

**Parliamentary Joint Committee on the
National Crime Authority**

**Inquiry Into The Australian Crime
Commission Establishment Bill 2002**

Submission No:4

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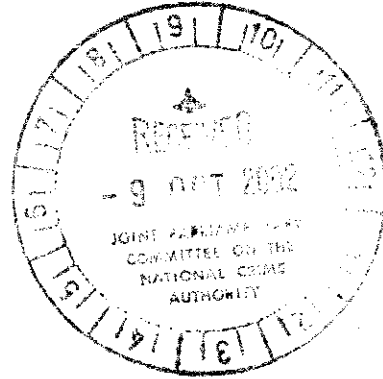
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Endorsed by the Australian Bar Association

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AUSTRALIAN CRIME COMMISSION BILL

SUBMISSIONS BY THE CRIMINAL BAR ASSOCIATION OF VICTORIA INC

The Criminal Bar Association (CBA) is comprised by some 330 members all of whom are practising members of the Victorian Bar with a special professional interest in the practice and development of the criminal law whether from a defence or prosecution perspective. In addition some 50 Honorary Members of the

Association are serving members of the Judiciary in Victoria. As such the Association is comprised by a varied membership which has a continuing interest in legislative initiatives associated with the criminal law including those touching upon investigative, evidentiary and forensic issues.

The CBA has real concerns about the proposed ACC and the draft Bill. Those concerns centre around the following major points:-

- The placing of coercive investigative powers into the hands of an agency of Government that is effectively to be tasked and driven by police and prosecution bodies. That is an unprecedented step and one that should be resisted.
- The removal of any real independent management role from the ACC and making it subservient to the direction of a 13 man Board.

- The removal of provisions in the NCA Act that required the Chair to be a judge or practising lawyer of at least 5 years standing further erodes the prospects of the ACC bringing an independent approach to its functions.

- The removal from the IGC of important decision making functions concerning the acceptance of references and the ambit of such references removes an important balancing mechanism at the highest level and replaces it with the operational decision making of senior police and law enforcement officials.

- All this occurs in the context of a body that can compel attendance at hearings; the giving of answers and/or production of documents or things without any effective protection in the event that the answer, document or thing may incriminate the person attending. Such powers have never been reposed into what is effectively an operational

police body with the powers of a Standing Royal Commission.

The CBA is also concerned about the following operational issues:-

- The role and status of Examiners is unlikely to foster real independence in the conduct of hearings and the fact that the Examiners may be appointed on a part time basis is likely to lead to an expectation that a failure to perform the functions as expected by the task force will lead to no further work. This is to be contrasted with the role of permanent Members of the NCA each of whom had an ongoing role in and daily exposure to the management, culture and strategic needs and direction of the NCA.

Nothing in the provisions relating to Examiners will redress the balance concerning the nature of the ACC as

an operational police investigative body with coercive powers.

- The fact that the range of offences contemplated by section 4(d) may be expanded by regulation is novel in the context of such legislation.
- The Bill erodes the management status of the CEO and confers a power to suspend on the Minister and will be seen as further subjugating the CEO to the dictates of the Executive.



Edwin J Lorkin
Secretary
Criminal Bar Association of Victoria Inc

9 October 2002