

SUMMARY OF PAPER

**AUSTRALIAN CRIME COMMISSION (ACC)**

**“SAVIOUR OR STAR CHAMBER”?**

**Playing the ACC game – recent developments**

**A PRACTICAL DEFENCE GUIDE**

**“WARNING” this lecture may be a silent lecture because of secrecy provisions of the Act.**

AUSTRALIAN CRIME COMMISSION ACT 2002

1. SECRECY (S51)

- Binding staff, offices etc
- Not divulge or communicate etc
- Fine and 1 year imprisonment

Other secrecy provisions offences related to examinations

E.G. S29A S29B

- Disclosure of summons – related matters – official matters
- Binding on persons served with the summons
- Official matters and matters related to cross examination, ACC investigation etc (Section active for 5 years only for summonses etc)
- Fine and imprisonment

*Practical Hint No. 1: How to communicate and remain lawful*

2. BACKGROUND

The former NCA

The “Head Prefects”

Transition provisions Table A Schedule 1 S76 S55D

3. STRUCTURE OF BOARD AND INTERGOVERNMENTAL COMMITTEES S7 & S8

FUNCTIONS OF ACC - S7A

- Collecting/analysing
- Undertake intelligence operations
- Investigate
- Report
- Provide assessments
- Provide advice

#### 4. EXAMINATIONS (DIVISION 2 OF THE ACT)

(a) The examiner empowers S25A

- Has conduct of proceedings
- Legal representation
- Examination in private
- Control of forum
- Counsel assisting and questioning
- Who is present and the ability to communicate with the persons present

(b) Non Publication Orders (If May Charged With An Offence – Prejudice To Fair Trial)

- Can be revoked or varied
- Limits on the CEO
- Obligation to provide evidence to courts
- Penalty provision for contravening directions

(c) S28 Power to summons “record in writing”

Form of summons in relation to material to be the subject of questioning

- Penalty for witnesses failure to attend

S29A CONFIDENTIALITY OF SUMMONS

S29B DISCLOSURE OFFENDING

(d) S30 failure to attend or failure to answer questions

- Offence and Penalty

S30(6) Self incrimination and the limited use to be made of evidence produced at examination

S33 – False and misleading answers or evidence

- Offence and Penalty
- Direction to answer self-incriminating questions
- Exception with regard to legal professional privilege

#### 5. PRACTICAL DEFENCE GUIDE TO EXAMINATIONS

*Nota bene This section is not based upon any particular cases or upon experience of or from attendance in any particular case or examination (etc).*

Failure to attend/attendance and following

- Declining to take the oath
- Failure to answer questions
- Options
- Providing Statement
- Seeking review from Federal Court
- Reasons for failing to answer questions and the consequences

- Information leaking from the examination
- Being directed to answer self incriminating questions (see Section below relating to the OK cases)
- Consequences of failing to answer questions
- Affect on later criminal trial whether it is for federal or state criminal cases

## 6. RECENT CASE LAW

- OK Cases (decline to answer questions)
- Validity of Summons cases
- Application for stay in Federal or State criminal trials based upon leakage from examination

## 7. CURRENT EFFECTIVENESS AND FUTURE

- High Court and Hammond
- Possible amendments to ACC Act relating to common law rights

8. OVERSIGHT – Australian Commission for Law Enforcement Integrity (ACLEI) (Act of 2006) – how effective?

9. “SECRET BANG FOR THE BUCK?”



## SOME USEFUL CASELAW

R v LB (2001) NTCCA 4 (11 March 2011) on validity of the summons  
 OK v ACC (2009) FCA 1038 – decline to answer questions  
 ACC v OK (2010) FCA 61 – decline to answer questions  
 HAMMOND v COMMONWEALTH 1982 HCA42:(1982) 152CLR 188

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