

2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT
BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Robert McClelland MP)

PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT BILL 2010

OUTLINE

This Bill establishes the Parliamentary Joint Committee on Law Enforcement (PJC-LE). The Bill sets out the functions and administrative arrangements for the PJC-LE. The PJC-LE will be established by renaming and extending the functions of the current Parliamentary Joint Committee on the Australian Crime Commission (PJC-ACC).

The PJC-LE will be responsible for providing broad Parliamentary oversight of the Australian Federal Police (AFP) and the Australian Crime Commission (ACC). It will also examine trends and changes in criminal activities, and inquire into any question in connection with its functions that is referred to the PJC-LE by either House of Parliament.

As the PJC-LE will replace the current PJC-ACC, the provisions relating to the PJC-ACC in Part III of the *Australian Crime Commission Act 2002* (ACC Act) will be repealed and replaced by the provisions in this Bill. The consequential amendments and the transitional arrangements are included in Schedule 10 of the National Security Legislation Amendment Bill 2010.

FINANCIAL IMPACT STATEMENT

The amendments in this Bill have no financial impact on Government revenue.

ACRONYMS

ACC	Australian Crime Commission
ACC Act	<i>Australian Crime Commission Act 2002</i>
AFP	Australian Federal Police
AFP Act	<i>Australian Federal Police Act 1979</i>
CEO	Chief Executive Officer
PJC-ACC	Parliamentary Joint Committee on the Australian Crime Commission
PJC-LE	Parliamentary Joint Committee on Law Enforcement

Part 1– Preliminary

Clause 1: Short title

Clause 1 provides that when the Bill is enacted, it is to be cited as the *Parliamentary Joint Committee on Law Enforcement Act 2010*.

Clause 2: Commencement

The Bill will commence on the day after it receives the Royal Assent.

Clause 3: Definitions

Several terms are defined in clause 3. Many of the terms are technical terms relating to the AFP and ACC, and are consistent with definitions in related legislation, such as the ACC Act and the AFP Act.

The term *sensitive information* is defined for the purposes of clauses 8 and 9 of the Bill, which provide that in certain circumstances the CEO of ACC and the Commissioner of the AFP may decide not to provide sensitive information to the PJC-LE. The definition of ‘sensitive information’ has been modelled upon a similar definition in the *Law Enforcement Integrity Commissioner Act 2006*. However, the definition has been modified in this Bill to apply to the roles, responsibilities and functions of the ACC and AFP rather than the Australian Commission for Law Enforcement Integrity.

Clause 4: Extension to external Territories

Clause 4 provides that the Bill applies to all external territories.

Part 2– Parliamentary Joint Committee on Law Enforcement

Clause 5: Parliamentary Joint Committee on Law Enforcement

Clause 5 is modelled on section 53 of the ACC Act. It sets out the administrative arrangements for establishing the PJC-LE and its membership for each Parliament. The PJC-LE will consist of 10 members of Parliament, with five members of the House of Representatives and five members of the Senate. The members are to be appointed in accordance with the practice of Parliament. Clause 5 also sets out when a member ceases to hold office as a member of the PJC-LE, the requirements for the resignation of a member and how a vacancy on the Committee is to be filled.

Clause 6: Powers and proceedings of the Committee

Clause 6 replicates section 54 of the ACC Act. It requires all matters relating to the powers and proceedings of the Committee to be determined by resolution of both Houses of Parliament.

Clause 7: Functions of the Committee

Clause 7 sets out the functions of the PJC-LE, which will include:

- monitoring and reporting to Parliament on the performance by the ACC of its functions,
- monitoring and reporting to Parliament on the performance by the AFP of its functions, and
- examining trends and changes in criminal activities, practices and methods and reporting on any desirable changes to the functions, structure, powers and procedures of the ACC or the AFP.

These functions are similar to the duties of the current PJC-ACC, but include review of the AFP in addition to the ACC.

Subclause 7(2) clarifies that the PJC-LE's functions do not extend to review of certain sensitive operational matters, review of particular investigations or operations or inquiring into complaints about the AFP or ACC. As is the case with the PJC-ACC, the PJC-LE's functions do not include reviewing or reconsidering the findings of any ACC or AFP operation or investigation. This provision is intended to clarify that the PJC-LE's functions relate to the broad operation and effectiveness of the ACC and AFP, rather than particular operations or responding to individual complaints or concerns. Individual operations and investigations are subject to oversight through the process of ministerial responsibility. Similarly, the investigation of individual complaints about the AFP and ACC can be dealt with by complaints handling bodies such as the Commonwealth Ombudsman, the AFP's Professional Standards Operations Monitoring Centre and the Law Enforcement Integrity Commissioner.

The PJC-LE may, subject to clauses 8 and 9, consider information about particular operations or investigations if this is relevant to the Committee's functions. For example, the PJC-LE may consider an operation or investigation in the course of considering trends and changes in crime, or in considering the AFP or ACC's performance of their functions, but the PJC-LE's function is not to review or reconsider the findings of that particular investigation or operation.

Subclause 7(3) provides that the PJC-LE may examine, and report to both Houses of Parliament, on information provided to the Committee in accordance with clauses 8 and 9. This will enable the Committee to make its report public and examine individuals on the content of the disclosed information.

Clause 8: Disclosure to Committee by CEO of the ACC

Clause 8 creates a clear obligation for the CEO of the ACC to comply with requests by the PJC-LE to provide information about the performance of the ACC's functions. This provision is not intended to exhaustively set out the PJC-LE's powers to request or require information. Clause 6 provides that the PJC-LE's powers and procedures are to be determined by resolution of both Houses of the Parliament. Therefore, it would be open for the PJC-LE to request other persons to provide information or

attend hearings. Clause 8 is intended to set out a statutory duty that requires the CEO of the ACC to comply with a request to provide information. It also sets out that in limited circumstances the CEO may decide not to comply with such a request.

Under subclause 8(2) the CEO of the ACC may decide not to comply with a request to provide the PJC-LE with particular information if he or she is satisfied that the information requested is sensitive information (defined in clause 3) *and* the prejudicial consequences outweigh the public interest served by providing the information to the PJC-LE.

If the CEO of the ACC decides not to provide information to the PJC-LE in accordance with these provisions, the PJC-LE may refer the request to the responsible Minister for the ACC, who must determine in writing whether the information is sensitive information and whether the public interest in providing that information to the PJC-LE is outweighed by the prejudicial consequences. As the Minister's reasons for making a determination may themselves be sensitive and could have prejudicial consequences, the Minister is not required to disclose his or her reasons. However, where no prejudicial consequences are likely, the Minister would not be prevented from providing his or her reasons to the PJC-LE.

It is intended that these provisions should be relied upon only in exceptional circumstances. Other options such as providing the information in a private hearing or on condition that sensitive information not be included in the PJC-LE's public reports would be open to the PJC-LE in accordance with the powers and proceedings of the PJC-LE as determined in accordance with clause 6.

Subclause 8(6) provides that a determination by the Minister responsible for the ACC under subclause 8(4) is not a legislative instrument. This provision is intended to assist readers. A determination by the Minister under subclause 8(4) would not come within the meaning of a legislative instrument under the *Legislative Instruments Act 2003*. Subclause 8(6) is merely declaratory and does not create an exemption from the *Legislative Instruments Act 2003*.

Clause 9: Disclosure to Committee by Commissioner of the AFP

Clause 9 replicates clause 8 but applies to the Commissioner of the AFP. The Commissioner of the AFP is also required to comply with a request from the PJC-LE for information in relation to an investigation, but may decide not to comply with a request if the information is sensitive information and the prejudicial consequences outweigh the public interest in providing the information to the PJC-LE.

Subclause 9(6) provides that a determination by the Minister responsible for the AFP under subclause 9(4) is not a legislative instrument. This provision is intended to assist readers. A determination by the Minister under subclause 9(4) would not come within the meaning of a legislative instrument under the *Legislative Instruments Act 2003*. Subclause 9(6) is merely declaratory and does not create an exemption from the *Legislative Instruments Act 2003*.

Clause 10: Ombudsman to brief Committee about controlled operations

Clause 10 provides that the PJC-LE must meet in private at least once a year to receive a briefing from the Commonwealth Ombudsman about the involvement of the ACC and AFP in controlled operations. Controlled operations are law enforcement operations that are carried out for the purpose of obtaining evidence that may lead to prosecution of a person for a serious offence, and may involve a law enforcement officer or other person engaging in conduct that would constitute an offence if not authorised in accordance with Part IAB of the *Crimes Act 1914*.

Division 2A of Part IAB of the Crimes Act gives the Commonwealth Ombudsman a role in monitoring controlled operations. The Ombudsman is required to inspect the records of the AFP and the ACC in relation to controlled operations at least once every 12 months, and may inspect these records at any time to ascertain whether the agencies have complied with the requirements of the Crimes Act.

The Ombudsman is to brief the PJC-LE each year on the involvement of the ACC and AFP in controlled operations in the previous 12 months. This requirement is consistent with the current requirement in section 55AA of the Australian Crime Commission Act, which requires the Ombudsman to brief the PJC-ACC on the ACC's use of controlled operations. Clause 10 will continue the requirement for the Ombudsman to provide a briefing about the ACC's use of controlled operations, and will extend the requirement to include briefing on the AFP's use of controlled operations. A similar requirement exists for the Ombudsman to brief the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (ACLEI) on ACLEI's use of controlled operations.

A briefing about controlled operations is likely to disclose sensitive operational details. Therefore, it is necessary for the Committee to meet in private in order to maintain the confidentiality of persons involved and to ensure that sensitive operational information is not disclosed in a public forum.

Part 3 – Miscellaneous

Clause 11: Regulations

This clause enables the Governor-General to make regulations as required or permitted by the Bill, or as necessary or convenient in order to give effect to the Bill.