

Chapter 6

Resources

Introduction

6.1 Chapter six examines the extent of the resources that are available to the ACC in terms of the two areas of budget and staff. Assessments of both matters assume a particular complexity in the case of the ACC by reason of the combination of contributions from both the Commonwealth and the states and territories.

Budget

6.2 In its first full year of operation (2003-2004), the Australian Crime Commission's total budget was \$73.6m, which included a government revenue component of \$65.8m.¹ In the current budget cycle, this grew to \$76.302m, which consists of an appropriation of \$69.173m and additional revenue from other sources amounting to \$7.129m.² The 'other sources' includes revenue of \$1.770m from the States and territories, comprising reimbursement of salaries in accordance with agreements for intelligence services with partner law enforcement agencies.

6.3 The remaining \$5.359m is not specifically identified as being from any particular source, nor does it appear to have any particular application. From the experience of past years it is possible that this represents tied funding for particular ACC operations or investigations.

6.4 Following the release of the 'Wheeler Review' into security at Australian airports, the government has allocated additional funds to the ACC, as Mr Milroy told the Committee, amounting to:

\$20 million over five years, which will allow us to increase staff numbers by 16 or 19 in the intelligence collection, research statistics and other areas that deal with crime at airports. We also received quite substantial funding for the 2007 financial year to really enhance the intelligence database and some of the other systems and analytical tools that we need and identified.³

6.5 The Committee has examined two issues concerning the ACC's budget:

- the adequacy of the overall budget resources; and
- control over funds allocation.

1 *Australian Crime Commission Annual Report 2003-2004*, p.95

2 Australian Crime Commission Portfolio Budget Statements for 2005-2006, p. 84
viewed online on 19 October 2005 at <http://www.ag.gov.au/agd>

3 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005. p.73

Adequacy of the ACC budget

6.6 Does the ACC has sufficient funds to properly fulfil its statutory tasks? Consideration of this question relies on both an assessment of current workloads and a prediction of the impact of future trends in the organised crime environment. However, answering this question is complicated by not only the inherent uncertainty of any such predictions, but by two further factors. First, the funds that the ACC *could* expend in pursuit and prosecution of organised crime is almost limitless. It is therefore necessary to balance this criteria against what they *should* be doing, given the perceived nature of the threat.

6.7 A second complication is that without exception, agencies have proven reluctant to discuss any budget issues with the Committee on the grounds that such matters relate to confidential advice to the minister, that will itself lead into the overall budget process.⁴

6.8 In general terms, the ACC considers that it is adequately funded to perform its current menu of work, as set by the ACC Board.⁵ Indeed, Mr Melick considered that the ACC was better funded than was the NCA at the time he was involved, although it is not clear whether he took into consideration either inflation over time or the expanded role of the ACC compared to the NCA.⁶

6.9 In contrast to Mr Mellick, Mr Bob Bottom made the following comparison between the NCA and the ACC funding levels, suggesting that the current budget for the ACC is 'hardly any different' to that of the NCA in the late 1980s:

I am sure that Mr Duncan Kerr, who has been a long-serving member of the committee, will remember that it used to be around about \$50 million a year; it is now \$69 million a year. This year's budget was allocated only an extra \$1.1 million, taking the total budget of the ACC to just \$69.1 million⁷

6.10 The Committee notes that in its last full year of operation (2001-2002), the National Crime Authority's total budget was \$60.014m., which represented an increase of approximately \$7m over the previous year.⁸ Whilst Mr Bottom's figures are not entirely correct, the essence of his point remains valid: that there has been a surprisingly small increase in budget for the ACC in comparison to historic funding levels, particularly considering the additional intelligence function incorporated into the ACC.

4 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 73

5 Mr Alastair Milroy, *Committee Hansard*, Canberra, 7 October 2005, p. 73

6 Mr Aziz Melick, *Committee Hansard*, Sydney, 9 September 2005, p. 26

7 Mr Bob Bottom, *Committee Hansard*. Brisbane, 19 August 2005, p. 3

8 *National Crime Authority Annual Report 2001-2002*, p. 84

6.11 Mr Bottom also noted that the spending by Australia on policing in the South Pacific far exceeds the ACC's budget. Mr Bottom said:

...an amount of \$840.5 million over four years has been allocated to help authorities restore law and order in the Solomon Islands. ...We have found \$840 million to help that country, and I think it is only logical that we should be able to get a better allocation so that the ACC, which is our peak body for partnership and multidisciplinary type activities, can target what I would regard as serious organised crime and something of an enemy within.⁹

6.12 The Committee notes that the Department of Foreign Affairs and Trade has allocated \$840.6 million over four years to the Australian-led Regional Assistance Mission to Solomon Islands (RAMSI). The Department says:

The funding will ensure our continuing assistance to the Solomon Islands Government in the restoration of law and order and the consolidation of broad-ranging reforms. This benefits Australia's own security and the security of other Pacific countries.¹⁰

6.13 Two further factors are relevant to the consideration of the adequacy of the ACC Budget. In its submission, the Australian Taxation Office highlighted concern at the growing challenges to Australia's revenue system through international tax schemes. The submission continues:

These concerns have been borne out by the current Operation Wickenby, that has also confirmed that these schemes extend to potential criminal activity. Operation Wickenby has highlighted the level of expertise required to [conclude these matters successfully]. Our concern is that we see more rather than less of this type of activity being uncovered. Should this eventuate there will be questions about whether the resources available to the ACC will be sufficient to meet this challenge.¹¹

6.14 The Committee is also aware of the budgetary implications of the counter terrorism initiatives, which have the potential to divert resources within the ACC's partner agencies such as the AFP, away from law enforcement activities and criminal intelligence, and into counter terrorism. If this is the case, the ACC may need additional funding to make up this shortfall and itself undertake a number of tasks that it has previously been able to rely on other agencies for.

9 *Committee Hansard*, Brisbane, 19 August 2005, p. 3

10 Dept of Foreign Affairs and Trade website:
http://www.dfat.gov.au/geo/solomon_islands/solomon_islands_brief.html#aust_relations
viewed 1:45pm, 26 October 2005.

11 Australian Tax Office, *Submission 11*, p. 3

Control over budget allocation

6.15 The Police Commissioner of Victoria considered that the tied funding model was a flawed one. Commissioner Nixon gives the example of the determination on money laundering & tax fraud; \$29.971m over four years was provided, with an expectation that approximately \$53m would be subject to tax assessment and proceeds of crime action.¹² Commissioner Nixon continued:

The current arrangements whereby Commonwealth funding is provided, but tied to a particular crime category ...reduces the flexibility of the ACC and is in conflict with the governance model. Sufficient funds need to be provided by the Commonwealth for the ACC to coordinate intelligence and investigations without the funding being tied to a particular crime category. The ACC provides advice to the ACC Board on how the resources should be allocated, according to the priorities set by the ACC Board. It is then a matter for the ACC Board to determine how the funding should be allocated, having regard to the national priorities, risks and threats. The current funding arrangements usurp the authority of the ACC Board, whereby the Commonwealth sets the agenda and prioritises the allocation of resources through tied funding.¹³

6.16 The Committee notes Commissioner Nixon's submissions. However, the model which she proposes would be at variance with the Commonwealth's budgetary arrangements and responsibilities. The current model also reflects the reality that the overwhelming majority of the ACC's funding is provided by the Commonwealth. The Committee takes the view that provided the ACC is given adequate core funding, there is no difficulty with the Commonwealth retaining control over specific areas of activity by means of tied funding.

Recommendation 15

6.17 The Committee recommends that where priority issues involving the ACC arise, the Commonwealth continue to grant funds on a 'once-off basis' when this occurs between budgetary cycles.

6.18 However, this must be distinguished from adequate core funding. The Committee also considers it is important to recognise that the states must remain an integral part of the ACC's governance and operations.

Staff

6.19 In its last Annual Report, the ACC reported a total of 518 staff at 30 June 2004. The table below shows the breakdown of staff.¹⁴

12 *Submission 8*, p. [2]

13 *Submission 8*, p. [2]

14 *Australian Crime Commission Annual Report 2003-2004*, p. 132

Designation	Number
CEO and Examiners	4
APS Staff	377
Seconded Police Officers	117
Australian Tax Office secondees	7
Australian Customs Service secondees	3
CDPP secondees	1
Agency staff	9
TOTAL	518

6.20 An updated staffing figure at 30 September 2005 gives a total of 501 staff with an additional 66 members of taskforces funded by jurisdictions.¹⁵

6.21 By way of contrast, the table below shows staffing for the National Crime Authority at 30 June 2002: the end of its last full year of operation.¹⁶

Designation	Number
Authority Members	2
APS Staff	277
NCA Act Staff	1
Seconded Police Officers	116
Australian Tax Office secondees	9
Australian Customs Service secondees	1
TOTAL	406

15 *Submission 14C*, p. 9

16 *National Crime Authority Annual Report 2001-2002*, p. 120

6.22 To this figure, it is of course necessary to add the staff of two other agencies, the Australian Bureau of Criminal Intelligence and the Office of Strategic Criminal Assessment.

6.23 This section comments on four issues in relation to staffing and resources:

- Management of staff skill sets
- Secondment issues
- The need for additional examiners
- Allocation of staff to regional offices

Management of staff skill sets

6.24 The Committee notes the policy adopted by the ACC in managing its staff, and maximising the capacities of those staff in a relatively small agency. An example of this was provided by Mr Kevin Kitson, the ACC's Director of National Criminal Intelligence:

the agency has supported my efforts to restructure the nature of the intelligence staffing within the ACC. We inherited an agency with a good number of skilled and experienced people but of a certain seniority. We needed to adjust the staffing profile so that we had a broader base of people with perhaps more contemporary and more diverse skill sets. That has allowed us to expand our numbers and to take people who only want to work in law enforcement for one to two years and who are not necessarily looking for careers in law enforcement.¹⁷

6.25 Mr Milroy explained to the Committee that the balance and mix of resources is a lot different from what it was in 2003:

It is a small organisation that has an ability to shift its resources to meet emerging needs, although there is a quarantined or core group who have key responsibilities for emerging crime and developing the picture of criminality for this intelligence collection.¹⁸

6.26 Mr Milroy cited the capacity of the ACC to respond to the need to increase the collection of intelligence at airports without disrupting the core intelligence work of the organisation.¹⁹ Mr Kitson also told the Committee of strategies to tap into the expertise of other agencies:

Within the scope of the ACC's resources we cannot justify having our own research or analytical chemist onboard, so we have built some very strong relationships with research chemists in Queensland and Victoria, and indeed in most of the states, so that on a very regular basis we can talk to

17 *Committee Hansard*, Canberra, 7 October 2005 p. 67

18 *Committee Hansard*, Canberra, 7 October 2005, p.68

19 *Committee Hansard*, Canberra, 7 October 2005, p.68

them and ask what the impact would be if a particular drug were scheduled. If the scheduling under the drugs and poisons regulations was adjusted, what difference would this make to criminal exploitation? Could they make methamphetamine by the same system? What would they replace it with? If we managed to reschedule or prohibit imports of certain things, where would they go next? That is a very active process that we have going.²⁰

6.27 The Committee commends the Commission for this approach to management of its resources. However, the Committee notes that this flexibility should not be used against the ACC by requiring it to undertake its work with fewer resources than it reasonably requires.

Secondment issues

6.28 The Committee heard considerable comment about the position of the police officers seconded to the ACC, of which there were 117 at the end of the 2003-2004 financial year.

6.29 Mr Milroy told the Committee:

We had some discussions very early in the piece to try to come up with some common terms and conditions, and I think that has been an issue that has been around for some years, even prior to the establishment of the ACC. A director of corporate services has been going around, talking to each individual commissioner, or representatives of the commissioners, to look at a better way of recruiting seconded officers, so that there is a bit more equity in the process. Whether that is a model of leave without pay – which is quite common in a number of jurisdictions, whereby we would advertise the terms and conditions to come and work at the ACC on a leave without pay arrangement – it is still a secondment, and all the legal and administrative issues would still be addressed.²¹

6.30 In their submission the Police Federation of Australia told the Committee that for some time they had been attempting to negotiate a national secondment package for all police secondees to the ACC. The Federation considers this is necessary, because all secondees are subject to the employment conditions of their home police force; this results in inconsistencies of employment conditions including salary and benefits²² as well as limiting the possibilities for promotion in the home jurisdiction. Discussions were held in May 2004 between the Police Federation and the ACC but there has been little progress since.

6.31 Mr Mark Burgess, explained a little of the history of secondees with the NCA:
...we found that members working together in an office were on various terms and conditions attached to their home jurisdiction. Decisions would

20 *Committee Hansard*, Canberra, 7 October 2005, p.67

21 *Committee Hansard*, Canberra, 11 October 2005, p. 7

22 Police Federation of Australia, *Submission 3*, pp. 1-2

be made on who would work overtime, who would be on call and who would work weekends, based obviously on the terms and conditions in their home jurisdiction to minimise any cost to the NCA, which meant that some officers in some jurisdictions found themselves doing all those sorts of tasks whereas others who perhaps had better terms and conditions were not being called on as much to do those tasks. That is what brought it to a head in the first place. There were a number of difficulties ...the one that still has not been overcome is: who is the employer of the police officers attached to the ACC?²³

6.32 There is also a clear imperative to resolve this issue for reasons of efficiency in the ACC's administration of its staff. Running a system of multiple pay and conditions reflecting those of each Australian jurisdiction imports a degree of administrative complexity and cost that is unacceptable in the longer term. As Mr Burgess noted:

From the employer's perspective, it would be far simpler administratively. They would not be dealing with potentially eight different awards or enterprise agreements across the country; they would be dealing with one common set of terms and conditions.²⁴

6.33 The Committee also notes the important relationship between the management of secondments generally and the integrity and disciplinary issues of those secondees. This matter was discussed in detail in Chapter 5 on accountability and will not be revisited here, except to stress the Committee considers that the integrity and disciplinary issues are part of the broader picture of the employment status of secondees within the ACC. An agreement which has been in existence for eleven years, and which was devised in a completely different employment and organisational environment should be revised, and the issues surrounding employment of state and federal police officers clarified.

6.34 The Committee notes the more practical model used for police secondees to overseas missions: they are on leave without pay from their home forces, and are sworn as special constables of the AFP, and are subject to the integrity regime, pay and conditions of the AFP.

6.35 If applied to the ACC, this model could work in two ways. Either, police secondees are seconded to the ACC specifically using the AFP pay and conditions as a reference standard, or, they are seconded to the AFP, which then assigns them to the ACC.

6.36 Either option resolves the current complexity of secondment arrangements, and also avoids the resources required to negotiate a specific ACC secondment package that could result in an expensive 'highest common denominator' approach to

23 Mr Mark Burgess, Chief Executive Officer of the Police Federation of Australia, *Committee Hansard*, Canberra 13 October 2005, p. 7

24 Mr Burgess, *Committee Hansard*, 11 October 2005, p. 7

these diverse conditions. The latter option has the added advantage of resolving the police powers issues discussed in chapter 3, although the Committee recognises that it may be considered undesirable by some jurisdictions to have secondees posted via the AFP.

Recommendation 16

6.37 The Committee recommends that the issue surrounding the employment of secondees be addressed as a priority. Any review should address the standardisation of salary and working conditions through the development of a common secondment arrangement, as well as the implications of this system on the integrity and disciplinary framework.

ACC secondees to other agencies

6.38 One final, albeit rather minor matter, in relation to secondees is the potential for transfers in the other direction. Mr Michael Monaghan Deputy Commissioner, Serious Non-Compliance, at the ATO, told the Committee that while there were are ATO secondees at the ACC, no ACC officers have been seconded to the ATO, although there are both AFP and ASIC officers on interchange:

I have had discussions with the ACC about potentially having an officer placed in the ATO for a while as a broadening experience.²⁵

6.39 The Committee considers that there would be some merit in ACC staff being seconded to other agencies where there is some mutual benefit. However the Committee does not believe that this should occur until the issues surrounding secondments are resolved.

The need for additional examiners

6.40 The ACC submission indicates that in 2003, 171 examinations were conducted, rising to 515 in 2004, and – as at June 2005 – 375 examinations had been conducted.²⁶ The Attorney General's Department indicated that the examiners are:

fully occupied exercising their coercive powers and conducting examinations but that that examination workload is increasing significantly. Without prejudicing the independence of the examiners, we believe it may be useful to consider what options may be available to the ACC under the act to manage the increasing examination workload. For example, would there be scope for longer terms for examiners or for the engagement of part-time examiners?²⁷

6.41 Since the ACC Act does not stipulate the number of examiners to be appointed, any increase may be done administratively, noting the requirement that the

25 Mr Michael Monaghan, *Committee Hansard*, Canberra, 11 October 2005, p.21

26 ACC and ACC Board, *Submission 14*, p. 15

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

IGC must be consulted prior to any appointment. However, appointing part-time examiners would require an amendment to the Act.

6.42 While mindful of the rising workloads of the examiners, either course of action outlined by the Attorney General's Department has wider implications that should be considered.

6.43 The Committee has already discussed (in Chapter 3 on Powers) the way a limited number of examiners indirectly provides an effective brake on any inappropriate expansion in the use of coercive powers. As the Hon Duncan Kerr SC MP observed:

The fact that there are three examiners occupied full-time on this task is in a sense an effective mechanism for ensuring that only important things are addressed.²⁸

6.44 As to the suggestion of part-time examiners, in its *Report on the ACC Establishment Bill* the then Committee expressed some concern at the suggestions that part-time examiners could be appointed. The Committee noted at the time the potential creation of inappropriate incentives for such examiners to 'make work' for themselves:

if the remuneration of your part-timers depends on getting more work, you could have the forum shopping that you alluded to.... After due consideration, the government is not disposed to have part-timers of that kind that is paid on an hourly, daily or use rate.²⁹

6.45 In the absence of any persuasive argument to the contrary, the Committee considers that part-time examiners should not be used by the ACC.

6.46 The Committee also considers that there may be a case for an increase in the number of examiners at some future date, but this is not presently justified. The Committee takes the view that there should be a provision within Part II Division 3 Subdivision B of the Act to prescribe the maximum number of examiners who can be appointed, while also authorising regulations to allow for an increase when this is necessary. The Committee considers that the unstated assumption when the ACC was established that the number of examiners would be limited to three should not be altered without Parliamentary oversight.

28 The Hon Mr Duncan Kerr SC MP, *Committee Hansard*, Canberra, 7 October 2005, p. 3

29 *Report on the Australian Crime Commission Establishment Bill 2002*, p. 28 referring to *Committee Hansard*, 14 October 2002, p. 142

Recommendation 17

6.47 The Committee recommends that Section 46B of the *Australian Crime Commission Act 2002* be amended to provide that the maximum number of examiners allowed to work with the Commission at any one time be limited to three. The Committee also recommends that a further provision be inserted allowing the regulations to review and prescribe a higher number of examiners if and when the need arises.

Allocation of staff to regional offices

6.48 In her submission to the Inquiry, the Hon Michelle Roberts Minister for Police in Western Australia said:

It is understood that when the ACC office first opened in WA in 2001, there were eight investigators on staff. Today there is now only one investigator at the Perth office of the ACC. On all objective standards this is insufficient to operate an effective and fully functional investigative team.

6.49 The ACC was asked about this resource issue. Mr Milroy told the Committee that when the minister visited and put in her submission, there was recruitment action being undertaken and the numbers were down. Mr Milroy continued:

we try to advise the law enforcement agencies of the dates when the secondees are returning, to try to facilitate their replacement so there is no gap, but unfortunately that was the position then. I think the numbers are up to two or three more officers, and when she visited there was only one. I think it is important to understand, of course, that we ensure that the balance and mix of our specialist resources in any location around the country are allied to our national requirements. Although the numbers might fluctuate up and down depending on the balance and mix of resources, it is required to operate in that environment to deal with a specific board-approved menu of work. So it does vary, and it is not the same as it was in 2003 when we first started because our menu of work has varied.³⁰

6.50 The Committee appreciates that the Minister had some cause for alarm, and accepts that the fluctuations in personnel numbers are evaluated in terms of work of the Commissioner at any given time.

30 Mr Alastair Milroy, *Committee Hansard*, 11 October 2005, p. 7

