

Australian Crime Commission (New South Wales) Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *Australian Crime Commission Establishment Act 2002* of the Commonwealth established the Australian Crime Commission (**the ACC**) on 1 January 2003 in accordance with an agreement reached between the Prime Minister, the Premiers of the States and the Chief Ministers of the Australian Capital Territory and the Northern Territory. The ACC replaced the National Crime Authority. Its functions include the investigation of federally relevant criminal activity (that is, investigation of 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 law of the Commonwealth or a law of a State or a Territory that has a federal aspect).

The object of this Bill is to complement the *Australian Crime Commission Act 2002* of the Commonwealth by making provision for the operation of the ACC in New South Wales in respect of relevant criminal activity in so far as serious and organised crime is, or serious and organised crimes are or include, an offence or offences against a law of the State (irrespective of whether they have a federal aspect). The Bill does this by applying the Commonwealth Act and regulations, directions and guidelines under it (with power to modify these where appropriate) as a law of New South Wales.

The Bill also repeals the *National Crime Authority (State Provisions) Act 1984* and includes provisions to provide for the transition of the operations of the National Crime Authority to the ACC in New South Wales.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act (with a minor exception) on the date of assent.

Clause 3 defines expressions used in the proposed Act.

Clause 4 provides that the proposed Act binds the Crown.

Part 2 The applied provisions

Division 1 Application and interpretation

Clause 5 applies as a law of New South Wales the ACC laws (which are defined in proposed section 3 as the *Australian Crime Commission Act 2002* of the Commonwealth and all regulations, guidelines and directions in force under that Act), as modified under the proposed Act, as described in the Overview above.

Clause 6 permits the regulations under the proposed Act to modify the ACC laws for the purposes of the proposed Act. The clause also permits the regulations to provide that the ACC laws applied by proposed section 5 apply as if any amendment to the ACC laws made by a law of the Commonwealth had not taken effect.

Clause 7 applies the *Acts Interpretation Act 1901* of the Commonwealth as a law of this State in relation to the interpretation of the applied provisions (which are defined in proposed section 3 as the ACC laws that apply as a law of this State because of proposed section 5 and so as to include any modification of those laws under the proposed Act). In addition, it provides that the *Interpretation Act 1987* of New South Wales does not apply to the applied provisions.

Division 2 Conferral of functions

Clause 8 provides for a Commonwealth body or person (defined in proposed section 3 to mean the ACC and various other Commonwealth persons and bodies) to have the functions conferred on the body or person under the applied provisions.

Clause 9 provides for the conferral of a function on a Commonwealth person or body to be subject to any provision of the *Australian Crime Commission Act 2002* of the Commonwealth (the **ACC Act**) that requires the consent of the Board of the ACC before the function can be performed.

Clause 10 makes it clear that a Commonwealth body or person is not precluded by any law of the State from performing a function conferred under the proposed Part.

Clause 11 makes it clear that the proposed 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.

Clause 12 makes it clear that functions are conferred on federal judicial officers by the applied provisions in a personal capacity and not as a court or as a member of a court.

Clause 13 provides that any delegation by a Commonwealth person or body 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

Clause 14 states that the object of the proposed 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.

In addition, the clause gives examples of the purposes for which an offence is to be so treated.

Clause 15 applies the relevant Commonwealth laws as laws of this State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth.

In addition, the clause provides that, except as provided by the regulations under the proposed Act, an offence against the applied provisions is taken to be an offence against the laws of the Commonwealth and not an offence against the laws of this State.

Clause 16 provides that a function or power in relation to an offence against the ACC Act conferred on a Commonwealth officer or authority by Commonwealth laws applying because of proposed section 15 is also conferred on the Commonwealth officer or authority in relation to an offence against the corresponding provision of the applied provisions.

Clause 17 provides that a person is not liable to be punished for an offence under the applied provisions if the person has been punished for the same offence under the ACC Act.

Part 3 General

Clause 18 enables the Minister administering the proposed Act to make arrangements with the Commonwealth Minister for the Board of the ACC to obtain information or intelligence relating to relevant criminal activities (which are defined in the ACC 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 law of the Commonwealth, of a State or of a Territory).

Clause 19 enables the Minister administering the proposed Act to make administrative arrangements with the Commonwealth Minister to make available officers or employees of the State or authorities of the State and others to perform services for the ACC.

Clause 20 authorises a Judge of a court of the State to perform functions

conferred on the judge under section 22 (Search warrants), 23 (Application by telephone for search warrants) or 31 (Warrant for arrest of witness) of the ACC Act.

Clause 21 provides that the validity of a thing done for the purposes of the applied provisions is not affected only because it was done also for the purposes of the ACC laws.

Clause 22 empowers the Governor to make regulations for carrying out or giving effect to the proposed Act.

Clause 23 repeals the *National Crime Authority (State Provisions) Act 1984* and the regulation made under that Act.

Clause 24 is a formal provision that gives effect to the amendments to the Acts and regulations set out in Schedule 1.

Clause 25 is a formal provision giving effect to the savings, transitional and other provisions set out in Schedule 2.

Clause 26 provides for the review of the proposed Act.

Schedule 1 Amendment of other Acts and instruments

Schedule 1 makes amendments to various Acts and instruments that are consequential on the replacement of the National Crime Authority by the ACC and the repeal of the *National Crime Authority (State Provisions) Act 1984*.

Schedule 2 Savings, transitional and other provisions

Schedule 2 includes savings and transitional provisions with respect to the transition of the operations of the National Crime Authority to the ACC in New South Wales.

Part 2 of the *Co-operative Schemes (Administrative Actions) Act 2001* was part of the legislative response to the decision of the High Court in *The Queen v Hughes* [2000] HCA 22, which cast doubt on the ability of Commonwealth authorities to exercise powers and perform functions under State laws in relation to certain inter-governmental legislative schemes. That Act ensures that functions or powers are not imposed on Commonwealth authorities and officers in connection with administrative action under the schemes if their imposition would exceed the legislative power of the State, and validates any such previous invalid administrative action. Clause 12 of Schedule 2 validates any previous such invalid administrative action taken by the National Crime Authority before the repeal by the proposed Act of the *National Crime Authority (State Provisions) Act 1984*.