

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

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

Submission No:9

State Government of Victoria

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STATE GOVERNMENT OF VICTORIA

SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

INQUIRY INTO THE AUSTRALIAN CRIME COMMISSION ESTABLISHMENT BILL 2002

BACKGROUND

1. The Commonwealth legislation to establish the Australian Crime Commission (ACC), the Australian Crime Commission Establishment Bill 2002 (Cth) (the Bill), was introduced into the House of Representatives on 26 September 2002. The Bill was referred on the same date to the Parliamentary Joint Committee on the National Crime Authority for consideration and an advisory report by 6 November 2002.
2. The Commonwealth engaged in extensive consultation with the States and Territories during the drafting of the Bill. The Victorian Government considers that this consultation has been highly constructive and that significant progress has been made in addressing issues raised the States and Territories.
3. Notwithstanding this significant progress, the Victorian Government has some remaining matters it wishes to raise in relation to the Bill. These matters, which have been divided into key issues and other issues, are outlined below.

KEY ISSUES

4. Set out below are the key issues the Victorian Government wishes to raise in relation to the Bill.

Search warrants

5. The Victorian Government is concerned about the adequacy of the accountability mechanisms in relation to the proposed search powers in the Bill, particularly in relation to the use of search powers in connection with special intelligence operations. These concerns, and proposed amendments to address these concerns, are outlined in more detail below.

Basic principles

6. The basic principles that should govern Commonwealth legislation dealing with the power of law enforcement officers to enter and search private premises (or land, or a vehicle, etc) without the consent of the occupier have recently been stated by the Senate Standing Committee for the Scrutiny of Bills.¹ The same

¹ Senate Standing Committee for the Scrutiny of Bills, Fourth Report of 2000, *Entry and Search Provisions in Commonwealth Legislation* (2000).

principles have also been stated in relation to Victorian legislation by the Victorian Parliament Law Reform Committee.²

7. Both Committees favoured a parsimonious approach to the granting of such powers. For example, the Senate Standing Committee stated that:

A power to enter and search should be granted only where the matter in issue is of sufficient seriousness to justify its grant, but no greater power should be conferred than is necessary to achieve the result required.

In considering whether to grant a power to enter and search, Parliaments should take into account the object to be achieved, the degree of intrusion involved, and the proportion between the two - in the light of that proportion, Parliament should decide whether or not to grant the power and, if the power is granted, Parliament should determine the conditions to apply to the grant and to the execution of the power in specific cases.³

8. The Senate Standing Committee adopted as a benchmark the entry, search and seizure powers set out in the *Crimes Act 1914* (Cth). The Committee stated that more extensive powers "should be conferred only in exceptional, specific and defined circumstances where Parliament is notified of the exercise of those powers and where those exercising the powers are subject to proper scrutiny".⁴

What does the proposed Bill do in relation to search warrants?

9. The Bill significantly expands the circumstances in which a search warrant may be issued. The powers created by the proposed provisions go well beyond the powers contained in the *Crimes Act 1914* (Cth).
10. Currently, the National Crime Authority (NCA) may apply, under section 22 of the *National Crime Authority Act 1984* (Cth) (the NCA Act)⁵, for a warrant to search for things connected with a matter into which the NCA is conducting a special investigation.⁶
11. The proposed amendments⁷ will allow the ACC not only to apply for a warrant to search for things connected with a special investigation, but also to apply for a warrant to search for things connected with a special intelligence operation.⁸

² Victorian Parliament Law Reform Committee, *The Powers of Entry, Search, Seizure and Questioning by Authorised Persons* (2002).

³ Senate Standing Committee for the Scrutiny of Bills, Fourth Report of 2000, *Entry and Search Provisions in Commonwealth Legislation* (2000), para. 1.32 and 1.33.

⁴ Senate Standing Committee for the Scrutiny of Bills, Fourth Report of 2000, *Entry and Search Provisions in Commonwealth Legislation* (2000), para. 1.54.

⁵ The NCA can also apply for a search warrant under any other relevant law. For example, if the NCA is investigating an offence under the Commonwealth *Crimes Act 1914*, it may also apply for a search warrant under Part 1AA of that Act.

⁶ A "special investigation" is an investigation in relation to which the Inter-Governmental Committee has considered whether ordinary police methods of investigation are likely to be effective.

⁷ Proposed sub-section 7C(2), inserted by item 35 of Part 1 of Schedule 1 to the Bill.

⁸ Under the proposed *Australian Crime Commission Act 2002*, a special ACC operation is an intelligence operation in relation to which the Board of the ACC has considered whether methods of collecting the criminal information and intelligence that do not involve the use of powers in that Act have been effective.

What is the difference between an investigation and an intelligence operation?

12. "Intelligence operation" is defined in the Bill to mean "the collection, correlation, analysis or dissemination of criminal information and intelligence relating to federally relevant criminal activity". Use of the word "intelligence" to supplement the word "information" in the definition suggests that the collection, correlation, analysis or dissemination of criminal information is different to the collection, correlation, analysis or dissemination of criminal intelligence. This suggests that "intelligence" has a different character to information, and that it refers to information that is secretly obtained or that has a sensitive or confidential quality.
13. "Investigation" is not defined in the NCA Act or in the Bill. Nevertheless, the Minister's second reading speech for the Bill indicates an intention that an "investigation" is narrower than an "intelligence operations" and that intelligence activities occur at a more preliminary stage. For example, the Minister explained that the ACC's intelligence functions would "allow areas of new and emerging criminality to be identified and investigated" and that it would "provide for investigations to be intelligence driven".⁹
14. The Minister's comments suggest that, in the proposed *Australian Crime Commission Act 2002* (ACC Act), "investigation" is intended to refer to activities undertaken at a point when it is suspected that an offence has been, is being or is likely to be committed. This would not mean that the activities encompassed by the word "investigation" are limited to the obtaining of evidence for the purposes of a prosecution, as they could also include the taking of action to prevent a suspected offence from being committed. However, in either situation, the word "investigation" must relate to activities undertaken at a stage where some offence is suspected. Otherwise it is difficult to see what is achieved by having the separate concept of "intelligence operation" in the proposed ACC Act.

How does this difference affect the character of the search powers?

15. As discussed in paragraph 7 above, when considering whether particular entry, search and seizure powers are appropriate, it is necessary to consider:
 - the object to be achieved;
 - the degree of intrusion involved; and
 - the proportion between the two.

The object to be achieved

16. The object to be achieved by the criminal justice system is to maintain social cohesion by deterring people from breaking the criminal law and to punish those who commit offences.

⁹ Commonwealth Parliament, House of Representatives, Hansard, 26 September 2002, Mr Williams (Attorney-General) p.6998.

17. The object to be achieved by an investigation can be described as the obtaining of information or evidence revealing that an offence has been committed, details of the offence, the circumstances in which it was committed, the identity of the person or persons who committed it, and so on. This is not an object to be achieved in its own right, but is a lower-order object which facilitates the achievement of the object in paragraph 16.
18. The object to be achieved by an intelligence operation is the obtaining of information to assist in the formulation and planning of investigations. Again, the obtaining of such information or "intelligence" is not an object to be achieved in its own right. It is a lower-order object which facilitates the achievement of the object in paragraph 17, which in turn facilitates the achievement of the object in paragraph 16.
19. Each of these lower-order objects is of social benefit. Nevertheless, the object to be achieved by intelligence operations is further removed from the ultimate object of the criminal justice system than the object to be achieved by investigations.
20. By expanding the entry, search and seizure powers to cover intelligence operations as well as investigations, the proposed provisions necessarily affect the proportion between the object to be achieved and the degree of intrusion, even if the degree of intrusion is the same in intelligence operations as in investigations.

The degree of intrusion

21. Because of the secret nature of intelligence operations, search warrants issued in relation to such operations are likely to be executed covertly. It will often be the case that (unless otherwise required by conditions imposed on the warrant) law enforcement officers executing a search warrant issued for an intelligence operation will execute the warrant at a time when the premises are not occupied and in such a manner that the occupants of the premises may never realise that the search has been conducted.
22. Covert searches are likely to be considered by many members of the community as being more intrusive than searches that are conducted openly when the occupier of the premises is present and has an opportunity to object to the search or to the manner in which it is conducted.

The proportion between the object to be achieved and the degree of intrusion

23. The proposed provisions alter the proportion between the object to be achieved (which is more distant from the ultimate object of the criminal justice system than the object to be achieved under existing section 22 of the NCA Act) and the degree of intrusion involved (which may be greater under proposed section 22 of the ACC Act than under that section in its current form in the NCA Act).
24. This means that the questions for the Joint Parliamentary Committee are:
 - whether the proposed extension is justified; and

- if it is justified, what safeguards should apply.

25. In answering these questions, it is important to consider the benchmark provisions in the *Crimes Act 1914*.

How do the proposed provisions compare with the benchmark provisions in the Crimes Act 1914?

26. The *Crimes Act 1914* does not permit search warrants to be issued for intelligence operations (as opposed to the investigation of offences) and does not permit search warrants to be executed covertly.

Is there a justification for the proposed provisions going beyond the benchmark provisions?

27. The search warrant provision in section 22 of the proposed ACC Act only applies in relation to serious and organised crime. "Serious and organised crime" is defined in the Bill¹⁰ to mean an offence, such as theft, fraud, money laundering, illegal drug dealing, etc:
- that involves two or more offenders and substantial planning and organisation;
 - that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques; and
 - that is committed, or is of a kind that is committed, in conjunction with offences of a like kind.
28. The difficulty of detecting and investigating such criminal activity means that intelligence operations are particularly important.
29. Intelligence operations relating to serious and organised crime are likely to be significantly more effective if they can be conducted in a way that does not alert those in relation to whom information or intelligence is being obtained. For example, if law enforcement officers do not have sufficient evidence to take action against a group of people engaged in serious and organised criminal activity, but those people become aware that they are under scrutiny, they may modify their behaviour to make it more difficult to detect and investigate any offences committed by them.

If it is appropriate to go beyond the benchmark provisions, what safeguards should apply?

30. Relevant safeguards can operate at a number of different points.

Criteria for authorising

31. The criteria for authorising a search warrant are important because they ensure that, in accordance with the general principle discussed in paragraph 7 above, no greater power to interfere with privacy and property is conferred than is necessary to achieve the result that is required.
32. Proposed sub-section 22(2) creates the power to issue a warrant. Proposed paragraph 22(3)(c) states that an issuing officer shall not issue a warrant under sub-section 22(2) unless he or she "is satisfied that there are reasonable grounds for issuing the warrant". The section does not set out any criteria to which the issuing officer must have regard, nor does it expressly state what may constitute reasonable grounds for the issuing of a warrant.

¹⁰ Schedule 1, Part 1, Item 120 of the Bill.

33. Proposed sub-section 22(4) requires the issuing officer to state which of the grounds in the affidavit supplied by the applicant he or she has relied upon, as well as any other grounds relied on by him or her to justify the issue of the warrant. The grounds in the affidavit given to the issuing officer would presumably have to relate to the conditions set out in proposed sub-section 22(1). The effect of those conditions is that an eligible person may only apply for a warrant if:
- (a) he or she has reasonable grounds for suspecting that, on a particular day, there may be in any premises (or vehicle, land, etc) a thing or things of a particular kind connected with a special ACC operation/investigation; and
 - (b) he or she believes on reasonable grounds that, if a summons were issued for the production of the thing or things, the thing or things might be hidden or destroyed.
34. Because the scope of intelligence operations is likely to be broad, and hence the range of things connected with those operations is also likely to be very broad, and because the objectives of intelligence operations (being the gathering of criminal information or intelligence) are relatively distant from the ultimate objectives of the criminal justice system, the Victorian Government considers that it is desirable to expressly require the issuing officer to consider a number of criteria to ensure that search warrants are only issued in circumstances where an invasion of privacy and property rights is justified.
35. It is suggested that relevant criteria are:
- *The likelihood that the information/things sought will be at the premises (or land, vehicle, etc) to be searched.* This criterion is already contained in proposed paragraph 22(1)(a).
 - *The extent to which the privacy of any person will be affected by the execution of the warrant.* This criterion would require the issuing officer to consider the nature of the place to be searched (for example, whether it is a commercial vehicle, business premises or a private home) and the nature and extent of the proposed search (for example, searching business records may affect privacy less than searching personal diaries or correspondence, which may have been written with a greater expectation of privacy).
 - *The likely value of the information/things in relation to the objectives of the intelligence operation.*
 - *Whether there are any viable, less intrusive means of obtaining the information/things.* This criterion amplifies the current provision in proposed paragraph 22(1)(b) regarding the viability of obtaining the thing by means of a summons.
36. The Victorian Government proposes that the Bill should be amended to require the issuing officer to have regard to the above criteria. These criteria are inter-related. In considering an application against the criteria, the issuing officer would

need to weigh the necessity for the intrusion, likely success in obtaining the information sought and degree of benefit to the objective of the intelligence operation against the extent of the proposed intrusion on the target's privacy.

Conditions on how the warrant is to be executed

37. Section 22 of the proposed ACC Act contains a number of conditions on the execution of a warrant.
38. The issuing officer must specify in the warrant:
 - the period (no more than a month) during which the warrant may be executed;
 - whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - the kind of things authorised be seized.
39. Section 22 of the proposed ACC Act also contains a number of conditions that apply if things are seized.
40. Section 22 of the proposed ACC Act does not prohibit the covert execution of warrants (ie. when the occupiers are not present and in a manner such that the occupiers may never realise that their premises have been searched), and does not require the issuing officer to specify whether or not the person executing the warrant may do so covertly.
41. The Victorian Government proposes that proposed section 22 should be amended to require the issuing officer to expressly consider (having regard to the criteria in paragraph 35 above) whether the warrant should be executed overtly or covertly.
42. If the issuing officer considers that the warrant should be executed *overtly*, the Victorian Government considers that the principles stated by the Senate Standing Committee for the Scrutiny of Bills¹¹ should apply. For example, the person executing the warrant should identify himself or herself to the occupiers of the premises and make a copy of the warrant available to them. If any things are seized, they should be itemised and a copy of the itemised list should be given to the occupier and any other relevant person. The legislation should also include a procedure for dealing with disputed seizures. The *Crimes Act* 1914 provides examples of such provisions.¹²

Accountability for how the warrant was in fact executed

43. A mechanism used in New South Wales and Victorian legislation for ensuring that warrants are properly and fairly exercised is to require the person responsible for

¹¹ The relevant principles are set out in the executive summary of the Senate Standing Committee for the Scrutiny of Bills, Fourth Report of 2000, *Entry and Search Provisions in Commonwealth Legislation* (2000) under the headings "Principles governing the manner in which the power to enter and search is exercised" and "Principles governing the provision of information to occupiers".

¹² See Division 2 of Part 1AA of the *Crimes Act* 1914.

the warrant to report back to the issuing officer about the execution of the warrant.¹³

44. There is no comparable mechanism in the NCA Act or the proposed ACC Act.
45. The Senate Standing Committee for the Scrutiny of Bills recommended that this mechanism be adopted in Commonwealth search warrant provisions.¹⁴ The mechanism is important to ensure accountability in relation to overt search warrants, but it is even more important in relation to covert search warrants. This is because in relation to an overt search, at least the occupier is in a position to supervise the search and to object if it is unfair or it goes beyond what is authorised. In relation to a covert search there is nobody independent from the law enforcement officers to supervise the search.
46. The Victorian Government proposes that the Bill should be amended to include a provision similar to the Victorian and New South Wales provisions mentioned above requiring the person responsible for executing the warrant to report back to the issuing officer about the execution of the warrant.
47. A further accountability mechanism is oversight by the Ombudsman under the *Ombudsman Act 1976* (Cth).
48. In relation to search warrants issued to and executed by the ACC the Ombudsman will have the power to investigate complaints and the power to act upon his or her own motion.
49. Whilst the power to act on a complaint may be sufficient in relation to overt searches, where a person affected by the search will be aware of the search, the Victorian Government considers it is not sufficient in relation to covert searches.
50. The ability of the Ombudsman to act on his or her own motion means that the Ombudsman could take action to scrutinise covert searches; however, there is no requirement for the Ombudsman to do so. The jurisdiction of the Commonwealth Ombudsman is extensive. Each year the Ombudsman is required to process and investigate an extremely large number of complaints on a wide range of matters. The extent to which the Ombudsman would chose to exercise his or her own motion power in relation to covert searches is likely to depend upon the resources available after the Ombudsman has satisfied his or her complaint-handling function.
51. The Victorian Government considers that the importance of monitoring covert search warrants is comparable to the importance of monitoring other covert investigative functions, such as telephone intercepts under the *Telecommunications (Interception) Act 1979* (Cth). Under Part VIII of that Act relevant agencies are required to keep certain records in relation to telecommunications interception warrants and the Ombudsman is not simply

¹³ See the *Search Warrants Act 1985* (NSW) s 21 and the *Magistrates' Court Act 1989* (Vic) s 57(10).

¹⁴ Senate Standing Committee for the Scrutiny of Bills, Fourth Report of 2000, *Entry and Search Provisions in Commonwealth Legislation* (2000) para. 4.14 - 4.16 and recommendation 9.

permitted to inspect those records of his or her own motion, but is required to inspect them and to report to the relevant Minister on his or her inspection.

52. The Victorian Government proposes that the Bill should be amended to require the Ombudsman to perform a similar function in relation to covert search warrants as the Ombudsman is required to perform in relation to telecommunications interception warrants.

Liability for damages

53. Proposed section 59B provides for a new statutory immunity against liability for damages for the Commonwealth Minister, other members of the Inter-Governmental Committee (IGC), Board members, the CEO, examiners and members of staff of the ACC. The Victorian Government notes that neither the current NCA Act nor the draft Bills in relation to which the Commonwealth consulted with the States and Territories contained such an immunity provision.
54. It is understood that ASIC has proposed that the statutory immunity in proposed section 59B of the Bill should be broadened to include all liabilities (rather than just liability for damages), acts done or omitted to be done in the performance of functions and exercise of powers under any law, and acts done or omitted to be done in the absence of bad faith, rather than acts done in good faith.
55. However, the Victorian Government considers that the protection afforded by proposed section 59B as drafted is undesirably broad for a number of reasons.
56. There is no demonstrated public policy justification for providing an immunity to each of the persons included within proposed section 59B. Notwithstanding the comment in the Explanatory Memorandum in relation to proposed section 59B that vicarious liability will continue to operate where appropriate and the provision does not provide protection for acts done in bad faith, the proposed immunity may leave an innocent victim of negligence without adequate legal redress.
57. In particular, it is suggested that it is inappropriate to provide an immunity for liability for damages to officers exercising investigative or enforcement powers. This includes members of staff of the ACC staff who would be empowered to exercise search powers and other investigative powers under the Bill. Due to the discretion associated with the exercise of these power, the availability of legal action for the improper exercise of these powers is an important accountability mechanism that would be diminished if a statutory immunity were to be provided.
58. The need to protect the persons included with proposed section 59B against loss could be dealt with by an indemnity as appropriate in the circumstances of a particular case.
59. For the above reasons, the Victorian Government considers that proposed section 59B should be amended to provide that where the named persons have acted (or omitted to act) in good faith in the performance of their duties any liability arising from the act or omission attaches to the Commonwealth rather than the individual.

Such an indemnity would protect the named persons from personal liability when they acted (or omitted to act) reasonably while not denying an innocent victim of such acts or omissions adequate legal redress.

60. The Victorian Government notes that proposed sub-section 36(1) of the ACC Act would provide an examiner in the performance of his or her functions or the exercise of his or her powers with the same protection and immunity as a Justice of the High Court (similarly to the existing immunity for members and hearing officers under sub-section 36(1) of the NCA Act). In light of this proposed immunity, the Victoria Government questions whether it would be necessary to include examiners in proposed section 59B if it were to be amended as suggested in paragraph 59 above.

Conduct of examinations

61. Proposed sub-section 25A(9) empowers an examiner to direct that evidence given before the examiner and other matters connected with an examination not be published. Proposed sub-section 25A(10) enables the CEO to revoke such a direction, subject to the qualification in proposed sub-section 25A(11) that the CEO cannot revoke such a direction if to do so might prejudice a person's safety, reputation or fair trial.
62. The Victorian Government notes that existing sub-sections 25(9A) and 25A(13) of the NCA Act empower the Chair of the NCA to revoke a direction of a member or hearing officer, respectively, prohibiting the publication of evidence and other matters. However, as the CEO's role is of a different nature to that of the Chair of the NCA, the Victorian Government suggests that it would be inappropriate to give the CEO a similar power. In particular, it is suggested that giving such a power to the CEO, who has a purely administrative rather than quasi-judicial function, may undermine the independent exercise of an examiner's powers.

OTHER ISSUES

63. In addition to the key issues outlined above, the following is a list of more minor issues in relation to the Bill the Victorian Government wishes to raise. These issues are principally of a technical or drafting nature.

Establishment of the Board - Acting Commissioners

64. The Victorian Government seeks to ensure that proposed section 7B would enable an Acting Commissioner of a State police force to attend Board meetings. This is necessary as Board members will from time to time be absent on leave with an Acting Commissioner appointed.
65. In the course of consultations with the Commonwealth, the Commonwealth indicated that the provisions of the *Acts Interpretation Act 1901* (Cth) would enable Acting Commissioners to attend Board meetings. However it appears that section 33B of that Act, which relates to acting appointments, is limited in its application to statutory powers of appointment under Commonwealth legislation. Consequently, it would not have the intended effect in relation to Acting

Commissioners of State police forces, who are appointed pursuant to State legislation.

66. Thus it is suggested that specific provision should be made in proposed sub-section 7B(2) to ensure that Acting Commissioners of State police forces can attend Board meetings in the same way as acting appointees under Commonwealth legislation.

Establishment of the Board - Delegates

67. The Bill does not allow a Board member to appoint a delegate to attend Board meetings on his or her behalf. The Victorian Government notes the Commonwealth's advice that it is intended that Board members will attend meetings personally.
68. However, the Victorian Chief Commissioner of Police has advised the Victorian Government that it would be impractical to require Police Commissioners to attend each Board meeting personally and that the timely and efficient conduct of the Board's business would be facilitated by permitting a Board member to appoint a delegate.
69. Such a power of delegation could be confined to the appointment of a Deputy Commissioner of Police (or equivalent) to ensure that the Board's functions are discharged only by suitably senior members of police command (and the other organisations represented on the Board).

Board meetings

70. Proposed sub-section 7D(3) requires the Board at its first meeting to determine, in writing, a schedule of Board meetings. However, it is not clear how far in advance the Board must schedule meetings.
71. To ensure that the Board determines a schedule of meetings on an ongoing basis, it is suggested that proposed section 7D should require the Board to determine a schedule of meetings both at its first meeting and periodically thereafter, for example annually.

Resolutions outside of Board meetings

72. Proposed section 7J enables the Board to pass resolutions out of session. Proposed paragraph 7J(1)(a) provides that section 7J applies to a resolution which, without being considered at a Board meeting, is referred to all members of the Board. However, it is not clear who can refer a resolution to Board members under this provision.
73. It is suggested that proposed paragraph 7J(1)(a) should be amended to specify that the Chair or any Board member through the Chair can initiate out of session Board business.

Disclosure of interests

74. The Victorian Government considers that adequate provision should be made in proposed section 41 for potential conflicts of interest of the CEO to be disclosed to the Board and the Inter-Governmental Committee on the ACC (IGC).
75. In the course of consultations during the drafting of the Bill the Commonwealth sought to address this issue by amending proposed section 41 to require the CEO to disclose any potential conflicts of interest to both the Commonwealth Minister and the Chair of the Board.
76. However, proposed section 41 is silent as to whether the Chair and the Commonwealth Minister could advise the Board and IGC, respectively, of any potential conflicts of interest disclosed by the CEO. While it is acknowledged that information about the CEO's private interests is of a personal nature and should be treated with discretion, this interest needs to be balanced against the good governance of the ACC.
77. It is suggested that the Chair and Commonwealth Minister should be able to advise the Board and IGC of potential conflicts of interest where appropriate. For example, if the CEO's interests could conflict with the performance of his or her duties in administering the ACC, this information should be available to the Board so that it can make any appropriate directions to the CEO pursuant to proposed section 46A.
78. To this end, it is suggested that proposed section 41 should be amended to expressly allow the Chair of the Board and the Commonwealth Minister to provide information about the CEO's potential conflicts to the Board and the IGC if the Chair or Minister considers it appropriate to do so.

Powers of CEO

79. The Victorian Government considers that the CEO should have an express duty under proposed section 46A to manage the day to day administration of the ACC. This matter was raised with the Commonwealth during consultation on the draft Bill and it is acknowledged that the Commonwealth sought to address the issue by including a specific reference to the day to day administration of the ACC in proposed sub-section 46A(1).
80. However, it appears that in amending proposed sub-section 46A(1) the Commonwealth misconstrued the issue raised in relation to the CEO's powers. The Victorian Government considers that the CEO should have an express general duty to manage the day to day administration of the ACC, in addition to the CEO's obligation in proposed sub-section 46A(1) to manage the ACC in accordance with Board directions. This would make it clear that the CEO has an independent duty to manage the ACC even in the absence of any specific directions from the Board.
81. For example, proposed section 46A could provide that the CEO has a duty to manage the day to day administration of the ACC, and such a duty is subject to any directions given or policies made by the ACC Board.