

South Australia

# **Australian Crime Commission (South Australia) Act 2004**

An Act to make provision for the operation of the Australian Crime Commission in South Australia; and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Australian Crime Commission (South Australia) Act 2004*.

### 3—Interpretation

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

*ACC Act* means the *Australian Crime Commission Act 2002* of the Commonwealth;

**Note—**

That Act was originally known as the *National Crime Authority Act 1984*.

*ACC operation/investigation* means—

- (a) an ACC State intelligence operation; or
- (b) an ACC State investigation;

*ACC State intelligence operation* means an intelligence operation that the ACC is undertaking under section 5(b);

*ACC State investigation* means an investigation that the ACC is conducting under section 5(a);

*authority* includes a department, agency or body;

*Commonwealth body or person* means—

- (a) the ACC; or
- (b) the Board; or
- (c) the Chair of the Board; or
- (d) a member of the Board; or
- (e) the Inter-Governmental Committee; or
- (f) the CEO; or
- (g) a member of the staff of the ACC; or
- (ga) a legal practitioner appointed under section 7 of the Act; or
- (h) an examiner; or
- (i) a Judge of the Federal Court; or

(j) a Federal Magistrate;

**Commonwealth Minister** means the Commonwealth Minister administering the ACC Act;

**confer** includes to impose;

**constable** means a member or special member of the Australian Federal Police or a member of the police force or police service of this State;

**Federal Magistrate** means a Federal Magistrate (including the Chief Federal Magistrate) who holds office under the *Federal Magistrates Act 1999* of the Commonwealth;

**function** has a meaning affected by subsection (4);

**in contempt of the ACC** has the meaning given by section 26A;

**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 the investigation of matters relating to relevant criminal activity;

**issuing officer** means—

- (a) a Judge of the Federal Court; or
- (b) a Judge of a court of the State; or
- (c) a Federal Magistrate;

**perform** includes to exercise;

**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 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;
  - (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
- (e) that is punishable by imprisonment for a period of 3 years or more,  
but—
- (f) 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
  - (g) does not include an offence the time for the commencement of a prosecution for which has expired;

***special ACC operation/investigation*** means—

- (a) an ACC State intelligence operation that the Board has determined to be a special operation; or
- (b) an ACC State investigation that the Board has determined to be a special investigation;

***State Minister*** means the State Minister administering this Act.

- (2) If this Act uses a term that is used in the ACC Act, the term has the same meaning in this Act as it has in the ACC Act unless the contrary intention appears in this Act.
- (3) If the head of an ACC operation/investigation suspects that an offence (the ***incidental offence***) that is not a serious and organised crime may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a serious and organised crime (whether or not the head has identified the nature of that serious and organised crime), then the incidental offence is, for so long only as the head so suspects, taken, for the purposes of this Act, to be a serious and organised crime.
- (4) A reference in this Act, other than Part 2, to a function includes a reference to a power or duty.

#### **4—Act to bind Crown**

This Act binds the Crown in right of the State and also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

### **Part 2—The Australian Crime Commission, the Board and the Inter-Governmental Committee**

#### **Division 1—The Australian Crime Commission**

##### **5—Functions of ACC**

The ACC has the following functions:

- (a) to investigate a matter relating to a relevant criminal activity, in so far as the serious and organised crime is, or the serious and organised crimes are or include, an offence or offences against a law of the State (irrespective of whether that offence or those offences have a federal aspect);
- (b) to undertake an intelligence operation in so far as the serious and organised crime is, or the serious and organised crimes are or include, an offence or offences against a law of the State (irrespective of whether that offence or those offences have a federal aspect);
- (c) to provide a report to the Board on the outcome of such an investigation or operation;
- (d) such other functions as are conferred on the ACC by other provisions of this Act or any other Act.

##### **6—CEO to manage ACC operations/investigations**

- (1) The CEO is to manage, coordinate and control ACC operations/investigations.
- (2) As soon as practicable after the Board consents under section 55A(3) of the ACC Act to the ACC undertaking an intelligence operation under section 5(b) or conducting an investigation under section 5(a), the CEO must determine, in writing, the head of the operation or investigation.
- (3) Before the CEO determines the head of the 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.
- (4) 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.

##### **7—Counsel assisting ACC**

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

## **Division 2—The Board of the ACC**

### **8—Functions of Board**

- (1) The Board has the following functions:
  - (a) to determine, in writing, whether an ACC State intelligence operation is a special operation or whether an ACC State investigation is a special investigation;
  - (b) to determine, in writing, the class or classes of persons to participate in an ACC State intelligence operation or ACC State investigation;
  - (c) to establish task forces;
  - (d) such other functions as are conferred on the Board by other provisions of this Act.
- (2) The Board may determine, in writing, that an ACC State intelligence operation is a special operation. Before doing so, it must consider whether methods of collecting the criminal information and intelligence that do not involve the use of powers in this Act have been effective.
- (3) The Board may determine, in writing, that an ACC State investigation is a special investigation. Before doing so, it must consider whether ordinary police methods of investigation into the matters are likely to be effective.
- (4) A determination under subsection (2) or (3) must—
  - (a) describe the general nature of the circumstances or allegations constituting the relevant criminal activity to which the operation or investigation relates; and
  - (b) state that the serious and organised crime is, or the serious and organised crimes are or include, an offence or offences against a law of the State but need not specify the particular offence or offences; and
  - (c) set out the purpose of the operation or investigation.
- (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.
- (6) A determination under subsection (2) or (3) has effect immediately after it is made.
- (7) Sections 9 to 15 have effect in relation to the Board's functions under this Act.

### **9—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 requirements set out in section 7D of the ACC Act.

### **10—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.

### **11—Quorum at Board meetings**

At a meeting of the Board a quorum is constituted by 7 Board members (not including the CEO).

### **12—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.
- (2) The person presiding at a meeting has—
  - (a) a deliberative vote; and
  - (b) if necessary, also a casting vote.
- (3) The CEO is not entitled to vote on any question arising at a meeting of the Board.
- (4) The Board cannot determine that an ACC State intelligence operation is a special operation, or that an ACC State investigation is a special investigation, unless at least 9 Board members (including at least 2 eligible Commonwealth Board members) vote in favour of making the determination.

### **13—Conduct of Board meetings**

- (1) The Board may regulate proceedings at its meetings as it considers appropriate.
- (2) The Board must ensure that minutes of its meetings are kept.

### **14—Resolutions outside of Board meetings**

- (1) This section applies to a resolution—
  - (a) which, without being considered at a meeting of the Board, is referred to all members of the Board; and
  - (b) of which—
    - (i) if subparagraph (ii) does not apply—a majority of those members (not including the CEO); or
    - (ii) if the resolution is that the Board determine that an ACC State intelligence operation is a special operation, or that an ACC State investigation is a special investigation—at least 9 Board members (not including the CEO but including at least 2 eligible Commonwealth Board members),

indicate by telephone or other mode of communication to the Chair of the Board that they are in favour.

- (2) The resolution is as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.

### **15—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.
- (3) The functions of a committee are as determined by the unanimous agreement of all the members of the Board (not including the CEO).
- (4) However, the Board cannot determine that a committee has the function of determining whether an ACC State intelligence operation is a special operation or whether an ACC State investigation is a special investigation.
- (5) In performing its functions, a committee must comply with any directions given to the committee by the Board.
- (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.
- (8) A committee must inform the other members of the Board of its decisions.
- (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.

### **Division 3—The Inter-Governmental Committee**

#### **16—Functions of Committee**

- (1) Within the period of 30 days beginning on the day the Committee is given a copy of a determination (a *special determination*) under section 8(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.
- (2) Subject to subsection (3), the Chair of the Board must comply with the request.
- (3) 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.
- (4) 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 State Minister.
- (5) If the Committee refers the request to the State Minister, he or she—
  - (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.

- (6) Within the period of 30 days beginning on the day the Committee makes a request under subsection (1) 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.
- (7) 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.
- (8) To avoid doubt, the revoking of the determination does not affect the validity of any act done in connection with the ACC operation/investigation concerned before the CEO is so notified.
- (9) The Committee does not have a duty to consider whether to exercise the power under subsection (1) or (6) in respect of any special determination, whether the Committee is requested to do so by any person, or in any other circumstances.

## **Part 3—Examinations**

### **17—Examinations**

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

### **18—Conduct of examination**

- (1) An examiner may regulate the conduct of proceedings at an examination as the examiner thinks fit.
- (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.
- (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).
- (6) At an examination before an examiner—
  - (a) counsel assisting the examiner generally or in relation to the matter to which the ACC operation/investigation relates; or

- (b) any person authorised by the examiner to appear before the examiner at the examination; or
- (c) any legal practitioner representing a person at the examination in accordance with subsection (2),

may, so far as the examiner thinks appropriate, examine or cross-examine any witness on any matter that the examiner considers relevant to the ACC operation/investigation.

- (7) If a person (other than a member of the staff of the ACC) is present at an examination before an examiner while another person (the *witness*) is giving evidence at the examination, the examiner must—
- (a) inform the witness that the person is present; and
  - (b) give the witness an opportunity to comment on the presence of the person.
- (8) To avoid doubt, a person does not cease to be entitled to be present at an examination before an examiner or part of such an examination if—
- (a) the examiner fails to comply with subsection (7); or
  - (b) a witness comments adversely on the presence of the person under subsection (7)(b).
- (9) An examiner may direct that—
- (a) any evidence given before the examiner; or
  - (b) the contents of any document, or a description of any thing, produced to the examiner; or
  - (c) any information that might enable a person who has given evidence before the examiner to be identified; or
  - (d) the fact that any person has given or may be about to give evidence at an examination,

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

- (10) Subject to subsection (11), the CEO may, in writing, vary or revoke a direction under subsection (9).
- (11) The CEO must not vary or revoke a direction if to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.
- (12) If—
- (a) a person has been charged with an offence before a federal court or before a court of the State; and
  - (b) the court considers that it may be desirable in the interests of justice that particular evidence given before an examiner, being evidence in relation to which the examiner has given a direction under subsection (9), be made available to the person or to a legal practitioner representing the person,

the court may give to the examiner or to the CEO a certificate to that effect and, if the court does so, the examiner or the CEO, as the case may be, must make the evidence available to the court.

- (13) If—
- (a) the examiner or the CEO makes evidence available to a court in accordance with subsection (12); and
  - (b) the court, after examining the evidence, is satisfied that the interests of justice so require,

the court may make the evidence available to the person charged with the offence concerned or to a legal practitioner representing the person.

- (14) A person who—
- (a) is present at an examination in contravention of subsection (5); or
  - (b) makes a publication in contravention of a direction given under subsection (9),

is guilty of an offence.

Maximum penalty: \$2 200 or imprisonment for 1 year.

- (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.

## **19—Power to summon witnesses and take evidence**

- (1) An examiner may summon a person to appear before the examiner at an examination to give evidence and to produce such documents or other things (if any) as are referred to in the summons.
- (2) Before issuing a summons under subsection (1), the examiner must be satisfied that it is reasonable in all the circumstances to do so. The examiner must also record in writing the reasons for the issue of the summons.
- (3) A summons under subsection (1) requiring a person to appear before an examiner at an examination must be accompanied by a copy of the determination of the Board that the State ACC intelligence operation is a special operation or that the State ACC investigation is a special investigation.
- (4) A summons under subsection (1) requiring a person to appear before an examiner at an examination must, unless the examiner issuing the summons is satisfied that, in the particular circumstances of the special ACC operation/investigation to which the examination relates, it would prejudice the effectiveness of the special ACC operation/investigation for the summons to do so, set out, so far as is reasonably practicable, the general nature of the matters in relation to which the examiner intends to question the person, but nothing in this subsection prevents the examiner from questioning the person in relation to any matter that relates to a special ACC operation/investigation.

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- (5) The examiner who is holding an examination may require a person appearing at the examination to produce a document or other thing.
  - (6) 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.
  - (7) 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.
  - (8) The powers conferred by this section are not exercisable except for the purposes of a special ACC operation/investigation.

## **20—Power to obtain documents**

- (1) An examiner may, by notice in writing served on a person, require the person—
  - (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being the examiner or a member of the staff of the ACC; and
  - (b) to produce at that time and place to the person so specified a document or thing specified in the notice, being a document or thing that is relevant to a special ACC operation/investigation.
- (2) Before issuing a notice under subsection (1), the examiner must be satisfied that it is reasonable in all the circumstances to do so. The examiner must also record in writing the reasons for the issue of the notice.
- (3) A notice may be issued under this section in relation to a special ACC operation/investigation, whether or not an examination before an examiner is being held for the purposes of the operation or investigation.
- (4) A person must not refuse or fail to comply with a notice served on the person under this section.
- (5) A person who contravenes subsection (4) is guilty of an offence.  
Maximum penalty: \$22 000 or imprisonment for 5 years.
- (6) The provisions of section 23(3) to (5) and (7) apply in relation to a person who is required to produce a document or thing by a notice served on him or her under this section in the same manner as they apply in relation to a person who is required to produce a document or thing at an examination before an examiner.
- (7) If there is a contravention of section 23(3) as applied by subsection (6), the provisions of section 23(6) apply to that contravention.

## 21—Disclosure of summons or notice may be prohibited

- (1) The examiner issuing a summons under section 19 or a notice under section 20 must, or may, as provided in subsection (2), include in it a notation to the effect that disclosure of information about the summons or notice, or any official matter connected with it, is prohibited except in the circumstances, if any, specified in the notation.
- (2) A notation must not be included in the summons or notice except as follows:
  - (a) the examiner must include the notation if satisfied that failure to do so would reasonably be expected to prejudice—
    - (i) the safety or reputation of a person; or
    - (ii) the fair trial of a person who has been or may be charged with an offence; or
    - (iii) the effectiveness of an operation or investigation;
  - (b) the examiner may include the notation if satisfied that failure to do so might prejudice—
    - (i) the safety or reputation of a person; or
    - (ii) the fair trial of a person who has been or may be charged with an offence; or
    - (iii) the effectiveness of an operation or investigation;
  - (c) the examiner may include the notation if satisfied that failure to do so might otherwise be contrary to the public interest.
- (3) If a notation is included in the summons or notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 22 on the person who was served with, or otherwise given, the summons or notice.
- (4) If, after the ACC has concluded the operation or investigation concerned—
  - (a) no evidence of an offence has been obtained as described in section 34(1); or
  - (b) evidence of an offence or offences has been assembled and given as required by section 34(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 section 34(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 section 34(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 or notices relating to the operation or investigation are cancelled by this subsection.

- (5) If a notation is cancelled by subsection (4), the CEO must serve a written notice of that fact on each person who was served with, or otherwise given, the summons or notice containing the notation.
- (6) In this section—  
*official matter* has the same meaning as in section 22.

## 22—Offences of disclosure

- (1) A person who is served with, or otherwise given, a summons or notice containing a notation made under section 21 must not disclose—
- the existence of the summons or notice or any information about it; or
  - the existence of, or any information about, any official matter connected with the summons or notice.

Maximum penalty: \$2 200 or imprisonment for 1 year.

- (2) Subsection (1) does not prevent the person from making a disclosure—
- in accordance with the circumstances, if any, specified in the notation; or
  - to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
  - if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
  - if the person is a legal practitioner—for the purpose of obtaining the agreement of another person under section 23(3) to the legal practitioner answering a question or producing a document at an examination before an examiner.
- (3) If a disclosure is made to a person as permitted by subsection (2) or (4), the following provisions apply:
- while he or she is a person of a kind to whom a disclosure is so permitted to be made, he or she must not disclose the existence of, or any information about, the summons or notice, or any official matter connected with it, except as permitted by subsection (4);
  - while he or she is no longer such a person, he or she must not, in any circumstances, make a record of, or disclose the existence of, the summons, notice or matter, or disclose any information about any of them.

Maximum penalty: \$2 200 or imprisonment for 1 year.

- (4) A person to whom information has been disclosed, as permitted by subsection (2) or this subsection, may disclose that information—
- if the person is an officer or agent of a body corporate referred to in subsection (2)(c)—
    - to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
    - to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or

- (b) if the person is a legal practitioner—for the purpose of giving legal advice, or making representations, relating to the summons, notice or matter.
- (5) This section ceases to apply to a summons or notice after—
  - (a) the notation contained in the summons or notice is cancelled by section 21(4); or
  - (b) 5 years elapse after the issue of the summons or notice, whichever is sooner.
- (6) A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.
- (7) In this section—

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

  - (a) the determination referred to in section 19(3);
  - (b) an ACC operation/investigation;
  - (c) an examination held by an examiner;
  - (d) court proceedings.

### **23—Failure of witnesses to attend and answer questions**

- (1) A person served, as prescribed, with a summons to appear as a witness at an examination before an examiner must 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.
- (2) A person appearing as a witness at an examination before an examiner must not—
  - (a) when required pursuant to section 19 either to take an oath or make an affirmation—refuse or fail to comply with the requirement; or
  - (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 must, 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.



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- (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. That subsection only applies if—
- (a) a person appearing as a witness at an examination before an examiner—
    - (i) answers a question that he or she is required to answer by the examiner; or
    - (ii) produces a document or thing that he or she was required to produce by a summons under this Act served on him or her as prescribed; and
  - (b) in the case of the production of a document that is, or forms part of, a record of an existing or past business—the document sets out details of earnings received by the person in respect of his or her employment and does not set out any other information; and
  - (c) before answering the question or producing the document or thing, the person claims that the answer, or the production of the document or thing, might tend to incriminate the person or make the person liable to a penalty.
- (5) The answer, or the document or thing, is not admissible in evidence against the person in—
- (a) a criminal proceeding; or
  - (b) a proceeding for the imposition of a penalty,
- other than—
- (c) confiscation proceedings; or
  - (d) a proceeding in respect of—
    - (i) in the case of an answer—the falsity of the answer; or
    - (ii) in the case of the production of a document—the falsity of any statement contained in the document.
- (6) A person who contravenes subsection (1), (2) or (3) is guilty of an offence.  
Maximum penalty: \$22 000 or imprisonment for 5 years.
- (7) Subsection (3) does not affect the law relating to legal professional privilege.

## **24—Warrant for arrest of witness**

- (1) Where, upon application by an examiner, a Judge of the Federal Court sitting in chambers or the Supreme Court is satisfied by evidence on oath that there are reasonable grounds to believe—
- (a) that a person who has been ordered, under section 28, to deliver his or her passport to the examiner, whether or not the person has complied with the order, is nevertheless likely to leave Australia for the purpose of avoiding giving evidence before the examiner; or
  - (b) that a person in relation to whom a summons has been issued under section 19(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 section 23(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 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.
- (3) A member of the Australian Federal Police cannot execute the warrant unless he or she is also a member of the staff of the ACC.
- (4) The warrant may be executed even if the warrant is not at the time in the possession of the person executing it.
- (5) A person executing the warrant may only use such reasonable force as is necessary for the execution.
- (6) Where a person is apprehended under the warrant, he or she must be brought, as soon as practicable, before a Judge of the Federal Court or the Supreme Court 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; or
  - (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.
- (7) Where a person is under detention under this section, he or she must, within 14 days after he or she was brought, or last brought, before a Judge of the Federal Court or the Supreme Court in accordance with this section, or within such shorter or longer time as a Judge has fixed upon the last previous appearance of the person before a Judge under this section, be again brought before a Judge and the Judge may then exercise any of the powers of a Judge under subsection (6).
- (8) In this section—  
*Australia* includes the external Territories.

## **25—False or misleading evidence**

- (1) A person must not, at an examination before an examiner, give evidence that the person knows is false or misleading in a material particular.
- (2) A person who contravenes subsection (1) is guilty of an offence.  
Maximum penalty: \$22 000 or imprisonment for 5 years.

## **26—Protection of witnesses from harm or intimidation**

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 State Minister or with members of the Australian Federal Police or of the Police Force of the State) as are necessary to avoid prejudice to the safety of the person, or to protect the person from intimidation or harassment.

## **26A—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—
- (i) refuses or fails to take an oath or affirmation when required to do so under section 19; 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
- (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.

## **26B—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 the Supreme Court for the person to be dealt with in relation to the contempt.
- (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 Supreme Court 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.

### **26C—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 Supreme Court under section 26B.
- (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 Supreme Court.
- (3) In proceedings in relation to the application, a certificate under section 26B(3) is prima facie evidence of the matters specified in the certificate.

### **26D—Person in contempt may be detained**

- (1) If an examiner proposes to make an application under section 26B(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 Supreme Court 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 section 26B(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—
  - (a) that the person surrenders his or her passport; 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).

### **26E—Examiner may withdraw contempt application**

- (1) An examiner may at any time withdraw an application in relation to a person under section 26B(1).
- (2) If—
- (a) the examiner does so; and
  - (b) the person is in detention under section 26D,
- the person must be released from detention immediately.

### **26F—Relationship with section 34**

To avoid doubt, evidence relating to an application under section 26B(1) is not required to be given to a person or authority under section 34(1).

### **27—Legal protection of examiners, counsel and witnesses**

- (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.

### **28—Order for delivery to examiner of passport 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; and
  - (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 of a passport issued to him or her,

the Judge may make an order requiring the person to appear before a Judge of 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 passport to the examiner.

- (2) Where a person appears before a Judge of the Federal Court under an order made under subsection (1), the Judge may, if he or she thinks fit, make an order—
  - (a) requiring the person to deliver to the examiner any passport issued to him or her that is in his or her possession, custody or control; and
  - (b) authorising the examiner to retain the passport until the expiration of such period (not exceeding 1 month) as is specified in the order.
- (3) A Judge of the Federal Court may, upon application by the examiner, extend for a further period (not exceeding 1 month) or further periods (not exceeding 1 month in each case) the period for which the examiner is authorised to retain a passport under an order made under subsection (2), but so that the total period for which the examiner is authorised to retain the passport does not exceed 3 months.
- (4) A Judge of the Federal Court may, at any time while the examiner is authorised under an order made under this section to retain a passport issued to a person, upon application made by the person, revoke the order and, if the order is revoked, the examiner must forthwith return the passport to the person.
- (5) In this section—

*Australia* includes the external Territories.

## Part 4—Search warrants

### 29—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 (the *relevant day*), being the day on which, or a particular day within 1 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 (*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 authorising a person named in the warrant (the *authorised person*), with such assistance as the authorised person thinks necessary and if necessary by force, to do any one or more of the following:
  - (a) enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
  - (b) search the land, premises, vessel, aircraft or vehicle for things of the relevant kind;
  - (c) 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) A member of the Australian Federal Police cannot be an authorised person unless he or she is also a member of the staff of the ACC.

- (4) An issuing officer must 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; and
  - (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.
- (5) Where an issuing officer issues a warrant under subsection (2), he or she must state on the affidavit furnished to him or her as mentioned in subsection (4)(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.
- (6) A warrant issued under this section must—
  - (a) include a statement of the purpose for which the warrant is issued, which must include a reference to the special ACC operation/investigation with which the things of the relevant kind are connected; and
  - (b) state whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (c) include a description of the kind of things authorised to be seized; and
  - (d) specify a date, not being later than 1 month after the date of issue of the warrant, upon which the warrant ceases to have effect.
- (7) 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.
- (8) A person executing a warrant issued under this section may only use such reasonable force as is necessary for the execution.
- (9) 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 or of a State or 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 is to be taken, for the purposes of this Act, to have been seized pursuant to the warrant.
- (10) Where a thing is seized pursuant to a warrant issued under this section—
  - (a) the head of the special ACC operation/investigation may retain the thing if, and for so long as, retention of the thing by the head of the special ACC operation/investigation is reasonably necessary for the purposes of the special ACC operation/investigation to which the thing is relevant; and

- (b) if the retention of the thing by the head of the special ACC operation/investigation is not, or ceases to be, reasonably necessary for such purposes, a person participating in the special ACC operation/investigation must cause the thing to be delivered to—
- (i) if the thing may be used in evidence in proceedings of a kind referred to in subsection (13)—the authority or person responsible for taking the proceedings; or
  - (ii) if subparagraph (i) does not apply—the person who appears to the person participating in the special ACC operation/investigation to be entitled to the possession of the thing,
- unless the CEO has furnished the thing to the Attorney-General of the Commonwealth or of a State, or to a law enforcement agency, or to another person or authority, in accordance with section 34(1)(a), (b) or (c).
- (11) A person participating in the special ACC operation/investigation may, instead of delivering a thing in accordance with subsection (10)(b)(ii), deliver the thing to the Attorney-General of the Commonwealth or of a State, or to a law enforcement agency, for the purpose of assisting in the investigation of criminal offences, where the person participating in the special ACC operation/investigation is satisfied that the thing is likely to be useful for that purpose.
- (12) 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.
- (13) Without limiting the generality of subsection (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, or arising out of, an offence to which the special ACC operation/investigation relates.
- (14) In this section—
- thing* includes a document.

### **30—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 29.
- (2) Before so making application, the eligible person must 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 29 upon an application made by telephone, he or she must—
- (a) complete and sign the warrant; and
  - (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; and
  - (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 29 upon an application made by telephone, a member of the staff of the ACC or a member of the Police Force of the 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 must 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 must, 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 must 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 29.
- (7) A form of warrant duly completed in accordance with subsection (4) is to be taken to be a warrant issued under section 29.

## **Part 5—Performance of functions and exercise of powers**

### **31—Consent of Board may be needed before functions can be performed**

The conferral of a function on a Commonwealth body or person by this Act is subject to any provision of the ACC Act that requires the consent of the Board before the function can be performed.

### **32—Functions not affected by State laws**

A Commonwealth body or person is not precluded by any law of the State from performing a function conferred by this Act.

### **33—Extent to which functions are conferred**

- (1) This Act does not purport to impose any duty on a Commonwealth body or person to perform a function if the imposition of the duty would be beyond the legislative power of the Parliament of the State.
- (2) This section does not limit the operation of section 35 of this Act or section 22A of the *Acts Interpretation Act 1915*.

### **34—Performance of functions**

- (1) Where the ACC, in carrying out an ACC operation/investigation, obtains evidence of an offence against a law of the Commonwealth or of a State or Territory, being evidence that would be admissible in a prosecution for the offence, the CEO must assemble the evidence and give it to—
- (a) the Attorney-General of the Commonwealth or the State, as the case requires;  
or
- (b) the relevant law enforcement agency; or

- (c) any person or authority (other than a law enforcement agency) who is authorised by or under a law of the Commonwealth or of the State or Territory to prosecute the offence.
- (2) Where the ACC, in carrying out an ACC operation/investigation, obtains evidence that would be admissible in confiscation proceedings, the CEO may assemble the evidence and give it to—
- (a) the Attorney-General of the Commonwealth or the relevant State, as the case requires; or
  - (b) a relevant law enforcement agency; or
  - (c) any person or authority (other than a law enforcement authority) who is authorised to commence the confiscation proceedings.
- (3) Where, as a result of the performance of any of the ACC's functions, the Board considers that a recommendation should be made to the Commonwealth Minister or to the appropriate State Minister of a participating State, being a recommendation—
- (a) for reform of the law relating to relevant offences, including any one or more of the following:
    - (i) evidence and procedure applicable to the trials of relevant offences;
    - (ii) relevant offences in relation to, or involving, corporations;
    - (iii) taxation, banking and financial frauds;
    - (iv) reception by Australian courts of evidence obtained in foreign countries as to relevant offences;
    - (v) maintenance and preservation of taxation, banking and financial records; or
  - (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 State Minister, as the case may be.

- (4) Where the ACC has obtained particular information or intelligence in the course of performing one or more of its functions, nothing in this Act is to be taken to prevent the ACC from making use of the information or intelligence in the performance of any of its other functions.

### **35—Functions of federal judicial officers**

- (1) In this section—
- federal judicial officer* means a Judge of the Federal Court or a Federal Magistrate.
- (2) A function conferred on a federal judicial officer by this Act is conferred on the federal judicial officer in a personal capacity and not as a court or a member of a court. The federal judicial officer need not accept the function conferred.
- (3) Anything done or made by a federal judicial officer under this Act has effect only by virtue of this Act and is not to be taken by implication to be done or made by a court.

- (4) A federal judicial officer performing a function under this Act 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 federal judicial officer is a member).

### **36—Limitation on challenge to Board determination**

If—

- (a) an ACC State intelligence operation is determined by the Board to be a special operation; or
- (b) an ACC State investigation is determined by the Board to be a special investigation,

then, except in a proceeding instituted by the Attorney-General of the Commonwealth or 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 of the State on the ground that the determination was not lawfully made.

### **37—Cooperation with law enforcement agencies and coordination with overseas authorities**

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

### **38—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 under this Act, and any specific powers conferred on the ACC by this Act are not to be taken to limit by implication the generality of this section.

## **Part 6—General**

### **39—Double jeopardy**

- (1) If—
  - (a) an act or omission by a person is an offence under this Act and is also an offence under the ACC Act; and
  - (b) the person has been punished for the offence under the ACC Act,the person is not liable to be punished for the offence under this Act.
- (2) If—
  - (a) an application is made to the Supreme Court under section 26B(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 section 26B(1), an application must not be made under section 26B(1) in respect of that act or omission.

#### **40—Arrangements for Board to obtain information or intelligence**

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

#### **41—Administrative arrangements with the Commonwealth**

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

#### **42—Judges to perform functions under the ACC Act**

A Judge of a court of the State may perform functions conferred on the Judge by section 22, 23 or 31 of the ACC Act.

#### **43—Furnishing of reports and information**

- (1) The Chair of the Board must keep the Commonwealth Minister informed of the general conduct of the ACC in the performance of the ACC's functions under this Act. If the Commonwealth Minister requests the Chair of the Board to provide to him or her information concerning a specific matter relating to the ACC's conduct in the performance of its functions under this Act, the Chair must comply with the request.
- (2) Subject to subsection (3), if a State Minister who is a member of the Inter-Governmental Committee requests the Chair of the Board to provide to him or her information concerning a specific matter relating to the ACC's conduct in the performance of its functions under this Act, the Chair must comply with the request.
- (3) If the Chair of the Board considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Chair must not provide the information under subsection (2).
- (4) Subject to subsection (6), the Chair of the Board—
- (a) must, when requested by the Inter-Governmental Committee to furnish information to the Committee concerning a specific matter relating to an ACC operation/investigation that the ACC has conducted or is conducting, comply with the request; and
  - (b) must, when requested by the Inter-Governmental Committee to do so, and may at such other times as the Chair of the Board thinks appropriate, inform the Committee concerning the general conduct of the ACC in the performance of the ACC's functions under this Act.
- (5) Subject to subsection (6), the Chair of the Board must 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.

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- (6) The Chair of the Board must 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 must prepare a separate report in relation to the matter and furnish that report to the State Minister.
- (7) The Chair of the Board may include in a report furnished under subsection (5) a recommendation that the report be laid before each House of the Parliament of the State.
- (8) The CEO may give to—
- (a) any law enforcement agency; or
  - (b) any foreign law enforcement agency; or
  - (c) any other authority of the Commonwealth, a State or a Territory prescribed by the regulations,
- any information that has come into the ACC's possession under this Act and that is relevant to the activities of that agency or authority if—
- (d) it appears to the CEO to be appropriate to do so; and
  - (e) to do so would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.
- (9) The CEO may, whenever it appears to the CEO to be appropriate to do so, furnish to authorities and persons responsible for taking civil remedies by or on behalf of the Crown in right of the Commonwealth, of a State or of a Territory any information that has come into the ACC's possession under this Act and that may be relevant for the purposes of so taking such remedies in respect of matters connected with, or arising out of, offences against the laws of the Commonwealth, of a State or of a Territory, as the case may be.
- (10) Where any information relating to the performance of the functions of an authority of the Commonwealth or a State or the Administration of a Territory comes into the ACC's possession under this Act, the CEO may, if he or she considers it desirable to do so—
- (a) furnish that information to the authority or Administration; and
  - (b) make any recommendations to the authority or Administration as to the performance of its functions that the CEO considers appropriate.
- (11) A report under this Act that sets out any finding that an offence has been committed, or makes any recommendation for the institution of a prosecution in respect of an offence, 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.
- (12) The CEO may, whenever it appears to the CEO to be appropriate to do so, furnish to the Australian Security Intelligence Organisation any information that has come into the ACC's possession under this Act and that is relevant to security as defined in section 4 of the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth.

#### 44—Secrecy

- (1) This section applies to—
  - (a) the CEO; and
  - (b) a member of the Board; and
  - (c) a member of the staff of the ACC; and
  - (d) 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 functions 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 functions under this Act, is guilty of an offence.

Maximum penalty: \$5 500 or imprisonment for 1 year, or both.

- (3) A person to whom this section applies cannot 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 functions 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 those functions, 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 section 4(1) of the ACC Act; or
- (b) a person who assists, or performs services for or on behalf of, a legal practitioner appointed under section 7 in the performance of the legal practitioner's functions as counsel to the ACC;

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

**relevant Act** means the ACC Act, this Act or any corresponding Act of another State.

#### 45—Delegation

The CEO may, by writing, delegate to a member of the staff of the ACC who is an SES employee, or an acting SES employee, all or any of the CEO's functions under this Act.

#### **46—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 conferred or expressed to be conferred by or under this Act.

#### **47—Obstructing, hindering or disrupting the ACC or an examiner**

- (1) A person must not—
  - (a) obstruct or hinder—
    - (i) the ACC in the performance of its functions; or
    - (ii) an examiner in the performance of his or her functions as an examiner; or
  - (b) disrupt an examination before an examiner.
- (2) A person who contravenes subsection (1) is guilty of an offence.  
Maximum penalty: \$22 000 or imprisonment for 5 years.

#### **48—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, including its functions under this Act.
- (2) The Board may publish bulletins for the purpose of informing the public about the performance of the ACC's functions, including its functions under this Act.
- (3) The Board must not—
  - (a) divulge in the course of a meeting held under subsection (1); or
  - (b) include in a bulletin published under subsection (2),  
any matter the disclosure of which to members of the public could prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

#### **49—Annual report**

- (1) In this section—  
*annual report* means a report by the Chair of the Board under section 61 of the ACC Act.
- (2) An annual report in relation to a year must include the following:
  - (a) a description of any ACC State investigation that the ACC conducted during the year and that the Board determined to be a special investigation;
  - (b) a description, which may include statistics, of any patterns or trends, and the nature and scope, of any criminal activity that have come to the attention of the ACC during that year in the performance of its functions under this Act;

- (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 under this Act, the Board considers should be made;
  - (d) the general nature and the extent of any information furnished by the CEO during that year under this Act to a law enforcement agency;
  - (e) the extent to which ACC State investigations have resulted in the prosecution in that year of persons for offences;
  - (f) the extent to which ACC State investigations have resulted in confiscation proceedings;
  - (g) particulars of the number and results of court proceedings involving the ACC in relation to its functions under this Act being proceedings that were determined, or otherwise disposed of, during that year.
- (3) An annual report must 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 annual report the Chair of the Board must take reasonable care to ensure that the identity of a person is not revealed if to reveal his or her identity might, having regard to any material appearing in the report, prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.
- (5) The State Minister is to cause a copy of—
- (a) each annual report that he or she receives; 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 of the State within 15 sitting days of that House after he or she receives the report.

## **50—Things done for multiple purposes**

The validity of anything done for the purposes of this Act is not affected only because it was done also for the purposes of the ACC Act.

## **51—Regulations**

The Governor may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.



## **Schedule 1—Transitional provision**

### **Part 7—Transitional provisions**

#### **13—Terms used in this Part**

In this Part—

*NCA investigation* means an investigation under section 5(4) of the NCA (State Provisions) Act;

*NCA (State Provisions) Act* means the *National Crime Authority (State Provisions) Act 1984*.

#### **14—Certain investigations taken to be special investigations**

If an ACC State investigation relates to a matter into which an NCA investigation had been commenced but not completed before 1 January 2003, the Board of the ACC is taken to have determined, in writing, that the ACC State investigation is a special investigation.

#### **15—Assembling and giving evidence obtained by the NCA**

If—

- (a) before 1 January 2003, the National Crime Authority obtained evidence of a kind referred to in section 6(1) of the NCA (State Provisions) Act; but
- (b) the National Crime Authority had not assembled and given the evidence as mentioned in that subsection before 1 January 2003,

section 34(1) applies as if that evidence had been obtained by the ACC in carrying out an ACC operation/investigation.

#### **16—Limitation on challenges to validity of references**

Section 8 of the NCA (State Provisions) Act continues to apply in relation to a reference made under that Act as if that section had not been repealed by this Act.

#### **17—Arrangements to obtain information or intelligence**

An arrangement that was in force under section 11 of the NCA (State Provisions) Act immediately before 1 January 2003 has effect as if it had been made under section 40.

#### **18—Things seized under search warrants**

If a thing seized pursuant to a warrant under section 12 of the NCA (State Provisions) Act is in the ACC's possession, section 29(10) and (11) apply to that thing as if it had been seized pursuant to a warrant under section 29.

#### **19—Directions as to publication**

- (1) If a direction was in force under section 16(9) of the NCA (State Provisions) Act immediately before 1 January 2003—
  - (a) the direction has effect; and
  - (b) section 18(10), (11) and (14)(b) apply to the direction as if it were a direction under section 18(9).

- (2) Section 18(12) and (13), so far as they relate to the CEO, apply to evidence in relation to which a direction was given under section 16(9) of the NCA (State Provisions) Act as if it were evidence given before an examiner in relation to which the examiner has given a direction under section 18(9).

## 20—Disclosure of summons or notice

If a notation made in connection with an NCA investigation was in force under section 18A of the NCA (State Provisions) Act immediately before 1 January 2003—

- (a) the notation has effect; and
- (b) section 22 applies to the summons or notice containing the notation; and
- (c) if there is an ACC operation/investigation relating to the matter to which the NCA investigation related, section 21(4) and (5) apply as if the notation had been made in connection with the ACC operation/investigation.

## 21—Witness protection

Arrangements that were in effect under section 24 of the NCA (State Provisions) Act immediately before 1 January 2003 have effect as if they had been made under section 26.

## 22—Administrative arrangements in relation to the NCA

An arrangement that was in force under section 28(b) of the NCA (State Provisions) Act immediately before 1 January 2003 has effect as if it had been made under section 42.

## 23—Secrecy obligations

- (1) In this section—
- former official* means a person who was, at any time, a person to whom section 31 of the NCA (State Provisions) Act applied.
- (2) Section 44(2) and (3) extend to a former official (whether or not he or she is or has been a person to whom section 44 applies) as if—
- (a) references in section 44 to this Act or to a corresponding Act of another State included references to the NCA (State Provisions) Act or to a corresponding Act of another State; and
  - (b) the reference in section 44(3)(b) to an investigation carried out by the ACC included a reference to an investigation carried out by the National Crime Authority before 1 January 2003.

## 24—Validation of administrative actions

The *Co-operative Schemes (Administrative Actions) Act 2001* (the *validation Act*) applies to administrative actions that have been taken, or have purportedly been taken, under the NCA (State Provisions) Act as if—

- (a) the NCA (State Provisions) Act were still a relevant State Act for the purposes of the validation Act; and

- (b) for the purposes of the validation Act, the “commencement time” in relation to the NCA (State Provisions) Act were the time when Part 6 of this Schedule comes into operation.

## **25—Transitional regulations**

- (1) If there is no sufficient provision in this Part for dealing with a transitional matter, regulations may prescribe all matters that are required, necessary or convenient to be prescribed in relation to that matter.
- (2) In subclause (1)—  
*transitional matter* includes a savings or application matter.
- (3) If regulations made under subclause (1) provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a day that is earlier than the day on which the regulations are published in the Gazette but not earlier than 1 January 2003, the regulations have effect according to their terms.
- (4) Regulations that contain a provision referred to in subclause (3) cannot be made more than 12 months after the day on which Part 6 of this Schedule comes into operation.
- (5) If regulations contain a provision referred to in subclause (3), the provision does not operate so as to—
- (a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
  - (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Australian Crime Commission (South Australia) Act 2004* repealed the following:

*National Crime Authority (State Provisions) Act 1984*

### Legislation amended by principal Act

The *Australian Crime Commission (South Australia) Act 2004* amended the following:

*Jurisdiction of Courts (Cross-vesting) Act 1987*

*Listening and Surveillance Devices Act 1972*

*Taxation (Reciprocal Powers) Act 1989*

*Witness Protection Act 1996*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2004	7	<i>Australian Crime Commission (South Australia) Act 2004</i>	8.4.2004	6.5.2004 ( <i>Gazette</i> 6.5.2004 p1227)
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 4 (s 6)—18.1.2007 ( <i>Gazette</i> 18.1.2007 p234)
<b>2012</b>	<b>12</b>	<b><i>Statutes Amendment (Serious and Organised Crime) Act 2012</i></b>	<b>10.5.2012</b>	<b>Pt 2 (ss 4—7)—17.6.2012 (<i>Gazette</i> 14.6.2012 p2756)</b>
2012	52	<i>Independent Commissioner Against Corruption Act 2012</i>	6.12.2012	Sch 3 (cl 2)—24.11.2014 ( <i>Gazette</i> 20.11.2014 p6477)
2014	13	<i>Australian Crime Commission (South Australia) (Examinations) Amendment Act 2014</i>	23.10.2014	24.11.2014 immediately after 52/2012 ( <i>Gazette</i> 20.11.2014 p6477)

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	18.1.2007
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>18.1.2007</i>
s 3		
s 3(1)		
Commonwealth body or person	amended by 44/2006 s 6	18.1.2007
<b>constable</b>	<b>inserted by 12/2012 s 4(1)</b>	<b>17.6.2012</b>
<b>in contempt of the ACC</b>	<b>inserted by 12/2012 s 4(2)</b>	<b>17.6.2012</b>
<b>intelligence operation</b>	<b>substituted by 12/2012 s 4(3)</b>	<b>17.6.2012</b>
Pt 2		
s 8		
s 8(5)	<b>amended by 12/2012 s 5</b>	<b>17.6.2012</b>
Pt 3		
ss 26A—26F	<b>inserted by 12/2012 s 6</b>	<b>17.6.2012</b>
Pt 6		
s 39		
s 39(1)	<b>s 39 redesignated as s 39(1) by 12/2012 s 7</b>	<b>17.6.2012</b>
s 39(2) and (3)	<b>inserted by 12/2012 s 7</b>	<b>17.6.2012</b>
Sch 1		
<i>Pts 1—6</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>18.1.2007</i>

## Historical versions

18.1.2007