

The Parliament of the Commonwealth of Australia

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

**Examination of the Annual Report for 2004-2005  
of the Australian Crime Commission**

October 2006

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# RECOMMENDATIONS

## Recommendation 1

2.12 The Committee recommends that the *Australian Crime Commission Act 2002* be amended to provide for the appointment of the Commissioner of Taxation to the ACC Board.

## Recommendation 2

2.43 The Committee recommends that the Australian Crime Commission consider the release of public versions of key research, including a declassified version of the Picture of Criminality.

## Recommendation 3

2.51 The Committee recommends that the *Australian Crime Commission Act 2002* be amended to prescribe the maximum number of examiners to be appointed.

## Recommendation 4

2.54 The Committee recommends that the document '*Public Information Statement: Examinations conducted under the Australian Crime Commission Act 2002*', be provided to all witnesses and their legal representatives along with the summons to appear at an examination.

## Recommendation 5

2.72 The Committee recommends that the Australian Crime Commission investigate the establishment of a common employment framework for secondees as a matter of priority.





# Chapter 1

## Introduction

### **The Committee's statutory duty**

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

1.2 This is part of the wider duty set out in section 55 of the Act to provide Parliamentary scrutiny of the ACC's performance of its statutory functions as well as examining trends in organised criminal activity.

### **Report under consideration**

1.3 The ACC Annual Report was tabled on 8 December 2005 in the House of Representatives, and on the 7 February 2006 in the Senate, in accordance with section 61 of the *Australian Crime Commission Act 2002*.

### **Inquiry into the Annual Report**

1.4 In examining the report, the Committee held a public hearing in Parliament House, Canberra on 28 March 2006.

1.5 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**

1.6 The Parliamentary Joint Committee adopted this report at a private meeting on 16 October 2006.

### **Acknowledgements**

1.7 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 has met with the Committee on a number of occasions. The willingness of the Commission to brief the Committee is of great assistance and has contributed to the building of an effective working relationship.

1.8 The Commonwealth Ombudsman plays a vital role in accountability mechanisms of the ACC, through investigating complaints, and auditing records. The

Committee also wishes to acknowledge the assistance provided by the Commonwealth Ombudsman, Professor John McMillan, and his staff.

# Chapter 2

## Australian Crime Commission Annual Report 2004-2005

### Functions of the Commission

2.1 Section 7 of the *Australian Crime Commission Act 2002* (the ACC Act) establishes the Commission 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 Section 61 of the ACC Act sets out the Annual Report requirements for the ACC, which include:

- description of any investigation into matters relating to federally relevant criminal activity that the ACC conducted during the year and that the Board determined to be a special investigation;
- a description, which may include statistics, of any patterns or trends, and the nature and scope of any criminal activity that have come to the attention of the ACC during that year in the performance of its functions;
- any recommendations for changes in the laws of the Commonwealth, of a participating State or of a Territory, or for administrative action, that, as a result of the performance of the ACC's functions, the Board considers should be made;

- the general nature and the extent of any information furnished by the CEO during that year to a law enforcement agency;
- the extent to which investigations by the ACC have resulted in the prosecution in that year of persons for offences;
- the extent to which investigations by the ACC have resulted in confiscation proceedings;
- particulars of the number and results of:
  - (ii) applications made to the Federal Court or the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for orders of review in respect of matters arising under this Act; and
  - (iii) other court proceedings involving the ACC;being applications and proceedings that were determined, or otherwise disposed of, during that year.

2.3 The Department of Prime Minister and Cabinet publishes Annual Report Requirements in June each year. These requirements are approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*. The requirements include: reporting on performance, management accountability, financial statements and other mandatory information. The report must also include a review by the departmental secretary, as well as a departmental overview.

2.4 Part 1 paragraph 3 of those requirements states that the requirements apply as 'a matter of policy' to prescribed agencies. The list of prescribed agencies appears in schedule 1 of the *Financial Management and Accountability Regulations 1997*. The ACC is one of those prescribed agencies, and accordingly must provide a report in the terms specified by these requirements, as well as the requirements prescribed under the ACC Act.

2.5 In this 2004-05 Annual Report the ACC has included a comprehensive index in compliance with annual report guidelines, and has met the reporting requirements.

### **Accountability and governance**

2.6 A number of external bodies, including the Minister for Justice and Customs, the Inter-Governmental Committee on the ACC (IGC-ACC), the ACC Board, the Parliamentary Joint Committee on the ACC (PJC-ACC) and the Ombudsman, provides the general oversight of the ACC.<sup>1</sup>

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1 *Australian Crime Commission, Annual Report 2004-05*, p.14

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### ***Minister for Justice and Customs***

2.7 The report notes that in 2004–05 the Minister for Justice and Customs the Hon Senator Chris Ellison met with the CEO of the ACC on eight occasions, received 217 submissions from the ACC on a range of subjects, released 11 media releases regarding the ACC, and spoke on behalf of the agency on numerous occasions.<sup>2</sup>

### ***Inter-Government Committee on the ACC***

2.8 The IGC-ACC met twice in 2004–05, in Hobart on 17 November 2004 and in Brisbane on 1 June 2005. It is reported that at these meetings, the IGC-ACC considered reports by the Chair of the Board and the CEO of the ACC. In addition, the IGC-ACC considered reports relating to the ACC's structure, an investigation by the Ombudsman into measures implemented in response to corruption allegations, a strategic assessment relating to firearms trafficking, the Annual Report process, proposals to support the equitable sharing of proceeds of crime between agencies participating in ACC investigations, performance measurement and the Picture of Criminality in Australia.<sup>3</sup>

### ***ACC Board***

2.9 Over the 2004–05 reporting period the Board met five times with all or the majority of Board Members attending all meetings.<sup>4</sup>

2.10 The Board consists of the following members:

- Commissioner of the AFP as Chair of the ACC Board;
- Secretary of the Commonwealth Attorney-General's Department;
- CEO of the Australian Customs Service;
- Chairperson of the Australian Securities and Investments Commission;
- Director-General of Security;
- Commissioners of all state and territory police forces;
- Chief Police Officer of the ACT; and
- CEO of the ACC (as a non-voting member).

2.11 Last year in its Report on the ACC Act, the Committee recommended that the Tax Commissioner be represented on the Board of Management of the ACC. The

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2 *Australian Crime Commission, Annual Report 2004-05*, p.14

3 *Australian Crime Commission, Annual Report 2004-05*, p.15

4 *Australian Crime Commission, Annual Report 2004-05*, p.16

Committee reiterates its recommendation that the Tax Commissioner be appointed to the ACC Board.<sup>5</sup>

### **Recommendation 1**

**2.12 The Committee recommends that the *Australian Crime Commission Act 2002* be amended to provide for the appointment of the Commissioner of Taxation to the ACC Board.**

#### *The Parliamentary Joint Committee*

2.13 During 2004-05 the ACC provided the Parliamentary Joint Committee (PJC) with a number of briefings and regular activity and output reports. The ACC has appeared at public hearings in regard to the inquiry into the Australian Crime Commission Annual Report 2004-05.

#### *The Ombudsman*

2.14 The report notes that the Commonwealth Ombudsman can receive and investigate complaints made against the ACC. The Ombudsman may advise the ACC of complaints it has received but is not required to do so. In 2004-05 the Ombudsman advised the ACC of only one complaint received during the year. It is also reported that the Ombudsman was pleased with the improvements made in the last twelve months in regard to information provision to the Minister and the Parliament and commended the ACC on its demonstrated initiative and willingness to develop strategies to improve compliance and achieve administrative best practice.<sup>6</sup>

#### *Committee Comment*

2.15 The Committee considers that the ACC is meeting its external accountability requirements in a professional and timely manner. The Committee also acknowledges the commitment of the ACC Board as reported in the annual report.

2.16 Section 55AA of the ACC Act requires the Ombudsman to brief the Committee at least once a year on the ACC's involvement in controlled operations. The Committee received a private briefing from the Commonwealth Ombudsman, Professor John McMillan, and his staff on 8 May 2006.

2.17 At this briefing the Ombudsman indicated that there was a high degree of compliance by the ACC with the requirements of the *Crimes Act 1914*, and that the reports to the Minister and the Parliament were satisfactory. The Ombudsman also commended the ACC for its strong focus on integrity and accountability, and for its significant reputation in this area.

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5 *Report on the Australian Crime Commission Act 2002*, Recommendation 6, p.ix

6 *Australian Crime Commission, Annual Report 2004-05*, p.20

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### ***Commission on Law Enforcement Integrity:***

2.18 In its 2005 review of the ACC Act, this Committee noted the intended introduction of a bill to create a Commonwealth anti-corruption body which would oversee the ACC and the Australian Federal Police. Legislation establishing the Australian Law Enforcement Integrity Commission together with a new Parliamentary Joint Committee to oversee the Commission was introduced into Parliament on 29 March 2006. The bill was referred to the Legal and Constitutional Legislation Committee for examination and that committee tabled its report on 11 May 2006. The legislation passed through both Houses of Parliament and was assented to on 30 June 2006.

2.19 In its report on the bill the Legal and Constitutional Committee observed that the duties and powers of the proposed Parliamentary Joint Committee on ACLEI were similar to those of the PJC on the ACC. The Legal and Constitutional Committee also noted the *Review of the Australian Crime Commission Act* undertaken by this Committee which recommended that the Australian Commission for Law Enforcement Integrity Bill, when introduced, include provisions that provide for scrutiny of the agencies' operations by this Committee.

2.20 While endorsing the desirability of parliamentary oversight, the Legal and Constitutional Legislation Committee noted that 'it is legitimate to consider whether it is necessary to create a second PJC that is so similar to the existing committee'.<sup>7</sup> However, Section 213 of the *Law Enforcement Integrity Commissioner Act 2006* (No. 85, 2006) provides for supervision of the new Australian Commission for Law Enforcement Integrity (ACLEI) by a separate Parliamentary Joint Committee.

### **Performance Outcomes**

2.21 During the 2004-05 reporting period, the ACC has made a number of significant steps to counter serious and organised criminal activity in Australia. The ACC's Chief Executive Officer, Mr Alastair Milroy, provided the Committee with an overview of the Commission's activities:

The commission increased the dissemination of criminal intelligence products to partner law enforcement and other government agencies from 727 in 2003-04 to 2,802 in 2004-05, which is a 285 per cent increase.... The ACC has disrupted 20 criminal entities, which includes networks, syndicates and groups, and has disrupted the criminal activities of 28 significant individuals.... Through Operation Wickenby the ACC is investigating significant tax avoidance schemes of an international scale, with the estimated value of revenue at risk greater than \$300 million.

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7. Senate Legal and Constitutional Legislation Committee: *Report on the Provisions of the Law Enforcement Integrity Commissioner Bill 2006; Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006; and the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006*, May 2006, p.44

We have conducted 629 examinations and issued 516 production notices, restrained \$13.4 million in proceeds of crime, forfeited \$860,000, recouped \$430,000 in pecuniary penalty orders and issued \$12.2 million in tax assessments. A total of 175 drug seizures resulted in 2.3 tonnes of drugs being seized, with a total street value of \$66.6 million. Two hundred and eighty-four firearms and components were seized, and 294 persons were charged on 1,665 charges. This equates to a 44.8 per cent increase in persons charged and a 166 per cent increase in the number of charges compared to the previous years.<sup>8</sup>

2.22 As with other government departments and agencies, the ACC has an Outcome and Outputs Framework which is published as part of the Attorney General's Portfolio Budget Statement. The ACC has one Outcome which is:

- Enhanced Australian Law Enforcement Capacity

2.23 To achieve this goal the ACC has two external outputs:

- Criminal Intelligence Services; and
- Investigations and Intelligence Operations into Federally Relevant Criminal Activity.<sup>9</sup>

2.24 In previous reporting periods these outputs were arranged under three headings:

- Criminal Intelligence Services,
- Criminal Intelligence Operations; and
- Investigations into federally relevant criminal activity.

2.25 The Commission's Annual Report indicates that the amalgamation of two previous outputs into a single output are intended to 'better reflect operational activities, key deliverables and to support more effective performance reporting.'<sup>10</sup>

### ***Output 1: Criminal Intelligence Services***

2.26 Under Output 1 the report notes that the ACC collects, collates, analyses and disseminates intelligence, provides and maintains effective and efficient criminal intelligence systems and provides advice to the Board regarding National Criminal Intelligence Priorities.<sup>11</sup> The key performance indicators for this output are:

- number and value of disseminations to law enforcement agencies;

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8 *Committee Hansard*, 28 March 2006, p. 2

9 *Australian Crime Commission Annual Report 2004-2005*, p.12

10 *Australian Crime Commission Annual Report 2004-2005*, p.13

11 *Australian Crime Commission Annual Report 2004-2005*, p.31



- provision and maintenance of effective and efficient criminal intelligence systems;
- quality and value of strategic criminal intelligence assessments, threat assessments and other products and services; and
- timely, high quality advice provided to ACC Board on National Criminal Intelligence Priorities.<sup>12</sup>

### *Number and value of disseminations*

2.27 The Commission's Annual Report includes a comparative table which shows the number of disseminations.

*Table 2: Number of disseminations<sup>13</sup>*

<b>Type</b>	<b>2003-2004</b>	<b>2004-2005</b>
Formal disseminations	424	722
Telephone Interception material disseminations	Not able to report	105
Disseminations by covert unit	72	173
Information reports	67	1631
Intelligence products	164	171

### *Committee Comment*

2.28 The Committee sought to clarify the information contained in the table. In particular information was sought on the nature of the information reports, the difference between information reports and intelligence reports, and an explanation for why the number of 'information reports' had increased substantially in the 2004-05 reporting year over the previous reporting period.<sup>14</sup>

2.29 The Committee was told that information reports, broadly termed 'open source information', are sourced largely from material that can be obtained through the media and do not usually carry value-added analysis. The increase in the number of information reports is due to both the ready availability of this type of information and the high level of transmission of this information to jurisdictional partners. In

12 *Australian Crime Commission Annual Report 2004-2005*, p.13

13 *Australian Crime Commission Annual Report 2004-2005*, p.32

14 *Committee Hansard*, 28 March 2006, pp 3-5

contrast, an intelligence product is information which has been 'value-added' through analysis, and is disseminated selectively.<sup>15</sup>

2.30 The Committee acknowledges that the ACC is cognisant that the generation of large amounts of information must be managed and disseminated in an efficient manner. The Committee notes that the significant increase in information reports may, if not managed effectively, have the effect of desensitising those who receive the ACC's products.<sup>16</sup>

2.31 Additionally, the virtually static number of intelligence products is a matter the Committee will monitor and revisited in the next annual reporting period.

*Effective and efficient criminal intelligence systems: information sharing*

2.32 The report provides an overview of the achievements during the 2004-05 year of the criminal intelligence databases. These are:

- ALEIN (Australian Law Enforcement Intelligence Network)
- ACID (Australian Criminal Intelligence Database)
- ALERT (Australian Law Enforcement Referencing and Targeting)
- AIPR (Australian Identity Fraud Protection Registers)
- ViCLAS (Violent Crime Linkage Analysis System)

2.33 The Committee was told that these systems represent a number of key intelligence initiatives which 'assist government and private sector agencies to minimise the impact of serious and organised crime'.<sup>17</sup>

*Committee Comment*

2.34 The contribution by the partner jurisdictions to these databases appears to be an area which requires further enhancement. As in previous years there was mixed success in the level of contribution by partner jurisdictions to the shared databases. The Commission reported some improvements, and noted that this is expected to continue in light of training undertaken with partner jurisdictions.

2.35 The Committee encourages the ACC and partner agencies to continue to work towards improved intelligence collection and sharing. The Committee intends that the next examination of the annual report will seek to identify the deficiencies in information and intelligence provision.<sup>18</sup>

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15 *Committee Hansard*, 28 March 2006, p.7

16 *Committee Hansard*, 28 March 2006, p.6

17 *Committee Hansard*, 28 March 2006, p.2

18 *Committee Hansard*, 28 March 2006, p.8

2.36 The Committee also identified a further matter in regard to information provided to other agencies. The Committee sought information on whether the Commission collaborates with the Office of National Assessments (ONA), as this was not mentioned in the report.<sup>19</sup> The Committee was informed that there are regular meetings between the ACC and the ONA and that the ONA has access to information through the ACID database. The ACC has also provided material on request to ONA, and discussions take place on individual issues.<sup>20</sup>

2.37 The Committee notes that this interaction has some significance, and suggests that this be reported more fully in the next Annual Report.

*Quality and value of strategic criminal intelligence assessments, threat assessments and other products and services.*

2.38 The report notes that the ACC produces a range of external and internal strategic and operational intelligence products. These are designed to meet the different requirements of strategic and operational decision-makers across a range of law enforcement, government, and non-government clients.<sup>21</sup>

*Table 3: Number of strategic intelligence products produced<sup>22</sup>*

<b>Product Type</b>	<b>2003-2004</b>	<b>2004-2005</b>
Strategic Criminal Intelligence Assessments	2	2
Current Intelligence Reports	3	28
Alerts	18	49
Updates	18	76
National Criminal Threat Assessments	12	11
Strategic Warning Reports	3	3
Other Strategic Reports (IDDR, POCA)	2	2
Totals	58	171

19 *Committee Hansard*, 28 March 2006, p.15

20 *Committee Hansard*, 28 March 2006, p.16

21 *Australian Crime Commission Annual Report 2004-2005*, p.36

22 *Australian Crime Commission Annual Report 2004-2005*, p.37

*Committee Comment*

2.39 The Committee was interested in the classifications of the National Criminal Threat Assessments as outlined on page 38 of the report. The report notes that of the 31 crime targets reported by the Commission, only six were in the 'high threat' category. This raised a concern for the Committee as to whether this was an appropriate use of the Commission's resources, in view of the fact that 17 crime targets were in the low threat category.<sup>23</sup>

2.40 The Committee was informed that investigations can move between categories and that a target group 'can be a medium level today and a high-threat group tomorrow.'<sup>24</sup>

2.41 The Committee appreciates that there is some unpredictability in this area, however, the Committee believes that it would be useful for the reporting to reflect the dynamic nature of the classification. On the statistics as presented it appears that the Commission's resources are being expended largely on low threat matters, which as has emerged, is not necessarily the case.

2.42 The report highlights a number of significant annual intelligence reports or assessments. The Commission reported that one of its major tools is *The Picture of Criminality in Australia* (POCA).<sup>25</sup> The Committee recommended in its last Report on Annual Reports that a public version of the POCA report and other key research be made available. The Committee reiterates that recommendation:

**Recommendation 2**

**2.43 The Committee recommends that the Australian Crime Commission consider the release of public versions of key research, including a declassified version of the Picture of Criminality.**

***Output 2: Investigations and Intelligence Operations into Federally Relevant Criminal Activity***

2.44 The report notes that the ACC aims to disrupt and deter serious and organised criminal activity by conducting Special Intelligence Operations, intelligence operations and Special Investigations into federally relevant criminal activity. This is often done in collaboration with partner law enforcement agencies.<sup>26</sup>

2.45 The performance indicators for this output are:

- collaboration with partner law enforcement agencies;

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23 *Committee Hansard*, 28 March 2006, p.12

24 *Committee Hansard*, 28 March 2006, p.12

25 *Committee Hansard*, 28 March 2006, p.3

26 *Australian Crime Commission Annual Report 2004-2005*, p.46

- effective use of coercive powers to support operational objectives;
- number and significance of arrests and charges;
- disruption and/or dismantling of criminal syndicates;
- efficient and effective delivery of Board approved operational and investigative priorities; and
- value of proceeds of crime.<sup>27</sup>

*Effective use of coercive powers to support operational objectives*

2.46 The report notes that coercive powers were instrumental in achieving operational results and collecting significant intelligence, both in ACC and joint agency activity. In 2004–05 the ACC conducted 629 section 28 examinations (or state equivalent). This represents a 77.2 percent increase from 2003–04. The ACC also invoked its section 29 special powers to demand documents on 516 occasions, an increase of 13.9 percent over 2003–04.<sup>28</sup>

*Committee Comment*

2.47 The Committee notes that the use of coercive powers has increased almost eighty per cent in the past twelve months. The Committee sought an explanation for this increase and whether it would have been possible to obtain information by some other means.<sup>29</sup>

2.48 The Committee was informed that the increased use of the coercive powers was due to the fact that these powers had become a core competency with investigators in order to achieve intelligence outcomes and as a result of examiners themselves becoming more skilled in their use. It was noted that this upward trend will plateau at some point.<sup>30</sup>

2.49 The Committee notes the recent appointment of an additional examiner. Under the *National Crime Authority Act 1984* the number of persons authorised to exercise the coercive powers was limited to three. The *Australian Crime Commission Act 2002* includes no such limit.

2.50 The Committee considers that there should be Parliamentary oversight of any decision to further increase the number of Examiners. Any change in the number should be part of a fully transparent process, and not the result of ad hoc decisions which slowly transform the use of coercive powers from the exceptional to the routine. The Committee considers it important to reiterate a long standing concern that the coercive powers must not come to be considered a standard investigative tool

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27 *Australian Crime Commission Annual Report 2004-2005*, p.13

28 *Australian Crime Commission Annual Report 2004-2005*, p.49

29 *Committee Hansard*, 28 March 2006, p.16

30 *Committee Hansard*, 28 March 2006, p.17

by partner agencies. These powers are exceptional, and reserved for exceptional circumstances.

### **Recommendation 3**

**2.51 The Committee recommends that the *Australian Crime Commission Act 2002* be amended to prescribe the maximum number of examiners to be appointed.**

2.52 A further aspect of the use of coercive powers is the examination process generally. In last year's review of the ACC Act, the Committee recommended the preparation of a practice and procedure manual for examination hearings.

2.53 In September 2006 the Commission published a document entitled *'Public Information Statement: Examinations conducted under the Australian Crime Commission Act 2002'*, this document is available on the ACC website. The Committee commends the Commission for acting on the Committee's earlier recommendation. However, the Committee had anticipated that the development of a practice and procedure document would provide an opportunity for the Commission to articulate its examination process in more detail for those who are the subject of the examination. Presumably this has not occurred because the examination process itself appears to be open-ended. The Committee considers that this document should be provided to all persons summonsed to appear at an examination and to their legal representatives.

### **Recommendation 4**

**2.54 The Committee recommends that the document *'Public Information Statement: Examinations conducted under the Australian Crime Commission Act 2002'*, be provided to all witnesses and their legal representatives along with the summons to appear at an examination.**

#### *Number and significance of arrests and charges*

2.55 During the reporting period, the ACC charged 294 people in support of its goal to reduce the impact of serious and organised crime on the Australian community, an increase of 44.8 percent on the number of people charged in 2003–04. The ACC has also laid 166 percent more charges this financial year than in 2003–04, with 1,665 charges laid against alleged offenders.<sup>31</sup>

2.56 The report notes that the number of people charged and the number of charges laid fluctuates on a monthly basis depending on each Determination's operational activity. During 2004–05 there were significant apprehension increases in July and December 2004, and February and March 2005.<sup>32</sup>

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31 *Committee Hansard*, 28 March 2006. p.2

32 *Australian Crime Commission Annual Report 2004-2005*, p.50

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*Committee Comment*

2.57 While the Committee notes that over the reporting period there has been a significant increase in the number of people being charged, the ultimate test of success in this area is the result when matters go to court. Obtaining a conviction is a test of the evidence gathered – and the manner in which it is obtained and presented. The Committee acknowledges that this is not necessarily the core concern of the ACC, but does represent a significant part of its work. The Committee considers it would be useful to have some performance measure in regard to successful prosecutions.

2.58 The Committee also considered the level of these offences. The court results, at Appendix C, suggest that the charges laid are generally at the lower level. This is reflected in the penalties given, such as custodial sentences with a gaol penalty of less than five years, suspended period of two or more years and fines of amounts as low as \$600. The nature of this information suggests that state and territory police under state and territory legislation could have dealt with the matters listed in Appendix C; in the main they do not appear to be matters which reflect the high level organised crime focus of the ACC. The Committee acknowledges that some matters represent a link to larger aspects of the work of the Commission, and clearly convictions are not the sole measure of the Commission's work. However, the Committee will seek an explanation of the significance of the court results for the work of the ACC in the next Annual Report, or at the next Annual Report hearing.

*Disruption and/or dismantling of criminal syndicates*

2.59 In evidence, Mr Milroy told the Committee that the core focus of the Commission will continue to be 'the provision of innovative and proactive criminal intelligence and investigative solutions to effect the disruption of criminal syndicates.'<sup>33</sup>

2.60 Both the Commission's Annual Report and evidence given at the inquiry indicate that 20 criminal entities and 28 significant individuals have had their activities disrupted by the ACC in the reporting period. The activities disrupted include drug importation and distribution, money laundering and firearms trafficking.<sup>34</sup>

*Committee Comment*

2.61 The Committee notes that under Operation Wickenby the ACC is currently investigating tax avoidance schemes with an estimated value of revenue greater than \$300 million. The Committee also notes that the decision of the Federal Court in *AA*

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33 *Committee Hansard*, 28 March 2006, p.2

34 *Australian Crime Commission Annual Report 2004-2005*, p.52; *Committee Hansard*, 28 March 2006, p.2

*Pty Ltd v Australian Crime Commission*<sup>35</sup> which was later overturned on appeal<sup>36</sup> threatened to inhibit the ACC's ability to share information obtained at an examination with the Tax Office.<sup>37</sup>

2.62 The Committee considers that the work of the Commission, in particular the operational aspects of sharing information from examinations with other agencies, would have been compromised and greatly diminished, had this matter not been rectified.

#### *Value of proceeds of crime.*

2.63 Appendix G of the report broadly sets out the proceeds of crime and tax assessments. During the reporting period 2004-05 the ACC restrained \$13.4 million in proceeds of crime, forfeited \$857,000, recouped \$430,000 in pecuniary penalty orders and issued \$12.2 million in tax assessments. Most of these results were achieved in relation to the Established Criminal Networks and Midas references.<sup>38</sup>

#### *Committee Comment*

2.64 The Committee sought clarification on the discrepancy between the reported large profits of crime and the seemingly small tax assessments and collections made on those profits.<sup>39</sup> The Committee acknowledges that for the ACC, large tax assessments are secondary to the use of substantial tax assessments to disrupt or 'shut-down' organised crime. The Committee also acknowledges that the ACC has attempted to flesh out information on the proceeds of crime and tax assessments in case studies throughout the report. However, the Committee considers that as this issue is not well understood, consideration should be given in future ACC Annual Reports to a greater breakdown of the figure as reported in Appendix G. This would also address the Committee's concern that as currently reported there is no way of telling whether the significant amounts of money restrained or forfeited are from one case or several.

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35 [2005] FCA 1178 (25 August 2005)

36 *Australian Crime Commission v AA Pty Ltd* [2006] FCAFC 30 (20 March 2006)

37 The matter concerned the power of the (CEO) of the (the ACC) under s 59(7) of the ACC Act to give information it compulsorily obtained at an examination under sections 24A and 25A of the ACC Act to the Australian Taxation Office. Section 59(7) allows the dissemination of such information to any law enforcement agency. The judge at first instance did not consider the ATO came into that category. Before the appeal was dealt with, regulations expanding the definition of law enforcement agency were drafted, and registered on 15 December 2005.

38 *Australian Crime Commission Annual Report 2004-2005*, p.160

39 *Committee Hansard*, 28 March 2006, p.10



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## Financial and Human Resources

2.65 This section of the report examines the ACC's use of resources, and its accounting for them.

### *Financial*

2.66 The report notes that the ACC's financial result for 2004–05 was a surplus of \$109,924. The ACC's appropriation for 2004–05 was \$69.67 million which included tied funding of \$13.53 million.<sup>40</sup>

### *Committee Comment*

2.67 The Committee notes that the ACC financial statements show a budget of \$78.5m and a surplus of \$109,924. This contrasts with a deficit in the previous year of \$3.1m.<sup>41</sup> The Committee commends that Commission on this achievement.

2.68 While the Committee is generally satisfied with the Commission's financial statements it has some concerns regarding the amounts paid to consultants. During 2004-05 the Commission paid \$97,000 for recruitment advertising. The Committee acknowledges that outsourcing activities such as recruitment is desirable as it allows the Commission to focus on its core business. However, the Committee believes that this is a considerable amount of money for advertising, and the Commission should maintain close scrutiny of expenditure of this kind.

2.69 A general concern of the Committee in the current environment is whether the focus on counter-terrorism activities may inadvertently result in a diversion of law enforcement resources from serious and organised crime.<sup>42</sup> Mr Milroy informed the Committee that this was not his experience, and there was 'a far more focused approach to attacking organised crime and ... to identifying those groups that are more deserving of attention than in the past'.<sup>43</sup>

### *Human resources*

2.70 At 30 June 2005 the average staffing level at the ACC was 510. This compares with 518 at the end of 2004.<sup>44</sup> This figure comprises 100 seconded police and 57 seconded taskforce staff, compared to 117 seconded police and 54 seconded taskforce staff in the previous reporting period.

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40 *Australian Crime Commission Annual Report 2004-2005*, p.81

41 *Australian Crime Commission Annual Report 2004-2005*, p.101

42 *Committee Hansard*, 28 March 2006, p.3

43 *Committee Hansard*, 28 March 2006, p.4

44 *Australian Crime Commission Annual Report 2003-2004*, p.133

### *Committee Comment*

2.71 The Committee notes the valuable contribution secondees make to the ACC. On previous occasions the Committee has discussed with the ACC the need for the standardisation of both the salary and working conditions for secondees to the ACC and the legal basis on which the secondments occur. These continuing variances are a source of administrative complexity that also have implications for performance and disciplinary matters, and are likely to generate ethical problems. While recognising the complexity of the negotiations required to resolve these issues with the various agencies concerned, the Committee recommends that the matter be addressed as a matter of priority.

### **Recommendation 5**

**2.72 The Committee recommends that the Australian Crime Commission investigate the establishment of a common employment framework for secondees as a matter of priority.**

### **Conclusion**

2.73 The Australian Crime Commission's 2004-05 Annual Report is a well presented and informative document. The Committee is pleased to see that some of the matters previously raised have been addressed.

2.74 The Committee notes that the ACC is developing improved performance measures which can identify the value of the ACC's work in terms of overall law enforcement. The Committee appreciates that quantifying effects such as deterrence, the value of information disseminated, and disruption to criminal networks is not a simple task. The Committee looks forward to further developments in this matter reported in the next Annual Report.<sup>45</sup>

2.75 The Committee wishes to acknowledge the assistance provided to it by the ACC and the high regard in which the Commission is held. At the hearing on 28 March 2006 the Chair conveyed this to the ACC:

I know the rest of the committee's and, indeed, the parliament's high regard for the work you do. That is not to say that we will never be critical of you. I am sure there will be an occasion when we will be, but your organisation does have the very best of goodwill and respect of the parliament.<sup>46</sup>

**Senator the Hon Ian Macdonald**  
**Chair**

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45 *Committee Hansard*, 28 March 2006, p.22

46 *Committee Hansard*, 28 March 2006, p.24

# **Appendix 1**

## **Witnesses who appeared before the Committee at the public hearing**

*Canberra, Tuesday 28 March 2006*

### **Australian Crime Commission**

Mr Alastair Milroy, Chief Executive Officer

Mr Kevin Kitson, Executive Director, National Criminal Intelligence

Mr Lionel Newman, Director, Strategy and Governance

Mr Andrew Phelan, Director, Infrastructure and Corporate Services

Mr Matthew Haslem, Solicitor

