



## NSW Legislative Council Hansard, Full Day Transcript

for 24 June 2003.

### AUSTRALIAN CRIME COMMISSION (NEW SOUTH WALES) BILL Second Reading

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, and Minister Assisting the Premier on Citizenship) [5.07 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

This Bill permits the full operation of the new Australian Crime Commission in New South Wales.

Other such legislation will be enacted in all State and Territory jurisdictions this year.

The Australian Crime Commission (ACC) was established on 1 January 2003 under the Commonwealth *Australian Crime Commission Act 2002*. The head of the ACC is former NSW Police officer Alistair Milroy.

The Australian Crime Commission amalgamates the National Crime Authority (NCA), the Australian Bureau of Criminal Intelligence (ABCI) and the Office of Strategic Crime Assessments (OSCA).

The NCA was a national agency with special powers tasked to investigate organised crime in Australia.

ABCI was an intelligence organisation supported by all jurisdictions which collected, analysed and disseminated intelligence information.

OSCA was a section of the Commonwealth Attorney-General's Department which produced strategic assessments of crime trends.

Following the terrorist attacks in America on 11 September 2001, a Leaders' Summit of the heads of all Australian governments was held on 5 April 2002 to review Australia's national response to organised crime and terrorism.

At the Summit, Commonwealth, State and Territory Government leaders agreed that to improve the response to organised crime the NCA should be replaced with the ACC.

All jurisdictions acknowledged the important role played by the NCA in fighting organised crime since it was established by national agreement in 1984.

NCA was effective in that it had special powers to summon persons before it to be questioned.

Also, by virtue of complementary legislation at Commonwealth, State and Territory level, the NCA was able to function as a truly national (as opposed to Commonwealth or State) law enforcement agency, establishing taskforces of its own personnel, police and officers of other agencies such as the Australian Taxation Office or the Department of Immigration.

Nevertheless, it was accepted that the NCA system could be improved to make it more responsive. This led to the establishment of the ACC.

It was agreed the ACC should have three main functions:

Firstly, to provide improved intelligence gathering, analysis and distribution services;  
Secondly, to identify national law enforcement intelligence priorities, and

Thirdly, to initiate, manage and participate in national investigative taskforces.

National leaders also agreed on a range of other matters relating to the ACC.

Firstly, the ACC would retain the NCA's capacity to use special powers, including telecommunication interception and the power to summon persons to be questioned by the ACC.

The Chief Executive Officer of the ACC would not exercise the power to summon persons or compulsorily question them. This would be done by specially appointed examiners. This change keeps the CEO focussed on managing the ACC.

Secondly, the ACC would retain an in-house investigative capability, in addition to the capability provided by seconded police or under joint task forces.

Thirdly, the process for obtaining authority to investigate a matter through a reference would be streamlined. This was a key concern about the NCA. References were obtained through a complicated process of approval by Commonwealth, State and Territory Ministers.

Instead of this process, control of the ACC would be invested in a Board comprising: State and Territory Commissioners of Police, the Commissioner of the AFP, the CEOs of the Commonwealth Attorney-General's Department, Customs, the Australian Securities and Investments Commission and ASIO and the CEO of the ACC.

This broader membership is appropriate given the complex nature of organised and transnational crime. The involvement of these agencies in guiding the ACC will assist with forming joint taskforces and sharing intelligence.

The Board will give direction to the ACC and authorise its intelligence operations and investigations.

The Board will also determine the national criminal intelligence priorities and authorise dissemination of intelligence assessments made by the ACC.

Ministerial oversight would be maintained via an Intergovernmental Committee comprising Commonwealth, State and Territory Ministers—in NSW, the Minister for Police.

Finally, a Joint Committee of the Commonwealth Parliament will report to the Commonwealth Parliament on the ACC.

All the above functions are set out in the Commonwealth's *Australian Crime Commission Act 2002*.

The purpose of the present Bill is to give full effect to the ACC in New South Wales in the terms set out in that Act.

As I noted before, although the ACC is a Commonwealth agency, it investigates crime nationally, as did the NCA. This is essential when confronting sophisticated criminal groups who operate across domestic and international borders.

To ensure this can occur to the fullest extent, State and Territory legislation is required to support the operation of the ACC in each jurisdiction.

I will now describe the main features of the Bill.

Firstly, the Bill is what is known as applied legislation.

This means that it imports into New South Wales law the Commonwealth Act. This is achieved by clauses 5 and 7 of the Bill.

In other words the law under which the ACC must operate in New South Wales is the text of the Commonwealth Act.

This is a common approach with collaborative Commonwealth/Territory schemes.

This does not mean that New South Wales surrenders control of the ACC's activities in New South Wales.

Clause 6 of the Bill makes it clear that New South Wales may make a regulation modifying or nullifying any aspect of the Commonwealth Act or regulations made under it.

So, if the Commonwealth amends the Commonwealth Act, and we support that, we do not have to do anything. The ACC gains the benefit of the amendment instantly for the purposes of its investigations in New South Wales.

If New South Wales wishes to alter or nullify the effect of the amendment, this can be done very rapidly by making a regulation.

The alternative to the applied form approach is a long form, where the New South Wales Act would stand alone. This would mean that if the Commonwealth amended its Act, a New South Wales response would require amending legislation to be passed, which inevitably takes time which is not always available in responding to organised criminal activity.

The applied provisions approach taken in the Bill maintains New South Wales' control over the ACC in New South Wales and makes our reaction to any Commonwealth amendment as fast as possible.

Division 2 of the Bill permits the conferral of functions on the ACC by both Commonwealth and New South Wales legislation.

Division 3 of the Bill relates to offences in respect to the ACC.

The offences are provided for in the Commonwealth Act and relate to such matters as providing false or misleading evidence to the ACC, threatening its staff or hindering its investigations.

Clauses 14, 15 and 16 mean that breaches of these offence provisions, when committed in New South Wales, are treated as offences against Commonwealth law.

Clause 17 is a double jeopardy provision making it clear that if the same act or omission by a person is an offence under both the Commonwealth ACC Act and New South Wales imported version, then the person can only be charged with an offence against the Commonwealth Act.

Part 3 of the Bill contains miscellaneous provisions.

Clause 18 permits the New South Wales Minister responsible for the ACC, the Minister for Police to establish intelligence sharing protocols with the Commonwealth Minister to facilitate the exchange of intelligence between Commonwealth and State agencies.

Clause 19 permits arrangements to be made allowing officers of NSW Police or other State agencies to be made available to the ACC. Such cooperative activity in joint taskforces is critical in modern law enforcement.

Clause 20 permits judges of New South Wales courts to issue search or arrest warrants to the ACC.

Clause 22 is a general regulation making power.

Clause 24 repeals the *National Crime Authority (State Provisions) Act 1984*, which was the equivalent of the Bill under the NCA cooperative scheme. This Act is no longer required as the NCA has ceased operation.

Clause 26 provides for statutory review of the Bill by the Minister for Police. The review is to commence as soon as possible after a period of 5 years from the date of assent of the Bill.

The report of the review is to be tabled in Parliament within 12 months after the 5 year period from the date of assent.

Schedule 1 of the Bill makes numerous machinery amendments to New South Wales legislation which refers to the NCA. These references are replaced with references to the ACC.

An example is the *New South Wales Crime Commission Act 1985*. The Bill will amend section 24 of that Act which deals with membership of the NSW Crime Commission Management Committee. The Chair of the NCA was ex officio a member of that committee.

This function will now be performed by the Chair of the ACC Board. This will facilitate intelligence sharing and taskforce cooperation between the ACC and the NSW Crime Commission.

Schedule 2 of the Bill contains various savings and transitional provisions which facilitate the transition of the NCA into the ACC in New South Wales.

Schedule 2 also contains important provisions to validate the actions of the NCA and ACC in light of the High Court of Australia decision in *R v Hughes*.

This decision endangered the validity of certain actions undertaken as part of cooperative Commonwealth/State legislative schemes, such as the NCA and the ACC.

Any exercise by the NCA, being a Commonwealth agency, of a power conferred by a State law, where there was a duty on the NCA to exercise the power, was vulnerable to challenge if there was no connection to a head of Commonwealth legislative power under the Commonwealth Constitution.

The *National Crime Authority Act 1984 (Cth)* was amended in consequence to validate the actions of the NCA in such situations.

In addition, the Intergovernmental Committee of the NCA tasked the Parliamentary Counsels' Committee to draft model legislation to amend the NCA State Provisions legislation to similarly validate the past and future actions of the NCA in light of this case.

Clause 12 of Schedule 2 of the Bill incorporates this model legislation to validate the past actions of the NCA in New South Wales.

The past and future actions of the ACC are similarly validated by Division 2 of Part 2.

I commend the Bill to the House.

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