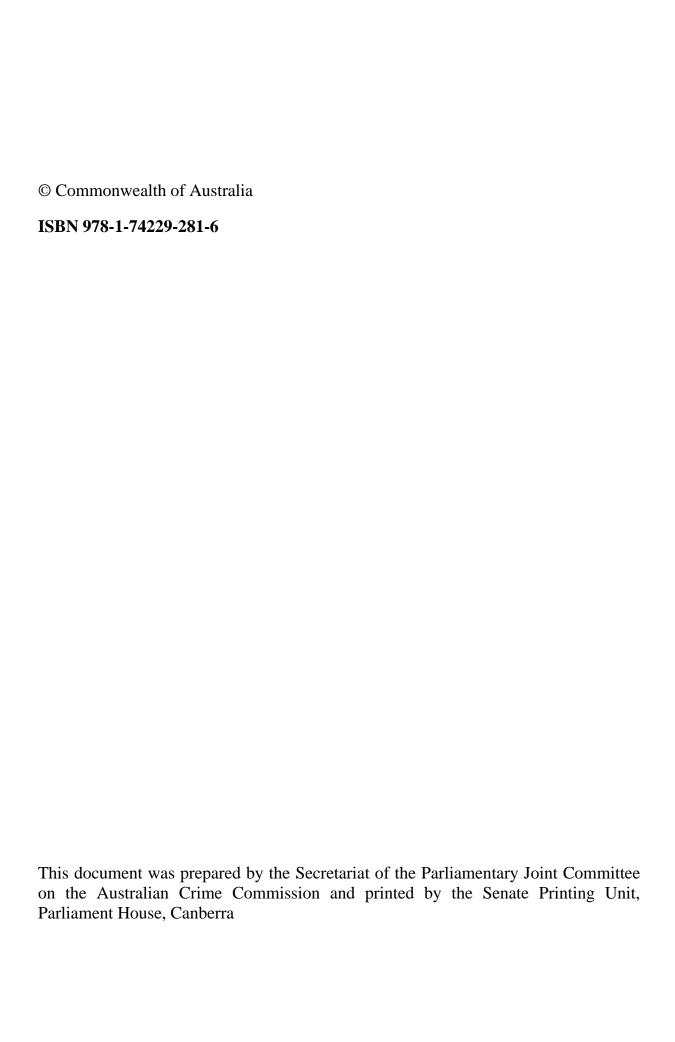


Parliamentary Joint Committee on the Australian Crime Commission

Examination of the Australian Crime Commission Annual Report 2008–09

March 2010



The Committee

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Chapter 1

Introduction

The committee's duty to examine reports

- 1.1 The Parliamentary Joint Committee on the Australian Crime Commission (the committee) has a statutory duty under paragraph 55(1)(c) of the *Australian Crime Commission Act 2002* (the Act) to examine each annual report of the Australian Crime Commission (ACC), and report to the Parliament on any matter appearing in, or arising out of, any such annual report.
- 1.2 This is part of the committee's wider duties under paragraphs 55(1)(a) and (b) of the Act to monitor, review and report on the ACC's performance of its statutory functions.

Report under consideration

1.3 The ACC's Annual Report 2008-09 (the Report) was presented to the Minister for Home Affairs, the Hon. Brendan O'Connor MP, on 12 November 2009, and was tabled in both the Senate and House of Representatives on 25 November 2009.

Inquiry into the Report

1.4 In examining the Report, the committee held a public hearing at Parliament House, Canberra on 22 February 2010. The witnesses who appeared before the committee, the submissions received and answers to questions on notice are listed in Appendix 2.

Acknowledgments

1.5 The committee acknowledges the cooperation of the ACC Chief Executive Officer, Mr John Lawler APM, as well as other officers of the ACC. The ACC regularly provides the committee with written reports and briefings on its operation, and is always willing to assist the committee with its various inquiries. The committee is pleased that the ACC continues to be frank and forthcoming with the information it provides to the committee.

Chapter 2

Australian Crime Commission Annual Report 2008–09

- 2.1 The Australian Crime Commission (ACC) is Australia's national criminal intelligence and investigation agency. Its work involves the collection and dissemination of criminal intelligence, and undertaking criminal investigations with and for its partner agencies. At the committee's hearing on 22 February 2010, the Chief Executive Officer of the ACC, Mr John Lawler, described the 2008–09 year as being one of transition, stabilisation and consolidation for his organisation.¹
- 2.2 The ACC is able to utilise special coercive powers to collect information that is not available through traditional policing methods. These powers, the use of which must be approved by the ACC Board, enable the ACC's Examiners to summons witnesses, compel witnesses to give evidence and require people to provide documents or other things.

Annual reporting and compliance

- 2.3 Annual reporting by government agencies is based on an 'outcome and output' structure. The ACC's outcome and output framework is set out in the Attorney-General's Portfolio Budget Statements.
- 2.4 The ACC's Annual Report is required to fulfil a number of statutory requirements. The Report's compliance with these requirements is outlined in Appendix 1.
- 2.5 The ACC's Outcome for 2008–09 was the same as that used in previous years: Enhanced Australian Law Enforcement Capacity. This Outcome was supported by two outputs:
- Criminal intelligence services, and
- Investigation and intelligence operations into federally relevant criminal activity.

Changes in 2009–10

2.6 The Report noted that the Outcome has changed for the 2009–10 year, in response to the evolving strategic approach to tackling serious and organised crime. In the current reporting period, the Outcome against which the ACC will be assessed will be:

¹ Mr John Lawler, *committee hansard*, 22 February 2010, p. 1.

Reduction in the threat and impact of serious and organised crime, through analysis of and operations against national criminal activity, for governments, law enforcement agencies and private sector organisations.

2.7 Rather than being supported by outputs as has been the case to now, the new outcome will be supported by program areas which are identical in substance to the outputs that preceded them. As was the case previously, each program area will be constituted by a number of Key Performance Indicators (KPIs).

Performance: Output 1.1–Criminal Intelligence Services

- 2.8 The Key Performance Indicators for output 1.1 are:
 - provision and maintenance of effective and efficient criminal intelligence systems;
 - quality and value of strategic criminal intelligence assessments, threat assessments and other products and services;
 - provision of timely, high quality advice to the ACC Board on national criminal intelligence priorities; and
 - number and value of disseminations to law enforcement agencies and other relevant agencies.
- 2.9 The committee was particularly interested in the ACC's performance in maintaining the quality of the ACC's databases and in the number, quality and value of the ACC's assessments and other intelligence products.

Database quality

- 2.10 One of the key goals for the ACC, outlined in the ACC Strategic Plan 2008–11, is to maintain a leading edge capability in national criminal intelligence and information systems. To this end the ACC provides law enforcement with connectivity to a number of databases, including the Australian Criminal Intelligence Database (ACID), the Australian Law Enforcement Intelligence Net (ALEIN), the National Clandestine Laboratory Database (NCLD) and the Violent Crimes Linkage Analysis System (ViCLAS).
- 2.11 The Report said that 2008–09 had been a period of consolidation for ACID/ALEIN. This followed the implementation of new text and network analysis tools and enhancements to search and document upload functionality in June 2007 and July 2008. During 2008–09 the ACC had:
- focussed on improving the quality of user interaction with the system through increased training opportunities and better communication with users about its business benefits; and
- worked closely with ACID stakeholders, as well as prospective user agencies, to increase the quantity of criminal information and intelligence being

transferred to ACID, with a view to increasing the frequency of use during 2009–10.

Australian Law Enforcement Intelligence Network

2.12 ALEIN is a secure national intranet used by national police services, the New Zealand Police, and a number of other government and law enforcement agencies. The use of ALEIN as a secure means of sharing criminal intelligence between organisations stayed roughly stable during 2008–09, and an apparently dramatic decrease in the number of documents downloaded through the system is perhaps explained by the increased availability of information through other ACC systems. In addition, the hours of downtime, in which ALEIN was not available to users, stayed stable during the year.²

Australian Criminal Intelligence Database

2.13 ACID is a secure, centralised national repository for criminal intelligence which provides 22 Commonwealth, state and territory law enforcement agencies and other regulatory authorities with the ability to securely share, collate and analyse criminal information and intelligence nationally. The ACC considers that:

Information and intelligence hosted by ACID is contextually rich and offers analysts and investigators insights on a wide variety of criminal themes, concepts and issues. ACID provides law enforcement with functionality and tools to assist with the identification, analysis and sharing of critical pieces of information including new criminal trends, emerging methodologies, linkages between crime groups and crossborder criminal activities.³

2.14 Usage of the ACID system, after one-off adjustments, was fairly stable, although the number of searches undertaken fell from approximately 2.1 million, to only 665 000. The ACC explains this by reference to changed search methodologies. The ACC also reported that training courses for ACID and ALEIN had been reviewed through the year, and that work was being undertaken to increase awareness among users of the features incorporated during the prior reporting period.

National Clandestine Laboratory Database

2.15 This database was introduced during 2008–09 to provide a national repository of data and intelligence on seized clandestine laboratories for use by Commonwealth, state and territory law enforcement. This system allows police and forensic officers to record data about seized clandestine laboratories at the crime scene—including information on laboratory locations, persons engaged in the illicit manufacture, safety,

3 Annual Report, p. 29.

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² Annual Report, p. 29.

⁴ Annual Report, p. 30.

types of laboratory reactions being used, methodology, exhibit details, on-site reports and photographs.⁵

2.16 A total of 145 seizure reports were uploaded during the reporting period.⁶

Suspected Financial Crime Intelligence Network

- 2.17 The Suspected Financial Crime Intelligence Network (SFCIN) was established to help collect and exchange suspected fraud data from the private sector through the ongoing use of ACC coercive powers and consultancy agreements. The aim of the SFCIN project is to enhance law enforcement information holdings on suspected financial crime perpetrators and to provide a tool for private sector organisations to improve their fraud detection capabilities.
- 2.18 In 2008–09 approximately 35 000 new records of suspect fraud data were collected from the private sector, adding to a total of 150 000 collected since 2004.⁷

Australian Identity Protection Register

- 2.19 The Australian Identity Protection Register (AIPR) was launched in 2002 to address a shortfall in the intelligence process relating to fraudulent identities. AIPR captures this intelligence from participating law enforcement, Commonwealth and state government agencies and facilitates exchange of this intelligence on a national basis.
- 2.20 At 30 June 2009, AIPR listed over 5000 fraudulent identities. During the reporting period, 138 fraudulent identities were added.

Number, quality and value of assessments and other products

2.21 Mr Lawler made note of the difficulty in accurately assessing the benefit of the ACC's work:

One of the challenges that I spoke about for the ACC is to actually try and track the benefit of that intelligence to the agency. Sometimes it is very easy if the intelligence is provided on one day and actioned on the next, but where it might take months or years or where it might form part of a broader picture—it might be the last piece in the jigsaw puzzle—or it might provide opportunity for police to take a statement from somebody that they did not previously know was involved in a particular matter, it can all go to very positive outcomes that are not necessarily tabulated by arrests or seizures or charges laid.⁸

6 Annual Report, p. 31.

7 Annual Report, p. 31.

8 Mr John Lawler, *committee hansard*, 22 February 2010, p. 12.

⁵ Annual Report, p. 30.

- 2.22 Challenges in assessment notwithstanding, a range of intelligence activities are undertaken by the ACC to support its provision of criminal intelligence services. Intelligence products are tailored to meet the different needs of each client, and many products are designed to provide decision makers with context to understand emerging threats. Other products are designed to satisfy immediate operational imperatives or focus on projected criminal activity over the short term. Intelligence products prepared during the reporting period covered topics such as:
- criminality in Australia's aviation industry;
- substance use in remote Aboriginal and Torres Strait Islander communities;
- illicit air cargo importation methodologies;
- violence and child abuse in remote Indigenous communities;
- cocaine imports into Australia by small marine craft;
- outlaw motorcycle gang activities; and
- diversion of precursors from pharmaceutical waste destruction facilities and the manufacture of these precursors.
- 2.23 During 2008–09 the ACC made 5962 disseminations of operational intelligence and intelligence products to partner agencies, an increase of 46 per cent in the number of disseminations from 2007–08 (4090). While there were more disseminations of intelligence products made during 2008–09 than 2007–08, the main reason given for the rise was a significant increase in disseminations of operational intelligence. ¹⁰
- 2.24 Of note to the committee was the ACC's reporting on partner agency feedback during 2008–09 on the quality and usefulness of ACC strategic intelligence products Respondents ranked ACC intelligence products out of a possible 5, as follows:
- Quality–4
- Clarity–4.1
- enhancing understanding–3.8, and
- relevance–3.5.
- 2.25 This resulted in an overall rank of 3.78. This is a slight decrease when compared to 2007–08 when partners rated strategic intelligence products a combined 3.86.¹¹

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⁹ Dissemination refers to the number of instances operational intelligence and intelligence products are shared by the ACC with law enforcement partners.

¹⁰ Annual Report, p. 38.

Annual Report, p. 32. The ACC noted that feedback evaluations in 2008–09 were less than half those received the previous year.

- 2.26 The ACC also reports to its Board on progress against the National Criminal Intelligence Priorities (NCIPs), which are considered by the Board to be of high priority.
- 2.27 Priorities for 2008–09 were set following consultation between the Board and partner agencies, and efforts were made during the year to better report to the Board on the alignment between the activities of the ACC and the NCIPs, as measured by the number of disseminations which address one or more NCIPs. The Report states:

Board member agencies and their nominated contact officers were surveyed in relation to whether they placed increased value on ACC advice regarding NCIPs. Responses from members indicated that the advice provided by the ACC in relation to the establishment of NCIPs was valued and that the agency's strategic intelligence products aligned with Board endorsed NCIPs. ¹²

Performance: Output 1.2–Investigation and intelligence operations into federally relevant criminal activity

- 2.28 The Key Performance Indicators for output 1.2 are:
 - effective collaboration with partner law enforcement agencies to progress criminal intelligence and investigative priorities;
 - effective use of coercive powers to support criminal intelligence and investigative objectives;
 - disruption of criminal syndicates;
 - effective and efficient delivery of the ACC Board-approved criminal intelligence and investigative priorities;
 - number and value of disseminations to law enforcement and other relevant agencies;
 - number and significance of arrests and charges; and
 - value of proceeds of crime.
- 2.29 The committee was particularly interested in the first 3 of these KPIs.

Collaboration with partner law enforcement agencies

- 2.30 The ACC makes the point that everything it does is either for, or in collaboration with, partner agencies.¹³ To this end, the quality of its collaboration with these agencies is critical.
- 2.31 Mr Lawler described the usefulness of this core function as follows:

13 Annual Report, p. 45.

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¹² Annual Report, p. 38.

Our intelligence and investigative capacity continues to underpin investigation and intelligence operations. We provide unique collection, analysis and dissemination capabilities as part of our focus on the value-add we offer our partners...Our partners' expectations that the ACC focuses on the highly sophisticated, entrenched and resilient serious and organised criminals allows us to complement and not compete with our partners. This is a niche where we can bring our specialist capabilities to bear by delivering breakthrough intelligence.¹⁴

- 2.32 Collaborative activity included information sharing and the conduct of joint operations, with 88 per cent of ACC operations conducted in partnership with other agencies. In turn, the ACC progresses intelligence collection and investigations into nationally significant crime types, provides access to coercive powers and disseminates strategic and operational intelligence.
- 2.33 Partner agencies provide information and commit resources to the ACC. At 30 June 2009, 50 officers were funded by jurisdictions, with 26 of those officers being members of task forces. This represents a change from 2007–08, when a total of 56 officers were funded by other jurisdictions.¹⁵
- 2.34 In addition to formal arrangements outlined above, state, territory and Commonwealth law enforcement support of ACC operations as they come to resolution. While ACC systems do not quantify these arrangements, analysis indicates that in excess of 400 law enforcement officers were periodically involved in ACC operations over the course of 2008–09.
- 2.35 The ACC observes in its report that this relationship enhances law enforcement efforts and supports a more effective national law enforcement response to serious and organised criminal activities.¹⁶

Use of coercive powers to support objectives

- 2.36 One of the distinctive characteristics of the ACC is its coercive powers, which are a key component in its work against serious and organised crime. The ACC issued 627 summonses to attend an examination, conducted 527 examinations and used its special powers to issue notices for the production of documents under sections 20 and 29 of the ACC Act on 526 occasions during the reporting period.¹⁷
- 2.37 The report goes on to discuss the fact that charges may be laid against individuals who refuse to provide information under examination, fail to attend, or provide false or misleading information. The number of such charges increased in the

16 Annual Report, p. 45.

¹⁴ Mr John Lawler, *committee hansard*, 22 February 2010, p. 2.

¹⁵ Annual Report, p. 45.

¹⁷ Annual Report, p. 45.

reporting period, primarily as a result of offences by members of outlaw motor cycle gangs and their associates.¹⁸

Disruption of criminal syndicates

- 2.38 Operational activity to disrupt criminal entities may include: significant arrests, prosecutions, seizure of illegal drugs and firearms or proceeds of crime action, but may also occur by undermining criminal businesses via the exposure of their methodologies, releasing intelligence alerts and warnings on their activities and reducing their ability to operate in the criminal markets of their choice.
- 2.39 In the reporting period, the ACC disrupted 25 serious and organised criminal entities, comprising ten individuals, six networks and nine syndicates. This compares to 30 criminal entities disrupted in 2007–08.
- 2.40 Over half of disruptions in 2008–09 where assessed by the ACC to have had a highly disruptive impact to the core business, financial or personnel capabilities of the criminal entities concerned. This compares to 40 per cent of the 30 disruptions in 2007–08.

People

- 2.41 The ACC APS workforce reduced from 573 in 2007–08 to 518 at 30 June 2009. The number of officers seconded from partner agencies also reduced by 37 over the same period.
- 2.42 The reduction in staff numbers was a matter of some concern to the committee, to which it was reported that reducing the number of contractors was a particular focus, which also increasing voluntary redundancies, managing attrition and redeploying staff against other outputs.¹⁹ However, the committee was somewhat reassured by Mr Lawler's advice that, where resources become available, they are being directed at investigation capacity:
 - ...I can tell the committee that the ACC, through program savings, particularly around accommodation and travel, has been enabled to be in a position to recruit more investigators as we move forward in the 2009–10 financial year. I think we previously briefed the committee that it looked like we would have to have a further reduction of staff somewhere in the order of 35 in 2009–10. The supplier savings we have been able to make have meant that that has now not needed to occur and, indeed, there may be some capacity—we think in the order of 20 to 30 staff—that can be brought onto the ACC's payroll, and we are looking to focus that at the operational front end, particularly the investigation capacity.²⁰

19 Annual Report, p. 80.

20 Mr John Lawler, *committee hansard*, 22 February 2010, p. 4.

¹⁸ Annual Report, p. 47.

2.43 Mr Lawler made note of the numerous employment frameworks through which the ACC is staffed. Mr Lawler noted that:

...it is important for the committee to note that in actual fact the staff that we have, including the secondees, fall within five separate employment frameworks and it is useful to take the committee through those, from APS employees through to contractors through to secondees that are actually seconded under the APS Act or, indeed, under the ACC Act, they being those funded by the ACC. We have also got another group that are seconded but funded by jurisdiction, then we have got another group that work with the ACC as members of joint operations that are funded by jurisdictions, and an additional group that are actually brought into our operations when we move to resolution. So it is quite a complicated resourcing and secondment arrangement and one that moves and shifts, depending on where the operational focus is in a particular jurisdiction or in relation to a particular crime type.²¹

2.44 The ACC was not required to give notice under section 68 of the *Occupational Health and Safety Act 1991* as there were no reportable accidents or dangerous occurrences in the 2008–09 period. Similarly, there were no directions of notification under sections 29, 45, 46 or 47 of that Act during the reporting period.²² This appears to partly reflect the success of the ACCtive Program, through which employees are encouraged, among other things, to make healthy lifestyle choices.

Accountability and management

- 2.45 The ACC has a number of internal and external governance and accountability mechanisms. These mechanisms provide oversight of the ACC's operations, and assist the ACC to achieve its outcomes. There are eight bodies with such responsibility, including:
 - the Minister for Home Affairs (the Minister);
 - the Inter-governmental Committee on the Australian Crime Commission;
 - the ACC Board;
 - the Parliamentary Joint Committee on the Australian Crime Commission (the committee);
 - the Commonwealth Ombudsman (the Ombudsman);
 - the Australian Commission for Law Enforcement Integrity (ACLEI);
 - judicial comment and review; and
 - the Australian National Audit Office (ANAO).

²¹ Mr John Lawler, *committee hansard*, 22 February 2010, p. 3.

Annual Report, p. 85.

2.46 While the ACC Act broadly sets out the functions of the ACC, the ACC Strategic Plan 2008–11 provides more detail about the long-term goals of the agency, how the ACC will achieve those goals and how the success of the strategies will be measured. The strategic plan is based on the ACC's outcome and outputs framework for 2008–09 and ensures that the efforts and resources of the ACC are directed towards achieving its purpose, to 'unite the fight against nationally significant crime'.²³

New operating model

- 2.47 The ACC's strategic plan and business plan will be reviewed during 2009–10 as part of the implementation of the new operating model for the agency.
- 2.48 According to the ACC, the new model:

...will assist the ACC in moving towards a more sustainable future and improve the ACC's capability, understanding of and responsiveness to stakeholders' needs and expectations. The ACC will be able to provide assurance that law enforcement and other government agencies have the necessary information to combat organised crime and will ultimately deliver a safer community as a result of well informed government and national, coordinated activities. This new model is designed to make the agency more agile in adapting to emerging threats and the needs of our partners.²⁴

Internal governance arrangements

- 2.49 The Report outlines a number of internal groups and committees concerned with internal governance of the ACC. It also sets out some of the internal policies and arrangements that regulate the ACC's internal governance, including: risk management strategies; professional standards and integrit; and internal complaints handling procedures.
- 2.50 During 2008–09 the ACC undertook a number of initiatives to support and develop its governance framework. These include the development of an Ethics Awareness training program to improve staff education and understanding of the Australian Public Service Values and Code of Conduct as well as external audits and reviews of some of the agency's key functions.
- 2.51 The committee sought feedback from the ACC about the implementation of its previous recommendations, one of which related to powers of dismissal, and noted Mr Lawler's comment, in relation to the need for a power to dismiss a person in relation to whom he has lost confidence, that:

It is still my view, notwithstanding extensive dialogue with the Attorney-General's Department and correspondence with the Australian Public

Annual Report, p. 98.

Annual Report, p. 90.

Service Commissioner, that, given the special powers the ACC has, the particular trusted position its employees operate in and the very sensitive nature of the intelligence that it holds on Australians, the expectation by the community of those staff is higher than in other areas or walks or life. It is my view, my strong view—and we see cases of it even of recent times—that the current regime does not provide sufficient power to remove people from the organisation who have engaged in misconduct but not to the level where one can mount a criminal case. This may be in a multiple context, where the culmination of the offending in isolation may not be sufficient, but the combination thereto would give one a very serious cause for concern as to whether that person should occupy a position within the Australian Crime Commission...²⁵

2.52 Other issues covered in this part of the report include: internal communications and governance; information and communications management; professional standards and complaints procedures; auditing and risk management; internal fraud; records management; notable judicial decisions and their impact on operations; and further details on scrutiny from external sources.

Financial performance

2.53 Part 5 of the Report provides details of the ACC's financial performance during 2008–09. The ACC's financial result for 2008–09 was a surplus of \$8.176 million. The ACC received an unqualified audit opinion from the Australian National Audit Office. The ACC's appropriation for 2008–09 was \$97.856 million which included tied funding of \$26.65 million.²⁶

Budget deficit and efficiency dividend

2.54 In its previous report, the committee expressed concern at the impact of budget cuts on the work of the ACC. The committee took the view that:

Staff reductions and decreases in operational costs will inevitably lead to less work being done to combat serious and organised crime, either through the ACC undertaking fewer investigations and operations, or through investigations not being as thorough, well-resourced or expedient.²⁷

2.55 As noted in a previous part of this report, the ACC's staff reduced markedly from 573 to 518 over the reporting period. This trend was evident from 2007–08 and

27 PJC ACC, Report on the ACC Annual Report 2007–08, at 2.81.

Mr John Lawler, *committee hansard*, 22 February 2010, p. 12. The committee's recommendation in its report on the 2007–08 Annual Report was 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.

Annual Report, p. 116.

has accelerated in 2008–09. During 2007–08 there was a net decrease in ACC staff of 25 staff, predominantly those employed on a contract basis.²⁸ The total number of ACC staff declined from 666 to 641 over that period.

2.56 The committee urges the ACC to keep it informed of the impact of budget cuts on the ACC's capacity to deliver its outputs, and to voice any legitimate requests for additional funding in order to combat serious and organised crime.

Conclusion

- 2.57 The committee has reviewed the ACC's activities, as reported in its 2007-08 Annual Report, against the performance framework of outputs and outcomes, and compared this with the agency's performance over recent years.
- 2.58 The committee has found that the ACC appears to be working efficiently and effectively, but is concerned to ensure that reduced funding and staff numbers do not adversely affect the agency's operations.
- 2.59 The CEO, Mr John Lawler, has demonstrated his commitment, and that of the ACC, to the enhancement of the capacity of Australian law enforcement to combat serious and organised crime.
- 2.60 The ACC has extensive accountability frameworks, and these appear to work well. The committee is particularly impressed with Mr Lawler's commitment to the agency's professional standards and integrity.
- 2.61 The committee also acknowledges the work of the staff of the ACC, who have continued to be helpful to the committee and remained committed to their important work. During 2007–08, the ACC's officers and partner agencies have produced some impressive results, and have been effective in uniting national efforts against serious and organised crime. The committee congratulates the ACC's officers on their achievements.
- 2.62 Finally, the committee would like the ACC to encourage, and increase, secondments from state and territory police forces. Mr Lawler cited effective collaboration as an important aspect of the ACC's success²⁹, and the committee believes secondments are to be encouraged on the basis that they provide enhanced intelligence sharing and jurisdictional cooperation.

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The total number of staff employed on a permanent basis increased from 555 to 573, while the number of contractors decreased from 111 to 68. Australian Crime Commission, *Annual Report*, 2007–08, p. 97.

²⁹ Chief Executive Officer Overview, Annual Report, p. 6.

Senator Stephen Hutchins Chair

Appendix 1

Public Hearing

Monday, 22 February 2010 - Canberra

Australian Crime Commission

Mr John Lawler, Chief Executive Officer

Ms Karen Harfield, Executive Director, Performance and Stakeholder Relations

Ms Jane Bailey, Executive Director, People and Business Support

Mr Michael Outram, Executive Director, Serious and Organised Crime

Answers to questions taken on notice

Australian Crime Commission, public hearing, 22 February 2010, (Received 17 March 2010)