



Australian Crime Commission Amendment (Special Operations and Special Investigations) Act 2019

No. 114, 2019

An Act to amend the *Australian Crime Commission Act 2002*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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Australian Crime Commission Amendment (Special Operations and Special Investigations) Act 2019

No. 114, 2019

An Act to amend the *Australian Crime Commission Act 2002*, and for related purposes

[Assented to 10 December 2019]

The Parliament of Australia enacts:

1 Short title

This Act is the *Australian Crime Commission Amendment (Special Operations and Special Investigations) Act 2019*.

*No. 114, 2019 Australian Crime Commission Amendment (Special Operations and
Special Investigations) Act 2019 1*

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day this Act receives the Royal Assent.	10 December 2019

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Australian Crime Commission Act 2002

1 Subsection 4(1) (definition of ACC operation/investigation)

Repeal the definition.

2 Subsection 4(1) (definition of intelligence operation)

Omit “the investigation of matters relating”, substitute “undertaking investigations relating”.

3 Subsection 4(1) (paragraph (b) of the definition of member of the staff of the ACC)

Omit “an ACC”, substitute “a special ACC”.

4 Subsection 4(1) (paragraph (b) of the definition of official matter)

Omit “an ACC”, substitute “a special ACC”.

5 Subsection 4(1)

Insert:

special ACC investigation means an investigation relating to federally relevant criminal activity that the Board has authorised to occur.

Note: The Board authorises such an investigation by making a determination under subsection 7C(3). A special ACC investigation can occur only while the determination is in force (see subsection 7C(4F)).

special ACC operation means an intelligence operation that the Board has authorised to occur.

Note: The Board authorises such an operation by making a determination under subsection 7C(2). A special ACC operation can occur only while the determination is in force (see subsection 7C(4E)).

6 Subsection 4(1) (definition of special ACC operation/investigation)

Repeal the definition, substitute:

special ACC operation/investigation means:

- (a) a special ACC operation; or
- (b) a special ACC investigation.

However, a *special ACC operation/investigation* does not include an integrity operation.

7 Subsection 4(1A) (paragraph (b) of the example)

Before “ACC”, insert “special”.

8 Subsection 4(2)

Omit “an ACC”, substitute “a special ACC”.

9 Subparagraph 4A(2)(d)(i)

Omit “is investigating a matter relating to”, substitute “is undertaking an investigation relating to”.

10 Subparagraph 4A(2)(d)(ii)

Omit “investigating, or were to investigate, a matter relating to”, substitute “undertaking, or were to undertake, an investigation relating to”.

11 Subsection 4A(6) (definition of *intelligence operation*)

Omit “the investigation of matters relating”, substitute “undertaking investigations relating”.

12 Paragraphs 7A(b) and (c)

Repeal the paragraphs, substitute:

- (b) when authorised by a determination made by the Board—to undertake special ACC operations;
- (c) when authorised by a determination made by the Board—to undertake special ACC investigations;

13 Paragraphs 7C(1)(c) and (d)

Repeal the paragraphs, substitute:

- (c) to authorise, by determination, a special ACC operation to occur;

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- (d) to authorise, by determination, a special ACC investigation to occur;

14 Subsection 7C(1) (note)

Omit “into matters”.

15 Subsections 7C(2), (3) and (4)

Repeal the subsections, substitute:

Special ACC operations/investigations

- (2) The Board may make a determination, in writing, authorising a special ACC operation to occur.

Note 1: See also subsection 7G(4) for the voting rule that applies in relation to such a determination.

Note 2: See also Division 2 for the examination powers available if a determination is made.

- (3) The Board may make a determination, in writing, authorising a special ACC investigation to occur.

Note 1: See also subsection 7G(4) for the voting rule that applies in relation to such a determination.

Note 2: See also Division 2 for the examination powers available if a determination is made.

- (4) A determination under subsection (2) or (3) may identify the federally relevant criminal activity to which the determination relates at whatever level of generality the Board considers appropriate including (without limitation) by reference to:

- (a) categories of relevant criminal activities; or
- (b) categories of suspected offender; or
- (c) specific allegations of crime; or
- (d) specific offenders; or
- (e) any combination of the above.

- (4A) The only condition for the exercise of the power under subsection (2) or (3) is that the Board considers, on the basis of the collective experience of the Board members voting at the meeting when a determination is made, that it is in the public interest that

the Board authorise the special ACC operation or special ACC investigation to occur.

- (4B) To avoid doubt, a determination under subsection (2) or (3) can be made, and has effect, regardless of whether the ACC:
- (a) is, at the time the determination is made, already investigating any or all of the federally relevant criminal activity to which the determination relates; or
 - (b) subsequently investigates any or all of the federally relevant criminal activity to which the determination relates by any means other than through the exercise by an examiner of the powers under Division 2; or
 - (c) decides to investigate some part of the federally relevant criminal activity to which the determination relates because of a request for assistance by another law enforcement agency.
- (4C) A determination under subsection (2) or (3) must, to the extent that the Board reasonably considers appropriate having regard to the level of generality at which it has authorised a special ACC investigation or special ACC operation to occur:
- (a) describe the general nature of the circumstances or allegations constituting the federally relevant criminal activity to which the determination relates; and
 - (b) set out the purpose of the investigation or operation;
- but, to avoid doubt, the determination is not required to specify:
- (c) any particular offence or offences; or
 - (d) any particular conduct, transaction or person to which the investigation or operation relates; or
 - (e) any timeframe within which:
 - (i) any federally relevant criminal activity may have occurred; or
 - (ii) the investigation or operation must commence or be completed.
- (4D) The Board may, at any time, revoke a determination made under subsection (2) or (3).
- (4E) A special ACC operation can be undertaken only while a determination under subsection (2) is in force.
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- (4F) A special ACC investigation can be undertaken only while a determination under subsection (3) is in force.
- (4G) A determination under subsection (2) or (3) is in force during the period:
- (a) beginning immediately after the determination is made; and
 - (b) ending at the earliest of the following:
 - (i) the end of the period of 3 years beginning immediately after the determination is made;
 - (ii) the end of the day on which the determination is revoked under subsection (4D);
 - (iii) if the determination is revoked under subsection 9(7)—when the CEO is notified of the revocation.
- (4H) Paragraph (4G)(b) does not prevent the making of another determination under subsection (2) or (3) in the same terms as the expired or revoked determination.
- (4J) The validity of the determination is not affected by any failure to comply with subsection (4C).
- (4K) A determination made under subsection (2) or (3) is not a legislative instrument.

16 Subsection 7C(6)

Repeal the subsection.

17 Subsection 7G(4)

Omit “determine that an intelligence operation is a special operation, or that an investigation into matters relating to federally relevant criminal activity is a special investigation,” substitute “make a determination under subsection 7C(2) or (3)”.

18 Subparagraph 7J(1)(b)(ii)

Omit “determine that an intelligence operation is a special operation, or that an investigation into matters relating to federally relevant criminal activity is a special investigation”, substitute “make a determination under subsection 7C(2) or (3)”.

19 Subsection 7K(4)

Omit all the words after “the function of”, substitute “making a determination under subsection 7C(2) or (3)”.

20 Subsection 9(8) (note)

Repeal the note.

21 Subsection 9(9)

Before “ACC”, insert “special”.

22 Subsections 12(1) and (1A)

Omit “an ACC”, substitute “a special ACC”.

23 Section 16

After “If”, insert “a determination is made under”.

24 Paragraphs 16(a) and (b)

Repeal the paragraphs, substitute:

- (a) subsection 7C(2); or
- (b) subsection 7C(3);

25 Paragraph 18(2)(a)

Before “ACC”, insert “special”.

26 Paragraph 19A(1)(b)

Omit “an ACC”, substitute “a special ACC”.

27 Subsection 19A(2)

Omit “an ACC”, substitute “a special ACC”.

28 Subsection 19A(8) (paragraph (c) of the definition of *relevant matters*)

Before “ACC”, insert “special”.

29 Paragraphs 20(1)(b) and (2)(b)

Omit “an ACC”, substitute “a special ACC”.

30 Paragraph 24ABA(1)(a)

After “purposes of the” insert “special”.

31 Subsection 25A(6)

Before “ACC” (wherever occurring), insert “special”.

32 Subsection 25A(6A)

Before “ACC”, insert “special”.

33 Subsection 28(2)

Omit all the words after “determination”, substitute “made by the Board under subsection 7C(2) or (3)”.

34 Subsection 46A(2) (heading)

Repeal the heading, substitute:

Special ACC operations/investigations

35 Subsection 46A(2)

Before “ACC”, insert “special”.

36 Subsection 46A(2A)

Repeal the subsection, substitute:

(2A) As soon as practicable after the Board makes a determination under subsection 7C(2) or (3), the CEO must determine, in writing, the head of the special ACC operation or the special ACC investigation.

37 Subsection 46A(3)

Omit “an ACC”, substitute “a special ACC”.

38 Paragraph 46A(4)(b)

After “nature of the”, insert “special”.

39 Paragraph 55A(2)(a)

Omit “investigating a matter”, substitute “undertaking an investigation”.

40 Subparagraph 55A(2)(b)(i)

Omit “of that matter”.

41 Paragraph 55A(3)(a)

Omit “investigate a matter”, substitute “undertake an investigation”.

42 Paragraph 55A(4)(a)

Omit “the investigation of a matter”, substitute “an investigation”.

43 Subparagraph 55A(4)(b)(i)

Omit “of that matter”.

44 Paragraph 55A(5A)(a)

Omit “the investigation of a matter”, substitute “an investigation”.

45 Paragraph 55A(5B)(a)

Omit “the investigation of a matter”, substitute “an investigation”.

46 Subparagraph 55A(5B)(b)(i)

Omit “of that matter”.

47 Subsection 55A(9)

Omit “the investigation of a matter or matters”, substitute “undertaking investigations”.

48 Paragraph 55B(1)(a)

Omit “investigating a matter”, substitute “undertaking an investigation”.

49 Paragraph 55C(1)(c)

Omit “of a matter”.

50 Subsection 55C(2)

Omit “of a matter”.

51 Paragraph 59(3)(a)

Omit “an ACC”, substitute “a special ACC”.

52 Paragraph 61(2)(a)

Repeal the paragraph, substitute:

- (a) a description of any special ACC investigations undertaken during the year;

53 Application provisions

- (1) Despite the amendment of paragraph (b) of the definition of **official matter** in subsection 4(1) of the *Australian Crime Commission Act 2002* made by this Schedule, that paragraph continues to apply, after the commencement of this item, in relation to notices issued under section 21A and summonses issued under section 28 before that commencement as if that amendment had not happened.
- (2) The amendments of sections 19A and 20 of the *Australian Crime Commission Act 2002* made by this Schedule apply in relation to requests and requirements made after the commencement of this item, regardless of whether:
 - (a) the special ACC operation/investigation commenced before or after that commencement; or
 - (b) the information, documents and things were acquired, or came into existence, before or after that commencement.

54 Transitional provisions

- (1) If a determination (the **old determination**) of the Board under subsection 7C(2) of the *Australian Crime Commission Act 2002* was in effect immediately before the commencement of this item, the old determination is taken, on and after that commencement, to be a determination (the **new determination**) made by the Board under that subsection, as amended by this Act.
- (2) If a determination (also the **old determination**) of the Board under subsection 7C(3) of the *Australian Crime Commission Act 2002* was in effect immediately before the commencement of this item, the old determination is taken, on and after that commencement, to be a determination (also the **new determination**) made by the Board under that subsection, as amended by this Act.
- (3) For the purposes of paragraph 7C(4G)(a) and subparagraph 7C(4G)(b)(i) of the *Australian Crime Commission Act*

2002, as inserted by this Schedule, the new determination is taken to have been made when the old determination was made.

55 Validation of determinations

- (1) This item applies if, before the commencement of this item:
 - (a) the Board made, or purported to make, a determination under subsection 7C(2) or (3) of the *Australian Crime Commission Act 2002*, as in force immediately before the commencement of this item; and
 - (b) the determination would, apart from this item, be invalid or ineffective because it did not satisfy the requirements of that Act.
- (2) The determination, and any other thing done in relation to the determination, is as valid and effective, and is taken always to have been as valid and effective, as it would have been had the determination satisfied those requirements.
- (3) If, and to the extent that, this item would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (4) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (5) This item does not affect rights or liabilities arising between parties to proceedings heard and finally determined by a court on or before the commencement of this item, to the extent that those rights or liabilities arose from, or were affected by, a determination referred to in subitem (1).
- (6) In this item, **determination** includes purported determination.

56 Validation of the exercise of powers etc.

- (1) This item applies:
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- (a) in relation to a thing done by a person in connection with a special ACC operation/investigation before the commencement of this item:
- (i) in the performance of any function; or
 - (ii) in the exercise of any power;
- under a provision of the *Australian Crime Commission Act 2002*; and
- (b) to the extent that the doing of the thing would, apart from this item, be invalid or ineffective because no investigation or intelligence operation was being undertaken at the time the thing was done.
- (2) The thing done is as valid and effective, and is taken always to have been as valid and effective, as it would have been if an investigation or intelligence operation were being undertaken at the time the thing was done.
- (3) If, and to the extent that, this item would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (4) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Federal Court determines.
- (5) This item does not affect rights or liabilities arising between parties to proceedings heard and finally determined by a court on or before the commencement of this item, to the extent that those rights or liabilities arose from, or were affected by, the doing of a thing referred to in subitem (1).
- (6) In this item:
- exercise of a power*** includes a purported exercise of a power.
- performance of a function*** includes a purported performance of a function.
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***Parliamentary Joint Committee on Law Enforcement Act
2010***

57 Section 3 (definition of ACC operation/investigation)

Repeal the definition.

58 Section 3 (subparagraph (c)(v) of the definition of sensitive information)

Omit “an ACC” (wherever occurring), substitute “a special ACC”.

59 Section 3

Insert:

special ACC operation/investigation has the same meaning as in the ACC Act.

60 Paragraph 7(2)(b)

Omit “particular ACC operation/investigation (including an ACC”, substitute “particular special ACC operation/investigation (including a special ACC”.

61 Paragraph 8(1)(a)

Omit “an ACC” (wherever occurring), substitute “a special ACC”.

62 Application of amendments

Despite the amendments of the *Parliamentary Joint Committee on Law Enforcement Act 2010* made by this Schedule, that Act (as in force immediately before the commencement of this item) continues to apply on and after that commencement in relation to ACC operations/investigations commenced before that commencement (including concluded ACC operations/investigations) as if those amendments had not happened.

Telecommunications (Interception and Access) Act 1979

63 Subsection 5(1) (definition of ACC operation/investigation)

Repeal the definition.

64 Subsection 5(1) (subparagraph (aa)(i) of the definition of *permitted purpose*)

Omit “an ACC”, substitute “a special ACC”.

65 Subsection 5(1) (paragraph (a) of the definition of *prescribed investigation*)

Omit “an ACC”, substitute “a special ACC”.

66 Subsection 5(1)

Insert:

special ACC investigation has the same meaning as in the ACC Act.

special ACC operation/investigation has the same meaning as in the ACC Act.

67 Paragraph 5D(1)(f)

Omit “a special investigation”, substitute “an ACC special investigation”.

68 Application of amendments

Despite the amendments of the *Telecommunications (Interception and Access) Act 1979* made by this Schedule, that Act (as in force immediately before the commencement of this item) continues to apply on and after that commencement in relation to ACC operations/investigations commenced before that commencement as if those amendments had not happened.

*[Minister's second reading speech made in—
House of Representatives on 28 November 2019
Senate on 5 December 2019]*

(230/19)

16 *Australian Crime Commission Amendment (Special Operations and
Special Investigations) Act 2019* No. 114, 2019