

## Chapter 2

### Examination of the *Australian Crime Commission Annual Report 2005-06*

#### Role and functions of the Australian Crime Commission

2.1 The Australian Crime Commission (ACC), which is established by section 7 of the *Australian Crime Commission Act 2002* (the Act), has both intelligence and investigative functions and capabilities. Section 7A of the Act defines the functions of the ACC as including:

- maintaining a database of the material from the collection, correlation, analysis and dissemination of criminal information and intelligence;
- undertaking, under the authorisation of the ACC Board, intelligence operations;
- investigating, under the authorisation of the ACC Board, matters relating to federally relevant criminal activity;
- providing reports to the ACC Board on the outcomes operations or investigations;
- providing strategic criminal intelligence assessments and criminal information and intelligence to the ACC Board;
- providing advice to the ACC Board on national criminal intelligence priorities; and
- other functions as conferred on the ACC by provisions of the ACC Act or by any other Act.<sup>1</sup>

#### Compliance with reporting requirements

2.2 The annual reporting requirements for the ACC are set out in section 61 of the Act. The report is required to include:

- descriptions of investigations into federally relevant criminal activity that the ACC Board has determined to be special investigations;
- descriptions of trends in criminal activity;
- recommendations for legislative reform or administrative action; and
- information on the nature and extent of disseminations of information by the ACC and the numbers of prosecutions, confiscations or court applications.<sup>2</sup>

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1 *Australian Crime Commission Act 2002*, section 7A.

2.3 The annual report requirements published by the Department of Prime Minister and Cabinet apply to agencies prescribed under section 5 of the *Financial Management and Accountability Act 1997* (the FMA Act), which include the ACC. The ACC's annual reports must therefore comply with the terms of the FMA Act as well as those prescribed under the Act. The core requirements under the FMA Act include reporting on performance, management accountability, corporate governance and financial statements.

2.4 The Parliamentary Joint Committee on the Australian Crime Commission (the committee) finds that the *Australian Crime Commission Annual Report 2005-06* (the report) complies with the requirements of both section 61 of the Act and the provisions FMA Act. The report provides tables—tables 25 and 26 on pages 145 and 146-47 respectively—that show the report to be in compliance with the requirements of the Act and the FMA Act.

### **Compliance with other government requirements**

#### ***Listing of contracts of greater than \$100,000 value***

2.5 The report states that, in response to a Senate Order,<sup>3</sup> the ACC includes the following contract information on its website:

- each contract entered into by the ACC which has not been fully performed or which has been entered into during the previous 12 months, and which provides for a consideration to the value of \$100,000 or more;
- the contractor, the amount of the consideration, the subject matter of each such contract, the commencement date of the contract, the duration of the contract and the 12-month period relating to the contract listings;
- whether each such contract contains provisions requiring the parties to maintain confidentiality on any of its provisions, or whether there are any other requirements of confidentiality, and a statement of the reasons for the confidentiality; and
- an estimate of the cost of complying with this order and a statement of the method used to make the estimate.

2.6 The report records that, as at 30 June 2006, the ACC was a party to 46 contracts totalling greater than \$100,000, which either began in or continued through 2005-06. The ACC estimated that the cost of complying with the Murray Motion was \$2,000, based on a per hour staffing level cost.

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2 *Australian Crime Commission Act 2002*, section 61.

3 Murray Motion as amended December 2003 J.2851.

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### ***Listing of file titles***

2.7 The report indicates that the ACC complies with the requirement to place indexed lists of file titles on the ACC's internet site, excluding those file titles or parts of file titles that would disclose commercially confidential, identifiably personal or national security matters.<sup>4</sup>

### **Report presentation**

2.8 The report displays an accessible design and format. The information contained in it is delivered in a logical manner and often conveniently summarised and presented in table form. It provides examples that are largely clear and representative of the claims being demonstrated, as well as an index and appendices. The report is written in a consistent style and is free of typographical and editorial errors. Overall, the report is a highly professional and useful document in terms of its presentation, content and structure.

### **Accountability and governance**

2.9 As a counterweight to its coercive powers and strategic independence, a comprehensive accountability framework surrounds the operation of the ACC. Along with the committee, a number of bodies contribute to the oversight of the ACC. These include the Minister for Justice and Customs, the Inter-governmental Committee of the Australian Crime Commission, the ACC Board and the Ombudsman. The commencement of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) on 30 December 2006 saw the establishment of the office of the Australian Commission for Law Enforcement Integrity, headed by the Integrity Commissioner. This new body will play an important accountability role in detecting, investigating and preventing corruption in bodies such as the ACC.

2.10 The report details the following information on the various bodies that together provide governance and accountability oversight of the ACC:

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

2.11 Senator the Hon. Chris Ellison was Minister for Justice and Customs from January 2001 until Senator David Johnston was appointed Minister for Justice and Customs on 9 March 2007. Senator Ellison was therefore the responsible minister for the reporting period under consideration.

2.12 The report notes that, in 2005-06, Senator Ellison met with the CEO of the ACC on eight occasions, launched the ACC's *Illicit Drug Data Report 2004-05*, received 242 submissions from the ACC on a range of subjects, released six media releases regarding the ACC and spoke on behalf of the agency on a number of occasions.

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4 Senate Order J.279 as amended 3 December 1998 J.265

### ***Inter-governmental Committee of the Australian Crime Commission***

2.13 The Inter-governmental Committee of the Australian Crime Commission (the IGC) met twice in 2005-06: in Brisbane on 14 October 2005 and in Adelaide on 29 June 2006. The report states that at those meetings the IGC considered confidential reports on a range of matters. These included performance reports from the Chair of the Board and Chief Executive Officer of the ACC, and reports on crime in the transport sector, a review of the ACC's in-house investigative capacity, the annual report for 2004-05, and the establishment of the Australian Commission for Law Enforcement Integrity.

### ***Australian Crime Commission Board***

2.14 The membership of the Australian Crime Commission Board (the Board) is comprised of the following office-holders:

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

2.15 The ACC Board met four times over the 2005-06 reporting period. A third of the Board's members attended every meeting, with the majority attending at least half.

2.16 Discussion at the hearing briefly touched upon the recommendation of the report on the examination of the ACC annual report for 2004-05 that the Commissioner of Taxation be appointed to the ACC Board.<sup>5</sup> In response, Mr Milroy commented that the Board and the ACC in general have 'an excellent relationship with the tax office':<sup>6</sup>

We have tax investigators permanently working in most of our offices to pursue some of the strategies against organised crime. Even the board at one stage invited the Commissioner of Taxation along to one of the meetings as an invited guest.<sup>7</sup>

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5 *Committee Hansard*, 30 March 2007, p. 11.

6 *Committee Hansard*, 30 March 2007, p. 11.

7 *Committee Hansard*, 30 March 2007, p. 11.

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2.17 The committee notes with approval the ACC's cooperative and close relations with the Australian Taxation Office. The recommendation in question is currently under consideration by the government, and the committee looks forward to the government's response.

2.18 The report lists major decisions or considerations of the Board in 2005-06 as including:

- approving new, extended or refocused determinations; the Board refocused or realigned a number of the ACC's determinations to ensure they addressed new priority areas identified by the ACC;
- setting National Criminal Intelligence Priorities for 2005-06 and priorities for 2006-07; and
- providing ongoing input to the strategic direction of the ACC.

2.19 The report states that the Board representation of the Commonwealth and the states and territories brings a national perspective to the work of the ACC. The Board maintains a high level of involvement in the setting of the strategic priorities of the ACC, and Board member agencies continue to make a significant contribution to the work of the ACC through contributions to key intelligence products and the secondment of personnel to ACC determinations and task forces.

#### *Strategic Directions sub-Committee*

2.20 According to the report, the Board's Strategic Directions sub-Committee (the SDC) routinely considers a range of administrative issues and provides feedback to the CEO on significant decisions likely to be brought before the Board.

2.21 The members of the SDC are the Commissioner of the Australian Federal Police as Chair, the Commissioner of NSW Police, the Chief Police Officer of ACT Policing and the Chief Executive Officer of the ACC. The role of the SDC, according to its terms of reference:

...[is] to assist and advise the CEO on matters relevant to the implementation of Board-approved strategic directions and priorities and report to the Board accordingly. When appropriate, the Committee shall make recommendations to the Board for support to the ACC and shall undertake such other functions as specified by the Board from time to time.<sup>8</sup>

2.22 The SDC met three times during the 2005-06 year.

### ***Parliamentary Joint Committee on the Australian Crime Commission***

2.23 During the reporting period, the ACC provided the Parliamentary Joint Committee on the Australian Crime Commission (the committee) with monthly activity and output reports.

2.24 The report advises that, in the 2005-06 reporting period, the committee completed an inquiry into and report on a review of the *Australian Crime Commission Act 2002*. In the same period, the committee commenced an inquiry into amphetamines and other synthetic drugs (AOSD).<sup>9</sup> The ACC made submissions to the committee for the purposes of the inquiries named above, and made officers of the ACC available to appear as witnesses at a number of public hearings.

2.25 The committee's statutorily required yearly examination of the ACC's annual report provides for consistent scrutiny of the ACC's strategic, operational and budgetary performance. The ongoing dialogue around the ACC's annual reports assists the ACC to achieve and maintain the highest standards in both its performance and its reporting on its activities. At the hearing, held in Canberra on 30 March 2007, Mr Alastair Milroy, the Chief Executive Officer of the ACC, observed:

The committee raised a number of concerns with respect to the 2004-05 annual report. These included the refinement of the ACC's performance measures and reporting on information and intelligence sharing. Where possible, the commission, in producing the 2005-06 report, has addressed these concerns and the report reflects the ACC's commitment to continuous improvement. The ACC has an ongoing commitment to maintain the same high level of governance, management and accounting mechanisms in this financial year...<sup>10</sup>

### ***Commonwealth Ombudsman***

#### ***Ombudsman briefing on controlled operations***

2.26 Section 55AA of the Act requires the Commonwealth Ombudsman to confidentially brief the committee at least once a year on the ACC's conduct of controlled operations.<sup>11</sup> The annual briefing by the Ombudsman also satisfies a similar requirement contained in paragraph 15UB(1)(a) of the *Crimes Act 1914*. The committee received this briefing from the Acting Commonwealth Ombudsman, Dr Vivienne Thom, on 26 March 2007.

2.27 The Ombudsman briefing usually consists of (a) a report on whether the ACC has properly complied with the requirements of the *Crimes Act 1914* for the

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9 The AOSD report was completed and tabled in the 2006-07 reporting period.

10 *Committee Hansard*, 30 March 2007 p. 3.

11 A controlled operation is one in which law enforcement officers may intentionally commit a Commonwealth offence to obtain evidence that may lead to the prosecution of a person for a serious Commonwealth offence.

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application for and grant of certificates to undertake controlled operations and (b) a report on the adequacy of the reports that the ACC is required by statute to provide to the minister and the parliament.

2.28 The committee heard there had been significant improvements in the ACC's reporting, and that it was generally compliant with the requirements of part 1AB of the *Crimes Act 1914*.

2.29 A publicly available report on the Ombudsman's monitoring of controlled operations conducted by the ACC in the period 1 August 2005 to 31 July 2006 was released in December 2006. The Ombudsman's report identifies the following main issues:

- that section 15M—the grounds on which an authorising officer may issue a certificate authorising a controlled operation—is fully addressed in all applications;
- that notification is given to the Chief Executive Officer of the Australian Customs Service under section 15Q of the *Crimes Act 1914* when required; and
- that the procedures for the making of urgent applications are improved.<sup>12</sup>

2.30 The Ombudsman's report makes the following general observations about the ACC and Australian Federal Police's compliance and performance in conducting controlled operations in 2005-06:

In the past year both the AFP and the ACC have continued to work towards enhancing their level of compliance with the Act. Both agencies are in the process of reviewing their practices and procedures...[The Ombudsman] believe[s] that the issues brought to the attention of the agencies by...[the] office have assisted...in identifying areas where the management of controlled operations can improve.<sup>13</sup>

### *Complaints*

2.31 The report observes that the Ombudsman can receive and investigate complaints made against the ACC. The Ombudsman advised the ACC of three complaints during the 2005-06 year. Complaints about the activities of the ACC and/or staff of the ACC may also be made directly to the ACC.<sup>14</sup>

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12 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operation conducted by the Australian Crime Commission and the Australian Federal Police, 2005-06*.

13 Commonwealth Ombudsman, 2005-06, p. 1.

14 Complaints concerning the alleged actions of seconded police officers are usually referred to the officers' home jurisdiction for investigation.

2.32 The ACC received 10 complaints during the reporting period; all complaints were finalised during the year. Four complaints were outstanding from 2004-05. Three of those complaints were finalised; one complaint is still under investigation by the Australian Federal Police.

2.33 Two complaints from 2003-04, which were investigated by the NSW Police Integrity Commission, resulted in charges being laid during 2005-06. Two former state police officers previously seconded to the ACC have been charged with a number of offences relating to armed robbery, supply of drugs and corruption. One of the officers is awaiting sentencing after pleading guilty to the charges. The other is believed to be currently in a non-extraditable country; a bench warrant has been issued in NSW for his arrest.

### ***Judicial comment on and review of ACC powers and actions***

2.34 The committee observes that the ACC's pursuit of prosecutions through the courts provides another opportunity for public scrutiny and evaluation of its procedures and conduct. In a 2005 case, the ACC and its predecessor, the NCA, were the subject of critical comments by a judge in the Victorian Court of Criminal Appeal. The criticism surrounded the NCA's and the ACC's failure to disclose documents under subpoena and to adequately provide reasons for those omissions. The judge was critical of the organisation's procedures and a number of its staff.

2.35 In examining the accountability and governance aspects of the annual report, the committee wanted to ensure that the court's criticisms did not reflect procedural or systemic failings in the organisation and that, when prosecuting offences, the ACC was both aware of, and actively committed to, its obligation to make full material disclosure to defence teams. Accordingly, at the hearing, the ACC was asked to respond to the aspects of the judgement critical of the ACC and its predecessor.

2.36 Mr Michael Outram, Executive Director of Operational Strategies for the ACC, advised the committee that the ACC had 'complied with the DPP policy on disclosure and discovery all the way through...[the] case.'<sup>15</sup> The ACC had sought the view of the DPP as to whether there had been systemic failures and whether the criticisms of staff were justified, and this consultation was the basis of the ACC's assessment that it and its staff had acted appropriately.

2.37 Mr Outram provided a detailed commentary on the evolution of the case, seeking to demonstrate that 'there was no deliberate attempt to hide information or material' that should properly have been disclosed.<sup>16</sup> Further, Mr Outram contended that the ACC and the DPP disputed and disagreed with aspects of the judge's comments and had sought legal advice in relation to the criticism levelled at the commission.

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15 *Committee Hansard*, 30 March 2007, p. 24.

16 *Committee Hansard*, 30 March 2007, p. 24.

2.38 The committee noted the ACC's assertion that the events arguably revealed no technical breach of disclosure obligations, but was concerned to ensure that the ACC respect the spirit of the broader ethical obligation of disclosure in its conduct of prosecutions. To this end, Mr Outram stated:

We do accept our obligation...the ACC takes the position very robustly that we must comply with the obligations—and not just the written law, but the spirit—of discovery in order to ensure fair trials and to ensure that we do not get any miscarriages of justice.<sup>17</sup>

2.39 Further, Mr Milroy assured the committee that, despite particular failings in the past, he was confident the ACC's current policies and procedures in this area were considered, appropriate and regularly reviewed:

Based on the policies and procedures that we currently use, my advice is that, subject to human error, the policies and procedures are sound...It is a policy that we review constantly...We take pride in full compliance with all legal and operational guidelines, and we assure the committee that that will continue.<sup>18</sup>

2.40 Mr Outram suggested that, in comparison to past systems, the ACC's processes were 'significantly enhanced', and provided the following summary of the ACC's current approach to case management:

We now have a case management system and business rules and processes where all key, critical decisions have to be recorded in electronic format. We now have an informant management system, which is routinely audited every quarter and randomly audited as well, with centralised management and record keeping. We have a TRIM system, which is an electronic document scanning system, so all documents coming into major investigations and other things are scanned onto a system and retained electronically and indexed and all those things.<sup>19</sup>

2.41 The committee notes the evidence given by the ACC on the history of the matter, and observes that none of the staff subject to criticism by the court remains employed by the ACC. The committee welcomes the ACC's explanation and assurances about the present robustness of its commitment to administratively, legally and ethically sound practices.

2.42 The committee notes that a selection of outcomes of reviews of ACC decisions or challenges to the Act is reported in appendix A of the report. A person may seek a review of a decision or determination by the ACC or an Examiner, pursuant to the *Administrative Decisions (Judicial Review) Act 1977* and section 39B

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17 *Committee Hansard*, 30 March 2007, p. 24.

18 *Committee Hansard*, 30 March 2007, pp 27-28.

19 *Committee Hansard*, 30 March 2007, p. 27.

of the *Judiciary Act 1903*; challenges may also be made to the validity of the Act or other relevant legislation, such as the *Crimes Act 1914*. The examples cited show the ACC to have been acting within legislative bounds, and present a countervailing picture to accusations of administrative malpractice such as that described above.

2.43 The committee observes that, given the nature of its targets, the ACC is likely to be often subject to challenges to its legislative authority or administrative actions. A culture of active pursuit of the highest standards of rigour and transparency in administrative and procedural processes will avoid any similar criticisms in the future.

### ***Australian Commission for Law Enforcement Integrity***

2.44 Legislation establishing the Australian Commission for Law Enforcement Integrity (ACLEI) passed both houses of federal parliament in June 2006. The objects of the legislation are to:

- facilitate the detection and investigation of corruption in law enforcement agencies;
- enable criminal prosecutions and civil penalty proceedings to be brought as a result of those investigations; and
- maintain and improve the integrity of law enforcement agency staff.

2.45 On 30 December 2006, the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) commenced. ACLEI will investigate and report on corruption in the ACC, its predecessor the NCA, the Australian Federal Police and any Commonwealth law enforcement agencies prescribed by regulation in the future. ACLEI may undertake its own corruption investigations, refer corruption issues to other agencies for investigation, or manage, oversee or review corruption investigations by other law enforcement agencies. ACLEI is to give priority to serious or systemic corruption issues. ACLEI is expected to begin operations in the period 2006-07.

### **COMMITTEE COMMENT: *Accountability and governance***

2.46 The report fully and accurately describes the various internal and external mechanisms and bodies that together serve as an effective accountability framework for the operation of the ACC.

2.47 Evidence from both the report and the hearing leads the committee to observe that, in the third full year of its operation, the ACC appears to be establishing settled, regular and effective accountability and governance processes. The ACC's relationship with the external bodies with oversight responsibilities for the ACC's performance is based on the increasing refinement of processes of information exchange and communication.

## Performance

### *Board assessment of the ACC's performance*

2.48 Page 24 of the report cites a number of outcomes which the Board considers to represent 'significant intelligence and operational successes' in 2006.<sup>20</sup>

- development of the 2006 Picture of Criminality in Australia report for Board consideration and finalisation of the 2005 Illicit Drug Data Report;
- provision of a wide range of strategic and operational intelligence assessments to partner agencies;
- the achievement of significant disruption to criminal entities through active investigations;
- enhancements to intelligence holdings of the ACC and partner agencies;
- actively promoting the exchange of information between agencies through information sharing activities and coordination of strategic forums; and
- provision of intelligence and risk assessments to the Board on emerging issues of interest to Board members.

2.49 These successes were across the following areas:

- high risk crime groups;
- money laundering and tax fraud;
- illicit firearm markets;
- amphetamines and other synthetic drugs;
- people trafficking for sexual exploitation;
- serious and organised fraud;
- crime in the transport sector; and
- outlaw motorcycle gangs.

## Outcomes and outputs

2.50 The Australian Crime Commission has one outcome: Enhanced Australian Law Enforcement Capacity.

2.51 The outputs that measure this outcome are:

- Output 1.1: Criminal Intelligence Services; and

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20 *Australian Crime Commission Annual Report 2005-06*, p. 24.

- Output 1.2: Investigations and Intelligence Operations into Federally Relevant Criminal Activity.

### **Output 1.1: Criminal Intelligence Services**

2.52 The report states that output 1.1, Criminal Intelligence Services, relates to the ACC's collection, analysis and dissemination of information and intelligence; maintenance of criminal intelligence information systems; and provision of advice to the ACC Board on National Criminal Intelligence Priorities (NCIPs).

2.53 The report details the following key ACC activities and services under output 1.1 for 2005-06:

- intelligence collection across and between agencies;
- coordination of intelligence activities nationally, including through regionally-based intelligence collection coordinators;
- provision and maintenance of the national criminal intelligence database: the Australian Criminal Intelligence Database (ACID); the ACC also maintains the Australian Identity Protection Register (AIPR), the Violent Crime Linkage Analysis System (ViCLAS) and other intelligence systems;
- production of strategic intelligence products and intelligence advice including Strategic Criminal Intelligence Assessments (SCIAs), National Criminal Threat Assessments (NCTAs), the *Picture of Criminality in Australia* report (PoCA), strategic intelligence reports, alerts, and updates;
- production of operational intelligence products including Operational Assessments, Quarterly Intelligence Reports, Operational Intelligence Reports, Profiles, and Information Reports;
- provision of an open source information service that provides a daily email compilation of articles relating to nationally significant criminal activity and the regional environment; the service is provided to over 200 national and international partner agencies;
- delivery of the National Strategic Intelligence Course; and
- workshops and meetings of national significance including the National Criminal Intelligence and Operations Forum and Proof of Identity Issuers' Forum.

2.54 The report identifies the ACC Board's member agencies, ACC investigations and government stakeholders as the ACC's key clients under output 1.1, and notes that the nature and scope of the ACC's intelligence products and services evolve according to client needs, national priorities, emerging issues, assessed harms, operational commitments and legislative requirements.

2.55 At the hearing to examine the report, Mr Milroy commented on the necessarily dynamic nature, as well as the variety, of the ACC's activities:

The menu of work undertaken by the commission is closely dependent on the changing nature of the criminal environment and the priorities determined by the Australian Crime Commission board. To combat serious organised crime activity, the board during 2005-06 approved an intelligence operation, special intelligence operations, special investigations and a task force to address a broad range of criminal activity.<sup>21</sup>

2.56 The report highlights the ACC's cooperative relationship with various Australian police forces and agencies in the performance of its functions:

...the ACC is able to call on the skills and resources of state and territory police forces and Commonwealth agencies such as the Australian Federal Police (AFP), Australian Customs Service (Customs), the Australian Securities and Investment Commission (ASIC), the Australian Taxation Office (ATO), Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Australian Security Intelligence Organisation (ASIO).<sup>22</sup>

2.57 Mr Milroy confirmed that, in 2005-06, 'the majority of the commission's operational activities were conducted in collaboration with state and territory police services and other government agencies.'<sup>23</sup>

### **Performance indicators**

2.58 There are four performance measures for output 1.1, Criminal Intelligence Services:

- timely, high-quality advice provided to the ACC Board on National Criminal Intelligence Priorities;
- number and value of disseminations to law enforcement agencies;
- provision and maintenance of effective and efficient criminal intelligence systems; and
- quality and value of strategic criminal intelligence assessments, threat assessments and other products and services.<sup>24</sup>

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21 *Committee Hansard*, 30 March 2007, p. 2.

22 *Australian Crime Commission Annual Report 2005-06*, p. 10.

23 *Committee Hansard*, 30 March 2007, p. 2.

24 *Australian Crime Commission Annual Report 2005-06*, p. 12.

***Timely, high-quality advice to the ACC Board on National Criminal Intelligence Priorities***

2.59 The report states that provision of advice on National Criminal Intelligence Priorities to the ACC Board allows the Board to make strategic decisions about the ACC's activities and, in particular, to issue determinations.

2.60 The principal mechanism for informing the ACC Board of NCIPs in 2005-06 was the *Picture of Criminality in Australia* (PoCA) report. The PoCA is a confidential high-level strategic intelligence report on the relative harms of each crime type, emerging issues in the criminal environment and strategic threat from various issues in the surrounding region.

2.61 The ACC also provided information on the NCIPs through intelligence products informing Board member agencies of specific issues of current or future concern. These products also contributed to judgements made in the PoCA.

***Number and value of disseminations to law enforcement agencies***

2.62 The report states that, during 2005-06, the ACC disseminated information and intelligence to a wide range of law enforcement and government stakeholders. The report lists the following significant outcomes arising from ACC disseminations:

- supporting proceeds of crime hearings;
- outlining new crime trends, emerging criminals and criminal entities;
- the seizure of precursor chemicals and the prevention of large-scale importation of precursors and drugs into Australia;
- identifying the location of numerous drug-producing laboratories;
- the arrest and disruption of serious criminal entities and individuals, including those involved in organised card fraud, drug offences, retail fraud and fraudulent production of identity documentation;
- the prevention of sales of illicit firearms to criminals;
- the seizure of several air consignments of interest for the Australian Customs Service;
- the further investigation of possible tax fraud offenders by the Australian Taxation Office;
- outlining new information related to outlaw motorcycle gangs and their actions;
- identifying possible visa and immigration fraud offenders; and
- provision of information relevant to numerous current investigations across Australia.

2.63 The report provides the following table, detailing the number of disseminations for 2005-06.

**Table 1: Number of Disseminations 2005-06**

Type	2004-05	2005-06
Operational intelligence disseminations	722	820
Telephone interception material disseminations	105	117
Operational intelligence disseminations by Covert Unit	173	140
ACC ACID uploads	1,631	2,462
ACC ALEIN uploads	2,535	1,973
Strategic intelligence product disseminations	171	964

**Source:** *Australian Crime Commission Annual Report 2005-06*, p. 27.

2.64 Mr Milroy characterised the figures above as reflective of the ACC's 'key activities and achievements' in 2005-06, and emphasised the operational value of the ACC's disseminations of intelligence:<sup>25</sup>

...let me emphasise, the dissemination of ACC intelligence has been integral to many further [drug] seizures made by jurisdictions.<sup>26</sup>

2.65 The committee draws particular attention to the inherent difficulties of assessing the value of intelligence disseminations. Firstly, latent or ongoing value may be inadequately captured or measured by annual assessments such as the annual examination of the ACC report. On this point, Mr Kevin Kitson, Executive Director of Intelligence Strategies for the ACC, observed:

...we have to recognise that it is in the nature of intelligence that a piece of intelligence delivered today may have no downstream impact for 12 or 18 months or longer. So it is an enormously challenging process to understand the true impact.<sup>27</sup>

2.66 Secondly, value tends to be assessed in terms of seizures, arrests and/or charges, whereas the ACC's intelligence activities are clearly also valuable in terms of policy and administration. As Mr Lionel Newman, ACC Executive Director of Strategy and Governance, observed:

...we are looking not just at the quantitative outcomes from our intelligence but often at the qualitative outcomes that are not manifested in the number of drugs seizures or arrests but may well be policy changes that are undertaken by the various jurisdictions in response to the intelligence, including their policy settings... [Intelligence] may have some impact on

25 *Committee Hansard*, 30 March 2007, p. 2.

26 *Committee Hansard*, 30 March 2007, p. 3.

27 *Committee Hansard*, 30 March 2007, p. 15.

the administrative arrangements within those jurisdictions and may contribute to law reform in those areas as well.<sup>28</sup>

2.67 Mr Kitson explained to the committee the ACC's evaluation processes:

We go through some intensive evaluation processes every time we disseminate an intelligence product, asking: 'What difference did this make to your understanding? What will you do with this information?' and 'Who has it gone to?' We are able to refine our processes from there. That has made a significant difference over the last two years to the way in which we have shaped our information, particularly to the points of distribution.<sup>29</sup>

2.68 Furthermore, the committee was advised that the ACC had entered into a 'significant enterprise with a tertiary institution and one of...[the ACC's] partner agencies [to develop a method] to measure the true effectiveness and value of intelligence information'.<sup>30</sup> The framework being developed would not look 'simply at weights and measures' but at some of the 'intangible measures that ultimately are best characterised as wellbeing'.<sup>31</sup> Mr Kitson observed:

...we are looking at various metrics that are perhaps more commonly applied in social and economic environments.<sup>32</sup>

2.69 The committee heard that the development of the 'effectiveness and efficiency framework' involved 'leading-edge research' that had attracted the interest of international agencies, such as the United Kingdom's Serious and Organised Crime Agency, SOCA.<sup>33</sup> With the first stage of the two-stage project complete, the ACC hoped that the framework would be in place within the next 12 months, and expected that it would enhance the ACC's evaluation and reporting of the value of its activities in future:

...the idea is to build that into a systematic evaluation of our effectiveness and efficiency within our own agency so that, for example, the output and activity reports we produce for the committee on a monthly basis will be refined over time to reflect and pick up the value of that intelligence...[There is] a significant commitment...to developing that capability within the ACC which will manifest itself, as I said, in some enhanced reporting over the next year or two.<sup>34</sup>

2.70 The committee commends the ACC for its efforts to develop meaningful measures of value for its intelligence activities. The issue of performance or value

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28 *Committee Hansard*, 30 March 2007, p. 15.

29 *Committee Hansard*, 30 March 2007, p. 15.

30 *Committee Hansard*, 30 March 2007, p. 15.

31 *Committee Hansard*, 30 March 2007, p. 16.

32 *Committee Hansard*, 30 March 2007, p. 16.

33 *Committee Hansard*, 30 March 2007, p. 16.

34 *Committee Hansard*, 30 March 2007, p. 16.

measures of law enforcement activities and outcomes is a perennially difficult question, and one that the committee has considered, for example, in relation to reporting of drug law enforcement outcomes.<sup>35</sup> The committee will therefore await with interest the outcome of the ACC's development of a new effectiveness and accountability framework.

### ***Provision and maintenance of effective and efficient criminal intelligence systems***

2.71 The report highlights the following intelligence systems: the Australian Law Enforcement Intelligence Net; the Australian Criminal Intelligence Database; the ALERT project; the Australian Identity Fraud Protection Register; and the Violent Crime Linkage Analysis System.

#### *Australian Law Enforcement Intelligence Net*

2.72 The Australian Law Enforcement Intelligence Net (ALEIN) is a secure national intranet used by all national police services, the New Zealand Police, state crime commissions and a large number of government agencies. It provides a dissemination capability for Australian law enforcement and enables cooperative intelligence sharing across jurisdictional boundaries. It also provides real-time, secure intelligence communications between the ACC, police jurisdictions and other law enforcement agencies across Australia.

2.73 The ACC annual report states that in 2005-06 the engagement of external agencies with ALEIN increased markedly in response to further marketing, release of new systems capabilities and new intelligence initiatives.

#### *Australian Criminal Intelligence Database*

2.74 The Australian Criminal Intelligence Database (ACID) is provided by the ACC to Australian law enforcement as a secure, centralised national repository for criminal intelligence. In evidence given at the hearing, the value of ACID was emphasised by Mr Milroy:

Criminal information intelligence shared through ACID arms law enforcement nationally with the means to combat and dismantle the activities of serious and organised crime groups. The ACC has continued its focus in the area of over the horizon estimative intelligence, as that is a crucial component of the commission's intelligence function because it informs law enforcement decision making and priority setting nationally.<sup>36</sup>

2.75 The ACC annual report provides the following statistics on the performance of the database in 2005-06:

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35 See Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the manufacture, importation and use of amphetamines and other synthetic drugs (AOSD) in Australia*, chapter 6.

36 *Committee Hansard*, 30 March 2007, p. 2.

- 752 new users were granted access to ACID, bringing the total number of users to 4,885;
- 111,246 information reports were uploaded to ACID; 2,462 of these were uploaded by the ACC;
- 540,065 searches were carried out by users nationally;
- 362,802 new entities were created, allowing more useful and informative searches to be conducted across the database; and
- 190,488 links and associations to existing records were established, providing users with further searching options.

2.76 Mr Milroy informed the committee that enhancements to ACID had seen use of and access to the ACID database increase in the period 2005-06:

More enhancements to the Australian Criminal Intelligence Database, ACID, have significantly increased jurisdictional engagement with the system. ACID recorded a 20 per cent increase in searches, and over 8,000 more documents were uploaded by law enforcement nationally, an increase of 13 per cent.<sup>37</sup>

#### *ALERT project*

2.77 The enhancements made to ACID during 2005-06 were achieved via the Australian Law Enforcement Referencing and Targeting (ALERT) project. The project met a number of key milestones for the enhancement of ACID, including:

- the introduction of a charting facility that enables instant viewing of the associations between entities, such as persons and organisations;
- the introduction of a facility to integrate results from multiple searches in ACID;
- enhancing useability and facilities, such as diaries and saved result sets;
- geo-coding of existing addresses and upload and download facilities, plus the ability to search by a geo-coded location; and
- preliminary testing of concept management tools to enhance the knowledge and understanding of the vast amounts of intelligence data stored within ACID.

2.78 The report notes that the release of these tools has substantially enhanced the value of ACID to intelligence users, as demonstrated by the marked increase in use of the system during 2005-06.

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37 *Committee Hansard*, 30 March 2007, p. 2.

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### *Australian Identity Fraud Protection Register*

2.79 The Australian Identity Fraud Protection Register (AIPR) collects information on fraudulent identities and victims of identity theft from law enforcement and government agencies. This allows law enforcement agencies to detect and stop the use of fraudulent identities for criminal activities. The AIPR also allows non law enforcement agencies to maintain the integrity of their customer databases and detect possible fraud offences.

2.80 The report records that, as of 30 June 2006, the AIPR listed approximately 6,000 fraudulent identities, with a further 800 new false identities added during 2005-06.

2.81 During 2005-06, the AIPR was used to:

- facilitate a formal network for the sharing of identity fraud intelligence with 27 federal and state government agencies;
- identify current and previous firearms and security licence holders who have been identified as using fraudulent identities;
- detect tax file numbers that were obtained through the use of fraudulent identities; and
- provide participating agencies with information regarding new methodologies employed by identity crime offenders.

### *Violent Crime Linkage Analysis System*

2.82 The Violent Crime Linkage Analysis System (ViCLAS) captures information on serial and violent crimes such as attempted or actual homicides, sexual assaults, child abductions and selected missing persons cases. The objective of recording and analysing this information is to identify offences potentially committed by the same offender(s), thereby assisting in the identification of the offender(s) at the earliest opportunity. The report notes that, since the system's introduction in Australia, analysts have identified more than 246 potential series of offences involving more than 952 actual crimes.

### ***Quality and value of Strategic Criminal Intelligence Assessments, threat assessments and other products and services***

#### ***(a) Strategic intelligence products***

2.83 The report states that the ACC produces a range of external and internal strategic and operational intelligence designed to meet the different requirements of strategic and operational decision-makers across a range of law enforcement, government and non-government clients.<sup>38</sup>

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38 *Australian Crime Commission Annual Report 2005-06*, p. 29.

2.84 The report notes that, during 2005-06, the ACC produced 79 strategic intelligence products. Recipients included Commonwealth, state, territory and foreign law enforcement agencies; other Commonwealth, state and territory government agencies; and, where appropriate, research bodies and key private sector stakeholders.

2.85 At the hearing, Mr Milroy emphasised the operational value of the ACC's intelligence operations, products and services:

Complex and protracted operations and investigations have produced outstanding results, again reinforcing the effectiveness of the ACC's intelligence and operations model...<sup>39</sup>

2.86 The report reveals that, in July 2005, the ACC carried out an extensive review of its strategic intelligence products. The review resulted in changes to the ACC product line, including introduction of a new Strategic Intelligence Report to replace the Current Intelligence Report; cessation of Strategic Warning Reports; use of National Criminal Threat Assessments to focus on the threat from crime groups operating within particular markets or commodities; and a revised range of operational intelligence products.

2.87 The report states that 'feedback following these changes has indicated improvements to the value, quality and relevance of ACC intelligence products.'<sup>40</sup> Feedback is sought by the ACC from its clients in five areas: quality; clarity of purpose; timeliness; understanding; and decision-making. In the period from the July-September 2005 quarter to the April-June 2006 quarter, each of the five categories received improved average feedback, which was provided by clients on a scale with a maximum score of five:

- 'quality' improved from 4.1 to 4.2;
- 'clarity of purpose' improved from 4.2 to 4.3;
- 'timeliness' improved from 3.5 to 3.9;
- 'understanding' improved from 3.5 to 3.9; and
- 'decision-making' improved from 2.8 to 3.4.

2.88 The report highlights 12 strategic intelligence products produced by the ACC, including the following:

*Picture of Criminality in Australia*

2.89 That report observes that the *Picture of Criminality in Australia* (PoCA) report is the ACC's principal strategic intelligence report. The PoCA examines the extent and nature of the threat from organised crime groups and networks either operating in Australia or operating offshore and targeting Australia. It is an

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39 *Committee Hansard*, 30 March 2007, p. 3.

40 *Australian Crime Commission Annual Report 2005-06*, p. 30.

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assessment of current and emerging criminal threats, written to inform the strategic and operational decision-making of the ACC Board and other stakeholder agencies. The PoCA is designed to support a range of senior government and law enforcement decisions, and to inform the Board's consideration of priority setting, resource allocation and issues of strategic importance.

2.90 The PoCA provides an assessment of the social, political, and economic harms associated with each of the National Criminal Intelligence Priorities, assesses the changing nature of the strategic environment for law enforcement, and identifies the major developments that look set to occur in Australia's crime markets over the next two to three years. The analysis presented in the PoCA is underpinned by a range of ACC intelligence products, and informed by intelligence gained through extensive consultation with Commonwealth, state and territory partner agencies as well as monitoring of national, regional, and global criminal environments.

2.91 The report states that the 2005 PoCA was used throughout 2005-06 to inform decisions regarding ACC determinations, taskforces, collaborative activities with law enforcement partners and intelligence development. It was also used by Board member agencies to make decisions about policing priorities and resourcing and has been used to support successful applications for funding to combat emerging crime threats and serious and organised crime. Further, Mr Milroy informed the committee, the PoCA was able to inform decision-making at a policy level:

The highly protected report is used by the relevant jurisdictions to assist in developing their own strategies, in consultation with their respective ministers, about what to do with organised crime in their jurisdictions. So it is used at the decision-making level.<sup>41</sup>

2.92 The committee observes that the PoCA has been the subject of a previous recommendation of the committee. The report on the examination of the 2004-05 ACC annual report recommended:

...that the Australian Crime Commission consider the release of public versions of key research, including a declassified version of the Picture of Criminality [in Australia report].<sup>42</sup>

2.93 At the hearing, Mr Milroy acknowledged the previous recommendation of the committee, and indicated that a declassified version of the 2007 PoCA report would be presented to the ACC Board for its consideration for public release.<sup>43</sup> Mr Milroy expressed the ACC's support for the release of a public version of the PoCA report:

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41 *Committee Hansard*, 30 March 2007, p. 9.

42 Parliamentary Joint Committee on the Australian Crime Commission, *Examination of the Annual Report for 2004-2005 of the Australian Crime Commission*, p. vii.

43 *Committee Hansard*, 30 March 2007, p. 9.

We are hoping that we will pick up the committee's views on this and hopefully one will be released this year, subject to the board's agreement.<sup>44</sup>

2.94 The committee notes that the above recommendation is presently under consideration by the government, and looks forward to receiving the government's response.

#### *Illicit Drug Data Report*

2.95 The report states that the Illicit Drug Data Report (IDDR) provides an overview of the illicit drug situation in Australia, including drug arrests, prices, purity levels, national impacts and emerging trends. The Minister for Justice and Customs launched the 2004-05 edition of the IDDR in May 2006.

2.96 The IDDR includes illicit drug data from all state and federal law enforcement agencies and drug analytical laboratories. It is the only report of its kind in Australia. The IDDR is widely used by a range of law enforcement bodies, government agencies and non-government organisations to support the work of drug squads; intelligence teams; policy, health and social welfare initiatives; and research.

#### *Strategic Criminal Intelligence Assessments*

2.97 Strategic Criminal Intelligence Assessments (SCIAs) inform Board consideration of the implications of likely changes in criminal markets or crime types, and support Board decisions on future strategies including policy development. SCIAs support a range of key intelligence and operational decisions recommended by the Board.

2.98 SCIAs provide senior decision-makers with insights into poorly understood or high-priority areas of the criminal environment, and improve understanding and awareness of changes in the criminal environment.

#### *National Criminal Threat Assessments*

2.99 National Criminal Threat Assessments (NCTAs) provide strategic advice to the ACC Board on the threats posed by organised criminal activities nationally, and facilitate the development and review of the options for national law enforcement responses. NCTAs form a key part of the process for selecting and evaluating ACC operations and determinations, as well as informing the operational decisions of partner agencies.

2.100 The report states that the ACC has played a key role in providing threat assessment advice through participation in a number of inter-agency targeting and coordination activities, including the Airports Intelligence Joint Working Group, the

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44 *Committee Hansard*, 30 March 2007, p. 9.

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Joint Asian Crime Group, the Financial Intelligence and Assessment Team and the Identity Crime Task Force.

### *Strategic Intelligence Reports*

2.101 Strategic Intelligence Reports (SIRs) inform senior law enforcement decision-makers of current and emerging issues in the criminal environment. An SIR contains predictive analysis out to approximately two years, providing insight into particular crime issues. SIRs include analysis of criminal opportunities, legislative and policy reform issues and implications and drivers for change. SIRs are the ACC's standard form for reporting on criminal intelligence issues.

### *Alerts*

2.102 An alert is a short intelligence report designed to highlight a particular issue to a broad client base. Alerts are generated to provide ACC clients with timely information on emerging issues or changes requiring immediate attention or policy consideration, or to prompt further intelligence collection or monitoring. The report observes that alerts produced by the ACC have resulted in the prevention of significant serious or organised crime activity.

### ***(b) Operational intelligence products***

2.103 The ACC produces a range of operational intelligence products in support of both its work and that of other agencies. The report shows that, during 2005-06, the ACC produced 1,036 operational intelligence products for internal and external clients.

2.104 Operational intelligence products are designed to inform both internal operational and strategic intelligence clients as well as meet the needs of external partner agencies. The report states that the integration of operational intelligence with both strategic intelligence and operational policing has resulted in notable successes for law enforcement.

### *Operational Assessments*

2.105 An Operational Assessment (OA) outlines and analyses significant issues or findings from a particular operation. An OA is designed to influence future targeting decisions, to inform strategic assessments and to inform operational strategies. OAs may be produced during the course of an operation as well as at its conclusion. OAs allow direct operational outcomes and wider intelligence dividends to be used to inform current and future law enforcement activities.

### *Information reports*

2.106 The report observes that, during 2005-06, 2,462 ACC information reports were completed. Reported outcomes include several arrests, significant contributions to target development and prevention of serious and organised criminal activities.

### *(c) Collection and liaison*

2.107 The report states that collection and liaison services provide crucial support to ACC intelligence outputs and help ensure intelligence exchanged between agencies is robust, focused and timely. The ACC supports a range of specialised collection functions and services that play a critical role in ensuring awareness of law enforcement's priorities and development of long-term effective collaboration.

2.108 Notable collection and liaison initiatives from the selection cited in the report are the open source information and requests for information services.

#### *Open source information*

2.109 The ACC Open Source Information (OSI) service is a daily compilation of open source articles relevant to nationally significant criminal activity and the regional environment. The report states that OSI summaries are disseminated to over 200 recipients across the ACC, and to national and international partner agencies. The OSI service forms a critical part of the ACC's scanning function; this function informs intelligence holdings on crime issues, harm statements and NCIPs.

2.110 The report lists outcomes resulting from the OSI as including:

- identification of new crime trends;
- better-informed strategic intelligence products;
- re-opening of investigations;
- identification of new syndicates;
- identification of policy and legislative issues;
- prevention of a possible large-scale incident involving outlaw motorcycle gangs;
- better-informed decisions about intelligence priorities;
- more effective resourcing decisions; and
- initiation of communication between agencies.

2.111 In 2005, the OSI service received an award from the Australian Institute of Professional Intelligence Officers for displaying the highest excellence in intelligence publications.

#### *Requests for information*

2.112 The Request for Information (RFI) process is coordinated at a national level and used to obtain input from a variety of internal and external clients to support strategy based assessments. The report states that, during 2005-06, 65 RFIs were facilitated in support of ACC strategic intelligence gathering and sharing with partner agencies. It reports that, in addition, a number of external agencies requested input on

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a range of issues including fraud, money laundering, organised crime and firearm-related issues.

***(d) Intelligence capability development***

2.113 The report states that the ACC plays an important role in establishing, promoting and coordinating national standards and skills in intelligence. This is achieved through interagency initiatives and collaboration and through staff development programs that provide valuable specialist training and recognition.

*National Criminal Intelligence and Operations Forum*

2.114 A notable program cited in the report is the National Criminal Intelligence and Operations Forum (NCIOF). The report states that the NCIOF provides a national forum to explore issues facing law enforcement and to develop complementary strategies to address them. It also provides an opportunity for interaction, sharing of best practice, and support for national decision-making.

2.115 Reported outcomes from the April 2006 NCIOF include strengthened communication and understanding between stakeholders about trends, issues, priorities and challenges facing intelligence and operations nationally; development of strategies to address national issues and priorities; improved coordination of national activities and projects; and improved integration between intelligence and operations.

***(e) Other coordination activities, conferences and working groups***

2.116 The report states that the ACC also builds internal and external agency capability and effectiveness through provision of, and participation in, a range of coordination activities, conferences and working groups. The report cites the following notable examples:

*Proof of Identity Workshop*

2.117 In May 2006, the ACC convened a proof of identity workshop in Sydney with senior representatives from law enforcement agencies and birth deaths and marriages and driver licensing authorities in Australia and New Zealand. The report states that the workshop enabled participants to develop strategies to address vulnerabilities in relation to identity documentation and develop valuable networks and relationships with other participating agencies. There was also discussion around joint action to examine coercion and corruption of issuing agency staff by domestic and transnational organised crime groups and enhanced interface between law enforcement and proof of identity issuing agencies.

2.118 The committee notes that identity fraud is an emerging area of concern for all Australian law enforcement agencies. In its current inquiry into serious and organised crime, the committee has received a number of submissions commenting on the need for a national approach to the administration of proof of identity information services. The ACC is to be commended for its foresight and proactive approach in this area.

*National Chemical Diversion Congress*

2.119 In 2005, with Northern Territory Police and the Commonwealth Attorney-General's Department, the ACC co-hosted the annual National Chemical Diversion Congress. The report states that the congress brings together delegates from national and international law enforcement agencies, forensic services, industry, judiciary and prosecutorial areas. The congress aims to draw on experience from different agencies nationally and internationally to combat the diversion of precursor chemicals for use in illicit drug manufacture; reduce the availability and diversion of precursors; facilitate interactions, information and cooperation between key stakeholders; and increase public awareness of issues associated with illicit drug manufacture.

*National Clandestine Laboratory Database Working Group*

2.120 The National Clandestine Laboratory Database (NCLD) stores and integrates national information and intelligence on seized clandestine laboratories and precursor chemicals used in illicit drug production. The information and intelligence is used by Australian law enforcement and forensic agencies. The report notes that ACC involvement in the project included providing representation on the Board and User Advisory Group, assistance in finalising the business case, operational support, and ongoing funding for the NCLD.

*Outcomes from the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities*

2.121 The report states that, on 26 June 2006, the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities recognised the vital role of intelligence and effective policing in addressing violence and child abuse in Indigenous communities. The summit foreshadowed the establishment of a national intelligence unit, subject to details being determined by the Australian Police Ministers Council (APMC) meeting on 29 June 2006.

2.122 Following the APMC meeting, Senator the Hon. Chris Ellison—the then Minister for Justice and Customs—announced that the APMC had proposed a Commonwealth funded and ACC-led intelligence taskforce on Indigenous violence and child sex abuse, which would have a dedicated national capacity to collect, collate, analyse and share information in relation to incidents of family violence and child abuse in remote Indigenous communities. The task force received ACC Board and COAG endorsement and became operational in the next reporting period.

2.123 At the hearing, officers of the ACC were asked to elaborate on the significance of the ACC's work with the Indigenous task force. The committee sought clarification of the way in which the focus and funding of the task force was directed toward the ACC's charter to address organised and federally relevant crime. The purpose of the task force, according to Mr Milroy:

...[is] to get a better understanding of the types of crimes that may or may not have been committed and then gather all this intelligence nationally, not

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just in the remote areas of Western Australia, South Australia or northern Australia.<sup>45</sup>

2.124 Members of the committee observed that there were concerns expressed in the past about the setting-up of the task force in response to the resolution of the APMC: it was suggested that its remit apparently 'did not seem to fit into the serious and organised crime categories'.<sup>46</sup> Mr Milroy explained that the ACC's involvement was related to its role in collecting criminal information and intelligence:

...our job is to look at this from a national intelligence collection process to establish if there are instances of these types of crimes occurring across all Indigenous communities in Australia. This is necessary because there is a clear indication that there is a gap in intelligence and knowledge of these sorts of crimes.<sup>47</sup>

2.125 Mr Milroy emphasised that the ACC's role in the task force was related to its role in national intelligence coordination:

I think it was recognised by the governments and the IGC that the ACC can bring the agencies together in a collaborative approach and go about collecting intelligence to get a better understanding of a particular market.<sup>48</sup>

2.126 The committee notes that, strictly speaking, the involvement of the ACC in leading the Indigenous taskforce pre-empts the requirement that the ACC's operations pertain to organised and federally relevant criminal activity. However, the committee believes that the identified absence of sufficient information and intelligence to properly assess the national significance of crime in Indigenous communities is a legitimate basis on which to ground the ACC's leading role in this project. The committee accepts that, in this particular instance, the national paucity of understanding in this area enlivens the ACC's jurisdiction, because it is best placed and equipped to uncover whether or not organised or federally relevant criminal activities are occurring in Indigenous communities.

2.127 The committee is confident that the ACC appropriately allocates or claims responsibility in areas of organised or federally relevant criminal activity, and that it will do so in response to the findings of the Indigenous task force. In evidence, Mr Milroy made it clear that the ACC had no preconceptions, and would continue to honour the demarcation of state and national law enforcement responsibilities:

In that process, we will eventually see certain trends and we will probably identify areas where there are matters that need to be pursued by the relevant authorities.

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45 *Committee Hansard*, 30 March 2007, p. 5.

46 *Committee Hansard*, 30 March 2007, p. 6.

47 *Committee Hansard*, 30 March 2007, p. 6.

48 *Committee Hansard*, 30 March 2007, p. 7.

**COMMITTEE COMMENT: Output 1.1**

2.128 The report provides an exhaustive view of the advice, information disseminations, strategic intelligence products, operational intelligence products, collection and liaison services, intelligence capability development and other coordination activities that the ACC utilises to produce criminal intelligence services and, ultimately, achieve the outcome of enhanced Australian law enforcement capacity.

2.129 The committee observes that the ACC has continued to refine and improve upon the intelligence and information systems and services it maintains and provides. The committee commends the ACC's commitment to developing better systems of measuring the value of its products and services.

**Output 1.2: Investigations and Intelligence Operations into Federally Relevant Criminal Activity**

2.130 Output 1.2 focuses on disrupting and deterring serious organised crime through special intelligence operations, special investigations and intelligence operations into federally relevant criminal activity in collaboration with partner law enforcement agencies.<sup>49</sup>

2.131 The ACC Board-approved Intelligence Operation in 2005-06 was:

- Outlaw Motorcycle Gangs.

2.132 The ACC Board-approved Special Intelligence Operations in 2005-06 were:

- Amphetamines and Other Synthetic Drugs;
- Serious and Organised Fraud;
- Crime in the Transport Sector; and
- People Trafficking for Sexual Exploitation.

2.133 The ACC Board-approved Special Investigations were:

- Illicit Firearm Markets;
- High Risk Crime Groups;
- Established Criminal Networks: Victoria; and
- Money Laundering and Tax Fraud (Midas)

2.134 Table 4 on page 40 of the report shows overall results for ACC determinations in terms of people charged, charges laid, examinations conducted, seizures of drugs and firearms and proceeds of crime restrained and forfeited.

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49 Definitions of the three types of operation are provided at page 38 of the ACC annual report.

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*Federally relevant criminal activity*

2.135 Output 1.2 specifies that the ACC's intelligence and operational activities must be directed to federally relevant criminal activity. The committee notes that this distinction is critical to maintaining the national significance of the organisation as well as its ability to effectively identify and disrupt highly organised criminal groups working in Australia. In response to the committee's questions around the distinctive national character of the ACC, Mr Milroy described the national significance of the ACC's intelligence function:

...the most distinctive feature of the ACC's intelligence gathering is that it is national. We do not focus solely on an individual state or territory, and therefore the information that we collect and the intelligence that we develop from that information has a national perspective. Whilst it might have strong implications for a single jurisdiction or a small number of jurisdictions, it really has that broader national scope and deals much more with the longer-term implications of that information.<sup>50</sup>

2.136 Further, Mr Milroy explained, operational priorities established by intelligence allowed national and state policing priorities to be clearly defined and established; so too, gaps in responsibilities were able to be more easily identified:

We also have a very intensive system of local engagement and national engagements with them to promulgate the national criminal intelligence priorities, to translate those to what one might characterise as state criminal intelligence priorities, so that we harness the national intelligence-gathering capability, so that we are not replicating or duplicating and so that we properly address where the true information gaps exist. Those gaps will always exist; the challenge is to identify them and to narrow them.<sup>51</sup>

*Disruption of criminal entities*

2.137 The report notes that the ACC maintained a strong focus on disrupting organised crime during the reporting period, which is generally defined as the interruption to the flow or continuity of the criminal behaviour and/or enterprises of a criminal entity as a direct result of ACC or joint agency operational activity. It can also involve undermining criminal businesses via the exploitation of their methodologies, the release of intelligence alerts and warnings on their activities and the reduction of their ability to operate in the criminal markets of their choice.

2.138 Operational activity used by the ACC to disrupt criminal entities and impact on current or future criminal activity includes arrests, seizure of illegal drugs and firearms and proceeds of crime action to seize criminally-gained assets.

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50 *Committee Hansard*, 30 March 2007, p. 14.

51 *Committee Hansard*, 30 March 2007, p. 15.

2.139 In the reporting period, the ACC significantly disrupted 22 serious and organised criminal entities. Criminal entities collectively include criminal syndicates, networks and groups. The report explains that a criminal syndicate is defined as an organised crime gang whose members work closely together to profit from criminal activity. A criminal network is the informal arrangements that exist between various organised syndicates through which they facilitate certain criminal activities or have others work on their behalf. A criminal group is defined as a number of individuals who work together on an as-needs basis to commit criminal activity, but which do not have the same level of organisation as a syndicate.

2.140 At the hearing, the committee highlighted that the definitions provided in the report were immediately confused by the use of the terms interchangeably in the example provided.<sup>52</sup> The committee observed that consistency of application of terminology was a desirable practice. Mr Milroy responded that the ACC was aware of the issue, and that greater consistency in definitions of organised crime would 'be rectified in [a future] report to the Board on organised crime in Australia.'<sup>53</sup>

#### *Disruption of significant individuals*

2.141 The report notes that 26 significant individuals involved in organised criminal activities were disrupted during the reporting period. A significant individual is a person who has committed serious criminal offences but who does not operate as part of a cohesive group or syndicate.

#### *Proceeds of crime*

2.142 In his opening address at the hearing, Mr Milroy informed the committee that some \$20.7 million had been restrained as proceeds of crime in 2005-06, with \$1.6 million having been forfeited.<sup>54</sup> Questioning at the hearing clarified that the \$20.6 million was currently subject to processes under which it was intended the amount would be ultimately forfeited.

#### *Use of coercive powers*

2.143 The report states that the ACC's special coercive powers are instrumental in achieving operational results and collecting significant intelligence in both ACC and joint agency activities. The coercive powers are used in situations where conventional law enforcement methods are judged as insufficient to combat serious and organised crime.

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52 See *Australian Crime Commission Annual Report 2005-06*, p. 39.

53 *Committee Hansard*, 30 March 2007, p. 7.

54 *Committee Hansard*, 30 March 2007, p. 3.

2.144 The report shows that, in 2005-06, the ACC conducted 605 examinations and used its special powers to demand documents under Section 29 of the ACC Act on 480 occasions.

2.145 At the hearing, the committee questioned the officers of the ACC as to the effectiveness of court processes to respond to instances where examinees (a) refuse to answer questions (b) produce documents or (c) give misleading evidence. The committee noted, on the one hand, previous calls for reform in this area and, on the other, that a number of substantial penalties had been applied to such offences in 2005-06.<sup>55</sup> Mr Milroy explained that, despite the welcome increase in the penalties for such offences, there was still potential for the ACC's coercive powers and examination processes to be undermined by the amount of time it took to prosecute such offences. A review conducted by Mr Mark Trowell QC, due to report on 16 April 2007, was considering whether or not any alternative approaches, such as dealing with such matters through the contempt powers of the courts, would be preferable.<sup>56</sup>

#### *Charges and convictions arising from ACC activity*

2.146 The report states that, during the reporting period, the ACC charged 218 people in support of its goal to reduce the impact of serious and organised crime on the Australian community, with 894 charges being laid against alleged offenders. According to the report, the decline in numbers charged, when compared with the last reporting period, can be directly linked to the ACC's involvement in a number of protracted investigations with extended resolution phases, such as operation Wickenby.

2.147 The report goes on to state that, in the reporting period, 77 people were convicted as a result of ACC activity, which is 24.2 percent higher than in 2004-05. Of these, 59 offenders received a sentence, including suspended sentences (up 37.2 per cent on 2004-05), 11 offenders received fines and seven offenders were placed on good behaviour bonds. These figures do not include two people who were fined and one person who was placed on a good behaviour bond without conviction.

#### *Outcomes from intelligence operations and special intelligence operations*

2.148 Pages 50 to 62 of the report describe the outcomes; future outlook; and options for legal, regulatory, administrative and policy reforms of the various intelligence operations pursued by the ACC.

2.149 The committee drew attention to the fact that, when conducting a special intelligence operation, the ACC was, as a matter of law, unable to use telephone intercepts or devices under the *Surveillance Devices Act 2004*. Mr Milroy informed

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55 *Australian Crime Commission Annual Report 2005-06*, appendix C, pp 126-36.

56 *Committee Hansard*, 30 March 2007, p. 8.

the committee that the matter was currently under consideration in reviews being undertaken by the Attorney-General's Department.

### *Operation Wickenby*

2.150 The report states that Operation Wickenby is a joint operation by the ATO, the ACC and other key agencies to combat international tax evasion designed by particular offshore promoters.

2.151 A Wickenby-related matter recently reported in the media, concerning allegations that the ACC had misled a Swiss court and been guilty of misfeasance, was raised with the officers from the ACC. The ACC officers informed the committee that an *Australian Financial Review* report of ACC admissions of the allegations was a misrepresentation and factually incorrect. The ACC was aware of no credible suggestions of impropriety on behalf of ACC staff and investigators, and the matters in question remained before the courts.<sup>57</sup>

2.152 A third matter, concerning an allegation of a breach of legal professional privilege, was also raised by the committee. Mr Michael Outram, Executive Director of Operational Strategies for the ACC, denied the veracity of the claim and noted that the substantive issues were still sub judice:

My understanding is that this has been litigated through the current matter that is before the court as part of the Dunn and Misty Mountain litigation, and I am not aware of any finding or suggestion of wrongdoing on the part of the ACC. These are matters that are before the court at the moment.<sup>58</sup>

2.153 Mr Outram provided some general insight into the ACC's processes for ensuring the integrity of its officers' performance and of its investigative and evidentiary practices:

...we do follow all the media in relation to any of our matters, including in relation to Wickenby, and we follow up if there are allegations made of any impropriety on the part of the ACC or any of our staff or suggestions that there have been any problems. We do that to assure ourselves that we are on solid ground in relation to the investigation and in relation to the litigation, which is significant and ongoing.<sup>59</sup>

### **COMMITTEE COMMENT: Output 1.2**

2.154 The report outlines in appropriate detail the ACC's investigations and operations into federally relevant criminal activity, which serve to achieve the outcome of enhanced Australian law enforcement capacity. After three full years of operation, it is apparent to the committee that the ACC appears to be appropriately

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57 *Committee Hansard*, 30 March 2007, p. 11.

58 *Committee Hansard*, 30 March 2007, p. 11.

59 *Committee Hansard*, 30 March 2007, p. 11.

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targeting the dynamic and changing nature of criminal activities in Australia, as is reflected by the shifts in its determinations and activities as directed by the Board. However, the committee notes that the ACC must be careful to ensure that its activities maintain a convincing national character, particularly where a determination purports to address a state based criminal activity of national consequence.

## **Financial and physical**

2.155 Chapter 3 of the ACC annual report describes the financial and physical aspects of the ACC's performance. The chapter discusses the ACC's structure and the functions of its four core directorates, ACC media, information and communications technology, professional standards and integrity, security, law and administrative reform, ecologically sustainable development performance reporting and the ACC's financial performance.

### ***Financial performance***

2.156 The report provides the following information on the financial performance of the ACC in 2005-06:

2.157 The ACC's financial result for 2005-06 was a surplus of \$3,674,561. The ACC received an unqualified audit opinion from the Australian National Audit Office.

2.158 The ACC's appropriation for 2005-06 was \$74.25 million, which included tied funding of \$21.16 million. Tied funding was allocated for the following purposes:

- \$7.54 million to fund the ACC's Midas determination; 2005-06 is the third year of four-year funding of \$30 million for this program;
- \$0.9 million to enhance the ACC's technical capacity; 2005-06 is the final year of four-year funding of \$6.9 million for this program; this program is being conducted jointly with the AFP and ASIO;
- \$2 million to enable the enhanced provision of telecommunications intercept and data intercept capacity to target and disrupt serious and organised criminal groups and individuals involved in the manufacture, importation and distribution of illicit drugs; 2005-06 is the third year of four-year funding of \$8 million for this program;
- \$3.9 million for the second stage of the ALERT program to improve the ability to analyse data in ACID; 2005-06 is the final year of four-year funding of \$11 million for this project;
- \$1.68 million to meet the requirements of the *Surveillance Devices Act 2004* to enable the ACC to enhance its data interception capability and increase the scope of deployment of surveillance equipment; 2005-06 is the second year of four-year funding of \$6.7 million for this project;
- \$2.73 million to meet the findings of the *Independent Review of Airport Security and Policing for the Government of Australia*; the ACC will deliver a program of criminal intelligence advice and information to law

enforcement, government and the private sector relating to activity impacting on the security of Australia's airports; 2005-06 is the first year of five-year funding of \$22.7 million for this project; and

- \$2.41 million to fund Operation Wickenby investigations and prosecutions; 2005-06 is the first year of five-year funding of \$17.3 million for this project.

2.159 The major driver for the underspend in the 2005-06 financial year was the delay in commencing some projects specifically funded by the Commonwealth in 2005-06 for completion in 2006-07. These projects remain on track for completion in 2006-07.

2.160 The ACC's revenue for 2005-06 included \$9.4 million for services received from other law enforcement agencies. This reflects continuing cooperation by the jurisdictions in managing nationally significant crime.

2.161 In 2005-06 the ACC invested in office fit-outs in information and communication technology and further development of the ACID. The ACC engaged the Australian Valuation Office to revalue leasehold improvement (LHI) and infrastructure, plant and equipment (IPE) as at 30 June 2006. The value of LHI increased by \$1.4 million; IPE decreased marginally.

2.162 The responsibility to host the secretariat for the Asia Pacific Group on Money Laundering was transferred to the Australian Federal Police, effective 1 July 2005. The transfer has not had a material impact on the ACC 2005-06 financial statements.

2.163 The ACC is forecasting a balanced budget for 2005-06.

2.164 Table 9, on page 71 of the report, shows the resources allocated for outputs 1.1 and 1.2 under outcome 1, Enhanced Australian Law Enforcement Activity. It shows budget for 2005-06, actual expenses for the same period, revenue from government and other sources, and budget for 2006-07.

2.165 Tables 10 and 11, on page 72 of the report, show ACC contracts for and expenditure on advertising and market research respectively for 2005-06.

### ***Human resources***

2.166 Chapter 4 of the report describes the human resource practices and procedures of the ACC.

2.167 The report states that the ACC is committed to best practice human resource principles and procedures and strives to be an employer of choice. In 2005-06, the ACC's human resources team focused on staff consultation; workplace agreements, including the negotiation of a new collective agreement; workforce planning; learning and development programs and performance and development for all staff.

2.168 The report examines staffing profile, including salaries; classifications; locations; gender and status; non-salary benefits; senior executive payments; staff consultation; workplace agreements; the certified agreement; the performance and development scheme; workforce planning; learning and development; OH&S performance; drugs and alcohol policy; productivity gains; social justice; and the outlook for 2006-07.

2.169 At the hearing, the witnesses from the ACC were invited to discuss levels of satisfaction or any issues pertaining to staff within the ACC. Mr Milroy provided an outline of the ACC's attempts to improve and maintain capability via succession planning, staff development and leadership opportunities:

We have spent a considerable amount of time improving our capability. We are looking at things like succession planning and a lot of courses to improve the capability of the organisation and to develop the skills of the staff and make more effective leaders. We have currently put nearly 40 people through leadership enhancement training and we have also increased some of the senior positions in our structure, which allows greater opportunities for advancement.<sup>60</sup>

2.170 Mr Lionel Newman, Executive Director of Strategy and Governance for the ACC, characterised the last three years as a transitional period in which a number of reorganisations and expansions had taken place within the ACC. Mr Newman stated that this period had provided many opportunities for staff to diversify as well as advance to senior positions in the organisation:

...we believe we provide and will continue to provide are greater opportunities for people to do a diversity of types of work and get involved in different areas. As a result that leads to opportunities to develop new skills and new expertise and to take on senior positions on a short- or long-term basis.<sup>61</sup>

2.171 However, according to Mr Newman, the same period had also seen a somewhat high staff turnover rate. Mr Newman highlighted the fact that the preceding years had seen the establishment, expansion and evolution of the ACC's scope and functions, and expressed the hope that staff turnover would reduce as the future shape and direction of the ACC became more settled:

The scope of work, as I indicated, has been enhanced both by authorisation of the board and from work given to us by the IGC. Once again, they all impact on the opportunities provided to our staff. Satisfaction levels will vary, naturally. We have a turnover rate that we would like to reduce...obviously we have gone through a significant transition over the last three years. We have been setting an organisation up for the future and recruiting extensively.<sup>62</sup>

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60 *Committee Hansard*, 30 March 2007, p.12.

61 *Committee Hansard*, 30 March 2007, p.12.

62 *Committee Hansard*, 30 March 2007, p.13.

2.172 The committee heard that succession planning and staff-retention issues were also being addressed through the ACC's recruitment and training processes. Mr Milroy explained that the ACC was endeavouring to develop the 'officer of the future' through its graduate program.<sup>63</sup> By focusing on 'cross-directorate' training and work opportunities, the program hoped to develop employees' management skills to allow them to move more freely between intelligence and operational work. It was expected that the combination of broad skill levels, work diversity and employment mobility within the ACC would address retention issues into the future.

2.173 The committee notes that the ACC's focus on quality recruitment and retention processes and outcomes is reflected in the fact that recruitment formed the largest component of advertising expenditure in 2005-06. The success of the ACC's recruitment efforts was highlighted by Mr Milroy, who explained that recent advertisements had elicited some 2,000 applicants for the ACC graduate program.

### **Financial statements**

2.174 Chapter 5 of the ACC report reproduces financial statements for the relevant period. It includes statements of compliance from the ANAO and the ACC's Chief Executive Officer and Chief Financial Officer, income statements for the year, balance sheets and cash flows and charts showing commitments and contingencies.

2.175 At the hearing, general discussion around the current level of funding for the ACC revealed that additional Commonwealth funding granted to the ACC following the Wheeler review into aviation security had led to a 'significant increase in the intelligence flowing from the jurisdictions into...[the ACC's] database', thereby improving the commission's knowledge of organised crime as well as providing actionable intelligence.<sup>64</sup>

2.176 Mr Milroy commented favourably on the shared funding model that attended the frequent seconding of staff from other agencies to the ACC:

We see a greater level of commitment by the jurisdictions to fund their staff into the ACC to work on projects so that has always been a significant extra resource which is funded. It increases our overall capability across the country. There are now three task forces where previously we had one. Under the task force model, the jurisdictions commit their resources at their cost. So that model is actually showing a greater level of commitment to this partnership arrangement.<sup>65</sup>

2.177 Mr Milroy advised the committee that policy proposals submitted by the ACC were currently under consideration by various government committees.<sup>66</sup> Mr Milroy

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63 *Committee Hansard*, 30 March 2007, p.13.

64 *Committee Hansard*, 30 March 2007, p.11.

65 *Committee Hansard*, 30 March 2007, p.12.

66 *Committee Hansard*, 30 March 2007, p.11.

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expected that he would be able to comment on whether additional funding would be made available under those proposals in a few months.<sup>67</sup>

2.178 Overall, Mr Milroy displayed general satisfaction with the current levels of funding to the ACC:

...at the present moment we are relatively comfortable with what we have and the progress we believe will be made in the future.<sup>68</sup>

## **Attachments**

2.179 Chapter 6 includes a number of attachments, such as the indexes to compliance with section 61 of the Act and with the FMA Act annual report guidelines.

## **Conclusion**

2.180 The examination of the ACC's annual report for 2005-06 has allowed the committee to examine the commission's activities against a performance framework of outputs and outcomes and relative to its performance in recent years.

2.181 The committee found that the ACC appears to be working efficiently and effectively, with appropriate and extensive governance and accountability arrangements and a clear sense of purpose and direction in achieving its goal of enhanced Australian law enforcement capacity.

2.182 The inquiry has demonstrated that the ACC is an organisation committed to continually improving its methods of quantifying and reporting on its performance. This is evident in the ACC's current project to develop an improved system of reporting, the outcome of which the committee looks forward to evaluating in the future.

2.183 Although the ACC is, by virtue of its purpose, an organisation that must fiercely protect much of the detail of its work, its commitment to facilitating appropriate and meaningful scrutiny of its performance is of great assistance to, and much welcomed by, the committee. The committee acknowledges and congratulates the officers of the ACC throughout Australia on their efforts in combating serious and organised crime.<sup>69</sup>

Senator the Hon. Ian Macdonald  
Chair

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67 *Committee Hansard*, 30 March 2007, pp 11-12.

68 *Committee Hansard*, 30 March 2007, p.12.

69 *Committee Hansard*, 30 March 2007, p.3.

