

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
PUBLIC HEARING INTO THE ANNUAL REPORT 2006-07

Agency – Australian Crime Commission

Question No - 1

Mr Hayes MP asked the following question at the hearing on 9 April 2008

Question

Has the administrative auditing process that the Ombudsman's office conducts in relation to the process used by the examiners, changed as a consequence of the Brereton case?

Specifically, what process has been put in place?

Answer

The Ombudsman has no specific power to review the practices and procedures used by Examiners under either the ACC legislation or the *Ombudsman Act 1976*. The Ombudsman can, however, exercise an own motion power under the *Ombudsman Act 1976* to inspect and report on those practices and procedures.

The ACC has assisted the Ombudsman's proposed audit and inspection program by providing template documents such as pro forma Summonses and Notices.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
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Question No - 2

Mr Hayes MP asked the following question at the hearing on 9 April 2008

Question

Has the legislation enacted last year caused the ACC or the examiners to change the way they conduct that part of their business (recording their reasons)?

Answer

The *Australian Crime Commission Amendment Act (2007)* removed legal doubt about the time in which an Examiner is required to record reasons in writing for issuing a Summons for a witness to appear and give evidence at an Examination or a Notice to Produce Documents and Things.

The amending legislation merely provided legislative confirmation that an Examiner may record reasons in writing before, at the time of, or as soon as practicable after the issue of a Summons or Notice. The Examiners adhere to those requirements and will be consulting further with the Commonwealth Ombudsman to identify whether an appropriate regime for inspection of their records can be arranged.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
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Agency – Australian Crime Commission

Question No - 3

Senator Barnett asked the following question at the hearing on 9 April 2008

Question

Has there been a commensurate increase in the firearm seizures of the state jurisdictions while the ACC has varied its determination to focus on other priorities?

Answer

The ACC is not able to comment on the number of seizures by state jurisdictions. Consultation with state and territory law enforcement agencies has identified that in many cases the agencies cannot interrogate their exhibit property records to accurately identify the quantity of firearms seized during any given period.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
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Agency – Australian Crime Commission

Question No - 4

Senator Parry asked the following question at the hearing on 9 April 2008

Question

The Ombudsman would like to see covert human intelligence source disclosure in the applications or in the certificates. The ACC has a position not to disclose. This viewpoint has been conveyed to the Ombudsman – what was the Ombudsman's response?

Answer

The ACC notes that in a report in November 2006 a recommendation was made that applications and certificates for controlled operations should acknowledge and detail the involvement of covert human intelligence source in such operations.

The Ombudsman and the ACC have since agreed that reference to a covert human intelligence source by a code number in controlled operations applications, certificates and quarterly reports meets the requirements of the legislation and provides a comprehensive auditable trail whilst still protecting the identity of the covert human intelligence source.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
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Agency – Australian Crime Commission

Question No - 5

Senator Barnett asked the following question at the hearing on 9 April 2008

Question

Does the ACC provide the name of covert human sources in the report to the Ombudsman? To what extent does the ACC advise the Ombudsman who is involved in the controlled operation?

Answer

The ACC provides the Ombudsman's inspection staff with access to the ACC records relating to the application and certificates granted under Part 1AB of the *Crimes Act 1914*. These documents contain particulars of the targets of the controlled operation as well as law enforcement and other participants. The legislation permits, in both the certificates and reports to the Minister, for a code to be used to refer to person's identity in prescribed circumstances and unique codes are used by the ACC to refer to covert human sources.

As required in the legislation, the ACC holds separate internal records, accessible only by a restricted class of ACC personnel (ACC's covert unit and senior management), that contain the name of covert human sources and the code number which has been assigned.

Senator Parry asked the following question at the hearing on 9 April 2008

Question

What is the process for disclosing the name of a covert human source? Who does the ACC believe will have knowledge of the name of the covert human source? Is it the ACC's recommendation that the Ombudsman should not see the name of the covert human source?

Answer

There is no legal requirement under Part 1 AB of the *Crimes Act 1914* that requires the name of a covert human source to be disclosed in controlled operations application documents, certificates or reports.

The assignment of a unique code number fulfils statutory requirements and ensures that full details of the identity of covert human sources is limited to those directly involved in operational activity and need to be aware of that identity. The ACC is of the view that this approach, permitted under the legislation, ensures that the safety of the covert human source is not endangered whilst enabling the Ombudsman to perform its statutory functions.

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Agency – Australian Crime Commission

Question No - 6

Senator Parry asked the following question at the hearing on 9 April 2008

Question

Has the Ombudsman been provided with the standard operating procedure manual that has been developed particularly for controlled operations?

Answer

The ACC Standard Operating Procedures (SOPs) chapter dealing with controlled operations has been provided to the Commonwealth Ombudsman's staff when conducting their inspection of ACC controlled operations records. The current version of the SOPs is available for them, if requested, at inspections.

At each inspection ACC legal staff also provide a briefing in relation to any particular issues that have arisen during the inspection period, training and compliance monitoring activities, and outline any revisions to the SOPs. ACC legal staff also assist with appropriate explanatory background briefings as the inspection proceeds, and facilitate any follow-up responses.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
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Agency – Australian Crime Commission

Question No - 7

Senator Parry asked the following question at the hearing on 9 April 2008

Question

Could a copy of the standard operating procedure (for controlled operations) be provided to the committee in confidence?

Answer

The ACC has:-

- A short policy document which describes the ACC's policy towards the employment of controlled operation techniques, in support of its investigations, in a way that complies with the legislation in the various Australian jurisdictions and the principles set out by the High Court in *Ridgeway v R* (1995). This document also sets out roles and responsibilities and refers to the supporting SOPs, templates and forms.

This document is classified "In Confidence" and a copy can be provided to the PJC on a confidential basis.

- The ACC also has a more detailed Standard Operating Procedures (SOP) document that outlines the detailed procedures that support the implementation of the policy, including:-
 - specifics on how applications shall be made;
 - requirement for advice from ACC legal staff;
 - particular requirements for the involvement, in the controlled operation, of a person who is not a law enforcement officer;
 - how controlled operations shall be conducted;
 - review and reporting requirements; and
 - a checklist to accompany applications for consideration by the authorised officer.

It is updated regularly to reflect operational experience of the ACC and better practice issues identified in the course of Ombudsman's inspections and provides.

Production of this document (classified at the higher "Protected" level) publicly would be resisted by the ACC on public interest immunity grounds and noting the requirements of s 59(6A) and (6B) of the ACC Act, there might be difficulties arising for the ACC if a copy were provided to the PJC.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
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Agency – Australian Crime Commission

Question No - 8

Senator Barnett asked the following question at the hearing on 9 April 2008

Question

Could the ACC please provide a status report on each of the six issues that are currently under investigation – as outlined in appendix D of the Annual Report 2006-07?

Answer

	Complaint	Current position
1	The ACC received allegations that an ACC officer may be corrupt.	This matter is under investigation by the Australian Commission for Law Enforcement Integrity and another agency.
2	The ACC received an allegation that an investigator may have misled three agencies.	This matter was investigated internally and was not substantiated.
3	A person complained that an ACC investigator may have used false information to obtain telephone inception warrants.	This matter was referred to the Australian Commission for Law Enforcement Integrity for investigation and was found to be unsubstantiated.
4	A person complained that a Queensland Police Officer may have passed on information he obtained at an ACC examination	This matter has been referred to the Queensland Police Service. The matter is still under investigation.
5	A whistleblower made an allegation relating to human resource issues and contracting in the ACC	A breach of the Australian Public Service Code of Conduct was found on one matter. All other matters were unsubstantiated.
6	A person complained to the Commonwealth Ombudsman about employment related issues.	The Commonwealth Ombudsman referred the matter to the Australian Commission for Law enforcement Integrity. The matter is still under investigation.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
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Agency – Australian Crime Commission

Question No - 9

Senator Barnett asked the following question at the hearing on 9 April 2008

Question

The Ombudsman made reference in his report (TI) to three outstanding recommendations that he had also referred to in his previous report, in 2005-06. Have the recommendations been addressed?

Answer

Annex A of the Commonwealth Ombudsman's Annual Report to the Attorney-General – Inspection of records of the Australian Crime Commission for the period 1 April 2006 to 31 March 2007 pursuant to the Telecommunications (Interception and Access) Act 1979 outlines three recommendations for the inspection 1 April 2006 - 30 Sept 2006, and a further three for the inspection 1 Oct 2006 - 31 Mar 2007. All of the recommendations referred to in Annex A have been addressed by the ACC.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
PUBLIC HEARING INTO THE ANNUAL REPORT 2006-07

Agency – Australian Crime Commission

(Additional Question No - 10)

Additional questions to the public hearing for the PJC Inquiry into Annual Report 2006-07 held in Canberra on Wednesday 9 April 2008:

Question

What is the current status of the 'effectiveness and efficiency framework': is it operational and how is it functioning so far?

Answer

The ACC continues to develop its performance measurement effectiveness and efficiency framework to improve its ability to measure the economic and social benefits of its outputs relating to serious and organised crime.

An effectiveness and efficiency project was conducted in two phases in conjunction with Victoria Police and Macquarie University to enhance the framework's performance measures.

Phase one focused on the development of a return on investment (ROI) model to identify and measure the return from ACC law enforcement investigation activities in combating serious and organised crime. The ROI model has been applied to ACC operations completed in 2006-07 to yield ROI metrics. Work will commence shortly to assess operations completed in 2007-08. Establishment of desirable ROI ranges will be determined after evaluation of outcomes for similar operations. Non-financial indicators, which are lead indicators and/or predictive of high ROI results, are currently subject to further review and refinement.

Phase two of the project was recently completed and focused on capturing both the strategic impact and enhanced operational outcomes resulting from ACC intelligence products and disseminations. The project trialled a three tiered evaluation process and recommended further formalisation of the ACC's partner-client approach and the inclusion of 'quantity', 'impact' and 'cost per output' metrics for intelligence products. These recommendations are currently being considered.

The ACC is currently using ROI metrics for a range of purposes, including post operational assessments and to support applications for new operations. An ROI case study on the Gordian Taskforce was included in the Annual Report 2006-07 (at page 81).

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
PUBLIC HEARING INTO THE ANNUAL REPORT 2006-07

Agency – Australian Crime Commission

(Additional Question No - 11)

Additional questions to the public hearing for the PJC Inquiry into Annual Report 2006-07 held in Canberra on Wednesday 9 April 2008:

Question

What proportion of staff left the ACC in 2006-07?

Answer

On the 30 June 2006 ACC had a staff of 428 APS employees, by 30 June 2007 this was 555; an increase of 127 staff. During this period 61 APS staff ceased employment with the ACC.

(NB: This figure does not include secondments and task force members).

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
PUBLIC HEARING INTO THE ANNUAL REPORT 2006-07

Agency – Australian Crime Commission

(Additional Question No - 12)

Additional questions to the public hearing for the PJC Inquiry into Annual Report 2006-07 held in Canberra on Wednesday 9 April 2008:

Question

What is the ACC doing to encourage retention of staff and their expertise?

Answer

The ACC aims to maximise the potential of its people by:

- Integrating HR decisions into the strategic planning framework.
- Developing talent and leadership.
- Building a high performance culture.
- Creating agile, skilled and cooperative teams.
- Being ethical and accountable in everything we do.

These aims are designed to encourage retention of staff and their expertise. Some examples of how the ACC meets these aims include:

- ACC employees have access to a learning and development program that offers programs to foster leadership, high performance teams, career development, compliance and programs that promote the values of the ACC and the APS.
- The ACC is committed to offering Visiting Fellowships intended to reward staffing excellence through an award of opportunity, by providing financial support to enable ACC employees to maintain and enhance professional skills in line with achieving ACC business goals and to undertake the following knowledge-based learning and development activities.
- The ACC offers a variety of learning interventions for employees:- executive coaching, mentoring, Building Business Capability workshops for EL2 and above, a high profile leadership program (The Intelligent Leadership Program) which includes peer learning sets and placement in the Office of the CEO, paid access to tertiary study, exchange programs, fellowship programs, secondments/higher duties placements.
- The ACC manages access to learning through the Performance Development Scheme (PDS). This scheme assists managers and employees to identify development needs as a result of performance management discussions and business planning.
- The ACC PEOPLE Team continuously look at process improvement in terms of recruitment, induction, exit interviews and career development.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
PUBLIC HEARING INTO THE ANNUAL REPORT 2006-07

Agency – Australian Crime Commission

(Additional Question No - 13)

Additional questions to the public hearing for the PJC Inquiry into Annual Report 2006-07 held in Canberra on Wednesday 9 April 2008:

Question

Why have a number of ACC offices been relocated so shortly after having been established? What is the overall cost of these relocations? What impact will the relocations have on the ACC operational and administrative capabilities?

Answer

While it may seem as though these office have only been established since 1 January 2002, they were in fact occupied for a number of years prior to the formation of the ACC by its precursor agencies. The following information provides an analysis of each office.

Canberra

In the case of Canberra, the ACC had approximately 2,000m² subleased from the AFP. This consisted of 1,600m² initially sub-leased by the Australian Bureau of Criminal Intelligence prior to the formation of the ACC, with a further 400m² being added following the establishment of the ACC on 1 January 2002. At 1 January 2002, the number of staff in the Canberra office of the ACC was approximately 80 people. By 2006, when the decision was made to relocate, the ACC's staffing in Canberra had increased to approximately 190. The AFP had advised the ACC that it required additional space itself and they could not provide the ACC with any additional space at 68 Northbourne Avenue.

By 2006, the ACC had used every meeting and conference room as general office space and the computer room was totally inadequate for the amount of equipment which was located there. In addition, the existing fitout was approximately 7-8 years old and in need of a major refurbishment. Given the limited space, there was no likelihood that a major refurbishment could have been staged and it would have been a waste of money to refurbish premises which were at that stage totally inadequate.

Melbourne

The Melbourne office is similar to Canberra in that the National Crime Authority sub-leased approximately 2,900m² from the AFP at 383 Latrobe prior to the formation of the ACC. In 2007 when the decision was made to relocate to 452 Flinders Street, the ACC's present accommodation was extremely crowded. Projected growth within 12 months was expected to exceed capacity and the AFP had asked the ACC whether it was possible to relocate as the AFP needed the space to accommodate its own growth needs.

Melbourne, unlike Canberra, is an operational office, with significant allocations of space required for operational purposes including Examinations facilities, exhibits storage and various interview and electronic product monitoring rooms. The anticipated growth exacerbated an already very tight

accommodation environment and this coupled to a request from the AFP to consider relocating, provided the impetus for the ACC to negotiate additional accommodation elsewhere in Melbourne.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
PUBLIC HEARING INTO THE ANNUAL REPORT 2006-07

Agency – Australian Crime Commission

(Additional Question No - 14)

Additional questions to the public hearing for the PJC Inquiry into Annual Report 2006-07 held in Canberra on Wednesday 9 April 2008:

Question

Why is legal services expenditure not disclosed in the Annual Report 2006-07?

Answer

Paragraph 11.1 (ba) of the *Legal Services Directions 2005* issued by the Attorney-General under s55ZF of the *Judiciary Act 1903*, require Chief Executives of FMA agencies from March 2006 to ensure that agencies' legal services purchasing, including expenditure, is appropriately recorded and monitored and that, by 30 October each year, the agency makes publicly available records of the legal services expenditure for the previous financial year. This information is made available on the ACC's website at http://www.crimecommission.gov.au/content/about/ACC-Legal_Services_Expenditure-2006-07.pdf

In developing its annual report the ACC uses the instructions issued by the Department of the Prime Minister and Cabinet. These instructions do not require legal services expenditure to be reported separately unless they meet the requirements for reporting as a consultancy.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
PUBLIC HEARING INTO THE ANNUAL REPORT 2006-07

Agency – Australian Crime Commission

(Additional Question No - 15)

Additional questions to the public hearing for the PJC Inquiry into Annual Report 2006-07 held in Canberra on Wednesday 9 April 2008:

Question

What types of legal work are handled internally, and what types of legal work are handled externally?

Answer

The ACC employs practising lawyers to undertake specific legal functions required by the agency.

These functions include:

- providing high level legal advice to the ACC Senior Executive;
- providing specialised legal advice and skills in direct support to ACC operational multi-disciplinary teams;
- managing and coordinating litigation matters arising out of ACC operational matters;
- coordinating ACC contributions to national law reform;
- monitoring and improving policies and processes to ensure statutory compliance and best practices in relation to relevant investigative legislative regimes; and
- providing legal support for ACC operational governance forums and business improvement project teams.

Under s50 of its Act, the ACC has appointed an experienced and highly respected QC to assist with litigation strategy (including appearance work as appropriate) and provide advice on a range of complex legal issues. The ACC also engages other external Counsel in relation to specific litigation or legal advice matters (either by direct briefing in accordance with the ACC's approval to appear as solicitor on the record under the *Legal Services Directions* or by instructing AGS).

In terms of the engagement of external solicitors, the ACC also accesses the Attorney-General's Department legal services panel (currently AGS and Blake Dawson Waldron Solicitors) in compliance with Commonwealth procurement requirements. The Office of General Counsel in AGS has been engaged consistently to provide advice on high level statutory interpretation issues and matters relating to the ACC Board.

PARLIAMENTARY JOINT COMMITTEE ON THE ACC
PUBLIC HEARING INTO THE ANNUAL REPORT 2006-07

Agency – Australian Crime Commission

(Additional Question No - 16)

Additional questions to the public hearing for the PJC Inquiry into Annual Report 2006-07 held in Canberra on Wednesday 9 April 2008:

Question

What percentage of the ACC's budget is spent on legal services, and what proportion of legal services expenditure is due to litigation this past financial year?

Answer

The ACC's Annual Budget for 2006-07 was \$101,362,000. The ACC's total legal services expenditure for 2006-07 was \$2,828,739 (inclusive of internal legal expenditure). Therefore the percentage of the ACC's budget spent on legal services for the 2006-07 financial year was 2.79%.

During the 2006-07 financial year, the ACC spent \$858,641.18 on external legal advice and representation. The majority of this amount was incurred through the engagement of Counsel and external solicitors to defend the ACC in challenges in the Federal Court. The systems maintained by Finance do not distinguish between legal advice and litigation matters.

In accordance with the *Legal Services Directions 1995*, the ACC seeks to recover legal expenditure in litigation by enforcing cost orders, including recovery of costs in litigation of its in-house lawyers.