

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CRIME COMMISSION

Question No. 63

Senator Ludwig asked the following question at the hearing on 14 February 2006:

Further to Question 94 for 31 October 2005, regarding non-cooperation in examinations, for the periods 1 January 2003 (when the ACC was formed) to 30 June 2003, 1 July 2003 to 30 June 2004, 1 July 2004 to 30 June 2005 and from 1 July 2005 to the present:

- a) What offences are there in relation to ACC examinations under the ACC Act 2002?
- b) How many people have been charged with these offences?
- c) What was the outcome of finalised matters?
- d) What percentage of total people appearing before ACC examinations do they represent?

The answers to the honourable Senator's questions are as follows:

- a) What offences are there in relation to ACC examinations under the *Australian Crime Commission Act 2002*?

Australian Crime Commission Act 2002 (Cth)

| Offence Provision | Offence | Maximum Penalty |
|---|---|---|
| Section 25A(14) <i>ACC Act 2002</i> | Breach of non-publication directions made by an Examiner | 20 penalty units or imprisonment for one year |
| Section 29B(1) <i>ACC Act 2002</i> | Disclosing Summons that has a notation prohibiting disclosure | 20 penalty units or imprisonment for one year |
| Section 29B(3) <i>ACC Act 2002</i> | Disclosing Summons by a person who is not the subject of a Summons to other persons, other than in accordance with a notation | 20 penalty units or imprisonment for one year |
| Section 30(1) and (6) <i>ACC Act 2002</i> | Fail to attend at an Examination | 5 years' imprisonment or 200 penalty units |
| Section 30(2)(a) and (6) <i>ACC Act 2002</i> | Refuse or Fail to take oath or make an affirmation at an Examination | 5 years' imprisonment or 200 penalty units |
| Section 30(2)(b) and (6) <i>ACC Act 2002</i> | Refuse or Fail to answer a question at an Examination | 5 years' imprisonment or 200 penalty units |
| Section 30(2) (c) and (6) <i>ACC Act 2002</i> | Refuse to produce a document or thing required to be produced by summons | 5 years' imprisonment or 200 penalty units |
| Section 30(3) and (6) | Refusal by legal practitioner | 5 years' imprisonment or |

| | | |
|---|--|---|
| <i>ACC Act 2002</i> | to give Examiner the name and address of a person to whom a privileged communication was made or to provide an answer or produce a document that would disclose a privileged communication where the person to whom the communication was made agrees to such disclosure | 200 penalty units |
| Section 33(1) and (2) <i>ACC Act 2002</i> | Giving false and misleading evidence in a material particular | 5 years' imprisonment or 200 penalty units or by fine not exceeding 200 penalty units |
| Section 35(a) and (2) <i>ACC Act 2002</i> | Obstruct or hinder the ACC in performance of its functions or an examiner in the performance of his or her functions as an examiner | 5 years' imprisonment or a fine not exceeding 200 penalty units |
| Section 35(b) and (2) <i>ACC Act 2002</i> | Disrupt an examination | 5 years' imprisonment or a fine not exceeding 200 penalty units |

There are companion offences to these offences under State legislation including the *Australian Crime Commission (State Provisions) Act 2003 (Vic)*.

b) How many people have been charged with these offences?

65 people have been charged with offences under *Australian Crime Commission Act 2002 (Cth)* and six persons have been charged pursuant to *Australian Crime Commission (State Provisions) Act 2003 (Vic)*.

Some of those persons have been charged with multiple counts. The details of those charges are recorded in the table set out below

Australian Crime Commission Act 2002 (Cth)

| Offence | Offence Provision | Persons charged |
|---|---|--|
| Section 29B(1) <i>ACC Act 2002</i> | Disclosing Summons that has a notation prohibiting disclosure | 2 persons have been charged. 1 prosecution is pending, the other has been finalised. |
| Section 29B(3) <i>ACC Act 2002</i> | Disclosing Summons by a person who is not the subject of a Summons to other persons, other than in accordance with a notation | No persons have been charged with this offence. |
| Section 30(1) and (6) <i>ACC Act 2002</i> | Fail to attend at an Examination | 1 person has been charged with this offence but that |

| | | |
|---|--|---|
| | | matter was discontinued. |
| Section 30(2)(a) and (6) <i>ACC Act 2002</i> | Refuse to take oath | 5 persons have been charged with this offence. 4 prosecutions are pending and 1 has been finalised (see below) |
| Section 30(2)(b) and (6) <i>ACC Act 2002</i> | Refuse or fail to answer a question. | 52 persons have been charged. 29 Prosecutions were discontinued, 17 prosecutions are pending and 6 matters have been finalised. 27 of the discontinued prosecutions were the result of persons who were charged being deported. |
| Section 30(2)(c) and (6) <i>ACC Act 2002</i> | Refuse or Fail to answer a question at an Examination | 1 person has been charged and that prosecution has been finalised. The outcome of that prosecution is set out in the table below. |
| Section 30(3) and (6) <i>ACC Act 2002</i> | Refusal by legal practitioner to give Examiner the name and address of a person to whom a privileged communication was made or to provide an answer or produce a document that would disclose a privileged communication where the person to whom the communication was made agrees to such disclosure | No person has been charged with this offence. |
| Section 33 <i>ACC Act 2002</i> | Giving False and Misleading Evidence in a material particular | 19 persons have been charged with this offence. 2 prosecutions were discontinued; 14 prosecutions are pending and 3 have been finalised (set out in the table below) |
| Section 35(a) and (2) <i>ACC Act 2002</i> | Obstruct or hinder the ACC in performance of its functions or an examiner in the performance of his or her functions as an examiner | 1 person has been charged and that matter has been finalised. The outcome of that matter is set out in the table below. |
| Section 35(b) and (2) <i>ACC Act 2002</i> | Disrupt an examination | No person has been charged with this offence |

Australian Crime Commission (State Provisions) Act 2003 (Vic)

| Offence | Offence Provision | Persons charged |
|--|---|--|
| Section 18(9) and (14) <i>Vic ACC Act 2003</i> | Breach of non-publication directions made by an Examiner | 1 person has been charged and that matter has been finalised. |
| Section 22(1) <i>Vic ACC Act 2003</i> | Disclosing Summons that has a notation prohibiting disclosure | 3 persons have been charged. 2 prosecutions are pending and 1 has been finalised (see below) |
| Section 25(1) and (2) <i>Vic ACC Act 2003</i> | Giving false and misleading evidence in a material particular | 5 persons have been charged. On prosecution has been finalised and four prosecutions are pending |

c) What was the outcome of finalised matters?

The outcome of the matters referred to above is specified in the tables below:

Australian Crime Commission Act 2002 (Cth)

| Offence | Offence Provision | Outcome |
|--|---|---|
| Section 29B(1) <i>ACC Act 2002</i> | Disclosing Summons that has a notation prohibiting disclosure | 1 person has been convicted, sentenced to enter into a recognisance for 15 months to be of good behaviour for 18 months. |
| Section 30(2)(a) and (6) <i>ACC Act 2002</i> | Refuse or Fail to take an oath | 1 person has been convicted and was sentenced to 12 months' imprisonment to be released after 2 months on a \$2000 recognisance to be of good behaviour for 12 months from the time of release (served concurrently with other sentences). |
| Section 30(2)(b) and (6) <i>ACC Act 2002</i> | Refuse or Fail to answer a question at an Examination | 6 convictions have been recorded. Each of those persons was sentenced to a term of imprisonment, <u>ranging</u> from a suspended sentence to 15 months imprisonment (in some cases these sentences were served concurrently with other offences under the <i>ACC Act 20002</i>) ((served concurrently with other sentences). |

| | | |
|---|---|--|
| Section 30(2)(c) and (6) <i>ACC Act 2002</i> | Refuse or Fail to produce a document or thing | 1 prosecution has been finalised. The outcome of that matter was the recording of a conviction and a sentence imposed of 12 months' imprisonment to be released after 2 months on a \$2000 recognisance to be of good behaviour for 12 months from the time of release. |
| Section 33(1) and (2) <i>ACC Act 2002</i> | Giving false and misleading evidence in a material particular | 3 prosecutions have been finalised. One person was convicted and sentenced to 15 months' imprisonment, to be released after 4 months on \$5,000 recognisance. In the second matter the person was convicted and sentenced to 12 months imprisonment, to be released after serving 3 months upon entering into a recognisance in the sum of \$2,000, conditioned that she be of good behaviour for a period of 2 years. In the third matter the person was convicted and sentenced to 18 months imprisonment, 6 months of the 18 month 'head' sentence was ordered to be served cumulative to other non ACC Act charges. The remaining 12 months of the sentence was suspended. |
| Section 35(a) and (2) <i>ACC Act 2002</i> | Obstruct or hinder the ACC in performance of its functions or an examiner in the performance of his or her functions as an examiner | 1 person was convicted and fined \$300. |

Australian Crime Commission (State Provisions) Act 2003 (Vic) (Vic ACC Act)

| Offence | Offence Provision | Outcome |
|---|--|--|
| Section 18 (9) and (14) <i>Vic ACC Act 2003</i> | Breach of non-publication directions made by an Examiner | 1 person has been convicted and fined \$400. |
| Section 22(1) <i>Vic ACC Act</i> | Disclosing Summons that | 1 person fined \$400 without |

| | | |
|---------------------------------------|---|---|
| 2003 | has a notation prohibiting disclosure | conviction |
| Section 25(1) <i>Vic ACC Act</i> 2003 | Giving false and misleading evidence in a material particular | 1 person has been convicted and fined \$1200. |

d) What percentage of total people appearing before ACC examinations do they represent?

Of the 1425 examinations conducted by the ACC since 2003 persons charged for offences under the *ACC Act* for failing to co-operate represent approximately 3 per cent.