



MINISTER FOR POLICE, FIRE AND EMERGENCY SERVICES

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PARLIAMENTARY JOINT COMMITTEE ON
THE AUSTRALIAN CRIME COMMISSION

Mr Jonathon Curtis
Committee Secretary
Parliamentary Joint Committee on the Australian Crime Commission
Parliament House
CANBERRA ACT 2600

REC'D:
FROM:
SECRETARY:
[Handwritten signature and initials over the routing slip]

Dear Mr Curtis

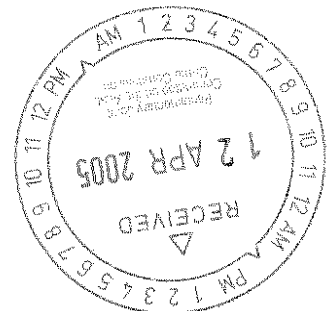
I refer to your letter of 12 January 2005 addressed to the Chief Minister of the Northern Territory and Attorney-General wherein you invited submissions on any matter pertaining to the Australian Crime Commission (ACC) during its first two years of operation. The Chief Minister has subsequently forwarded your letter to me as Minister for Police, Fire and Emergency Services for due consideration.

Following a recent incident in the Northern Territory Courts where members of an established criminal network were bailed by a Magistrate under the Commonwealth's *Australian Crime Commission Act 2002* despite police opposition, the Northern Territory would like to suggest amendments to the Act to increase penalties and reverse the presumption for bail, so that the authority of the ACC to investigate and disrupt organised crime is more effective.

This issue was also raised at the recent ACC Board meeting on 2 March 2005 by the Northern Territory Commissioner of Police, who will be writing to the Commonwealth Attorney-General's Department on this matter.

Yours sincerely

[Handwritten signature of Paul Henderson]
PAUL HENDERSON 7/4/05





SUBMISSION BY THE NORTHERN TERRITORY

TO THE PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN CRIME COMMISSION ON THE AUSTRALIAN CRIME COMMISSION 2003-04 ANNUAL REPORT

On 12 January 2005, you invited submissions from jurisdictions on the Australian Crime Commission (ACC) and its effectiveness in its first two years of operation.

One specific determination of the ACC is to: *'investigate entrenched criminal networks involved in drug importation and manufacture, money laundering and violence'*. The Northern Territory Police and the ACC regularly conduct joint criminal investigations which target Established Criminal Networks (ECN) operating within the boundaries of the Northern Territory. The ACC has so far conducted four rounds of examinations in the Northern Territory utilising the coercive provisions of Section 30 of the Commonwealth *Australian Crime Commission Act 2002* (the Act).

Aside from the coercive provisions, it also provides for witness indemnity to prosecution. Answers provided by a witness to the examiner are not admissible against the person in a criminal proceeding, nor for a proceeding for the imposition of a penalty. Witnesses may request or waive the right to indemnity for all or part of their evidence as they see fit. The examiner offers this indemnity to each witness in any case prior to the examination. In this regard, the examination process is regarded as fair and balanced. To deliberately refuse to cooperate with the examination process is, in itself, a contemptuous and provocative act aimed at undermining the authority of the legislation and its purpose.

Until recently, all witnesses summonsed for examination in the Northern Territory have complied with the process. However in December 2004, three members of an ECN were arrested after refusing to answer questions during an ACC examination, and one associate was arrested after failing to appear at the ACC examination. Despite police opposing bail, all four persons were immediately granted bail by a Magistrate.

The current penalty for refusing to answer a question during an examination under the Act is 200 penalty units (\$22,000) or five years imprisonment. These penalties are regarded by the ECN as inferior to the potential ramifications from their own organisation, which may result from any disclosure made during an ACC examination. The Commonwealth-based indictable offences are not regarded by the courts as being serious enough to warrant on-going detention. At present, the offences, although indictable, can be heard summarily with a further reduced maximum penalty.

The lack of a deterrent for failing to comply with the coercive powers means the ECN can effectively usurp the purpose of the Act. Despite the threat of incarceration, members of the ECN see this as a more reasonable consequence of their actions. It would seem that recent court bail outcomes have reinforced their contempt for the law.

The Northern Territory example above provides a clear demonstration that the coercive powers utilised by the ACC during an examination are being undermined by ECNs adopting a code of silence without fear of repercussion, despite the penalties provided by the Act. Unless the penalties are substantially increased, and the presumption for bail reversed, the authority and capability of the ACC to investigate and disrupt organised crime is diminished, and in time will become ineffectual.

It is therefore proposed that offences relating to '*Failure to attend*' and '*Failure to answer questions, etc.*' be replaced with a new offence entitled '*Contempt of examination*' which would encapsulate the aforementioned offences. The penalty for '*Contempt of examination*' should be increased to 10 years imprisonment, to provide a greater deterrent for potential non-compliance. The increased penalty is significant in that, under Commonwealth legislation, it would remove the presumption of bail in favour of the defendant.

Without a change to the legislation, it is believed that the ACC will fail to realise its objectives to impact on nationally significant, serious and organised crime.

On 2 March 2005, the Northern Territory Commissioner of Police raised this issue at a meeting of the Board of the Australian Crime Commission, and was requested to write to the Commonwealth Attorney-General's Department seeking a review of the Commonwealth *Australian Crime Commission Act 2002*.