

**Parliamentary Joint Committee on the
National Crime Authority**

**Inquiry Into The Australian Crime
Commission Establishment Bill 2002**

Submission No:16

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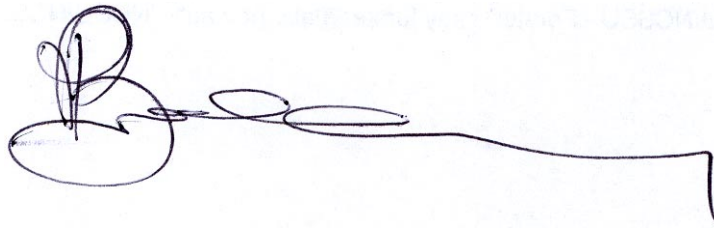
Ms Maureen Weeks
Committee Secretary
Joint Committee on the National Crime Authority
The Senate
Parliament House
CANBERRA ACT 2600

Dear Ms Weeks

ACC ESTABLISHMENT BILL

I refer to your request for a submission on the Bill and now enclose the Authority's submission on key components of the Bill.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a long, horizontal, slightly wavy line that ends in a small vertical tick.

Phillip Bradley
A/Chairman

NATIONAL CRIME AUTHORITY

SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY ON THE AUSTRALIAN CRIME COMMISSION ESTABLISHMENT BILL 2002

The ACC is being established to replace the NCA, the ABCI and OSCA.

Essentially the NCA has an investigation and intelligence role. The ABCI is purely intelligence and OSCA is a provider of advice on what is 'over the horizon'.

The ACC Bill gives greater emphasis to intelligence. The NCA agrees with this emphasis as agencies have not realised their full potential in the intelligence field in the past. The combination of the 3 agencies and the constitution of the Board should achieve better intelligence outcomes through greater collaboration and co-ordination.

The ACC Bill also vests in a new body, the Board, the power to authorise the use of coercive powers. Previously this power was vested in Ministers which was seen as inappropriate and cumbersome. If the authorisation process is made more efficient by this change, it will be a welcome outcome.

In the view of the NCA there is not much else that needs change. However, there are a number of other changes introduced by the ACC Bill. Some of these are inappropriate.

The ACC has similar functions to the NCA. The ACC mainly acts through operations/investigations authorised by the Board with or without coercive powers. It is not clear that the ACC can act outside the operations/investigations framework though there is an incidental power.

The 'head' of operations investigations may be independent of the ACC. This 'head' need not be an officer of the ACC and reports directly to the Board which is an entity separate and distinct from the ACC. This assumes a degree of involvement by the 13 member Board in the management of operations/investigations which is not consistent with usual corporate practices. It is certainly not consistent with the conduct of similar bodies in the law enforcement context. Commonwealth examples include the Senior Officers' Group and SCOCCI before it. It is not clear whether the 'head' is to be a disciplinary head, co-ordinator, manager, supervisor or simple reporter.

The partnership model which has been the most successful structural arrangement in the investigation of organised crime and was an underlying principle of the ACC, is not addressed. Indeed the concept of a 'head' of an operation/investigation is not consistent with partnership.

The CEO does not carry out the 'core' business of the ACC which distinguishes it from police agencies - the exercise of coercive powers. The CEO is reduced to a co-ordinator, allocator of examiners or list manager.

This organisational arrangement lacks structural integrity. There are no clear lines of supervision and no identifiable positions which can be held accountable for outcomes.

If it is the Board which decides the matters to be the subject of operations/investigations and which of those should have recourse to coercive powers, it is submitted that these authorisations should be expressed in general terms such as the 'investigation of trafficking in handguns'. How that mandate is implemented (executed) should be up to the corporate executive. The CEO should determine the type and quantity of resources to be applied and be answerable to the Board for the outcome. If the CEO is to rely upon the discretion of an 'independent' examiner to execute the authority, he cannot be called to account for even total inaction. The Board cannot hold the independent examiner accountable in relation to the exercise of the distinguishing powers. It cannot even hold the 'head' accountable.

In our submission the CEO should exercise the coercive powers 'through' the examiner who would be independent as to the manner of the exercise. If this proposal were adopted, the CEO would need to be specially qualified beyond a 'strong law enforcement background' as presently proposed. This would also help to deal with the perception arising from a police dominated Board conferring powers on police operations whose head could seek the assistance of an examiner independently of the CEO.

Under the structure contained in the Bill, the functions of the ACC, as to core work, are carried out by independent entities which have discretion as to how the work is carried out and what is done with the outputs – such as intelligence product. In this context it should be noted also that the Board and its Chair are independent of the ACC and can provide information to the IGC and the PJC. The Act provides no guidance to those who possess the real authority. Is the examiner to act on the advice of the 'head' of an operation as to when coercive powers should be exercised?

The independence of the examiner from the investigation process can be distinguished from the role of the 'Member' under the NCA Act. There the Member (who is required to have special qualifications) has knowledge and understanding of the investigation. The key decisions as to the direction of the investigation and, in particular, the use of the coercive powers, are made in the context of that knowledge and understanding drawn from the full resources of the Authority which need not be at the disposal of an independent examiner.

The lack of criteria upon which to base the exercise of coercive powers is important in the context of the expanded intelligence role for which coercive powers are now expressly available.

In this context it should be noted that the ACC appears to have no specific power to seek intelligence which might ground advice to the Board as to national intelligence priorities. It seems to be reduced to a passive role of collector unless specifically authorised to conduct an intelligence operation. It may therefore have no scope to validate propositions which might influence Board authorisations.