

## Schedule 3

- 3.1 The purpose of Schedule 3 of the Crimes Legislation Amendment (Powers and Offences) Bill (the Bill) is to amend the *Australian Crime Commission Act 2003* (the ACC Act) to introduce rules that are required to better govern the use, sharing and retention of things seized under the ACC Act.

### Existing laws and practices

- 3.2 The Australian Crime Commission (ACC) is able to undertake intelligence operations and investigations authorised by the ACC Board. The ACC Board is also able to determine that such operations and investigations are special operations and special investigations.
- 3.3 Determination of an operation or investigation as being ‘special’ is on the basis of whether ordinary police methods of investigation have been effective or other methods of collecting criminal information and intelligence are effective.<sup>1</sup> Declaration of an investigation or operation as being ‘special’ gives rise to the use of the ACC’s coercive powers.
- 3.4 Coercive powers allow ACC Examiners to:
- summon any witness to appear before an examiner;
  - require witnesses to give evidence of their knowledge of criminal activities, involving themselves or others which are the focus of the investigation or intelligence operation; and

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<sup>1</sup> Australian Crime Commission, *Submission 3*, p. 3.

- require witnesses to provide documents or other things<sup>2</sup> to the Examiner.
- 3.5 Examiners are independent statutory officers appointed to approve the use of the coercive powers. ACC Examiners are appointed by the Governor-General for a non-renewable five year term.
- 3.6 Examiners function independently of the ACC and all agencies of the Government. The powers of the Examiner are subject to Federal Court oversight and the exercise of their administrative functions can form the subject of review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).
- 3.7 Current legislation in section 22 of the ACC Act allows the ACC to apply for and execute a warrant to search for a thing or things (including a document) of a particular kind that are connected with a special ACC operation or investigation.
- 3.8 Section 28 gives examiners the power to summons witnesses to appear before an examiner to give evidence and provide such documents or other things as outlined in the summons.
- 3.9 Section 29 provides examiners with the power to require persons to produce a document or a thing to a specified person.
- 3.10 There is currently no existing legislation that requires the return (or otherwise) of things produced under a section 29 notice or at an ACC examination.

## Proposed legislative amendments

- 3.11 The amendments contained in this schedule will introduce rules governing the use, sharing and retention of things seized under an ACC Act search warrant and things or documents produced under sections 28 or 29 of the ACC Act. These amendments are based on similar provisions in the *Crimes Act 1914* (Cth) (Crimes Act).

### *Australian Crime Commission Act 2002* (Cth)

- 3.12 A proposed amendment inserts into the ACC Act a definition of 'Commonwealth Officer' into the ACC Act which is similar to that in the Crimes Act. This will ensure that all ACC staff will be subject to the same

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2 'Thing' is not defined in the ACC Act.

statutory regime governing the way they deal with documents and other things seized or produced under the ACC Act.

- 3.13 The proposed legislation will insert a definition of a returnable item which will include a thing seized under a warrant under section 22 or a thing or document produced under a notice given under section 29 or during an examination. The new amendments will make reference to returnable items.
- 3.14 A definition of a State and Territory law enforcement agency will be inserted by proposed amendments. This will facilitate the ACC sharing of a returnable item with a State or Territory law enforcement agency in certain circumstances, as a later amendment proposes.
- 3.15 Proposed new amendments will create more consistency between Commonwealth regimes governing the seizing and producing of things and documents.
- 3.16 New sections are proposed which are modelled on the provisions of the Crimes Act and set out provisions governing the use, sharing and retention of documents and other things obtained by the ACC using its coercive powers.
- 3.17 These amendments clarify the different rules that apply when the ACC is dealing with returnable items compared to when they are dealing with ACC information.
- 3.18 The Explanatory Memorandum details at great length the purposes for which a constable or Commonwealth officer would be able to use a returnable item.<sup>3</sup>
- 3.19 The Explanatory Memorandum concludes that:

All these purposes for using and sharing returnable items are important in ensuring that the ACC is able to properly carry out its designated functions as the national body responsible for detecting and investigating serious and organised crime and maintaining a leading capability in national criminal intelligence and information services.<sup>4</sup>

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3 Crimes Legislation Amendment (Powers and Offences) Bill 2011 Explanatory Memorandum pp. 70-72.

4 Crimes Legislation Amendment (Powers and Offences) Bill 2011 Explanatory Memorandum p. 72.

## Other minor and technical amendments

- 3.20 Schedule 3 of the Bill will make a number of minor and technical amendments to the Crimes Act. The proposed amendments will simplify the language used in various sections of the Act and rectify a number of technical drafting issues and inconsistency of terminology.

## Committee comment

- 3.1 No significant issues were raised in consultation regarding the amendments proposed in Schedule 3 of the Bill.
- 3.2 The Committee notes the importance of safeguards to protect individual rights. The Committee also notes that law enforcement agencies act in the public interest, and require tools to effectively and efficiently carry out their functions. In this instance, the Committee considers that an appropriate balance between these two objectives has been achieved.

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### **Recommendation 4**

- 3.3 **The Committee recommends that Schedule 3 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.**