

**2003**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**AUSTRALIAN CRIME COMMISSION (ACT) BILL 2003**

**EXPLANATORY STATEMENT**

**Circulated by authority of the  
Minister for Police and Emergency Services  
Mr Bill Wood MLA**

## AUSTRALIAN CRIME COMMISSION (ACT) BILL 2003

This explanatory statement relates to the Bill as introduced into the ACT Legislative Assembly.

### **Overview of the Bill**

The purpose of this Bill is to complement the *Australian Crime Commission Act 2002* (Cwlth) (the Commonwealth Act) to provide for the operation of the Australian Crime Commission (ACC) in the Australian Capital Territory (ACT).

The ACC, established under the Commonwealth Act, came into operation on 1 January 2003 replacing the National Crime Authority (NCA). The ACC combines the investigative functions of the former NCA with the criminal intelligence functions of the former Australian Bureau of Criminal Intelligence and the former Office of Strategic Crime Assessments.

The Commonwealth Act maintains the powers that were available to the former NCA and enables these powers to be used for both the ACC's investigatory role and its new criminal intelligence role. These powers are available in relation to intelligence operations and investigations relating to relevant federal criminal activity. In addition, the Commonwealth Act establishes the governance regime for the ACC, including the establishment of a board and an office of Chief Executive Officer (CEO) of the ACC.

The board is made up of Commonwealth, State and Territory law enforcement representatives and is responsible under the Commonwealth Act for determining national criminal intelligence priorities and overseeing the strategic direction of the ACC, as well as authorising intelligence operations, investigations and the use of special powers. The CEO is responsible under the Commonwealth Act for managing the day-to-day administration of the ACC and for coordinating ACC operations and investigations.

The Commonwealth Act also establishes the Inter-Governmental Committee (IGC) responsible for maintaining an appropriate monitoring and oversight role in relation to the ACC.

Lastly, the Commonwealth Act provides for the coercive examination powers that were available to the former NCA to be exercised by examiners. These powers were formerly exercised by members and hearing officers of the NCA.

The Bill and comparable legislation in other States and Territories will enable the ACC to undertake like functions to those under the Commonwealth Act in relation to relevant criminal activity that relates to State or Territory offences, irrespective of whether those offences have a federal aspect. This will ensure that the ACC can operate as effectively and seamlessly as possible on a national basis.

The Bill provides for the functions and powers of the ACC, the board, and the CEO under ACT law. Similarly to the Commonwealth Act, the Bill maintains the powers that were available to the former NCA and enables these powers to be used for both the ACC's investigatory and criminal intelligence roles.

The Bill creates offences for contraventions of the provisions to facilitate the effective performance of the ACC's functions. These offences reflect equivalent offences that are contained in the Commonwealth Act, however it should be noted the offences have been drafted in accordance with the requirements of the *Criminal Code 2002* consistent with all new ACT legislation. Penalties in the Bill reflect current penalty policy in the ACT. Some penalties are higher than for the equivalent offence in the Commonwealth Act.

The Bill will repeal the ACT's NCA legislation, the *National Crime Authority (Territory Provisions) Act 1991*. The Bill contains transitional provisions to facilitate a seamless transition from the NCA to the ACC under ACT law.

The Bill also contains consequential amendments that are necessary because of the replacement of the NCA with the ACC and the repeal of the *National Crime Authority (Territory Provisions) Act 1991*.

## **Outline of provisions**

### **Part 1 Preliminary**

#### **Clause 1 Name of Act**

This clause sets out the name of the proposed Act as the *Australian Crime Commission (ACT) Act 2003*.

#### **Clause 2 Commencement**

This clause provides for the commencement of the Bill, apart from clauses 1 and 2, on a day to be fixed by the Minister via written notice. This is to enable regulations and related Commonwealth amendments to be prepared to ensure that certain duties, functions and powers invested by State and Territory laws in the ACC, the ACC board and the IGC-ACC, are constitutionally valid. For example, with respect to clause 18 (board committees) and division 2.3 (the IGC), the legislative consent provision in section 55A(4) of the Commonwealth Act must be amended to extend to members of the board and the IGC, to ensure the validity of these clauses. It is expected that the Commonwealth will make the necessary amendments to its Act during the Spring 2003 Parliamentary sittings.

The provisions of the Bill will automatically commence 6 months after its notification day if they have not been commenced by the Minister earlier.

#### **Clause 3 Dictionary**

This clause states that the dictionary, at the end of the Bill, forms a part of the Bill.

#### **Clause 4 Notes**

This clause makes it clear that notes in the Bill are explanatory only and do not form part of the Bill.

#### **Clause 5 Offences against Act – application of Criminal Code etc**

This clause is a standard provision stating that other legislation applies for offences against this Bill. This section alerts the reader to the application of Chapter 2 of the *Criminal Code* to all offence provisions. Chapter 2 sets out the general principles of criminal responsibility and defines relevant terms such as conduct, intention, recklessness and strict liability for the purposes of the offence provisions.

**Clause 6 Terms used in ACC Act**

This clause provides for terms used in the *Australian Crime Commission Act 2002* (Cwlth) to have the same meaning in this Bill. In particular, the term ‘State’, includes the Australian Capital Territory and the Northern Territory. The word ‘Territory’ generally refers to the external territories. The *Legislation Act 2001*, s.155 makes this subject to a contrary intention in the Bill. For example, where a term is defined such as “ACC Territory investigation” or “Territory Minister”.

**Clause 7 Incidental offences may be taken to be serious and organised crime**

"Serious and organised crime" is defined in the dictionary. This clause extends the meaning of the term "serious and organised crime" to include incidental offences, connected with a course of activity involving the commission of a serious and organised crime.

**Part 2 The ACC, the board and intergovernmental committee****Division 2.1 Australian Crime Commission****Clause 8 Functions of ACC**

This clause sets out the functions of the ACC, complementing section 7A of the Commonwealth Act. The investigatory function of the ACC is similar to the investigatory function previously undertaken by the NCA. This provision will enable the ACC to investigate relevant criminal activity where the board has consented to the ACC doing so under the Commonwealth Act. The ACC will only be empowered to investigate relevant criminal activity to the extent that it is, or includes, an offence or offences against an ACT law.

Paragraph (b) reflects the new role that the ACC has in relation to criminal intelligence, providing for the ACC to undertake intelligence operations where the board has consented to the ACC doing so under the Commonwealth Act. As with its investigatory function, the ACC will only be empowered to undertake intelligence operations in connection with offences against an ACT law.

The ACC must provide reports to the board on the outcome of its investigations and intelligence operations under paragraph (c). Paragraph (d) provides that the ACC has such other functions as are conferred on it by other provisions of the Bill or any other Act. For example, functions could be conferred on the ACC by other ACT laws creating investigative powers, subject to the necessary legislative consent under section 55A of the Commonwealth Act.

**Clause 9 CEO to manage ACC operations/investigations**

This clause provides that the CEO's functions are to coordinate ACC operations and investigations, determine the head of an ACC operation or investigation and arrange for an examiner who is to be able to exercise his or her powers under the Bill in relation to a special ACC operation/investigation. This provision complements a similar provision contained in section 46A of the Commonwealth Act. It should be noted that under section 46A of the Commonwealth Act, the CEO is also responsible for the day-to-day administration of the ACC.

**Clause 10 Counsel assisting ACC**

This clause enables the CEO to appoint a legal practitioner to assist the ACC. This complements an equivalent provision in section 50 of the Commonwealth Act.

## **Division 2.2 Board of ACC**

### **Clause 11 Functions of board**

This clause sets out the functions of the board and complements section 7A of the Commonwealth Act, which provides for the functions of the ACC. This clause should be read together with section 55A(3) of the Commonwealth Act, which requires board consent under that Act for the ACC to undertake an ACC State intelligence operation or ACC State investigation. The ACT is included in the definition of a State for the Commonwealth Act.

The board has the function of determining whether an ACC operation or investigation is a special operation or investigation. This determination then allows for the exercise of coercive powers under the Bill.

The board may also determine the classes of persons to participate in an ACC Territory intelligence operation/investigation. For example, the board may determine that members of a State or Territory police force that are seconded to the ACC are to participate in a particular ACC Territory intelligence operation/investigation. The board can establish task forces to conduct an ACC Territory intelligence operation/investigation and exercise any other functions conferred on it by other provisions of the Bill.

Determinations made by the board must be contained in a written determination of the board authorising the use of special powers. It must describe the general nature of the circumstances or allegations constituting the relevant criminal activity; state what the serious and organised crime is or that the serious and organised crimes are or include an offence or offences against an ACT law and set out the purpose of the operation or investigation. However, before determining that an investigation is a special investigation or that an operation is a special operation, the board must first consider whether ordinary methods of collection of criminal information and intelligence, or police methods of investigation into the matters have been effective, or are likely to be effective. These provisions provide an important safeguard in setting out the parameters for the board's authorisation of the use of special powers under the Bill.

Clause 11(7) requires the chair of the board to provide to the inter-governmental committee (IGC), a copy of a determination authorising the use of special powers within 3 days of the determination being made. This will facilitate the IGC's oversight function under clause 19.

Subclause (9) provides that clauses 12 to 18 relating to board meetings have effect in relation to the board's functions under the Bill.

### **Clause 12 Board meetings**

This clause sets out the requirements for board meetings. The chair must ensure that board meetings are convened in accordance with the complementary provisions governing board meetings in section 7D of the Commonwealth Act.

### **Clause 13 Presiding at board meetings**

This clause provides that the chair of the board or another eligible Commonwealth board member nominated by the chair must preside at a board meeting. An eligible Commonwealth board member is defined in the Commonwealth Act to mean, in effect, another Commonwealth member of the board, other than the CEO.

**Clause 14 Quorum at board meetings**

This clause provides that a quorum of the board is seven members, excluding the CEO.

**Clause 15 Voting at board meetings**

This clause sets out the voting procedures to apply at board meetings. Generally, a simple majority vote will determine decisions of the board. However, special voting requirements apply to board determinations authorising the use of special powers, as an additional safeguard on the exercise of these powers. The board can only determine that a Territory ACC operation or investigation is a special operation or investigation if at least nine board members agree, including at least two eligible Commonwealth board members. The CEO has no voting rights.

**Clause 16 Conduct of board meetings**

This clause provides that the board may regulate proceedings at its meetings as it considers appropriate and requires minutes of board meetings to be kept.

**Clause 17 Resolutions outside of board meetings**

This clause allows decisions of the board to be taken by resolution out of session, enabling the board to make decisions without a formal meeting being held. The special voting requirements that apply to a determination of the board authorising the use of special powers will continue to apply to any such determination that is made out of session.

**Clause 18 Board committees**

This clause enables the board to establish committees to assist in carrying out its functions, recognising the need for the board to operate by committee when appropriate. However, limitations are imposed on the establishment and functions of committees to ensure sufficient accountability in relation to the exercise of board functions by committees. The most important limitation is that the board's function of determining whether an ACC Territory intelligence operation or an ACC Territory investigation is a special operation or investigation, cannot be exercised by a committee. The full board must exercise this function. A committee must let other board members know of its decisions and ensure that minutes of its meetings are kept.

**Division 2.3 Inter-governmental committee****Clause 19 Functions of committee**

This clause provides for the functions of the IGC in relation to the revocation of special determinations made by the board, and complementary powers for the IGC to obtain further information about a special determination from the chair of the board. These provisions complement section 9 of the Commonwealth Act which provides more generally for the oversight and monitoring role of the IGC in relation to the ACC and the board.

Subclauses (1) to (5) set out the procedures for the IGC to obtain further information from the chair of the board in relation to a board determination authorising the use of special powers. The chair of the board must not provide information requested by the IGC if the public disclosure of the information could prejudice a person's safety or reputation or the operations of law enforcement agencies. If the chair of the board decides on this ground not to provide the information sought, the IGC can refer the request to the Territory Minister, who must determine whether disclosure of the information could prejudice a person's safety or reputation or the operations of law

enforcement agencies. This mechanism for referral of the matter to the Territory Minister provides an additional check on the provision to the IGC of information that it may require in determining whether to revoke a special determination under subclause (6).

Subclause (6) provides for the IGC to revoke by resolution a special determination made by the board. The resolution can be made with the agreement of the Commonwealth member of the IGC and at least five other members of the IGC. The IGC's power to revoke a special determination is a further safeguard on the exercise of the special powers under the Bill. The IGC is required to notify the chair of the board and the CEO if it revokes a special determination. The revocation takes effect when the CEO is notified.

### **Part 3 Examinations**

#### **Clause 20 Examinations**

This clause provides that an examiner may conduct an examination for the purposes of a special ACC operation/investigation. The power to conduct examinations, including coercive powers to produce documents and answer questions, is a powerful investigative tool central to the role and functions of the ACC.

#### **Clause 21 Conduct of examination**

This clause regulates the conduct of examinations, complementing an equivalent provision in section 25A of the Commonwealth Act. Subclause (1) provides that an examiner may conduct the proceedings in the manner he or she thinks appropriate.

Examiners are independent statutory officers appointed by the Governor-General under the Commonwealth Act. An examiner must be employed on a full-time basis and have been enrolled as a legal practitioner for at least five years. While clause 9(4) enables the CEO to allocate an examiner to a particular special ACC operation/investigation, this does not fetter the statutory discretion of the examiner in exercising his or her powers. The independence of examiners is an important safeguard on the exercise of the special powers under the Bill.

Subclause (2) provides for legal representation of witnesses and, in some circumstances, with the examiner's consent, non-witnesses.

Subclause (3) requires an examination to be held in private and empowers the examiner to give directions regarding the presence of persons during an examination.

Subclause (4) then makes it clear that such a direction does not prevent the presence of the legal representative of a witness, or non-witness if the examiner has consented to his or her presence.

Subclause (5) precludes the presence of a person (other than approved ACC staff members) at an examination unless the examiner has given a direction under subclause (3) permitting the person to be present, or if subclause (4) applies.

Subclause (6) makes it an offence for a person to be present at an examination knowing that he or she is not entitled to be present. The maximum penalty is 100 penalty units, one year's imprisonment or both.

Subclause (7) provides for the examination and cross-examination of witnesses by counsel assisting the examiner, someone authorised by the examiner to appear or any legal practitioner representing persons present under subclause (2).

Subclause (8) requires an examiner to inform a witness of the presence of a non-witness at an examination and allow the witness to comment on that person's presence.

Subclause (9) makes it clear that a non-witness does not cease to be entitled to be present at an examination if the examiner fails to comply with subclause (8) or a witness comments adversely on the presence of a non-witness. For example, if the ACC is coordinating its activities, in accordance with clause 40(2), with the functions of an overseas authority that performs similar functions to the ACC and a representative of that authority is present at an examination, the examiner must inform a witness of that person's presence.

Subclause (10) enables an examiner to make a non-publication direction prohibiting the publication of:

- evidence given at an examination or documents or things produced to the examiner;
- information that might enable a witness to be identified; or
- the fact that a person has or may give evidence at an examination.

This provision would enable an examiner to make a non-publication direction if, for example, the publication of matters relating to the conduct of an examination might compromise the effectiveness of an ACC operation or investigation. An examiner must make a non-publication direction if the failure to do so might prejudice the safety or reputation of a person or the fair trial of a person who has been or may be charged with an offence (subclause (11)).

Subclauses (12) and (13) provide for the CEO to revoke a non-publication direction made by an examiner under subclause (10). This power is consistent with the CEO's functions of managing, regulating and controlling ACC operations and investigations under clause 9(1).

Subclause (14) sets out a procedure under which a court can require evidence given before an examiner that is subject to a non-publication direction under subclause (10) to be made available to the court. A court can require evidence to be made available if a person has been charged with an offence and the court considers that it may be desirable in the interests of justice that evidence given before an examiner be made available to that person or his or her legal practitioner. Once the evidence has been made available to the court, subclause (15) enables the court to make that evidence available to the charged person or his or her legal practitioner.

Subclause (16) makes it an offence if an examiner makes a non-publication direction under subsection (10) and a person publishes something in contravention of the direction and is reckless about whether the publication contravenes the direction. The maximum penalty is 100 penalty units, one year's imprisonment or both.

Subclause (17) requires an examiner to give the head of the special ACC operation/investigation at the conclusion of an examination a record of proceedings of the examination and any documents or things given to the examiner.

## **Clause 22 Power to summon witnesses and take evidence**

This clause provides for an examiner's powers to summon witnesses and take evidence, enabling an examiner to summon a person to appear before him or her to give evidence and to produce documents or things. The examiner must be satisfied it is reasonable to do so and must record his or her reasons for issuing the summons.

Subclause (4) requires a summons to be accompanied by a copy of the determination of the board that the ACC Territory intelligence operation or investigation is a special operation/investigation. The summons must set out the general nature of the matters in relation to which the examiner intends to question the person, unless this would prejudice the effectiveness of the special ACC operation/investigation (subclause (5)).

Subclauses (6) and (7) empower an examiner to require a person appearing at an examination to produce a document or thing and take evidence on oath or affirmation. Subclause (8) provides for a person who is authorised by the CEO to be present in an examination to administer the oath or affirmation.

Subclause (9) makes it clear that the powers to summon witnesses and take evidence under this clause can only be exercised in relation to a special ACC operation or investigation, subjecting this clause to the safeguards that apply under the Bill relating to the authorisation of the use of special powers.

## **Clause 23 Power to obtain documents**

This clause provides for an examiner's power to obtain documents, enabling an examiner, by written notice, to require a person to attend before the examiner or a member of staff of the ACC to produce specified documents or things relevant to a special ACC operation/investigation. The examiner must be satisfied it is reasonable to do so and must record his or her reasons for issuing the notice.

Subclause (4) makes it clear that a notice may be issued in relation to a special ACC operation/investigation regardless of whether an examination before an examiner is being held. Under subclause (5) a person, who is served with a notice, must not intentionally fail to attend an examination or fail to produce documents or things as stated. This is an indictable offence with a maximum penalty of 500 penalty units, imprisonment for 5 years or both. However, this offence may be dealt with summarily under the provisions of section 375 of the *Crimes Act 1900* in certain circumstances. In this case, the maximum penalty that can be imposed by the court is \$5000 or two years imprisonment.

Subclause (6) applies the same provisions in clauses 26(4) and (5) [which allows a legal practitioner to refuse to provide information to an examiner on the ground of legal professional privilege, subject to a requirement that the legal practitioner identifies the person to whom the privilege applies], clauses 26(6), (7) and (8) [which deal with self-incrimination] and clause 26(9) [which makes it clear that clause 26(4) does not affect the law relating to legal professional privilege] that apply to a person who is required to produce a document or thing at an examination to the production of documents or things pursuant to a notice under this clause.

## **Clause 24 Disclosure of summons or notice may be prohibited**

This clause provides for the inclusion of a non-disclosure notation in a summons or notice issued under clause 22 or 23 to prohibit the disclosure of information about the summons or notice or any official matter connected with it. Subclause (2) sets out the

circumstances in which an examiner may, or must, include a non-disclosure notation in a summons or notice. A notation must be included if the examiner is satisfied that failing to do so would reasonably be expected to prejudice a person's safety or reputation, the fair trial of a person or the effectiveness of an ACC operation or investigation. A notation may be included if the examiner is satisfied that failing to do so might prejudice a person's safety or reputation, the fair trial of a person or the effectiveness of an ACC operation or investigation. An examiner may also include a notation if he or she is satisfied that the failure to do so might otherwise be contrary to the public interest.

Subclause (3) requires a written statement setting out a person's rights and obligations under clause 25 to accompany the notation. Clause 25 creates offences for the contravention of a notation.

Subclause (4) provides for the automatic cancellation of a notation in certain circumstances where it is no longer necessary to prevent disclosure of information about a summons or notice. The CEO is required to serve written notice of the cancellation of a notation to each person who received the summons or notice containing the notation.

### **Clause 25      Offences of disclosure**

This clause creates offences for disclosing certain information about a summons or notice that contains a non-disclosure notation under clause 24. Subclause (1) makes it an offence for a person who receives a summons or notice containing such a non-disclosure notation, to disclose the existence of, or information about the summons or notice or official matters connected with the summons or notice, reckless about whether it will make a disclosure of this kind. The maximum penalty is 100 penalty units, one year's imprisonment or both.

Subclause (2) sets out exceptions to subclause (1) where disclosure is permitted, recognising there will be circumstances in which it is necessary and appropriate to disclose information about a summons or notice. A person who receives a summons or notice containing a non-disclosure notation can disclose the existence of, or information about the summons or notice or an official matter connected with it -

- in accordance with any circumstances specified in the notation;
- to a legal practitioner for the purposes of obtaining legal advice or representation;
- if the person is a body corporate, to an officer or agent of the body corporate to ensure compliance with the summons or notice; or
- if the person is a legal practitioner, for the purposes of obtaining the consent of another person under clause 26(4) to the legal practitioner answering a question or producing a document before an examiner. Clause 26(4) will apply where a legal practitioner is required to answer a question or produce a document that would disclose communications protected by legal professional privilege, and he or she seeks the agreement of the person to whom the privilege applies to answer the question or produce the document.

Subclause (3) makes it an offence if a person receives information about a summons or notice in accordance with subclause (2) or (4) and while the person is a person to whom a disclosure is allowed to be made, the person discloses the existence of, or information about the summons or notice or official matters connected with the summons or notice and is reckless about whether the later communication will make a disclosure of this kind. The maximum penalty is 100 penalty units, one year's imprisonment or both.

Subclause (4) sets out the circumstances in which that person can disclose the information. These are:

- if the person is an officer or agent of the body corporate that received the summons or notice, he or she may disclose the information to another officer or agent to ensure compliance with the summons or notice or to a legal practitioner for the purposes of obtaining legal advice or representation; or
- if the person is a legal practitioner, he or she may disclose the information for the purposes of providing advice or representation.

Subclause (5) makes it an offence for a person who receives information about a summons or notice in the circumstances set out in subclause (2) or (4) to make a record of, or disclose the existence of, or information about the summons, notice or official matters connected with the summons or notice, reckless about whether the later disclosure is a disclosure of this kind, after the person is no longer a person to whom such a disclosure may be made. For example, a legal practitioner who receives information about a summons or notice for the purposes of providing legal advice or representation cannot disclose this information if he or she ceases to be a legal practitioner. The maximum penalty is 100 penalty units, one year's imprisonment or both.

Subclause (6) provides that the disclosure offences in this clause will cease to apply when the notation contained in the summons or notice is automatically cancelled under clause 24(4), or five years after the summons or notice has been issued, whichever is sooner. This recognises that once 5 years have elapsed after the issue of a summons or notice, the interests affected by the contravention of a non-disclosure notation in the summons or notice will no longer be such as to warrant criminal punishment.

## **Clause 26 Failure of witnesses to attend and answer questions**

Clause 26 provides for offences for failure to attend and answer questions at an examination and deals with self-incrimination and use immunity.

Subclause (1) provides that a person must not intentionally fail to attend an examination as required by a summons, or fail to attend from day to day. The maximum penalty is 500 penalty units, 5 year's imprisonment or both. This offence may be dealt with summarily under the provisions of section 375 of the *Crimes Act 1900* in certain circumstances. In this case, the maximum penalty that can be imposed by the court is \$5000 or 2 years imprisonment.

Subclause (2) provides that if a person does not attend from day to day, an offence is not committed if the examiner has excused or released the person from attending on a day or part of a day.

Subclause (3) provides that a witness at an examination must not intentionally fail to take an oath or affirmation, answer a question required by the examiner, or produce a document or thing in answer to a summons. The maximum penalty is 500 penalty units, 5 year's imprisonment or both. This offence may be dealt with summarily under the provisions of section 375 of the *Crimes Act 1900* in certain circumstances. In this case, the maximum penalty that can be imposed by the court is \$5000 or two years imprisonment.

Subclause (4) enables a legal practitioner to refuse to answer questions or produce documents at an examination on the ground of legal professional privilege.

Subclause (5) makes it an offence if the legal practitioner refuses to comply with the requirement under subclause (4) and intentionally fails to provide the name and address of the person to whom the privilege applies if required to do so by the examiner. The maximum penalty is 500 penalty units, five year's imprisonment or both. This offence may be dealt with summarily under the provisions of section 375 of the *Crimes Act 1900* in certain circumstances. In this case, the maximum penalty that can be imposed by the court is \$5000 or two years imprisonment

Subclauses (6), (7) and (8) set out provisions dealing with self-incrimination and use immunity in relation to evidence given at an examination.

Subclause (7) sets out the circumstances in which a person may claim the privilege against self-incrimination. A person can claim the privilege if--

- before answering a question that the person is required to answer at an examination;
- before producing, in answer to a summons, a business document that sets out details of earnings received by the person in respect of his or her employment and does not set out any other information; or
- before producing a thing in answer to a summons--

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

Subclause (8) limits the use that can be made of certain evidence if one of the situations in subclause (7) exists. If one of these situations exists, the answer, document or thing cannot be used as evidence against the person, except in confiscation proceedings or proceedings in relation to the falsity of evidence given by the person. However, any evidence that is derived from the answer, document or thing may be used against the person.

Subclause (9) clarifies that subclause (4) does not affect the law relating to legal professional privilege. So, where a legal practitioner is required to provide certain information to an examiner and to do so would disclose privileged information, the legal practitioner may refuse to produce that information, unless the person to whom the privilege applies consents to its disclosure.

## **Clause 27      Warrant for arrest of witness**

Clause 27 empowers a Judge of the Federal Court or the Supreme Court to issue a warrant for the arrest of a person in specified circumstances upon an application made by an examiner. This is an important power to ensure that the investigatory process of the ACC is not thwarted. As the coercive examination powers under the Bill are only available in connection with a special ACC operation/investigation, the power to arrest and detain a person to ensure his or her appearance before an examiner will be subject to the safeguards that apply under the Bill in relation to the authorisation of the use of special powers.

Subclause (1) sets out the grounds for issue of such a warrant. The Judge must be satisfied by evidence on oath that there are reasonable grounds to believe that--

- (a) a person who has been ordered to surrender his or her passport under clause 31 is nevertheless likely to leave Australia to avoid giving evidence before an examiner;
- (b) a person is attempting or is likely to attempt to evade service of a summons to appear at an examination that has been issued under clause 22(1); or

(c) a person has committed an offence under clause 26(1) by failing to attend an examination in answer to a summons.

Subclause (2) enables a warrant to be executed by any person to whom it is addressed. The person executing the warrant is empowered to break and enter any premises, vessel, aircraft or vehicle to execute it. Subclause (3) provides that the warrant may be executed even if the person executing it doesn't have the warrant in their possession at the time. Subclause (4) makes it clear that reasonable force can be used in the execution of a warrant.

Subclause (5) sets out the procedure for dealing with a person who is apprehended under a 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 or Court may admit the person to bail, order the continued detention of the person to ensure his or her appearance as a witness before an examiner or order the release of the person.

Subclause (6) requires a person who is detained under clause 27 to be brought back before a Judge of the Federal Court or the Supreme Court within 14 days, or any other period fixed by the Judge or Court. The Judge or Court is then empowered to exercise any of the powers under subclause (5) in relation to the person.

#### **Clause 28 False or misleading evidence**

Clause 28 makes it an indictable offence to knowingly give false or misleading evidence at an examination before an examiner. The maximum penalty is 500 penalty units or 5 years' imprisonment or both. This offence may be dealt with summarily under the provisions of section 375 of the *Crimes Act 1900* in certain circumstances. In this case, the maximum penalty that can be imposed by the court is \$5000 or two years imprisonment.

#### **Clause 29 Protection of witnesses from harm or intimidation**

Clause 29 allows an examiner to make arrangements to protect a person who is appearing or has appeared at an examination before an examiner or proposes to give, or has given, information or other documents other than at an examination. An examiner can make arrangements, including with the Territory Minister or with members of the police force, to ensure that the safety of a person is not prejudiced or a person is not subject to intimidation or harassment.

#### **Clause 30 Legal protection of examiners, counsel and witnesses**

Clause 30 provides, in relation to an examination before an examiner, the same legal protection and immunity for examiners, witnesses and legal practitioners assisting the ACC or an examiner or representing a witness, as would apply in proceedings in the High Court. This ensures that the conduct of an examination is not constrained by a risk of tortious liability that may otherwise arise from things said or done in the conduct of an examination.

#### **Clause 31 Order for giving passport of witness to examiner**

Clause 31 enables an examiner to apply to a Judge of the Federal Court for an order that a person who has been summonsed in connection with a special ACC operation/investigation to appear before the examiner, or who has appeared before the examiner, must surrender his or her passport to the examiner.

There must be reasonable grounds for believing that the person may be able to provide evidence, documents or things, or further evidence, documents or things that could be of particular significance to the special operation/investigation. In addition, an order may only be made where there are reasonable grounds for suspecting that the person intends to leave Australia.

An order can authorise an examiner to retain a person's passport for a specified period of up to one month. This period can be extended, upon application, for a further period of up to one month, up to a maximum total period of three months.

As an order for the delivery of a passport can only be made in connection with a special ACC operation/ investigation, this power will be subject to the safeguards that apply under the Bill in relation to the authorisation of the use of special powers.

## **Part 4 Search warrants**

### **Clause 32 Search warrants**

Clause 32 enables an eligible person to apply to an issuing officer for a search warrant. An eligible person is defined under section 4(1) of the Commonwealth Act to mean an examiner or a member of staff of the ACC who is also a member of the Australian Federal Police or a State police force. State includes the Australian Capital Territory and the Northern Territory under the Commonwealth Act. An issuing officer is defined in the dictionary to mean a judge of the Federal Court, or a judge of the Supreme Court or a federal magistrate.

Subclause (1) provides that an eligible person can apply for a search warrant if he or she has reasonable grounds to suspect that there may be in any premises or other specified place a thing of a particular kind connected with a special ACC operation/investigation which he or she believes on reasonable grounds might be concealed, lost, mutilated or destroyed if a summons for the production of the thing were issued. This means that a search warrant application can only be made in circumstances where the power to issue a summons for the production of a thing would be effective to secure the production of the thing in question.

Subclause (2) sets out the things that a search warrant may allow an authorised person to do. An authorised person can enter and search the premises or other specified place and seize any things of the relevant kind, and deliver them to any person participating in the special ACC operation/investigation. An authorised person can use force, if necessary, to execute the warrant.

Subclause (3) sets out conditions for the issue of a warrant. An affidavit must have been provided setting out the grounds on which the warrant is sought, the applicant must have provided any further information required by the issuing officer as to why the warrant is sought, and the issuing officer must be satisfied that there are reasonable grounds for issuing the warrant. Under subclause (4) the issuing officer is required to state the grounds on which a warrant has been issued.

Subclause (5) specifies that the warrant must contain the following details:

- state the purpose of the warrant, including a reference to the relevant special ACC operation/investigation with which the things the subject of the warrant are connected;
- state when entry can be made under the warrant;
- describe the kind of things that can be seized; and

- specify when the warrant ceases to have effect. The maximum period for which a warrant can be valid is one month. Under subclause (5) a warrant may be executed at any time during this period.

Subclause (7) makes it clear that only the necessary reasonable force can be used in the execution of a warrant. Subclause (8) provides that evidence that is found in the course of searching for things of the relevant kind under a warrant may be seized. Such evidence can only be seized, however, if the person executing the warrant reasonably believes that the seizure is necessary to prevent its concealment, loss, mutilation or destruction or to prevent the evidence being used to commit an offence.

Subclauses (9) and (10) provide for the retention and delivery of things seized under warrant. Subclause (9) enables the head of a special ACC operation/investigation to retain a thing seized under warrant for as long as is reasonably necessary for the purposes of the relevant special ACC operation/investigation. If it is not, or ceases to be, reasonably necessary to retain a thing for such a purpose, the thing must be delivered:

- if it may be admissible evidence in proceedings by the Commonwealth, a State or a Territory for a civil remedy, to the relevant person or authority responsible for taking the proceedings; or
- otherwise, to the person who appears to be entitled to the possession of the thing.

These obligations do not apply if the CEO has already given the thing to the relevant Commonwealth, or State Attorney General or to a law enforcement agency or prosecuting authority in accordance with clause 37(1)(a), (b) or (c). That clause requires the CEO to assemble evidence that would be admissible in the prosecution of an offence and give it to the relevant Commonwealth, or State Attorney General, a law enforcement agency or prosecuting authority.

Rather than delivering a thing seized under warrant to the person who appears to be entitled to it in accordance with subclause (9), subclause (10) enables a participant in a special ACC operation/investigation to deliver the thing to the relevant Commonwealth or State Attorney General or to a law enforcement agency if it is likely to assist in the investigation of a criminal offence.

Subclause (11) makes it clear that clause 32 does not affect other rights to apply for a warrant or other powers to issue a warrant. For example, clause 32 would not prevent an eligible person such as a member of staff of the ACC who is also a police officer from applying under other ACT laws for a warrant in connection with an offence that is the subject of an ACC Territory investigation.

### **Clause 33 Application by telephone for search warrants**

This clause allows an eligible person to apply for a search warrant by telephone where a warrant is required urgently.

For an application by telephone the eligible person must first prepare an affidavit setting out the grounds on which the warrant is sought. However, if necessary, the application may be made before the affidavit has been sworn.

Subclause (3) requires an issuing officer who issues a search warrant by telephone to inform the applicant of the terms of the warrant and the date and time it was issued and record the reasons it was issued on the warrant. A copy of the warrant is required to be forwarded to the CEO.

Subclause (4) provides that a member of the staff of the ACC or a police officer may complete a form of warrant in the terms indicated by the issuing officer. The member or officer must record on it the issuing officer's name and the date and time of issuing. The completed form of the warrant together with the eligible person's sworn affidavit must be sent to the issuing officer no later than the day after the warrant expires. Upon receipt of the documents, the issuing officer must attach them to the warrant signed by him or herself and deal with them, as they would have done under clause 32. A form of warrant duly completed under subsection (4) is to be taken to be a warrant issued under section 32.

## **Part 5      Exercising functions**

### **Clause 34      Consent of board may be needed before functions can be exercised**

This clause provides that the conferral of functions on a Commonwealth body or person is subject to the consent of the board under the Commonwealth Act. This provision complements section 55A(5A) of the Commonwealth Act, which provides that the CEO or an examiner cannot perform a duty or function or exercise a power under State (includes the ACT) law relating to the investigation of a relevant criminal activity or the undertaking of an intelligence operation unless the board has consented to the ACC doing so.

### **Clause 35      Functions not affected by Territory laws**

This clause makes it clear, to avoid doubt, that a Commonwealth body or person is not precluded by any ACT law from performing functions under the Act.

### **Clause 36      Extent to which functions are given**

This clause provides that the Bill does not purport to impose any duty on a Commonwealth body or person to perform a function if the imposition would be beyond Territory legislative power. Subclause (2) then provides that the general interpretative provision contained in section 120 of the *Legislation Act 2001*, providing that Acts should be read so as not to exceed legislative power but to operate to the full extent of the power of the Legislative Assembly, is not limited by the section. These provisions are intended to ensure that the Bill does not contravene any constitutional doctrine that restricts the duties that may be imposed on Commonwealth bodies or persons. This clause also does not limit clause 38, which makes it clear that a function conferred on a federal judicial officer under the Bill is conferred on him or her in a personal capacity.

### **Clause 37      Exercising functions**

This clause imposes obligations on the CEO in relation to what he or she must do with information obtained by the ACC. Where admissible evidence is obtained during the course of an ACC operation/investigation, the CEO must assemble the evidence and give it to the relevant Commonwealth, or State Attorney General, law enforcement agency or prosecuting authority. This obligation applies under subclause (1) in relation to evidence that would be admissible in the prosecution of an offence and under subclause (2) in relation to evidence that would be admissible in confiscation proceedings.

This clause also allows, at subclause (3), for the board to make law reform or administrative reform recommendations to the Commonwealth Minister or the appropriate State Minister.

Subclause (4) provides that where the ACC obtains information or intelligence in the course of performing one of its functions, that information or intelligence may be used for the purposes of other ACC functions. For example, information obtained during an intelligence operation may be used during an investigation into relevant criminal activity. This provision recognises the integrated nature of the ACC's intelligence and investigatory functions and ensures that the use of information by the ACC is not artificially restricted.

**Clause 38 Functions of federal judicial officers**

This clause makes it clear that a function conferred by the Bill on a federal judicial officer (a judge of the Federal Court or a federal magistrate) is conferred on that person in a personal capacity and not as a court or member of a court, and the federal judicial officer need not accept the function conferred. This provision is intended to ensure that the Bill does not breach any constitutional doctrine that restricts the duties that may be conferred on federal judicial officers by the ACT. If the judicial officer exercises a function under this Bill, the officer has the same protection as a member of the court of which he or she is a member.

**Clause 39 Limitation on challenge to board determination**

This clause limits, in certain circumstances, the challenges that may be made in relation to activities of the ACC. Where the board has determined that an ACC Territory intelligence operation/investigation is a special operation/investigation, then an act or thing done by the ACC because of that determination cannot be challenged in any ACT court on the ground that the determination was not lawfully made. This prevents a court from looking behind a determination to see if it was properly made. For example, it prevents a challenge being made on the basis that there was an error in the procedure that led to the determination being made.

This provision does not prevent challenges in relation to the activities of the ACC once a determination is in place. Also, this limitation does not apply to proceedings initiated by a Commonwealth, or State Attorney General.

**Clause 40 Cooperation with law enforcement agencies and coordination with overseas authorities**

This clause makes it clear that the ACC must cooperate with other law enforcement agencies, so far as practicable, in performing its functions under the Bill. The ACC may also coordinate its activities with the functions of overseas authorities that perform similar functions to those of the ACC.

**Clause 41 Incidental powers of ACC**

This clause empowers the ACC to do all things necessary in connection with, or reasonably incidental to, the performance of its functions under the Bill.

**Part 6 General**

**Clause 42 Arrangements for board to obtain information or intelligence**

This clause allows the Territory Minister to enter into arrangements with the Commonwealth Minister, for the board to receive from the ACT or an ACT authority, information and intelligence about criminal activities. This provision allows Ministerial level arrangements to be made in relation to the provision of ACT information or intelligence to the board. It is not intended to affect the provision of information or intelligence from the ACT to the board by other means, such as directly from the police to the board.

**Clause 43 Administrative arrangements with Commonwealth**

This clause enables the Territory Minister to make an arrangement with the Commonwealth for the provision of human resources by the ACT to perform services for the ACC.

**Clause 44 Judges to exercise functions under the ACC Act**

This clause makes it clear that a judge of the Supreme Court may exercise functions conferred on him or her by section 22, 23 or 31 of the Commonwealth Act. Section 22 of the Commonwealth Act empowers an issuing officer, which includes in effect a Judge of the Supreme Court, to issue a search warrant and section 23 of the Commonwealth Act enables such a warrant to be issued upon a telephone application. The powers contained in sections 22 and 23 of the Commonwealth Act are equivalent to those contained in clauses 32 and 33, respectively, of the Bill. Section 31 of the Commonwealth Act empowers a Judge of the Supreme Court to issue a warrant for the arrest of a witness, similarly to the power contained in clause 27.

**Clause 45 Giving reports and information**

This clause deals with the provision of reports and information about the performance of the ACC's functions to relevant persons.

The chair of the board must keep the Commonwealth Minister informed of the general conduct of the ACC in the performance of its functions under the Bill. This recognises the role of the Commonwealth Minister in monitoring the general conduct of the ACC, as a Commonwealth body established by Commonwealth legislation.

The Commonwealth Minister may also request from the chair of the board information concerning a specific matter relating to the performance by the ACC of its functions under the Bill.

A State Minister (includes an ACT Minister) who is a member of the IGC may also request from the chair of the board information concerning a specific matter relating to the performance by the ACC of its functions under the Bill. This enables the Minister to obtain information independently about the conduct of the ACC functions as the Minister responsible for the administration of the Act.

The chair of the board must comply with the request unless the chair considers that disclosure of information to the public could prejudice the safety or reputation of a person or the operations of law enforcement agencies.

The IGC may request the chair of the board to--

- (a) provide information to the IGC concerning a specific matter relating to an ACC operation/investigation that the ACC has or is conducting; and
- (b) inform the IGC about the general conduct of the ACC in the performance of its functions under the Bill.

The chair of the board must comply with such a request from the IGC, subject to a requirement that the chair must not furnish a matter the disclosure of which to members of the public could prejudice the safety or reputation of a person or the operations of law enforcement agencies.

In addition to the IGC's power to request information from the chair of the board, the chair of the board--

(a) may inform the IGC at such times as he or she considers appropriate about the general conduct of the ACC in the exercise of its functions under the Bill; and

(b) must provide to the IGC a report on the findings of any special ACC operation/investigation conducted by the ACC for transmission to the governments represented on the IGC--

subject to a requirement that the chair must not furnish a matter the disclosure of which to members of the public could prejudice the safety or reputation of a person or the operations of law enforcement agencies. Any such matter must be included in a separate report prepared by the chair of the board and given to the Territory Minister.

These provisions are intended to facilitate the role of the IGC in monitoring generally the work of the ACC.

Clause 45(8) provides for inclusion in a report made by the ACC a recommendation that the report be presented to the Legislative Assembly.

Clause 45(9) enables the CEO to disseminate any relevant information that is in the ACC's possession to another law enforcement agency, foreign law enforcement agency or prescribed government authority. The CEO can only disseminate such information if it appears to him or her to be appropriate to do so, and the dissemination would not be contrary to a Commonwealth, State or Territory law that would otherwise apply.

The CEO is also empowered to provide, in specified circumstances, any information that is in the ACC's possession to:

- authorities responsible for taking civil remedies on behalf of the Commonwealth, a State or a Territory, where the information may be relevant for the purposes of taking such remedies in connection with Commonwealth, State or Territory offences; and
- a Commonwealth, State or Territory authority or Administration, where the information relates to the performance of the authority or Administration; and
- the Australian Security Intelligence Organisation, where the information is relevant to security as defined in section 4 of the Commonwealth *Australian Security Intelligence Organisation Act 1979*.

Clause 45(12) sets out a general prohibition on a report under the Bill being made available to the public if it--

- contains a finding that an offence has been committed; or
- makes a recommendation for the prosecution of an offence--

unless the finding or recommendation indicates that it is based on evidence that would be admissible in the prosecution of a person for that offence. This provision is intended to ensure that the publication of a report containing these matters does not compromise the fair trial or reputation of a person.

#### **Clause 46      Secrecy**

This clause imposes secrecy obligations on specified ACC officers. These officers are the CEO, a member of the board, a member of staff of the ACC and an examiner and those who have been such officers. These obligations are intended to ensure that information that could jeopardise the effective conduct of the ACC's functions is not improperly disclosed.

Clause 46(2) make it an offence for the CEO, a member of the board, a member of the staff of the ACC and an examiner to make a record of any information obtained in the course of their duties. It is also an offence to publish or otherwise communicate this information reckless about whether such a publication or communication would divulge restricted information to anyone. Subclause (3) provides that it is not an offence where the making of the record, or divulging of information was for the purposes of, or in connection with the performance of his or her functions under, a relevant Act. This offence applies to conduct either while a person is a specified ACC officer or after he or she ceases to be such an officer. The maximum penalty for the offence is \$100 penalty units, one year's imprisonment or both.

Clause 46(4) ensures that a specified ACC officer cannot be required to:

- produce to a court documents that have come into the officer's possession in the course of performing his or her functions under the Bill; or
- divulge or communicate to a court matters that have come to the officer's notice in the performance of his or her functions under the Bill.

This is intended to preserve the secrecy of information relating to the ACC's functions in circumstances where a court would otherwise have power to require the production of documents or the answering of questions that would disclose that information.

Clause 46(4) provides for exceptions under which a specified officer can be required to produce the above documents or divulge or communicate the above matters. These are:

- where the ACC, 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;
- if it is necessary to do so to carry into effect the provisions of a relevant Act; or
- if it is necessary to do so for the purposes of a prosecution resulting from an ACC operation or investigation.

Clause 46(5) defines a 'relevant Act' for the purposes of clause 46 to mean the Commonwealth Act, this Act or a corresponding Act of another State. This definition is necessary to ensure that the secrecy obligations in this clause do not prevent the disclosure of information where this is necessary for the purposes of another Act that forms part of the ACC co-operative scheme.

#### **Clause 47 Delegation by CEO**

This clause allows the CEO to delegate in writing any of his or her powers under the ACC Act to a member of staff of the ACC who is an SES employee. This power of delegation affords the CEO flexibility in undertaking administrative matters, while ensuring that delegated powers are only exercised by appropriately senior persons.

#### **Clause 48 – Liability for damages**

This clause provides that a member of the board is not liable to proceedings for damages in relation to an act done, or omitted honestly in the exercise or purported exercise of any function given or expressed under the Bill.

#### **Clause 49 – Obstructing, hindering or disrupting ACC or an examiner**

This clause makes it an indictable offence to intentionally obstruct or hinder the ACC or examiner in the performance of the ACC's or examiner's functions or to intentionally disrupt an examination. The maximum penalty is 500 penalty units or 5 years' imprisonment or both. This offence may be dealt with summarily under the provisions of section 375 of the *Crimes Act 1900* in certain circumstances. In this case, the maximum penalty that can be imposed by the court is \$5000 or 2 years imprisonment.

### **Clause 50 Public meetings and bulletins**

This clause provides for public meetings of the board to inform the public about, or receive submissions in relation to, the performance of the ACC's functions. The board can also publish bulletins to inform the public about the performance of its functions. The board is limited in its disclosure in that it cannot disclose information which could prejudice the safety or reputation of a person or prejudice the fair trial of a person.

### **Clause 51 Annual Report**

This clause provides for certain matters to be included in an annual report prepared by the chair of the board under section 61 of the Commonwealth Act.

This provision, together with comparable provisions in other States' and Territories' ACC legislation, will ensure that information included in the annual report under section 61 of the Commonwealth Act relating to the performance of the ACC's functions under that Act is supplemented with comparable information about the performance of the ACC's functions under State and Territory law.

Clause 51(2) requires an annual report under section 61 of the Commonwealth Act to include:

- descriptions of any special ACC Territory investigations during the year;
- descriptions of any patterns of criminal activity and the nature and scope of criminal activity that has come to the ACC's attention during the year;
- any recommendations for legal or administrative reform the board considers should be made;
- the general nature and extent of information provided by the CEO to a law enforcement agency under the Act;
- the extent to which ACC Territory investigations have resulted in prosecutions or confiscation proceedings during the year; and
- numbers and results of court proceedings involving the ACC in relation to its functions under the Act that were determined during the year.

Clauses 51(3) and (4) contain provisions to prevent an annual report identifying persons as having being suspected of, or as having committed offences (unless the persons have been convicted of those offences) or identifying a person where this would prejudice a person's safety or reputation or the fair trial of a person who has been or may be charged with an offence.

The Territory Minister is required to table an annual report within 6 sitting days of receiving the report from the IGC.

### **Clause 52 Things done for multiple purposes**

Clause 52 – provides that anything done for the Commonwealth Act does not affect the validity of anything done also for this Bill.

### **Clause 53 Regulation-making power**

This clause provides for a regulation-making power under the Bill.

## **Part 7 Transitional provisions**

### **Division 7.1 Transitional**

Part 7 contains transitional provisions to ensure that the transition from the NCA to the ACC is as seamless as possible. These transitional provisions are necessary as a

consequence of the commencement of the Commonwealth Act, which commenced operation on 1 January 2003 and the repeal of the *National Crime Authority (Territory Provisions) Act 1991* by clause 67 of this Bill. In addition, Schedule 1 contains consequential amendments to a number of ACT Acts that are necessary because of the replacement of the NCA with the ACC. The consequential amendments will ensure that those other ACT Acts operate consistently with the provisions of the new Bill.

**Clause 54 Definitions for div 7.1**

This clause sets out definitions that apply for the purposes of the transitional provisions in division 7.1 of the Bill.

**Clause 55 Certain investigations taken to be special investigations**

This clause deems an ACC Territory investigation that relates to a matter that was the subject of an NCA investigation that had been commenced but not completed before 1 January 2003 to be a special ACC investigation. This means that if the board consents to the ACC conducting an ACC Territory investigation into a matter that previously had been the subject of an incomplete investigation under the *National Crime Authority (Territory Provisions) Act 1991*, it will be unnecessary for the board to make a new determination authorising the use of special powers under the Bill.

**Clause 56 Assembling and giving evidence obtained by the NCA**

This clause imposes on the ACC the obligation under subclause 37 (1) of the Bill to assemble and give to the relevant prosecuting authority evidence that the NCA had obtained before 1 January 2003 but had not assembled and given to the relevant prosecuting authority under section 6(1) of the *National Crime Authority (Territory Provisions) Act 1991* as if that evidence had been obtained by the ACC in carrying out an ACC operation/investigation.

**Clause 57 Limitation on challenges to validity of references**

This clause ensures that where a matter was referred to the NCA for investigation before 1 January 2003, the reference continues to be protected from challenges, under section 8 of the *National Crime Authority (Territory Provisions) Act 1991* after the repeal of that Act by the Bill. Section 8 protects a reference from challenge on the grounds that any necessary approval had not been obtained or was not lawfully given.

**Clause 58 Arrangements to obtain information or intelligence**

This clause provides that an arrangement in force immediately before 1 January 2003 under section 11 of the *National Crime Authority (Territory Provisions) Act 1991* has effect as if it had been made under clause 42 of the Bill.

**Clause 59 Things seized under search warrants**

This clause ensures that where things are seized under a warrant under section 12 of the *National Crime Authority (Territory Provisions) Act 1991* are in the ACC's possession, the obligations under subclauses 32(9) and (10) of the Bill regarding the retention and return of things seized under warrant apply to those things.

**Clause 60 Directions about publication**

This clause provides that where a direction was in force under section 15(4) of the *National Crime Authority (Territory Provisions) Act 1991* immediately before 1 January 2003:

- the provisions in clauses 21(12), and (13), regarding the revocation of directions and the offence of contravening a non-publication direction contained in

clause 21(16) apply to that direction; as if it were a direction under clause 21 (10) relating to the publication of information; and

- clause 21 (14) and (15) so far as they relate to the CEO of the ACC, apply to evidence that is the subject of such a direction. These provisions enable a court to obtain evidence that is the subject of a non-publication direction in certain circumstances.

#### **Clause 61 Disclosure of summons or notice**

This clause ensures that if a non-disclosure notation included in a summons or notice to produce documents was in force under section 17A of the *National Crime Authority (Territory Provisions) Act 1991* immediately before 1 January 2003, the notation is effective and it is an offence under clause 25 of the Bill to make a disclosure in contravention of the notation. If there is an ACC operation/investigation relating to the same matter to which the NCA investigation related, the provisions in clause 24(4) and (5) relating to the automatic cancellation of a notation apply.

#### **Clause 62 Witness protection**

This clause ensures that arrangements in force immediately before 1 January 2003 under section 23 of the *National Crime Authority (Territory Provisions) Act 1991* made by a member or hearing officer of the NCA to protect witnesses from harm or intimidation have effect as if they had been made under clause 29 of the Bill.

#### **Clause 63 Administrative arrangements in relation to NCA**

This clause enables arrangements between the ACT and the Commonwealth that were in force immediately before 1 January 2003 under section 27(b) of the *National Crime Authority (Territory Provisions) Act 1991* under which the Territory makes persons available to hold office as members of the NCA or to perform services for the NCA to have effect as if those arrangements had been made under section 43 of the Bill.

#### **Clause 64 Administrative arrangements under Witness Protection Act 1996**

This clause enables arrangements between the chief police officer and the NCA that were in force immediately before 1 January 2003 under section 25 of the *Witness Protection Act 1996* to have effect as if those arrangements had been made under the Bill between the chief police officer and the CEO.

#### **Clause 65 Secrecy obligations**

This clause ensures that former officials, being persons who were at any time subject to the secrecy obligations under section 29 of the *National Crime Authority (Territory Provisions) Act 1991*, are subject to the secrecy obligations outlined in clause 46(2),(3) and (4) of the Bill.

#### **Clause 66 Regulations modifying pt 7**

This clause enables the making of regulations to modify the operation of Part 7 to provide for any matter that is not, or is not in the Executive's opinion adequately dealt with in this part. The section expires one year after its commencement.

### **Division 7.2 Repeals and consequential amendments**

#### **Clause 67 Repeals**

This clause repeals the *National Crime Authority (Territory Provisions) Act 1991* No 75 and the *National Crime Authority (Territory Provisions) Regulations 1995* No 39.

#### **Clause 68 Legislation amended-sch1**

This clause provides for the amendment of legislation by Schedule 1 of the Bill.

**Division 7.3 Miscellaneous****Clause 69 Expiry of pt7**

This clause provides for the expiration of Part 7, other than section 66, two years after the day it commences.

**Clause 70 Declared law for Legislation Act, s 88**

This clause declares Part 7 to be law to which the Legislation Act, section 88 applies. This has the effect of continuing the declaratory or validating effect of the transitional provisions after the repeal of those provisions.

**Schedule 1 Consequential amendments****Part 1.1 Administration (Interstate Agreements) Act 1997**

This part omits the reference to the “*National Crime Authority Act 1984* (Cwlth) section 8” with “*Australian Crime Commission Act 2002* (Cwlth), section 7”, in Schedule 1, clause 1 of the Bill. It has also omitted the reference to “references issued by the responsible ACT Minister...” because such references are no longer made under the new ACC legislation. These have been replaced in effect by determinations of the board under clause 11 of the Bill.

**Part 1.2 Gambling and Racing Control Act 1999**

This part substitutes the previous reference to “National Crime Authority” in section 37 (d)(vii) with “the Australian Crime Commission”.

**Part 1.3 Spent Convictions Act 2000**

This part replaces references to the “the National Crime Authority” and “the Australian Bureau of Criminal Intelligence” contained respectively in paragraphs (d) and (e) in the dictionary definition of “law enforcement agency”, with “the Australian Crime Commission”. The Australian Bureau of Criminal Intelligence has also been incorporated into the ACC.

**Part 1.4 Taxation Administration Act 1999**

This part substitutes the previous reference to “national crime authority” in section 97 (d) (ix) with “the Australian Crime Commission”.

**Part 1.5 Witness Protection Act 1996**

This part replaces the previous reference to “chairperson of the national crime authority” contained in section 3 of the definition of “approved authority”, with “the chief executive officer of the Australian Crime Commission”.

**Dictionary**

The dictionary defines certain words and expressions for the purposes of the Bill. This includes definitions for the following key terms:

***“ACC operation/investigation”*** means an ACC Territory intelligence operation or an ACC Territory investigation. This covers both the ACC's function in relation to intelligence operations and its function in relation to investigating relevant criminal activity.

Relevant criminal activity is defined in the Commonwealth Act to mean any circumstances implying, or any allegations, that a serious and organised crime may have

been, may be being, or may in future be, committed against a Commonwealth, State or Territory law. This definition is applied to the Bill under the operation of clause 6.

**"ACC Territory intelligence operation"** means an intelligence operation that the ACC is undertaking under clause 8(b). This covers the ACC's function in undertaking intelligence operations in relation to relevant criminal activity relating to ACT offences.

**"ACC Territory investigation"** means an investigation that the ACC is conducting under clause 8(a). This covers the ACC's function in conducting investigations in relation to relevant criminal activity relating to ACT offences.

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

Intelligence operation has a broad meaning to ensure that the ACC is able to undertake fully its criminal intelligence role under ACT law.

**"serious and organised crime"** is defined to cover a wide range of serious offences that are the same as those contained in the equivalent definition in the Commonwealth Act, except for certain offences under the Commonwealth *Proceeds of Crime Act 2002* that are not relevant in an ACT context. The offences listed in the definition of "serious and organised crime" in the Bill mirror the offences that the former NCA could investigate, with the addition of offences that involve firearms and cyber crime. Cyber crime has been added to enable the ACC to respond to this emerging issue. Firearms offences have been added to the list to ensure that the ACC has a clear power to investigate the illegal trafficking of firearms.

The definition of serious and organised crime covers a listed offence that is punishable by three years' imprisonment or more and that is not committed in the course of a genuine industrial dispute of a specified kind.

The wide range of serious offences included within the definition of "serious and organised crime" will ensure that the ACC has a broad basis on which to undertake its investigatory and criminal intelligence functions.

The definition of serious and organised crime covers a listed serious offence where there are also specified organised crime elements involved in the offence in question. In particular, the offence must also:

- involve two or more offenders and substantial planning and organisation; and
- involve, or be an offence of a kind that ordinarily involves, the use of sophisticated methods and techniques; and
- be an offence that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind.

**"special ACC operation/investigation"** means an ACC Territory intelligence operation or an ACC Territory investigation that the board has determined to be a special operation or investigation. This is an important definition as the ACC can only access its special powers, such as search warrants and examinations, as part of a special ACC operation/investigation. It cannot access these powers for other ACC investigations or operations authorised by the board.