



# Parliamentary Joint Committee on Law Enforcement

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Examination of the Australian Criminal Intelligence  
Commission Annual Report 2016-17

April 2019

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# The Committee

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Senator the Hon Lisa Singh	ALP, TAS (Deputy Chair)
Senator the Hon Eric Abetz	LP, TAS
Dr Anne Aly MP	ALP, WA
Senator Jane Hume	LP, VIC (from 10.9.18)
Senator the Hon Kristina Keneally	ALP, NSW (from 15.2.18)
Mr Llew O'Brien MP	NATS, QLD
Ms Clare O'Neil MP	ALP, VIC
Mr Jason Wood MP	LP, VIC

## *Former Members*

Senator David Bushby	LP, TAS (until 5.2.18)
Senator the Hon Richard Colbeck	LP, TAS (until 10.9.18)
Senator the Hon Don Farrell	ALP, SA (until 15.2.18)
Senator Skye Kakoschke-Moore	NXT, SA (from 7.2.17 – 22.11.17)
Senator Barry O'Sullivan	NATS, QLD (from 3.10.17 – 12.2.18)

## *Secretariat*

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## Acronyms and abbreviations

ACC	Australian Crime Commission
ACC Act	<i>Australian Crime Commission Act 2002</i>
ACIC	Australian Criminal Intelligence Commission
ACID	Australian Criminal Intelligence Database
ACLEI	Australian Commission for Law Enforcement Integrity
ACORN	Australian Cybercrime Online Reporting Network
the Act	<i>Parliamentary Joint Committee on Law Enforcement Act 2010</i>
AFIN	Australian Firearms Information Network
AFP	Australian Federal Police
AGD	Attorney-General's Department
AIC	Australian Institute of Criminology
ALEIN	Australian Law Enforcement Intelligence Network
ANAO	Australian National Audit Office
annual report	ACIC annual report 2016–17
APOT	Australian Priority Organisation Target
AUSTRAC	Australian Transaction Reports and Analysis Centre
ASL	Average Staffing Level
BIS	Biometric Identification Services
CACT	Criminal Assets Confiscation Taskforce
CEO	Chief Executive Officer
COPS	Core Policing System
Crimes Act	<i>Crimes Act 1914</i>
eEUD	National Electronic End User Declaration

Home Affairs	Department of Home Affairs
LEAP	Law Enforcement Assistance Program
NAFIS	National Automated Fingerprint Identification System
NCIS	National Criminal Intelligence System
NCOS	National Child Offender System
NEC	NEC Australia
NT	Northern Territory
NVOI	National Vehicles of Interest
PBS	Portfolio Budget Statements
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PMO	Portfolio Management Office
PROMIS	Police Real-time Management Information System
PwC	PricewaterhouseCoopers
P3M	Portfolio, Program and Project Management
SD Act	<i>Surveillance Devices Act 2004</i>
the committee	Parliamentary Joint Committee on Law Enforcement
wastewater program	National Wastewater Drug Monitoring Program



# Chapter 1

## Introduction

### Committee's duty to examine reports

1.1 The Parliamentary Joint Committee on Law Enforcement (the committee) has a statutory duty to examine each annual report of the Australian Criminal Intelligence Commission (ACIC) formally known as the Australian Crime Commission (ACC) under the *Parliamentary Joint Committee on Law Enforcement Act 2010* (the Act).

1.2 The duty of the committee to examine annual reports of the ACIC under the Act stems from an expectation that agencies which have been granted strong coercive powers, like the ACIC, should be subject to additional oversight. At the time of the introduction of the Parliamentary Joint Committee on Law Enforcement Bill 2010, the then Attorney-General noted that the bill would exemplify the 'commitment to improving oversight and accountability in relation to the exercise of the functions of Commonwealth agencies.'<sup>1</sup>

### *The formation of the Australian Criminal Intelligence Commission*

1.3 The *Australian Crime Commission Amendment (National Policing Information) Act 2016* amended the *Australian Crime Commission Act 2002* (ACC Act) to incorporate CrimTrac into the ACC. The changes were implemented on 1 July 2016, and as previously stated, the ACC is now known as the ACIC.<sup>2</sup>

1.4 The ACIC's purpose as Australia's national criminal intelligence agency is to 'make Australia safer through improved national ability to discover, understand and respond to current and emerging crime threats and criminal justice issues'.<sup>3</sup> The ACIC connects police and law enforcement agencies to 'criminal intelligence, policing knowledge and information through collaborative national information systems and services'.<sup>4</sup>

1.5 This is the first time that the committee has examined an annual report of the ACIC, which is preceded by seven previous examinations of the ACC annual reports.<sup>5</sup> This reporting period commenced on 1 July 2016 and ended 30 June 2017.

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1 *House of Representatives Hansard*, 18 March 2010, p. 2925.

2 Australian Criminal Intelligence Commission (ACIC), *About us: legislation*, <https://www.acic.gov.au/about-us/legislation> (accessed 12 January 2017).

3 Attorney-General's Department (AGD), *Portfolio Budget Statements (PBS) 2017–18*, p. 73.

4 AGD, *PBS 2017–18*, p. 73.

5 Previous examination reports are available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Law\\_Enforcement/Annual\\_Reports](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Annual_Reports) (accessed 14 February 2019).

### ***Australian Institute of Criminology***

1.6 The Australian Institute of Criminology (AIC) is Australia's national research and knowledge centre for crime and justice. It compiles data and disseminates research and policy advice to inform national and international stakeholders.<sup>6</sup>

1.7 Under a Machinery of Government process, AIC employees were transferred to the ACIC, and the Chief Executive Officer of the ACIC was also appointed the Director of the AIC. The AIC is located within the ACIC, with ACIC staff seconded to the AIC to continue its criminology research.<sup>7</sup>

1.8 On 14 September 2016, the government introduced the Australian Crime Commission Amendment (Criminology Research) Bill 2016. The Bill seeks to merge the functions of the AIC with the ACIC. The Bill is currently before the House of Representatives.<sup>8</sup>

### ***Supporting documents and key legislation***

1.9 The ACIC's annual report is supported by the following documents:

- The *Attorney-General Portfolio Budget Statements 2016–17: Budget Related Paper No 1.2* that establishes the ACIC's strategic direction, resources, budget measures and expenses, outcome, program and financial statements.<sup>9</sup>
- The ACIC's *Strategic Plan 2016–21* that summarises the ACIC's approach purpose, functions and strategic objectives.<sup>10</sup>
- The ACIC's *Corporate Plan 2016–20* that is the primary planning document, prepared in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).<sup>11</sup>

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6 Australian Institute of Criminology (AIC), *About us*, <https://aic.gov.au/about> (accessed 23 January 2019).

7 ACIC, *Annual Report 2016–17*, p. 15.

8 Parliament of Australia, Australian Crime Commission Amendment (Criminology Research) Bill 2016, [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r5720](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5720) (accessed 23 January 2019).

9 Commonwealth of Australia, *Attorney-General Portfolio Budget Statements 2016–17: Budget Related Paper No. 1.2*, available at: <https://www.ag.gov.au/Publications/Budgets/Budget2016-17/Documents/Portfolio-budget-statements/PBS-ACC-2016-17.pdf> (accessed 22 January 2019).

10 Please note that the ACIC *Strategic Plan 2016–21* was updated in 2018, and is now titled ACIC *Strategic Plan 2018–23*, available at: [https://www.acic.gov.au/sites/default/files/2018/07/australian\\_criminal\\_intelligence\\_commission\\_strategic\\_plan\\_2018-23.pdf?v=1530588722](https://www.acic.gov.au/sites/default/files/2018/07/australian_criminal_intelligence_commission_strategic_plan_2018-23.pdf?v=1530588722) (accessed 22 January 2019).

11 ACIC, *Corporate Plan 2016–20*, available at: [https://acic.govcms.gov.au/sites/g/files/net1491f/acic\\_corporate\\_plan\\_2016-20.pdf?v=1504155975](https://acic.govcms.gov.au/sites/g/files/net1491f/acic_corporate_plan_2016-20.pdf?v=1504155975) (accessed 22 January 2019).

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1.10 Key legislation that governs the ACIC's activities includes the:

- ACC Act (enabling legislation);
- *Telecommunications (Interception and Access) Act 1979*; and
- *Surveillance Devices Act 2004*.

### ***Independent review of the operations of the Australian Crime Commission Act 2002***

1.11 Under section 61A of the ACC Act, the Minister must conduct an independent review of the operation of the ACC every five years.<sup>12</sup> According to the annual report, the last review was conducted in 2015–16 (prior to the formation of the ACIC).<sup>13</sup> The ACIC stated that '[c]onsideration of the final report continues and we will seek to implement any agreed recommendations arising from the review'.<sup>14</sup>

1.12 At the time of the committee's examination of the 2016–17 annual report, the Minister had not tabled the final report of the five year review.

### ***Executive oversight***

1.13 In addition to the committee, the ACIC is oversighted by:

- the Minister for Home Affairs;
- the Department of Home Affairs;
- the Australian Commission for Law Enforcement Integrity (ACLEI);
- the Inter-Governmental Committee on the Australian Crime Commission;
- the Commonwealth Ombudsman;
- the Australian National Audit Office (ANAO);
- judicial review, primarily through the Federal Court of Australia; and
- the Senate Legal and Constitutional Affairs Committees.<sup>15</sup>

### **Report under consideration**

1.14 The ACIC's Annual Report 2016–17 (annual report) was presented to the then Minister for Justice, the Hon Michael Keenan MP, on 5 October 2017. It was presented to the House of Representatives on 18 October 2016<sup>16</sup> and tabled in the Senate on 13 November 2017.<sup>17</sup>

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12 *Australian Crime Commission Act 2002*, s. 61A.

13 ACIC, *Annual Report 2016–17*, p. 70.

14 ACIC, *Annual Report 2016–17*, p. 70.

15 ACIC, *Governance*, <https://www.acic.gov.au/about-us/governance> (accessed 23 January 2019).

16 *Votes and Proceedings*, No. 87—26 October 2017, p. 1219.

17 *Journals of the Senate*, No. 68—13 November 2017, p. 2166.

## Examination of the annual report

1.15 As part of its examination of the ACIC annual report, the committee held a public hearing at Parliament House, Canberra on 29 November 2018. The witnesses who appeared before the committee are listed in Appendix 1.

## Structure of the committee report

1.16 The committee's report comprises the following chapters:

- chapter 2 examines the ACIC's compliance with annual report requirements and the ACIC's financial management;
- chapter 3 considers the ACIC's performance against its key performance indicators; and
- chapter 4 details issues raised with the ACIC in the hearing, as well as major operational information of interest to the committee over the reporting period.

## Acknowledgements

1.17 The committee acknowledges the continued co-operation of the ACIC officials who assisted the committee in its examination.

1.18 In particular, the committee extends its thanks to Mr Chris Dawson APM, who departed the ACIC on 15 August 2017 following his appointment as Commissioner of Police in Western Australia.<sup>18</sup>

1.19 Mr Dawson was appointed Chief Executive Officer (CEO) of the ACIC in April 2014, and assisted the committee throughout his tenure. The committee thanks Mr Dawson for his service and wishes him well with his future endeavours.

1.20 Upon Mr Dawson's departure, Ms Nicole Rose PSM was appointed Acting CEO on 16 August 2017. In November 2017, departed the ACIC and became the CEO of Australian Transaction Reports and Analysis Centre (AUSTRAC).<sup>19</sup> The committee congratulates Ms Rose for her appointment to this role.<sup>20</sup>

1.21 On 13 November 2017, Mr Michael Phelan APM became the CEO of the ACIC. The committee congratulates Mr Phelan on his appointment as CEO of the ACIC and looks forward to working with him into the future.

1.22 Mr Dawson, Ms Rose and Mr Phelan variously had responsibility for the ACIC's 2016–17 annual report: Mr Dawson was CEO during the drafting of annual report, whilst Ms Rose was Acting CEO when the annual report was presented to the Parliament. Mr Phelan appeared before the committee's hearing in November 2018.

## Note on references

1.23 References to the *Committee Hansard* are to the proof *Hansard*.

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18 ACIC, *Annual Report 2016–17*, p. 158.

19 AUSTRAC, *The CEO and executive*, <http://austrac.gov.au/about-us/austrac/ceo-and-executives> (accessed 23 January 2019).

20 ACIC, *Annual Report 2016–17*, p. 158.

## Chapter 2

### Australian Crime Commission Annual Report 2016–17

#### Background

2.1 The Australian Criminal Intelligence Commission (ACIC) is established under the *Australian Crime Commission Act 2002* (ACC Act) as a statutory authority with investigative and information delivery functions. The ACIC's purpose is to reduce serious and organised crime threats to Australians and Australia's national interests, and provide 'national policing information systems and services'.<sup>1</sup>

2.2 ACIC has a range of stakeholders across government and the private sector, both nationally and internationally. These stakeholders include state, territory, national and international law enforcement and intelligence agencies.<sup>2</sup>

#### Annual report compliance

2.3 The ACIC annual report must comply with requirements specified in section 61 of the ACC Act. Subsection 61(2) requires that the report must include the following:

- (a) a description of any investigation into matters relating to federally relevant criminal activity that the ACC conducted during the year and that the Board determined to be a special investigation;
- (b) a description, which may include statistics, of any patterns or trends, and the nature and scope, of any criminal activity that have come to the attention of the ACC during that year in the performance of its functions;
- (c) any recommendations for changes in the laws of the Commonwealth, of a participating State or of a Territory, or for administrative action, that, as a result of the performance of the ACC's functions, the Board considers should be made;
- (d) the general nature and the extent of any information furnished by the ([Chief Executive Officer (CEO)]) during that year to a law enforcement agency;
- (da) the general nature and the extent of any information disclosed by the CEO during that year to a body corporate under section 59AB;
- (e) the extent to which investigations by the ACC have resulted in the prosecution in that year of persons for offences;
- (ea) the extent to which investigations by the ACC have resulted in confiscation proceedings;
- (g) particulars of the number and results of:

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1 Australian Criminal Intelligence Commission (ACIC), *Annual Report 2016–17*, p. 14.

2 ACIC, *Annual Report 2016–17*, p. 18.

(ii) applications made to the Federal Court or the Federal Circuit Court under the Administrative Decisions (Judicial Review) Act 1977 for orders of review in respect of matters arising under this Act; and

(iii) other court proceedings involving the ACC;

being applications and proceedings that were determined, or otherwise disposed of, during that year.<sup>3</sup>

2.4 As a Commonwealth entity, the ACIC must comply with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which requires Commonwealth entities to provide an annual report to the entity's responsible minister for presentation to the Parliament on the entity's activity during the reporting period,<sup>4</sup> and the Public Governance, Performance and Accountability Rule 2014.<sup>5</sup>

2.5 Under the PGPA Act, Commonwealth entities are required to prepare annual performance statements and include a copy of these statements in their annual reports tabled in Parliament.<sup>6</sup> The ACIC's annual performance statement appears in section 2 of the annual report.<sup>7</sup>

2.6 Based on the committee's assessment, the annual report meets the above requirements.

### **Overview of ACIC activities and priorities 2016–17**

2.7 The annual report sets out a comprehensive summary of the ACIC's activities and priorities for 2016–17. Based on snapshot information, the ACIC successfully:

- connected law enforcement agencies through 16 national systems related to biometrics, forensics, DNA, firearms, ballistics, vehicles, cybercrime, child protection, domestic violence, criminal targets and national police checks;<sup>8</sup>
- delivered its National Criminal Intelligence System (NCIS) pilot;<sup>9</sup>
- shared over 39 000 information and intelligence products with more than 170 stakeholders;
- produced 144 analytical products;
- added 24 new criminal targets to the National Criminal Target List (78 targets were added by all agencies over this period);
- conducted 227 examinations and produced 187 intelligence products containing examination material;

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3 *Australian Crime Commission Act 2002*, ss. 61(2).

4 *Public Governance, Performance and Accountability Act 2013*, s. 46.

5 Public Governance, Performance and Accountability Rule 2014, div. 3A.

6 *Public Governance, Performance and Accountability Act 2013*, s. 39.

7 ACIC, *Annual Report 2016–17*, p. 34.

8 ACIC, *Annual Report 2016–17*, p. 8.

9 Considered in further detail in chapter 3.

- enriched the national picture of criminal activity through flagship reports on criminal targets, illicit drug data, wastewater analysis and the assessment of illicit firearms in Australia;
- disrupted 81 criminal entities;
- arrested 283 people on 828 charges;
- seized an estimated street value of illicit drugs worth \$929.71 million; and
- restrained assets worth \$107.67 million.<sup>10</sup>

2.8 In his review, the then CEO stated that 'amalgamating the national picture across the spectrum of crime' strengthened the ACIC's position 'to build knowledge and support more collaborative, connected and informed national responses—from day-to-day policing, to serious and organised crime and national security'.<sup>11</sup>

2.9 The current CEO, Mr Michael Phelan, commented that in 2016–17 the ACIC had worked with domestic and international partners to develop 'strategic criminal intelligence assessment and advice on national crime'.<sup>12</sup> Mr Phelan highlighted three key items: the Australian Priority Organisation Target list; the national wastewater analysis; and the NCIS.<sup>13</sup> Each of these is considered in detail in chapter 3.

### ***2016–17 priorities***

2.10 The priorities listed in the 2016–17 annual report outline the strategic areas in which the ACIC focused its resources:

- strategic intelligence;
- international threats;
- operations and investigations;
- national information and intelligence sharing services; and
- the establishment of the new agency (following the merger of the Australian Crime Commission and CrimTrac).<sup>14</sup>

### **Staffing profile**

2.11 As at 30 June 2017, the ACIC's overall staff total was 934. The annual report notes that the increase in staff was a product of the ACC's merger with CrimTrac, and the incorporation of 37 staff from the AIC.<sup>15</sup> Details of the ACIC's 2016–17 staffing profile is found in Table 1.

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10 ACIC, *Annual Report 2016–17*, pp. 8–9.

11 ACIC, *Annual Report 2016–17*, p. 21.

12 Mr Michael Phelan, Chief Executive Officer (CEO), ACIC, *Committee Hansard*, 29 November 2018, p. 2.

13 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, pp. 2–3.

14 ACIC, *Annual Report 2016–17*, pp. 30–31.

15 ACIC, *Annual Report 2016–17*, p. 189.

**Table 1: ACIC's staffing profile as at 30 June 2017<sup>16</sup>**

Staffing categories	No. of staff	No. of full-time equivalent (FTE) staff	Average staff level during 2016–17
APS employees Statutory office holders	810	761.25	757.69
Secondees funded by the ACIC	14	14	14
Secondees funded by jurisdiction	10	10	10
<b>Total core staff</b>	<b>834</b>	<b>785.25</b>	<b>781.69</b>
Task force members	100	100	100
Total overall staff	934	885.25	881.69

2.12 When compared to previous years, the number of ACIC staff has increased substantially. For example, in 2015–16 the ACC's total number of overall staff was 702; in 2016–17 it increased to 934. This increase is primarily attributed to the number of APS and statutory office holders in the agency, which increased from 595 in 2015–16 to 810 in 2016–17 (an increase of 215 employees).<sup>17</sup>

2.13 The annual report provides other detailed statistics about the ACIC's staffing profile for 2016–17 such as employee location, classification level, gender, cultural and workplace diversity (including Indigenous employment), and staff retention.<sup>18</sup> Statistics of note include:

- a retention rate of 88.9 per cent;<sup>19</sup>
- women comprised 50.86 per cent of all staff, 35.1 per cent of executive level employees and 26.7 per cent of senior executive employees (SES Bands 1 and 2, and CEO);<sup>20</sup> and
- 1.2 per cent of the ACIC's employees were Indigenous.<sup>21</sup>

16 ACIC, *Annual Report 2016–17*, p. 189.

17 ACIC, *Annual Report 2016–17*, p. 190.

18 See ACIC, *Annual Report 2016–17*, pp. 190–194, p. 198 and Appendix F: Employee Statistics, pp. 254–258.

19 ACIC, *Annual Report 2016–17*, p. 198.

20 ACIC, *Annual Report 2016–17*, pp. 192, 257.



2.14 The budgeted average staffing level (ASL) for the ACIC in 2016–17 was 817.<sup>22</sup> The ACIC reported that its actual ASL for this financial year was 724.<sup>23</sup> The ACIC explained the variance between the budgeted and actual ASL:

The average staffing level for 2016–17 was lower than budget mainly due to delays in recruitment. The delays were primarily caused by the need to conduct significant additional security checks as a result of the merge in 2016. This backlog has now been cleared.<sup>24</sup>

*Committee comment*

2.15 The committee commends the ACIC for its detailed and insightful employee statistics, such as its retention rate, the age of its workforce, gender diversity and Indigenous employment. The inclusion of these statistics each year enables the committee to analyse the ACIC's success in implementing its diversity strategy, and to compare the ACIC in this regard with other Commonwealth and law enforcement agencies.

### **Financial performance**

2.16 The ACIC's financial result for 2016–17 was an operating surplus of \$10.982 million.<sup>25</sup> With the exclusion of unfunded depreciation and capital funding, the ACIC would have achieved a surplus of \$16.852 million for this financial year.<sup>26</sup> This outcome is in contrast to the \$9.911 million deficit reported for 2015–16.<sup>27</sup>

2.17 The ACIC's total appropriation for 2016–17 was \$94.663 million, which included \$89.820 million operating budget, \$2.666 million departmental capital budget and \$2.177 million equity injection.<sup>28</sup> \$81.812 million was allocated for base funding (\$77.398 million in 2015–16)<sup>29</sup>, with the remainder allocated as follows:<sup>30</sup>

- \$0.859 million to generate intelligence targeting unexplained wealth for the Australian Taxation Office (received \$0.858 million in 2015–16)<sup>31</sup>;

21 ACIC, *Annual Report 2016–17*, p. 194.

22 ACIC, *Annual Report 2016–17*, p. 210.

23 ACIC, *Annual Report 2016–17*, p. 210.

24 ACIC, *Annual Report 2016–17*, p. 234.

25 ACIC, *Annual Report 2016–17*, p. 206.

26 ACIC, *Annual Report 2016–17*, p. 206.

27 ACC, *Annual Report 2015–16*, p. 176.

28 ACIC, *Annual Report 2016–17*, p. 207.

29 ACC, *Annual Report 2015–16*, p. 177.

30 2015–16 projects included: \$1.723 million to intercept communications of serious and organised crime groups; \$5.173 million to whole-of-government effort to counter threat of foreign fighters and Islamic extremists; \$0.858 million for targeting unexplained wealth; \$1.614 million to the Australian Gangs Intelligence Coordination Centre; and \$0.141 million to support Operation Sovereign Borders. See ACC, *Annual Report 2015–16*, p. 177.

31 ACC, *Annual Report 2015–16*, p. 177.

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- \$1.630 million to fund the Australian Gangs Intelligence Coordination Centre (received \$1.614 million in 2015–16)<sup>32</sup>;
  - \$1.259 million to enhance the ACIC's physical security (office buildings and personnel security capabilities) in response to the heightened security threat;
  - \$1.729 million to develop and enhance the ACIC's cyber crime intelligence and analysis capability; and
  - \$2.531 million to develop the National Order Reference System, which will 'facilitate information sharing and enforcement of domestic violence orders between courts and police across Australia'.<sup>33</sup>

2.18 The ACIC's revenue for 2016–17 was primarily generated from its appropriation for ordinary annual services (\$89.820 million),<sup>34</sup> which is an increase of \$2.913 million from the previous year.<sup>35</sup> Own source income<sup>36</sup> totalled \$111.884 million (\$16.633 million in 2015–16), which was derived from the provision of National Policing Information Services, monies from the Proceeds of Crime Trust Account, the provision of other services, and resources received free of charge.<sup>37</sup>

2.19 Higher demand for National Policing systems and services was a major component for the ACIC's 2016–17 budget surplus.<sup>38</sup>

2.20 The annual report notes a number of major variances<sup>39</sup> between the funds allocated in the 2016–17 PBS and the final outcome for 2016–17. The ACIC provided the following explanations:

- ASL was lower than budgeted due to recruiting delays;
- own source revenue varied due to demand for the National Police Checking Services;
- the ACIC had fewer secondees from other Commonwealth agencies and state and territory police agencies;
- several large supplier contract expenses were accrued as liabilities at 30 June 2017;

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32 ACC, *Annual Report 2015–16*, p. 177.

33 ACIC, *Annual Report 2016–17*, p. 207.

34 ACIC, *Annual Report 2016–17*, p. 207.

35 ACC, *Annual Report 2015–16*, p. 176.

36 Own source income for 2015–16 was: \$6.210 million from Proceeds of Crime Trust Account; \$6.492 million from provision of service; \$2.555 million from inter-governmental agreements; and \$1.376 million in resources received free-of-charge. See ACC, *Annual Report 2015–16*, p. 177.

37 ACIC, *Annual Report 2016–17*, p. 207.

38 ACIC, *Annual Report 2016–17*, p. 206.

39 For classification of major variance, see ACIC, *Annual Report 2016–17*, p. 238.

- changes in reporting on special account balances;
- leasehold improvements; and
- delayed capital expenditure.<sup>40</sup>

2.21 In 2016–17, the ACIC commenced 12 new consultancy contracts worth \$0.433 million, in addition to the 10 ongoing contracts active in 2016–17 (and worth \$0.074 million). The total amount spent on consultants during 2016–17 was \$0.507 million (\$0.149 million in 2015–16).<sup>41</sup>

2.22 The Australian National Audit Office (ANAO) determined that the ACIC had complied with the Australian Accounting Standards and the Public Governance, Performance and Accountability (Financial Reporting) Rule 2015, and presented fairly its financial position as at 30 June 2017, its financial performance and cash flows for 2016–17.<sup>42</sup>

### **Commonwealth Ombudsman reports**

2.23 Section 10 of the *Parliamentary Joint Committee on Law Enforcement Act 2010* requires the Commonwealth Ombudsman, at least once per calendar year, to privately brief the committee about the involvement of the ACIC in controlled operations under Part 1AB of the *Crimes Act 1914* (Crimes Act) during the preceding 12 months. In addition, the committee also considers the Commonwealth Ombudsman's reports on its inspections of the ACIC's:

- compliance with the *Surveillance Devices Act 2004* (SD Act); and
- access to stored communications and telecommunications data under Chapters 3 and 4 of the *Telecommunications (Interception and Access) Act 1979*.

### ***Controlled operations***

2.24 On 3 December 2018, the Commonwealth Ombudsman briefed the committee on the ACIC's involvement in controlled operations under Part 1AB of the Crimes Act. This briefing related to the inspection report of the controlled operation records of the ACIC for the period of 1 July 2016 and 30 June 2017 (published August 2018).

2.25 The Commonwealth Ombudsman conducted two inspections at the ACIC in 2016–17. The first inspection was conducted from 30 November to 1 December 2016, and inspected the records of seven authorities that had expired or were cancelled between 1 January and 30 June 2016. The second inspection, held from 19 April to 21 April 2017, related to 17 authorities that had expired between 1 July and 31 December 2016.<sup>43</sup>

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40 ACIC, *Annual Report 2016–17*, pp. 234–235.

41 ACIC, *Annual Report 2016–17*, p. 212.

42 ACIC, *Annual Report 2016–17*, p. 213.

43 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, 1 July 2016 to 30 June 2017, August 2018, p. 6.

2.26 The Commonwealth Ombudsman identified three issues, all of which had been disclosed by the ACIC. A summary of the 2016–17 findings from the Commonwealth Ombudsman's inspections are detailed below.

*Finding 1*

2.27 A civilian participant of a controlled operation potentially engaged in an activity, on the advice of a law enforcement office, not listed as a controlled conduct on the authority. The Commonwealth Ombudsman was of the view that the authority could have been varied (under section 15GO of the Crimes Act) to include the additional activity prior to the law enforcement officer providing the direction to the civilian participant.

2.28 The ACIC responded that the activity was not likely to amount to an offence, and therefore did not require an inclusion on the authority. The Commonwealth Ombudsman advised that 'where there may be any doubt as to the legality of activities, these activities should be identified on the authority, particularly when an agency involves civilian participants'.<sup>44</sup>

*Finding 2*

2.29 An urgent authority had been issued for a controlled operation that had already been subject to previous formal authorities. Although the reason for the urgency was detailed on the relevant application, the Commonwealth Ombudsman advised the ACIC that Part IAB of the Crimes Act 'does not allow an urgent authority to be granted if the controlled operation has been subject to a previous authority', and suggested the 'ACIC remind its officers of the provision relating to urgent authorities under [section] 15GJ(2)' of the Crimes Act.<sup>45</sup> In response, the ACIC argued:

...that the controlled operations, within the meaning of [section] 15GJ(2), were arguably not the same due to the manner in which it planned to manage the operation under the urgent authority.<sup>46</sup>

*Finding 3*

2.30 For one authority, it was identified that authorised activities (controlled conduct) had been reported as occurring one day prior to the date the relevant controlled operations authority was granted. Protections from criminal and civil liability may have not applied to that conduct.<sup>47</sup>

2.31 The ACIC responded that the issue was a record-keeping error, and that the controlled conduct was not engaged in prior to the granting of the authority. The

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44 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, 1 July 2016 to 30 June 2017, August 2018, pp. 6–7.

45 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, 1 July 2016 to 30 June 2017, August 2018, pp. 7–8.

46 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, 1 July 2016 to 30 June 2017, August 2018, p. 8.

47 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, 1 July 2016 to 30 June 2017, August 2018, p. 8.

Commonwealth Ombudsman stated it would verify this advice, which would be addressed in its next report the Minister.<sup>48</sup>

*Other observations*

2.32 The Commonwealth Ombudsman also noted an instance of information being incorrect in the 1 January to 30 June 2016 six-monthly report (section 15HM report) and incorrect information in the 2015–16 annual report. The ACIC has corrected these errors and the Commonwealth Ombudsman reported that it is satisfied the 'ACIC has adequate processes in place to achieve compliance with the reporting requirements of Part IAB'.<sup>49</sup>

*Surveillance devices*

2.33 On March 2017, the Commonwealth Ombudsman released one report<sup>50</sup> that finalised the results from its inspection of agencies' compliance under section 55 of the SD Act for 1 July to 31 December 2016. The report states the Commonwealth Ombudsman did not finalise any results from its inspection, and would do so in its next report to the Minister.<sup>51</sup>

2.34 On September 2017, the Commonwealth Ombudsman published its report for the period 1 January to 30 June 2017. In this report, the Commonwealth Ombudsman considered the findings from its first inspection of the then ACC records from 1 July 2015 to 30 June 2016.<sup>52</sup> The report explains that the Ombudsman's first inspection of the then ACC took place from 15 February to 18 February 2016 for the period 1 July to 31 December 2015. A second inspection occurred from 12 September to 15 September 2016 for the period 1 January to 30 June 2016.<sup>53</sup> No recommendations were made as a result of either inspection, but two findings were made by the Commonwealth Ombudsman, which were related to issues self-disclosed by the ACC.<sup>54</sup>

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48 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, 1 July 2016 to 30 June 2017, August 2018, p. 8.

49 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, 1 July 2016 to 30 June 2017, August 2018, p. 9.

50 Commonwealth Ombudsman, *A report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 July to 31 December 2016, p. 1.

51 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 July to 31 December 2016, p. 1.

52 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 January to 30 June 2017, September 2017.

53 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 January to 30 June 2017, September 2017, p. 8.

54 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 January to 30 June 2017, September 2017, p. 8.

*Finding 1*

2.35 The Commonwealth Ombudsman found three files containing protected information were incorrectly retained by the ACC despite the ACC's chief officer authorising those files to be destroyed. The files did not contain reference to the warrant number, which the Commonwealth Ombudsman suspected was the cause of the oversight. After the inspection, the ACC reported that the files had since been destroyed. The Commonwealth Ombudsman also identified one instance of protected information being destroyed without proper approval.<sup>55</sup>

2.36 As a result of these issues, the ACC reported that it was undertaking a review of its destruction program, and had made amendments to its 'processes for storing and destroying protected information and made it consistent with other destruction processes'.<sup>56</sup>

*Finding 2*

2.37 The second finding relates to an instance where the Commonwealth Ombudsman was unable to determine whether the ACC complied with the SD Act concerning the 'installation, use and retrieval of a surveillance device'.<sup>57</sup> The installation of the device occurred at a premises adjacent to the property disclosed on the warrant.<sup>58</sup>

2.38 The ACC advised the Commonwealth Ombudsman that it had quarantined ten hours of protected information sourced from the surveillance device, which had occurred after the warrant had expired.<sup>59</sup> The Commonwealth Ombudsman found there to be ambiguity about the necessity for a warrant in this circumstance, and sought legal advice from the Attorney-General's Department (AGD). In response, the AGD advised that independent legal advice should be sought.<sup>60</sup>

2.39 The ACC explained that it conducted an internal review of the warrant and found because the 'device was an optical surveillance device' and the ACC 'had permission from the occupier', the installation therefore could have arguably attracted powers under s 37(1)(c) of the SD Act, which 'provides for the use of an optical

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55 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 January to 30 June 2017, September 2017, p. 9.

56 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 January to 30 June 2017, September 2017, p. 9.

57 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 January to 30 June 2017, September 2017, p. 10.

58 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 January to 30 June 2017, September 2017, p. 10.

59 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 January to 30 June 2017, September 2017, p. 10.

60 Commonwealth Ombudsman, *Report on the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 January to 30 June 2017, September 2017, p. 10.

surveillance device, provided that it does not involve entry onto premises without permission'.<sup>61</sup>

2.40 While the Commonwealth Ombudsman understood the ACC's response and advice, it had not sighted records of the occupier's permission and subsequently 'could not confirm compliance with the Act in this instance'.<sup>62</sup>

***Telecommunications interception records and stored communication records***

2.41 In November 2018, the Commonwealth Ombudsman published a report on its monitoring of agency access to stored communications and telecommunications data under Chapter 3 and 4 of the *Telecommunications (Interception and Access) Act 1979* for the period 1 July 2016 to 30 June 2017.<sup>63</sup>

2.42 The Ombudsman inspected 123 telecommunications data authorisations obtained by the ACIC, and identified issues in relation to 16 of those (relating to telecommunications data outside the parameters of the authority; written records indicating notification of an authorisation; and record keeping).<sup>64</sup>

2.43 The Ombudsman inspected seven warrants and ten preservation notices relating to stored communications during its inspection of the ACIC. One issue was identified in relation to a preservation being left to expire.<sup>65</sup>

*Committee comment*

2.44 The committee thanks the Commonwealth Ombudsman for its assistance and ongoing oversight of the ACIC's use of special (coercive) powers. The committee notes the Ombudsman's findings.

2.45 The committee commends the ACIC for its high level of compliance with the requirements under the Crimes Act. The committee acknowledges the ACIC's responses to the Commonwealth Ombudsman's findings. The committee will continue to monitor the Commonwealth Ombudsman's reports to determine whether these issues are rectified or continue to arise into the future.

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61 Commonwealth Ombudsman, *Report on the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 January to 30 June 2017, September 2017, p. 10.

62 Commonwealth Ombudsman, *Report on the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 January to 30 June 2017, September 2017, p. 10.

63 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, November 2018.

64 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, November 2018, p. 36.

65 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, November 2018, p. 37.





# Chapter 3

## Performance

3.1 This chapter considers the performance of the Australian Criminal Intelligence Commission (ACIC) against the outcomes in the Attorney-General's Department Portfolio Budget Statement (PBS) and the ACIC's key performance criteria.

### Portfolio Budget Statement

3.2 In the 2016–17 PBS, the Australian Crime Commission (ACC) and CrimTrac are listed as separate agencies (the agencies merged on 1 July 2016 to create the ACIC). For this reason, the ACIC annual report 2016–17 (annual report) reports against the 2017–18 PBS.<sup>1</sup>

3.3 The 2017–18 PBS outlines the ACIC's new purpose, which encompasses the ACC's role 'to reduce serious and organised crime threats of most harm to Australians and the national interest' with an expanded purpose 'to include the provisions of national policing information systems and services'.<sup>2</sup>

### Outcome 1

3.4 The ACIC has a single outcome (Outcome 1) that requires the ACIC to make:

Australia safer through improved national ability to discover, understand and respond to current and emerging crime threats and criminal justice issues, including the ability to connect police and law enforcement to essential criminal intelligence, policing knowledge and information through collaborative national information systems and services.<sup>3</sup>

3.5 The PBS highlights that the ACIC is an agency that:

...works across national boundaries to provide national policing information systems and services and to bring together Commonwealth, state and territory government partners from law enforcement, intelligence, regulatory and other agencies to achieve the ACIC's outcome of making Australia safer. Every activity the ACIC undertakes has an intersection and linkage with another agency or organisation (including some international partners and private industry).<sup>4</sup>

### Key performance criteria

3.6 As stated above, the performance criteria for the ACIC are described in the PBS for 2017–18: a new consolidated performance framework reflecting the merger

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1 Australian Criminal Intelligence Commission (ACIC), *Annual Report 2016–17*, p. 34.

2 Attorney-General's Department (AGD), *Portfolio Budget Statements 2017–18*, p. 73.

3 AGD, *Portfolio Budget Statements 2017–18*, p. 78.

4 AGD, *Portfolio Budget Statements 2017–18*, p. 78.

of the ACC and CrimTrac. This framework 'incorporates all the performance criteria of both former agencies'.<sup>5</sup>

3.7 The performance criteria outlined in the 2017–18 PBS align with the *ACIC Corporate Plan 2016–20*.<sup>6</sup> The corporate plan categorises the PBS performance criteria into four categories: connect, discover, understand and respond.<sup>7</sup> Table 2 outlines the ACIC's new performance framework.

**Table 2: ACIC performance framework 2016–17 with overview of results**<sup>8</sup>

<b>Corporate plan approach</b>	<b>Performance criteria</b>	<b>Result</b>
<b>Connect</b>	<b>Connect 1:</b> Existing ACIC systems and services are accessible, used and reliable.	Met
	<b>Connect 2:</b> The delivery and implementation of new and enhanced ACIC systems and services satisfies the needs of stakeholders and users.	Not met
	<b>Connect 3:</b> The ACIC is sharing increasing volume, breadth and formats (mediums, platforms) of criminal intelligence and information, police information, and other relevant information.	Met
	<b>Connect 4:</b> The ACIC builds, coordinates and maintains strong and collaborative relationships with domestic and international partners.	Partially met
<b>Discover</b>	<b>Discover 1:</b> The picture of crime impacting Australia is improving because the ACIC is discovering crime threats, vulnerabilities, patterns, methods and trends previously unknown.	Met
<b>Understand</b>	<b>Understand 1:</b> The understanding of the picture of crime impacting Australia is increasingly more comprehensive, integrated and relevant.	Met
	<b>Understand 2:</b> The understanding of the picture of crime impacting Australia is increasingly used	Met

5 AGD, *Portfolio Budget Statements 2017–18*, p. 80.

6 ACIC, *Annual Report 2016–17*, p. 34.

7 ACIC, *Annual Report 2016–17*, p. 35.

8 ACIC, *Annual Report 2016–17*, pp. ii, 35.

	to guide strategies and responses to crime.	
<b>Respond</b>	<b>Respond 1 (prevent):</b> The ACIC better informs and influences the hardening of the environment against crime.	Met
	<b>Respond 2 (disrupt):</b> ACIC is conducting investigations and intelligence operations, and producing intelligence that is effective in disrupting, disabling and dismantling serious and organised crime.	Met
	<b>Respond 3 (protect):</b> ACIC partners are better informed and enabled to undertake policing and community safeguarding activities through access to national information systems and services.	Met

3.8 The ACIC's performance assessment comprises a mix of quantitative measures against previous performance results and qualitative measures. 'Key environmental factors' are also taken into consideration, along with the ACIC's annual stakeholder survey.<sup>9</sup>

3.9 As demonstrated in Table 2, the ACIC met its performance results for eight performance criterion, partially met Connect 4 and did not meet Connect 2. The committee has not reproduced all the measures and results for each performance criteria but has selected notable results demonstrative of the ACIC's work and effectiveness against Connect 1, Connect 2, Connect 4 and Respond 2.

***Connect 1—Existing ACIC systems and services are accessible, used and reliable***

3.10 The ACIC successfully met this criterion by ensuring its systems, such as frontline services, biometric and forensic systems, and its police checking service were consistently available to stakeholders over the reporting period. ACIC system availability benchmarks were met for all service types.<sup>10</sup>

3.11 Connect 1 also considers usage data, tracking the number of times stakeholders used ACIC systems. The figures across the majority of systems indicate usage rates have increased. For example, the number of reports received by the Australian Cybercrime Online Reporting Network (ACORN) has increased from 25 000 in 2014–15 to 47 873 in 2016–17.<sup>11</sup>

3.12 One notable exception to this trend is the data for the National Vehicles of Interest (NVOI) system. At its peak in 2014–15, the NVOI had over 10 million system

9 ACIC, *Annual Report 2016–17*, p. 36.

10 ACIC, *Annual Report 2016–17*, p. 39.

11 ACIC, *Annual Report 2016–17*, p. 40.

searches. This trend has continued to decrease over the last two reporting periods, and in 2016–17, this figure reduced to 7 311 687 searches.<sup>12</sup>

3.13 The ACIC conducted a record 4 759 577 police history checks in 2016–17. Approximately 98 per cent of standard checks (completed within ten days) met the 'on time' benchmark of 95 per cent. The ACIC did not meet its benchmark of a 95 per cent completion rate for urgent checks (completed within five days), having achieved a 93 per cent completion rate.<sup>13</sup>

3.14 The ACIC stakeholder survey for Connect 1 reveals overall high results. For example, 95 per cent of stakeholders surveyed indicated that the ACIC's 'information and intelligence services and systems were of value, or of great value, to them or their business area'.<sup>14</sup> The lowest survey result was 67 per cent of stakeholders agreeing or strongly agreeing that the ACIC's national policing and intelligence services are reliable.<sup>15</sup> In its analysis of this result, the ACIC stated it was:

...concerning that a third of stakeholders surveyed were not convinced our systems were reliable, and a quarter were not convinced our systems were accessible. However, further analysis of the survey data indicates that only a small proportion (6% and 8% respectively) disagreed with the statements, with 26% and 20% providing a neutral answer.<sup>16</sup>

3.15 These results will be a focus for the ACIC in the year ahead, to 'determine and rectify the causes of this lack of certainty'.<sup>17</sup> The ACIC Technology Division will use the survey results (and other tools) to 'improve stakeholder engagement and understanding of systems and services'.<sup>18</sup> The ACIC clarified that the stakeholder survey does not seek feedback on specific systems and services, instead 'questions were designed to answer overarching systems and services performance...in a general sense, aligned with the [ACIC] Strategic and Corporate Planning goals'.<sup>19</sup>

***Connect 2—The delivery and implementation of new and enhanced ACIC systems and services satisfies the needs of stakeholders and users.***

3.16 The ACIC did not meet this performance criterion. The annual report notes that the only method available to determine whether the ACIC's new and enhanced systems and services meet the needs of its stakeholders is through its annual stakeholder survey. For this reason, the ACIC has embarked on developing better

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12 ACIC, *Annual Report 2016–17*, p. 41.

13 ACIC, *Annual Report 2016–17*, p. 42.

14 ACIC, *Annual Report 2016–17*, p. 42.

15 ACIC, *Annual Report 2016–17*, p. 42.

16 ACIC, *Annual Report 2016–17*, p. 42.

17 ACIC, *Annual Report 2016–17*, p. 42.

18 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [11].

19 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [11].

methodologies to measure its effectiveness, as well as undertake a Portfolio, Programme and Project Management Maturity Model Assessment. This assessment will review 'the whole system, not just the process, to assess how [the ACIC delivers its] portfolio, program and project-related activities' and 'plot a path for improvement, prioritising activities with the biggest impact on performance'.<sup>20</sup>

3.17 Two projects, the National Child Offender System (NCOS) and the National Criminal Intelligence System (NCIS), were listed as delivered in 2016–17. Six projects, including the Biometric Identification Services (BIS) project, were listed as progressed in 2016–17. Another five projects were planned during 2016–17.<sup>21</sup>

3.18 The stakeholder survey revealed lower levels of satisfaction for this performance criterion. Sixty-five per cent of stakeholders agreed or strongly agreed that the ACIC's national policing and intelligence systems are being delivered and improved to meet stakeholders' needs, and 54 per cent 'agreed or strongly agreed that the ACIC systems meet the criminal information and intelligence needs of their organisation'.<sup>22</sup>

3.19 The ACIC's analysis of these results recognised a need for improvement in its delivery of projects. It highlighted that the merger between the ACC and CrimTrac revealed the need for a new approach in the delivery of information and intelligence systems, including an overhaul of the ACIC's project management methodology.<sup>23</sup> This arose from recognition that:

...projects typically delivered by CrimTrac were quite discrete with a particular focus on delivering technology solutions. Given the ACIC's broader focus there was a need for the agency's project management practices to be reviewed to effectively deliver the required capabilities and outcomes aligned to the new agency's strategic objectives.<sup>24</sup>

3.20 Consequently, the ACIC engaged an external consultant to review its project management office in order to strengthen and mature the ACIC's delivery capability over the next 18 months.<sup>25</sup> Ernst and Young were engaged by the ACIC, at a cost of \$192 500, to conduct the review, which made seven key recommendations (the Statement of Work and key recommendations are at Appendix 2).<sup>26</sup> The recommendations and the ACIC's response to them were:

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20 ACIC, *Annual Report 2016–17*, p. 43.

21 ACIC, *Annual Report 2016–17*, pp. 43–44.

22 ACIC, *Annual Report 2016–17*, p. 44.

23 ACIC, *Annual Report 2016–17*, p. 44.

24 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [13].

25 ACIC, *Annual Report 2016–17*, p. 44.

26 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), pp. [15], [17].

- Develop, endorse and implement a project management framework specific to the needs of the ACIC. In response, the ACIC formed the Portfolio, Program and Project Management (P3M) framework to address these specific needs supported by associated tools and templates.
- Implement program/project governance aligned to capability outcomes to enable the translation of strategic priorities into deliverable outcomes. The ACIC explained its P3M framework enables governance to be aligned with the delivery of capability and business outcomes. Subsequently, all key ACIC programs have governance arrangements in place, which are consistent with the P3M framework and effective senior executive oversight.
- Implement a prioritisation model to enable effective resource allocation and evaluation as priorities change. In response, the ACIC implemented an investment planning framework and an investment prioritisation model, which ensure effective resource allocation and ongoing evaluation.
- Define, endorse and implement the governance roles, responsibilities, accountabilities and escalation processes. In response, the creation of the P3M framework defined governance roles and responsibilities, along with establishing processes and procedures for escalation and managing change.
- Communicate an endorsed and clear mandate for the Portfolio Management Office (PMO), which in response resulted in a PMO vision and role that was clearly communicated across the ACIC.
- Allocate staff to the PMO that has appropriate capability and capacity to deliver the endorsed mandate. The ACIC staffed the PMO with appropriately skilled and experienced staff. And,
- Design and implement PMO functions that enable project delivery of capability outcomes that are aligned with strategic priorities. Subsequently, the ACIC developed a 'PMO service model to support effective delivery of capability and business outcomes to meet the ACIC's strategic priorities'.<sup>27</sup>

3.21 The ACIC advised that concerns about the communication of information systems projects were identified in the annual stakeholder survey, and related to the day-to-day communication of the ACIC's activities and the level of engagement with stakeholders during project development. The ACIC Technology Division has been tasked with improving engagement activities across projects.<sup>28</sup> The ACIC will assess the success of these initiatives through future stakeholder surveys.<sup>29</sup>

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27 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), pp. [14]–[17].

28 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [12].

29 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [12].

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***Connect 4—ACIC builds, coordinates and maintains strong and collaborative relationships with domestic and international partners***

3.22 This performance criterion was partially met, based on a range of coordination and collaboration activities, collaboration on the development of new services, and the results of the stakeholder survey.<sup>30</sup>

3.23 The annual report shows a large number of collaborations between the ACIC and its domestic and international partners. Domestically, the ACIC lists six national collaborative efforts, comprising five taskforces and the Australian Cyber Security Centre, and participation in five state-based joint responses. The ACIC also cites the NCIS as a key collaborative project.<sup>31</sup>

3.24 Internationally, the ACIC expanded the number of officers deployed abroad from three in Hong Kong, Dubai and the United States in 2015–16<sup>32</sup> to eight across Hong Kong, Dubai, the United States, Canada and the Netherlands in 2016–17.<sup>33</sup> In addition, the ACIC remained active with the Five Eyes Law Enforcement Group partners through collaborative projects and gatherings.<sup>34</sup>

3.25 The stakeholder survey revealed 54 per cent of respondents agreed or strongly agreed that the ACIC collaborates with the respondent's organisation as much as it should, whilst 71 per cent thought 'ACIC investigations collaborate with their organisation in the effective disruption of serious and organised crime'.<sup>35</sup>

3.26 The ACIC's analysis of these results indicate that broadly, stakeholders consider the ACIC is performing well in its international role; however, the ACIC needs 'a stronger focus on stakeholder engagement', particularly with 'communication about delivery of information system projects'.<sup>36</sup>

***Respond 2: Disrupt—ACIC is conducting investigations and intelligence operations, and producing intelligence that is effective in disrupting, disabling and dismantling serious and organised crime***

3.27 The ACIC met this performance criterion based on measures against comparative statistics of criminal entities disrupted, arrests and convictions, seizures of illicit drugs and cash, as well as proceeds of crime restraints, tax assessments and the recovery of assets.<sup>37</sup>

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30 ACIC, *Annual Report 2016–17*, p. 47.

31 ACIC, *Annual Report 2016–17*, pp. 47–48.

32 Australian Crime Commission (ACC), *Annual Report 2015–16*, p. 17.

33 ACIC, *Annual Report 2016–17*, p. 74.

34 ACIC, *Annual Report 2016–17*, p. 47.

35 ACIC, *Annual Report 2016–17*, p. 48.

36 ACIC, *Annual Report 2016–17*, p. 48.

37 ACIC, *Annual Report 2016–17*, p. 57.

3.28 The number of criminal entities disrupted for 2016–17 was 81, a record for the agency. This figure continues an upward trend since 2012–13.<sup>38</sup> Convictions also increased (69 in 2016–17 compared to 52 in 2015–16), and persons charged remained relatively stable (283 in 2016–17 compared to 289 in 2015–16).<sup>39</sup> The number of drug seizures (including precursors) continued to decline, from its peak of \$2,134.10 million in 2014–15 to \$929.71 million in 2016–17. Proceeds of crime restraints valuing \$107.67 million remained on par with 2015–16 results (\$107.67 million), whilst tax assessments increased from \$95.30 million in 2015–16 to \$103.92 million in 2016–17.<sup>40</sup>

3.29 The ACIC also reported on its support of the Criminal Assets Confiscation Taskforce (CACT). In 2016–17, the number of referrals to CACT continued to decline from 19 in 2015–16 to 14 in 2016–17. Whilst referrals continued to decline, the value of offending increased significantly from \$56.01 million in 2015–16 to \$137.30 million in 2016–17.<sup>41</sup>

3.30 Stakeholder survey results showed that 71 per cent of participants 'agreed or strongly agreed that ACIC investigations collaborate with their organisation in the effective disruption of serious and organised crime'; whilst 84 per cent said 'ACIC investigations were of value or great value'.<sup>42</sup>

3.31 In its performance analysis, the ACIC reflected on the change in its operational focus to target transnational criminals impacting Australia, which influenced the ACIC's onshore cash and drug seizure results. Further, the ACIC noted the transnational focus will result in 'a new approach to measuring disruptions to ensure all our performance is effectively captured and that our measurements are standardised, objective and scalable'.<sup>43</sup>

### ***Overall analysis of performance criteria results***

3.32 In its overall analysis of its performance, the ACIC acknowledged areas for improvement in its project delivery capability and its related collaboration and engagement with stakeholders, but concluded that its first year of operation has 'continued a consistent level of performance across [the ACIC's] core functions, as reflected in the majority of [its] performance criteria'.<sup>44</sup>

3.33 On a scale of 1 to 10, stakeholders rated the ACIC's general performance an average score of 6.8. The ACIC considered this result 'a solid performance' for its first

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38 ACIC, *Annual Report 2016–17*, p. 57.

39 ACIC, *Annual Report 2016–17*, p. 58.

40 ACIC, *Annual Report 2016–17*, p. 58.

41 ACIC, *Annual Report 2016–17*, p. 59.

42 ACIC, *Annual Report 2016–17*, p. 59.

43 ACIC, *Annual Report 2016–17*, p. 59.

44 ACIC, *Annual Report 2016–17*, p. 61.



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year in operation, and a benchmark for the agency to inform future improvements to its performance in coming years.<sup>45</sup>

### **Comparison with 2015–16 results and amendments to the stakeholder survey**

3.34 In past annual reports, the ACC provided performance data over a period of three years. This assisted the committee to track the agency's performance over time. However, with the creation of the ACIC, 'a new, improved fit for purpose performance framework' was developed, in conjunction with a revised stakeholder survey that aligns with the new framework.<sup>46</sup>

3.35 The 2015–16 annual report noted that the more significant declines against performance indicators 4, 5 and 6 would be further explored during the coming year and in the 2016–17 stakeholder survey.<sup>47</sup>

3.36 The committee sought information about the declines against performance indicators 4, 5 and 6 identified in 2015–16. In response, the ACIC offered the following explanations:

- Changes to the ACC's survey method: in the past, the ACC provided stakeholders with a briefing on its activities to highlight what the ACC had undertaken during the year. The ACC ceased this practice prior to the 2015–16 stakeholder survey.<sup>48</sup>
- Lack of appropriate respondent targeting: previous surveys did not collect detailed data about respondents (such as the type of respondent, agency and role). Respondents were asked questions regardless of relevancy to the individual. Further, survey results were skewed by stakeholders completing the survey 'who by virtue of their role or level, weren't expected to be in a position to accurately answer certain questions but were compelled to answer anyway'.<sup>49</sup> Finally,
- Potential drop in organisational performance: the ACIC stated that survey results had achieved a 'pass mark' across the 2013–14 to 2015–16 survey period, and that survey results should not be viewed in isolation. The ACIC acknowledged, however, that some survey results were down but 'all were

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45 ACIC, *Annual Report 2016–17*, p. 61.

46 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [9].

47 PCJLE, *Examination of Australian Crime Commission Annual Report 2015–16*, p. 17.

48 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [7].

49 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [7].

supplemented with solid to strong qualitative and quantitative performance measure results'.<sup>50</sup>

3.37 The ACIC also outlined the changes and improvements made to the stakeholder survey from 2016, including:

- Amending survey questions to be thematic and aligned to performance criteria, not simply verbatim stating the performance criteria as a question. This aims to assist in continuity of comparison of longitudinal data over time, especially where organisational changes may eventuate in the future.
- An aim to maintain a consistent approach to survey design and delivery across years despite any organisational or performance framework change or well-intentioned improvement to the survey.
- Changes to survey design to ensure the right/relevant questions are addressed to specific stakeholders.
- Ensuring survey consultants provide appropriate data detail to allow flexible reporting and data analysis.<sup>51</sup>

*Committee comment*

3.38 The committee welcomes the ACIC's first annual report and acknowledges the results achieved in 2016–17.

3.39 The committee is pleased by the ACIC's efforts to address areas where performance goals were not achieved or were only partially achieved. The committee looks forward to the ACIC's advice about the success or otherwise of those efforts, and in particular the outcomes from improved stakeholder engagement and the Portfolio, Programme and Project Management Maturity Model Assessment.

3.40 With regard to the delivery and implementation of new and enhanced systems and services, the committee notes the positive results, including the delivery of the NCOS and NCIS.

3.41 Drug seizures and the restraint of assets and proceeds of crime are of ongoing interest to the committee. The committee will continue to monitor these trends and the effect of the ACIC's new operational focus on transnational criminals impacting Australia.

3.42 The committee is appreciative of the inclusion, where possible, of comparative data from previous reporting periods. The inclusion of this data strengthens the ACIC's analysis of its performance results, and supports the committee's understanding and oversight of the ACIC's activities.

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50 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [7].

51 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [8].

# Chapter 4

## Key issues

4.1 This chapter provides an overview of some issues the committee discussed with the Australian Criminal Intelligence Commission (ACIC) during the committee's hearing on 29 November 2018.

4.2 At the hearing, the ACIC reported on three key items from 2016–17: the Australian Priority Organisation Target list (APOT), the National Wastewater Drug Monitoring Program (wastewater program) and the National Criminal Intelligence System (NCIS). In addition, the committee questioned the ACIC about the Biometric Identification Systems (BIS) project, the National Electronic End User Declaration (eEUD), the Australian Firearms Information Network (AFIN), and reports concerning the then Australian Crime Commission's (ACC) use of coercive powers in relation to the Securrency and Note Printing Australia case.

### **Australian Priority Organisation Target list**

4.3 The APOT list is an ACIC-led initiative designed to focus on 'identification, assessment, designation and coordination to inform operational response against transnational, serious and organised crime targets that pose the greatest threat to Australia's interests'.<sup>1</sup>

4.4 The development of APOT was a key component of the Vestigo Task Force, which commenced in November 2016 to provide a framework to enhance international engagement, collaboration and information sharing. Participants in the taskforce include Commonwealth, state and territory agencies, as well as international partners such as the Five Eyes Law Enforcement Group.<sup>2</sup>

4.5 APOT's purpose is to create a list of 'top tier international and transnational' serious and organised crime targets.<sup>3</sup> According to Mr Michael Phelan, Chief Executive Officer (CEO) of the ACIC, possible entities for APOT are:

...assessed against crime types and scale, capability, intent, vulnerability and opportunities for law enforcement to be able to target the individuals and groups, as well as strategic considerations, ensuring the category is reserved only for those elite actors, so that we can justify their designation, and those who are actually able to be meaningfully targeted by law enforcement in this country and offshore on our behalf.<sup>4</sup>

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1 Mr Michael Phelan, Chief Executive Officer (CEO), Australian Criminal Intelligence Commission (ACIC), *Committee Hansard*, 29 November 2018, p. 2.

2 ACIC, *Annual Report 2016–17*, pp. 77, 101.

3 ACIC, *Annual Report 2016–17*, p. 101.

4 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 2.

4.6 Mr Phelan advised that as of October 2018, the APOT list contained 16 serious and organised crime targets.<sup>5</sup>

*Committee comment*

4.7 The committee supports the development of APOT and the progress made to date. Given 70 per cent of high-risk criminals targeting Australia are based overseas, or have strong offshore links,<sup>6</sup> the committee sees significant benefit in a priority list designed to co-ordinate efforts by Australian and international law enforcement agencies.

4.8 The committee will monitor the evolution and use of the APOT into the future.

### **National Wastewater Drug Monitoring Program**

4.9 The national wastewater program has been in operation since May 2016,<sup>7</sup> and as of November 2018,<sup>8</sup> the ACIC had published five out of nine reports.<sup>9</sup> The purpose of the wastewater program is to measure drug use in selected Australian communities to inform policy and operational responses to drug use problems.<sup>10</sup>

4.10 Mr Phelan highlighted key statistics derived from the fifth report, with data sourced from 47 testing sites covering 54.8 per cent of the Australian population (equating to approximately 12.8 million Australians).<sup>11</sup> As per previous reports, alcohol and tobacco remain the primary drugs consumed in Australia, with methamphetamine the 'most consumed illicit drug' under the wastewater program testing regime.<sup>12</sup>

4.11 Mr Phelan stated that the ACIC was particularly concerned about fentanyl use: the April 2018 report indicated that average consumption had increased in both capital cities and regional areas, and was greater than that reported in the previous four reports.<sup>13</sup> The average consumption of cocaine and heroin in capital cities remained higher than regional areas, whereas fentanyl and oxycodone were 'higher in terms of percentage consumption in regional areas as opposed to the city'.<sup>14</sup>

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5 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 2.

6 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 2.

7 Parliamentary Joint Committee on Law Enforcement (PJCLE), *Examination of the Australian Crime Commission Annual Report 2015–16*, p. 22.

8 The ACIC released its sixth report on 20 February 2019. This report has not been considered in this examination.

9 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 2.

10 PJCLE, *Examination of the Australian Crime Commission Annual Report 2015–16*, p. 22.

11 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 2.

12 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 2.

13 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 2.

14 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, pp. 2–3.

4.12 The committee questioned the ACIC about reports that operators of wastewater facilities in Tasmania and the Northern Territory (NT) had opted not to participate in the national wastewater program.<sup>15</sup> The ACIC explained that Tasmanian and NT data was included in all of the national wastewater program reports except for report two<sup>16</sup> (published in July 2017).<sup>17</sup> The relevant authorities in Tasmania and the NT 'cited administrative and resourcing issues as reasons for not supplying the required samples for the second report'.<sup>18</sup> In response, the ACIC made contact with 'respective authorities on a number of levels' and explained 'the benefits of a national wastewater program'. Subsequently, both services from Tasmania and the NT have provided samples since that time.<sup>19</sup>

4.13 The ACIC added that it now has unfettered access to sample sites, with raw data collected by The University of Queensland and the University of South Australia. Once data is collected, the ACIC's strategic intelligence team analyses the data.<sup>20</sup>

4.14 The committee questioned why some sites, such as site 020 in Queensland, had only provided data for the first report and none for subsequent reports. The ACIC explained that each testing site is operated by a 'series of different government, quasi-government and private sector entities', and samples are provided voluntarily.<sup>21</sup> Further:

In some cases, the wastewater treatment plant is relocated by the entity that operates it so a new site number is allocated. In other cases, as in the case of the entity which operates site 020, they decide not to participate further in the program or a decision is made not to include them in future collections.<sup>22</sup>

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15 Patrick Billings, 'Australian Crime and Intelligence Commission disappointed as Tassie opts out of drug monitoring report', *The Mercury*, 27 July 2017, <https://www.themercury.com.au/news/tasmania/australian-crime-and-intelligence-commission-disappointed-as-tassie-opts-out-of-drug-monitoring-program/news-story/0d14d31c22dc11e0fe3005240c439d5b> (accessed 4 February 2019).

16 Mr Michael Phelan, CEO, ACIC, answer to questions on notice, number 1, 29 November 2018 (received 31 January 2019).

17 ACIC, *National Wastewater Drug Monitoring Program*, Report 2, July 2017, [https://www.acic.gov.au/sites/g/files/net1491/f/national\\_wastewater\\_drug\\_monitoring\\_program\\_report\\_2.pdf?v=1501044083](https://www.acic.gov.au/sites/g/files/net1491/f/national_wastewater_drug_monitoring_program_report_2.pdf?v=1501044083) (accessed 4 February 2019).

18 Mr Michael Phelan, CEO, ACIC, answer to questions on notice, number 2, 29 November 2018 (received 31 January 2019).

19 Mr Michael Phelan, CEO, ACIC, answer to questions on notice, number 2, 29 November 2018 (received 31 January 2019).

20 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 8.

21 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [3].

22 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [3].

4.15 The ACIC added that a site's decision not to provide samples 'have a variable short-term impact on the national analysis', and '[i]n the case of site 020, the impact was minimal'.<sup>23</sup> In addition, the program has alternative sites that are:

...providing samples instead of sites which no longer participate. These sites were chosen to maximise the proportion of the population that is covered by the program and the variety of population segments covered, as well as being areas reporting concerning drug use.<sup>24</sup>

4.16 The committee also asked the ACIC about the omission of cannabis from the wastewater program to date, and the announcement that cannabis would be included in future reports.<sup>25</sup> Some have argued that the exclusion of cannabis misconstrued the public's understanding and the media's reporting of drug use in Australia.<sup>26</sup>

4.17 In response, the ACIC advised that cannabis was omitted from the wastewater program initially because the universities involved had 'concerns with the levels of uncertainty attached to measuring cannabis in wastewater' and stated that the ACIC had requested the universities:

...to continue to work on resolving the specific problems related to measuring cannabis in wastewater. As the program evolved, the Universities became increasingly confident that they could deliver meaningful results for the drug, therefore it is now included in the program.<sup>27</sup>

4.18 The ACIC refuted the claim that the omission of cannabis had misconstrued the patterns of drug use in Australia because the 'analysis was always expressed in terms of drugs tested in the program'.<sup>28</sup>

#### *Committee comment*

4.19 The wastewater program continues to provide Australian law enforcement and health professionals with valuable insights into drug consumption in Australia. Not only has the program provided data on the use of illicit drugs, but also prescription

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23 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [3].

24 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [3].

25 ACIC, *National Wastewater Drug Monitoring Program*, Report 5, August 2018, <https://www.acic.gov.au/sites/g/files/net3726/f/nwdmp5.pdf?v=1538721816> (accessed 4 February 2019), p. 4.

26 Mr Laurence Alvis and Dr Stephen Bright, 'Wastewater drug monitoring: Never let the evidence get in the way of a good story', *AOD Media Watch*, 6 April 2017, <https://www.aodmediawatch.com.au/wastewater-drug-monitoring-never-let-the-evidence-get-in-the-way-of-a-good-story/> (accessed 4 February 2019).

27 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [4].

28 ACIC, answers to written questions on notice, 29 November 2018 (received 29 January 2019), p. [4].

drugs. Of particular concern is the data revealing fentanyl consumption has increased and is at its highest reported level to date.

4.20 The committee is encouraged by the ACIC's work to ensure continuity of samples provided by Tasmanian and NT wastewater facilities. The committee supports ongoing stakeholder engagement to ensure that testing sites participate for the duration of the wastewater program.

4.21 The committee endorses the inclusion of cannabis in the wastewater program. Data concerning cannabis use will provide a more complete picture and understanding of drug use patterns in Australia and therefore better inform policy makers and law enforcement agencies.

4.22 The committee will continue to monitor the wastewater program reports and outcomes from this important initiative.

### **National Criminal Intelligence System**

4.23 The ACIC updated the committee on the development of the NCIS. The NCIS is an ACIC-led project that facilitates the sharing of criminal intelligence and information between law enforcement agencies across Australia. The pilot program, which consolidated over 100 million police records and included 30 million master records from 400 data sources,<sup>29</sup> was completed in June 2017. During this time, the NCIS generated over '11 000 searches across law enforcement, with 600 million real-time records available during the pilot program'.<sup>30</sup> Twenty law enforcement agencies across the Commonwealth and state jurisdictions had access to the pilot NCIS, and out of those agencies, 800 users had used the system.<sup>31</sup>

4.24 With regard to the purpose of the NCIS, Mr Phelan pointed out that it is:

...quite disturbing that in this day and age, in a modern country like ours, the information from one jurisdiction is not able to be accessed by another, particularly given we have eight of the world's best police forces in terms of both professionalism and capability in this country. So, for the first time, we're actually able to deconflict the data.<sup>32</sup>

4.25 Mr Phelan explained that the ownership of data would remain with whichever agency provided that data, for example ACIC data remains the property of the ACIC, because:

...each of the states and territories have various rules in relation to information, and they may not be the same rules in each jurisdiction for the same piece of information. For example...sex offender registers: the actual legislation to get on a register is different in each state: who has access to that information, what can be disclosed, what can't be disclosed, how long you're on the register—all that is different. When NCIS is completely

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29 PJCLE, *Examination of the Australian Crime Commission Annual Report 2015–16*, p. 21.

30 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 3.

31 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 6.

32 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 6.

developed, the rules will be put in by those who provision the information. So that's where the cost is.<sup>33</sup>

4.26 As a 'connectivity database', the NCIS will connect ACIC data with state and territory police agencies. For example, Victoria Police's Law Enforcement Assistance Program (LEAP) program, Queensland Police's QPrime records system, the NSW Police's Core Policing System (COPS) and the Australian Federal Police's (AFP) Police Real-time Management Information System (PROMIS) will all be integrated into the NCIS.<sup>34</sup> The Department of Immigration and Border Protection and the Australian Security Intelligence Organisation have also been involved in its development.<sup>35</sup>

4.27 Mr Phelan provided an update on the funding for the NCIS. The pilot program received \$9.8 million over two years from the Proceeds of Crime Fund.<sup>36</sup> Then, in the 2018–19 Budget, the ACIC was provided with a further \$59.1 million to develop the first tranche of the program; however, the ACIC was 'still going through the process of securing funding for the balance' of tranche one, which had been agreed 'by resolution of the board of the ACIC'.<sup>37</sup> In order to complete tranche one, Mr Phelan clarified that a further \$118 million is needed in addition to the \$59.1 million allocated by the Commonwealth.<sup>38</sup> The ACIC was 'waiting for the mid-year economic review' for further allocation of funds.<sup>39</sup>

4.28 The committee questioned the total cost of the NCIS, which the ACIC's former CEO, Mr Chris Dawson, had previously estimated would cost 'in the order of \$200 million'.<sup>40</sup> The current CEO, Mr Phelan stated an indicative figure for the 'whole project, from tranche 1 and all the way through to tranche 4' would cost 'upwards of about \$400 million'.<sup>41</sup>

4.29 The ACIC confirmed that work had started on tranche one and that the business case for the NCIS had passed in order to access the appropriation in the 2018–19 Budget. However, Mr Phelan disclosed that the NCIS was delayed by approximately three or four months because the ACIC was 'negotiating in terms of how the system would be built'.<sup>42</sup> Further, the building of the NCIS will be done by the Department of Home Affairs (Home Affairs) on the ACIC's behalf, with input

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33 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 6.

34 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 3.

35 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 4.

36 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 3.

37 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 3.

38 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 3.

39 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 3.

40 Mr Chris Dawson, CEO, Australian Crime Commission (ACC), *Committee Hansard*, 14 June 2017, p. 5.

41 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 3.

42 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 3.



provided by the states and territories.<sup>43</sup> Home Affairs contracted information technology consultancy service, Leidos Australia, to oversee the project management of the NCIS until 30 June 2020 under a \$1.54 million contract.<sup>44</sup>

4.30 The ACIC informed the committee that it anticipated tranche one to take 24 months to complete, and at this stage it expects tranche one to be completed by August or September 2020.<sup>45</sup> Once complete, the NCIS will replace the Australian Criminal Intelligence Database (ACID) and the Australian Law Enforcement Intelligence Network (ALEIN).<sup>46</sup>

#### *Committee comment*

4.31 The committee notes the progress made on the NCIS and congratulates the ACIC on the successful completion of the pilot program. The committee has expressed support of the NCIS throughout its pilot phase and looks forward to the full NCIS coming to fruition. As stated previously, the committee is of the view that such a system will significantly improve the co-ordination and intelligence sharing capabilities of law enforcement agencies across all jurisdictions, particularly by providing police access to real time data.

4.1 The committee highlights the significant difference in the estimated cost of the full NCIS: from \$200 million in June 2017<sup>47</sup> to \$400 million in November 2018. Although the specifics were not discussed during the hearing, the committee will monitor the implementation and cost of the NCIS into the future.

### **Biometric Identification Services project**

4.32 The BIS project was discussed in some detail during the public hearing on 29 November 2018. The BIS is a platform slated to replace the National Automated Fingerprint Identification System (NAFIS), which contains eight million fingerprint records. Further, the BIS was intended to enable a national facial recognition platform for law enforcement partners and an ability 'to match face and finger biometrics for individuals, across state and territory boundaries'.<sup>48</sup>

4.33 CrimTrac awarded NEC Australia (NEC) the contract to develop the project on 20 April 2016, just months before the merger of CrimTrac with the ACC on 1 July 2016.<sup>49</sup> The approved budget for the BIS project was \$52 million, with

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43 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 3.

44 AusTender, *Contract Notice – CN3561794*, 21 December 2018, <https://www.tenders.gov.au/?event=public.cn.view&CNUUID=0CFAA730-ACCE-1323-02AD284A16F66EC3> (accessed 5 February 2019).

45 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 6.

46 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 5.

47 Mr Chris Dawson, CEO, ACC, *Committee Hansard*, 14 June 2017, p. 5.

48 ACIC, *Annual Report 2016–17*, p. 138.

49 Australian National Audit Office (ANAO), *The Australian Criminal Intelligence Commission's Administration of the Biometric Identification Services Project*, Audit-General Report No 24 2018–19, 21 January 2019, p. 7.

\$28.9 million funded from the special account and \$23.1 million sourced from CrimTrac's own funds.<sup>50</sup> In the annual report, the ACIC explained that the BIS would 'significantly enhance police and law enforcement capabilities regarding biometrics and demographic information'.<sup>51</sup> The annual report noted that the BIS had progressed under performance criterion, Connect 2.<sup>52</sup>

4.34 In January 2018, it was reported that '[a] series of delays and a budget blowout reaching \$35 million has thrown the national crime intelligence commission's project to replace its fingerprint database is in disarray'.<sup>53</sup> According to Fairfax Media, a report by PricewaterhouseCoopers (PwC) found that the cost of the BIS had almost doubled to \$94.6 million, despite the Department of Finance approving expenditure of \$52 million.<sup>54</sup> It was reported that the ACIC 'could not depend on NEC having its replacement ready even by November 2018';<sup>55</sup> NEC was contracted to deliver the project in April 2016.<sup>56</sup>

4.35 In June 2018, the ACIC announced its decision to discontinue the BIS project, citing project delays.<sup>57</sup> The contract with NEC was cancelled, with the project suspended by mutual agreement on 4 June 2018. The ACIC stated it was:

...committed to delivering projects that enhance capability for our law enforcement partners. As part of this approach we regularly review the scope, expected benefits and ongoing feasibility of our projects.

The ACIC is committed to providing national criminal information and intelligence services, including fingerprint data, to more than 70,000 police officers and other accredited users on a daily basis, to keep them and the Australian community safe.<sup>58</sup>

4.36 The committee questioned the ACIC about the status of the BIS. Mr Phelan advised the committee that the decision was made because:

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50 ANAO, *The Australian Criminal Intelligence Commission's Administration of the Biometric Identification Services Project*, Audit-General Report No 24 2018–19, 21 January 2019, p. 14.

51 ACIC, *Annual Report 2016–17*, p. 138.

52 ACIC, *Annual Report 2016–17*, p. 43.

53 Doug Dingwall, 'ACIC upgrade the latest tech wreck as biometric project delayed, over-budget', *Sydney Morning Herald*, 23 January 2018, available: <https://www.smh.com.au/public-service/acic-upgrade-the-latest-tech-wreck-as-biometric-project-delayed-overbudget-20180122-h0m1ao.html> (accessed 5 March 2019).

54 Doug Dingwall, 'Tech wreck a blow to ACIC', *Canberra Times*, 24 January 2018, p. 3.

55 Doug Dingwall, 'ACIC upgrade the latest tech wreck as biometric project delayed, over-budget', *Sydney Morning Herald*, 23 January 2018.

56 ACIC, 'Biometric Identification Services project to close', *Media release*, 15 June 2018, available: <https://www.acic.gov.au/media-centre/media-releases-and-statements/biometric-identification-services-project-close> (accessed 5 March 2019).

57 ACIC, 'Biometric Identification Services project to close', *Media release*, 15 June 2018.

58 ACIC, 'Biometric Identification Services project to close', *Media release*, 15 June 2018.

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...the amount of money that was required to complete the system was too large an amount, given the amount of utility I was going to get out of the system, depending on what we already had.<sup>59</sup>

4.37 Mr Phelan clarified that, had the project continued from June 2018, it would have cost an extra \$47 million to build the program, and that:

...the total outlay would have far outweighed the benefit that we would have got from building the system because our assessment was that it would have been marginally better than the one we already had. So, just on a cost-benefit analysis, spending that extra \$47 million from that point in time was just not worth the Commonwealth expenditure.<sup>60</sup>

4.38 In the lead up to the decision to end the BIS project, Mr Phelan explained that the ACIC had tried to 'keep the project alive'. Workshops were held in December 2017 and February 2018 with NEC to 'work through the project and some of the issues that we were having', and during an extraordinary meeting of the ACIC board in February 2018,<sup>61</sup> Mr Phelan requested an additional:

...\$63 million to complete the project. But, it became quite clear after that date, as we were moving forward, that we were never going to meet the time lines within the existing scope of the budget. So, I made the decision that it was simply not worthwhile to continue.<sup>62</sup>

4.39 The contract with NEC was terminated for convenience because it was the best alternative to 'look after government money going forward'.<sup>63</sup> Mr Phelan made clear that the termination of the contract 'cast no aspersion whatsoever on NEC's product';<sup>64</sup> however:

...the implementation of it, for Australian jurisdictions at that moment and with what we had, was too expensive given the uplift in the project. I will say that we would have had a marginal benefit, but that marginal benefit was not worth us spending an extra \$47 million.<sup>65</sup>

4.40 In response to a question on notice, the ACIC confirmed that '[f]rom the perspective of fingerprint functionality only, the BIS system would have been marginally better than NAFIS, had it been delivered'.<sup>66</sup> The ACIC also stated that '[t]he business case for the functionality that would have been delivered by the Biometric Identification Services (BIS) project remains valid'.<sup>67</sup>

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59 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 4.

60 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 4.

61 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 4.

62 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 4.

63 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 5.

64 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 5.

65 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 5.

66 ACIC, answers to questions on notice, 29 November 2018 (received 29 January 2019), p. 6.

67 ACIC, answers to questions on notice, 29 November 2018 (received 29 January 2019), p. 6.

4.41 With respect to expenditure on the project which would not be recouped, Mr Phelan remarked 'I think we can safely assume that \$26 million, at a minimum, has been sunk into that that won't be recovered'.<sup>68</sup> The ACIC clarified that the closure of the BIS project had not impacted other ACIC projects.<sup>69</sup>

4.42 When asked whether the ACIC will consider future biometric projects, Mr Phelan replied:

Later on, we will explore opportunities again to determine how best to go forward with other biometrics, including facial recognition, to fuse them with the national fingerprint system. To be quite frank, we want to be able to walk before we can run, and also, in terms of law enforcement doctrine for facial recognition, it's important that we work out how we're going to use facial recognition before we go out and spend a whole heap of money on integrating it with other systems, so we're going through that process as well...At the moment, that job is a matter for the Australia New Zealand Policing Advisory Agency in terms of doctrine. They haven't accepted that piece of work yet; it's a matter for the board as to whether or not they accept that piece of work. But to me it just makes sense that we would want to be able to have consistent doctrine of how we're going to use a system before we do it.

Just to put that in context, for identification purposes in this country, there are three pieces of work that are acceptable in a court of law to identify someone: DNA, fingerprints and eyewitness testimony. Facial recognition is not at that stage, so it's important that we actually have a doctrine about how you're going to use facial recognition—whether it's going to be used for forensic purposes, whether it's going to be used by police officers at the coalface, whether it's going to be used by detectives, whether it's going to be used in the intelligence area. I would submit that all of that needs to be worked out before we spend any money on a system. That's the process we're going through collectively with law enforcement at the moment.<sup>70</sup>

### ***Impact on the National Automated Fingerprint Identification System***

4.43 The committee heard that NAFIS was negatively impacted by the cancellation of the BIS. The ACIC explained that, due to the delays associated with the BIS, the contract with IDEMIA (the company contracted to provide the NAFIS) had to be:

extended twice to enable the overlap between when we would go off the IDEMIA system and onto the BIS program. When we moved up, when we renegotiated those contracts because of the delays, the price was escalating up from about \$6 million to \$9 million per annum...that is a cost of the delay. The increased costs that we had to pay IDEMIA to maintain the system was simply a product of delay of the BIS program.<sup>71</sup>

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68 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 7.

69 ACIC, answers to questions on notice, 29 November 2018 (received 29 January 2019), p. 6.

70 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 5.

71 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 5.

4.44 The ACIC explained that the annual budget to keep the NAFIS going is \$9 million per year and that the commission is:

in commercial negotiations at the moment to, obviously, work through that to have a longer-term relationship with the existing system that we have, depending on what enhancements they're able to do to the system.<sup>72</sup>

4.45 In its January 2019 audit report on the BIS, the Australian National Audit Office (ANAO) reported that the NAFIS contract is due to expire in May 2020 and that the ACIC 'has yet to decide the future of the NAFIS'.<sup>73</sup>

#### ***ANAO audit report***

4.46 On 21 January 2019, the ANAO published its audit report on the ACIC's administration of the BIS project. The audit was requested by the ACIC on 14 February 2018.<sup>74</sup> The audit considered whether the 'procurement process for the BIS project was conducted in accordance with the Commonwealth Procurement Rules', and whether the ACIC had 'effectively managed the BIS project to achieve agreed outcomes'.<sup>75</sup>

4.47 The audit identified significant deficiencies with the administration of the BIS project. It reported that the total expenditure on the project was \$34 million, and '[n]one of the project's milestones or deliverables were met'.<sup>76</sup>

4.48 The ANAO found that the BIS procurement was designed and planned consistent with the Commonwealth Procurement Rules and ICT Investment Approval requirements, and the tender assessment process supported value for money. However, the ANAO also concluded that:

While CrimTrac's management of the BIS procurement process was largely effective, the subsequent administration of the BIS project by CrimTrac and ACIC was deficient in almost every significant respect...two critical requirements were overlooked in the requirements gathering phase and the approach to negotiating and entering the contract did not effectively support achievement of outcomes. This was a result of the contract not explaining the milestones and performance requirements in a manner that was readily understood and applied.

ACIC did not effectively manage the BIS project with its approach characterised by: poor risk management; not following at any point the mandated process in the contract for assessing progress against milestones

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72 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 4.

73 ANAO, *The Australian Criminal Intelligence Commission's Administration of the Biometric Identification Services Project*, Audit-General Report No. 24 2018–19, 21 January 2019, p. 7.

74 ANAO, *The Australian Criminal Intelligence Commission's Administration of the Biometric Identification Services Project*, Audit-General Report No. 24 2018–19, 21 January 2019, p. 7.

75 ANAO, *The Australian Criminal Intelligence Commission's Administration of the Biometric Identification Services Project*, Audit-General Report No. 24 2018–19, 21 January 2019, p. 8.

76 ANAO, *The Australian Criminal Intelligence Commission's Administration of the Biometric Identification Services Project*, Audit-General Report No. 24 2018–19, 21 January 2019, p. 8.

and linking their achievement to payments; reporting arrangements not driving action; non adherence to a detailed implementation plan; and inadequate financial management, including being unable to definitively advise how much they had spent on the project.<sup>77</sup>

4.49 The ANAO reported that the ACIC's financial management of the BIS project was poor: its 'corporate finance area had no responsibility for management of the financial aspects of the BIS project', nor did the BIS project team have a dedicated financial or contract manager; the ACIC was 'unable to advise definitively how much they had spent on the project'.<sup>78</sup> For example:

ACIC made a 'goodwill' payment of \$2.9 million to NEC which was not linked to the achievement of any contract milestone. ACIC was not able to provide details of how the quantum of this payment was calculated.<sup>79</sup>

4.50 On 16 November 2018, it was reported that the ACIC may have sought to have parts of the ANAO's audit report redacted.<sup>80</sup> This matter was discussed during Senate Estimates on 18 February 2019. Mr Phelan explained that the correspondence between the ACIC Chief Operating Officer and the Auditor-General was benign, and reference to a section 37 certificate under the *Auditor-General's Act 1997* was due to the:

...secrecy provisions that exist within the ACC Act about our information that we hold inside the ACC and the sharing components of that. So it was just a matter of them turning their mind to that—to whether or not they wanted to invoke the powers of the Attorney-General to redact those certain components. It was never our intention, and in fact we did not request, that any information be redacted from the audit. It was never our intention to do so; it was just so the Auditor-General could turn their mind to the secrecy provisions that existed in the ACC Act.<sup>81</sup>

4.51 Mr Phelan offered to provide the Senate Legal and Constitutional Affairs Legislation Committee with a copy of the correspondence between the ACIC and the Auditor-General.<sup>82</sup> As of 5 March 2019, this correspondence had not been tabled.

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77 ANAO, *The Australian Criminal Intelligence Commission's Administration of the Biometric Identification Services Project*, Audit-General Report No. 24 2018–19, 21 January 2019, p. 8.

78 ANAO, *The Australian Criminal Intelligence Commission's Administration of the Biometric Identification Services Project*, Audit-General Report No. 24 2018–19, 21 January 2019, p. 9.

79 ANAO, *The Australian Criminal Intelligence Commission's Administration of the Biometric Identification Services Project*, Audit-General Report No. 24 2018–19, 21 January 2019, p. 9.

80 Doug Dingwall and Sally Whyte, 'Home Affairs, Crime Commission flag suppression for audits', *Canberra Times*, 16 November 2018, p. 4.

81 Mr Michael Phelan, CEO, ACIC, Legal and Constitutional Affairs Legislation Committee, *Committee Hansard*, 18 February 2019, p. 52.

82 Mr Michael Phelan, CEO, ACIC, Legal and Constitutional Affairs Legislation Committee, *Committee Hansard*, 18 February 2019, p. 52.

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*Committee comment*

4.52 The committee is concerned about the management and subsequent cancellation of the BIS project.

4.53 The management of the project appears to have been deeply flawed, at significant financial cost to the Commonwealth, including the loss of approximately \$26 million which will not be recouped and the need to renegotiate the NAFIS contract at an additional \$3 million per year.

4.54 The ANAO's finding that the BIS contract failed to explain milestones and performance requirements that could be readily understood and applied, together with Mr Phelan's remarks that Australian law enforcement agencies have not yet resolved a 'doctrine for facial recognition' suggests that pursuing the BIS project was premature and poorly scoped.

4.55 The committee recognises the significant benefit to law enforcement from new and emerging technologies, including facial recognition. The committee supports adoption of these technologies for clearly articulated purposes and following rigorous assessment of law enforcement needs. In this instance, the committee is left to conclude that the justifications for the BIS project were only partially developed and/or were poorly articulated at the time the contract was negotiated with NEC and that these issues were neither identified nor appropriately addressed as the project progressed.

4.56 The committee acknowledges the ACIC's response to media reports that it may have sought to have parts of the ANAO's audit report redacted. The committee is pleased by Mr Phelan's comments that the ACIC did not seek to have parts of the audit report withheld from publication. It would have been of concern to the committee had the ACIC made such a request with the intention of avoiding scrutiny and accountability. The failures of the BIS project may be a source of embarrassment, but they resulted in significant financial losses to the Commonwealth and have the potential to put our law enforcement agencies at a technological disadvantage; as such, they should not be shielded from critique.

4.57 On a positive note, the committee acknowledges the proactive effort by the ACIC to review and learn from the BIS project, including the ACIC's request for the ANAO to conduct the performance audit. The committee also notes Mr Phelan's considered approach and the board's ultimate decision to end further investment in the BIS project.

4.58 The committee will monitor the ACIC's response to the ANAO audit report, and looks forward to the ACIC keeping the committee apprised of future projects to implement facial recognition technology for use by Australian law enforcement agencies.

## National Electronic End User Declaration

4.59 The Council of Australian Governments Law, Crime and Community Safety Council agreed in October 2016 to introduce new measures to improve the national consistency of control on precursor chemicals and equipment used to manufacture crystal methamphetamine and other illicit drugs. The eEUD was announced as part of this endeavour.<sup>83</sup>

4.60 Work on the eEUD commenced in March 2017. The eEUD will require buyers of precursor chemicals and equipment to declare that the intended use is not for the manufacture of illicit drugs. The business case for the eEUD proposes 'a new electronic service to manage the current paper-based handling of end user declarations', and alert police to suspicious sales of chemicals and/or equipment occurs.<sup>84</sup>

4.61 The annual report states that:

Legislative change in each state and territory is required before the system can be fully implemented. Work to align the legislation has commenced and is occurring in parallel to the project.<sup>85</sup>

4.62 As of January 2019, the business and technical documentation for the eEUD had been approved by the eEUD Working Group and justice officials from each jurisdiction.<sup>86</sup> The ACIC will seek agreement from state and territory Attorneys-General to commit to progressing legislative reform by June 2020.<sup>87</sup>

4.63 The ACIC advised:

Further work being undertaken to progress the eEUD includes consultation with industry on the precursor chemicals and equipment schedules which would be included. Further consultation will be undertaken with stakeholders through a series of workshops to gain a complete understanding of the business and technical requirements. Tender documents will be completed to facilitate an approach to market for the solution to be undertaken.<sup>88</sup>

4.64 The eEUD becoming 'operational is dependent on the outcome of the approach to market'.<sup>89</sup>

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83 PJCLE, *Inquiry into crystal methamphetamine (ice): First report*, September 2017, p. 113.

84 ACIC, *Annual Report 2016–17*, p. 135.

85 ACIC, *Annual Report 2016–17*, p. 135.

86 ACIC, answers to questions on notice, 29 November 2018 (received 29 January 2019), p. 16.

87 ACIC, answers to questions on notice, 29 November 2018 (received 29 January 2019), p. 16.

88 ACIC, answers to questions on notice, 29 November 2018 (received 29 January 2019), p. 16.

89 ACIC, answers to questions on notice, 29 November 2018 (received 29 January 2019), p. 16.



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*Committee comment*

4.65 The committee has previously recommended, as part of its inquiry into crystal methamphetamine (ice), that Australian governments implement the eEUD system as soon as practicable. The committee maintains this position and will seek further updates on the status of the eEUD.

**Australian Firearms Information Network**

4.66 The ACIC has a number of databases and systems in place to monitor firearms and ballistics in Australia. These include the National Firearms Identification Database, the National Firearms Licensing and Registration System, and the Australian Ballistics Information Network.<sup>90</sup> To further strengthen the monitoring of firearms in Australia, the ACIC developed the AFIN, which became operational in October 2016.<sup>91</sup>

4.67 Despite the AFIN now being operational, the ACIC reported that 'no partner agencies have integrated with AFIN to provide near-real time firearm data to meet the benefits of a national firearm system'.<sup>92</sup> The AFP and Victoria Police were expected to commence providing data to AFIN by the end of January 2019, with the Queensland Police Service and Western Australia Police Force to integrate data by July 2019 and December 2019, respectively. South Australian Police and Northern Territory Police have commenced planning for integration, but no timeframes have been announced. New South Wales Police Force commenced data integration planning in 2018, but is on hold due to a local system upgrade.<sup>93</sup>

**Australian Crime Commission's use of coercive powers**

4.68 On 8 November 2018, the High Court of Australia found the ACC had conducted unlawful examinations on behalf of the AFP at which former employees of Securrency and Note Printing Australia were required to answer questions.<sup>94</sup> The High Court found:

...the AFP unlawfully used the ACC, without any special operation or investigation being undertaken or conducted by the ACC, as a "hearing room for hire" to compel the appellants to answer questions.<sup>95</sup>

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90 ACIC, *Annual Report 2016–17*, pp. 132–133.

91 ACIC, answers to questions on notice, 29 November 2018 (received 29 January 2019), p. 17.

92 ACIC, answers to questions on notice, 29 November 2018 (received 29 January 2019), p. 17.

93 ACIC, answers to questions on notice, 29 November 2018 (received 29 January 2019), p. 17.

94 *Tony Strickland (a pseudonym) v Commonwealth Director of Public Prosecutions* [2018] HCA 53, 8 November 2018.

95 *Strickland & Galloway & Hodges & Tucker v Commonwealth Director of Public Prosecutions* [2018] HCA 251 [80–81].

4.69 AFP officers secretly observed the ACC's interviews of the suspects, and the ACC widely disseminated transcripts of the interviews with the AFP and prosecution teams.<sup>96</sup> The High Court held that the prosecutions against the accused individuals be permanently stayed 'as an abuse of process on the basis that the administration of justice would be brought into disrepute'.<sup>97</sup> The High Court concluded that:

...a permanent stay can be ordered where, despite the public interest in prosecuting reasonably suspected crime, no less extreme remedial measure will sufficiently avoid the damage to the integrity of the court. The integrity of the court would be impaired by trials of the appellants. No lesser remedial measure was offered or available to prevent the stultification of key safeguards in the ACC Act and the achievement of the unlawful purposes for which those safeguards were contravened.<sup>98</sup>

4.70 The committee questioned the ACIC about the High Court's ruling. In response, Mr Phelan stated that the unlawful examinations occurred in 2010, and since that time the Parliament has amended the ACC Act to:

...allow us to do some of the things that were prohibited under the ruling at that particular time. We acknowledge the decision, obviously, and we're still looking through the case to see whether or not it has any further impacts on any of the previous historic jobs. But, in terms of our examinations of people post-charge and pre-charge and what we do with that information and the disseminations by the examiners, we're very confident that we're doing the right thing now. The parliament actually changed the laws, following another High Court case a couple of years ago now. That has enabled a fair bit more clarity about what we're able to do. But, clearly, the court has held that, at the time, 10 years ago, that we not have what's called a special investigation in place which allows us to use the coercive powers. It just said that—and I'm trying to paraphrase the High Court judgement a little bit—we were acting solely on behalf of the AFP to conduct their investigation, and that's what deemed it unlawful.<sup>99</sup>

4.71 The ACIC clarified if future foreign bribery cases arise, it would be the AFP that would investigate the matter. Further, Mr Phelan explained that he is conscious of the ACIC's role as an intelligence organisation, and for that reason does not 'do anything for [its] own sake':

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96 *Strickland & Galloway & Hodges & Tucker v Commonwealth Director of Public Prosecutions* [2018] HCA 251 [81].

97 *Strickland & Galloway & Hodges & Tucker v Commonwealth Director of Public Prosecutions* [2018] HCA 297 [98].

98 *Strickland & Galloway & Hodges & Tucker v Commonwealth Director of Public Prosecutions* [2018] HCA 297 [98].

99 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 8.

When we're putting together the intelligence and working with our state and territory partners, if there was a requirement under one of our determinations to do so, we would work with a state and territory in a joint taskforce arrangement, under a very specific determination of the board which allowed us to use those special powers. We don't use them all the time. They are quite powerful, as people in this place are aware, so we use them very carefully.<sup>100</sup>

**Mr Craig Kelly MP**  
**Chair**

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100 Mr Michael Phelan, CEO, ACIC, *Committee Hansard*, 29 November 2018, p. 8.





# **Appendix 1**

## **Witnesses who appeared before the Committee at the public hearing**

**Thursday 29 November 2018 – Canberra ACT**

### **Australian Criminal Intelligence Commission**

Mr Michael Phelan APM, Chief Executive Officer

Mr Matt Rippon, Executive Director Intelligence Operations

Ms Rochelle Thorn, Executive Director Technology

Ms Nicole Mayo, National Manager Legal Services

Mr Mark Harrison, Executive Director Capability

Dr Rick Brown, Deputy Director, Australian Institute of Criminology



# **Appendix 2**

## **Additional documents**

### **Answers to questions on notice**

1. Answers to questions on notice - Public hearing, 29 November 2018 (received 31 January 2019) – Department of Home Affairs
2. Answers to written questions on notice, 11 December 2018 (received 31 January 2019) – Department of Home Affairs



