

PARLIAMENTARY JOINT COMMITTEE ON
THE AUSTRALIAN CRIME COMMISSION

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Law Council
OF AUSTRALIA

Supplementary Information

REVIEW OF THE AUSTRALIAN CRIME COMMISSION ACT 2002

Parliamentary Joint Committee on the Australian Crime
Commission

3 November 2005

1. The Law Council of Australia ("Law Council") is grateful for the invitation to provide supplementary information to the Parliamentary Joint Committee ("PJC") on the Australian Crime Commission ("ACC") in relation to its review of the Australian Crime Commission Act 2002 ("ACC Act").
2. The Law Council provides supplementary information in respect of the following matters raised by the PJC in relation to evidence given by the Law Council at the hearing on 7 October 2005, including:
 - o Further recommendations to address the police dominance on the board;
 - o Information provided in relation to the privilege against self incrimination, and
 - o The potential application of legal professional privilege to the names and address details of lawyers' clients.
3. The Law Council commends the written submission lodged on 6 October 2005 in which issues were raised and recommendations were made. In this supplementary information, reference is made to the written submission where appropriate and does not cover the same ground.

Composition of the Board

4. In the written submission, the Law Council asserts that there is a police dominance on the ACC Board which creates a perception of bias and could potentially skew decision making. In view of this, the Law Council recommends the following:
 - CEO of the ACC to be appointed a board member;
 - AUSTRAC director to be appointed a board member;
 - The Inter-Governmental Committee play a greater role in decision making.
5. At the hearing, the PJC indicated that it was prepared to consider further options which could potentially address the police dominance on the board. Accordingly, the Law Council makes the following additional recommendations:
 - Chair of the ACC Board should be a former judge instead of the Australian Federal Police Commissioner (similar to equivalent bodies in other Australian jurisdictions such as New South Wales, Western Australia and Queensland);
 - AFP Commissioner should remain as a board member;

- The introduction of weighted voting designed to dilute the aggregated power of the police members of the board should be considered. For instance, the Commonwealth Board members could be provided with two votes and the State and Territory Heads of Police with one vote. Smaller police jurisdictions, such as the ACT, NT, Tasmania and South Australia, might be entitled to less votes than the larger jurisdictions.
6. In addition to an increase in the number of board members from the Commonwealth, the Law Council believes that s 7G(4) of the ACC Act should be amended to reflect a better balance.
 7. Currently, s 7G(4) provides that at least 9 board members, of whom only 2 eligible Commonwealth board members, are required to make a determination that an operation is a special operation or that an investigation is a special investigation.
 8. The Law Council recommends that in relation to the minimum of 9 board members required to make a determination that at least 5 (instead of 2) of them should be eligible Commonwealth board members (assuming that the number of Commonwealth government members on the ACC Board are increased).

Privilege Against Self Incrimination

9. In its written submission, the Law Council asserts that the ACC Act or the Regulations should prescribe an obligation to caution in relation to the application of the use immunity where the privilege is claimed pursuant to s 30(4) and (5).
10. The PJC believed that such information and warnings may be provided in relation to ACC examinations and suggested that the ACC procedures manual may cover this issue and that the manual may be accessible to the public (refer to page 49 of the Proof Committee Hansard).
11. The Law Council notes that the ACC procedures manual is a confidential document and has not been released to the public.
12. The Law Council believes that the conduct of ACC examination procedures including the operation of privileges and the obligation to caution should be accessible to the public. Without public access to the ACC rules and procedures governing the conduct of examination, a witness is unaware of his or her rights and obligations.
13. In any event, the Law Council believes that the obligation of examiners including to provide a caution should be included in the ACC Act or its regulations.

Client (Legal Professional) Privilege

14. Senator Kerr sought clarification from the Law Council in relation to the application of client privilege to the client's name and address details.
15. The Law Council submits that common law client privilege may apply to the names and addresses of their clients depending on the circumstances. For instance, in some circumstances the name and address details may be privileged where the disclosure would compromise the confidentiality of the communication.¹
16. In *Commissioner of Taxation (Cth) v Coombes*², Sundberg, Merkel and Kenny JJ, in a joint judgment, said at [28]:

"While the disclosure of the name of the client is not of itself a matter within the privilege, it will be protected where so much has been divulged with regard to the legal services rendered or the advice sought that to reveal the client's name would be to disclose the whole relationship and confidential communications."
17. This issue may arise in cases where lawyer–client communication has already been disclosed to the extent that identification of the client amounts to disclosure of a confidential communication.
18. The Law Council submits that s. 30(3) does abrogate client privilege as in some circumstances the name and address details of a client may be entitled to the protection of the privilege.

¹ *Commissioner of Taxation (Cth) v Coombes* (1999) 164 ALR 131 (Fed Crt)

² (1999) 164 ALR 131