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CHIEF EXECUTIVE

Our Ref: 15/69641

Senator Barry O'Sullivan
Committee Chair
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator O'Sullivan

**Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015
Australian Crime Commission (ACC) submission**

I refer to the inquiry by the Senate Legal and Constitutional Affairs Committee into the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015* (the Bill). Schedule 12 of the Bill proposes technical amendments to the *Australian Crime Commission Act 2002* (the ACC Act) to:

- (1) **Amend the definition of 'eligible person' under s 4 to include any person who is both a member of the staff of the ACC and a 'constable'.**

Currently an 'eligible person' can apply for a search warrant under s 22 of the ACC Act. An 'eligible person' means (a) an examiner or (b) a member of the staff of the ACC who is also a member of the Australian Federal Police (AFP) or a police force of a state. Under this definition, it is unclear whether special members of the AFP are eligible to apply for warrants despite the fact they are typically authorised to exercise all the powers of an AFP member. This appears to have been an unintended consequence of the provision as drafted. In practice, this may require, for example, a seconded AFP member, with little or no connection to the investigation, to apply for a warrant in place of the responsible ACC investigator (where the responsible investigator is a special member of the AFP).

This amendment corrects the anomaly within the current definition by ensuring that all members of staff of the ACC who are constables (as defined by the ACC Act) to apply for s 22 search warrants. The ACC Act defines 'constable' as including a special member of the AFP.

- (2) **Amend s 24AB to provide that an examiner have power during an examination to return an item produced by the witness at the examination, to that witness.**
The *Crimes Legislation Amendment (Powers and Offences) Act 2012* (2012

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amendments) introduced the returnable items regime in the ACC Act. The 2012 amendments provided a power to the CEO (or delegate) to direct the return of items produced at an examination. This has the unintended effect that where an item is produced at an examination, the examiner no longer has power to direct immediate return of the item, but must rely on the decision of the CEO or delegate to do so. This is impractical where the examiner is present at the time the item is able to be returned and where the CEO or delegate may have no familiarity with the subject matter of the examination.

This provision will ensure the examiner, as the most appropriate person in the circumstances, has the power to return such items. It will also make clear that s 25A(15) does not require the examiner to give such items to the head of the special ACC operation/investigation at the conclusion of the examination. This provision will enable the timely return of items to witnesses, subject to return conditions being satisfied.

The provision allows an examiner to impose 'return conditions' that must be met before the item is returned. The examiner must be satisfied that the item is not (or no longer) required for the purposes of the relevant ACC operation/investigation, or will not be so required once the return conditions have been met. This will allow, for example, the examiner to direct the return of a mobile telephone or similar hand-held device, to the witness once a copy of its contents has been made, even though this process may not be completed until after the examination is over.

- (3) **Update the prescribed provisions in Schedule 1 of the ACC Act to address changes to secrecy provisions referred to in that Schedule. Section 20 of the ACC Act requires provision to the ACC of official information or documents by a government agency where an examiner issues a written request to the agency or an officer of the agency.**

Schedule 1 to the ACC Act lists secrecy provisions that cannot be overridden by a notice issued by an examiner under s 20, ensuring that agencies are not compelled to provide information in contravention of these secrecy provisions. A number of the provisions listed in Schedule 1 have been repealed or amended without consequential changes to Schedule 1. These proposed amendments will ensure that the provisions listed in Schedule 1 are current, that immunity from production is not unintentionally lost where it remains appropriate and that there are no cross-references to legislation that no longer exists.

The proposed amendments are necessary to clarify and update provisions of the ACC Act. The ACC supports the enactment of Schedule 12 of the Bill.

Should you wish to discuss any aspect of this submission further, please contact Ms Judy Lind, Executive Director Strategy and Specialist Capabilities,

Yours sincerely

Chris Dawson APM
Chief Executive Officer

5 May 2015

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