

Parliament of the Commonwealth of Australia

**PARLIAMENTARY JOINT COMMITTEE
ON THE AUSTRALIAN CRIME COMMISSION**

**Examination of the Annual Report for 2003-2004
of the Australian Crime Commission**

June 2005

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RECOMMENDATIONS

Recommendation 1

- 2.25** The Committee recommends that, to provide an opportunity for proper public debate, the government involve the Committee at an early stage of the development of legislation affecting important operational or civil liberties issues.

Recommendation 2

- 2.55** The Committee recommends that the ACC consider the release of public versions of key research, including a declassified version of the Picture of Criminality.

Recommendation 3

- 2.62** The Committee recommends that the ACC review the legal and administrative arrangements governing information on its intelligence networks and provide the Committee with a briefing on the results. This should include both any current limits to the access to information, as well as access, accountability and control processes.

Recommendation 4

- 2.68** The Committee recommends continued refinement of the performance measures, including an explanation of the significance of quantitative and qualitative indicators.

Recommendation 5

- 2.71** The Committee recommends that the performance indicators relating to criminal intelligence operations include – subject to reasonable security considerations – how priority is allocated to matters submitted to the ACC Board for consideration.

Recommendation 6

- 2.76** The Committee recommends that information relating to the results of legal proceedings be refined to indicate more clearly the numbers of charges that proceed and are successfully prosecuted.

Recommendation 7

- 2.82 The Committee recommends further refinement of the reporting measures for 'Investigations into Federally relevant criminal activity', including more specific breakdown of information relating to forfeiture of the proceeds of crime, and the meaning of qualitative measures such as 'disruption of established criminal networks'.**

Chapter 1

Introduction

The Committee's statutory duty

1.1 The Parliamentary Joint Committee on the Australian Crime Commission has the statutory under Section 55(1)(c) of the *Australian Crime Commission Act 2002* to examine each annual report of the Commission and report to Parliament on any matter appearing in, or arising out of, any such annual report.

1.2 The provision is part of the wider duties set out in Section 55 of the PJC to provide Parliamentary scrutiny of the ACC's performance of its functions under the Act, as well as examining trends in organised criminal activity. A particular focus of the Committee is providing the Parliament with advice on the overall effectiveness of the legislative framework under which the ACC operates, and balancing these effectiveness criteria against the need to protect the civil rights of Australian citizens under the law.

1.3 In this context, the Committee acknowledges the significant cooperation of both the Chairman of the ACC Board, Commissioner Mick Keelty, the CEO of the ACC, Mr Alastair Milroy, and officers of the ACC. In the reporting period, the ACC has provided regular written reports and briefings, and met with the Committee on a number of occasions.

1.4 The willingness of the Commission to provide information to the Committee is of great assistance and has contributed to the building of an effective working relationship. This stands in contrast to the difficulties experienced by this Committee's predecessor, the PJC on the National Crime Authority, whose early work was frustrated by the reluctance of the NCA to provide the information needed by the committee to perform its function.

1.5 The Committee also wishes to acknowledge the assistance provided by the Commonwealth Ombudsman, Professor John McMillan, and his staff. The Commonwealth Ombudsman plays a vital role in accountability mechanisms of the ACC, through investigating complaints, and auditing records. The Committee considers that regular discussions and exchange of information with the Ombudsman is vital to maintaining the overall effectiveness of the accountability regime. In addition to the briefing on telecommunication intercepts required by statute, Professor MacMillan has met with the Committee privately on several occasions and the Committee appreciates his insights and experience.

Report under consideration

1.6 The ACC Annual Report was presented out of session on 21 December 2004, and tabled in both Houses on 8 February 2005, in accordance with section 61 of the

Australian Crime Commission Act 2002. This year's report is significant in that its reporting period covers the first full year of the ACC's operation.

Inquiry into the Annual Report

1.7 In examining the report, the Committee held a public hearing in Parliament House on 17 March 2005. The Committee also wrote to a number of individuals and organisations, inviting them to comment on the Annual Report. The Committee received seven submissions in response, together with a number of letters that expressed satisfaction with the operation of the ACC and declined to raise any further issues.

1.8 The Committee also notes its intention, with the agreement of the Minister, to conduct the evaluation of the ACC Act, pursuant to Section 61A.

Note

1.9 In this report, 'report' refers to the Annual Report of the Australian Crime Commission. Other reports are referred to in full.

Adoption of the Report

1.10 The Parliamentary Joint Committee adopted this report at a private meeting on 20 June 2005.

Chapter 2

Australian Crime Commission Annual Report 2003–2004

Functions

2.1 The *Australian Crime Commission Act 2002* (the 'ACC Act') establishes the Commission (section 7) and section 7A sets out its functions, which include:

- to maintain a database of the material from the collection correlation, analysis and dissemination of criminal information and intelligence;
- to undertake, when authorised by the Board, intelligence operations;
- to investigate, when authorised by the Board, matters relating to federally relevant criminal activity;
- to provide reports to the Board on the outcomes of those operations or investigations;
- to provide strategic criminal intelligence assessments, and any other criminal information and intelligence, to the Board;
- to provide advice to the Board on national criminal intelligence priorities; and
- other functions as are conferred on the ACC by other provisions of the ACC Act or by any other Act.

Reporting requirements

2.2 The Annual Report requirements for the ACC are set out under section 61 of the ACC Act, which include (paraphrased):

- descriptions of investigations into federally relevant criminal activity that the Board had determined to be a special investigation;
- descriptions of trends in criminal activity;
- recommendations for legislative reform or administrative action; and
- information on the nature and extent of dissemination of information by the ACC, as well as the numbers of prosecutions, confiscations or court applications.

2.3 The Annual Report Requirements published by the Department of Prime Minister and Cabinet state that the requirements apply as 'a matter of policy'¹ to prescribed agencies under section 5 of the *Financial Management and Accountability Act 1997* (FMA Act). The ACC is one of those prescribed agencies, and accordingly

1 Department of Prime Minister and Cabinet *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act bodies*, p. 1.

provides a report in the terms specified by these requirements, as well as those prescribed under the ACC Act.

2.4 The core requirements under the FMA Act include: reporting on performance, management accountability, corporate governance and financial statements. As is evident from the guide to the ACC report, these requirements are complied with.

Corporate overview

Accountability and governance structures

2.1 The ACC operates in a complex accountability environment, of which this Committee is part. If these accountability systems are to operate effectively, it is essential that they operate in practice as they are intended to in theory.

2.2 In this respect, the Committee is pleased to note that the Annual Report provides information on, not only the membership, but also the attendance at the ACC Board meetings. This table also reflects that the great majority of the ex-officio members of the ACC Board attended all meetings.

2.3 As required by the Act, the ACC received a briefing from the Commonwealth Ombudsman, Professor John McMillan and his staff, on the ACC's involvement in controlled operations.² The Ombudsman outlined the process and outcomes of their audit program on ACC records. The Ombudsman further reported his satisfaction with the cooperation provided by the ACC, and with the standard of the record keeping.

2.4 Since the Committee's examination of the ACC Annual Report 2002-03, the ACC has also released key planning documents that also form an important part of the overall accountability framework. These include the Corporate Plan 2004-07 and the Business Plan 2003-04, and constitute elements of the 'integrated planning framework' set out in the Corporate Plan.³

2.5 The Committee commends the ACC for the production of these documents, and will monitor their implementation in the coming reporting period.

Stakeholder relationships

2.6 In a complex jurisdictional environment, one of the greatest challenges faced by the ACC is developing strong working relationships with its stakeholders, including the state and territory police forces. This task is obviously assisted by the membership of the ACC Board. Nevertheless, legislation cannot compel constructive cooperation and the full sharing of information.

2 ACC Act, s. 55AA.

3 ACC Corporation Plan 2004 – 2007, p. 9.

2.7 In this respect, the Committee notes the considerable amount of work done by the ACC to foster and develop these relationships, including the memoranda of understanding with both AUSTRAC and the Australian Tax Office.⁴

2.8 Mr Milroy described some of the measures taken to develop a closer understanding of 'client' needs in relation to information:

As part of this information-sharing working group, Mr Phelan is actually taking his experts to each jurisdiction to get an understanding of what stakeholders are currently using, and at the same time briefing them on the capabilities of the ACC systems and on the new ALERT initiative and the benefit that is to Australian law enforcement in particular. ... So we are trying to work across jurisdictions to end up with a far more advanced and more efficient national criminal intelligence database which will benefit not only the ACC but also our partner agencies.⁵

2.9 The Committee also notes Mr Phelan's comment that the cost for individual jurisdictions to acquire information and intelligence systems is rising continually. This provides a strong incentive to develop stronger linkages with a national system.⁶

Effectiveness of the legal framework

2.10 The Committee notes a number of issues raised in both the Annual Report and elsewhere relating to the adequacy of the overall legal framework in which the ACC operates.

Operation of coercive powers and contempt provisions

2.11 Both the ACC⁷ and Mr Henderson, the Northern Territory Minister for Police, Fire and Emergency Services, have drawn the Committee's attention to limitations in the operation of the ACC's coercive powers.

2.12 In particular, the offences for 'failure to attend' and 'failure to answer questions' are proving less than effective. After being charged, the witnesses are invariably granted bail, and six months or more may pass before the matter is heard and a penalty imposed. This provides little real deterrence, and leaves the ACC without the benefit of the information sought.⁸

2.13 One suggested response to this weakness is to replace the current offences with a more serious 'contempt' provision. The ACC further noted that the provisions

4 AUSTRAC, *Submission 2*, p. 3; ATO, *Submission 5*, p. 1.

5 Mr Milroy, *Committee Hansard*, 17 March 2005, p. 9.

6 Mr Phelan, *Committee Hansard*, 17 March 2005, p. 10.

7 ACC Private briefing to the Committee, March 2005.

8 Henderson, *Submission 4*, pp 2-3.

relating to various types of privilege, such as legal professional privilege, may need refinement.

Immunity from prosecution

2.14 Currently, there is limited capacity for the ACC to provide indemnity from prosecution to those assisting in inquiries, since it is a decision for the Commonwealth Director of Public Prosecutions.

2.15 There is a view that this limits the effectiveness of the ACC inquiries. Similarly, the different rules for granting immunity across Australian jurisdictions increases administrative complexity and raises the potential for an inconsistent approach nationally.

Illicit drug related legislation

The ACC Annual Report identified a number of legislative issues relating to illicit drugs:

- Legislative deficiencies and non-uniformity throughout jurisdictions relating to supply and possession of precursor chemicals.
- Limited appropriate legislation at a Commonwealth and state level governing the importation and control of pill presses and related lab apparatus including glassware.
- Regular non-compliance by chemical suppliers with the voluntary National Code of Practice.
- Lack of appropriate 'children found in lab' legislation.
- Amendments to Schedule VI of the *Customs Act 1901* to include pseudoephedrine as a prohibited drug import.

Firearms legislation

2.16 The ACC Annual Report notes that a comprehensive review of jurisdictional firearm legislation was forwarded to the Attorney General's Department and other jurisdictions. This review resulted from the Firearms Trafficking Determination which commenced in May 2003.

Legislation to attack Established Criminal Networks

2.17 According to the ACC Annual Report, there is an identified need for law reform to address more effectively the issue of established criminal networks, including permitting the commencement of prosecutions under the corporations law and for the Victorian *Fisheries Act* to include indictable offences in circumstances of serious criminality.

Access by law enforcement agencies to databases

2.18 Effective law enforcement, particularly in relation to organised crime, requires access to the fullest possible amount of information. The ACC discussed with the Committee current efforts to understand the legal, physical, technical and other impediments that might prevent law enforcement agencies from providing the full range of intelligence reports for inclusion into the Australian Criminal Intelligence Database (ACID). The ACC Board has established the Information-sharing Working Group, which aims to understand what the problems are and to come up with cooperative solutions with partner agencies to achieve that aim.

2.19 One of the principal legal impediments is likely to be the privacy legislation in various jurisdictions that places strict controls on the release of information. As Mr Phelan told the Committee:

The history of databases in Australia really reflects legislatures across Australia – all states and federally – coming up with information sources or databases to cover information specific to whatever is the purpose of the agency that owns it. So surrounding each of those databases will be a purposeful clause to do with privacy, the ability to access information and so on.⁹

2.20 Mr Phelan explained that:

It is a very big issue for an agency set up for one particular purpose to be able to access the other databases, given the overall privacy legislation in Australia. Part of the role of the information-sharing working group is to help us identify what those databases are and what they are carrying so that we can purposefully work through each of them and understand how we can perhaps deal with any legislative, privacy or other reasons to encourage a maximisation of the provision of information to ACID itself.¹⁰

2.21 Another requirement for improvement in the sharing of information was raised by the submission from the Insurance Australia Group. The IAG has estimated that insurance fraud cost \$832 million in 2003, and a significant proportion of this can be attributed to the activities of organised criminal groups. They point out that:

[T]here is an urgent need for a national law enforcement body to collect, analyse and assess information from insurers in order to gather intelligence about fraud networks operating across the industry. Currently there is no mechanism for the sharing of such data.¹¹

2.22 IAG proposes legislative change to require insurers to provide information to the ACC, similar to the way that the Australian Prudential Regulatory Authority currently obtains claims data on public liability and professional indemnity insurance.

9 Mr Phelan, *Committee Hansard*, 17 March 2005, p. 6.

10 Mr Phelan, *Committee Hansard*, 17 March 2005, p. 6.

11 IAG, *Submission 7*, p. 2

Committee comment

2.23 The raising of these issues by the ACC is consistent with the requirements of Section 61(2)(c) of the ACC Act, and the Committee considers it important that these matters be put in the public domain early in the policy cycle. There is a danger that these legislative measures, which often involve a balancing of civil rights with police operational effectiveness, are developed in private government-to-government discussions and then presented to Parliament as a *fait accompli*.

2.24 Some of these issues, particularly the consideration of the 'contempt' provision, will be considered by the Committee in detail in the course of its forthcoming evaluation of the ACC Act.

Recommendation 1

2.25 The Committee recommends that, to provide an opportunity for proper public debate, the government involve the Committee at an early stage of the development of legislation affecting important operational or civil liberties issues.

The role of the PJC

2.26 The Chief Commissioner of Police in Victoria has written to the Committee questioning the role for an ongoing Parliamentary Joint Committee, on the basis that there are:

sufficient reporting obligations, legislative requirements and oversight by both the ACC Board and the IGC-ACC, without the need for [an] additional layer of accountability through this PJC.¹²

2.27 Commissioner Nixon also points the additional accountability that will be provided by the likely creation of an independent Commonwealth body to detect and investigate corruption among law enforcement officers.

2.28 The Committee considers that it is important to find the right balance between proper oversight of the ACC and overly restrictive or duplicated scrutiny that wastes resources or impedes the effective conduct of the ACC's work. Since the Committee is itself a creation of the ACC Act, the Committee's role and effectiveness will be considered in the forthcoming evaluation of the act. The Committee will commission an independent evaluation of its own role, and will make a detailed submission to this separate evaluation.

2.29 However, the Committee makes two preliminary observations in response to the Commissioner.

2.30 First, the role of the Committee is not duplicated by either the IGC or the ACC Board. The primary task of both groups is the management and strategic

12 Commissioner Nixon, *Submission 3*, pp 1-2.

direction of the ACC. They cannot therefore act in an independent scrutiny role. To use an analogy, the control of a public company by a competent and effective Board is not a substitute to the accountability of both the company and the board to the shareholders. In this case, the 'shareholders' are the Australian taxpaying public, represented by the Parliament.

2.31 Equally, the IGC membership comprises government ministers and are members of the Executive. For reasons of practicality, and by reason of Australia's constitutional arrangements, it is not appropriate that scrutiny of executive agencies is the sole responsibility of executive ministers. Rather, they must be accountable to the Parliament or the judiciary.

2.32 These rules are based on sound experience. History shows that the instinctive reaction of government agencies, when confronted with corruption, malpractice or incompetence, is to keep the matter private. Bureaucracies, and police bureaucracies in particular, are notoriously reluctant to allow external scrutiny. A strict application of this separation of powers is even more essential given that the ACC wields powers equivalent to a Royal Commission – powers that were previously granted only to the judiciary, for a limited purpose and duration. It is well to remember that these now settled but once extraordinary powers would not have been granted by the Federal Parliament to either the NCA or the ACC had there not been a guarantee of parliamentary oversight.

2.33 It must also be recognised that a scrutinising body will only have legitimacy when there is a public perception of independence. Neither a ministerial body nor a board possess such a public perception. In this context, the Committee notes that neither the ACC Board nor the IGC report publicly on their activities.

2.34 The second issue is that the fight against organised crime – like that against terrorism – has particular and sometimes unique characteristics, and there is a general acceptance that law enforcement agencies need specialist powers to combat the sophisticated, cross-jurisdictional and hidden activities of organised criminals.

2.35 However, the granting of these powers involves authorising law enforcement agencies to act in ways that significantly infringe the basic rights, freedoms and privacy of Australian citizens. These powers cannot be granted lightly. Nor are these concerns over civil rights merely theoretical, given the history of police corruption and abuse of power that has emerged from several Royal Commissions.

2.36 Balancing the protection of these basic rights against the need for effective policing requires that Parliament has a sophisticated understanding of the characteristics of organised crime, and the implications of this for the operation of the criminal law. The expertise developed by a specialist Committee such as the PJC is crucial to the Parliament's role in finding this balance.

2.37 For these reasons, the Committee considers that its role remains relevant and necessary and as part of the evaluation of the ACC Act, the Committee will be arguing for the retention of a specialist parliamentary committee. The priority should be to

ensure the effectiveness of the Committee as a part of the overall accountability framework.

Performance of the ACC

2.38 The Commission's single outcome and associated outputs are:

OUTCOME: Enhanced Australian law enforcement capacity.

Outputs

1. Criminal Intelligence Services
2. Criminal Intelligence Operations
3. Investigations into federally relevant criminal activity

2.39 The performance measures against each of these outputs are discussed under the relevant headings set out below. However, the Committee notes the comments of the Families and Friends for Drug Law Reform ACT (FFDLR). In their submission, they make the general criticism that the ACC's performance measures largely refer to levels of activity, but do not address whether that activity is effective in achieving the organisation's objective. Nor do the performance measures set any particular level of activity as a goal.¹³

What is required for the performance criteria to be meaningful is that they provide a measure of whether the level of serious organised crime is disrupted and deterred. The number of arrests and value of proceeds of crime forfeited are a measure of this only with an estimate of the amount of crime involved and of the financial turnover of that criminal activity.¹⁴

2.40 Accordingly, the FFDLR recommend that the ACC Annual Report include an assessment of the extent to which the ACC's activity has affected the overall level of criminality.

Committee comment

2.41 The issue of performance criteria is a vexed question for many organisations, and is particularly so for one such as the ACC.

2.42 Several characteristics of the ACC's operating environment complicate the design of transparent performance measures. There is also the danger that a focus on

13 FFDLR, *Submission 6*, p. 1 et seq.

14 FFDLR, *Submission 6*, p. 2.

the wrong performance measures can create perverse incentives that drive the organisation in the wrong direction.

2.43 Organised crime is inherently characterised by its secrecy, sophistication and operation across jurisdictional borders. Unlike more obvious crimes such as assault, organised crime may go unreported, particularly in relation to fraud or 'high tech' crime. Similarly, the extent of organised crime involvement in individual incidents of crime may go unrecognised. This makes determining the extent of the problem difficult. Thus, for example, does a rising number of arrests for drug trafficking indicate a rising level of success against the organised crime importation networks, or are law enforcement agencies simply arresting the same percentage of an increasing number of offenders?

2.44 These observations have implications for the design of the ACC's performance measures.

2.45 First, the difficulty of accurately assessing the extent of organised criminal activity means that great care must be taken in interpreting information on the impact of ACC activities on organised crime. A focus on measuring success by 'clean-up rates' as a percentage of problem, could create perverse incentives for the ACC to minimise the extent of the crime its 'finds', so that its successes give the false impression of being highly effective.

2.46 Second, a focus on 'results' such as the number of arrests, charges laid or convictions secured could create the perverse incentive for the ACC to concentrate its efforts on simpler 'easier to solve' crime, instead of the resource intensive investigations into complex organised crime that they ought to be focused on.

2.47 Third, given the highly collaborative environment that the ACC must foster with partner law enforcement organisations, a focus on 'results' by the ACC could put pressure on the ACC to emphasise unilateral activity for which it can claim all the credit. Again, this runs counter to what is required: the focus of the ACC on assisting partner agencies with its specialist investigative resources, even if the ultimate 'credit' goes to the lead agency involved.

2.48 Fourth – and a problem general to all knowledge based organisations – is that quantitative measures of performance, such as the number of reports disseminated, may be misleading, since quantity of activity is no indicator of quality.

2.49 For these reasons, the Committee accepts that while it is relatively easy to point to limitations in the performance measures selected by the ACC, it is somewhat harder to recommend alternatives.

2.50 Nevertheless, both the Parliament and the public generally need as much accurate and detailed information as possible. This is necessary to inform their assessment of the threat posed by organised crime, as well as the adequacy of the response measured in terms of budgets, and the powers granted by legislation to law enforcement agencies.

2.51 The Committee also notes that under Paragraph 61(2)(b) of the Act, the ACC Annual Report should contain information patterns or trends and the nature and scope of criminal activity.

2.52 Whilst the Annual Report contains significant information about what the ACC has been targeting, and the results of particular investigations and operations, there is relatively little general discussion of trends and patterns in organised crime in Australia. A useful comparison is the public version of the 'UK threat Assessment – the threat from serious and organised crime', published annually by the National Criminal Intelligence Service. The Royal Canadian Mounted Police also publish various reports¹⁵ about aspects of organised crime.

2.53 The ACC's Illicit Drug Data Report is an excellent source of information, and the Committee is also aware of material published by the Australian Institute of Criminology¹⁶ relating to organised crime, including money laundering, serious fraud, and people trafficking, and also notes the cooperative arrangements between the Institute and the Australian Federal Police's High Tech Crime Centre.

2.54 Nevertheless, none of the principal products of the ACC, such as the Picture of Criminality and the National Threat Assessments, are available to the public in any form. Wherever possible, this information should be published, and the Committee encourages the ACC to consider release of public versions of key documents such as the 'Picture of Criminality'. The Committee also encourages collaboration between the Australian Institute of Criminology and the ACC in developing publicly accessible research.¹⁷

Recommendation 2

2.55 The Committee recommends that the ACC consider the release of public versions of key research, including a declassified version of the Picture of Criminality.

Criminal intelligence services

2.5 There are five key performance measures for this output:

- number and value of disseminations provided to other law enforcement agencies;
- provision and maintenance of criminal intelligence systems;
- number and significance of strategic criminal assessments and other intelligence and information products;

15 see for example, Royal Canadian Mounted Police, *Criminal Networks*, Research and Evaluation Branch, RCMP, 2003.

16 See Australian Institute of Criminology publications: <http://www.aic.gov.au/publications/>

17 The Committee notes here the recommendations of Professor Grabosky, *Submission 1*, p. 1.

- acceptance by ACC Board of advice on national criminal intelligence priorities; and
- number of criminal intelligence priorities that become intelligence operations.

Committee comment

Number and value of disseminations provided to other law enforcement agencies

2.56 In this reporting period the ACC has endeavoured to give additional meaning to the raw figures provided in previous annual reports and those of its predecessor, the NCA. For example, the table on page 30 provides details of the number of disseminations, reports and intelligence product and following it there is information on the feedback received in relation to that information.

Provision and maintenance of criminal intelligence systems

2.57 In this performance measure, the ACC has reported on the systems known as ALEIN, ACID and ALERT. At the public hearing, the Committee asked the ACC about the security of these databases, a particularly in the light of the statement in the Annual Report that in the reporting period, 1580 new users 'self-registered' to ALEIN. The Committee's concern surrounded whether or not the entry point was controlled by the agencies that use it.

2.58 The ACC explained that ALEIN is an interface for delivering certain systems to the users – law enforcement agencies across Australia and New Zealand, including of course the ACC. ACID is the specific database within ALEIN. However, the ACC said that the control of the database is achieved:

... with great difficulty, I would have to say. We have a risk management framework around ACID and ALEIN, so we do declare the minimum standards that we expect for people who are able to access ACID.¹⁸

2.59 The ACC told the Committee that there is a certain amount of risk management attached to the use of the databases:

... where we are relying on the quality of information provided by our partners out there in law enforcement agencies, we obviously need to take a risk in terms of who is accessing it. We rely on the agencies concerned to essentially ensure that only those who are properly accredited to do so can access their systems.¹⁹

2.60 The Committee notes the safeguards which exist to protect the data. The Report indicates a steady growth in the numbers of users of the database, and the information contained in it. This is a useful measure of the acceptance within the law enforcement community of the ACC's role in providing useful criminal intelligence.

18 *Committee Hansard*, 16 March 2005, p. 4.

19 *Committee Hansard*, 16 March 2005, p. 4.

However, growing numbers of users accessing the system from different jurisdictions, and bound by various security and access regimes, poses an increasing and difficult to manage threat of unauthorised access to, and disclosure of information.

2.61 The development of an effective national criminal intelligence sharing network is a vital part of a coherent national response to organised crime. It is also appropriate that law enforcement agencies have access to all information that is relevant to their investigations. However, the Committee is concerned that cross jurisdictional information sharing arrangements do not inadvertently result in 'holes' in accountability. It is important that there is absolute clarity over what information is accessed; what are the relevant legislative controls; who may access the information; for what purpose, and what accountability measures apply.

Recommendation 3

2.62 The Committee recommends that the ACC review the legal and administrative arrangements governing information on its intelligence networks and provide the Committee with a briefing on the results. This should include both any current limits to the access to information, as well as access, accountability and control processes.

Number and significance of strategic criminal assessments and other intelligence and information products

2.63 The table on page 33 of the ACC Annual Report indicates that there were three Strategic Criminal Assessments in the reporting year, compared to four in the previous reporting year. Two of those reported this year concern the Picture of Criminality, which is summarised in the box on pages 33-34, and which has been discussed above.

2.64 Included in this category are several other 'intelligence products' which included intelligence assessments/reports/alerts (31), information bulletins (18), information items/OSI reports (3079), presentations and briefings (73) and operational reports (one). In each case the ACC gives a general comment as to the perceived usefulness of each product by the agencies who have used it.

Acceptance by the Board of advice on national criminal intelligence priorities

2.65 The Committee appreciates that the acceptance of the ACC's advice by its governing body is a matter of some importance to the ACC; however, non-acceptance of the ACC's advice by the Board may not necessarily signify flaws in the advice, but may reflect decisions made on alternative policy, resource, or political considerations. Accordingly the value of this criterion as a performance measure in its present form is not clear.

Number of criminal intelligence priorities that become intelligence operations

2.66 Similarly, it is not clear why these are necessarily a measure of performance. It may be that the work invested in them reflects a measure of achievement, but the Report does not explain why this is so.

2.67 As previously indicated in this report none of these – nor the following – performance indicators is set against a background of benchmarks. There appear to be no estimates of the volume of work expected, nor is there any standard set which would measure success. The Committee appreciates that the ACC operates in a dynamic environment, but considers that the Commission could further refine the standards by which it assesses its own performance.

Recommendation 4

2.68 The Committee recommends continued refinement of the performance measures, including an explanation of the significance of quantitative and qualitative indicators.

Criminal intelligence operations

2.6 There are four performance measures for this output. They are:

- number conducted and proposals actioned by Board;
- achievement of objectives of intelligence operations;
- use of coercive powers; and
- collaboration with partner law enforcement agencies.

Committee comment

2.69 The ACC has provided comprehensive information in a number of ways on this set of indicators. There are tables which set out the use of coercive powers in relation to both documents and people (tables 3.1 to 3.5), as well as narrative which describes each of the determinations, the activities undertaken within each one, and the results.

2.70 It would be useful if the Annual Report explained how the ACC decides what matters have sufficient priority to be put to the Board for consideration as a recommended determination. This is particularly the case given that the ACC uses the Board's acceptance of its recommendations as a performance measure. The Committee appreciates that these considerations may be sensitive, but a general discussion of how relative priorities are determined would put the information into a clearer context.

Recommendation 5

2.71 The Committee recommends that the performance indicators relating to criminal intelligence operations include – subject to reasonable security considerations – how priority is allocated to matters submitted to the ACC Board for consideration.

2.72 The use of coercive powers was a matter of some concern to the Committee when the ACC was established. From the information contained in the Annual Report, it appears that the most frequent use of the powers is in relation to drug matters, which is an outcome which would be expected in the light of the prevalence of this kind of serious crime.

2.73 The details concerning determinations include numbers of arrests and charges laid. While the Committee acknowledges that all charges are unlikely to be dealt with in the space of a reporting period, the Committee would like to see some material in each annual report which gives some indication of the stage the charges laid in the reporting period have reached: for example charged, prosecution brief served, committal hearing, trial or concluded.

2.74 The Committee notes that Table 6E1²⁰ gives some information; however some of these matters appear to relate to pre-ACC activity. Further, the table does not specify what the date at the top of the column is – the date of arrest, charge, first court appearance, date of trial or last court appearance.

2.75 The Committee is also aware that despite considerable intelligence work, some charges do not proceed. Information concerning the total number of charges, the number which proceed and the number which are successfully prosecuted would be a useful measure of the success of ACC investigations and the extent of the disruption to criminal networks.

Recommendation 6

2.76 The Committee recommends that information relating to the results of legal proceedings be refined to indicate more clearly the numbers of charges that proceed and are successfully prosecuted.

Investigations into federally relevant criminal activity

2.77 There are six performance measures for this output:

- number conducted and allocated by the ACC Board;
- value of proceeds of crime forfeited;
- use of coercive powers;
- achievement of objectives of investigations;
- number and significance of arrests and charges arising from investigations; and
- collaboration with partner law enforcement agencies.

Committee comment

2.78 The comments set out above equally apply to these performance measures which require the provision of figures. For example, 'value of proceeds of crime forfeited'.

2.79 In the Firearms Trafficking Determination, we are told that a range of assets were restrained, and these are listed. Table 4.2 then indicates that \$1,581,200 in assets were restrained, but there is no indication of whether this figure represents the assets mentioned above, or how many matters it relates to. The same applies to the proceeds of crime figures given for Established Criminal Networks.

2.80 A further measure is 'achievement of objectives of investigations'; nowhere are these articulated or confirmed as achieved, except in oblique terms. There are some instances in which figures in context are given, for example the results for the Established Criminal Networks on page 61, but these also contain unsupported assertions such as 'significant disruption of established criminal networks in Australia'. There is no exploration of what constitutes 'significant disruptions' nor how this relates to any previously set objectives.

2.81 The reporting on this output is in large part very general, and where specifics are noted, they are usually not placed in a context nor are the outcomes clear. Implicit in the performance measures is the existence of performance objectives, and while they may be clear to the ACC this is not communicated in the report.

Recommendation 7

2.82 The Committee recommends further refinement of the reporting measures for 'Investigations into Federally relevant criminal activity', including more specific breakdown of information relating to forfeiture of the proceeds of crime, and the meaning of qualitative measures such as 'disruption of established criminal networks'.

Corporate Services

2.83 The Corporate Services section of the report includes compliance with the requirements to provide information on matters such as Social Justice, Occupational Health and Safety and Energy Management, Ecologically Sustainable Development, Complaints, Freedom of Information and use of consultants. This section complies with the requirements for Annual Reports, and all areas have been reported.

Financial Management

2.84 The ACC has received an unqualified audit certificate for its 2003-2004 financial statements. The appropriation for 2003-2004 was \$65.471 million. There was a less than expected deficit of \$3.3 million including an operating loss of \$1.4 million. The Report explains the deficit 'reflected the commitment to expenditure in

this year on lapsed tied funding programs where funding had not been expended in 2002-3 and carried over.²¹

2.85 The ACC's revenue includes a number of tied funding arrangements – in total \$11.9 million. These are set out on page 86 of the Annual Report. This type of funding over a three or four year period was also a feature of the NCA's budget. No tied allocations have carried over from the NCA to the ACC.

Victoria Police Commissioner's views on ACC funding.

2.86 Ms Christine Nixon, Chief Commissioner of Police in Victoria, sought re-examination of the ACC's funding model. Under current arrangements:

Commonwealth funding is provided, but tied to a particular crime category (for instance, the determination in respect to money laundering & tax fraud whereby \$29.97 million over 4 years was provided, with an expectation that approximately \$53m would be subject to tax assessment and proceeds of crime action, reduces the flexibility of the ACC and is in conflict with the governance model.²²

2.87 Ms Nixon argues that:

The ACC provides advice to the ACC Board on how the resources should be allocated, according to the priorities set by the ACC Board. It is then a matter for the ACC Board to determine how the funding should be allocated, having regard to the national priorities, risks and threats. The current funding arrangements usurp the authority of the ACC Board ...²³

2.88 Commissioner Nixon's views have some merit, in that around one sixth of the Commission's expenditure is directly controlled by the Commonwealth, therefore limiting the discretion of the ACC Board. However, this indirect control by the Commonwealth minister reflects the Commonwealth's role in funding the ACC, unlike earlier arrangements with the NCA which involved contributions from all jurisdictions. Conversely, it could also be argued that the Commonwealth is always assured of a significant voice on the ACC Board by reason of the membership: seven of the 16 members represent Commonwealth organisations.

2.89 The Committee considers that this is a matter which should be examined in the review of the operation of the ACC Act prescribed under section 61A.

21 ACC Annual Report 2003-2004, p. 87.

22 Commissioner Nixon, *Submission 3*, p. 2.

23 Commissioner Nixon, *Submission 3*, p. 2.

Timeliness

2.90 The Committee is pleased to note that the current Annual Report was presented out of session on 21 December 2004, and tabled in both Houses on 8 February 2005, which is a considerable improvement on previous years.

2.91 The delay in tabling the Annual Report was noted on the previous occasion, and has been a near perennial theme of this Committee's reports on the NCA Annual Report over recent years. The Committee commends the Commission on the more timely release of the current report. It is the Committee's understanding that this is in large part due to revised arrangements for clearing the report with the members of the Intergovernmental Committee.

2.92 However, the Committee still notes that it exceeds the normal due date of reports of 31 October. Whilst appreciating the administrative difficulties of achieving this, the Committee hopes to see continuing improvement in this regard.

Conclusion

2.93 The ACC Annual Report is a well produced, professional publication. The Committee commends the Commission on its work in producing the report, and hopes that the comments and suggestions contained in this report will provide assistance to the Commission to enhance the information it provides in its Annual Reports.

Senator Santo Santoro
Chairman

Appendix 1

Submissions Received

- 1 Professor Peter Grabosky
- 2 Australian Transactions Reports and Analysis Centre
- 3 Victoria Police
- 4 Northern Territory Minister for Police, Fire and Emergency Services
- 5 Australian Taxation Office
- 6 Families and Friends for Drug Law Reform (ACT) Inc
- 7 Insurance Australia Group

Appendix 2

Witnesses who have appeared before the Committee at public hearings

Canberra, Thursday 17 March 2005

Australian Crime Commission

Mr Alistair Milroy, Chief Executive Officer

Mr Lionel Newman, Director, Executive Services

Mr Michael Outram, Director, National Operations

Mr Andrew Phelan, Director, Corporate Services

Mr Peter Brady, Senior Legal Adviser

Mr Jeff Pope, General Manager, National Intelligence Services

