

Passed by both Houses



New South Wales

Australian Crime Commission (New South Wales) Bill 2003

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2003*



New South Wales

Australian Crime Commission (New South Wales) Bill 2003

Act No , 2003

An Act to make provision for the operation of the Australian Crime Commission in New South Wales; to repeal the *National Crime Authority (State Provisions) Act 1984*; and to make consequential amendments to various Acts.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

Clause 1 Australian Crime Commission (New South Wales) Bill 2003

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Australian Crime Commission (New South Wales) Act 2003*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1.32 commences, or is taken to have commenced, on the commencement of Schedule 7 [8] to the *State Revenue Legislation Amendment Act 2002*.

3 Definitions

- (1) In this Act:

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 laws means:

- (a) the ACC Act, and
- (b) all regulations, directions and guidelines in force under the ACC Act.

applied provisions means the ACC laws that apply as a law of this State because of section 5, including any modification under this Act.

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

- (h) an examiner, or
- (i) a Judge of the Federal Court, or
- (j) a Federal Magistrate.

confer includes to impose.

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

function includes a power or duty.

modification includes an addition, omission or substitution.

perform includes to exercise.

- (2) If this Act uses a term that is given a meaning in section 4 of the ACC Act, the term has the same meaning in this Act unless the contrary intention appears.
- (3) In this Act, a reference to a Commonwealth Act includes a reference to:
 - (a) the Commonwealth Act, as amended and in force for the time being, and
 - (b) an Act enacted in substitution for that Act and, if it is amended, as amended and in force for the time being.
- (4) Notes included in this Act do not form part of this Act.

4 Crown bound

This Act and the applied provisions bind the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all of its other capacities.

Part 2 The applied provisions

Division 1 Application and interpretation

5 Application of ACC laws to this State

- (1) The ACC laws, as modified under this Act, apply as a law of this State as if references in them to a federally relevant criminal activity were references 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).
- (2) This section has effect in relation to the ACC laws as in force for the time being.

6 Modification of ACC laws

- (1) The regulations may modify the ACC laws for the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may provide that the ACC laws apply under section 5 (1) as if an amendment to the ACC laws:
 - (a) made by a law of the Commonwealth, and
 - (b) specified in the regulations,had not taken effect.

7 Interpretation of applied provisions

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this State in relation to the applied provisions as if the applied provisions were a Commonwealth Act or were regulations under a Commonwealth Act, as the case requires.
- (2) The *Interpretation Act 1987* of New South Wales does not apply in relation to the applied provisions.

Division 2 Conferral of functions

8 Functions under applied provisions

A Commonwealth body or person has the functions conferred on that body or person under the applied provisions.

9 Consent of Board may be needed before functions can be performed

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

10 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 Part.

11 Extent to which functions are conferred

- (1) This Part 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 12 of this Act or of section 31 of the *Interpretation Act 1987*.

12 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 the applied provisions 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 the applied provisions has effect only by virtue of the applied provisions 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 the applied provisions 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).
 - (5) A function conferred on the Federal Court by the applied provisions is taken to be conferred on a Judge of the Federal Court and subsections (2) and (4) apply to that function.
-

13 Delegations under ACC Act

Any delegation by a Commonwealth body or person under the ACC Act is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.

Division 3 Provisions about offences

14 Object of this Division

- (1) The object of this Division is to provide for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but are not limited to):
 - (a) the investigation and prosecution of offences, and
 - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences, and
 - (c) proceedings relating to a matter referred to in paragraph (a) or (b), and
 - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c), and
 - (e) the sentencing, punishment and release of persons convicted of offences, and
 - (f) fines, penalties and forfeitures, and
 - (g) liability to make reparation in connection with offences, and
 - (h) proceeds of crime, and
 - (i) spent convictions.

15 Application of Commonwealth criminal laws to offences against applied provisions

- (1) The relevant Commonwealth laws apply as laws of this State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, an offence against the applied provisions:
 - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were a law of the Commonwealth, and

- (b) is taken not to be an offence against the laws of this State.
- (3) Subsection (2) has effect for the purposes of a law of this State except as provided by the regulations under this Act.
- (4) For the purposes of this section, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of this section.

16 Functions and powers conferred on Commonwealth officers and authorities relating to offences

- (1) A Commonwealth law applying because of section 15 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the ACC Act also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the ACC Act.

17 Double jeopardy

If:

- (a) an act or omission by a person is an offence under the applied provisions 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 the applied provisions.

Part 3 General

18 Arrangements for Board to obtain information or intelligence

The 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.

19 Administrative arrangements with Commonwealth

The 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 NSW Police, or persons who are such officers, employees or members, to perform services for the ACC.

20 Judges to perform functions under ACC Act

A Judge of a court of the State may perform functions conferred on the Judge by section 22 (Search warrants), 23 (Application by telephone for search warrants) or 31 (Warrant for arrest of witness) of the ACC Act.

21 Things done for multiple purposes

The validity of anything done for the purposes of the applied provisions is not affected only because it was done also for the purposes of the ACC laws.

22 Regulations

The Governor may make regulations, not inconsistent with this Act, 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.

23 Repeal of National Crime Authority (State Provisions) Act 1984 No 157 and National Crime Authority (State Provisions) Regulation 2000

- (1) The *National Crime Authority (State Provisions) Act 1984* is repealed.
- (2) The *National Crime Authority (State Provisions) Regulation 2000* is repealed.

24 Amendment of other Acts and instruments

Schedule 1 has effect.

25 Savings, transitional and other provisions

Schedule 2 has effect.

26 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of other Acts and instruments (Section 24)

1.1 Births, Deaths and Marriages Registration Regulation 2001

Clause 13 Persons who can apply for old birth certificate

Omit clause 13 (1) (d) (iv). Insert instead:

(iv) the Australian Crime Commission,

1.2 Casino Control Act 1992 No 15

[1] Section 148 Secrecy

Omit “National Crime Authority” from section 148 (6) (c).

Insert instead “Australian Crime Commission”.

[2] Section 149 Information gathering for law enforcement purposes

Omit “National Crime Authority” from paragraph (d) of the definition of *law enforcement agency* in section 149 (7).

Insert instead “Australian Crime Commission”.

1.3 Children (Detention Centres) Regulation 2000

[1] Clause 29 Correspondence with external bodies

Omit “National Crime Authority” from the definition of *privileged letter* in clause 29 (1).

Insert instead “Australian Crime Commission”.

[2] Clause 29 (3) (d)

Omit the paragraph. Insert instead:

(d) the Australian Crime Commission, or

1.4 Companion Animals Act 1998 No 87

Section 89 Confidentiality of certain information

Omit section 89 (6) (b). Insert instead:

(b) the Australian Crime Commission,

1.5 Crimes (Administration of Sentences) Act 1999 No 93

Section 3 Interpretation

Omit paragraph (d) of the definition of *law enforcement agency* in section 3 (1).

Insert instead:

(d) the Australian Crime Commission,

1.6 Crimes (Administration of Sentences) Regulation 2001

Dictionary

Omit “National Crime Authority” from paragraph (b) of the definition of *exempt body*.

Insert instead “Australian Crime Commission”.

1.7 Crimes (Detention after Arrest) Regulation 1998

[1] Clause 11 Order of preference in relation to custody managers

Omit “National Crime Authority” from clause 11 (5).

Insert instead “Australian Crime Commission”.

[2] Part 2, Division 2, heading

Omit the heading. Insert instead:

**Division 2 Custody managers for New South Wales
 Crime Commission or Australian Crime
 Commission investigations**

[3] Clause 12 Custody managers for New South Wales Crime Commission or Australian Crime Commission investigations

Omit “Authority” wherever occurring from clause 12 (1) and (2).

Insert instead “ACC”.

[4] Clause 12 (4), definition of “Authority”

Omit the definition. Insert instead:

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

[5] Clause 12 (4), definition of “a member of the staff of the Authority”

Omit the definition. Insert instead:

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

1.8 Criminal Records Act 1991 No 8

Section 13 Unlawful disclosure of information concerning spent convictions

Omit paragraph (d) of the definition of *law enforcement agency* from section 13 (5).

Insert instead:

(d) the Australian Crime Commission,

1.9 Gambling (Two-up) Act 1998 No 115

Section 29 Secrecy

Omit section 29 (5) (b). Insert instead:

(b) the Australian Crime Commission,

1.10 Gaming Machines Act 2001 No 127

Section 206 Secrecy

Omit section 206 (5) (b). Insert instead:

(b) the Australian Crime Commission,

1.11 Greyhound Racing Act 2002 No 38

Section 52 Secrecy

Omit section 52 (5) (b). Insert instead:

(b) the Australian Crime Commission,

1.12 Harness Racing Act 2002 No 39

Section 55 Secrecy

Omit section 55 (5) (b). Insert instead:

(b) the Australian Crime Commission,

1.13 Health Records and Information Privacy Act 2002 No 71

Section 4 Definitions

Omit paragraph (d) of the definition of *law enforcement agency* in section 4 (1).

Insert instead:

(d) the Australian Crime Commission,

1.14 Independent Commission Against Corruption Act 1988 No 35

Section 16 Co-operation with other agencies

Omit “National Crime Authority” wherever occurring from section 16 (1) (b) and (3).

Insert instead “Australian Crime Commission”.

1.15 Jury Act 1977 No 18

[1] Section 68 Disclosure etc of identity or address of juror

Omit section 68 (4) (e). Insert instead:

(e) the Australian Crime Commission,

[2] Section 68A Soliciting information from or harassing jurors or former jurors

Omit section 68A (4) (e). Insert instead:

(e) the Australian Crime Commission,

1.16 Law Enforcement and National Security (Assumed Identities) Act 1998 No 154

Section 3 Definitions

Omit paragraph (e) (ii) of the definition of *authorised agency*.

Insert instead:

- (ii) the Australian Crime Commission,

1.17 Law Enforcement and National Security (Assumed Identities) Regulation 1999

[1] Clause 5 Authorised agencies

Omit clause 5 (b). Insert instead:

- (b) the Australian Crime Commission,

[2] Clause 5A Chief executive officers of certain authorised agencies

Omit clause 5A (b). Insert instead:

- (b) in respect of the Australian Crime Commission—the Chief Executive Officer of the Commission,

[3] Clause 6 Delegations

Omit clause 6 (i). Insert instead:

- (i) in respect of the Australian Crime Commission—an officer of the Australian Crime Commission nominated by the Chief Executive Officer of the Commission,

1.18 Law Enforcement (Controlled Operations) Act 1997 No 136

Section 3 Definitions

Omit paragraph (e) (ii) of the definition of *law enforcement agency*.

Insert instead:

- (ii) the Australian Crime Commission,

1.19 Law Enforcement (Controlled Operations) Regulation 1998

[1] Clause 4A Prescribed law enforcement agencies: section 3

Omit “the National Crime Authority”.

Insert instead “the Australian Crime Commission”.

[2] Clause 13 Delegations: section 29

Omit clause 13 (f). Insert instead:

- (f) in respect of the Australian Crime Commission—an officer of the Australian Crime Commission nominated by the Chief Executive Officer of the Commission,

1.20 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Section 183 Restrictions on publication

Omit paragraph (f) of the definition of *law enforcement agency* in section 183 (3).

Insert instead:

- (f) the Australian Crime Commission,

1.21 Liquor Act 1982 No 147

Section 155A Secrecy

Omit the second bullet point from section 155A (5). Insert instead:

- the Australian Crime Commission,

1.22 New South Wales Crime Commission Act 1985 No 117

Section 24 The Management Committee

Omit section 24 (1) (c). Insert instead:

- (c) one shall be the Chair of the Board of the Australian Crime Commission, and

1.23 Police Integrity Commission Act 1996 No 28

Section 18 Co-operation with other agencies

Omit paragraph (h) of the definition of *investigative agency* in section 18 (5).

Insert instead:

(h) the Australian Crime Commission, or

1.24 Police Powers (Internally Concealed Drugs) Act 2001 No 31

Section 39 Restrictions on publication

Omit paragraph (f) of the definition of *law enforcement agency* in section 39 (3).

Insert instead:

(f) the Australian Crime Commission,

1.25 Privacy and Personal Information Protection Act 1998 No 133

Section 3 Definitions

Omit paragraph (d) of the definition of *law enforcement agency*.

Insert instead:

(d) the Australian Crime Commission,

1.26 Public Lotteries Act 1996 No 86

Section 80 Secrecy

Omit section 80 (5) (b). Insert instead:

(b) the Australian Crime Commission,

1.27 Registered Clubs Act 1976 No 31

Section 72C Secrecy

Omit the second bullet point from section 72C (5). Insert instead:

- the Australian Crime Commission,

1.28 Revenue Laws (Reciprocal Powers) Act 1987 No 86

[1] Section 12 Provision of information to certain Commonwealth and State officers

Omit section 12 (1) (c). Insert instead:

- (c) the Australian Crime Commission, or a person authorised by that Commission, for the purposes of the administration or execution of:
 - (i) the *Australian Crime Commission Act 2002* of the Commonwealth, or
 - (ii) a law of a State that makes provision for the operation of that Commission in that State,

[2] Section 12 (3) (b) (iv)

Omit the subparagraph. Insert instead:

- (iv) the *Australian Crime Commission Act 2002* of the Commonwealth or a law of a State that makes provision for the operation of that Commission in that State, or

1.29 Roads Act 1993 No 33

Section 250A Approved camera recording devices—toll offences

Omit section 250A (5) (b). Insert instead:

- (b) the Australian Crime Commission,

1.30 Royal Commissions Act 1923 No 29

Section 12A Communication of information etc

Omit paragraph (g) of the definition of *law enforcement agency* in section 12A (3).

Insert instead:

- (g) the Australian Crime Commission,

1.31 State Records Act 1998 No 17

Section 73 Authority's duty of confidentiality

Omit section 73 (5) (b). Insert instead:

- (b) the Australian Crime Commission,

1.32 State Revenue Legislation Amendment Act 2002 No 108

Schedule 7 Amendment of Taxation Administration Act 1996

Omit section 82 (g) of the *Taxation Administration Act 1996* (as inserted by Schedule 7 [8]).

Insert instead:

- (g) to the Australian Crime Commission, or a person authorised by that Commission, for the purposes of the administration or execution of:
 - (i) the *Australian Crime Commission Act 2002* of the Commonwealth, or
 - (ii) a law of a State or Territory that makes provision for the operation of that Commission in that State or Territory, or

1.33 Telecommunications (Interception) (New South Wales) Act 1987 No 290

Section 3 Definitions

Omit paragraph (b) of the definition of *agency* in section 3 (1).

Insert instead:

- (b) the Australian Crime Commission,

1.34 Totalizator Act 1997 No 45

Section 105 Secrecy

Omit section 105 (5) (b). Insert instead:

- (b) the Australian Crime Commission,

1.35 Witness Protection Act 1995 No 87

Section 3 Definitions

Omit paragraph (c) of the definition of *approved authority*. Insert instead:

- (c) the Chief Executive Officer of the Australian Crime Commission, or

1.36 Workplace Video Surveillance Act 1998 No 52

Section 3 Definitions

Omit paragraph (g) of the definition of *law enforcement agency*.

Insert instead:

- (g) the Australian Crime Commission,

Schedule 2 Savings, transitional and other provisions

(Section 25)

1 Terms used in this Schedule

(1) In this Schedule:

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*.

(2) In this Schedule, a reference to a section of the applied provisions is a reference to a section of the ACC Act that is an applied provision.

2 Certain investigations taken to be special investigations

If an investigation that the ACC is conducting under the applied provisions (the *ACC 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 investigation is a special investigation.

3 Assembling and giving evidence obtained by 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 has not assembled and given the evidence as mentioned in that subsection before 1 January 2003,

section 12 (1) of the applied provisions applies as if that evidence had been obtained by the ACC in carrying out an ACC operation/ investigation.

4 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.

5 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 18.

6 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 22 (8) and (9) of the applied provisions apply to that thing as if it had been seized pursuant to a warrant under section 22 of the applied provisions.

7 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 25A (10), (11) and (14) (b) of the applied provisions apply to the direction as if it were a direction under section 25A (9) of the applied provisions.
- (2) Section 25A (12) and (13) of the applied provisions, 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 25A (9) of the applied provisions.

8 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 29B of the applied provisions 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 29A (4) and (5) of the applied provisions apply as if the notation had been made in connection with the ACC operation/investigation.

9 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 34 of the applied provisions.

10 Administrative arrangements in relation to 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 19.

11 Secrecy obligations

(1) In this clause:

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 51 (2) and (3) of the applied provisions extend to a former official (whether or not he or she is or has been a person to whom section 51 of the applied provisions applies) as if:

- (a) references in section 51 of the applied provisions 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 51 (3) (b) of the applied provisions 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.

12 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 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 section 23 comes into operation.

13 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to 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 date of its publication, or
 - (b) to 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 date of its publication.