

Chapter 8

Legislative Change

Introduction

8.1 The ACC Act is three years out from its commencement. From the submissions and evidence, there appear to be no major structural issues which require amendment or attention. However, there are some important matters identified in this report which have been the subject of recommendations. These include:

- Developing legislation to clarify the position of a person summonsed under section 28 of the ACC Act who is the subject of criminal proceedings or who becomes the subject of criminal proceedings or confiscation of proceeds of crime proceedings, during the course of his or her contact with the Australian Crime Commission.
- Amending section 55AA of the ACC Act 2002 to broaden the scope of the Commonwealth Ombudsman's briefing to the PJC to include any matter relating to the operations of the ACC.

8.2 The Attorney General's Department's submission notes that the Department and the ACC continually review the effectiveness of the Act.¹ However, particular attention has been given to the section 28 matter noted above together with:

- the powers and immunities of staff members and in particular the specially commissioned officers as well as secondees;
- non-compliance at examination; and
- the dissemination of criminal information and intelligence – in particular to the private sector.²

8.3 The Committee has already expressed a view in relation to each of these matters, and notes that they remain the subject of ongoing discussion with the ACC.

Caselaw

8.4 A body of case law challenging various aspects of the ACC legislation is being generated in the Federal Court: the main areas of challenges are noted in Chapter 3. From those the Committee notes that the most pressing is the section 28 issue noted above, and the effect of the recent decision in *AA Pty Ltd and Mr BB v Australian Crime Commission* [2005] FCA 1178.

1 Commonwealth Attorney General's Department, *Submission 17*, p. 14

2 Commonwealth Attorney General's Department, *Submission 17*, pp 11-14

8.5 The problem identified by Finkelstein J is whether the ATO can be construed as a law enforcement agency under the ACC Act. While saying that it could not, His Honour suggested that the matter might be remedied by regulation.³ While the case is being appealed by the ACC the decision has implications for the ACC and ATO, and in particular Operation Wickenby in which the ACC, the ATO and the AFP are jointly engaged. Again this is a matter which the Committee would like to see resolved as a matter of priority.

Availability of legal aid at examinations – ACT Legal Aid office

8.6 The Committee notes in Chapter 3 the position in relation to Legal Aid and examinations by the ACC. Mr Chris Staniforth of the Legal Aid Office of the ACT told the Committee:

The act was clearly drafted ...in a way which would make you think that legal aid would be available through a legal aid commission. There is a distinction made allowing a person working for a legal aid commission to come to know material which would not otherwise be allowed. I think any citizen in any democracy should have access to legal advice in the most accessible form we can achieve it.⁴

8.7 The present arrangement for a person seeking assistance for an Examination is through an application to the Attorney General's Department. This matter is discussed in Chapter 3.

8.8 The Committee considers that the implications for a person called to an ACC examination are considerable, and not all witnesses before an examination are 'Mr Bigs' who can be assumed to be capable of affording legal assistance. For this reason, the Committee makes the following recommendation:

Recommendation 18

8.9 The Committee recommends that regulatory, or if necessary legislative changes be introduced to allow persons summonsed for an Examination to be eligible for legal aid from the legal aid commissions, subject to the usual means tests.

3 *AA Pty Ltd and Mr BB v Australian Crime Commission [2005] FCA 1178, para 23*

4 Mr Chris Staniforth, *Committee Hansard*, 13 October, 2005, p. 1

Circulation of draft legislative or regulatory proposals

8.10 The Committee also suggests that proposals for amendments of relevant legislation be circulated to the Committee while the legislation is being developed. This would make the evaluation stage more efficient, and would allow the Committee to express views before the matter becomes a matter for pressing Parliamentary attention.

Senator Santo Santoro
Committee Chair

