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**GOVERNMENT RESPONSE
PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN CRIME COMMISSION
EXAMINATION OF THE AUSTRALIAN CRIME COMMISSION ANNUAL
REPORT 2007-2008**

JUNE 2010

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Recommendation 1

2.56 The committee recommends that the Australian Government amend the *Australian Crime Commission Act 2002* to include a statutory definition of contempt, the statutory power of referral, plus ancillary provisions and/or expedite the judicial process for Australian Crime Commission contempt matters.

Accepted.

The Government has introduced legislative amendments into Parliament that will provide a contempt regime for the Australian Crime Commission (ACC) to deal with witnesses who refuse to cooperate with the ACC. These amendments are contained in the Crimes Legislation Amendment (Serious and Organised Crime) Bill No.2 2009.

As the ACC Act already contains offences for dealing with uncooperative witnesses, the regime will ensure that a person can be dealt with for contempt or charged with an offence but not both.

Recommendation 2

2.112 The committee recommends that the Australian Government expedite the process to include the Commissioner of Taxation as a full member of the Australian Crime Commission Board.

Accepted.

The ACC and the ACC Board support the appointment of the Commissioner of Taxation to the ACC Board.

The Government has introduced an amendment into Parliament to have the Commissioner of Taxation included as a member of the ACC Board. This amendment is contained in the Crimes Legislation Amendments (Serious and Organised Crime) Bill No.2 2009. Pending these legislative changes being passed by Parliament, the ACC Board has invited the Commissioner of Taxation to attend ACC Board meetings as an observer.

Recommendation 3

2.133 The committee recommends that the Australian Crime Commission and the Australian Commission for Law Enforcement Integrity develop a practice to ensure publication of corruption or possible corruption matters in an appendix of Australian Crime Commission annual reports is done in a manner which will neither compromise current investigations nor the reputations of individuals facing allegations.

Accepted.

The ACC and Australian Commission for Law Enforcement Integrity (ACLEI) will work together to develop an appropriate reporting template for the next annual report that neither compromises current investigations nor the reputation of individuals facing allegations.

Recommendation 4

2.145 The committee recommends that the Australian Government review existing arrangements for the suspension and dismissal of Commonwealth law enforcement agency employees believed on reasonable grounds to have engaged in serious misconduct or corruption, and that the Government take action as appropriate, bearing in mind the need to respect the rights of employees.

Accepted in principle.

The Government recognises the need for the Australian Federal Police (AFP) and the ACC to have appropriate arrangements in place to address serious misconduct or corruption.

The AFP has a strong regime under the *Australian Federal Police Act 1979* (AFP Act) and the *Australian Federal Police Regulations 1979* (AFP Regulations) to suspend and dismiss officers who the AFP Commissioner reasonably believes have engaged in serious misconduct or corruption.

Regulation 5 of the AFP Regulations allows the AFP Commissioner to suspend an AFP employee where he or she suspects on reasonable grounds that the employee has, or may have, engaged in corrupt conduct or conduct that contravenes the AFP professional standards.

Under s 28 of the AFP Act, the AFP Commissioner may at any time, by notice in writing, terminate the employment of an AFP employee. Where the termination was made because the AFP Commissioner believed on reasonable grounds that the employee's behaviour or conduct constituted serious misconduct or corruption, the AFP Commissioner may make a declaration to this effect (s 40J). Where a declaration is made, it is likely that the decision to terminate will not be subject to workplace relations laws but may be judicially reviewed.

The Government is confident that these arrangements are generally appropriate and well adapted to the needs of the AFP and will consider any amendments should the need arise.

Employees of the ACC are engaged under the *Public Service Act 1999* (PS Act) and are required to uphold the Australian Public Service Values and the Code of Conduct and, under section 15 to the Act, the agency head may impose sanctions on an employee who is found to have breached the Code of Conduct.

The power of the Chief Executive Officer (CEO) of the ACC to suspend and dismiss employees for suspected misconduct or corruption arises from his or her status as an 'Agency Head' for the purposes of the PS Act and the *Public Service Regulations 1999* (PS Regulations). The ACC operates under the same legislative regime as the majority of the public service.

The CEO may suspend an employee in compliance with regulation 3.10 of the PS Regulations (s 28 PS Act). Suspension (with or without pay) is possible where the Agency Head believes on reasonable grounds that:

- the employee has, or may have, breached the Code of Conduct, and
- the employee's suspension is in the public's, or the Agency's, interest.

The CEO may at any time, by notice in writing, terminate the employment of an APS employee in the ACC (PS Act s29). Termination of employment is subject to rules and entitlements laid out in the Fair Work Act 2009. A notice of termination for an ongoing APS employee must specify the ground or grounds that are relied on for the termination. The grounds include non-performance, or unsatisfactory performance, of duties; breach of the Code of Conduct and any other ground prescribed by the regulations.

The regulations may prescribe grounds or procedures applicable to the termination of the engagement of non-ongoing APS employees but this does not, by implication, limit the grounds for termination for a non-ongoing APS employee.

The Attorney-General's Department has reviewed existing arrangements for the suspension and dismissal of ACC employees believed, on reasonable grounds, to have engaged in serious misconduct or corruption and is developing options to strengthen the powers of the CEO of the ACC. This review has involved extensive consultations, taking into account the views of the Committee.