

Parliamentary Joint Committee on Law Enforcement

Inquiry into the gathering and use of criminal intelligence

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Terms of reference

a) Role and objectives of the ACC within the context of the National Security Framework

The roles and objectives of the ACC within the national security framework are still being clarified and developed by the agency. Prior to 2008, there was no appetite either by policy makers or internally within the ACC for any role within the national security framework. Three recent developments however have helped change this. These are important to reflect on as they help explain what future role and objectives the ACC may have in the broader national security framework.

The first is the bedding down of an appropriate intelligence operating model (Project Sentinel) which only started being implemented in 2009. Prior to 2009, I argue that the agency was not ready to take on a broader role in the national security framework. Pre-2009, the ACC was still resolving what intelligence model would best suit its needs and that of its stakeholders in its *core business* of being the key national criminal intelligence agency responsible for organised crime. This started to change however, in 2009 when it introduced Sentinel which for the first time in the agency's short history put intelligence at the heart of its business, and helped more clearly define how the ACC would work with other agencies in the organised crime context.

Sentinel is a target oriented approach to organised crime which is underpinned by three phases: intelligence collection and analysis, target development and assessment and prevention and intervention. Sentinel emerged within the agency after much soul searching and in part as a reaction to previous intelligence models trialed since the agency's establishment in 2003. Earlier intelligence models were either too investigative in their focus— or did not provide the agency with sufficient flexibility in dealing with organised crime in *other ways* than running traditional investigations usually seen in the AFP or other state policing agencies.

Sentinel model gave a small, relatively under-resourced national criminal intelligence agency additional options in how to action increasingly vast amounts of collected criminal intelligence than just investigating all targets itself. Sentinel helped identify/clarify niche high risk/high impact areas of organised crime; where the ACC intelligence capabilities could best deploy its unique set of intelligence assets. It also highlighted areas where the ACC might not take a leading role and those that other federal or state agencies were better positioned to deal with.

In addition to the Sentinel model, the development by the ACC of more sophisticated tools to measure the threat and risk of organised crime helped define better the role of the agency working in specific organised crime issues. These tools have been particularly useful in examining complex financial crimes and helping the agency decide on the types of intelligence operations or special investigations it could most usefully deploy its limited resources in. The model has also helped underpin an organisational ethos of not duplicating intelligence or investigative activities that other agencies have a greater comparative advantage in leading such efforts.

I think it's crucial for the Committee to understand the importance of Sentinel being a key driver for reshaping the corporate culture of the ACC. Sentinel represents a significant break with the early operating years of the ACC — where the agency was arguably still not sufficiently a criminal intelligence agency to one today whose primary focus is the *collection and analysis of criminal intelligence*. The development of Sentinel in 2009 and the appointment of the new CEO, John Lawler the same year to oversee its implementation, have also both been important drivers in the creation of a new organisational culture. This culture is focused on the ACC being a criminal *intelligence* agency first rather just another 'policing agency' that must investigate everything that comes across its desk. The gradual

retirement of old investigators that were part of the ACC's main predecessor agency — the NCA — has also helped shift the culture away from being just another law enforcement agency to one whose *core business is intelligence*. This cultural shift now potentially gives the ACC a greater intelligence focus — a focus it shares with more traditional national security intelligence agencies such as ASIO and ASIS. By seeing itself as primarily an *intelligence agency* collecting on organised crime, this makes the ACC now a potentially more useful and natural partner to national security intelligence agencies. The development of an intelligence culture also helps distinguish it from the AFP which as a policing agency cannot exclusively focus on intelligence activities.

The other two factors influencing the ACC's very recent foray into the national security framework have been the 2008 Prime Minister's First Statement on National Security and the 2009 Commonwealth Organised Crime Strategic Framework. Both policy initiatives underscored the Government's desire to recast the meaning of 'national security' to a wider all hazards context. National Security now includes issues beyond traditional security issues of war, peace, proliferation to the greater transnational security agenda including transnational crime and organised crime. The 2008 national security statement had a dramatic effect on increasing the number of agencies that are now part of the national intelligence community, and agencies such as the ACC, AFP and Customs and Border Protection. The ACC now has a seat at the table along with traditional intelligence community members such as ASIO, DSD and ASIS in key national security decision-making fora such as the national intelligence coordination committee, and the Secretaries Committee on National Security.

The 2009 Commonwealth Organised Crime Strategic Framework was more specific than the Prime Minister's Statement on what role the ACC should play in the national intelligence community. Key among its findings and recommendations was that organised crime is a national security issues, and the ACC should take a *leading role* in the national criminal intelligence effort against organised crime. In July 2010, the government made good on another recommendation of the Organised Crime Strategic Framework with the funding of the ACC led national criminal intelligence fusion capability. Both the 2008 Prime Minister's Statement on National Security and the 2009 Organised Crime Strategic Framework have for the first time given the ACC a seat at the table with other traditional players in the national security intelligence space. The bigger question now which I think still hasn't been completely resolved is what role and objectives should the ACC have in the expanded national security framework?

It is clear that since 2008 that the ACC has become increasingly involved in issues that are high priorities for the broader Australian national security community. It has revealed publicly in its annual reporting to government that it has played a support role in the collection and analysis of criminal intelligence on the extent of financing of terrorism and people smuggling through criminal activity. Additionally, in its last Annual Report it indicated that it was going to establish a broader determination called: *national security impacts from serious and organised crime* rather than the previous narrower intelligence operations on specific issues such as terrorism or people smuggling.

This broader approach makes sense and will allow a detailed examination of the links between organised crime and other national security issues *beyond* just people smuggling and terrorism. Perhaps for the immediate future the biggest role the ACC can play in the national security space is to use its fusion centre to link any proceeds of crime to entities that are also of national security concern. This will require a greater sharing of targets and suspicious activity detected amongst intelligence between the ACC and ASIO than currently exist. Are there high risk organised crime entities in Australia involved in drug trafficking, indentify theft, money laundering which are either directly or indirectly also supporting terrorism, people smuggling, arms trading or political instability in another country? The answer is probably yes and I see the ACC's greatest comparative advantage in the national security community in the future may be in tracking illicit funds and connecting this with other criminal intelligence such as human sources.

ACC may then hand over the target to ASIO and the AFP for further development for example in a counter-terrorism investigation. Alternatively, if a water-tight case for terrorism is not possible, the ACC in conjunction with the AFP and state police may be able gather sufficient intelligence for a brief of evidence that results in sentencing the individual for a serious criminal offence. In this way, the ACC may be able in the future to play a greater role in disrupting targets which may have eventually committed an even more serious offence of terrorism.

In the future, I think the ACC and the national security community will need to build better governance around the kind of intelligence and operational activities it gets involved in this area. It is likely that the ACC is already moving in this direction, but there needs to be some clear boundaries between the AFP, ASIO and it in particular on its role to avoid duplication and the ACC stepping into areas that other agencies core business. For example, there needs to be an

agreement on when intelligence on an issue was thought initially to be an organised crime target but may have links to national security is handed over to ASIO and the AFP. There also needs to be a lot more thought given about how to harmonise intelligence requirements across the national security intelligence priorities, and the national criminal intelligence collection requirements and national criminal intelligence priorities coordinated in the ACC. The ACC should outpost officers in key national security intelligence agencies such as ASIO and AFP to ensure its own collection requirements relating to national security issues are being met and that officers can more quickly interrogate ACC systems for colleagues in ASIO and AFP.

B) ACC's collection capability, including resourcing, expertise, powers, and criminal intelligence community networks.

Since 2005, the ACC's collection capabilities have improved steadily as the agency worked on its internal processes to link national criminal intelligence priorities with strategic, operational and tactical requests for information from other law enforcement agencies, and by being able to better capture intelligence via its own collection capabilities. More sophisticated threat and risk tools have also steered collection efforts to areas where little intelligence existed before. This in turn has helped recalibrate law enforcement's understanding of various threats and resulted in more focused and priority driven collection efforts. The ACC Board which is chaired by the AFP, but also has AUSTRAC, ASIC, ASIO and all state policing agencies represented, has also been a good mechanism for checking national intelligence collection and priority setting for the ACC and other law enforcement agencies. Though it is less clear the extent to which other ACC board agencies are consistently collecting against the priorities agreed by the ACC Board. This is an issue which requires further investigation to ensure the country is getting a truly national picture of organised crime, particularly in emerging areas.

The ACC's examination process, where it can use its coercive powers to compel witnesses to speak about a criminally related issue or request documents from banks or other companies has also resulted in a fairly unique flow of intelligence that is not available to most other law enforcement agencies. In addition as noted earlier, the implementation of the first stage of the ACC's Sentinel model, collection and analytics also saw the agency invest heavily in developing data mining technologies and employing staff who could focus on improving automated retrieval and tagging of relevant information. Finally, in 2009 the new national criminal intelligence fusion centre seems to be improving the agency's collection capability further with current attempts to fuse various criminal intelligence holdings together to detect criminal activity.

It is difficult for me as an outsider to comment on the resourcing of the ACC's collection capabilities. This is something that the ACC CEO John Lawler should be asked to comment on. The two areas of collection though that concern me are covert human intelligence services (CHIS) and the ongoing funding of the fusion centre. The CHIS has always had a human intelligence capability and I am strong believer in this kind of collection capability as technical and electronic interception cannot always produce good intelligence on the most sophisticated and resilient of organised crime entities.

Many organised crime entities use effectively counter-intelligence techniques and will not communicate via telephone or email as they know law enforcement capabilities to collect intelligence against these. CHIS can be an expensive, time and labour intensive activity, but can produce intelligence about the structure of organised crime groups and their transnational dimensions that cannot be found out by other means. I do think that the ACC's CHIS (collection) capabilities do need examining to ensure they are sufficiently funded and that this important collection capability is not being diminished as the agency focuses more on other collection methodologies in its fusion centre such as analytics or information on existing criminal data bases .

The other area that concerns me longer term is fusion centre funding. As noted earlier, the Australian Government funded the organised crime fusion centre to the amount of around 20 million dollars over 5 years. At this stage, it less clear whether the funding will be ongoing or to the extent that federal and state agencies that participate in the centre feel they can continue to support staff participating in the centre. These funding concerns are in the context of a tight fiscal environment for federal and state governments. Future funding surety needs to be addressed beyond the initial five years. The government should consider (*pending an interim independent review of fusion centre*) giving the ACC core funding in an ongoing capacity for the maintenance and future information technology procurement of the centre. It should also consider funding at least partially agencies who participate in the centre.

The ACC has always had some expertise in specialised intelligence collection which came originally from one of its predecessor agencies the National Crime Authority. But staff turnover at the ACC and other similar agencies means that further investment in developing specialist collection expertise across staff is vital. New intelligence staff at the ACC would benefit for more advanced training in the agency's collection methodologies so they can task these more effectively. Further training of analytical staff in advanced analytics/data mining and analytical software that can combine various sources of intelligence is also required as soon as possible.

In the short time that the ACC has been in existence it has done a lot via stakeholder management and its involvement in multi-agency task forces or determinations to create better criminal intelligence networks. These efforts have resulted in better collection on some areas of organised crime. Though often these networks can be informal between analysts in different agencies and a greater criminal intelligence collection culture needs to develop in Australian law enforcement where the ACC — Australia's key criminal intelligence collection and analysis agency can rely on regular collection from other federal and state agencies on a broader number of issues that doesn't rely on the good will of a couple of people.

(C) Adequacy of the ACC's criminal intelligence holdings

It is impossible and not necessary for every intelligence agency to collect intelligence on every imaginable topic. The ACC, like its national security counterparts collects against priority issues as set by the ACC Board. I am sure that the ACC keeps an audit on how it and other ACC Board agencies are performing against the national criminal intelligence priorities. It would be useful though for an independent agent such as this Committee to ask the ACC CEO to demonstrate how Australian law enforcement is tracking against collection priorities. I think this is something that the Committee should be asking of the ACC and AFP on a regular basis as a standing agenda item. There would no doubt be intelligence gaps in the ACC's intelligence holdings and again it's important for the Committee to be satisfied about how the agency is addressing these. Again the CEO ACC or the ACC National Manager for Intelligence should be called to talk to these issues.

(D) Availability and accessibility of ACC's criminal intelligence

Overall I would say that the availability of ACC's criminal intelligence to other law enforcement and national security agencies in Australia is good, though the agency needs to think more strategically about how it can service traditional members of the national security community with the intelligence products they would most be interested in. The ACC is also getting faster in the dissemination of intelligence to stakeholders though there is still room for improvement here. But the issue is not just having more intelligence products; the agency like other law enforcement agencies needs to give more thought to whether its current suite of products will remain the best way to service its varied client base, particularly those in the national security community. Additionally, there may well be a need to further reduce the number of product types or to shorten the length of some particularly strategic intelligence products.

Accessibility of ACC's criminal intelligence I think remains a potential problem. Criminal intelligence accessibility is not a unique issue for the ACC. It's a problem that has existed for all Australian law enforcement agencies for some time. For example, as far back as 1993, the Australian Government extensively reviewed via the Commonwealth Law Enforcement Arrangements Review (CLER) all aspects of Commonwealth law enforcement agencies operations, including the performance of their intelligence functions. The report underlined a number of problems associated with intelligence practice including the coordination, collection and intelligence and information management systems. Similar problems with accessing and disseminating criminal intelligence identified in the CLER remain today.

Part of the problem is that the ACC and AFP today have inherited legacy data bases which were never designed to be utilised as intelligence data bases. For example, the PROMIS system used by the AFP and the ACC is a case management system — good for investigators during an operation — but not good for sharing intelligence across an agency amongst intelligence officers or between agencies. Another poor 'intelligence data base' which is coordinated by the ACC on behalf of all law enforcement agencies is the Australian Criminal Intelligence Database (ACID). Again this is not a user-friendly system and while the ACC regularly post its intelligence products on it ACID is not used extensively by all law enforcement agencies. This reduces national knowledge about certain criminal threats and degrades law enforcement's ability to do effective strategic intelligence which can provide warning to government

about the potential development of future organised crime threats. ACID needs replacing with a system that all law enforcement agencies will distribute national significant intelligence onto. Nationally significant intelligence should be shared on a mandatory basis between law enforcement agencies. It should be mandatory for the two higher categories of national criminal intelligence collection requirements to be shared on a common criminal intelligence data base that all agencies can contribute to and exploit. This will require greater leadership between federal and state police ministers and attorney-generals to sign MOUs that will drive this process. The ACC should oversee collection efforts made by other jurisdictions and report progress regularly to the ACC Board and to this Committee.

(E) Interoperability of Australian law enforcement agencies in relation to criminal intelligence holdings.

On a daily, short term (tactical) level, Australian law enforcement agencies demonstrate interoperability in sharing their criminal intelligence holdings. Person to person contacts between different agencies has been particularly important in facilitating 'short term interoperability' across a range of issues. Most also have MOUs for sharing intelligence on issues of mutual concern. But the existence of legacy IT architectures as mentioned above has often made it difficult for agencies to extract and share more complex operational and strategically relevant criminal intelligence in real time. Variations in federal and state legislation governing the distribution of intelligence from certain sources has also slowed down the ability of different agencies to use all relevant intelligence in real time.

There are some recent improvements to this historical situation. For example, most Australian law enforcement agencies have in the last five years developed intelligence doctrines to help guide a number of different improvements in their intelligence capabilities, including in the areas of sharing and working together on available intelligence. The desire by government for whole of government approach to organised crime and other national security issues has also sped up the tempo in making Australian law enforcement agencies more interoperable with their criminal intelligence holdings.

The post 9/11 culture of sharing intelligence amongst each other and the ACC and AFP's desire to build better criminal intelligence databases will improve interoperability between agencies. For example, through Project Spectrum, the AFP is looking to replace its 17 year old PROMIS system with a new database which will merge operational and intelligence data into the one platform. Much has been done already to make the AFP more interoperable with national security intelligence agencies such as ASIO, but more urgent work is now required on how to build a truly nationwide intelligence data base that all federal and state agencies will drop their intelligence into. This data base needs to be designed in a way that will allow the tagging of information with the appropriate national intelligence collection priority category. This will allow, (except in very limited circumstances such as sensitive internal investigation cases), all agencies to have greater visibility on what is known on different targets and issues and what yet still needs collecting.

Things to consider

1. ACC should develop enhanced monitoring within its fusion centre of national security related issues beyond terrorism and illegal immigration.
2. There needs to be improved governance around the sharing of criminal and national security intelligence between the ACC, AFP and ASIO. Arrangements for the development of and handing over of criminal targets to national security agencies need further development.
3. There needs to be where appropriate, more harmonising between national security driven intelligence priorities and national criminal intelligence priorities. Greater staff exchanges at the senior level between the ACC and ASIO may help improve collection priority setting processes in each agency.
4. The Commonwealth should consider launching an independent inquiry into how federal and state relevant agencies produce and share criminal intelligence priorities on organised crime and how these processes can be improved nationally.
5. The Committee should investigate the adequacy of current funding for ACC CHIS capabilities.

6. Funding for the ACC's fusion centre should be extended beyond the current initial five years pending an independent review of its progress. This funding should be core to its budget.
7. The ACC needs to build more systematically into its operating model (Sentinel) a strong counter intelligence capability to detect proactively and protect against organised crime's knowledge and use of intelligence methodologies against the agency. This will be particularly important in the short to medium term as organised crime entities continue to exploit information technology traditionally used by the ACC and others to collect intelligence. ASIO and DSD should be asked to help build this counter intelligence capability within the ACC.
8. The ACC needs to enhance its training of intelligence officers in advanced analytics particularly predictive analytics.
9. A greater criminal intelligence collection culture needs to be built amongst federal and state law enforcement agencies. The ACC Board and agencies such as ANZPAA need to be more actively involved in helping to build this culture within their organisations.
10. The Committee needs to regularly request an update from the ACC CEO on how well the criminal intelligence collection priorities are being met and where problems exist.
11. The Committee should ask the ACC Board to establish a working group of executive staff from all federal and state law enforcement agencies to develop a terms of reference for the replacement of ACID.
12. Federal and state police and attorney generals should develop an MOU which makes it mandatory for all relevant agencies to upload to ACID and its replacement nationally significant criminal intelligence.
13. Consideration should be given to giving IGIS powers to investigate operational intelligence matters within the ACC if required.