

## *Powers to deal with uncooperative witnesses*

### Question

16. The ACC took on notice a question from the committee seeking details of uncooperative witnesses the ACC has dealt with. Can you please provide details of uncooperative witnesses over the past two financial years and the current year to date including:
- what percentage of witnesses are uncooperative;
  - a breakdown of the number of uncooperative witnesses by the nature of the lack of cooperation (eg failure to take an oath, produce documents or answer questions);
  - what action has been taken in relation to the witness (eg has the witness been charged with offences under the ACC Act); and
  - the ultimate outcome of the matter or its current status?

### Answer

At the Committee's hearing on 29 October 2009 a briefing was provided on the current upsurge in non-cooperation offences by persons summoned to appear at ACC examinations. That briefing included figures for the number of persons who had been charged with or committed such offences since 1 July 2007.

In response to the question on notice above, the ACC provided figures on uncooperative witnesses to the Committee on Tuesday 10 November. Since then the ACC has identified a number of other ACC witnesses who have committed such offences but who have not yet been charged. On looking into the matter further, the ACC has identified an anomaly in its records, in that these offences are not centrally recorded until charges are laid. The following corrected figures are the result of a detailed comparison between several different recording systems.

In order to address the Committee's question fully, these figures are broken down by the year in which the non-cooperative conduct occurred. Because of the delays inherent in the criminal prosecution process, these figures will vary from published figures (for example, the figures for previous financial years provided to the Committee on 29 October) that are grouped according to the date on which persons were charged, convicted or sentenced.

### *Percentage of witnesses that are uncooperative*

The level of non-cooperation varies depending on the type of witnesses examined. For example, members and associates of outlaw motor cycle gangs tend to be particularly unwilling to cooperate in the examination process. As noted during the ACC's appearance on 29 October 2009 there has recently been a marked upward trend in non-cooperation offences.

This is illustrated by the following table:

Year	Non-cooperating witnesses	Total number of examinations	Percentage non-cooperative
2007-08	11	760	1.4
2008-09	18	527	3.4
2009-10 (to 1 Nov)	26	195	13.3
Total	55	1 482	3.7

Number of uncooperative witnesses by the nature of the lack of cooperation

The following table demonstrates that the bulk of uncooperative witnesses fail or refuse to answer questions put at an examination:

Year	30(1) Fail to attend examination	30(2)(a) Refuse/fail to take oath	30(2)(b) Refuse to answer question	33 Give false/misleading answer	35(1)(a) Obstruct/hinder examiner	Total
2007-08	1	1	7	2		11
2008-09	2	4	9	3		18
2009-10		2	15	5	4	26
Total	3	7	31	10	4	55

Action taken/ultimate outcome/current status of matters

The following table sets out the point each matter that arose since 1 July 2007 has reached in the prosecution process, as at 1 November 2009. While some 21 sentences have been imposed for non-cooperation offences during the period since 1 July 2007, all but four of these have been in respect of offences committed before that date. This illustrates the substantial delay between the commission of a non-cooperation offence and the ultimate imposition of a sentence.

Year of offence	Not yet charged	Charged	Committed for trial	Pleaded guilty	Convicted	Sentenced
2007-08	1	1*	2**	3	1	3
2008-09	5	5	5***	2		1
2009-10	25	1				

\* Murdered before committal proceedings could be conducted.

\*\* In one of these cases the CDPP subsequently discontinued the prosecution.

\*\*\* Includes one case where the charges were dismissed at the committal hearing but an ex officio indictment was subsequently lodged.