 2016; No 34, 2018
s 7A	ad No 125, 2002 am No 194, 2012; No 41, 2015; No 45, 2016; No 114, 2019

Endnote 4—Amendment history

Provision affected	How affected
Subdivision B	
Subdivision B	ad No 125, 2002
s 7B	ad No 125, 2002
	am No 33, 2009; No 4, 2010; No 41, 2015; No 34, 2018
s 7C	ad No 125, 2002
	am No 128, 2007; No 4, 2010; No 109, 2015; No 45, 2016; No 114, 2019
s 7D	ad No 125, 2002
s 7E	ad No 125, 2002
s 7F	ad No 125, 2002
	am No 45, 2016
s 7G	ad No 125, 2002
	am No 114, 2019
s 7H	ad No 125, 2002
s 7J	ad No 125, 2002
	am No 114, 2019
s 7K	ad No 125, 2002
	am No 114, 2019
s 7L	ad No 45, 2016
Subdivision C	
Subdivision C heading	ad No 125, 2002
s 8	am No 44, 1992; No 43, 1996; No 135, 2001; No 125, 2002
s 9	am No 165, 1984; No 110, 1988; No 133, 2000
	rs No 125, 2002
	am No 114, 2019
s 10	am No 165, 1984; No 133, 2000
	rep No 125, 2002
s 11	am No 133, 2000
	rep No 125, 2002
Division 1A	
Division 1A heading	ad. No. 125, 2002

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Endnote 4—Amendment history

Provision affected	How affected
s 12	am. No. 165, 1984; No. 28, 1991; No. 43, 1996; No. 133, 2000; No. 135, 2001; No. 86, 2002 (as rep. by No. 125, 2002); No. 125, 2002; No. 24, 2012; No 109, 2015; No 45, 2016; No 31, 2018; No 114, 2019
s. 13	am. No. 110, 1988; No. 133, 2000 rep No. 125, 2002 ad No 45, 2016
s. 14	am. No. 110, 1988; No. 133, 2000 rep No. 125, 2002 ad No 45, 2016
s. 15	am. No. 43, 1996; No. 133, 2000; No. 125, 2002 rep. No. 30, 2004 ad No 45, 2016
s 15A	ad No 45, 2016
s 16	rs. No. 125, 2002 am No 31, 2018; No 114, 2019
s. 17	am. No. 104, 1985; No. 125, 2002
s 18	am. No. 125, 2002; No 45, 2016; No 114, 2019
s. 19	am. No. 125, 2002
s 19A	ad. No. 104, 1985 am. No. 89, 1987; No. 87, 1988; No. 108, 1989; No. 161, 1999; No. 133, 2000; No. 135, 2001; No. 125, 2002; No. 40, 2006; No. 128, 2007; Nos. 54 and 70, 2009; No. 145, 2010; No. 174, 2012; No 114, 2019; No 78, 2021
s 20	am. No. 104, 1985; No. 108, 1989; No. 43, 1996; No. 133, 2000; No. 135, 2001; No. 125, 2002; No. 128, 2007; No. 145, 2010; No 153, 2015; No 114, 2019
s. 20A	ad. No. 128, 2007
s. 21	am. No. 125, 2002
s 21A	ad No 109, 2015
s 21B	ad No 109, 2015
s 21C	ad No 109, 2015
s 21D	ad No 109, 2015

Endnote 4—Amendment history

Provision affected	How affected
s 21E.....	ad No 109, 2015
s 21F.....	ad No 109, 2015
s. 22.....	am. No. 165, 1984; No. 193, 1985; No. 108, 1989; No. 43, 1996; No. 133, 2000; No. 135, 2001; No. 125, 2002; No. 24, 2012
s. 23.....	am. No. 165, 1984; No. 108, 1989; No. 43, 1996; No. 135, 2001; No. 125, 2002
s 24.....	am No 165, 1984; No 108, 1989; No 43, 1996; No 133, 2000; No 135, 2001; No 125, 2002; No 122, 2015
s 24AA.....	ad. No. 24, 2012
	am No 109, 2015
s 24AB.....	ad No 24, 2012
	am No 153, 2015
s 24ABA.....	ad No 153, 2015
	am No 114, 2019
s 24AC.....	ad No 24, 2012
Division 2	
Division 2 heading.....	rs. No. 125, 2002
s. 24A.....	ad. No. 135, 2001
	rs. No. 125, 2002
	am No 109, 2015
s. 25.....	am. No. 165, 1984; No. 141, 1987; No. 108, 1989; No. 44, 1992; No. 135, 2001
	rep. No. 125, 2002
s 25A.....	ad No 135, 2001
	rs No 125, 2002
	am No 109, 2015; No 114, 2019
s 25B.....	ad No 109, 2015
s 25C.....	ad No 109, 2015
s 25D.....	ad No 109, 2015
s 25E.....	ad No 109, 2015
	am No 13, 2021
s 25F.....	ad No 109, 2015

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 25G	ad No 109, 2015
s 25H	ad No 109, 2015
s. 26	rs. No. 65, 1988
	am. No. 108, 1989; No. 44, 1992; No. 135, 2001; No. 125, 2002; No 109, 2015
s 27	am No 165, 1984; No 43, 1996; No 194, 1999; No 57, 2000; No 135, 2001; No 125, 2002; No 13, 2013; No 13, 2021
s 28	am. No. 165, 1984; No. 108, 1989; No. 44, 1992; No. 135, 2001; No. 125, 2002; No. 168, 2007; No. 4, 2010; No 109, 2015; No 114, 2019
s. 29	am. No. 108, 1989; No. 43, 1996; No. 135, 2001; No. 125, 2002; No. 168, 2007; No. 4, 2010
	rep No 109, 2015
s. 29A	ad. No. 209, 1991
	am. No. 135, 2001; No. 125, 2002; No 197, 2012; No 109, 2015
s. 29B	ad. No. 209, 1991
	am. No. 118, 1999; No. 135, 2001; No. 125, 2002; No. 4, 2010; No 109, 2015
s. 30	am. No. 108, 1989; No. 43, 1996; No. 135, 2001; No. 86, 2002 (as rep. by No. 125, 2002); No. 125, 2002; No 109, 2015; No 4, 2016
s 31	am No 165, 1984; No 141, 1987; No 4, 1990; No 209, 1991; No 43, 1996; No 135, 2001; No 125, 2002; No 122, 2015
s. 32	am. No. 165, 1984; No. 108, 1989; No. 43, 1996; No. 57, 2000
	rep. No. 135, 2001
s. 32A	ad. No. 165, 1984
	am. No. 57, 2000
	rep. No. 135, 2001
ss. 32B, 32C	ad. No. 57, 2000
	rep. No. 135, 2001
s. 33	am. No. 43, 1996; No. 135, 2001; No. 125, 2002
s. 34	am. No. 108, 1989; No. 135, 2001; No. 125, 2002
s 34A	ad. No. 4, 2010
	am No 109, 2015

Endnote 4—Amendment history

Provision affected	How affected
s 34B	ad No 4, 2010
s 34C	ad No 4, 2010
s 34D	ad No 4, 2010
	am No 122, 2015
s 34E.....	ad No 4, 2010
s 34F.....	ad No 4, 2010
s. 35	am. No. 108, 1989; No. 135, 2001; No. 125, 2002; No. 4, 2010; No 4, 2016
s. 35A	ad. No. 165, 1984
	am. No. 4, 2010
s. 36	am. No. 108, 1989; No. 43, 1996; No. 135, 2001; No. 125, 2002
Division 2A	
Division 2A	ad No 44, 2021
Subdivision A	
s 36A	ad No 44, 2021
Subdivision B	
s 36B	ad No 44, 2021
s 36C	ad No 44, 2021
s 36D	ad No 44, 2021
s 36E.....	ad No 44, 2021
Subdivision C	
s 36F.....	ad No 44, 2021
s 36G	ad No 44, 2021
s 36H	ad No 44, 2021
s 36J.....	ad No 44, 2021
s 36K	ad No 44, 2021
s 36L.....	ad No 44, 2021
s 36M.....	ad No 44, 2021
s 36N	ad No 44, 2021
s 36P	ad No 44, 2021
s 36Q	ad No 44, 2021

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 36R	ad No 44, 2021
s 36S	ad No 44, 2021
Division 3	
Subdivision A	
Subdivision A	ad. No. 125, 2002
s. 37	am. Nos. 65 and 110, 1988; No. 44, 1992; No. 43, 1996; Nos. 135 and 159, 2001
	rs. No. 125, 2002
	am No 34, 2018
s. 38	am. No. 43, 1996; No. 135, 2001
	rs. No. 125, 2002
s. 39	am. No. 108, 1989; No. 43, 1996
	rs. No. 125, 2002
s. 39A	ad. No. 110, 1988
	rep. No. 125, 2002
s. 40	rs. No. 122, 1991
	am. No. 146, 1999
	rs. No. 125, 2002
s. 41	am. No. 43, 1996; No. 135, 2001
	rs. No. 125, 2002; No 62, 2014
s. 42	am. No. 108, 1989; No. 43, 1996; No. 135, 2001
	rs. No. 125, 2002
s. 43	am. No. 94, 1992; No. 43, 1996; No. 135, 2001
	rs. No. 125, 2002
	am. No. 30, 2004
s. 43A	ad. No. 110, 1988
	rep. No. 125, 2002
s. 44	am. No. 44, 1992; No. 43, 1996; No. 135, 2001
	rs. No. 125, 2002
	am. No. 26, 2008; No. 58, 2011; No 62, 2014
s. 45	am. No. 110, 1988; No. 44, 1992; No. 43, 1996; No. 135, 2001

Endnote 4—Amendment history

Provision affected	How affected
	rs. No. 125, 2002
s. 46	am. No. 108, 1989; No. 44, 1992; No. 135, 2001
	rs. No. 125, 2002
	am. No. 46, 2011
s 46A	ad No 108, 1989
	am No 44, 1992; No 135, 2001
	rs No 125, 2002
	am No 2, 2011; No 45, 2016; No 114, 2019; No 44, 2021
Subdivision B	
Subdivision B	ad. No. 125, 2002
s. 46B	ad. No. 125, 2002
	am. No. 128, 2007; No. 2, 2011
s. 46C	ad. No. 125, 2002
s. 46D	ad. No. 125, 2002
	am. No. 2, 2011
s. 46E.....	ad. No. 125, 2002
s. 46F.....	ad. No. 125, 2002
	rs No 62, 2014
s. 46G	ad. No. 125, 2002
	am. No. 2, 2011
s. 46H	ad. No. 125, 2002
	am. No. 26, 2008; Nos. 2 and 58, 2011; No 62, 2014
s. 46J.....	ad. No. 125, 2002
Subdivision C	
Subdivision C heading.....	ad. No. 125, 2002
s. 47	am. No. 44, 1992; No. 146, 1999; No. 135, 2001; No. 125, 2002
s. 47A	ad. No. 2, 2011
	am. No. 24, 2012
s. 48	am. No. 104, 1985; No. 108, 1989; No. 44, 1992; No. 135, 2001; No. 125, 2002
s. 49	am. No. 125, 2002

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 50	am. No. 209, 1991; No. 44, 1992; No. 135, 2001; No. 125, 2002
Subdivision D	
Subdivision D heading.....	ad. No. 125, 2002
s. 51	am No 141, 1987; No 108, 1989; No 43, 1996; No 135, 2001; No 125, 2002; No 30, 2004; No 86, 2006; No 127, 2010; No 109, 2015; No 98, 2021
Part III heading	rs. No. 125, 2002
	rep. No. 127, 2010
Part III	rep. No. 127, 2010
s. 52	am. No. 125, 2002
	rep. No. 127, 2010
	rep. No. 127, 2010
s. 53	am. No. 104, 1985; No. 43, 1996; No. 125, 2002
	rep. No. 127, 2010
s. 54	rep. No. 127, 2010
s. 55	am. No. 135, 2001; No. 125, 2002
	rep. No. 127, 2010
s. 55AA	ad. No. 136, 2001
	am. No. 125, 2002
	rep. No. 127, 2010
Part IV	
s 55A	ad No 165, 1984
	am No 195, 1999; No 57, 2000
	rs No 133, 2000
	am No 125, 2002; No 30, 2004; No 128, 2007; No 136, 2012; No 13, 2013; No 45, 2016
	ed C61
	am No 114, 2019; No 13, 2021
s 55B	ad No 133, 2000
	rs No 125, 2002
	am No 30, 2004; No 128, 2007; No 45, 2016; No 114, 2019

Endnote 4—Amendment history

Provision affected	How affected
s 55C	ad No 133, 2000 am No 125, 2002; No 30, 2004; No 13, 2013; No 45, 2016; No 114, 2019; No 13, 2021
s. 55D	ad. No. 30, 2004
s. 56	rep. No. 125, 2002
s 57	am No 194, 1999; No 125, 2002; No 13, 2013; No 13, 2021
s. 58	am. No. 125, 2002
s 59	am. No. 66, 1988; No. 108, 1989; No. 209, 1991; No. 44, 1992; No. 43, 1996; No. 161, 1999; No. 133, 2000; No. 135, 2001; No. 125, 2002; No. 127, 2010; No. 24, 2012 (as am. by No. 136, 2012); No 114, 2019
s 59AA	ad No 24, 2012 am No 45, 2016; No 156, 2018; No 98, 2021
s 59AAA	ad No 45, 2016
s. 59AB	ad. No. 24, 2012 am No 109, 2015; No 45, 2016
s. 59AC	ad. No. 24, 2012 rs No 109, 2015
s. 59AD	ad. No. 24, 2012
s 59A	ad No 66, 1988 am No 108, 1989; No 44, 1992; No 135, 2001 rs No 125, 2002 am No 2, 2011; No 44, 2021
s. 59B	ad. No. 125, 2002
s 59C	ad No 45, 2016
s 59D	ad No 45, 2016
s 59E	ad No 45, 2016
s. 60	am. No. 108, 1989; No. 44, 1992; No. 135, 2001; No. 125, 2002; No. 24, 2012 (as am. by No. 136, 2012); No 109, 2015
s 61	am No 108, 1989; No 44, 1992; No 43, 1996; No 194, 1999; No 57, 2000; No 135, 2001; No 86, 2002 (as rep by No 125, 2002); No 125, 2002; No 24, 2012; No 13, 2013; No 62, 2014; No 109, 2015; No 114, 2019; No 13, 2021

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Endnote 4—Amendment history

Provision affected	How affected
s 61AA	ad No 62, 2014
s. 61A	ad. No. 125, 2002
	rs. No. 4, 2010
s. 63	rep. No. 65, 1988
Schedule heading	rep. No. 108, 1989
Schedule 1	
Schedule 1 heading	ad. No. 108, 1989
Schedule	am. No. 123, 1984
	rs. No. 104, 1985
	am. No. 89, 1987; Nos. 75 and 87, 1988
Schedule 1	am. No. 70, 1991; No. 60, 1996; Nos. 161 and 194, 1999; Nos. 121 and 135, 2001; No. 105, 2002; Nos. 28 and 134, 2003; Nos. 40 and 84, 2006; No. 8, 2007; No. 54, 2009; No. 51, 2010; No. 186, 2012; No. 13, 2013; No 108, 2014; No 153, 2015; No 67, 2018
	ed C65
	am No 78, 2021; No 13, 2021
Schedule 2	
Schedule 2	ad. No. 108, 1989
	am. No. 118, 1990; Nos. 54 and 88, 1993; No. 161, 1995; Nos. 67 and 96, 1997; No. 62, 2004