

Chapter 1

Introduction

The Committee

1.1 The Parliamentary Joint Committee (PJC) on the Australian Crime Commission (ACC) is established under section 53 of the *Australian Crime Commission Act 2002*. The duties of the Committee are set out in section 55:

- (1) The duties of the Committee are:
 - (a) to monitor and to review the performance by the ACC of its functions;
 - (b) to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the ACC or connected with the performance of its functions to which, in the opinion of the Committee, the attention of the Parliament should be directed;
 - (c) to examine each annual report on the ACC and report to the Parliament on any matter appearing in, or arising out of, any such annual report;
 - (d) to examine trends and changes in criminal activities, practices and methods and report to both Houses of the Parliament any change which the Committee thinks desirable to the functions, structure, powers and procedures of the ACC; and
 - (e) to inquire into any question in connection with its duties which is referred to it by either House of the Parliament, and to report to that House upon that question.
- (2) Nothing in this Part authorises the Committee:
 - (a) to undertake an intelligence operation or to investigate a matter relating to a relevant criminal activity; or
 - (b) to reconsider the findings of the ACC in relation to a particular ACC operation/investigation.
- (3) To avoid doubt, the Committee may examine, and report to both houses of the Parliament on, information given to it under section 59.

Terms of reference

1.2 On 20 July 2005, the Committee adopted the following terms of reference:

Pursuant to Section 61A, the Committee will review the operation of the Australian Crime Commission Act 2002, with particular reference to:

1. the effectiveness of the investigative, management and accountability structures established under the Act, including:
 - a) the Australian Crime Commission;

- b) the Chief Executive Officer;
 - c) the Examiners;
 - d) the Australian Crime Commission Board;
 - e) the Intergovernmental Committee; and
 - f) the Parliamentary Joint Committee on the Australian Crime Commission
2. whether the roles, powers and structure granted to the Australian Crime Commission under the Act and associated legislation remain appropriate and relevant to meeting the challenge of organised crime in the 21st century.
 3. The need for amendment of the Act.
 4. Any other related matter.

1.3 The terms of reference include the PJC itself, since as a creation of the ACC Act, it is logical that the review should encompass an evaluation of the Committee's work. The Committee recognised the inevitable difficulty of an objective self-assessment. For this reason, the Committee determined to invite an independent person to examine the PJC's role and performance, with the following terms of reference:

Pursuant to Section 61A of the ACC Act 2002, you are to inquire into the role and functions of the Parliamentary Joint Committee on the Australian Crime Commission, established under Part III of the Act.

In particular:

2. the appropriateness of the Committee's statutory role and functions; and
3. the effectiveness of the Committee in fulfilling its statutory charter, particularly in relation to its key functions of:
 - a) scrutinising the ACC's activities and its use of its special investigatory powers; and
 - b) contributing to policy debate in relation to emerging trends and patterns in organised criminal activity relevant to the ACC.

1.4 Professor James Davis, Emeritus Professor of Law at the Australian National University was chosen with the unanimous agreement of the Committee, and in consultation with the Minister for Justice. In drafting his report, Professor Davis had the benefit of the Committee's own thoughts in relation to its role and performance, which form the section of Chapter 5 titled 'PJC on the ACC'. Professor Davis' report is at Appendix 3.

Conduct of the inquiry

1.5 The Committee advertised the inquiry in the Australian newspaper on Wednesday 3 August 2005, as well as writing to a number of interested organisations and individuals.

1.6 Public hearings were held in Brisbane on 19 August, Sydney on 9 September, Melbourne on 16 September and Canberra on 7, 11 and 13 October. One further hearing was held in Melbourne on Friday 28 October, in order to provide a representative of the Victoria Police with the opportunity to respond to adverse comments made in earlier hearings.

1.7 The Committee wishes to record its appreciation to all those who took the time to prepare submissions and appear before the Committee. Many of the submissions were of high quality and great assistance.

1.8 The Committee wishes to particularly thank the officers of the ACC for their helpfulness and responsiveness to the Committee in providing information, answering additional questions and in their readiness to give evidence on several occasions.

Problems in gathering evidence

1.9 The Committee must also record its disappointment with the lack of cooperation shown by a number of state governments and agencies. These comments relate to two categories of agencies.

1.10 The first category is agencies represented on the ACC Board. The Committee sought meetings with several commissioners of police, including those of Queensland, NSW and Victoria. The NSW Commissioner declined to appear or send a representative.

1.11 In Victoria, Chief Commissioner Nixon also declined the specific request to appear, although as noted, a senior representative of Victoria Police did appear at a special hearing in Melbourne, albeit for the limited purpose of answering criticisms made of Victoria Police by an earlier witness.

1.12 The Queensland Commissioner also declined, but did at least send instead a senior detective. This officer's evidence was valuable and the Committee appreciates his involvement.

1.13 The common rationale in each case appears to be that the officers in question had already made their views known by means of the joint ACC and ACC Board submission, and that they had nothing further to add. Implicit in their refusal is the fact that, as officers of their states, they are not obliged to give evidence to a Federal Parliamentary Committee.

1.14 The Committee does not consider this to be acceptable. While these officers are state government officials, as ACC Board members they are also senior office holders of an agency created by Federal Act of Parliament and as such, they are under a duty to assist the Committee in the same manner that they doubtless (and appropriately) assist members of the Intergovernmental Committee in their considerations.

1.15 Their view that they had nothing further they wished to say to the Committee overlooks the fact that the Committee had matters that it wished to discuss with them. In each case, the Committee had a particular interest in meeting with the Commissioners in their capacity as ACC Board members, to discuss both the national operation of the ACC and the particular criminal and operational environment in their jurisdictions. Other members of the ACC Board proved willing to assist the Committee, including both its Chairman, Mr Keelty, and the CEO of the Australian Customs Service, Mr Woodward.

1.16 The second category comprises agencies with related roles to that of the ACC, and includes the Queensland Crime and Misconduct Commission, the NSW Police Integrity Commission, and the NSW Crime Commission, which all declined to provide information or meet with the Committee. The Committee recognises that these agencies are not subject to the Committee's jurisdiction and are not obliged to assist. However, the fact that they perform closely related tasks in a similar environment suggests that they may be able to provide valuable insights into investigating organised crime and corruption from a perspective perhaps slightly different to that of the ACC.

1.17 It is regrettable that, in an inquiry into the operations of a national law enforcement agency like the ACC, the Committee has encountered such a lack of national perspective or cooperation. The Committee sincerely hopes that there will be opportunities in the future in which it can meet with these related agencies as well as the parliamentary committees that in many cases oversee them.

Overview of the history of the ACC and background to this review

1.18 A series of Royal Commissions during the late 1970's and early 1980's – notably the Moffit, Woodward, Costigan, Stewart and Williams Royal Commissions – led to a belief that a standing Royal Commission was needed to deal with the investigation of serious organised crime. Many felt that police forces had largely been ineffective against organised crime, and traditional methods of detecting and investigating offences were ill-suited to the task of controlling it.

1.19 In contrast with police inquiries, which are essentially reactive and directed towards individuals and individual crimes,¹ the principal attraction of a Royal Commission is the availability of coercive powers, which allow an investigating body to take initiatives which are outside the scope of legally acceptable criminal investigation, and which are not available to police. Most importantly, these extraordinary powers are entrusted to the judiciary, and not to executive agencies.

1.20 These considerations led to discussions in the Australian Police Ministers' Council and the Standing Committee of Attorneys-General with a view to the creation of a National Crime Commission. Legislation for the National Crime Commission

1 National Crime Authority, Annual Report 1984-85, p. 7

was passed by the Commonwealth Parliament in December 1982, but due to opposition from various states and police forces, was never proclaimed. The incoming Hawke government in 1983, announced a review of the National Crime Commission, and a discussion paper was released setting out various options, which, together with other material, formed the basis for a national conference in July 1983. Out of these proceedings came the *National Crime Authority Act 1984*.²

1.21 In the eighteen years of its existence, a perception emerged that there were problems with the fundamental structure of the NCA. This led to a review of the NCA, conducted by former AFP Commissioner Mr Mick Palmer, and former Secretary of the Attorney General's Department, Mr Tony Blunn. This report has never been made public, but its findings, together with the results of the April 2001 Summit on 'a safer Australia' formed the basis for the new Australian Crime Commission Establishment Bill 2002. According to the then Attorney General, Mr Daryl Williams:

If you take the analogy of a car, with the NCA we had an 18 year old car. It may work as well as it can, but it has limits. The government decided it was time to review the adequacy of the NCA as Australia's premier law enforcement vehicle. It decided Australia needed a state of the art organisation to combat the state of the art amenities used by criminal organisations.³

1.22 The Committee's present review represents the continuation in a regular series of reviews of the NCA by the Parliamentary Joint Committee on the NCA, conducted in 1988, 1991 and 1998.

1.23 These reviews continue to assess, at a strategic level, the continuing relevance, effectiveness and accountability of these organised-crime fighting bodies and the wide powers they wield in the national interest.

2 The Hon. R.J. Hawke MP, *House Hansard*, 7 June 1984, p. 3111

3 The Hon. D. Williams QC MP, *House Hansard*, 14 November 2002, p. 9041

