

EXPOSURE DRAFT

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Parliamentary Joint Committee on Law Enforcement Bill 2009

No. , 2009

(Attorney-General)

**A Bill for an Act to establish a Parliamentary Joint
Committee on Law Enforcement, and for related
purposes**

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1 **A Bill for an Act to establish a Parliamentary Joint**
2 **Committee on Law Enforcement, and for related**
3 **purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *Parliamentary Joint Committee on*
9 *Law Enforcement Act 2009*.

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Part 1 Preliminary

Section 2

1 **2 Commencement**

2 This Act commences on the day after it receives the Royal Assent.

3 **3 Definitions**

4 In this Act:

5 **ACC** means the Australian Crime Commission established by
6 section 7 of the *Australian Crime Commission Act 2002*.

7 **ACC operation/investigation** has the same meaning as in the
8 *Australian Crime Commission Act 2002*.

9 **AFP** means the Australian Federal Police.

10 **AFP conduct or practices issue** has the same meaning as in the
11 *Australian Federal Police Act 1979*.

12 **CEO of the ACC** means the Chief Executive Officer of the ACC.

13 **intelligence operation** has the same meaning as in the *Australian*
14 *Crime Commission Act 2002*.

15 **law enforcement agency** means:

- 16 (a) the ACC; or
17 (b) the AFP; or
18 (c) a Police Force of a State; or
19 (d) any other authority or person responsible for the enforcement
20 of the laws of the Commonwealth or of the States.

21 **member** means a member of the Committee.

22 **member of the Australian Federal Police** has the same meaning as
23 in the *Australian Federal Police Act 1979*.

24 **member of the staff of the ACC** has the same meaning as in the
25 *Australian Crime Commission Act 2002*.

26 **relevant criminal activity** has the same meaning as in the
27 *Australian Crime Commission Act 2002*.

28 **sensitive information** means information that, if disclosed:

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- 1 (a) could prejudice:
2 (i) the security, defence or international relations of
3 Australia; or
4 (ii) relations between the Commonwealth Government and
5 the Government of a State or between the Government
6 of a State and the Government of another State; or
7 (b) would disclose:
8 (i) deliberations or decisions of the Cabinet, or of a
9 Committee of the Cabinet, of the Commonwealth or of a
10 State; or
11 (ii) deliberations or decisions of the Australian Capital
12 Territory Executive or of a committee of that Executive;
13 or
14 (iii) deliberations or advice of the Federal Executive Council
15 or the Executive Council of a State or the Northern
16 Territory; or
17 (c) could reveal, or enable a person to ascertain, the existence or
18 identity of a confidential source of information in relation to:
19 (i) the enforcement of the criminal law of the
20 Commonwealth, a State or Territory or a foreign
21 country; or
22 (ii) an investigation relating to misconduct or alleged
23 misconduct by a member of the Australian Federal
24 Police; or
25 (iii) an investigation relating to misconduct or alleged
26 misconduct by a member of the staff of the ACC; or
27 (iv) an investigation into an AFP conduct or practices issue;
28 or
29 (v) an ACC operation/investigation (including an ACC
30 operation/investigation that has been concluded); or
31 (d) could endanger a person's life or physical safety; or
32 (e) could prejudice the protection of public safety; or
33 (f) could prejudice the fair trial of a person or the impartial
34 adjudication of a matter; or
35 (g) could prejudice the proper enforcement of the law or the
36 operations of law enforcement agencies; or
37 (h) could prejudice a person's reputation; or

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Part 1 Preliminary

Section 4

- 1 (i) would disclose information the disclosure of which is
2 prohibited (absolutely or subject to qualifications) by or
3 under another law of the Commonwealth; or
4 (j) would unreasonably disclose personal information (within
5 the meaning of the *Privacy Act 1988*); or
6 (k) would unreasonably disclose confidential commercial
7 information.

8 *State* includes the Australian Capital Territory and the Northern
9 Territory.

10 *the Committee* means the Parliamentary Joint Committee on Law
11 Enforcement for the time being constituted under this Act.

12 **4 Extension to external Territories**

13 This Act extends to every external Territory.
14

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1 **Part 2—Joint Parliamentary Committee on Law**
2 **Enforcement**
3

4 **5 Joint Parliamentary Committee on Law Enforcement**

- 5 (1) As soon as practicable after the commencement of the first session
6 of each Parliament, a joint committee of members of the
7 Parliament, to be known as the Parliamentary Joint Committee on
8 Law Enforcement, is to be appointed according to the practice of
9 the Parliament with reference to the appointment of members to
10 serve on joint select committees of both Houses of the Parliament.
- 11 (2) The Committee is to consist of 10 members, namely, 5 members of
12 the Senate appointed by the Senate, and 5 members of the House of
13 Representatives appointed by that House.
- 14 (3) A member of the Parliament is not eligible for appointment as a
15 member of the Committee if he or she is:
16 (a) a Minister; or
17 (b) the President of the Senate; or
18 (c) the Speaker of the House of Representatives; or
19 (d) the Deputy-President and Chair of Committees of the Senate
20 or the Chair of Committees of the House of Representatives.
- 21 (4) A member ceases to hold office:
22 (a) when the House of Representatives expires by effluxion of
23 time or is dissolved; or
24 (b) if he or she becomes the holder of an office specified in any
25 of the paragraphs of subsection (3); or
26 (c) if he or she ceases to be a member of the House of the
27 Parliament by which he or she was appointed; or
28 (d) if he or she resigns his or her office as provided by
29 subsection (5) or (6).
- 30 (5) A member appointed by the Senate may resign his or her office by
31 writing signed by him or her and delivered to the President of the
32 Senate.

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Part 2 Joint Parliamentary Committee on Law Enforcement

Section 6

- 1 (6) A member appointed by the House of Representatives may resign
2 his or her office by writing signed by him or her and delivered to
3 the Speaker of that House.
- 4 (7) Either House of the Parliament may appoint one of its members to
5 fill a vacancy amongst the members of the Committee appointed
6 by that House.

7 Powers and proceedings of the Committee

8 All matters relating to the powers and proceedings of the
9 Committee are to be determined by resolution of both Houses of
10 the Parliament.

11 7 Functions of the Committee

- 12 (1) The Committee has the following functions:
- 13 (a) to monitor and to review the performance by the ACC of its
14 functions;
- 15 (b) to report to both Houses of the Parliament, with such
16 comments as it thinks fit, upon any matter appertaining to the
17 ACC or connected with the performance of its functions to
18 which, in the opinion of the Committee, the attention of the
19 Parliament should be directed;
- 20 (c) to examine each annual report on the ACC and report to the
21 Parliament on any matter appearing in, or arising out of, any
22 such annual report;
- 23 (d) to monitor and to review the performance by the AFP of its
24 functions;
- 25 (e) to report to both Houses of the Parliament, with such
26 comments as it thinks fit, upon any matter appertaining to the
27 AFP or connected with the performance of its functions to
28 which, in the opinion of the Committee, the attention of the
29 Parliament should be directed;
- 30 (f) to examine each annual report on the AFP and report to the
31 Parliament on any matter appearing in, or arising out of, any
32 such annual report;
- 33 (g) to examine trends and changes in criminal activities,
34 practices and methods and report to both Houses of the

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1 Parliament any change which the Committee thinks desirable
2 to the functions, structure, powers and procedures of the
3 ACC or the AFP;

4 (h) to inquire into any question in connection with its duties
5 which is referred to it by either House of the Parliament, and
6 to report to that House upon that question.

7 Note 1: For the functions of the ACC, see section 7A of the *Australian Crime*
8 *Commission Act 2002*.

9 Note 2: For the functions of the AFP, see section 8 of the *Australian Federal*
10 *Police Act 1979*.

11 (2) The functions of the Committee do not include:

12 (a) undertaking an intelligence operation or investigating a
13 matter relating to a relevant criminal activity; or

14 (b) reconsidering the findings of the ACC in relation to a
15 particular ACC operation/investigation (including an ACC
16 operation/investigation that has been concluded); or

17 (c) reviewing sensitive operational information or operational
18 methods available to the ACC or the AFP; or

19 (d) reviewing particular operations or investigations that have
20 been, are being or are proposed to be undertaken by the ACC
21 or the AFP; or

22 (e) reviewing information provided by, or by an agency of, a
23 foreign government where that government does not consent
24 to the disclosure of the information; or

25 (f) conducting inquiries into individual complaints about the
26 activities of the ACC or the AFP.

27 (3) To avoid doubt, the Committee may examine, and report to both
28 Houses of the Parliament on, information given to it under
29 section 8 or 9.

30 **8 Disclosure to Committee by CEO of the ACC**

31 (1) Subject to subsection (2), the CEO of the ACC:

32 (a) must comply with a request by the Committee to give the
33 Committee information in relation to an ACC
34 operation/investigation (including an ACC
35 operation/investigation that has been concluded); and

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Part 2 Joint Parliamentary Committee on Law Enforcement

Section 9

- 1 (b) must when requested by the Committee, and may at such
2 other times as the CEO thinks appropriate, inform the
3 Committee concerning the general performance of the ACC's
4 functions.
- 5 (2) The CEO of the ACC may decide not to comply with the request if
6 the CEO is satisfied that:
7 (a) the information is sensitive information; and
8 (b) the public interest that would be served by giving the
9 information to the Committee is outweighed by the
10 prejudicial consequences that might result from giving the
11 information to the Committee.
- 12 (3) If the CEO of the ACC does not give information to the Committee
13 because of subsection (2), the Committee may refer the request to
14 the Minister responsible for the ACC.
- 15 (4) If the Committee refers the request to the Minister responsible for
16 the ACC, the Minister responsible for the ACC:
17 (a) must determine in writing whether:
18 (i) the information is sensitive information; and
19 (ii) if it is, whether the public interest that would be served
20 by giving the information to the Committee is
21 outweighed by the prejudicial consequences that might
22 result from giving the information to the Committee;
23 and
24 (b) must provide copies of that determination to the CEO of the
25 ACC and the Committee.
- 26 (5) The Minister responsible for the ACC is not required to disclose
27 his or her reasons for making a determination under subsection (4).
- 28 (6) A determination made by the Minister responsible for the ACC
29 under subsection (4) is not a legislative instrument.

9 Disclosure to Committee by Commissioner of the AFP

- 30 (1) Subject to subsection (2), the Commissioner of the AFP:
31

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- 1 (a) must comply with a request by the Committee to give the
2 Committee information in relation to an investigation that the
3 AFP has conducted or is conducting; and
4 (b) must when requested by the Committee, and may at such
5 other times as the Commissioner thinks appropriate, inform
6 the Committee concerning the general performance of the
7 AFP's functions.
- 8 (2) The Commissioner of the AFP may decide not to comply with the
9 request if the Commissioner is satisfied that:
10 (a) the information is sensitive information; and
11 (b) the public interest that would be served by giving the
12 information to the Committee is outweighed by the
13 prejudicial consequences that might result from giving the
14 information to the Committee.
- 15 (3) If the Commissioner of the AFP does not give information to the
16 Committee because of subsection (2), the Committee may refer the
17 request to the Minister responsible for the AFP.
- 18 (4) If the Committee refers the request to the Minister responsible for
19 the AFP, the Minister responsible for the AFP:
20 (a) must determine in writing whether:
21 (i) the information is sensitive information; and
22 (ii) if it is, whether the public interest that would be served
23 by giving the information to the Committee is
24 outweighed by the prejudicial consequences that might
25 result from giving the information to the Committee;
26 and
27 (b) must provide copies of that determination to the
28 Commissioner of the AFP and the Committee.
- 29 (5) The Minister responsible for the AFP is not required to disclose his
30 or her reasons for making a determination under subsection (4).
- 31 (6) A determination made by the Minister responsible for the AFP
32 under subsection (4) is not a legislative instrument.

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Part 2 Joint Parliamentary Committee on Law Enforcement

Section 10

1 **10 Ombudsman to brief Committee about controlled operations**

2 (1) At least once in each calendar year the Ombudsman must provide a
3 briefing to the Committee about the involvement of the ACC and
4 the AFP in controlled operations under Part IAB of the *Crimes Act*
5 *1914* during the preceding 12 months.

6 (2) For the purposes of receiving a briefing from the Ombudsman
7 under subsection (1), the Committee must meet in private.
8

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Miscellaneous **Part 3**

Section 11

1 **Part 3—Miscellaneous**
2

3 **11 Regulations**

4 The Governor-General may make regulations prescribing matters:
5 (a) required or permitted by this Act to be prescribed; or
6 (b) necessary or convenient to be prescribed for carrying out or
7 giving effect to this Act.