Law Council
OF AUSTRALIA

Review of the Australian Criminal Intelligence Commission reform package 2026

Parliamentary Joint Committee on Intelligence and Security

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Contents

Acknowledgements 1

Executive summary 2

General comments 6

- Reframing the ACIC as a “criminal intelligence” agency 6
- Risks to the administration of justice 8

Gateway definitions 11

- “Serious and organised crime” 11
- “Combatting” 17
- “Relevant to” 19
- Post-charge and post-confiscation application coercive questioning 20

Cooperation and information sharing communication: the ACIC and other agencies 23

- Information sharing and disclosure frameworks 24
- Cooperation with other persons or bodies 25

Coercive powers framework 31

- Authorisation framework 33
- Notice to produce and summons to appear at examination 38
- Examiners 40
- Coercive questioning and production 43
- Legal practitioners 55

Controlled intelligence operations—Part 4 58

- Urgent grant and variation of CIO authorisation—Division 3 59
- General Provisions—Division 4 61
- Notifications and other matters—Division 7 62

Search warrants—Part 5 63

- Premises search warrants—Division 2 63
- Person search warrants 66

About the Law Council of Australia 68

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Executive summary

1. The Law Council welcomes the opportunity to respond to the Joint Parliamentary Committee on Intelligence and Security's review of the Australian Criminal Intelligence Commission reform package 2026. Although the package is comprised of two Bills—the Australian Criminal Intelligence Commission Bill 2026 (Cth) (the **ACIC Bill**) and the Australian Criminal Intelligence Commission (National Policing Information Charges) Bill 2026 (Cth)—the Law Council's submission is focused exclusively on provisions of the ACIC Bill.

2. The ACIC Bill seeks to re-characterise the ACIC as an intelligence agency concerned with developing intelligence relating to "serious and organised crime", while also preserving the important functions the ACIC currently performs in relation to criminal intelligence assessments and nationally coordinated criminal history checks.

3. The Law Council acknowledges that serious and organised crime represents a significant threat to the safety and wellbeing of the Australian community and imposes substantial costs across the economy.[1] The economic cost was estimated by the Australian Institute of Criminology to be between $35.5 billion and $82.3 billion in 2023–24.[2] We also share the concerns expressed by the Director-General of Security about a degraded national security landscape and note his public acknowledgment of a relationship between transnational organised crime, state actors, and antisemitic violence and property damage in Australia.[3]

4. The Law Council supports, in principle, the clarification of the functions and purposes of the ACIC as a criminal intelligence agency with powers that are consistent with the rule of law, and demonstrably necessary and proportionate to the gravity of possible harms that may befall the Australian community. The ACIC Bill requires some refinement to meet that standard.

5. Indeed, neither the ACIC Bill nor its supporting materials contain a definition of "criminal intelligence". While not strictly necessary to the operation of the proposed legislation, the absence of a clear articulation of a core concept, practice, and type of information sitting behind the legislation risks infusing the drafting with ambiguity of focus and limitation. Unlike the unique but nebulous concept of "security intelligence"—as expressed through the Australian Security Intelligence Organisation's core definitions and functions,[4] "criminal intelligence" retains a direct relationship to the criminal law. This relationship requires that appropriate consideration be given to the proper administration of an adversarial justice system that includes the constitutionally protected role of the courts, the preservation of fair trial rights, and suitable checks and balances.

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1 Australian Criminal Intelligence Commission, *Opening the Books: The impact of serious and organised crime in Australia in 2025* (Report, 6 November 2025).

2 Alexandra Voce and Anthony Morgan, 'The costs of serious and organised crime in Australia, 2023–24', *Australian Institute of Criminology* (Statistical Report No. 55, 6 November 2025).

3 Mike Burgess, 'Director-General's Annual Threat Assessment 2026', *Australian Security Intelligence Organisation* (Speech, 24 June 2026) <https://www.asio.gov.au/resources/speeches-and-statements/director-generals-annual-threat-assessment-2026>.

4 Australian Security Intelligence Organisation Act 1979 (Cth) s 4 (definition of security) and s 17.

6. The Bill does not adequately define the key term of "serious and organised crime", a gateway definition that establishes the remit of the agency and justifies recourse to extraordinary intelligence collection powers with clarity and precision. Instead, the definition is drafted too broadly, confuses evidence of circumstances with the conduct being defined, invites unqualified speculation about possible conduct, and can be expanded by regulation.

7. Our submission recommends that additional work be undertaken to ensure that key definitions are clear and certain, appropriate, and strictly necessary to authorise and constrain the extraordinary powers of the ACIC.

8. The ACIC has extraordinary powers, which deviate from the traditional norms and safeguards that have developed for law enforcement and support fundamental rights and freedoms, such as fair trial rights and the privilege against self-incrimination. Such extraordinary powers contained in the ACIC Bill, which deviate from the usual standards embedded in the criminal justice process, include:

    - compelling persons, including non-suspects and minors, to answer questions, on pain of punishment, even though the answers may incriminate them;
    - taking information obtained under threat of punishment and using that information to find evidence that may be used to support a criminal prosecution and sharing that evidence with police and prosecutors;
    - compelling persons who are subject to criminal proceedings to answer questions about the circumstances of those allegations before their case has been finalised;
    - imposing secrecy conditions attached to criminal offences for disclosing that a person has been compelled to participate in an ACIC process;
    - restrictions on the right to obtain legal representation by a practitioner of the person's choosing;
    - authorising staff and agents or informants to break laws in order to obtain intelligence as part of a controlled operation; and
    - searching premises without notifying the occupier and concealing traces of that clandestine access, even after the search warrant has expired.

9. In our view, such extraordinary powers are not the norm. In this context, their use is only ever justifiable when strictly limited to the extent necessary to achieve the public policy aim of collecting intelligence about serious criminal offending by sophisticated actors, and those powers are buttressed by robust safeguards and vigilant oversight. We are concerned that there are some significant shortcomings with provisions of the ACIC Bill.

10. There are several reasons for this. The ACIC Bill's proposed functions and powers for a re-oriented ACIC remain closely linked to sophisticated criminal conduct and contemplate the utilisation of extraordinary powers to supplement traditional investigative techniques. In doing so, the frameworks for the ACIC's powers will be directed at gathering information about conduct that may, in future, form the basis of criminal prosecutions. The actions of the ACIC therefore carry an appreciable risk to the administration of justice and the right to a fair trial by potentially prejudicing the fairness of such trials. In such a context, the importance of effective legislative

safeguards, an organisational culture of compliance with rules and guidelines, and independent and appropriately resourced oversight cannot be overstated.

11. Second, given that the constitutionality of post-charge coercive questioning frameworks has not been settled,[5] and that Parliament will want to ensure a constitutionally sound scheme, we consider it vitally important to ensure that the powers in question are as tightly calibrated to necessity as possible, and that all safeguard mechanisms are stress-tested against foreseeable abuse, misunderstanding, or temptation. We recommend that the PJCIS apply due caution in this regard, as public safety and the related policy aims of suppressing organised crime are not enhanced if frameworks are found to be unconstitutional and proceedings are stayed in consequence.

12. The Law Council's submission focuses on refining the approach adopted in the Bill to better achieve what we agree are important public policy outcomes. Thematically, our submission addresses the following issues (although we note that our submission broadly follows the order of provisions in the ACIC Bill). Our submission recommends that the PJCIS consider:

Clarifying the ACIC's intelligence mandate

- clarifying that the ACIC's intrusive powers are to be used for purposes appropriate to a criminal intelligence agency and not to be used primarily for law enforcement outcomes or to bolster prosecutions;
- ensuring that the definition of "serious and organised crime" is clear, certain, and not unduly broad; and
- removing disruption and prosecution from the definition of "combat".

Protecting the administration of justice where intelligence powers intersect with criminal proceedings

- strengthening the tests and thresholds for the utilisation of coercive powers in circumstances proximate to criminal justice processes;
- improving controls on compelled and derivative material, including more robust protections where derived materials are to be obtained, used or communicated;
- if derivative use immunity is not provided, deferring the use of coercive powers until the resolution of criminal proceedings;
- requiring examiners to have appropriate seniority when using coercive powers in circumstances where a criminal charge is imminent or underway; and
- requiring examiners to undertake an objective inquiry into the circumstances surrounding the use of coercive powers.

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5 Paragraph [18] of this submission.

Strengthening external authorisation and oversight of extraordinary powers

- introducing a genuine "double-lock" process to authorise access to the coercive powers framework and stronger authorisation thresholds;
- clarifying the meaning of "policing support" provided by the Australian Federal Police and ensuring that the activities of police are appropriately oversighted when engaging with the ACIC;
- requiring search warrants to be issued by judges acting *persona designata*; and
- expanding IGIS notification and oversight in circumstances of urgency.

13. The Law Council's recommendations follow careful and constructive engagement with the ACIC Bill. We consider the public policy objective of addressing sophisticated and well-resourced organised crime to be important for the safety and prosperity of the Australian community. If implemented, our recommendations would ensure that the ACIC maintains a more separated intelligence collection mandate capable of guiding strategic policy and operations of law enforcement and policing agencies while nevertheless preserving the adversarial justice system, and ensuring that individual's rights are afforded greater protection. At the same time, our recommendations would improve the architecture of the ACIC legislation to ensure that misconduct and misuse of powers are minimised, and decisions and authorisation are more independently made and properly scrutinised, while ensuring that intelligence collection activities authorised under the Bill are more appropriately oversighted.

General comments

14. The Law Council of Australia welcomes the opportunity to respond to the Parliamentary Joint Committee on Intelligence and Security's (**PJCIS**'s) review of the Australian Criminal Intelligence Commission (**ACIC**) reform package 2026. The package comprises two Bills:

    - Australian Criminal Intelligence Commission Bill 2026 (Cth) (the **ACIC Bill**); and
    - Australian Criminal Intelligence Commission (National Policing Information Charges) Bill 2026 (Cth).

15. We thank the Department of Home Affairs for the opportunity to discuss the proposed operation of the ACIC Bill and the policy matters and issues that underpin its drafting.

16. The existing powers and functions of the ACIC are primarily located in the *Australian Crime Commission Act 2002* (Cth) (**ACC Act**).

17. The Law Council has previously expressed concerns about the breadth of the ACIC's existing functions and extraordinary powers across both intelligence activities (collection, analysis and dissemination) and normal law enforcement / policing.[6] The review of the ACIC reform package presents a meaningful opportunity to improve the operation, safeguards and oversighting of the extraordinary powers of the ACIC. This submission makes a series of recommendations to improve such safeguards and contribute towards minimising the risk of subsequent malfeasance or misuse.

18. We acknowledge that key questions concerning the constitutionality of coercive questioning frameworks, particularly in circumstances where the powers in question concern the availability and use of post-charge or post-confiscation, remain unanswered despite being raised in *X7 v Australian Crime Commission* (***X7***).[7] Reform in this area should maximise compliance with the case law that has developed concerning post-charge compulsory questioning frameworks, particularly as the question of constitutional validity remains outstanding. Where matters of serious and organised crime are concerned, the risk of harm to the community that flows from prosecutions being permanently stayed or convictions overturned ought to be a live consideration for the PJCIS.

Reframing the ACIC as a "criminal intelligence" agency

19. In 2024, Stephen Merchant and Greg Wilson conducted an independent review of the functions of the ACIC (the **Independent Review**). The Independent Review concluded that the ACIC is currently "inhibited from fulfilling this intelligence mandate by a lack of clarity about its role, complicated legislative frameworks and uncertainty about its funding",[8] and recommended that comprehensive reform be undertaken to

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6 See, eg, Law Council of Australia, *Inquiry into the gathering and use of criminal intelligence* (Submission to the Parliamentary Joint Committee on Law Enforcement, 1 August 2012) 3.

7 (2013) 248 CLR 92.

8 Stephen Merchant and Greg Wilson, *Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements* (Unclassified Report, May 2024) 7.

focus the role of the ACIC on "providing unique and incisive intelligence on serious and organised crime to Commonwealth, state and territory law enforcement agencies".[9] The Independent Review noted that re-positioning the ACIC as a criminal intelligence agency would mean that it would no longer undertake investigations for the purpose of collecting evidence to support a prosecution.[10]

20. The role of a re-designed ACIC was described in the Minister's second reading speech as:

> *… obtain[ing] and provid[ing] actionable intelligence on the complex and evolving criminal networks impacting Australia today and into the future. It is essential that law enforcement agencies are supported by unique and insightful intelligence to more effectively direct their disruption efforts.*[11]

21. Neither "intelligence" nor "criminal intelligence" is defined in the legislation.[12] These terms are not fully explicated in the Independent Review. The Explanatory Memorandum to the ACIC Bill (**EM**) specifies that "the term 'intelligence' is to be taken to have its ordinary meaning, and includes data, facts or other information that has or has not yet been analysed, evaluated or processed".[13] While the word intelligence may be taken to have an ordinary meaning, the phrase "criminal intelligence" does not so readily admit to an "ordinary meaning". In our view, the more proximate "intelligence activities" are to traditional criminal investigations of criminal offences and proceedings before the courts, the more important it becomes to be able to draw clear lines between functions and purposes. We emphasise that "traditional" must be considered "the norm".

22. As a criminal intelligence agency, the ACIC's mandate for the exercise of its extraordinary powers carries an increased risk of direct and adverse impacts on the administration of justice and the right to a fair trial when compared to other Commonwealth intelligence agencies with similarly extraordinary investigation powers, for example, the Australian Security Intelligence Organisation (**ASIO**).

23. The Australian Law Reform Commission, in its 2016 *Traditional Rights and Freedoms* report, summarised the concept of a fair trial as including the following attributes:

- that a defendant not to be compelled to testify against themselves nor be compelled to confess guilt
- that trial proceedings are held in public, and the judgment of the court is delivered in public;
- the presumption of innocence, where the prosecution bears the onus of proof and must prove guilt beyond reasonable doubt;
- the defendant is informed, in a manner they understand, of the nature and cause of any charges laid against them;
- the defendant can communicate with counsel of their own choosing;

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9 Ibid.
10 Ibid 19.
11 Commonwealth, *Parliamentary Debates*, House of Representatives, 25 March 2026, 13 (Julian Hill, Assistant Minister for Citizenship, Customs and Multicultural Affairs).
12 NB "intelligence or advisory function" is defined at s 7, this refers circularly to paragraphs of the section 24 "statement of the functions of the ACIC".
13 Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [267].

- the defendant is afforded adequate time and facilities to prepare their defence.[14]

24. As the "criminal intelligence" functions of the ACIC attach to a definition of "serious and organised crime",[15] the intelligence collection, analysis and disclosure frameworks necessarily involve a relationship to criminal offences and justice processes. This is because the concept of "criminal intelligence" necessarily requires the existence of relevant criminal offences and the extension of extraordinary intelligence collection powers to the ACIC (such as coercive questioning powers[16]) exceed the traditional questioning powers of law enforcement in ways that can materially impact the administration of justice and the right to a fair trial. Extraordinary powers that carry such a risk include:

    - requiring a witness to give evidence under oath or affirmation;[17]
    - where a failure to give evidence, give truthful evidence, or hinder an examination, such conduct be can be subject to criminal prosecution;[18]
    - a witness is required to answer questions even where such answers may tend to incriminate them;[19] and
    - where answers provided under compulsion may be utilised to find further admissible evidence in criminal prosecutions against the witness.[20]

25. The proximity between criminal intelligence and the criminal law means that clear and certain definitions, thresholds and limitations on the powers, functions and sharing of information processes of the ACIC are needed to ensure that its powers are appropriately limited to enable it to perform its intelligence collection and analysis function, without unduly intruding on the administration of justice. We understand that a Bill containing consequential and transitional amendments is currently being drafted. In the absence of this Bill, it is not possible to fully assess the implications of the characterisation of the ACIC as a "criminal intelligence agency" for other warranted powers beyond what is contained in the provisions of the ACIC Bill.

Risks to the administration of justice

26. The coercive questioning framework in the ACC Act was amended by the *Law Enforcement Legislation Amendment (Powers) Act 2015* (Cth) (**LELAP Act**). These reforms were introduced in response to the decision of the High Court of Australia in *X7* that the ACC Act did not permit post-charge questioning.[21] The LELAP Act was intended to "place the Crime Commission… powers on a stronger footing",[22] by expressly authorising both post-charge questioning and the use and communication

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14 See Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws* (Report No 129, 2016) [8.20].
15 See Australian Criminal Intelligence Commission Bill 2026 (Cth) ss 10 and 24(a)-(c).
16 Australian Criminal Intelligence Commission Bill 2026 (Cth) Pt 3. See paragraphs [115]–[215] of this submission.
17 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 82.
18 See Australian Criminal Intelligence Commission Bill 2026 (Cth) ss 75-77, and 79-80.
19 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 126.
20 See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 118.
21 Commonwealth, *Parliamentary Debates*, House of Representatives, 26 March 2015, 3555 (Michael Keenan, Minister for Justice).
22 Ibid 3556.

of derivative material, including the provision of such material to prosecutors.[23] This was required because the majority in *X7* found that:

> *Permitting the Executive to ask, and requiring an accused person to answer, questions about the subject matter of a pending charge would alter the process of criminal justice to a marked degree, whether or not the answers given by the accused are admissible at trial or kept secret from those investigating or prosecuting the pending charge.*[24]

27. Their Honours concluded that:

> *[r]equiring the accused to answer questions about the subject matter of a pending charge prejudices the accused in his or her defence of the pending charge… If an alteration of that kind is to be made, it must be made by express words or necessary intendment*.[25]

28. Because *X7* was ultimately resolved on statutory interpretation grounds, the High Court was not required to decide on the constitutionality of coercive questioning powers based on their compatibility with Chapter III and section 80 of the Constitution.[26]

29. *Lee v the Queen* (***Lee (No. 2)***)[27] subsequently addressed the role of safeguards provided in legislation to preserve the adversarial nature of the criminal trial where a compulsory questioning framework was established by the *Crime Commission Act 2012* (NSW) (**NSWCC Act**). In a unanimous decision, the High Court considered the importance of safeguards intended by the legislature to balance and preserve fair trial rights in circumstances where there is a clear statutory intention to investigate serious and organise crime through a compulsory questioning framework that abrogates the privilege against self-incrimination. The Court concluded that:

> *Our system of criminal justice reflects a balance struck between the power of the State to prosecute and the position of an individual who stands accused. The principle of the common law is that the prosecution is to prove the guilt of an accused person. This was accepted as fundamental in X7. The principle is so fundamental that "no attempt to whittle it down can be entertained" albeit its application may be affected by a statute expressed clearly or in words of necessary intendment. The privilege against self-incrimination may be lost, but the principle remains. The principle is an aspect of the accusatorial nature of a criminal trial in our system of criminal justice. ...*
>
> *The purpose of s 13(9) of the NSWCC Act was to protect the fair trial of a person who might be charged with offences. It supported the maintenance of the system of criminal justice referred to in X7 and the trial for which that system provides, in which the prosecution has a defined role and the accused does not. The protective purpose of s 13(9) would usually require that the Commission quarantine evidence given by a person to be charged from persons involved in the prosecution of those charges. It would require the Commission to make a*

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23 Ibid.

24 *X7 v Australian Crime Commission* (2013) 248 CLR 92, 127 [70] (Hayne and Bell JJ, with whom Kiefel J agreed).

25 Ibid 127 [70] (Hayne and Bell JJ, with whom Kiefel J agreed).

26 Ibid 133 [92] (Hayne and Bell JJ, with whom Kiefel J agreed).

27 (2014) 253 CLR 455.

> *direction having that effect and to maintain the prohibition in the face of requests for access to the evidence*.[28]

30. While *Lee (No. 2)*, like *X7*, did not answer the question of constitutionality, the unanimous decision nevertheless has been interpreted as providing guidance to the role and importance of safeguards concerning the use of compelled materials in the context of the criminal justice system.

31. In *Strickland v Commonwealth Director of Public Prosecutions* (***Strickland***),[29] the High Court indicated that the presence of safeguards in the legislation is a necessary but not sufficient condition for the preservation of fair trial rights and the administration of justice. The abuse of the powers of compulsory examination in *Strickland*, which ultimately resulted in a permanent stay of proceedings, demonstrates the importance of having clear boundaries and robust safeguards which protect an accused person's right to a fair trial.

32. Recent reports by the Commonwealth Ombudsman have raised concerns about the ability of the ACIC to demonstrate compliance with legal thresholds for the exercise of intrusive powers.[30] The Ombudsman raised concerns about non-compliance by ACIC staff with an otherwise robust policy and governance framework when exercising and documenting the use of intrusive powers.[31] The Ombudsman has also raised these concerns in his submission to the PJCIS about this Bill.[32] We suggest that the PJCIS consider this submission carefully in assessing the Bill.

33. While it is necessary for legislation to confer powers and prescribe limits, legislation should also structure and direct decision-makers' attention to foreseeable circumstances where those powers are most susceptible to misuse, error or circumvention.

34. Concerns for good institutional design that sit alongside clear and limited legislative drafting have additional force in the context of a criminal intelligence agency that works closely with policing and prosecution services. This submission has used the types of conduct described in High Court cases as examples of possible misuse of powers, workarounds that subvert legislative intent, or unduly expansive drafting. Alongside non-compliance with agency policy or poor record keeping, broadly drafted provisions can risk prosecution outcomes and erode the effectiveness and legitimacy of downstream uses of intelligence tainted by such issues. Designing an institutional architecture that actively shapes a culture of compliance with the law and respect for the rule of law is fundamental to the legitimacy of an intelligence service in a

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28 Ibid 466-7 (citations omitted).

29 (2018) 266 CLR 325.

30 Eg Commonwealth Ombudsman, *Surveillance powers under the microscope: Report to the Minister for Home Affairs on agencies' compliance with the Surveillance Devices Act 2004 (Cth) for Commonwealth Ombudsman inspections conducted from 1 January to 30 June 2025* (Report, September 2025); Commonwealth Ombudsman, *Uncovering the use of undercover powers: 2023-24 Report to the Attorney-General on agencies' compliance with the Crimes Act 1914 for: Controlled Operations, Delayed Notification Search Warrants, Account Takeover Warrants* (Report, November 2024).

31 Commonwealth Ombudsman, *Surveillance device powers: are agencies complying? Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004 (Cth) for Commonwealth Ombudsman inspections conducted from 1 January to 30 June 2024* (Report, 2024) 11.

32 Iain Anderson, Submission No 1 to the Parliamentary Joint Committee on Intelligence and Security, *Review of the Australian Criminal Intelligence Commission reform package 2026* (5 June 2026).

democracy.[33] It is appropriate that further scrutiny be explicitly directed to points in the statutory scheme where first-instance safeguards may be at risk of failure, or where any failure would carry the significant consequences for individual rights and the administration of justice.

Gateway definitions

"Serious and organised crime"

General observations

35. The intrusive powers of the ACIC—coercive powers, controlled intelligence operations and warranted powers—are enlivened through reference to the definition of "serious and organised crime".[34] The ACIC Bill defines "serious and organised" crime as:[35]

> ***10 Meaning of serious and organised crime***
>
> *(1) For the purposes of this Act, serious and organised crime means a federal offence that may have been committed, may presently be being committed, or may in future be committed, in circumstances involving:*
>
> *(a) 2 or more offenders; and*
>
> *(b) substantial planning or organisation; and*
>
> *(c) the use of sophisticated methods and techniques.*
>
> *(2) A federal offence is an offence:*
>
> *(a) against a law of the Commonwealth; or*
>
> *(b) against a law of a State that has a federal aspect;*
>
> *that is:*
>
> *(c) punishable by imprisonment for a period of 2 years or more; or*
>
> *(d) prescribed by the rules.*

36. While the definition is intended to address the most serious and complex offending by organised crime, in our view, the definition should limit the extraordinary powers of the ACIC to significantly harmful, well-resourced, and sophisticated criminal enterprises.

37. This phrase "serious and organised crime" is currently set out twice in the ACC Act in two distinct contexts. There is a general definition set out at section 4, which applies to all of the ACC Act, including the use of coercive powers, but does not apply to Part III of the Act, which concerns criminal intelligence assessments. There is a second definition of "serious and organised crime" set out at section 54B that applies only for the more limited purpose of criminal intelligence assessments. A criminal intelligence assessment is defined as:

> *(1) … a written statement made by the ACC expressing any recommendation, opinion or advice on, or otherwise referring to, the question of whether it*

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[33] See Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (Report, December 2019) vol 1 ch 7.

[34] See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 24.

[35] Australian Criminal Intelligence Commission Bill 2026 (Cth)s 10(1).

would be consistent with preventing the advancement of serious and organised crime for prescribed administrative action to be taken, or not taken, in respect of a person".[36]

38. The general definition of "serious and organised crime" as set out in existing section 4 is:

> ***serious and organised crime*** *means an offence:*
>
> *(a) that involves 2 or more offenders and substantial planning and organisation; and*
>
> *(b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques; and*
>
> *(c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and*
>
> *(d) that is a serious offence, an offence against Subdivision B or C of Division 471, or D or F of Division 474, of the Criminal Code, an offence of a kind prescribed by the regulations or an offence that involves any of the following [forms of conduct listed at subparagraphs 4(d)(i)–(xx)] …*
>
> *(da) that is:*
>
> *(i)punishable by imprisonment for a period of 3 years or more; or*
>
> *(ii)a serious offence;*
>
> *but:*
>
> *(e) does not include an offence committed in the course of a genuine dispute as to matters pertaining to the relations of employees and employers by a party to the dispute, unless the offence is committed in connection with, or as part of, a course of activity involving the commission of a serious and organised crime other than an offence so committed; and*
>
> *(f) does not include an offence the time for the commencement of a prosecution for which has expired.*

39. The ACC Act includes a second definition of "serious and organised crime" for the limited purpose of a criminal intelligence assessment under Part III of the ACC Act. This limited purpose definition is set out section 54B and provides that:

> ***54B Meaning of serious and organised crime***
>
> *(1) For the purposes of this Part,* ***serious and organised crime*** *means a federal offence that may have been committed, may presently be being committed, or may in future be committed, in circumstances involving:*
>
> *(a) 2 or more offenders; and*
>
> *(b) substantial planning or organisation; and*
>
> *(c) the use of sophisticated methods and techniques.*

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[36] *Australian Crime Commission Act 2002* (Cth) s 53. For the purposes of Part III of the *Australian Crime Commission Act 2002* (Cth), prescribed administrative actions refer to firearms licences, and checks relating to aviation and maritime safety, as well as other circumstances prescribed by regulation: see s 54A.

40. It appears that the ACIC Bill definition adopts features of the limited purpose definition that is currently used for narrower purposes than the general definition. We are concerned that some of these features may not be appropriate as a basis for establishing the functions and powers of the ACIC.

May have been committed, may presently be being committed, may in future be committed.

41. The definition of "serious and organised crime" includes reference to a federal offence that "may have been committed, may presently be being committed, or may in future be committed". This is described in the EM the "temporal element" of the definition, however it refers not only to time but also to possible conduct. The EM explains that:

> *… the temporal element … is particularly critical to enable the ACIC to perform its intelligence activities during the anticipatory phase. This anticipatory phase is where the collection of intelligence is first required before a connection (or lack thereof) between a person, entity or group and their activities and serious and organised crime can be determined.*[37]

42. The Law Council is concerned that the inclusion of "may have been committed, may presently be being committed, or may in future be committed" should not form part of the definition of a serious and organised crime, which instead should be focused on describing the conduct and offences that should fall within its limits. The current definition of "serious and organised crime" in section 4 of the ACC Act does not contain this wording and instead addresses relevant criminal offences by reference to the *Criminal Code Act 1995* (Cth), prescription under regulations, or the involvement of certain conduct (including, for example, theft, fraud, or tax evasion).[38] The question of whether an offence "may have been committed, may presently be being committed, or may in future be committed" is not relevant to the description of offending as "serious and organised" but instead is more relevant the question of what thresholds should be required to be met, having regard to the evidence, before particular powers should be authorised or exercised under the ACIC Bill.

43. Including reference to whether relevant conduct or offences have occurred in the definition of "serious and organised crime" increases the uncertain ambit of the already broad definition. The clause concerning offences that "may in future be committed" is particularly vague and inappropriate, as it may form the basis for exercising significant powers based on the mere speculative possibility that a crime might be committed in future.

44. Instead, thresholds for the exercise of relevant powers should be separately outlined in the Bill beyond the definition of serious and organised crime. We consider that they should be based on whether there is a "reasonable belief" (or failing that, suspicion) threshold at minimum which would signal that there is some basis for the belief beyond mere possibility. Without such a limitation, the ACIC's substantial powers can be enlivened at first instance based on unsubstantiated conjecture. Additionally, we note that the current drafting of subsection 10(1) means that this

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[37] Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [194].
[38] See *Australian Crime Commission Act* (Cth) definition of "serious and organised crime" para 4(d).

imposes no effective or substantial limitation on what might be subject to an investigation.

Recommendation 1

- **The phrase "that may have been committed, may presently be being committed, or may in future be committed" should be removed from the definition of "serious and organised crime".**
- **Where the term "serious and organised crime" is included in the Bill, each instance should be reviewed to ensure that there is an appropriate evidential standard for the authorisation or exercise of relevant powers. The relevant decision maker at each instance should be identified and required to have a reasonable basis for a belief that any enlivening circumstances exist.**

Substantial planning and organisation

45. The phrase "substantial planning and organisation" at paragraph 10(1)(b) is not defined in the legislation. This means that the phrase should be interpreted according to its ordinary meaning. The EM notes that the phrase is intended to cover:

> *… thorough, detailed and considerable planning or organisation has been undertaken in relation to the criminal activity. This is not intended to capture opportunistic criminal offending but the types of insidious and systemic criminality that causes widespread and detrimental harm to the Australian community and the economy.*[39]

46. This is more refined than the ordinary meaning of "substantial planning and organisation", which refers only to the degree of organisational and/or logistical effort. The description in the EM provides clearer guidance to what is intended than the primary legislation. In referring to "systemic criminality that causes wide-spread and detrimental harm to the Australian community and the economy",[40] the EM links the degree of organisation to a materiality threshold. This approach should be adopted in the legislation.

Recommendation 2

- **Paragraph 10(1)(b) should be amended to reflect that it is only intended to capture "thorough, detailed and considerable planning or organisation" constituting "systemic criminality that [ordinarily] causes widespread and detrimental harm to the Australian community and the economy".**

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[39] Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [201].
[40] Ibid.

The use of sophisticated methods and techniques

47. Paragraph 10(1)(c) refers to "the use of sophisticated methods and techniques". These terms are not defined in the legislation and therefore their ordinary meaning applies. In this context, the ordinary meaning of "sophisticated' refers to "complex; intricate".[41] "Method" refers both to "a mode of procedure, especially an orderly or systematic mode" and "a way of doing something, especially in accordance with a definite plan";[42] lastly, techniques can be understood as "methods of performance; way of accomplishing" or "technical skill".[43]

48. The EM clarifies that this phrase is intended to capture actions that include, but are not limited to:

> - *the wide-scale adoption and use of new and emerging technologies to conduct criminal activity and evade law enforcement detection;*
> - *fraudulent activity, such as coordinated efforts to fraudulently obtain government welfare or subsidy payments to fund illicit activity;*
> - *implementing concealment techniques to facilitate the trafficking of illicit goods;*
> - *laundering proceeds of crime through a web of complex financial transactions;*
> - *the use of professional facilitators to assist with illegal activities, conceal wealth, or provide legitimacy to their operations; and*
> - *the infiltration of shipping, transport and postal industries to facilitate illicit activity, such as trafficking of drugs or people.*[44]

49. We suggest that including a non-exhaustive definition of "sophisticated methods and techniques" in the legislation, based on the description in the EM, would bring additional clarity to the intended application of this provision.

50. The EM notes that technologies such as "artificial intelligence" and encrypted communication, which are either currently widespread or rapidly becoming widespread, can be examples of technology use that might generate investigative hurdles or multiply the harms of criminal offending. The inclusion of routine technologies as examples of sophisticated methods and techniques risks collapsing the distinction between the actions listed above and the use of common applications and processes. The Law Council supports the adoption of a technology-neutral definition, but recommends amending the threshold of sophistication to indicate that it is not intended to capture routine uses of common technologies, but is intended to cover a non-exhaustive list of sophisticated activities of the kind listed in the EM.

51. The EM notes that "[s]ophistication may be demonstrated in the form of particular logistical or organisational methods employed, such as having a complex or adaptable business model which makes activity difficult to trace."[45] This suggests that refinement is needed to ensure that the concepts located at paragraphs 10(1)(b) and (c) are capable of distinction.

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41 *Macquarie Dictionary* (9th ed, 2023) 'sophisticated' (def 4).
42 Ibid 'method' (def 1 and def 2).
43 Ibid 'technique' (def 1 and def 2).
44 Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [204].
45 Ibid [206].

Recommendation 3

- **Paragraph 10(c) should be amended to clarify that, in the absence of other factors, the use of routine technologies (such as encryption) does not meet the threshold of "sophisticated methods and techniques".**

"Federal offence" component

52. We are concerned that the threshold for meeting the definition of a "federal offence" located at subsection 10(2) for offences has been lowered from 3 years under the ACC Act[46] to 2 years in the ACIC Bill, in light of the intrusive qualities of the coercive powers and controlled intelligence operations frameworks that are enlivened by this threshold.

53. Very few offences under the Criminal Code Act, for example, carry maximum penalties of fewer than 2 years imprisonment. We note that when considering the threshold for the availability of intrusive warrant powers contained in the *Surveillance Legislation Amendment (Identify and Disrupt) Act 2021* (Cth), the Independent National Security Legislation Monitor (**INSLM**) found that a maximum penalty of 3-years imprisonment was too low to enliven those powers, commenting that "[i]n my view it is not appropriate that these significant powers be used for relatively minor offending."[47] The INSLM's recommendation was that such powers should only be available for offences with a maximum penalty of 5-years imprisonment.[48]

54. Given that coercive questioning powers abrogate the privilege against self-incrimination, such powers can arguably be significantly more intrusive and rights-limiting than network activity warrant powers and account takeover powers which do not abrogate this privilege.

55. The EM states that:

> *This threshold has been set in recognition of the fact that 2 year offences are also often conducted alongside other serious offences attracting higher penalties. For example, outlaw motorcycle gangs are often engaged in a range of criminal offending from lower level offences, such as low-level violent offences, to serious offences such as trafficking illicit drugs and money laundering. In particular, the intent is to enable the ACIC to undertake its activities with respect of 2 year offences in order to help unravel larger and more clandestine operations to generate insightful intelligence to share with law enforcement and intelligence partners.*[49]

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46 *Australian Crime Commission Act 2002* (Cth) s 4.

47 Jake Blight, Data Disruption, *Network Activity and Account Takeover Powers: Review of Surveillance Legislation Amendment (Identify and Disrupt) Act 2021*, Independent National Security Legislation Monitor (Report, 1 September 2025) [10.18].

48 Ibid [10.22].

49 Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [209].

56. However, basing the extraordinary powers of the ACIC on offences with such a low maximum penalty risks undermining the stated intention of limiting the application of the definition to insidious and systemic criminality. To this end, this aspect of the definition does not appear to function as a safeguard but rather to enable the use of the ACIC's powers on the basis of reference to the overwhelming majority of federal offences. Likewise, the ability at paragraph 10(2)(d) to prescribe additional offences through rules that are classified as "federal offences" expands the scope of the ACIC's powers by legislative instrument.[50] Although subject to disallowance, this provision does not act as a meaningful limitation or safeguard.

57. The extension of the scope of the definition of "serious and organised crime" through delegated legislation raises rule of law concerns as such a provision allows the Executive to expand the powers of the ACIC without the express approval of the Parliament.[51] Determining the scope of extraordinary and human rights enlivening powers, as well as the scope of the ACIC's mandate, should remain subject to Parliamentary debate and approval through inclusion to primary legislation.

Recommendation 4

- **Paragraph 10(2)(c) should be amended to refer to an offence "punishable by imprisonment for a period of 5 years or more".**
- **Paragraph 10(2)(d) should be removed.**

"Combatting"

58. A number of key provisions within the ACIC Bill rely on the term "combatting serious and organised crime".[52] At section 7 of the ACIC Bill, "combat" is defined non-exhaustively to include to "identify, investigate, prevent, disrupt or prosecute".

59. We are particularly concerned that this definition includes disruption and prosecution objectives, as the Independent Review concluded that:

> *We consider that disruption activities go beyond the ACIC's intelligence functions and should be the preserve of law enforcement and other appropriately authorised agencies. We acknowledge that intelligence activities undertaken by the ACIC may have a disruptive effect on criminal entities, as a by-product of the intelligence activity. However, the ACIC should not have a legislated function to undertake activities which have the primary purpose of disrupting criminal activity via arrest and prosecution.*[53]

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50 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 10(2)(d).

51 Law Council of Australia, *Policy Statement on Rule of Law Principles* (March 2011) 4.

52 References to "combatting" in the Australian Criminal Intelligence Commission Bill 2026 (Cth) include: the objects clause (see s 3(b)(i)); the functions of the ACIC found at s 24(b) and (c); the purposes for which the Attorney-General might grant a premises search warrant (s 157(1)(b)); and assistance orders (s 175(b)).

53 Stephen Merchant and Greg Wilson, *Independent Review of the Australian Criminal Intelligence Commission and Associated Commonwealth Law Enforcement Arrangements* (Unclassified Report, May 2024) 32.

60. The Australian Government noted in its agreement with recommendation 9 of the Independent Review, "that disruption operations should remain the responsibility of law enforcement agencies".[54] Furthermore, section 24 of the ACIC Bill sets out the functions of the newly reconstituted ACIC in legislation. These include:

> *(b) for purposes connected with combatting serious and organised crime—to communicate intelligence relevant to serious and organised crime to such persons, and in such manner, as are appropriate to those purposes;*
>
> *(c) for purposes connected with combatting serious and organised crime—to obtain, correlate, analyse and evaluate intelligence relevant to, and provide advice to any person or body about, any of the following:*
>
> *(i) strategic or emerging crime trends;*
>
> *(ii) criminal activity;*
>
> *(iii) preventing crime;*

61. The EM describes the intention behind paragraphs 24(b) and (c) as setting out "core",[55] or "central",[56] functions of the ACIC. The EM makes no reference to the limitations recommended by the Independent Review or the Australian Government response to it. Instead, the EM states that:

> *… the ACIC must be able to communicate intelligence relevant to serious and organised crime to key partners in order to support activities across the full spectrum of combatting serious and organised crime, such as identification, investigation, prevention, disruption and prosecution*.[57]

62. We are concerned that the definition of "combat" does not exclude the traditional policing and law enforcement functions of disruption and prosecution from the functions of the ACIC, as a "criminal intelligence agency" with sufficient clarity. This, in turn, raises a concern that disruption and prosecution are not incidental downstream uses of earlier upstream or anticipatory intelligence collection and communication, but instead can be more closely aligned with the intended core functions of the ACIC.

63. Nothing in the statute or the EM suggests that these functions should be strictly limited to incidental and downstream functions of the ACIC or that the intrusive powers of the ACIC should be similarly restricted. Likewise, the requirement that the purposes of an activity be "connected with combatting serious and organised crime" does not suggest a clear or high threshold of connection as, for example, "essential to" or "necessary for" might.

64. The distinction between law enforcement and criminal intelligence needs to be drawn with greater clarity, the more proximate an intelligence activity is to traditional policing and law enforcement actions. As drafted, the text of the Bill leads unduly towards

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54 Australian Government, *Government Response to the Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements* (November 2024) 8.

55 Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [273].

56 Ibid [276].

57 Ibid [273].

being permissive rather than being addressed to providing necessary limitations and safeguards for the use of the extraordinary powers of the ACIC.

Recommendation 5

- **The definition of "combat" at section 7 should be amended to clarify that the ACIC's functions do not extend to disruption and prosecution.**
- **Coercive powers, premises search warrants, and associated assistance orders provisions should clearly state that they cannot be exercised to achieve disruption and prosecution functions.**

"Relevant to"

65. The phrase "relevant to" occurs throughout the ACIC Bill as one description of a layer of connection between "intelligence" and "serious and organised crime". This phrase therefore defines both the character of that connection as well as establishes a threshold for the degree of connection required to enliven those powers. It is defined at section 7 as:

> ***relevant to**: the circumstances in which intelligence is relevant to serious and organised crime include where:*
>
> *(a) the intelligence is, or could be, relevant to combatting serious and organised crime; or*
>
> *(b) the intelligence may assist in determining whether:*
>
> *(i) there is a connection between a person, entity or group and serious and organised crime; or*
>
> *(ii) there is a connection between the activities of a person, entity or group and serious and organised crime.*

66. The term "relevant to" therefore operates to widen the degree of connection between "intelligence" and "serious and organised crime". The phrase "relevant to" does not, without reference to the section 7 definition, make clear that "relevant to" means "could be relevant to". As it stands, the current definition is circular at paragraph (a) and paragraph (b) and is sufficiently expansive so as to facilitate so-called "fishing expeditions" to determine if, under cover of being "relevant to" serious and organised crime, intelligence is sought to "assist in determining" if there is a connection between a person entity or group, or their activities, and organised crime.

67. We are additionally concerned that the definition of "relevant to" may be insufficiently certain and clear regarding the boundaries of relevance for both extraordinary powers and criminal offences, noting that the phrase forms a part of the conduct element of criminal offences including those at sections 106, 107, 114, 115, and 148. This raises rule of law concerns about the precise boundaries of criminal offences in a situation that is materially different from the use of such a phrase in administrative contexts.

Post-charge and post-confiscation application coercive questioning

Post-charge and post-confiscation application and related definitions

68. Definitions of "post-charge" and "post-confiscation application" apply across the ACIC Bill, primarily in the context of enabling powers to be used under conditions that can be characterised as falling within the terms of those definitions. This section focuses on post-charge provisions although our observations are broadly applicable to post-confiscation application proceedings.

69. Definitions of "post-charge" and "post-confiscation application" are provided in sections 13 and 17 respectively. Subsection 13(1), reads as follows:

> *(1) An event covered by subsection (2) is a **post-charge** event in relation to a person if it happens at a time when:*
>
> *(a) the person has been charged with a relevant offence and that charge is still to be resolved; or*
>
> *(b) such a charge is imminent.*[58]

70. Whether or not a charge is "imminent" is clarified by section 15 of the ACIC Bill. Subsection 15(1) provides that:

> *(1) A charge for an offence is **imminent** for a person if:*
>
> *(a) the person is a protected suspect; or*
>
> *(b) the person is under arrest for the offence, but has not been charged with the offence; or*
>
> *(c) a person with authority to commence a process for prosecuting the person for the offence has decided to commence, but has not yet commenced, the process.*

71. Subsection 15(3) then provides that each of the following is a "protected suspect":

> *(a) a protected suspect (within the meaning of Part IC of the Crimes Act 1914);*
>
> *(b) a person who would be covered by paragraph (a) if the definition of **Commonwealth offence** in section 23B of that Act included any offence against a law of a State or Territory.*

72. The definition of a "protected suspect" for the purposes of Part IC of the *Crimes Act 1914* (Cth) is located at section 23B of that Act. This definition includes reference to a person who has not been arrested but is "in the company of an investigating official",[59] and one of the following subparagraphs of s 23B(1)(c) applies:

> *(i) the official believes that there is sufficient evidence to establish that the person has committed the offence;*
>
> *(ii) the official would not allow the person to leave if the person wished to do so;*

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[58] Relevant events are listed at Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 13(2).
[59] *Crimes Act 1914* (Cth) s 23B(2)(a)).

> *(iii) the official has given the person reasonable grounds for believing that the person would not be allowed to leave if he or she wished to do so …*

73. The definitions of "post-charge" and "post-confiscation application" are critical to a number of provisions of the ACIC Bill, including, as examples, those in relation to:

- specifying that examinations may be conducted "post-charge";[60]
- specifying that a summons to attend an examination may be issued "post-charge";[61]
- specifying that a summons may deal with the subject matter of criminal charges against the witness;[62]
- requiring a witness "to give information, or produce a document or thing",[63] noting that such a requirement may be post-charge;[64]
- enabling an examiner to expand the purposes of an examination where that determination is post-charge;[65] and
- enabling an examiner or other specified entity to disclose compelled and derivative materials post-charge,[66] including, under certain conditions to prosecutors of the witness.[67]

74. Additionally, the ACIC Bill also specifies additional considerations under conditions that may be characterised as "post-charge". An illustrative example of this test is found at subsection 59(5):

> *… must also be satisfied that issuing the summons is reasonably necessary for the purposes of obtaining the intelligence referred to in paragraph (2)(a) or subsection (4) even though:*
>
> *(a) the person has been charged or the confiscation proceeding has commenced; or*
>
> *(b) that charge or proceeding is imminent.*

75. A similar construction is also adopted in the context of making a decision to issue a notice to produce,[68] and where an examiner is making a determination to expand the purposes of an examination.[69]

76. The definition of "imminent" describes a circumstance in objective terms. Aspects of the definition, notably those at paragraph 15(c) and subsection 15(2), as well as the definition of a "protected suspect" require the assessment of knowledge of the intentions of a third party in order to accurately appraise whether the event meets the characterisation of "imminent". Knowledge of the state of mind of a third-party is therefore essential to categorising a decision as either pre- or post-charge.[70] It is

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60 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 58(2), see also s 83.
61 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 59(3).
62 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 60(6).
63 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 60(1).
64 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 60(2).
65 See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 66.
66 See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 118
67 See Australian Criminal Intelligence Commission Bill 2026 (Cth) ss 119-120.
68 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 50.
69 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 66.
70 Australian Criminal Intelligence Commission Bill 2026 (Cth) ss 12(1)(a), 13(b), 16(1)(a), 17(b).

unclear how an examiner would reach the conclusion that, for example, a prosecutor had, as a matter of fact reached a decision to charge or if an investigating officer believes there is sufficient evidence to charge a person. Further, it is even less conceivable that a decision could be reviewed on the basis that an event was mischaracterised given that evidence of a decision to charge having been reached by police or a prosecuting authority but not yet formalised would not, in any ordinary circumstances, be knowable by the person subject to imminent criminal proceedings.

77. It is not possible for an examiner to objectively assess when a charge is imminent without further and detailed knowledge of the prosecution process and the status of any ongoing police investigations. The provisions impose no positive duty to inquire on an examiner, nor does the Bill make any reference to the quality of evidence, belief or knowledge as to whether the circumstances of commenced proceedings or imminent charge or proceedings. This may lead to the ACIC's examination process being wrongly categorised, and therefore rendering ineffective the safeguards provided in the Bill to protect the fair trial of the accused. It is concerning that this drafting does not exclude the possibility of investigators requesting a delay to request the exercise of ACIC powers to obtain compelled and derivative materials under colour of seeking intelligence.

Recommendation 6

- **The definition of "imminent" should be amended to require a decision maker to make inquiries of prosecutors and police actions and intentions prior to assessing an event as pre- or post- charge or confiscation application.**

Pre-charge and pre-confiscation application questioning

78. Sections 12 and 16 address when an event is pre-charge or pre-confiscation application. Importantly, such an event is characterised under the ACIC Bill as pre-charge or pre-confiscation application after the resolution of all charges or applications. Consequently, the definition of pre-charge and pre-confiscation application also involves consideration of third-party knowledge whether a charge or confiscation application is "imminent" in order to determine that the relevant event is "not imminent".

79. The Parliamentary Joint Committee on Human Rights noted that a distinction in safeguards based on whether a proceeding is pre- or post- charge or confiscation application may not afford sound protection of enlivened rights, as:

> *[i]t appears possible that persons who are pre-charge may eventually face charges related to the criminal activity investigated by the ACIC and would not be protected by this safeguard merely because of the delay in time between the ACIC examination and the laying of charges*".[71]

[71] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Scrutiny Report 5 of 2026* (Report, 7 May 2026) [1.21].

80. The issue of how these definitions interact with the provisions in which they are located is canvassed later in this submission. Similar to the PJCHR, we are also concerned that establishing safeguards that are predicated on when a particular event[72] takes place gives rise to the possibility that such processes are open to the possibility of circumvention or susceptible to strategic manipulation. This is particularly so in circumstances where delaying the making of a decision, or withholding the communication that a decision has been reached, can be utilised to impede or subvert the application or functional utility of existing safeguards for the fair trial of a defendant.

Cooperation and information sharing communication: the ACIC and other agencies

81. Part 2 of Division 2 of the ACIC Bill sets out how the ACIC and other agencies are to interact, both in terms of institutional support and cooperation as well as information sharing provisions. Information sharing provisions are set out in Part 8 of the ACIC Bill.

82. The re-establishment of the ACIC as a "criminal intelligence" agency creates a policy difficulty: information must be collected and with a view to being acted upon or shared to qualify as intelligence,[73] yet the closer collection and disclosure is to operational law enforcement use, the greater the likelihood of risk to fair trial rights and the administration of justice. Coercive and other extraordinary powers may appear to be useful in supporting downstream, actionable policing and law enforcement activity. However, such powers significantly abrogate and undermine fundamental rights and privileges, which are carefully built into our criminal justice system under our Australian democracy. Strong safeguards and limitations are required to ensure that coercive powers remain consistent with the administration of criminal justice, including the preservation of the adversarial nature of criminal trials.

83. The Law Council considers that the safeguards in the ACIC Bill must be capable of ensuring that the extraordinary powers conferred on an intelligence agency are confined to what is necessary and proportionate, and are not made widely available to supplement the investigative methods ordinarily available to agencies performing law enforcement and policing functions. We are concerned that the current Bill does not assure this outcome.

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[72] For example, in the context of criminal charges, the "events" requiring the assessment of pre- or post-charge status are located at Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-ss 12(2) and 13(2).

[73] See Dennis Richardson, Comprehensive Review of the Legal Framework of the National Intelligence Community (Report, December 2019) vol 1 [7.10].

Information sharing and disclosure frameworks

84. The ACIC Bill establishes a framework for managing the tension between communication and non-disclosure of information or intelligence. The ACIC is empowered to make use of information obtained "in the course of performing one or more of its functions",[74] and may use that information or intelligence for "the performance of any of its other functions",[75] unless such a use is contrary to a restriction found in another provision of the Bill.[76]

85. The Bill provides broad authority for the sharing of information in accordance with the functions of the ACIC,[77] the role of examiners,[78] or to assist the functions of limited range of other agencies,[79] unless a limitation on information sharing applies.

86. Limitations on information sharing include:

- where sharing the information is contrary to another provision of the ACIC Bill or another law of the Commonwealth, or of a state or territory;[80]
- where an examiner or the Director-General has made a non-disclosure direction;[81] and
- where sharing the information would not comply with a relevant direction given by the Director-General,[82] the Minister,[83] or in the course of cooperating with another agency under section 29.[84]

87. There is a further limitation on sharing information by the ACIC consistent with another agency's function, in such cases the decision-maker must be satisfied that sharing information is "appropriate" subject to consideration of a range of matters.[85] It is not clear why this requirement to assess information sharing against similar criteria is not required where the disclosure relates to the performance of the ACIC's functions. The EM notes that "[g]iven the sensitivity of ACIC information, proper consideration must be given to whether the communication should take place".[86] We observe that the analysis in the EM is valid regardless of the origin of the function that the disclosure is designed to support. The extension of a more considered decision-making framework to all sharing arrangements would remind decision makers of the need for conformity with the oversight responsibility of the Inspector-General of Intelligence and Security (**IGIS**) that any actions of the ACIC must be both lawful and proper.[87] While the Director-General can give general directions about sharing information under section 222, it is desirable for some aspects of information

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74 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 25(1).
75 See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 25(1).
76 See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 25(2).
77 See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 221(1).
78 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 221(4).
79 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 221(2) and (3).
80 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 221(5)(a)-(b).
81 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 221(5)(c).
82 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 221(6)(a) and s 222.
83 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 221(6)(b) and s 37
84 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 29(2)(a).
85 Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 221(7).
86 Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [2077].
87 *Inspector-General of Intelligence and Security Act 1986* (Cth) sub-s 8(4).

sharing to be subject to legislative requirements such as at subsection 221(7). A similar analysis of appropriateness should be required for decisions made under subsection 221(1).

88. In circumstances where information "relates, or appears to relate, to the proper performance of a function, duty or activity, or the exercise of a power, of the agency or body",[88] the ACIC may share information with other listed agencies.[89] We suggest that the threshold assessment of "appears to relate to the proper performance of a function, duty or activity, or the exercise of a power" of a third party is too low given the sensitivity of the information in question.

89. In light of the acknowledged sensitivity of ACIC information, this section might be improved by requiring the decision maker in the ACIC to apply an objective standard to the "proper performance of a function duty of activity" of that third party rather than the low standard of something that simply "appears to relate to". This drafting does not specify that the conduct in question must appear to be proper, only that it "appear relate to" proper performance. In our view, inserting the qualifier "reasonably believes to be the proper performance…" would provide flexibility but also require that a decision-maker make some basic inquiries as to the facts underpinning a belief in a relationship between the information and the function of the third party.

Recommendation 7

- **The sharing of ACIC information and records for the purposes of performing an ACIC function or duty under subsection 221(1) should be subject to a reasonably necessary and appropriate test.**
- **Subsection 221(2) should be amended to replace the phrase "appears to relate" with a standard with an objective requirement, such as "reasonably believes to relate…".**

Cooperation with other persons or bodies

90. The ACIC Bill sets out a framework for forming cooperation agreements with other persons or bodies based on whether the ACIC is seeking or providing support. The framework for cooperation of other persons or bodies to assist with the full range of the ACIC's functions[90] is contained in a general provision,[91] and a specific provision addressing policing support provided by the Australian Federal Police (**AFP**).[92]

91. We are concerned that these provisions, while clearly designed to facilitate the exchange of cooperation between international partners as well as Commonwealth, state and territory agencies, are not sufficiently clear as to requisite limitations and

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88 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 221(2).
89 Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 221(2).
90 As set out in Australian Criminal Intelligence Commission Bill 2026 (Cth) s 24. See also Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) s [302].
91 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 27.
92 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 28.

safeguards. In considering these provisions, we are concerned about the types of misconduct described by the High Court in *Strickland* and *Lee (No. 2)*.

Cooperation with the ACIC to perform ACIC functions

92. Paragraphs 27(1)(a)–(g) limits the types of entities with which the ACIC may cooperate to:

> *(a) an intelligence or security agency;*
> *(b) a law enforcement agency;*
> *(c) a Commonwealth body;*
> *(d) a State agency;*
> *(e) a Territory agency;*
> *(f) an authority of another country that is approved by the Director-General as being capable of assisting the ACIC in the performance of its functions;*
> *(g) an international body that is approved by the Director-General as being capable of assisting the ACIC in the performance of its functions.*[93]

93. The phrases "authority of another country" and "international body" are not defined in the ACIC Bill. Where the Director-General's approval of an international or foreign agency "being capable of assisting the ACIC in the performance of its functions" is required,[94] the Director-General is required to notify the IGIS and maintain records of that approval.[95] The threshold for cooperation is quite low at "conducive to… the performance of the ACIC's functions".[96] The EM notes that:

> *It is not intended that these provisions be relied upon to support general sharing of information between the ACIC and its partners. This will need to occur in accordance with the provisions in Part 8 of the Bill.*[97]

94. To better ensure that this is so, the requirement that all information sharing should take place in accordance with Part 8 of the ACIC Bill, this requirement should be included in the text of section 27. This would improve the clarity of the section by flagging that while this provision enables cooperation, it that does not extend to information sharing by the ACIC, notwithstanding sections 25 (use of information) and 26 (incidental powers of the ACIC) in the furtherance of the function found at paragraph 24(b).[98]

Recommendation 8

- **Section 27 should be amended to include reference to the requirement that any such cooperation be provided in a manner consistent with Part 8 of the ACIC Bill.**

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93 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 27(1).
94 See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 27(2).
95 Australian Criminal Intelligence Commission Bill 2026 (Cth) s 27(3).
96 Australian Criminal Intelligence Commission Bill 2026 (Cth) s27(1).
97 Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [300].
98 See also Ibid [301], which links the performance of this function to the cooperation with partner agencies in Australia and abroad.

Policing support by AFP

95. The Independent Review addressed how policing powers are currently being accessed by the ACIC:

> *The ACIC has continued to access policing powers through special member provisions under the Australian Federal Police Act 1979 (the AFP Act) since 2004. Subject to an Instrument of Appointment, ACIC staff sworn in as AFP special members may have access to particular enforcement powers and associated immunities that are used to service notices and summonses for coercive examinations, including use of force and arrest powers, access to weapons, or the ability to apply for particular warrants only available to law enforcement.*
>
> *The use of special members has expanded over time leading to a situation where there is a growing number of special members within the ACIC with limited control or visibility by the AFP of their activities.*[99]

96. The Independent Review recommended discontinuing the "authorised officer model" to more clearly separate intelligence collection from law enforcement powers within the ACIC. The object is to ensure that ACIC employees cannot access policing powers through their cross-appointment as a special member of the AFP.[100] However, despite this framework, the Bill does not preclude secondment or assistance from members of the AFP to the ACIC.

97. Subsection 28(1) requires that:

> *The Director-General, on behalf of the ACIC, and the AFP Commissioner, on behalf of the Australian Federal Police, must enter into a written agreement in relation to the provision of policing support by the Australian Federal Police to the ACIC for the purposes of assisting or cooperating with the ACIC in the performance of the ACIC's functions.*

98. This mandatory agreement is restricted to "policing support" but paragraph 28(3)(b) states that:

> *… this section does not otherwise limit the ACIC's power to cooperate with the Australian Federal Police or another law enforcement agency for the purposes of paragraph 27(1)(b).*

99. Subsection 27(1) states that the ACIC may cooperate with a law enforcement agency "so far as necessary for, or conducive to, the performance of the ACIC's functions".[101] Because "policing support" is not defined, it is not possible to clearly understand what aspects of cooperation are deemed "policing support" (noting that the provision understands that "policing support" is a narrower category of cooperation), and what aspects are cooperation with a law enforcement agency, and therefore can take place outside the scope of any such arrangement.

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[99] Stephen Merchant and Greg Wilson, *Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements* (Unclassified Report, May 2024) 32.

[100] See *Australian Federal Police Act 1979* (Cth) s 40E.

[101] See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 27(1).

100. A clear definition is also important to ensure that "policing support" for the ACIC is appropriately oversighted. An intelligence function of the AFP is subject to operational oversight by the IGIS,[102] and, in terms of "administration and expenditure", by the PJCIS in alignment with section 29(1)(a)(ii) of the *Intelligence Services Act 2001* (Cth) (**IS Act**). Section 3A(1)(a) of the *Inspector-General of Intelligence and Security Act 1986* (Cth) (**IGIS Act**) includes the following as examples of an "intelligence function":

> *(1) Intelligence function for AFP means:*
>
> *(a) the collection, correlation, analysis, production and dissemination of intelligence by AFP to support the performance of its functions under paragraphs 8(1)(b), (baa), (bd), (be), (bf), (bg) and (bh) of the Australian Federal Police Act 1979 ...*

101. However, "intelligence functions" do not include:

> *(2) To avoid doubt, the functions mentioned in paragraphs (1)(a) and (b) of this section do not include:*
>
> *(a) the arrest, charging or detention of suspected offenders; or*
>
> *(b) the gathering of evidence, or any activity undertaken to directly support the gathering of evidence.*

102. The relevant function of the AFP, as set out at section 8(1)(bf) of the *Australian Federal Police Act 1979* (Cth) (**AFP Act**), reads:

> *The functions of the Australian Federal Police are:*
>
> *…*
>
> *(bf) the provision of police services and police support services for the purposes of assisting, or cooperating with, an Australian or foreign:*
>
> *(i)law enforcement agency; or*
>
> *(ii)intelligence or security agency; or*
>
> *(iii)government regulatory agency … and*
>
> *(c) to do anything incidental or conducive to the performance of the foregoing functions.*

103. The phrase "police support services" is defined at section 4(1) of the AFP Act where it means:

> ***police support services** means services related to:*
>
> *(a) the provision of police services by an Australian or foreign law enforcement agency; or*
>
> *(b) the provision of services by an Australian or foreign intelligence or security agency; or*
>
> *(c) the provision of services by an Australian or foreign regulatory agency.*

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[102] See *Inspector-General of Intelligence and Security Act 1986* (Cth) s 3A(1), as inserted by Schedule 1 to the *Strengthening Oversight of the National Intelligence Community Act 2025* (Cth).

104. The phrase "police services" is also non-exhaustively defined at section 4(1) of the AFP Act:

> *"**police services** includes services by way of the prevention of crime and the protection of persons from injury or death, and property from damage, whether arising from criminal acts or otherwise.*

105. An "intelligence or security agency means an authority or person responsible for intelligence gathering for, or the security of, a country or a part of a country".[103]

106. Taken together, these provisions require knowing the precise nature of the activities being undertaken in order to ensure that they are appropriately operationally oversighted by the IGIS. Even then, it is unclear whether they are intelligence functions or policing services of the kind that enliven the exception at subsection 3A(2).

107. In our view, it would be advantageous for both the ACIC and all related policing support and assistance provided by the AFP to be unambiguously oversighted by the IGIS and PJCIS. This would streamline oversight arrangements for situations that are more appropriate to the IGIS's oversight responsibilities for ensuring public confidence in the legality and propriety of the interaction between the AFP and the ACIC,[104] especially in matters where use of force may be justified.

108. To ensure that other pathways for AFP involvement in ACIC activities are more effectively limited, we recommend that a definition of "policing support" is included in the Bill. The Bill already includes a limited number of provisions which refer to powers exercisable by a constable, so a limited definition that clarifies the relationship between the ACIC and the AFP in a "policing support" capacity would assist in ensuring that these functions are appropriately and clearly limited.

109. Additionally, the agreement between the Director-General and the AFP Commissioner should be published to the extent that the content of that agreement directly affects the public.[105]

Recommendation 9

- **The concept of "policing support" should be defined in the primary legislation.**
- **The agreement between the AFP and ACIC should be published to the extent that the content of that agreement directly affects the public.**
- **The PJCIS should be satisfied that the AFP is subject to oversight by the IGIS and PJCIS when performing "policing support" or otherwise providing policing assistance to the ACIC.**

[103] Australian Federal Police Act 1979 s 4(1) definition "intelligence or security agency".
[104] See *Inspector-General of Intelligence and Security Act 1986* (Cth) s 3A.
[105] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 262.

ACIC cooperation to perform other agency functions

110. The ACIC is also enabled to "cooperate with and assist" other persons or bodies with the performance of their functions.[106] These persons or bodies include:

> *(a) an intelligence or security agency;*
> *(b) a law enforcement agency;*
> *(c) a Commonwealth body;*
> *(d) a State agency prescribed by the rules;*
> *(e) a Territory agency prescribed by the rules.*[107]

111. The ACIC's cooperation with other persons and bodies in the performance of their functions is limited to Australian agencies.[108] This limitation is appropriate.

112. There are also more stringent requirements for other agencies to utilise the assistance and cooperation of the ACIC than in instances where the ACIC seeks cooperation with another agency. ACIC cooperation and assistance are "subject to any arrangements made or directions given by the Minister",[109] following a request made by that body of person. While this remains a discretionary power, the legislation does not specify to whom that request should be made. Additionally, the EM states that this provision is not intended to require the Minister to make any arrangements or directions, only that "if any directions are arrangements are given, the ACIC must comply with them".[110] The legislation does not include a provision to require the Director-General to notify the Minister that such an arrangement has been entered into.

113. Subsection 29(3) provides that the:

> *… the ACIC may make the services of any of the following, and other resources of the ACIC, available to the person or body:*
> *(a) ACIC employees (see section 259);*
> *(b) consultants engaged under section 260;*
> *(c) persons performing services for the ACIC under an agreement under section 262.*

114. We note that although paragraphs 29(a)–(c) list persons other than "examiners", there is nothing that prohibits making available the use of coercive powers to other agencies as an example of "other resources available to the ACIC" provided that the use of coercive powers can be justified under an existing authorisation and agreed to by an examiner.

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[106] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 29.
[107] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 29.
[108] Cf Australian Criminal Intelligence Commission Bill 2026 (Cth) para 27(f)-(g).
[109] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 29(2)(a).
[110] Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [320].

Recommendation 10

- **Section 29 should specify to whom a person or body requesting ACIC cooperation should be addressed and who is responsible for making such a decision.**
- **If the ACIC is to exercise a discretion about cooperation with other agencies, the legislation should include a notification requirement requiring that the Minister and the IGIS are notified of the existence and terms of such an agreement, similar to subsection 27(3).**

Coercive powers framework

115. Part 3 of the ACIC Bill sets out the coercive powers framework. The coercive powers framework broadly applies to two classes of powers:

    - Division 3 of Part 3 addresses the power to require information, documents and things. Within this Division, our submission focuses most closely on the notice to produce powers; and
    - Division 4 of Part 3 addresses compulsory examinations.[111]

116. Both Divisions contain provisions that require a person to perform actions, respond to a notice to produce or an examination to respond to and comply with either notices to produce or respond to any questions asked at an examination, regardless of whether such compliance might incriminate the witness. The ACIC's powers of compulsion are backed by a range of criminal offences for non-compliance,[112] and the ACIC may also access remedies for contempt.[113]

117. In the Law Council's view, such coercive powers must be carefully confined to extraordinary matters, accompanied by strong safeguards to protect individuals, preserve the right to legal representation, and have appropriate accountability mechanisms. Coercive questioning powers engage substantial rule of law concerns, our Policy Statement on the Rule of Law states that:

> *No one should be compelled to testify against him or herself. Where a person is subject to questioning by the state, he or she should be given appropriate warnings about this right. Where a person is compelled to provide information to the state, there should be a prohibition on that information, or further information derived from it, being used in proceedings against that person (that is there should be use and derivative use immunity).*[114]

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[111] While these powers are described separately in the Bill, provision is also made to append production powers to persons under summons to attend an examination. See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 59(4).

[112] See for example Australian Criminal Intelligence Commission Bill 2026 (Cth) ss 56, 57, 75, 76, 77, 78, 79, 80, and 81.

[113] See Subdivision C of Part 3 of Division 4 of the ACIC Bill.

[114] Law Council of Australia, *Policy Statement on Rule of Law Principles* (March 2011) 3.

118. This is because requiring persons to answer questions, on pain of punishment, posed by an intelligence agency investigating "serious and organised crimes" introduces a real risk that the administration of justice will be interfered with.[115] The High Court has recognised, for example, that the fact that a person may be examined, in detail about the circumstances of an alleged offence or matter relating to a confiscation proceeding, is very likely to prejudice a person in terms of their defence.[116] In *X7*, the Court acknowledged that:

> *… the requirement to give answers, after being charged would fundamentally alter the accusatorial judicial process that begins with the laying of a charge and culminates in the accusatorial (and adversarial) trial in the courtroom. No longer could the accused person decide the course which he or she should adopt at trial, in answer to the charge, according only to the strength of the prosecution's case as revealed by the material provided by the prosecution before trial, or the strength of the evidence led by the prosecution at the trial… the accused person would have to decide what plea to enter, what evidence to challenge and what evidence to give or lead at trial according to what answers he or she had given at the examination.*[117]

119. The fact that the ACIC Bill includes drafting that is intended to clearly express a legislative intention that post-charge compulsory questioning is to be allowed—despite provisions that regulate the secrecy of any answers given and limitations on direct and indirect use of those answers by investigators and prosecutors[118]—does not ameliorate the concerns previously raised by the High Court about the risks that follow such a departure from the accusatorial system of criminal justice.[119]

120. The Law Council is concerned that allowing post-charge compulsory examination on the circumstances of alleged offending, prior to the resolution of criminal charges, is very likely to prejudice a person's defence at trial. An accused person should not be forced to divulge their position prior to trial or to assist law enforcement or intelligence officers in gathering supplementary information which can be used to aid their prosecution.

121. The Law Council's position on coercive questioning is that it should be deferred until after the resolution of proceedings.[120] If a person is to be so compelled, and any information they possess is deemed sufficiently important by the Executive to warrant imposing on the administration of criminal justice, this should only be allowable where both use and derivative immunities are provided to the witness.

122. However, if the PJCIS is not minded to accept the Law Council's position, then the Law Council makes a number of alternative recommendations below to improve the quality of safeguards included in the ACIC Bill.

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[115] *Hammond v the Commonwealth* (1982) 152 CLR 188, 198 (Gibbs CJ with whom Mason and Murphy JJ agreed).
[116] Ibid.
[117] *X7 v Australian Crime Commission* (2013) 248 CLR 92, 142 [124] (Hayne and Bell JJ, with whom Kiefel J agreed)].
[118] Ibid.
[119] *Lee v the Queen* (2014) 253 CLR 455, 466-7 [32]; *Lee v NSW Crime Commission* (2013) 251 CLR 196,266 [176] (Kiefel J).
[120] See Law Council of Australia, Law Enforcement Legislation Amendment (Powers) Bill 2015 (Submission to Senate Legal and Constitutional Affairs Committee, 4 June 2015) [32].

Recommendation 11

- **The use of compulsory questioning powers should be deferred until after the resolution of criminal charges without the provision of both use and derivative immunity.**

Authorisation framework

123. The Law Council's Policy Statement on the Rule of Law states that intrusive actions undertaken by the Executive—including police and intelligence services—should be duly authorised by law, and the use of such powers should be subject to the oversight judiciary and the parliament:

> *The use of executive powers should be subject to meaningful parliamentary and judicial oversight, particularly: powers to use force; to detain; to enter private premises; to seize property; to copy or seize information; to intercept or access telecommunications or stored communications; to compel the attendance or cooperation of a person; or to deport a person. Mechanisms should be in place to safeguard against the misuse or overuse of executive powers.*[121]

124. Where laws provide for the use of executive powers that are intrusive, engage human rights (such as the right to a fair trial (incorporating the right to silence), the right to privacy, and the rights of the child) and would otherwise be unlawful if not duly authorised, the rule of law is better maintained through the oversight of the judiciary. It is more appropriate that requests for access to intrusive powers, such as coercive questioning powers, are assessed and issued by the judiciary rather than members of the Executive. Otherwise, the Executive is essentially authorising itself to exercise significant powers against individuals, and important checks and balances over the exercise of these powers are not maintained.

125. We are concerned that authorisation framework does not provide sufficiently independent oversight of the ACIC. The principal decisions concerning the utilisation of the coercive powers framework, as well as the imposition and terms of any bespoke protections (such as non-disclosure notations and directions)[122] are made by the Minister responsible for the ACIC, or the Director-General or independent examiners who, although appointed under statute, form constituent parts of the ACIC.[123]

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[121] Law Council of Australia, *Rule of Law Principles* (Policy Statement, March 2011) (6)(b).
[122] See Australian Criminal Intelligence Commission Bill 2026 (Cth) ss 102 and 110 respectively.
[123] See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 23(2).

126. The Law Council is concerned that the ACIC Bill moves yet further away from judicial authorisation of warranted activities. The proposed approach is contrary to emerging best practice in nations Australia has historically emulated,[124] and does not account for considered proposals for warrant issuing processes, such as those made by the INSLM about warrant issuing processes.[125]

127. While not supporting judicial authorisation, the Independent Review identified the need for "a new authorisation model for the approval of the ACIC's use of coercive powers".[126] The reviewers "propose[d] a new "double lock" process for authorising the ACIC's use of coercive powers".[127] In particular, they proposed that the first "lock" should consist of a request for an authorisation from the Attorney-General:

> *We propose that the CEO request the Attorney-General to authorise the exercise of coercive powers for the purpose of obtaining intelligence in relation to a criminal network or organisation. Before authorising the use of these powers, the Attorney-General would need to be satisfied that there were reasonable grounds for concluding that the criminal network/organisation referred to in the request was, or was reasonably likely to be, involved in federally relevant crime that met the threshold of serious and organised crime.*[128]

128. This model formed the basis of recommendation 5 of the Independent Review, which reads:

> *The ACIC retain its ability to utilise coercive powers incorporating a 'double lock' approval process which utilises authorisations by the Attorney-General and an independent Examiner.*[129]

129. The Government agreed to this recommendation,[130] writing in support of that decision:

> *The ACIC's access to coercive powers remains essential to providing key intelligence on TSOC. It is equally important that the use of these significant and intrusive powers be subject to appropriate oversight and safeguards.*
> *A strengthened 'double lock' approval process will be legislated to require that the use of the ACIC's coercive examination and document production powers be authorised by both an independent ACIC Examiner and the Attorney-General.*[131]

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[124] For example, under the *Investigatory Powers Act 2016* (UK).
[125] See Jake Blight, *Data Disruption, Network Activity and Account Takeover Powers Review of Surveillance Legislation Amendment (Identify and Disrupt) Act 2021*, Independent National Security Legislation Monitor (Report, 1 September 2025) 53-83.
[126] Stephen Merchant and Greg Wilson, *Independent Review of the Australian Criminal Intelligence Commission and Associated Commonwealth Law Enforcement Arrangements* (Report, May 2024) 27.
[127] Ibid 28.
[128] Ibid.
[129] Ibid 30, rec 5.
[130] Australian Government, Government Response to the Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth Law Enforcement Agencies (November 2024) 7.
[131] Ibid.

130. The General Outline of the EM describes the intention of the government in setting out the coercive powers framework and the implementation of recommendation 5 of the Independent Review, as it relates to authorisations, in the following way:

> *The ACIC's coercive powers will be in line with the Government response to relevant recommendations of the Independent Review. These include that the ACIC should retain its ability to use coercive powers for intelligence collection purposes with a revised 2-step authorisation process involving both the Minister responsible for the ACIC (replacing the ACIC Board) and an independent examiner (recommendation 5).*[132]

131. The ACIC Bill deviates from the Independent Review's model of a "double lock" mechanism in several significant ways.

132. First, the Bill does not implement the Independent Review's recommendation that the Attorney-General grant authorisation following the Director-General's request for an authorisation. Instead, the "Minister responsible for the ACIC" grants such authorisations.[133]

133. In the Law Council's view, authorisations of this kind should be issued or ratified by judicial officers. However, if executive authorisation is to be adopted (as was recommended by the Independent Review), it would be more appropriate for this role to sit with the Attorney-General. Such an approach is adopted in relation to other intrusive powers, notably search warrant authorisations. Additionally, the Attorney-General is required to act as the First Law Officer of the Commonwealth, which adds an additional safeguard when making authorisations that enable the use of coercive powers.

134. Second, the Bill does not implement the Independent Review's recommendation that the Director-General "… request the Attorney-General to authorise the exercise of coercive powers".[134] This was considered an "approval process" mechanism, meaning that it required a request followed by an assessment on the merits.

135. Thirdly, the Bill does not implement the Independent Review's recommendation that before authorising the use of these powers, the Attorney-General would need to be satisfied that there were reasonable grounds for concluding that the criminal network/organisation referred to in the request was, or was reasonably likely to be, involved in federally relevant crime that met the threshold of serious and organised crime. Instead, the Minister must simply be satisfied that it is in the public interest to issue the authorisation.

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[132] Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) 5.

[133] In May 2025, following the federal election, a new Administrative Arrangements Order moved responsibility for the majority of the *Australian Crime Commission Act 2002* (Cth) to the Minister for Home Affairs: Administrative Arrangements Order (13 May 2025) 23. Note: the Attorney-General retained responsibility for legal assistance decisions made under section 27 of the *Australian Crime Commission Act 2002* (Cth). Cf Administrative Arrangements Order (13 October 2022) 4.

[134] The Independent Review refers to this request being made by the CEO of the ACIC, but as the role of CEO of the ACIC will be replaced by the Director-General should the ACIC Bill pass, for ease of reference we have maintained the Bill's terminology for the head of the ACIC. Stephen Merchant and Greg Wilson, *Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements* (Unclassified Report, May 2024) 28.

136. The Bill instead includes the following authorisation mechanism:

> ***41 Minister may issue authorisations***
>
> *(1) The Minister may issue an authorisation identifying serious and organised crime in relation to which the ACIC may exercise the powers in this Part.*
>
> *(2) The only condition for the exercise of the power to issue an authorisation under subsection (1) is that the Minister is satisfied that it is in the public interest to issue the authorisation…*

137. This process does not require the "unlocking" of extraordinary powers on request of the Director-General. Instead, the Minister is empowered to authorise the use of coercive powers based on their assessment of "the public interest", which is subject only to a non-binding list of factors the Minister "may take into account in deciding whether issuing an authorisation is in the public interest".[135]

138. The Law Council is concerned that the discretion to decide whether a matter is in "the public interest" remains largely unstructured on account of the non-binding status of factors that the Minister "may take into account". Such decisions require value judgments to be made in identifying the relevant issues and assigning them appropriate weight in decision-making.[136]

139. The authorisation provision would be substantially improved through the following amendments to bring the coercive powers framework into closer alignment with the controlled intelligence operation authorisation framework located in Part 4 of the ACIC Bill (discussed below at [216–218]):

- instituting a request and ratification style authorisation framework;
- the inclusion of an appropriate threshold to be met prior to authorising the use of these powers:
  - satisfaction that there are reasonable grounds for concluding that the criminal network/organisation referred to in the request is, or is reasonably likely to be, involved in federally relevant crime that meets the threshold of serious and organised crime; or
  - (if this is not accepted) a necessity and proportionality test to ensure that the Minister is reasonably satisfied that the authorisation is in the public interest to the extent necessary and proportionate to the identified harm associated with serious and organised crime in the specific circumstances;
- the inclusion of a "less intrusive methods" test before authorising coercive powers; and
- the inclusion of a list of matters that must be considered as part of a "public interest analysis" to provide greater certainty and consistency of decision-making.

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[135] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 41(3).

[136] See for example*, O'Sullivan v Farrer* (1989) 168 CLR 210, 216 (Mason CJ, Dawson, Brennan and Gaudron JJ): "the expression "in the public interest", when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only "in so far as the subject matter and the scope and purpose of the statutory enactments may enable…'" (citation omitted).

140. Furthermore, section 41(4) currently states that the "authorisation may identify the serious and organised crime to which an authorisation relates at whatever level of generality the Minister considers appropriate". We consider this drafting to be unduly permissive given the expansive definition of "serious and organised crime". This provision does not prohibit, for example, a Minister from granting a single authorisation for the use of ACIC powers against all potential current and future "serious and organised crime" if they were personally satisfied that that would be in the public interest. We suggest that this provision might benefit from a further necessary and proportionate test. For example:

> *… an authorisation must identify the serious and organised crime to which an authorisation relates at no greater level of generality than the Minister considers strictly necessary and proportionate to address the identified serious and organised harm.*

141. Likewise, as the High Court has held, the meaning of a statutory expression such as "in the public interest" is determined by reference to the specific text, context and purpose of the enactment in which it is used.[137] Subsection 41(3) states that it is not intended to limit the "matters that the Minister may take into account" in assessing whether a potential authorisation might be "in the public interest".[138] We suggest that this provision might be improved by providing additional structure to any decision regarding the "public interest", including specifying whether specific matters must be taken in to account.

142. While the list of factors currently provided in subsection 41(3) of the ACIC Bill is a useful starting point, we suggest that any holistic assessment of the public interest in issuing an authorisation for coercive powers ought to require the Minister to consider:

- whether there are less intrusive methods that should be applied before utilising extraordinary coercive powers to collect the relevant intelligence;[139] and
- whether there are any situation-specific safeguards and limitations on an authorisation that could be provided.

143. If the proposed broad authorisation approach is maintained, contrary to our submission and the recommendation of the Independent Review, it should be bolstered by the inclusion of a requirement for the Attorney-General to ratify the authorisation by the Minister. Similar (although not replicable) authorisation mechanisms have been adopted to facilitate the proscription of prohibited hate groups at Part 5.3B of the Criminal Code Act.[140]

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[137] See, for example, *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 [69] (McHugh, Gummow, Kirby and Hayne JJ).

[138] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 41(3).

[139] NB a similar provision is adopted in the *Australian Security Intelligence Act 1979* (Cth) paras 34BA(1)(c) and 34BB(1)(d) as part of the Attorney-General's test for issuing compulsory questioning warrants.

[140] See for example how authorisations are implemented in Criminal Code Act ss 114A.4-114A.6.

Recommendation 12

- **Authorisations should be issued by judges.**
- **If the PJCIS decides to continue to support the proposed model, then we make the following recommendations to the authorisation framework:**
  - **Instituting a request and ratification style framework at first instance, that requires that the Director-General request an authorisation from the Minister; and the Minister subsequently assesses if the request meets an appropriate threshold (see below).**
  - **The inclusion of an appropriate threshold to be met prior to the authorisation of coercive powers that requires:**
    - **satisfaction that there are reasonable grounds for concluding that the criminal network/organisation referred to in the request is, or is reasonably likely to be, involved in federally relevant crime that meets the threshold of serious and organised crime.; or**
    - **a necessity and proportionality test to ensure that the Minister is reasonably satisfied that the authorisation is in the public interest to the extent necessary and proportionate to the identified harm associated with serious and organised crime in the specific circumstances;**
  - **the inclusion of a "less intrusive methods" test before authorising coercive powers.**
  - **the inclusion of a list of matters that must be considered as part of a "public interest analysis" to provide greater certainty and consistency of decision-making.**
- **Section 41(4) should be amended to require that any authorisation for coercive powers should be limited in generality to the extent strictly necessary and proportionate to the assessed harm.**

Notice to produce and summons to appear at examination

144. Once an authorisation has been granted, an examiner may issue a summons to appear at an examination,[141] or a notice to produce information, documents, or things.[142] This largely accords with "Lock 2" in the "double lock" process recommended by the Independent Review.[143]

145. The coercive powers framework, at sections 50 and 59 explicitly authorises post-charge or post-confiscation application examinations and notices to produce. Likewise, the ACIC Bill also provides for post-charge or post-confiscation application

[141] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 59.
[142] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 50.
[143] See Stephen Merchant and Greg Wilson, *Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements* (Unclassified Report, May 2024) 29. There are some minor differences, for example, the Independent Review recommended that records of reasons be made in a more proscribed format than is provided for by the more general requirement to record reasons as set out at sections 50(7) or 59(7).

issuing of summonses and notices to produce. Where a post-charge or post-confiscation application event is considered, an examiner is required to address additional considerations before issuing a summons or notice to produce. In both instances, this additionally requires that the examiner "be satisfied" that issuing a summons or notice "is reasonably necessary for the purposes of obtaining" the requisite intelligence "even though (a) the person has been charged or the confiscation proceeding has commenced; or (b) that charge or proceeding is imminent".[144]

146. As discussed above, we are concerned that powers to question a person under oath or affirmation who meets the characterisation of being "post-charge" significantly undermines their ability to contest criminal charges or confiscation proceedings. We are also concerned that the threshold for access to this power is too low given its likely prejudicial impact on any subsequent proceedings.

147. Coercive powers can be activated by an examiner to obtain information that is not necessarily directly relevant to obtaining intelligence. The test only requires that the "evidence would assist the ACIC to obtain intelligence". This allows for the collection of information at a significant distance from the intelligence the ACIC seeks to obtain. There should be a closer nexus between sought intelligence and a person who is post-charge.

148. Additionally, we are concerned that a post-charge summons and notices can be issued by a relatively junior examiner. As discussed in the following section of this submission regarding the qualifications for appointment as an examiner, we propose that the seniority of examiners should be calibrated to the proximity of the examination to a criminal justice process, with more senior examiners required to be allocated to higher-risk examinations.

149. There is a higher threshold for post-charge or post-confiscation application notices or summonses, which requires that under such circumstances an examiner must also be "satisfied that issuing the notice",[145] or "satisfied that issuing the summons",[146] is "reasonably necessary for obtaining the intelligence referred to" in one of: paragraph 50(1)(a), subsection 59(4), or paragraph 59(1)(a) as appropriate. There is some ambiguity in this approach.

150. It is unclear on the drafting what the relevant "intelligence" is and whether this requires a further assessment of "reasonable necessity" in the context of "reasonable suspicion" or if the provision is intended to be read as raising the threshold for the analysis of the section to "reasonable necessity". It is also possible that the current drafting, if interpreted narrowly, refers only to the final clause of the paragraph: "intelligence relevant to serious and organised crime that is identified in an authorisation that is in force under Division 2 of this Part". In which case, it would require a narrower construction of the remit to collect intelligence through the notice or examination frameworks (as it would omit the information, document or thing reasonably suspected to assist in obtaining intelligence of the kind referred to in that paragraph). If the provision is read down in this way, noting that this is the preferred

[144] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-ss 59(5) and 50(4).
[145] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 50(4).
[146] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 59(5).

interpretation in the EM,[147] an examiner would be limited to uses of this power in circumstances where they understand the person in question to possess that intelligence.

151. Without clarification, it is not possible to know precisely what is referred to and, in the context of post-charge or post-confiscation applications provisions, this risks falling short of the clarity of drafting required by *X7*. It would be preferable to have the scope of the test for the intended application of any additional threshold provisions concerning post-charge and post-application orders to be expressed with greater clarity in the primary legislation.

Recommendation 13

- **Sections 50 and 59 should be amended to require that summonses and notices to produce that are to be issued in post-charge or post-confiscation application circumstances, are only to be issued by examiners who were appointed based on the highest level of qualification under section 251.**
- **Sections 50(4) and 59(5) should be amended to clearly articulate a "reasonably necessary" test for post-charge or post-confiscation application examination or notices.**

Examiners

152. Examiners, appointed as independent statutory officeholders,[148] have broad powers to request the provision of information, documents, and things, including from the heads of federal agencies and to conduct examinations under compulsion. These powers of compulsion are backed by criminal offences for failure to comply, for giving false or misleading information or documentation in response. Therefore, the standard and probity of examiners (as well as public confidence in the standard and probity of examiners) is a central aspect of the public legitimacy of the ACIC as it seeks to exercise extraordinarily intrusive powers as part of its mandate.

Qualifications and appointment process

153. The proposed minimum qualifications for examiners are such that

> *(2) A person must not be appointed as an examiner unless:*
>
> *(a) the person:*
>
> *(i) is enrolled as a legal practitioner; and*
>
> *(ii) has been so enrolled for at least 5 years…*[149]

[147] See Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [491] and [580].
[148] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 251.
[149] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 251(2)(a).

154. We note that provision is also made for former judges,[150] who may no longer be enrolled as legal practitioners.[151] Under the current ACC Act, former judges who are not enrolled as a legal practitioner are not eligible for appointment.[152] Provision for former judges is a welcome improvement.

155. There are also important similarities and differences between examiners under the ACIC Bill and "prescribed authorities" under Part 3 of Division III of the ASIO Act.[153] While we are satisfied that statutory appointment provides a stronger basis for independence than Ministerial appointment, we are concerned that in some important aspects the qualifications for examiners are lower under the ACIC Bill than the ASIO Act. Under section 34AD(1) of the ASIO Act, a person appointed as a "prescribed authority" must be:

> *(a) a person who:*
>
> *(i) has served as a judge in one or more superior courts for a period of at least 5 years; and*
>
> *(ii) no longer holds a commission as a judge of a superior court; or*
>
> *(b) a person who holds an appointment to the Administrative Review Tribunal as President or Deputy President; or*
>
> *(c) a person who:*
>
> *(i) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory; and*
>
> *(ii) has engaged in practice as a legal practitioner for at least 10 years; and*
>
> *(iii) holds a practising certificate granted under a law of a State or Territory; and*
>
> *(iv) is a Senior Counsel.*[154]

156. Given that the powers are similar in terms of their level of intrusiveness and both are exercisable by an intelligence agency, we propose that the standard of qualifications required for appointment as a prescribed authority under the ASIO Act are preferable. These powers are also significantly more likely to interact with criminal prosecutions, and as such, examiners with additional experience and seniority within the profession are better positioned to provide greater protection of fair trial rights. Public confidence in the integrity of the framework can be better supported by ensuring that appointments to the office of examiner are seen to be more highly qualified than the lowest possible qualification for appointment.

157. Finally, we suggest that post-charge questioning and public confidence in post-charge questioning might be further bolstered by adopting a graduated approach to the seniority of examiners. The Australian Security Intelligence Organisation Amendment Bill (No. 2) 2025 (Cth) currently before the Australian Parliament includes a provision that would require a prescribed authority appointed based on a

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[150] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 251(2)(b).
[151] Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [2328].
[152] See *Australian Crime Commission Act 2002* (Cth) s 46B. The *Australian Crime Commission Act 2002* (Cth) restricts appointment to legal practitioners who have been enrolled for at least 5 years.
[153] See for example Australian Security Intelligence Organisation Act 1979 (Cth) s 34AD.
[154] *Australian Security Intelligence Organisation Act 1979* (Cth) sub-s 34AD(2) also provides a list of occupations that permit disqualification as a "prescribed authority".

previous judicial tenure in at least one superior court of at least 5 years in cases where:

> *(a) the warrant is a post-charge questioning warrant; or*
>
> *(b) the subject of the warrant has been charged with a related offence and that charge is still to be resolved; or*
>
> *(c) such a charge is imminent…*[155]

158. While these changes would not fully ameliorate the potential for adverse impacts on fair trial rights, they would better ensure that decisions regarding the post-charge examinations are made by persons with significant trial experience.

Independence

159. There are limited circumstances where the Minister can give directions to the Director-General set out in section 37 of the ACIC Bill. Should this power be exercised, reports must be tabled in both Houses of Parliament,[156] and if the directions involve overriding an opinion of the Director-General, then the Minister must also give a copy of that report to the Prime Minister.[157] By contrast, there are no provisions in the Bill that spell out the independence of examiners with equivalent clarity.

160. Examiners comprise one of three core elements of the ACIC, along with the Director-General and ACIC staff.[158] The independence of examiners is essential to both the lawful operation of and public confidence in the ACIC. We suggest that the ACIC Bill be amended impose upon examiners a duty to exercise independent judgment as well as protection from outside direction as to the exercise of their discretion.

161. A specific provision in the legislation would better communicate to examiners, potential appointees and related parties that the office of examiner requires the exercise of independent judgment. We remain concerned by the situation described in *Strickland* where both the ACC as a whole and the examiner:

> *did not exercise his compulsive powers under the ACC Act lawfully for the purpose for which the ACC Act provided but for the extraneous unlawful purpose of assisting the AFP to compel the appellants to give answers to questions about offences of which they were suspected and in relation to which they had exercised their common law right to silence.*[159]

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[155] Australian Security Intelligence Organisation Amendment Bill (No. 2) 2025 (Cth) Sch 1 Pt 5 item 8 (amending section s 34BE of the *Australian Security Intelligence Organisation Act 1979* (Cth)).
[156] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 37(9).
[157] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 38.
[158] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 23(2).
[159] *Strickland v CDPP* (2018) 266 CLR 325, 366 [96] (Kiefel CJ, Bell and Nettle JJ).

Recommendation 14

- **Consideration should be given to aligning examiners' qualifications with those of "prescribed authorities" at section 34AD of the ASIO Act.**
- **Where coercive powers are used before a criminal charge has been resolved by a court, an examiner should be required to have been appointed under section 251(2)(b).**
- **Consideration should be given to including a disqualification provision for examiners.**
- **A provision should be inserted into the ACIC Bill that confirms the independence of an examiner.**

Coercive questioning and production

What are examiners authorised to do?

162. The coercive powers framework in Part 3 of the Bill grants examiners a series of rights to gather information and materials from persons. These powers include:

- issue a "notice to produce";[160]
- conduct an examination;[161]
- summons persons to attend an examination;[162]
- compel a witness at an examination to give information, produce a document or thing;[163]
- expand the purposes of an examination in progress to cover material that forms the basis of other authorisations beyond the one that formed the basis for authorising the examination that is underway;[164] and
- the examiner may compel the witness to provide reasonable and necessary assistance in order to access information or data, or to examine the thing in question.[165]

[160] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 50(1).
[161] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 58.
[162] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 59.
[163] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 65.
[164] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 66.
[165] Australian Criminal Intelligence Commission Bill 2026 (Cth) ss 67 and 68.

Abrogation of the privilege against self-incrimination

163. The ACIC Bill explicitly abrogates the privilege against self-incrimination in two contexts:

    (a) witnesses summoned to attend an examination or issued with a notice to produce;[166] and

    (b) ACIC employees reporting requirements concerning serious misconduct or potential criminal activity.[167]

164. The ACIC Bill expressly states that a person is "not excused from giving an answer or information, or producing a document or thing, as required by a notice to produce or during an examination, on the ground that doing so would tend to incriminate the individual".[168]

165. As noted above, the Law Council's *Policy Statement on Rule of Law Principles* holds that:

> *No one should be compelled to testify against him or herself. Where a person is subject to questioning by the state, he or she should be given appropriate warnings about this right. Where a person is compelled to provide information to the state, there should be a prohibition on that information, or further information derived from it, being used in proceedings against that person (that is there should be use and derivative use immunity).*[169]

166. The privilege against self-incrimination forms a core part of the accusatorial system of criminal justice.[170] Such a privilege supports the "golden thread" of the criminal justice system that the prosecution is required to prove the accused's guilt beyond reasonable doubt.[171] The privilege means that:

> *… a person is not bound to answer any question or produce any document if the answer or the document would have the tendency to expose the person to, either directly or indirectly to, to a criminal charge, the imposition of a penalty or the forfeiture of an estate which is reasonably likely to be preferred or sued for.*[172]

167. Where the Executive seeks to abrogate the privilege against self-incrimination, the Law Council's position is that there should be a corresponding prohibition on the use of that information in proceedings, or the use of that any compelled information to collect evidence which may then be used in proceedings against the person. These are described as "use" and "derivative" immunities, respectively.

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[166] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 126.
[167] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 267, see also s 266(4).
[168] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 126(1).
[169] Law Council of Australia, *Rule of Law Principles* (Policy Statement, March 2011) 3.
[170] *Lee v New South Wales Crime Commission* (2013) 251 CLR 196, 202 [1] (French CJ), 266 [182] (Kiefel J).
[171] See *X7 x Australian Crime Commission* (2013) 248 CLR 92, 136 [102] (Hayne and Bell JJ, with whom Kiefel J agreed); *Lee v New South Wales Crime Commission* (2013) 251 CLR 196, 265 (Kiefel J).
[172] *Bridal Fashions Pty Ltd v Comptroller-General of Customs and Another* (1996) 17 WAR 499, [504] (Malcolm CJ, Ipp and Owen JJ).

Use immunity

168. The limit on the privilege against self-incrimination is subject to a use immunity that restricts the direct use of "the answer given, or the document or thing produced",[173] or the fact that an answer given or material was produced,[174] as evidence in criminal proceedings or confiscation proceedings "at a time when the proceeding had commenced or was imminent".[175]

169. There are a number of limitations on the use immunity. The use immunity does not apply to documents produced under compulsion that meet the description of business records.[176] A use immunity is not available in circumstances where answers, information or documents obtained under compulsion are sought to be admitted into evidence:

> *… "against the individual in:*
>
> *(i) a proceeding under this Act for contempt of the ACIC;*
>
> *(ii) a proceeding for an offence against this Part, other than an offence against section 81, 93 or 97;*
>
> *(iii) a proceeding for an offence against section 137.1 or 137.2 of the Criminal Code (about false or misleading information or documents) that relates to a notice to produce or an examination;*
>
> *(iv) a proceeding for an offence against section 144.1 or 145.1 of the Criminal Code (about forgery) that relates to a notice to produce or an examination;*
>
> *(v) a proceeding for an offence against section 149.1 of the Criminal Code (about obstruction of Commonwealth public officials) that relates to this Act.*[177]

Derivative use immunity

170. The Law Council remains opposed to allowing the derivative use of compelled material.[178] A person should not be compelled to assist intelligence officers or law enforcement by being compelled to provide supplementary information that may be used to assist in evidence collection for the purposes of their prosecution. In circumstances where the ACIC seeks to obtain intelligence from a person about circumstances that relate to a criminal offence before relevant charges have been resolved, it is appropriate that such an immunity be extended. We are of the view that direct and derivative use of compelled materials are equally capable of practically impeding the accusatorial justice system by requiring a person to participate in the investigation and prosecution of criminal offences. While safeguards are provided, these do not remedy the underlying issue of using answers given under compulsion to collect evidence which is then capable of being admitted at trial for the same conduct.

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[173] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 126(3)(a).
[174] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 126(3)(b).
[175] See Australian Criminal Intelligence Commission Bill 2026 (Cth) para 126(4)(b).
[176] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 126(5)(a).
[177] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 126(5)(b).
[178] Law Council of Australia, *Policy Statement on Rule of Law Principles* (March 2011) (3)(b).

171. The use of such an immunity is designed to facilitate findings of fact. In our view, the extension of such an immunity is better aligned with the purpose of a criminal intelligence agency. Reflecting on the utility of derivative immunity in investigating allegations of war crimes in Afghanistan, the Inspector-General of the Australian Defence Force commented that:

> *… without those immunities, it is unlikely that the culture of silence would have been breached, and that the conduct described in this Report would have been exposed, at least to the extent to which it has.*[179]

172. The ACIC Bill allows for the derivative use of answers, documents and information obtained under the coercive questioning framework. Section 118 sets out that entities in lawful possession of compelled material are not, unless prohibited, restricted from passing on compelled material to obtain derivative material. These restrictions are discussed below. The EM states that utilising compelled material to obtain derivative material is a policy decision taken by the Australian Government:

> *It is important that material derived from compelled material can be used to disrupt and prevent serious harm to the community, including by prosecuting persons who have been witnesses.*[180]

173. The Parliamentary Joint Committee on Human Rights has expressed concern about the proportionality of the coercive questioning framework. In their Report on this Bill, the PJCHR states that in circumstances where the right not to incriminate oneself and the right to privacy are engaged "[t]he legislative thresholds to be met before information can be compelled are arguably low".[181] The PJCHR then suggests that:

> *the proportionality of this measure may be assisted were the bill amended to provide a derivative use immunity for information provided by the ACIC to the prosecutor of a witness*.[182]

174. We agree with the PJCHR.

175. The ACIC Bill relies on the definitions of pre- and post- charge to structure when different safeguards required in order to enable the use of coercive powers post-charge. As discussed at paragraphs [68]—[80] above, the Law Council considers that there are structural weaknesses in these definitions which mean that there is a susceptibility to strategic manipulation of when a charge is considered "imminent".

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[179] Inspector-General of the Australian Defence Force, *Afghanistan Inquiry Report* (Report, 2020) 40 [67].
[180] Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [1146].
[181] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Scrutiny Report 5 of 2026* (Report, 7 May 2026) [1.37].
[182] Ibid [1.38].

Recommendation 15

- **The coercive powers framework should be amended to include a derivative use immunity.**
- **Should the PJCIS not accept our recommendation that a derivative use immunity is provided, the PJCIS should consider prohibiting the use of derived material in proceedings against the person.**

Using compelled material to obtain derivative material

176. If an entity is permitted to use or disclose compelled material by the law of a state, territory, or the Commonwealth, that entity is not prohibited from using or disclosing that compelled material for the purposes of obtaining evidence that is then admissible in proceedings. The ACIC Bill expressly permits certain entities—including the ACIC, investigation bodies, the prosecutor of a witness, and a proceeds of crime authority[183]—to both use and disclose derivative material, including in circumstances where the material is both obtained in post-charge circumstances and sought to be disclosed or used post-charge.[184]

177. Subsection 118(2) subjects the operation of subsection (1) to any directions about use or disclosure in force,[185] and the conditions for the disclosure to prosecutors of a witness set out at section 119. While this clause is not intended to override a Court's power to make orders concerning the fair trial of a witness, the use of compelled powers to obtain derived evidence may not be known to the defence and therefore not capable of being so restrained in proceedings. Once ACIC information is one step removed from the ACIC, it is not covered by Part 8 of the ACIC Bill.

178. There is no requirement in the ACIC Bill that disclosures of ACIC information to third parties are recorded. In order to facilitate appropriate record keeping and ensure oversight of compliance with these provisions, we consider it appropriate that all ACIC material obtained through the coercive powers framework should be appropriately logged so that a record of intelligence handling exists. Given the sensitivity of the information in question and the consequences of misconduct or poor decision making to criminal prosecutions, it is appropriate that such a requirement be included in primary legislation.

[183] See Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 118(4).
[184] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 118(1).
[185] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 110.

Recommendation 16

- **If the PJCIS decides to continue to allow derivative use, then the following recommendations should be implemented:**
  - **Section 118 should be tightened so that the ability to use compelled materials for the purpose of obtaining derivative use remain entirely subject to provisions of the ACIC Bill.**
  - **Section 118 must be accompanied by a requirement that any subsidiary users are subject to disclosure logging and reporting requirements so that the dissemination of ACIC information remains visible.**

Limitations on the use and disclosure of material obtained using coercive powers

179. The ACIC Bill includes a series of limitations on the use and disclosure of material obtained using the coercive powers framework.

180. Compelled material may be disclosed to prosecutors of a witness under conditions that depend on whether the material was obtained, and whether the proposed disclosure is proposed to take place, pre- or post-charge.[186] Where the disclosure is post-charge, the disclosure requires permission of the court.[187]

181. The protection provided by this provision may be meaningfully enhanced by requiring a decision maker to inquire as to the status of proceedings and decisions concerning charges to properly characterise any request as pre- or post- charge.

182. Derivative material may be disclosed to prosecutors of a witness if the derivative material was obtained on the basis of pre-charge compelled material. However, in the case of post-charge disclosure of derivative material obtained from post-charge compelled material,[188] any post-charge disclosure of that derivative material must be under an order of the court made pursuant to subsection 121(1). There are two concerns with this provision. The first is that it replicates the concern described in the paragraph above about correctly characterising the pre- or post- charge status. The second is that this provision risks incentivising prosecutors to withhold making decisions about charging a person in order to facilitate disclosure of derivative material without a court order. As both derivative material and compelled material may undermine the fairness of the trial in ways that cannot be remedied by the passage of time (as it relates to the distinction between pre-charge and imminent charge), we recommend that all disclosure of derivative materials to prosecutors should require an application to the court in accordance with subsection 121(1).

183. The courts are to adjudicate whether, and under what conditions, disclosures of compelled and derivative materials might be disclosed to prosecutors. It is an important provision because it speaks to the types of safeguard mechanisms that are likely be considered in assessing the constitutionality of the coercive powers

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[186] See Australian Criminal Intelligence Commission Bill 2026 (Cth) paras 119(1)(a)-(c).
[187] Australian Criminal Intelligence Commission Bill 2026 (Cth s 119(a)-(b) and 121.
[188] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-para 120(c)(i).

framework.[189] It is "intended as a protective mechanism",[190] that enables the courts to adjudicate if and how compelled or derivative materials might be disclosed to prosecutors. This includes making clear that a court "may specify the prosecutors (by any means), and the uses to which the prosecutors may put the material."[191] A court[192] may permit the disclosure of material to prosecutors either:

> *"on application or on its own initiative … if the court is satisfied that the disclosure is required:*
>
> *(a) in the interests of justice; and*
>
> *(b) despite any direction made under subsection 110(1) that is in force.*[193]

184. Subsection 121(4) provides that:

> *This Subdivision does not, by implication, restrict a court's power to make any orders necessary to ensure that the witness' fair trial is not prejudiced by the possession or use of compelled material or derivative material by a prosecutor of the witness.*

185. The section does impose a limitation on the court's power to make orders concerning the witness' fair trial insofar as it clarifies that "a person's trial… is not unfair merely because the person has been a witness".[194]

Recommendation 17

- **Section 118 and 119 should be amended to require the decision maker to have knowledge of the intention of a prosecutor regarding whether a charge is "imminent".**
- **To ensure a fair trial, section 118 and 119 should be amended to require any disclosure to prosecutors must be by court order.**

Safeguards contained in the coercive powers framework

186. The coercive powers framework is designed to facilitate the sharing of intelligence as well as the secrecy of the examination process in a manner which is intended to balance the fair trial interests of witnesses. There are a number of features of legislation intended to provide safeguards for the exercise of these powers. These include notations on summonses and orders to produce, attaching directions to compelled materials, and limitations on who may be present at an examination.

187. These mechanisms are also supported by criminal offences for non-compliance.

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[189] See *Lee v the Queen* (2014) 253 CLR 455.
[190] Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [1098].
[191] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 121(2).
[192] There are some jurisdictional requirements set out in Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 121(3).
[193] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 121(1).
[194] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 121(5).

Non-disclosure notations

188. The non-disclosure notation framework set out in Subdivision A of Part 3 Division 5 of the Bill that can accompany a summons or a notice to produce. A ”non-disclosure” notification is an inclusion in a notice to produce or summons that “prohibits the disclosure of information about: (i) the notice or summons; and (ii) any official matter connected with the notice or summons”.[195] An “official matter” refers to an authorisation, examination, exercise of powers under Part 3 of the ACIC Bill or a court proceeding.[196]

189. A non-disclosure notation does not place an absolute prohibition on disclosure, but “may permit the disclosure of information in specified circumstances.”[197] Additionally, a non-disclosure notation does not prohibit disclosure:

> *… to a court exercising federal jurisdiction in a proceeding in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth.*[198]

190. The ACIC Bill specifies that non-disclosure notations must be used in some circumstances, and can be applied on the discretion of the examiner in others.[199] Unless those circumstances are found to the satisfaction of an examiner, then a non-disclosure notice must not be included.[200] The test of whether a non-disclosure notation must be included is set out at subsection 102(2) and requires that:

> *… the examiner is satisfied that not including the non-disclosure notation could reasonably be expected to prejudice:*
>
> *(a) a person’s safety; or*
>
> *(b) a person’s fair trial, if the person has been charged with an offence or such a charge is imminent; or*
>
> *(c) the ACIC’s ability to obtain intelligence relevant to serious and organised crime.*

191. Our concerns about the knowledge of the examiner as to the intentions of prosecutors and investigating officers relevant to the definition of “imminent” are relevant here. If the examiner is under no obligation to make inquiries about the state of investigations or prosecutions, the possibility that an examiner may wrongly characterise a situation as not requiring a non-disclosure notation increases. The test is only that the examiner is “satisfied”. There is no objective dimension to this assessment that might require an examiner to be apprised of relevant information held by third parties. An objective aspect should be included in the test for including a non-disclosure notation.

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[195] Australian Criminal Intelligence Commission Bill 2026 (Cth) paragraph 101(1)(b).
[196] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 101(3).
[197] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 101(2).
[198] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 101(4).
[199] See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 102.
[200] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 102(5).

192. The second limb of the test for whether a non-disclosure notation may be included makes reference to where such a notation "might be contrary to the public interest".[201] An unqualified discretion for an examiner to consider "the public interest", where the phrase "public interest" is not defined for the purposes of subsection 102(4), risks unduly extending the breadth of matters that must be subject to a non-disclosure order. If, as suggested in the EM, the intention behind such a provision is to prevent "tipping off",[202] then this concern should be more clearly spelled out for assessment by the examiner. Otherwise, this limb risks being used as a catch-all provision justifying whatever limitations on disclosure the examiner seeks to impose as most all activities that might be revealed could be argued to risk prejudicing either capabilities or effective performance of statutory functions.

Recommendation 18

- **Subsections 102(2) and (4) should be amended to specify that an examiner must be "satisfied" that the circumstances exist "on reasonable grounds".**
- **Section 102 should be amended to provide additional guidance to the meaning of "contrary to the public interest" at paragraph 102(4)(b).**

Directions about use or disclosure of compelled materials

193. The use or disclosure of compelled material may be subject to conditions as determined by the Director-General or an examiner. Subsection 110(1) provides that

> *(1) Subject to subsections (2) and (4), an examiner or the Director General may direct that compelled material:*
>
> *(a) must not be used or disclosed; or*
>
> *(b) may only be used by, or disclosed to, specified persons in specified ways or on specified conditions.*[203]

194. Subsections 110(2) and (4) establish who has responsibility for making directions based on whether the coercive power about which the direction relates has been concluded or is underway. Examiners are empowered to make and vary directions concerning compelled materials while an examination is underway.[204] While, on conclusion of an examination, the power to make and vary directions passes to the Director-General,[205] or a delegate.[206] Such powers of direction are intended to:

> *… give examiners and the Director-General flexibility to limit the ways in which specified persons may use or disclose the material and to impose conditions on that use. For example, a direction could provide that compelled material may be*

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[201] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 102(4)(b).
[202] See Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [885].
[203] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 110(1). NB this section does not override the disclosure of compelled material to a court in accordance with s 113.
[204] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s s 110(2).
[205] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s s 110(4).
[206] See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 265.

> *disclosed to a law enforcement agency, but that it may only be used for the purposes of guiding the development of intelligence within that agency.*[207]

195. While the Director-General has a broad discretion to set directions, examiners are required to make directions should they be satisfied that certain circumstances have arisen. Where an examiner has discretion for making directions relating to compelled material under subsection 110(1), per subsection 100(4):

> *an examiner must make a direction under subsection (1) if the examiner is satisfied that the failure to make such a direction:*
>
> *(a) might prejudice a person's safety; or*
>
> *(b) would reasonably be expected to prejudice a witness' fair trial, if the witness has been charged with a relevant offence or such a charge is imminent.*

196. There are two matters that an examiner or the Director-General must consider before making a direction. These include:

- any requests made by the witness "for the compelled material to be disclosed to specified persons in specified ways or on specified conditions".[208] The EM provides the example, "a person may wish to request that they be able to disclose particular compelled material to a medical practitioner or psychologist";[209] and
- where the decision-maker is aware of a vulnerability or disability "that could affect the person's ability to comply with the direction",[210] then they are required to:

> *… consider directing that compelled material may be disclosed to enable the person to obtain assistance in:*
>
> *(a) complying with the direction; or*
>
> *(b) otherwise engaging with the ACIC for the purposes of this Part.*

197. However, beyond these two limited circumstances there is otherwise no limitation imposed by the ACIC Bill on the circumstances where such discretion may be exercised, nor does the statute provide any guidance about how the Parliament intends decisions regarding non-disclosure or use conditions to be made.

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[207] Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [982].
[208] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 110(5).
[209] Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [991].
[210] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 110(6).

198. If a use or disclosure direction is made, the ACIC Bill provides for the revocation or variation of that direction.[211] Whether or not an examiner or the Director-General is empowered to vary or revoke a direction depends on whether the examination has concluded or the notice to produce has been complied with.[212] Revocation or variation is subject to the limitation that either an examiner or the Director-General cannot vary or revoke a direction if:

> *… if the variation or revocation:*
>
> *(a) might prejudice a person's safety; or*
>
> *(b) would reasonably be expected to prejudice the witness' fair trial, if the witness has been charged with a relevant offence or such a charge is imminent.*[213]

199. While such a protection is welcome, we observe that there is no equivalent requirement that a direction be varied if circumstances change whereby a risk to safety is made known to the ACIC or information concerning criminal proceedings is made known to the ACIC. We are concerned with situations where the examiner or the Director-General subsequently becomes aware that a charge is imminent, as the legislation has no requirement to correct the record in order to better protect the administration of justice.

Recommendation 19

- **Sections 111 and 112 should be amended to require the examiner or Director-General to vary a direction where information becomes known to the ACIC about criminal proceedings or risks to safety.**
- **Notification of directions under section 110, and variations or revocations under sections 111 and 112 should be provided in writing to the witness and the IGIS as soon as practicable.**

Presence of others at examinations

200. Paragraphs 72(1)(a)–(g) of the ACIC Bill limit the persons who may be present at an examination, as an examination is being conducted, to the following:

> *(a) the examiner conducting the examination;*
>
> *(b) the witness;*
>
> *(c) a legal practitioner referred to in subsection 71(1) who is not covered by a determination under subsection 71(2);*
>
> *(d) a person covered by a determination under subsection (2);*
>
> *(e) counsel assisting the examiner;*
>
> *(f) an ACIC staff member who is approved by the examiner to be present at the examination;*
>
> *(g) an IGIS official referred to in subsection 73(1) who is not covered by a determination under subsection 73(2).*

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[211] Australian Criminal Intelligence Commission Bill 2026 (Cth) ss 111 and 112.
[212] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-ss 111(1) and 112(1).
[213] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-ss 111(2) and 112(2).

201. An examiner has an unincumbered discretion to determine who may attend an examination under paragraph 72(1)(d).[214] The use of this discretion generates a requirement to inform a witness of the presence of another on the basis of the examiner's discretion and to give the witness the opportunity to comment on the person's presence".[215]

202. However, we have some concerns about the adequacy of this provision as a safeguard of fair trial rights.

203. First, the provision carries some ambiguity about scope by being restricted to persons "who may be present" when an examination is conducted. The drafting does not unambiguously exclude other persons from remote participation in proceedings without necessarily being "present". While there is a requirement that an examination "must be held in private",[216] this restriction again does not fully account for the participation of others that nevertheless comply with a requirement that the examination is otherwise held in private.

204. Second, we are concerned that this provision carries no adverse consequences where others are present without the examiner informing the witness or if the witness objects to the presence of particular persons or classes of persons.[217] This provision therefore does little to prevent an examiner from failing to disclose the presence of others. The potential for investigators or prosecutors to be present, listen in on or direct questioning at an examination remotely should be expressly excluded in this provision after *Strickland*.[218]

Recommendation 20

- **Section 72 should be amended to: (a) apply to remote participation and monitoring of an examination as well as presence; and (b) expressly exclude investigators and prosecutors from being present at, participating in or monitoring an examination.**

[214] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 72(2).
[215] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 72(4)(b).
[216] Australian Criminal Intelligence Commission Bill 2026 (Cth) subs-s 64(2).
[217] See Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 72(5).
[218] See *Strickland v CDPP* (2018) 266 CLR 325, 348 [50] (Kiefel CJ, Bell and Nettle JJ).

Legal practitioners

General position

205. The ACIC Bill envisages the involvement of legal practitioners in two principal ways:

- providing legal advice and representation to witnesses at examinations and to persons issued a notice to produce; and
- as a person summonsed to a appear themselves as either a witness at an examination or subject to a notice to produce.

206. Rules concerning legal representation for the purposes of examinations are primarily contained in section 71 of the ACIC Bill. This section allows witnesses to be represented by a legal practitioner, and allows their representative to "be present when the witness is giving evidence or information, or producing a document or thing, at an examination".[219] There are two caveats on this general proposition, the first is when an examiner has been excluded and secondly, where a "non-disclosure notation",[220] is included in a notice to produce or summons. These are each discussed below. A witnesses' legal representative may be granted permission to examine witnesses, "so far as the examiner thinks appropriate…on any matter that the examiner considers relevant to serious and organised crime identified in any authorisation to which the examination relates".[221]

207. A notice to produce or a summons to attend an examination must be accompanied by a written statement that states that a person may obtain legal advice, and in the case of an examination, also legal representation.[222]

Exclusion of a legal practitioner

208. An examiner has a broad power to exclude "a particular legal practitioner" from an examination "if the examiner reasonably believes that the legal practitioner's attendance may prejudice the ACIC's ability to obtain intelligence relevant to serious and organised crime".[223] The examiner's power to make a determination may be exercised "at any time".[224] This includes at the time of issuing a summons as well as "at any time before or during an examination".[225]

209. The Law Council is concerned that the threshold for exclusion, that the "legal practitioner's attendance may prejudice the ACIC's ability to obtain intelligence relevant to serious and organised crime",[226] allows for exclusion on the basis of legitimate legal representation, having regard to the existing professional and ethical obligations of a legal practitioner, which may slow questioning. An appropriately higher threshold is required that makes clear that an exclusion after the beginning of an examination is linked to probity concerns rather than any prejudice to the mere

[219] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 71(1)(b).
[220] See Australian Criminal Intelligence Commission Bill 2026 (Cth) s 101 and sub-s 102(6).
[221] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 83.
[222] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 51(6)(g).
[223] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 71(2).
[224] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 71(3).
[225] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 71(3)(b).
[226] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 71(2).

ability to obtain relevant intelligence. The provision of powers to enable an examiner to refer a legal practitioner to the body responsible for the regulation of legal practitioners in the relevant State or Territory is an important alternative.

210. The Law Council has raised similar concerns over time about section 34FF of the ASIO Act which similarly provides for a legal representative to be removed from questioning if they are "unduly disrupting the questioning of the subject".[227]

211. We understand that there may be some limited circumstances where a particular legal practitioner may legitimately be excluded from an examination before such a process formally begins.[228] There are materially different considerations for effective legal representation before and after the commencement of an examination. We are concerned that section 71 of the ACIC Bill does not put in place sufficient safeguards for the effective presence of legal practitioners after an examination has commenced. Instead, it risks allowing the arbitrary exclusion of a legal practitioner. For example, where a particular practitioner was not excluded from an examination before the examination commences, that practitioner may nevertheless be excluded at any time and with instantaneous effect.[229] Whether or not an examiner's belief is reasonable is difficult to ascertain and any consequences are difficult to ameliorate after the event. There is no guidance in the Bill on the consequences of unjustified removal of a legal practitioner.

212. We suggest that guidance should be included in the legislation as to what constitutes "prejudice" as well as when and how this power might be exercised after an examination commences, having regard to the fundamental importance of a lawyer's presence as a safeguard to uphold access to justice and the rule of law. Likewise, this provision might be improved by the requirement of a warning for exclusion after examination has commenced and a requirement that such a direction is a matter of last resort, given the high likelihood of detrimental impact that a change of lawyer during an examination may have on the person being questioned. As an alternative,

213. A requirement for a "notice of determination" is included at section 71(5):

> *(5) the examiner makes a determination under subsection (2) in relation to a legal practitioner, the examiner must, as soon as practicable, notify the witness about the determination:*
>
> *(a) if the determination is made before the examination—by written notice; or*
>
> *(b) otherwise—by notifying the witness during the examination.*

214. We observe that there is no requirement to notify the legal practitioner of exclusion. While this may be consistent with the objectives of a non-disclosure notation (see above paragraphs [188]–[192]]) in circumstances where a particular legal practitioner is pre-emptively excluded from an examination and not to be informed of an examination. The situation may be different for legal practitioners who are excluded part-way through an examination. We suggest that consideration be given to

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[227] Australian Security Intelligence Organisation Act 1979 (Cth) sub-s 34FF(6). See also Law Council of Australia, *Australian Security Intelligence Organisation Amendment Bill (No 2)* (Submission to PJICS, 20 October 2025) [68]-[71].

[228] See eg Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [675].

[229] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 71(2)(b) and sub-s (4).

implementing a notification process similar to a recent recommendation of the PJCIS about removal powers under Division 3 of Part III of the ASIO Act,[230] whereby:

> *… the prescribed authority directs the removal of the lawyer of a person subject to a compulsory questioning warrant, the prescribed authority must provide written advice (subject to clearance by ASIO for classified information) to the lawyer within a reasonable period specifying the grounds for the decision.*[231]

215. An examiner is required to give a person a warning that their conduct may result in contempt before referring the person to the Director-General.[232] A similar requirement could also be applied to legal practitioners who are at risk of exclusion due to conduct that is interpreted as "prejudicing" an examination after the examination has commenced.

Recommendation 21

- **Section 71 should be amended to:**
  - **offer guidance on what constitutes "prejudice";**
  - **include a higher threshold for exclusion after an examination has commenced;**
  - **after an examination has commenced, a legal practitioner should be required to be warned prior to exclusion;**
  - **provide powers to enable an examiner to refer a legal practitioner to the body responsible for the regulation of legal practitioners in the relevant State or Territory is an important alternative**

[230] See Parliamentary Joint Committee on Intelligence and Security, *Parliament of Australia, Advisory report on the Australian Security Intelligence Organisation Amendment Bill (No. 2) 2025* (Report, February 2026) [4.35]-[4.37].
[231] Ibid recommendation 3.
[232] See Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 85(6).

Controlled intelligence operations—Part 4

216. Part 4 of the ACIC Bill introduces a controlled intelligence operation (**CIO**) framework. This proposed framework enables "authorised persons (participants) to engage in unlawful conduct, as outlined in a CIO authority, in order to obtain intelligence relevant to serious and organised crime".[233] The Independent Review into the ACIC recommended that:

> *The ACIC have controlled operations-style powers with an intelligence collection purpose, similar to the Special Intelligence Operations framework in the Australian Security Intelligence Organisation Act 1979.*
>
> *The ACIC not have the legal function of undertaking operations that are primarily designed to disrupt criminal activities.* [234]

217. The Independent Review proposed to replace the ACIC's reliance on the existing controlled operations framework found in Part IAB of the Crimes Act and set out a new CIO framework based on that found in the ASIO Act. The Independent Review noted that unlike a security intelligence agency (such as ASIO) actions of the ACIC that are directly and primarily[235] "disruption activities go beyond the ACIC's intelligence functions and should be the preserve of law enforcement and other appropriately authorised agencies".[236]

218. The CIO framework grants participates immunity from civil and criminal liability to authorised participants in a CIO where they would otherwise be liable for harms caused to individuals and the community for conduct that would be, without a valid authorisation, either criminal conduct or give rise to civil liability.[237] Such conduct can remain harmful to individuals and the community, despite being part of the ACIC operation. For example, although the distribution of sexual exploitation material can be permitted under the CIO immunity framework, where that material involves real people, harm to the victim still accompanies the circulation of such material by the ACIC.[238] Likewise, these powers involve the ACIC acting deceptively and breaking laws of the Commonwealth, states and territories as part of their intelligence mandate. Such immunities and their application need to be carefully restricted because of the immense risk that accompanies excusing persons from equal treatment under the law.[239]

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[233] Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [1161].
[234] Stephen Merchant and Greg Wilson, Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements (Unclassified Report, May 2024) 32, recommendation 9.
[235] Ibid. The authors acknowledge that intelligence operations might lead to the outcome of disruption, for example through later prosecution, but want to distinguish those operations where aim is disruption.
[236] Ibid 32.
[237] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 143.
[238] See Australian Criminal Intelligence Commission Bill 2026 (Cth) subs 143(3).
[239] Law Council of Australia, *Rule of Law Principles* (Policy Statement, March 2011) 2.

Urgent grant and variation of CIO authorisation—Division 3

Initial application for grant or variation

219. The CIO framework contains provisions for the urgent grant or variation of a CIO authorisation. These provisions are significantly different to the ordinary authorisation provisions which require that the Director-General request that the Attorney-General grant authority to conduct a CIO,[240] once the Director-General is:

> *satisfied that, having regard to the nature of any unlawful conduct that may be engaged in by a person that the controlled intelligence operation may involve, it is appropriate and proportionate for section 143 to apply in relation to the conduct.*[241]

220. The Attorney-General has discretion to authorise a CIO if they believe, "on reasonable grounds" that that matters in subsection 130(2) exist. Such matters include assessing the relevance of the CIO to the functions of the ACIC, that circumstances justify such a grant, and that there are appropriate controls in place.

221. No evidence has been provided that this approach is unduly rigorous, and that either the Director-General or the Attorney-General are not sufficiently capable of performing their respective functions in a timely manner.

222. In order to access the urgent grant or variation powers, a "senior position holder"[242] within the ACIC may make a request to the Director-General to grant a CIO authority or variation if the ACIC staff member reasonably believes that "any delay that may be caused by requesting the Attorney-General to grant the authority would be likely to affect the success of the controlled intelligence operation".[243] This requirement is in addition to the standard considerations for a CIO authority as provided for under the timely request provisions found in Division 2.

223. The Director-General is then required to assess if they are "satisfied that any delay may be caused by requesting the Attorney-General to grant the authority would be likely to affect the success of the controlled intelligence operation",[244] and also have consideration of the list of matters at subsection 133(2), noting that these matters are the same as those the Attorney-General is required to consider at subsection 130(2). The senior staff member should be required to notify IGIS as part of the request process. This is especially important where the Attorney-General may not have the opportunity to thoroughly review the application, and the matter is time sensitive.

224. This threshold is too low and should be strengthened to provide that an urgent authority procedure should only be accessible where undue delay by the Attorney-General is believed to, on reasonable grounds, materially threaten the success of the CIO.

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[240] Australian Criminal Intelligence Commission Bill 2026 (Cth) subs 129(1).
[241] Australian Criminal Intelligence Commission Bill 2026 (Cth) subs 129(2).
[242] An ACIC staff member who holds or performs the duties of an SES employee: ACIC Bill s 7 definition.
[243] Australian Criminal Intelligence Commission Bill 2026 (Cth) subs 132(1).
[244] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 133(1)(b).

Attorney-General must affirm, vary, or cancel an urgent CIO authority

225. Section 135 of the ACIC Bill provides a ratification requirement in circumstances where an urgent authorisation or variation was approved by the Director-General. The Attorney-General is required to affirm, vary or cancel an authorisation[245] or variation,[246] "as soon as practicable after being informed of the granting" of the authorisation or variation, no later than the time the CIO authority ceases to be in force.[247] A CIO authority granted under the urgency provisions is, in the ordinary course of events, is to cease to be in force after 7 days unless varied.[248]

226. It is concerning that subsection 153(4) of the ACIC Bill states that where there is a failure to assess the validity of a CIO granted or varied under section 135, this failure to comply "does not affect the validity of a CIO authority or variation".[249] This is plainly not sufficient for authorisations to perform unlawful actions and must be amended such that improperly authorised conduct is not protected by the immunity of properly authorised conduct. This provision introduces a significant weakness into the oversight framework, as it risks incentivising the non-performance of the responsibility to ratify an urgent or varied authorisation. It is concerning from a rule of law perspective that otherwise unlawful conduct can be granted an immunity because of a timely decision not being rendered by the Executive.

Recommendation 22

- **Urgent authorisation, variation, or cancellation processes should be limited to circumstances where the Director-General believes on reasonable grounds that undue delay would materially threaten the success of the CIO.**
- **Subsection 135(4) should be removed from the ACIC Bill.**
- **The IGIS should be notified as soon as practicable when a CIO authority has been granted, and notified of the request of an urgent CIO authority.**

[245] Australian Criminal Intelligence Commission Bill 2026 (Cth) subs 135(1).
[246] Australian Criminal Intelligence Commission Bill 2026 (Cth) subs 135(2).
[247] Australian Criminal Intelligence Commission Bill 2026 (Cth) pars 135(1)(b) and 135(2)(b).
[248] Australian Criminal Intelligence Commission Bill 2026 (Cth) subpara 138(e)(ii).
[249] Australian Criminal Intelligence Commission Bill 2026 (Cth) subs 135(4).

General Provisions—Division 4

Making requests to grant or vary CIO authorities

227. Provisions for making requests to grant or vary a CIO authority carry additional risk when made orally due to conditions of urgency. Sections 136 and 137 provide that a request to grant or vary a CIO authority must be in writing unless the person making the request considers it necessary to make a request orally "because the delay caused by making a written request may affect the success of the controlled operation".[250] If a request is made orally, the person so requesting must provide all information which otherwise was required in writing and provide a "written record of the request".[251]

228. It is concerning that these provisions do not require the record of the decision to contain the information that was actually relied upon to make the decision but, instead, require the record to contain information that ought to have informed a decision. There is a risk that urgent decision-making processes are not appropriately documented because the record-keeping requirement does not direct decision makers to provide an accurate account of how decisions were reached.

Recommendation 23

- **The provision should make clear that the written record of a request and a grant of a CIO authority should contain the information relied upon for subsection 136(2)(a) and 137(3).**

Cancellation of CIO Authorities

229. A CIO authority can be cancelled by either the Attorney-General or the Director-General "at any time or for any reason".[252] However, the Attorney-General and the Director-General are required to cancel any CIO authority if "satisfied the grounds on which the authority was granted no longer exist".[253]

230. Where cancellation takes places due to the reasons for granting the authority no longer existing, it is preferable that the statute require cancellation as soon as practicable. Where a cancellation takes place, if the IGIS has previously been involved with that CIO, the IGIS should be notified as soon as practicable after the cancellation takes place.

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[250] Australian Criminal Intelligence Commission Bill 2026 (Cth) subs136(1) and para 137(2)(b).
[251] Australian Criminal Intelligence Commission Bill 2026 (Cth) subss 136(2) and 137(3).
[252] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 140.
[253] Australian Criminal Intelligence Commission Bill 2026 (Cth) paras 140(2)(a) and (b).

Recommendation 24

- **Where cancellation of a CIO takes place under subsection 140(2), cancellation should be carried out as soon as practicable rather than at the discretion of the decision maker.**
- **If the IGIS has previously been involved in monitoring a CIO, the Inspector-General should be required to be notified as soon as practicable after the cancellation takes place.**

Notifications and other matters—Division 7

Inspector-General of Intelligence and Security

231. The Director-General must notify the IGIS in writing if a CIO authority is granted or varied, as soon as practicable after the authority is granted or varied.[254]

232. Ensuring that the IGIS has additional and more timely notification of authorisations granted or varied under urgent circumstances is required to ensure that oversight is calibrated to the risks that accompany controlled conduct under time pressure. The IGIS oversight function is most relevant where there are fewer checks and balances on the granting or varying authority and where decisions are made under time pressure. This is especially so where decisions are proposed to be made about a CIO within the ACIC. The possibility of inspections and active oversight of the legality and propriety of decision making encourages better decisions. The inclusion of requirements for notification for oversight commensurate with urgency acts as a counterweight to haste in circumstances where Executive agencies are given intrusive powers involving otherwise illegal activity and limited opportunities for other forms of accountability (i.e. public interest journalism). Public trust in extraordinary investigative powers and the institutions responsible is improved by ensuring that the IGIS' oversight powers remain robust.

Recommendation 25

- **The ACIC should be required to notify IGIS urgent grants or variations to a CIO authority immediately rather than "as soon as practicable".**
- **Where a CIO authority is granted orally rather than by writing, there should be a requirement that IGIS is also given oral notification immediately, with a written report to follow.**
- **The IGIS should also be required to be notified of cancellations of authorised CIOs as soon as practicable.**

[254] Australian Criminal Intelligence Commission Bill 2026 (Cth) s 152.

Search warrants—Part 5

233. Search warrants under the ACIC Bill are to be issued by the Attorney-General following the assessment of a request made by the Director-General. While this represents an external oversight of ACIC requests by the Attorney-General, the Bill moves away from the current procedural requirement that search warrants sought by the ACIC are issued by judicial officers as set out at section 22 of the ACC Act.[255]

234. The Law Council's Policy Statement on the Rule of Law states that:

> *Executive powers should be carefully defined by law, such that it is not left to the Executive to determine for itself what powers it has and when and how they may be used.*[256]

235. We remain concerned that there is no independent authorisation of intrusive warranted actions that enable the entry, search, and seizure of private property as well as the search of persons. Premises search warrants can be conducted covertly and concealed from the subject of the warrant. For these reasons, assessment of whether a warrant ought to be granted should be by a judicial officer as a fundamental check and balance.

Recommendation 26

Search warrants sought by the ACIC should continue to be issued by judicial officers.

Premises search warrants—Division 2

Request provisions

236. The premises search warrant framework requires that the Director-General first request the Attorney-General "issue a warrant authorising the ACIC to do a thing referred to in subsection 158(1) in respect of particular premises".[257] Ordinarily such a request must be made in writing, but there is provision for urgent oral requests followed by a written record of the request.[258]

237. The provisions which relate to the Director-General's request and the subsequent consideration of that request by the Attorney-General,[259] do not explicitly align in terms of what the Director-General is requested to specify at paragraph 156(2)(b) and the Attorney-General is required to consider in assessing the application by subsection 157(3). We recommend that the legislation expressly require the Director-General outline their grounds for requesting a such a warrant in terms aligned with subsection 157(3), this would include specifying their concerns and the

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[255] *Australian Crime Commission Act 2002* (Cth) s 22; see also the definition of "issuing authority at s 4.
[256] Law Council of Australia, *Rule of Law Principles* (Policy Statement, March 2011) 4.
[257] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 156(1).
[258] See Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-ss 156(3)-(4).
[259] Australian Criminal Intelligence Commission Bill 2026 (Cth) ss 156 and 157.

basis for their belief regarding "serious and organised crime", the perceived benefit of the warrant, and their understanding of the impact on third parties, as well as an analysis of the benefits and shortcomings of other methods of intelligence collection. Such an approach does not rely on the Attorney-General being required to assess those matters in the absence of original consideration by the ACIC. The ACIC are better placed to put forward their views and basis for belief in such circumstances than the Attorney-General is to assess them in the absence of first-instance consideration.

238. The warrant should be required to specify the things requested by the Director-General to be done under subsection 156(1) as subsection 158(1) states that "the things that may be specified in a premises search warrant are any of the following that the Attorney General considers appropriate".

239. This would ensure that the two sections are aligned in terms of the language of specification. This is because the Director-General is better placed than the Attorney-General to know what warranted activities ought to be requested.

Recommendation 27

- **A premises search warrant should be required to specify the things requested by the Director-General to be done under subsection 156(1).**
- **Section 156(2)(b) should specify that the Director-General must address the criteria by which the Attorney-General is required to assess the warrant request at subsection 157(3), noting that such considerations are not exhaustive of matters relevant to the determination of a warrant request.**

Warrant assessment provisions

240. Under paragraph 157(1)(b), the Attorney-General may issue a premises search warrant following a request from the Director-General,[260] provided that the request specifies the premises and that:

> *(b) the Attorney-General is satisfied there are reasonable grounds for believing that access by the ACIC to documents or other things on the premises will substantially assist the ACIC to obtain intelligence in accordance with this Act in respect of a matter that is important in relation to combatting serious and organised crime.*[261]

241. We note that the proposed premises search warrant power has the highest current threshold for accessing a power under the ACIC Bill, as it is proposed at "substantially assist".

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[260] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 157(1).
[261] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 157(1)(b) emphasis added.

242. In assessing a premises search warrant request, the Attorney-General is required to have regard to the following matters among any other relevant matters:[262]

> *(a) the nature and gravity of the serious and organised crime matter;*
>
> *(b) the extent to which the warrant is likely to assist the ACIC in carrying out its function of obtaining intelligence relevant to serious and organised crime;*
>
> *(c) how much the privacy of any person would be likely to be interfered with as a result of executing the warrant;*
>
> *(d) whether alternative methods[263] of obtaining intelligence are available that:*
>
> *(i)do not involve the use of the ACIC's warranted powers; and*
>
> *(ii)would be effective and reasonably practicable to use in the circumstances;*
>
> *(e) if the warrant will authorise the doing of any thing (the concealment thing) reasonably necessary to conceal the fact that any thing has been done under the warrant—whether the doing of the concealment thing is necessary in the circumstances .*

243. These provisions allow the use of search warrants as a disruption technique on the basis of inclusion of "combatting" in paragraph 157(1)(b).[264] There is scope to minimise the intrusiveness of this power by clarifying that the search warrant power is intended to support the ACIC's intelligence functions rather than (due to the definition of "combatting", described above) disruption and prosecution activities which are better performed by law enforcement.[265]

244. We note that the ability to allow the "concealment thing" to take place after the warrant for access has expired at "the earliest time… it is reasonably practicable to do so", raises rule of law concerns.[266] The exercise of intrusive powers should not be left to the discretion of the ACIC. All actions permitted under warrant should be required to be performed during the time frame that the warrant is in force. If a warranted action cannot reasonably be performed during the time frame for the original warrant, approval for variation should be sought, this is important given that the concealment activity also foreseeably engages the rights of the subject of the premises warrant and also engage the rights of third parties.

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[262] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 157(4).
[263] For example, notice to produce under Australian Criminal Intelligence Commission Bill 2026 (Cth) Pt 3.
[264] See discussion of the definition of "combat" above at paragraphs [58]-[64].
[265] See Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [1489].
[266] ACIC Bill s 167(4). See also Explanatory Memorandum, Australian Criminal Intelligence Commission Bill 2026 (Cth) [1521].

Recommendation 28

- **Paragraph 157(1)(b) should be amended to clarify that a premises search warrant is limited circumstances where the purpose is intelligence collection and not disruption and prosecution activities.**
- **Any concealment activities should be considered part of the warranted action and performed under a valid warrant. Where concealment activities are not completed during the original warrant period, then a variation should be sought.**

Person search warrants

245. The person search warrant framework is set out in Division 3 of Part 5 of the ACIC Bill. The ACC Act does not currently allow the ACIC to obtain a search warrant for persons.[267]

246. In addition to authorising "an ordinary search or frisk search",[268] of "the person specified in the warrant",[269] a person search warrant also authorises the ACIC to search "things found in possession of the person",[270] and "any conveyance that the person had operated or occupied at any time within 24 hours before the warrant is executed".[271]

247. This subparagraph and the accompanying description in the EM make no reference of the effect of such search provisions on third parties (for example, taxi drivers or air service providers) who may be significantly impacted by the execution of a search warrant despite not being the specified person. Regarding "other documents or things" found while executing a search warrant, paragraph 162(2)(c) authorises:

> *(i) inspecting or otherwise examining the document or thing for the purpose of determining whether the document or thing is relevant to the serious and organised crime matter referred to in paragraph 161(1)(c) to which the warrant relates;*
>
> *(ii) moving the document or thing to another place for such inspection or examination in accordance with section 163 …*

248. If the person executing the warrant, in the course of examining "other documents or things … believes [the document or thing] on reasonable grounds to be relevant to the ACIC obtaining intelligence relevant to serious and organised crime", they are authorised to copy, transcribe, photograph or otherwise making a record of the document or thing or seize it as a returnable item.[272] The threshold here is low and is second order of relevance meaning that the document or thing need only be "relevant to the ACIC obtaining intelligence relevant to serious and organised crime".

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[267] See generally *Australian Crime Commission Act 2002* (Cth) s 22(2).
[268] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-s 162(2).
[269] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-para 162(1)(a)(i).
[270] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-para 162(1)(a)(ii).
[271] Australian Criminal Intelligence Commission Bill 2026 (Cth) sub-para 162(1)(a)(iii).
[272] Australian Criminal Intelligence Commission Bill 2026 (Cth) para 162(1)(b).

Recommendation 29

Section 161 should be amended to require the Attorney-General to consider that the impact on third parties is necessary and proportionate to the predicted intelligence value of the document or thing.

About the Law Council of Australia

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- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.