

# Chapter 4

## Structure

### Introduction

4.1 This chapter examines the elements of the structure established by the *ACC Act 2002*, and in particular, the relationships between some of these elements.

4.2 The aspect of the ACC's structure that attracted the most comment throughout the inquiry is the Board, probably because it differs so fundamentally from the structure of the National Crime Authority. Other elements of this quite complex organisation received little or no comment in the evidence presented to the Committee. Thus, potentially interesting configurations and relationships created within this structure are left unexplored in this review, such as:

- the role of the Minister for Justice and other parts of the ACC
- the role of the Intergovernmental Committee (IGC); and
- the internal structure of the ACC itself.

4.3 Ideally, this lack of comment reflects a well balanced and effective structure which is generating no problems.

4.4 It should be noted that the role of examiners is addressed in chapter 3 of the report, while the CEO's role is considered below in the context of his relationship with the Board.

### *Overview of the ACC structure*

4.5 The ACC Act creates an organisation with five core elements:

- The ACC:<sup>1</sup> which is internally subdivided into four directorates: operations, intelligence, infrastructure and corporate services, and strategy and governance.
- The CEO: who is responsible for the management and administration of the ACC, who acts in accordance with policies determined, and any directions given, in writing by the Board, and who must also manage, co-ordinate and control ACC operations/investigations.<sup>2</sup>

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1 Created by sections 7 & 7A

2 Division 3 Subdivision A. Duties are set out in section 46A

- The Examiners: who are responsible for the conduct of Examinations carried out pursuant to the Act for the purposes of a special ACC operation or investigation.<sup>3</sup>
- The ACC Board: which is primarily focused on providing strategic guidance to the ACC and the determination of its priorities.<sup>4</sup>
- The IGC: which monitors the operations and strategic direction of the ACC and the Board, and receives reports from the Board for transmission to the governments represented.<sup>5</sup>
- The Parliamentary Joint Committee on the ACC (the PJC):<sup>6</sup>

4.6 Thus, in practice the Act provides for an organisation led by a CEO, which reports to the Board, and whose special coercive powers are authorised by the Board and exercised by the Examiners. The overall organisation is then scrutinised by the IGC, the PJC and the Ombudsman.

4.7 This can be contrasted with the NCA, which was headed by a Chair and two other Members. This group had administrative control, led investigations and exercised the coercive powers. The NCA reported to an Intergovernmental Committee which, much like the ACC IGC, consisted of relevant ministers of the Commonwealth government and the states, and was responsible for general oversight of the NCA and the referral of particular matters for special investigations using coercive powers.

4.8 It is also relevant to recall the management structure of the Australian Bureau of Criminal Intelligence (ABCI), which was incorporated into the ACC. Although the ultimate responsibility in matters of policy for the ABCI rested with the Australian Police Ministers' Council, operational control belonged with a Management Committee of all Australian Commissioners of Police, to which the Director of the ABCI reported.<sup>7</sup>

4.9 It is evident from these antecedents, how the new ACC incorporated elements of its predecessor organisations into its management structure, with the NCA IGC becoming the ACC IGC, while the ABCI Management Committee was effectively transformed (with some additions) into the ACC Board.

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3 Examiners are appointed pursuant to Division 3 Subdivision B; duties are outlined in sections 24A & 25A

4 ACC, *Submission 14*, p. 16. See Division 1 Subdivision B. Functions of the Board are set out in section 7C.

5 Division 1 Subdivision C

6 Part III. For further details on the role and activities of the PJC, see Chapter 5 Accountability.

7 Keith Askew, Assistant Commissioner, Director ABCI, *Drugs – the role of the ABCI and the Australian Criminal Intelligence Database*, Paper to the Asia Pacific Technology Conference 1993

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## The ACC Board

4.10 The Committee is aware that there are significant difficulties in making any assessments of the Board's operations given that it meets in private and its minutes are not published. However, the evidence collected during the inquiry indicates that the Board is proving successful in its structure and operations.

4.11 It is certainly clear that the Board has been active. As Mr Milroy told the Committee, while the Act only requires the Board to meet twice per annum, it has managed to meet around four times each year, and in one year met five times.<sup>8</sup> Considering that the Board members have to converge from all over the country, and each can be expected to have extremely busy schedules, this is no mean achievement.

4.12 Mr Milroy further explained that the Board operates outside of formal meetings through several mechanisms. In between the Board meetings there is a strategic direction committee, which was established by the Board and consists of the Chair, the Chief Officer from the ACT, the Commissioner from New South Wales and the CEO.<sup>9</sup>

In addition to that, I go around the country and meet with the board members, between every board meeting, to discuss the board agenda, to look at any policy issues that may be coming from the various board members' environments and to discuss the work that the ACC has been doing, particularly in the determination area.<sup>10</sup>

4.13 The Board has also made decisions on all matters envisaged by the Act, including establishing the National Criminal Intelligence Priorities and Determinations on special intelligence operations and special investigations, upon which the ACC's use of its special powers depends.

4.14 The Committee was told by Mr Keelty, the Chairman of the Board, that the Board has also developed a successful working culture:

It is a robust board. Those of us who have been around this game for some time are quite surprised at the level of commitment and the level of non-jurisdictional bias there is in trying to get the job done. People represent their views.<sup>11</sup>

4.15 As Mr Keelty suggests, this is a substantial achievement, given the size of the Board and the diversity of interests and jurisdictions represented on it.

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8 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 71

9 Although it should be noted that this Committee cannot exercise any board powers under the Act.

10 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 71

11 Mr Mick Keelty, *Committee Hansard*, Canberra, 7 October 2005, p. 32

4.16 In the context of the major change from the NCA's structure, it is evident that the ACC Board offers several quite significant advantages. The most obvious of these is the capacity of the Board to overcome jurisdictional problems and work at a genuinely national level. As several witnesses commented, this is a fundamental reality of Commonwealth/state cooperation. Mr Jordana of the Attorney General's Department explained that:

the ACC model, through its board structure, has been able to utilise the views of the main law enforcement agencies in Australia and by so doing make sure that the ACC is very much focused on issues that are of immediate concern to policing in Australia, ... ensuring a level of cooperation with the state and territory bodies.<sup>12</sup>

4.17 As Mr Jordana further noted, by ensuring it is of interest to the Australian police forces, you are going to secure levels of cooperation.<sup>13</sup>

4.18 A second factor favouring the existing Board structure is the advantage of having the combined 'wealth of information and experience that the police commissioners can bring together'.<sup>14</sup> This keeps the ACC operating on issues of relevance to national policing:

The existence of senior police people on the Board is ensuring that the main issues of concern to Australian policing are at the forefront of the ACC's activities.

... The kind of decision-making process at Board level assures that you are getting not just a state-centric or individual-jurisdiction-centric take on it; you are getting a collective view from Australia's senior police authorities.<sup>15</sup>

4.19 However, as an officer of the Attorney General's Department pointed out, this process goes both ways:

the existence of the ACC board in its present form serves a bit of a dual function in that it not only allows the various heads of police forces and other law enforcement-related agencies to pool their collective experience in making judgments but it also to some extent serves as an educative force in developing a collective and collegiate view among those people as to the law enforcement situation in Australia. So in that sense I think it actually contributes more, in the long run, to national thinking as opposed to parochial thinking.<sup>16</sup>

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12 Mr Miles Jordana, *Committee Hansard*, Canberra, 7 October 2005, p. 5

13 Mr Miles Jordana, *Committee Hansard*, Canberra, 7 October 2005, p. 7

14 The Hon. Bruce Baird MP, *House Hansard*, 13 November 2002, p. 8958

15 Mr Miles Jordana, *Committee Hansard*, Canberra, 7 October 2005, p. 7. see also Law Council of Australia, *Submission 18*, p. 3; and Bottom, *Committee Hansard*, Brisbane, 19 August 2005, p. 7

16 Mr Michael Manning, *Committee Hansard*, Canberra, 7 October 2005, pp 8-9

4.20 The Committee considers that on the evidence presented, the ACC Board has been successful in its fundamental structure and its emerging working culture. As noted in Chapter 1, the Committee would have appreciated the opportunity to meet with more Board members, and the conclusions it draws here are necessarily limited by the fact that only two Board members gave evidence.

### **Issues relating to the ACC Board**

4.21 Four issues have emerged from the evidence to the inquiry that relate to the structure and workings of the Board:

- The extent of police domination of the Board
- Proposals for extending the Board membership
- Sending delegates to Board meetings
- Allocating roles between the Board and the CEO

#### ***Police domination of the Board***

4.22 A recurring concern of some commentators, which has existed since early debates on the ACC legislation, is the extent of perceived police domination of the Board. As detailed above, with each of the Australian police commissioners – including the Chief Police Officer of the ACT (who is a member of the AFP) – represented on the Board, police account for nine out of the thirteen member voting Board (not counting the non-voting CEO). Compared with the earlier NCA, whose top leadership were all lawyers, the change to the ACC structure certainly amounted to ‘a “blueing” of the organisation’.<sup>17</sup>

4.23 This concern focuses on two matters.

4.24 The first centres on the implications that a police dominated Board has for the strategic directions of the ACC. Critics suggest that the direction of the ACC will inevitably reflect the focus of state police commissioners on provincial concerns and on the clean-up rates for routine crime against which they are judged. This would see a shift in the ACC’s priorities away from its strategic roles and into providing support for more routine policing activities. To this extent that this happens and the ACC becomes a body whose principal task is to support state police in particularly difficult areas, the entire rationale for the organisation is lost.

4.25 A further and opposite aspect of the same problem is if the commissioners are able to use their presence on the Board to keep the ACC out of matters in their own jurisdictions. Mr Mellick SC, a former NCA Member, explained that:

I was always concerned that the organisation changed its nature and structure, because I think it lost, when we did that, the ability to have an organisation that is proactive and acting independently of police forces,

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17 The Hon. Bruce Baird MP, *House Hansard*, 13 November 2002, p. 8958

although in conjunction with them, and dealing with matters that may not be strictly policing in such a way that its operational effectiveness would not be impeded by the exigencies of police forces having the necessity of being reactive to whatever political hot potato is going on at any particular time.<sup>18</sup>

4.26 As Mr Mellick noted, the NCA ‘got involved in some interesting investigations, which were conducted despite the reluctance of the police to get involved in any way.’<sup>19</sup> Mr Mellick concluded that ultimately, the value of the ACC's structure:

depends what you want the model to achieve. I think the current model is actually achieving extremely good results for police forces. ... But I really think that, if you want a model that is going to be truly independent, able to think outside the box and deal with matters which may not necessarily be part of what is occurring in the criminal milieu vis-a-vis police forces, the current model will not work.<sup>20</sup>

4.27 Responding to the first matter – the implications for the ACC's strategic directions of a police dominated Board – Mr Milroy argued that:

it is unfortunate that this sort of perception is around and I think it is totally unwarranted, because I believe that the non-police members of the board would not take too kindly to the suggestion that the board is being run by one particular body over another.<sup>21</sup>

4.28 Thus, while nine members of the Board are police, their views are presumably tempered to at least some degree by those of other Board members from the Attorney General's Department, ASIC or ASIO. Further, as Mr Jordana put to the Committee, there is no evidence to suggest that the Board is police dominated. On the contrary, he asserts that the system is working because they are focusing on the right things:

as we look at the kinds of issues that they have focused on, they are the kinds of issues that we would have expected or hoped to have been the kinds of issues that they would be looking at – those of major national importance that relate to organised crime.<sup>22</sup>

4.29 The second concern lies in the perception that an ACC leadership dominated by a police culture may have less concern for the protection of civil liberties, due process, and privacy. As the Chair of the Committee, Senator Santoro noted, there is a possibility that:

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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. 26

20 Mr Aziz Mellick SC, *Committee Hansard*, Sydney, 9 September 2005, p. 25. see also Mr Bob Bottom, *Committee Hansard*, Brisbane, 19 August 2005, pp 5 & 8

21 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 63

22 Mr Miles Jordana, *Committee Hansard*, Canberra, 7 October 2005, p. 7

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people who have been trained to be law enforcement officers are probably keener to pursue the investigative function with reasonable and sometimes excessive zeal. In doing so, there might be a willingness, perhaps unconsciously, to have some disregard for individual rights and civil liberties.<sup>23</sup>

4.30 Critics therefore contrast the ACC Board structure with the NCA, which was led by senior criminal lawyers. Mr Frank Costigan QC explained the value of lawyers in investigatory agencies of this type:

Lawyers are not trained as police investigators and one must always remember that. On the other hand, they have a very valuable role in an organisation in terms of their experience in the criminal justice system, their understanding of the analysis of evidence and the conclusions to be drawn from it and also their understanding of the basic principles behind the system of criminal justice and the basic rights of individuals who appear before tribunals and courts.<sup>24</sup>

4.31 In considering this issue, the Committee was mindful that the Act creates a separation between the authorisation of the use of coercive powers (which is done by the Board) and the exercise of those powers, which remains the responsibility of the Examiners who are lawyers.

4.32 The Committee evaluated these concerns carefully and its response is twofold. Overall, the structure of the Board membership reflects a fundamental policy decision as to the nature of the ACC, its role and management. Accordingly, the membership of the Board is consistent with the ACC's function as a national criminal investigative and intelligence agency, that is designed to work closely with law enforcement agencies across all Australian jurisdictions. This structure is unlikely to be substantially altered.

4.33 Second, the Committee is not convinced that the concerns are borne out by the facts at this time. Notwithstanding the significant police presence on the Board, the Committee has not seen any appreciable skewing of the ACC's operations into more politicised or routine policing matters: as Mr Jordana stated, the ACC is doing what it would be expected to be doing.

4.34 Similarly, the Committee has not seen any evidence to suggest that the ACC Board ought to be restructured to minimise police numbers and perhaps increase the influence of lawyers. In practice, the operation of the coercive powers is in the hands of lawyers, since the Board function is to approve their use.

4.35 These criticisms must also be balanced against the very real advantages of having the Board structured as it is. The close involvement of the state and territory police commissioners has done much to advance a more genuinely collaborative

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23 Senator Santo Santoro, *Committee Hansard*, Canberra, 7 October 2005, p. 63

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

cross-jurisdictional approach to the investigation of organised crime. The reality is that organisations such as the ACC operate in a highly political environment and depend on the goodwill and cooperation of police forces. In contrast, this is an area in which the NCA always struggled.

### ***Changing the Board membership***

4.36 Several submissions to the review have argued in favour of expanding the Board membership to include the CEO of the Australian Tax Office (ATO)<sup>25</sup> and the Director of the Australian Transaction Reports and Analysis Centre (AUSTRAC)<sup>26</sup> and amending subsection 7G(3) of the Act to give the CEO voting rights.

4.37 There seems to be general acceptance by the current Board membership that the CEO of the ATO should be represented. As Mr Keelty told the Committee:

At the time of the creation of the ACC there was care taken not to have an overbalance of Commonwealth agencies over the state and territory agencies. We have worked through that. The board unanimously supports the Commissioner of Taxation being a member of the board, which is an indication of the maturity of the board and how far we have moved.<sup>27</sup>

4.38 In explaining the rationale for this addition, Mr Keelty stated:

The benefit of the Commissioner of Taxation being on the board would be to have direct insight. Most of the major operations undertaken by the ACC are underwritten by investigations into finances and typically of organised crime. Even in the days of the NCA, typically in organised crime, one of the best ways to attack it has been through attacking the finances. There are not many organised crime entities that do not in some way or another affect our taxation system either through defrauding the taxation system or using the taxation system in a variety of ways to benefit themselves. It would be of enormous benefit to have the Commissioner of Taxation on the board to see the range of operations that are coming to the board and to look for opportunities to improve the performance of both the board and the ACC.<sup>28</sup>

4.39 The Attorney General's Department showed cautious support:

We see some advantages in this proposal, but we would only support it if there was general agreement amongst the jurisdictions and it was understood that it was not a precedent for the further expansion of the board.<sup>29</sup>

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25 AFP, *Submission 10*, p. 9

26 Law Council of Australia, *Submission 18*, paras 45-47

27 Mr Mick Keelty, *Committee Hansard*, Canberra, 7 October 2005, p. 23

28 Mr Mick Keelty, *Committee Hansard*, Canberra, 7 October 2005, p. 23

29 Mr Miles Jordana, *Committee Hansard*, Canberra, 7 October 2005, p. 3



4.40 In contrast, the case is less clear in relation to AUSTRAC. In responding to this proposal, Mr Keelty noted that the Board itself has not formally considered the matter, although in his personal view, suggested there could be advantages in having AUSTRAC on the Board as it 'is a rich database providing enormous potential and opportunity for [...] the operations conducted by the ACC to be enhanced.'<sup>30</sup>

4.41 However the Committee notes that, based on the evidence of the Director, Mr Neil Jensen, AUSTRAC has a somewhat different relationship with the ACC compared to, for example, the ATO:

We are one intelligence source to them. We are not a law enforcement agency as such, so our role is perhaps not dissimilar to Crimtrac, for example, which is a source of intelligence.<sup>31</sup>

4.42 In considering these proposals, it is relevant to consider the effect that the changes would have on both the balance of representation of various jurisdictions on the Board, as well as the workability of the Board as its membership increases. These concerns are reflected in the submission of the Attorney General's Department:

The proposal settled between the Commonwealth and state and Territory governments, which was carried through to the legislation as enacted, represented a balance among several considerations. It was desirable to include a broad range of law enforcement agencies without having a board with too many members for effective discussion, and it was important to avoid giving any jurisdiction representation that would be perceived by others as excessive.<sup>32</sup>

4.43 The existing Board membership numbers thirteen, which is already a substantial number, and the Committee is aware that as a matter of practicality, there are limits to the numbers you can effectively have on a committee before it becomes unworkable.<sup>33</sup>

4.44 A further consideration is that the Board is already able to invite the heads of other agencies to attend Board meetings as an observer, where it feels that it would benefit from getting information or experience in those relevant matters.<sup>34</sup> The ATO has had such an observer role in past meetings.

4.45 The remaining issue to consider in relation to the Board membership is the proposal to extend voting rights to the CEO of the ACC.<sup>35</sup> The Law Council argues that:

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30 Mr Mick Keelty, *Committee Hansard*, Canberra, 7 October 2005, p. 23

31 Mr Neil Jensen, *Committee Hansard*, Sydney, 9 September 2005, p. 17

32 AGD, *Submission 17*, p. 6

33 Noted by Mr Miles Jordana, *Committee Hansard*, Canberra, 7 October 2005, p. 12

34 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 64

35 Mr Ross Ray QC, *Committee Hansard*, Canberra, 7 October 2005, pp 37 & 47

Notwithstanding the pivotal role of the CEO, the CEO is unable to vote as a member of the ACC board pursuant to s 7G(3). This means that, although the operational role of the CEO is critical in giving effect to Board decisions, the CEO does not directly play a part in making those decisions.<sup>36</sup>

4.46 The agencies concerned generally did not see the need for any change.<sup>37</sup> As Mr Milroy noted, the change would have little impact in practice:

because I am allowed by the board to brief them in detail not only in board meetings but also in my regular face-to-face meetings with them around the country between board meetings...<sup>38</sup>

### *Conclusions and recommendations*

4.47 The Committee notes the unanimous support for the inclusion of the Commissioner of Taxation onto the Board, and agrees that there is considerable merit in the idea.

### **Recommendation 6**

**4.48 The Committee recommends that the ACC Act be amended to provide for the appointment of the Commissioner of Taxation to the ACC Board.**

4.49 The Committee has not received sufficient evidence to support a similar appointment of the Director of AUSTRAC. As discussed above, AUSTRAC is essentially a provider of information to the ACC, and where necessary, the Board is able to invite the Director to attend Board meetings as an observer. At the same time, the Director of AUSTRAC heads an organisation that is central to Australia's efforts to counter money laundering, and would bring a valuable knowledge and perspective to the Board deliberations.

4.50 Although the Committee does not propose a change in these arrangements at the current time, it is also aware that the growing importance of money laundering and transnational cash flows may lead to change in this assessment; the Committee will continue to review the issue. It is also a matter which both the ACC Board and the Minister may wish to consider.

4.51 Finally, the Committee considered the proposal to amend the Act to provide the CEO with voting rights.

4.52 The Committee does not agree with this proposal. As Mr Milroy himself pointed out, in practice such a change would have little appreciable effect. On the contrary, the Committee considers the current arrangement appropriate from both a

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36 Law Council of Australia, *Submission 18*, para 34

37 Mr Miles Jordana, *Committee Hansard*, Canberra, 7 October 2005, p. 5

38 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 63

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symbolic and practical level: the CEO, as administrative head of the ACC, reports to the Board. Whilst the CEO attends Board meetings to advise the Board in its deliberations, this does not imply that the CEO ought to have voting rights. To have the CEO as a voting member would involve the CEO voting on his own proposals.

4.53 The Committee also does not agree with the views put by the Law Council of Australia, that making the CEO a voting member would counteract the police influence on the Board. As argued above, the Committee does not accept that this constitutes a problem. However, even were it considered a problem, the Committee is not convinced that the change proposed by the Law Council would be an effective remedy.

### ***Sending delegates to Board meetings***

4.54 The Hon. Michelle Roberts MLA, West Australian Minister for Police and Emergency Services, proposed an amendment to the Act to enable delegates to attend ACC Board meetings instead of the Commissioner:

It would be of great assistance to the Commissioner if provision could be made to allow for a suitable proxy to be nominated to replace the Commissioner at Board of the ACC meetings where his absence is unavoidable. It is the view of the Western Australia Police that a person of a rank such as Deputy Commissioner could adequately fulfil the role of the Commissioner ...<sup>39</sup>

4.55 The Board membership is established in section 7B of the Act, and no provision is made for delegating attendance to others, although Mr Keelty, the Chairman of the Board, noted that an acting commissioner is able attend if the Commissioner is on leave.

4.56 Mr Keelty told the Committee that he remains opposed to the proposed change:

if we delegate we could end up with the lowest common denominator on the Board. That would be an injustice not only to the ACC as an entity itself but also to the wider community, because the ACC has vested in it some extraordinary powers not vested in any other agency of its type.

4.57 According to Mr Keelty, there is also little real need for such a solution since the Board has been able to meet and conduct business effectively even in the occasional absence of certain members:

without doing an injustice to my state and territory colleagues: if one or a number of board members are not present, we do not seem to have lost where the majority of the board people wanted to go. There has been enormous consensus in board meetings ...<sup>40</sup>

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39 WA Minister for Police, *Submission 9A*, p. 1

40 Mr Mick Keelty, *Committee Hansard*, Canberra, 7 October 2005, p. 24

4.58 The Committee further notes that in practice this does not appear to be a major issue, based on the attendance at meetings in the previous financial year, at which the majority of members were consistently able to be present.<sup>41</sup>

4.59 The Committee declines to accept the Hon. Ms Roberts' recommendation. The Committee strongly believes that the ACC Board is not simply another management or steering committee to which member organisations need send a representative – even one of such rank as deputy commissioner.

4.60 The importance of the decisions made by the ACC Board, based on its determinations and setting of the National Criminal Intelligence Priorities as well as commitment to operations in various jurisdictions represented by those on the Board, requires the personal authority of the statutory members, and this power should not be delegated.

### ***Allocating roles between the Board and the CEO***

4.61 A criticism of the existing Board arrangements was made by the Australian Federal Police Association (AFPA), who commented on the relationship between the CEO and the Board, and an inappropriate lack of autonomy by the CEO:

The CEO does not have the resources or managerial independence needed to run the ACC in the manner that was initially expected by the Parliament. ... Unlike the Director-General of ASIO, the CEO is answerable to [the] Board on which he does not even have voting rights. Moreover on simple day to day matters such as sending ACC officers overseas the CEO first has to obtain the permission of the AFP Commissioner.<sup>42</sup>

4.62 This view is disputed by both Mr Keelty as Chairman of the Board, and Mr Milroy, the CEO. According to Mr Keelty:

in a practical sense Alastair runs the ACC on a daily basis. There is very little interference from the board.<sup>43</sup>

4.63 Mr Milroy concurred:

They do not intervene in my responsibility in terms of day-to-day management, administration and coordination of operations and investigations.

4.64 In Mr Milroy's view, the ACC Board focuses on the matters that it is intended under the legislation to focus on: making decisions on the National Criminal Intelligence Priorities, and determinations on operations and investigations. Mr Milroy explained the operation of these processes:

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41 ACC, *Annual Report 2003-04*, p. 14

42 AFPA, *Submission 16*, p. 2

43 Mr Mick Keelty, *Committee Hansard*, Canberra, 7 October 2005, p. 2

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To understand the processes, let me say that we prepare submissions based on intelligence. Those submissions go to the board as statements in support of other intelligence operations, special intelligence operations and special investigations. We will put forward a submission suggesting a certain course of action. Quite rightly, the board brings further knowledge and policy understanding. ... That is the board in their role of setting strategic directions and priorities. ...

On the basis that the board deals with the menu of work, they have a discussion about the submissions. The board may decide that the decision, because of certain factors, should not be as the submission recommended. Then the determination will be changed, or there may be a requirement for us to collect intelligence in another area and come back to the board and advise them on that ...<sup>44</sup>

4.65 Evidence suggests that only on a couple of occasions has the Board differed from the ACC's submissions, such as – in one example – to focus more narrowly the proposed Board determinations on aviation security.

4.66 There is also a distinction that should be made between formal decision making by Board members, and more informal and frequent consultations between Board members and the CEO. Mr Keelty noted that he and Mr Milroy have regular meetings on a range of issues requiring his input, and he also communicates routinely with Board members out of session.<sup>45</sup>

4.67 The Committee further notes the comments of Mr Jordana of the Attorney General's Department:

The separation of the roles of the chief executive officer and examiners in the ACC has in our view proved successful. The CEO has been able to effectively manage the ACC while the examiners have been able to exercise their independent use of the ACC's coercive powers on a full-time basis.<sup>46</sup>

4.68 The Committee is not convinced that there is a current problem in relation to the allocation of roles between the CEO and the Board or its chairman. As a matter of legislation, the Committee believes that the separation of roles is clear and appropriate, giving the CEO considerable authority in relation to the operational control over the ACC, but involving the Board in significant strategic directions.

4.69 It is also evident to the Committee that in practice there is a strong and effective working relationship between the current CEO and Board chairman, and there is no substantial evidence that this relationship is in any way dysfunctional.

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44 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 70

45 Mr Mick Keelty, *Committee Hansard*, Canberra, 7 October 2005, p. 21; see also Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 71

46 Mr Miles Jordana, *Committee Hansard*, Canberra, 7 October 2005, p. 2

4.70 The Committee also reiterates the point that there is a difference between seeking the Board's approval in relation to a particular matter, and – as a matter of practice – providing information to, and consulting widely with, Board members.

4.71 Evidence to the review suggests that Mr Milroy has been extremely active in liaising and consulting with Board members in and out of session. While this may appear to some critics as excessively cautious, it also reflects the political realities of establishing the strong working relationships and understandings with partner law enforcement agencies that are crucial to the ACC's effectiveness. This is particularly the case during its first few years. Rather than a matter that needs repair, the Committee considers that this is something for which the CEO and his officers should be commended.