

Chapter 2

Purpose

Introduction

2.1 This chapter begins with a consideration of the fundamentals of the ACC: why it was created, and whether its purpose is still valid. We then compare these purposes with the organisational focus that the ACC has adopted in practice and assess whether it is heading in the right direction.

Purpose of the ACC

2.2 During debate on the ACC Act 2002, the Attorney General, the Hon. Daryl Williams stated that the ACC was established to 'provide an enhanced national law enforcement capacity through':

- improved criminal intelligence collection and analysis;
- setting clear national criminal intelligence priorities; and
- conducting intelligence-led investigations of criminal activity of national significance, including the conduct and/or coordination of investigative and intelligence task forces as approved by the board.¹

2.3 In relation to its intelligence role, the ACC is to:

- Provide a coordinated national criminal intelligence framework;
- Set national intelligence priorities to avoid duplication;
- Allow areas of new and emerging criminality to be identified and investigated; and
- Provide for investigations to be intelligence driven.²

2.4 Accordingly, under Section 7A of the ACC Act, the aim of the ACC is to: reduce the incidence and impact of serious and organised criminal activity on the Australian community.

2.5 Federally relevant criminal activity is:

- a) a relevant criminal activity, where the serious and organised crime is an offence against a law of the Commonwealth or of a Territory; or
- b) a relevant criminal activity, where the serious and organised crime:

1 The Hon. D. Williams QC MP, *House Hansard*, 26 September 2002, p. 7328

2 The Hon. D. Williams QC MP, *House Hansard*, 26 September 2002, p. 7328

- (i) is an offence against a law of a State; and
- (ii) has a federal aspect.³

2.6 Serious and organised crime means an offence:

- a) that involves 2 or more offenders and substantial planning and organisation; and
 - b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques; and
 - c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and
 - d) that is a serious offence within the meaning of the Proceeds of Crime Act 2002, ...
- (da)that is:
- (i) punishable by imprisonment for a period of 3 years or more; or
 - (ii) a serious offence within the meaning of the Proceeds of Crimes Act 2002;⁴

2.7 The *Proceeds of Crime Act 2002* includes the offences of : 'theft; fraud; tax evasion; money laundering; currency violations; illegal drug dealings; illegal gambling; obtaining financial benefit by vice engaged in by others; extortion; violence; bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory; perverting the course of justice; bankruptcy and company violations; harbouring of criminals; forging of passports; firearms; armament dealings; illegal importation or exportation of fauna into or out of Australia; cybercrime; and matters of the same general nature as one or more of the matters listed above.'

2.8 The role of the ACC has several important aspects:

2.9 First, the ACC – and the National Crime Authority before it – was formed in response to identified weaknesses in the capacity of traditional policing to combat sophisticated organised crime effectively. These weaknesses reflect the characteristics of both traditional policing and organised crime.

2.10 Policing is characterised by strict jurisdictional boundaries across which state, territory and Federal police have limited capacity to act. This has traditionally frustrated efforts by law enforcement agencies to tackle organised crime groups that move freely across state and national borders. The police response to organised crime is further hampered by the need to focus on the heavy demands of community volume policing, with its attendant political demands. As Mr Mellick SC stated:

3 *Australian Crime Commission Act 2002*, s 4

4 *Australian Crime Commission Act 2002*, s 4

It is unfortunate that policing tends to be parochial and reactive in nature and often tends to have to answer to the political expediency of the time.⁵

2.11 Police:

get a certain budget, and if there is a premier screaming about bikie gangs, gang rapes in the south-west or wherever, or parliamentary travel rorts, they are the things that get done and your mind gets taken off the main game.⁶

2.12 This was mirrored by comments of Detective Superintendent Gollschewski of the Queensland Police Service:

Essentially, state jurisdictions are driven by calls for service, volume crime and those issues. A lot of our resources are focused on the call for service and volume crime type issues. We put a bit aside for the organised crime stuff, but we can only do so much ...⁷

2.13 In practice, state police are under significant pressure to react to routine crime such as burglaries, assaults, or street crime, which means there is limited time and few resources for detectives to invest in the long-term, sophisticated and often well-hidden operations of organised crime groups. Put slightly differently, standard police investigations are 'reactive' in that they are focused on solving particular crimes. This approach has been found to be less effective in tackling organised crime where the emphasis must be on unearthing crime that may not be visible, on understanding a wider pattern of criminal behaviour, and anticipating crime rather than reacting to it. It is for this reason that the ACC stresses the importance of its 'intelligence led' investigations. Practically speaking, this means that the investigations of the ACC are less concerned with finding an offender responsible for a particular offence, than with developing a comprehensive picture of the operations, methods and structures of criminal networks.

2.14 The ACC therefore exists to provide investigations that operate across jurisdictional boundaries, equipped with the necessary specialist expertise and resources, and able to focus exclusively on organised crime rather than street crime/volume crime.

2.15 This crucial difference was aptly summed up by Mr Gary Crooke QC, a former NCA Chairman:

[T]he NCA was there not only because of the federal limitations on jurisdiction but, more particularly, like a royal commission, to get to the background of the problems, discover whether there was something systemic and put together a bigger picture. ...

5 Mr Aziz Mellick SC, *Committee Hansard*, Sydney, 9 September 2005, p. 24

6 Mr Aziz Mellick, *Committee Hansard*, Sydney, 9 September 2005, p. 27

7 Detective Superintendent Stephan Gollschewski, *Committee Hansard*, Brisbane, 19 August 2005, p. 26

to take it further and say, ‘Well, where did that come from, where did it come from before that, where did the money come from, what was the money trail and was there overseas involvement and the like?’ There is a world of difference in that. When you are in the field as a police officer and the constraints on you are to get results and move on to the next one, you cannot take that attitude. The public demands that you just get on with it, arrest the person and say, ‘Next, please.’⁸

Issues relating to the purpose of the ACC

2.16 Evidence to the Committee raised several issues relating to the purpose of the ACC: is there still a need for the ACC, and is the ACC focusing on the right things?

Is the ACC still needed?

2.17 A perhaps rhetorical, but nevertheless valid, question is whether the rationale for the creation of the ACC remains. This question takes two forms: is a specialist organised crime fighting body, equipped with special coercive powers, still needed in the current and foreseeable organised crime environment? Secondly, does there need to be a separate ACC or could its role be equally fulfilled by transferring its powers to some other existing law enforcement agency – in particular, the Australian Federal Police?

2.18 Predicting the future criminal environment is always difficult – a matter that is explored in more detail in the final chapter. However, it is clear from the evidence that the task of combating serious and organised crime will continue to be complicated by the wider trends towards globalisation in banking and commerce, and driven by the increasing capacity and speed of information technology, telecommunications and transport. According to Mr Milroy, CEO of the ACC:

Most notable are the uptake of mobile systems, increased data transmission rates and the proliferation of increasingly powerful multifunction devices. There is ample evidence that criminal groups are taking advantage of these developments and as a result continue to become more flexible and sophisticated in their operations.

In the coming years there is no doubt that serious organised crime will continue to engage some of the best professional minds in the legal and accounting professions, as well as engaging and soliciting information and advice from experts in shipping, transportation, travel, banking, finance and communication technology. This will be aided by the time-held strategy of organised crime corrupting people in the public and private sectors to facilitate ongoing criminal enterprises and activities.

8 Mr Gary Crooke, QC *Committee Hansard*, Brisbane, 19 August 2005, p. 42. Note also the comments of The Hon. D. Williams MP, *House Hansard*, 26 September 2002, p. 7328; Mr Frank Costigan QC, *Committee Hansard*, Canberra, 7 October 2005, p. 51; and Mr Aziz Mellick SC, *Committee Hansard*, Sydney, 9 September 2005, p. 27

The commission believes that major developments and trends that may occur in Australia over the next five years are likely to involve finance sector fraud becoming even more prevalent, serious and organised crime groups continuing to develop regional partnerships to facilitate the trafficking of a wide range of illicit commodities, the lucrative and growing nature of the local amphetamine market, and identity crime remaining a key enabler of many criminal activities.⁹

2.19 The increasingly transnational nature of this type of crime will be further influenced by a pattern towards more fluid and opportunistic organised crime syndicates. As Louise Shelley, the Director of the US Transnational Crime and Corruption Centre argues:

Transnational crime will be a defining issue of the 21st century for policymakers – as defining as the Cold War was for the 20th century and colonialism was for the 19th. Terrorists and transnational crime groups will proliferate because these crime groups are major beneficiaries of globalization. They take advantage of increased travel, trade, rapid money movements, telecommunications and computer links, and are well positioned for growth.¹⁰

2.20 Based on these factors, it is evident that the rationale that underpinned the creation of the ACC, and its predecessor the NCA, has grown stronger in the years since its inception.

2.21 But does there need to be a separate agency such as the ACC, or might it not be more efficient to simply role the ACC into the larger AFP?

2.22 The Australian Federal Police Association (AFPA) submission to the inquiry argued strongly that there is little justification for retaining a separate ACC, which it argues should be merged into the AFP. Pointing to efficiencies in staff management, the capacity of the larger organisation to provide better career structures and the better handling of integrity issues, the AFPA submits that:

... 21st Century organised crime in its many facets requires a well resourced professional organisation to effectively fight and win the battle. The AFPA maintains that the AFP is that body. To fund other agencies, including the ACC, merely dilutes resources into unnecessary duplications.¹¹

2.23 The Committee also notes the comments of Mr Costigan QC, who suggested that, in his view, the ACC is already almost a subset of the AFP:

9 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 61. Note also the comments by Mr Frank Costigan QC, *Committee Hansard*, Canberra, 7 October 2005, p. 51

10 Transnational Crime and Corruption Centre, www.american.edu/tracc/, accessed 14 October 2005

11 AFPA, *Submission 16*, p. 4

the ACC is, in effect, another police force under the control basically of the AFP but with the assistance and cooperation of the police commissioners of the states and territories.¹²

2.24 There were, and remain, four considerations behind a separate ACC. The first is the long standing objection to granting coercive powers to police forces¹³ (a matter that is examined in detail in chapter 4). Second, as a matter of law, the AFP cannot perform the role of the ACC. The AFP's task is to investigate offences under Commonwealth law, and has no jurisdiction to investigate state or territory offences, which remain the preserve of the relevant state and territory police forces. To perform the ACC's national role, the states and territories would need to pass complementary legislation (as they have done with the ACC). However, for political reasons, this is unlikely to occur, as Mr Costigan pointed out:

if you did not have it as a separate body and you gave to the AFP the powers which you have given to the ACC, it would be more likely that you would have problems with the states. I think if for no other reason you are going to get this better working relationship, which is absolutely critical, then you need to draw it back a bit from one police force.¹⁴

2.25 The ACC provides a politically and jurisdictionally neutral focal point for the creation of joint task forces in areas that are not necessarily of interest or relevance to the AFP. Mr Keelty noted that:

a lot of the focus of the ACC has not necessarily been in the same area as the focus of the AFP – examples being the underworld killings in Victoria and the outlaw motorcycle gangs, which by and large tend to be the focus of the state jurisdictions rather than the AFP. So in a sense we are complementing each other. ... The AFP already has quite an extensive network in overseas countries. Hopefully we are value adding to the ACC as much as the ACC is value adding to us.¹⁵

2.26 The ACC therefore does not duplicate the AFP role, but rather seeks to complement both the AFP and the state and territory police forces. Most importantly, the ACC's greatest strength is its intelligence role. As Mr Keelty explained:

there is no other body in law enforcement in this country that can provide the over-horizon strategic assessment of what is coming around the corner in terms of law enforcement. ...

To take a 10-year look at where we are at this point in time, we have a big focus on terrorism, transnational crime and the trafficking of women and

12 Mr Frank Costigan QC, *Committee Hansard*, Canberra, 7 October 2005, p. 53

13 The Hon. Daryl Williams QC MP, *House Hansard*, 14 November 2002, p. 9041

14 Mr Frank Costigan QC, *Committee Hansard*, Canberra, 7 October 2005, p. 54

15 Mr Mick Keelty, *Committee Hansard*, Canberra, 7 October 2005, p. 34

children. They are crimes not focused on before by law enforcement agencies.¹⁶

2.27 The ACC's role as a national criminal intelligence agency is worth closer examination, since it is an area where it differs somewhat from its nominal predecessor, the NCA, which had more of an independent investigatory focus, and existed separately from the Australian Bureau of Criminal Intelligence. Combining the two functions – investigative and intelligence – gives the ACC important advantages.

2.28 First, there are significant practical advantages for an intelligence agency to be able to proactively collect its own material. As Mr Mellick SC, a former Member of the NCA explained, the two functions of investigation and intelligence are inextricably intertwined and it is artificial to try to separate them:¹⁷

In my experience, it was always the case that the best intelligence came from your own investigations. People tended to close-hold matters they found out themselves because of being possessive or suspicious. ... But, often, significant matters of intelligence just did not get passed on because of either concerns about security or parochial issues.¹⁸

2.29 Relying on other police agencies to provide information is not always adequate for the additional reason that they may not be looking for the same things. As Mr Mellick SC further explained, one of the best ways you get genuine intelligence is 'being on the ground with a mindset of what you are looking for':

If you are walking around a street doing a surveillance operation, you tend to look for the things that that particular operation has got you attuned to looking for. It was quite interesting the number of times our NCA surveillance teams picked up matters on another investigation because of their knowledge from the hearing process about that investigation even though it was not one of their investigations. To me it just accentuates the fact you have got to be on the ground yourself gathering the intelligence as well as using other people.¹⁹

2.30 Second, access to coercive powers has always been heavily restricted. These powers are becoming more widespread among law enforcement agencies,²⁰ so the ACC's role can no longer be defined by the singularity of these powers. In contrast,

16 Mr Mick Keelty, *Committee Hansard*, Canberra, 7 October 2005, p. 35

17 Mr Aziz Mellick SC, *Committee Hansard*, Sydney, 9 September 2005, p. 34

18 Mr Aziz Mellick SC, *Committee Hansard*, Sydney, 9 September 2005, p. 24

19 Mr Aziz Mellick SC, *Committee Hansard*, Sydney, 9 September 2005, p. 28

20 Most states now have agencies which share the coercive powers of the ACC, including the Queensland Crime and Misconduct Commission, the NSW Police Integrity Commission, the NSW Crime Commission, the NSW Independent Commission Against Corruption, the Corruption and Crime Commission of Western Australia, and the Office of Police Integrity in Victoria.

the role of national criminal intelligence agency is one that is clearly unique to the ACC. Mr Milroy told the inquiry:

the ACC is playing a unique and significant national role in gathering, correlating and analysing national criminal intelligence and information gained from Commonwealth, state and territory law enforcement agencies and the private sector. The commission adds value to this intelligence and disseminates it in a strategic and actionable form to assist in determining a national response to serious and organised crime. This helps shape law enforcement policy and strategic direction at both a jurisdictional and a national level.²¹

2.31 And further:

it particularly recognises the importance of its national criminal intelligence priorities and the picture of criminality in Australia to strategic intelligence products that are informing national law enforcement policy and operational responses to the activities of serious and organised crime groups in this country. ... It is progressively establishing itself as a critical national repository for criminal intelligence and information. As mentioned previously, it is playing a key role in facilitating the exchange of this intelligence.²²

2.32 This view is also evident in the submission from the AFP:

In the AFP's view the most significant role assigned to the ACC is its intelligence function. While there are numerous investigative LEAs in Australia, the ACC's role as the national criminal intelligence agency is a unique one in Australian law enforcement and serves as a significant capacity enhancement for the ACC's partners.²³

2.33 The Committee endorses this role and considers that given the likely trends in organised criminal activity, there remains a strong and probably growing role for the ACC.

ACC Priorities

2.34 A final matter to consider is whether the ACC is focusing on the right matters.

2.35 The ACC's strategic priorities are set by the ACC Board, and are set out in the National Criminal Intelligence Priorities (NCIPs) and in the authorisation of the ACC operational work.²⁴ To date, the Board has approved Intelligence Operations and Special Intelligence Operations in relation to:²⁵

21 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 60

22 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 61

23 AFP, *Submission 10*, p. 10

24 ACC, *Submission 14*, p. 16

25 ACC, *Submission 14*, p. 5

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- ID Crime and card skimming
 - Amphetamines and Other Synthetic Drugs (AOSD)
 - Vehicle re-birthing
 - Major fraud
 - Serious and organised fraud
 - Identity crime
 - People trafficking for sexual exploitation
 - Crime in Australia's category one airports and Board approved category two airports.
 - Outlaw motorcycle gangs

2.36 Special investigations authorised by the Board are:

- Established Criminal Networks
- Firearms
- Money laundering and tax fraud
- Established Criminal Networks (Victoria)
- High risk crime groups

2.37 Comment from one submission suggested that the ACC's strategic priorities could be improved. Mr Bottom, an author and journalist with long experience with organised crime, told the Committee that the ACC should remain focused on what he sees as its 'core business' – drug trafficking:

Our criticism is basically that, whilst the ACC is doing a good job in targeting a multiplicity of aspects of organised crime, it is tending to overlook the most serious aspect, which is what it was set up for. There were a series of federal and state royal commissions concerned about the drug trade. That seems to be subsumed now in these multifaceted approaches by the modern ACC.²⁶

2.38 He concludes that 'As valid and necessary, as all these Determinations may be, emphasis on tackling the networks involved in drugs should have the highest priority.'²⁷

2.39 The Committee does not agree with this view. The ACC is not, and has never been, an agency designed exclusively to combat drug trafficking. As is explicit in the purpose of the Act, the Commission's purpose is to target serious and organised crime. The Act then leaves considerable flexibility for the ACC Board to determine which aspects of organised crime to focus on, reflected in the National Criminal Intelligence

26 Mr Bob Bottom, *Committee Hansard*, Brisbane, 19 August 2005, p. 4

27 Mr Bob Bottom, *Submission 1*, p. 2

Priorities and the Board Determinations. This flexibility is important, because the focus and tactics of organised crime groups will vary over time, adapting to new market opportunities and constraints, and the ACC must be able to change its own focus accordingly.

2.40 Stated differently, drug trafficking is just one of a number of illegal business activities undertaken by organised crime syndicates. So while illicit drugs are an important part of organised crime operations in Australia – and this importance is reflected in the operational focus of the ACC – they are not the only part.

2.41 The ACC needs have the ability to investigate and understand the totality of these illegal businesses, and have the operational freedom to focus its attacks on the weakest parts of syndicates' operations. The most effective way to shut down a drug trafficking network may be through one of its other, more vulnerable, operations.

2.42 The ACC Board, with the accumulated experience of its membership, and advised by ACC intelligence, is well placed to direct this focus.