Joint Submission
Review of the Australian Crime Commission Act 2002
10 August 2005

Committee Secretary
Parliamentary Joint Committee on the Australian Crime Commission
Parliament House Act 2600,
Australia

Having ourselves recommended such a review in our submission to the Committee's Review of the Australian Crime Commission Establishment Bill 2002, we welcome the current review.

We have considered the four (4) Terms of Reference.

In relation to Term 1., we have no reason nor grounds to question the "effectiveness of the investigative, management and accountability structures established under the Act".

More specifically, we see no need for any change in relation to (a) the Australian Crime Commission, nor (b) the Chief Executive Officer, nor (c) the Examiners, nor (d) the Australian Crime Commission Board (except to expand it where need be to include any further relevant agencies), nor (e) the Intergovernmental Committee, and (nor) the Parliamentary Joint Committee of the Australian Crime Commission.

In particular, we would reiterate our support for a continuance of the PJC which has been very much an underpinning feature of such a national body since its adoption with the establishment of the original National Crime Authority in 1984.

Indeed, in our 2002 submission, we went so far as to propose a strengthening of its role, recommending that it should have access to operational details where appropriate.

In reaffirming our support for a continued role for the PJT, we note - and endorse - the observations of the PCJ itself in its Report on its Examination of the Annual Report of the Australian Crime Commission 2003-2004.

In relation to Term 2., we are confident that 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". Except that, as mentioned by the PJC in evaluating the last annual report of the ACC, there may well be instances of machinery-style amendments such as that submitted by the Northern Territory Police that might need to be addressed.

In relation to Term 3., we ourselves do not see any need for any "amendment to the Act".

In relation to Term 4., there is a "related matter" whereby we do wish to make a recommendation.

That is that the Australian Crime Commission should be provided with additional funding to enable it to refocus on its core business - drug trafficking.

As the ACC's latest annual report shows, it has been operating under eight Determination.

Four of these represent what are termed Special Investigations - those being Firearms Trafficking, Established Criminal Networks, Established Criminal Networks - Victoria, and Money Laundering and Tax Fraud.

The other four represent Special Intelligence Operations - those being Amphetamines and other Synthetic Drugs, Vehicle Rebirthing, Identity Crime and Card Skimming and People Trafficking for Sexual Exploitation.

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

Through proper priorities, and extra funding (specified under the Tough on Drugs program) , the Australian Federal Police have been particularly successful in combating drug smuggling at a transnational level - seizing so much heroin to have caused a heroin drought and thereby through unavailability of drugs to have reduced the number of deaths from heroin overdoses by nearly 70 per cent, as well as having cut the regular usage of illicit drugs by nearly 25 per cent and to have had an unacknowledged flow-on effect of having reduced instances of thefts and other crimes to buy drugs by 20 per cent in areas of NSW and elsewhere throughout Australia.

On our reckoning, with the Get Tough on Drugs strategy having reversed what had been an upward spiral of drug deaths, several thousand lives have been saved so far.

The flow-on effect of fewer people turning to crime to get money for drugs or committing crimes while under the influence of drugs has been having a spectacular effect on crime statistics.

For example, figures released on 23 April 2005 by the NSW Bureau of Crime Statistics and Research show that rates of property crimes have almost halved since 2001, with crimes such as muggings, shoplifting and break and enter falling more than 10 per cent between 2003 and 2004.

The challenge now is to not only consolidate such success but grasp an opportunity to achieve even greater results.

A deficiency is that the AFP success has relied upon interdictions resulting largely from off-shore intelligence, with onshore, or regional organised crime functions, having been allowed to be scaled back.

The current attention being paid to arrests of drug mules in Indonesia highlights a classic opportunity for refocusing on network structures within Australia.

After two Australians, Kevin Barlow and Brian Chambers, were hung for drug trafficking in Malaysia nearly 20 years ago in June 1986, importation of heroin into Australia switched from drug "mules" to larger consignments using ships, containers etc.

With the success of AFP interdictions off-shore, overseas suppliers are now again forcing Australian networks to send "mules" to collect the drugs - thus making such local networks more vulnerable to good law enforcement strategies.

It requires a strategy to refocus and prioritise the direction of the ACC, using its powers and resources in partnership with the AFP along with State and Territory Police Forces and partner agencies such as Customs. In simple terms, it requires an infusion of extra funding for specific purposes under the Tough on Drugs strategy.

As a participant in the Victoria Police's Organised Crime Strategy Group responsible for devising a five-year strategy to combat organised crime in response to the spate of 27 gangland murders, Bob Bottom has been privy to a confidential intelligence assessment by the ACC on just how many organised crime groups there now are throughout Australia.

What may be stated publicly in general terms is that, according to the ACC assessment, there are now 97 organised crime groups of national interest, as against just 13 identified by the NCA just on 20 years ago.

Out of those, 32 of the groups are deemed to be high-risk.

What is significant is that when authorities in the United States announced on 26 April last what was described as one of the biggest mob crackdowns in Chicago history they proclaimed that there were now just four remaining mob "crews" operating in the Chicago area.

Extraordinarily, according to the ACC assessment, we have two and a half times as many such groups in Sydney (10 groups), twice as many in Melbourne (8), the same number in Adelaide (4), one less in Brisbane and Perth (3) and half as many in Darwin and even Canberra (2).

We note that the Committee received information in relation to the ACC assessment during its evaluation of the ACC's 2003-2004 annual report, and we support the Committee's subsequent recommendation that the ACC consider the release of public versions of key research, including a declassified version of the Picture of Criminality.

In that context, it may be important for the ACC to monitor the impending implementation of consorting laws in Victoria to target and dismantle organized crime groups in that State and the necessity in due course for machinery amendments to relevant federal and state Acts to accommodate such an historic initiative.

When introducing the new consorting provisions in the Parliament of Victoria within the past month on 21 July as part of a VAGRANCY (APPEAL) AND SUMMARY OFFENCES (AMENDMENT) BILL, the Victorian Attorney-General, Mr Rob Hulls, proclaimed that the Bill provided for a new consorting offence to "target activities that may be a prelude to organized crime".

As Mr Hulls explained, "It will be an offence, without reasonable cause, to habitually consort with a person convicted or suspected of an organized crime offence. While the original consorting offences targeted thieves, the new offence is directed at people involved in organized crime and is designed to assist police in creating a hostile environment for organized crime."

The historical background and basis for such an initiative is outlined in an ANNEXURE which forms part of this submission and which is a copy of a paper presented by Bob Bottom at an Organised Crime Strategy Workshop held in Victoria in August last year.

In recommending revival of consorting laws, the paper outlines how consorting laws were used successfully in the past in Australia not only to break up organized crime gangs in the 1930s but put a stop to illicit drug trafficking for a period of more than three decades.

In our view, priority must be given to ensure that not only Victoria but all States and Territories as well as the Commonwealth can be sue that the ACC is properly resourced to enable it, too, to create a hostile environment for organize crime right throughout Australia.

Thus, we recommend that the Committee recommend a substantial allocation of additional funding to enable the ACC to fulfill its original charter and tackle modern crime networks head-on, in all States and Territories, including the national capital, especially in dismantling networks underpinning the illicit drug trade.

Bob Bottom, OAM

Rev. Canon B.A. (Bruce) Ballantine-Jones, OAM

ANNEXURE

CONSORTING LAWS
Repeal or revival?

By Bob Bottom, OAM

Organised Crime Strategy Workshop
24-25 August, 2004

The passing by the Commonwealth Parliament of consorting laws to combat terrorism has served to highlight an option for Victoria Police to deal with aspects of Melbourne's gangland war and organised crime generally.

Under legislation passed just recently on 12 August 2004, it will now be a Commonwealth offence for persons to "associate" with known terrorists or members of proscribed terrorist organisations, just as old state laws have made it an offence to consort with known criminals.

However, at the time the Commonwealth law was being mooted, and other states were re-activating their consorting laws to target criminal gang activity, and at the very height of Melbourne's gangland war, Victorian politicians from all parties ignored police pleas and moved to actually repeal Victorian consorting laws.

Once the principal weapon used to stop criminals getting together to organise crime, or extend their influence over otherwise respectable people, consorting laws have tended to fall into disuse in most states and territories over the past three decades.

Significantly, it was Victoria's current Police Minister, Mr Andre Haermeyer, who first promoted the idea in modern times of re-using consorting laws to combat gang activity.

In December 1995, Mr Haermeyer, then Opposition spokesman on police matters, publicly called for the "re-introduction" of the use of consorting laws to tackle local and ethnic gangs in response to mounting concern over the spread of the drug trade in Melbourne.

Rather than re-introduce the use the laws since becoming Police Minister following the election of the current government in 2000, Mr Haermeyer has been faced with moves by parliamentary colleagues to repeal the laws which resulted in a formal recommendation in a report to Parliament in 2002 by the all-party Scrutiny of Acts and Regulations Committee (SARC).

In contrast, just the year before New South Wales had not only re-introduced the use of old consorting laws but its Parliament passed special new legislation allowing courts to order convicted gang members not to associate with other gang members, or return to designated gang "turf " meeting places.
In March this year, a conference of commissioners of police from Australia and South West Pacific Region countries, attended by Victoria Police's Chief Commissioner,

Christine Nixon, recommended that each jurisdiction "pursue" updated consorting powers.

In theory, Victoria retains the harshest penalties under old-style consorting laws, with a sentence of one year imprisonment on a first offence and two years for a repeat offence, compared with a maximum of six months in New South Wales, South Australia, Tasmania, Queensland and Western Australia, and three months in the Northern Territory.

Victorian Attorney-General, Rob Hulls, has deferred action on the SARC recommendation pending a further review.

The move for repeal has been supported by the Criminal Bar Association, the Law Institute of Victoria, Victorian Legal Aid and the Public Interest Clearing House - mainly on the basis that the powers are predicated on the principle of guilt by association.

Another major argument put forward for repeal is that the powers are now rarely used.

A submission and evidence on behalf of the Victorian Police Association, has attributed the infrequent use of the law in modern times largely to onerous restrictions imposed from within, requiring police to now record nine consorting reports within one month or 12 within three months - whereas the law does not specify such numbers and in NSW police are required to record only six bookings in seven months.

When a SARC sub-committee held a public hearing in May 2002, police not only appealed for retention of the old consorting powers but sought the broadening of its provisions to specifically target drug trafficking.

Preserved in the Vagrancy Act, the consorting provisions provide for bookings against people found consorting in a house or place in the company of reputed thieves and another applies to habitual consorting with convicted thieves.

One witness, Detective Senior Sergeant P Chidley, of the Tactical Response Squad, argued that if the criteria were broadened it could be directed "hopefully" against drug trafficking. "It has been more and more realised," he said, "by the regions and places like Springvale, Frankston — and all sorts of places — that the police have their hands tied in preventative measures ...

"They have to allow these drug dealers to talk to the housebreaker to organise a swap over of goods. Like a housebreaker will take a video to a drug dealer, and he will give him a cap of heroin or whatever. We are very limited as to what measures we can take to prevent this sort of communication and these conspiracies."

Modern policing, it seems, has forgotten what consorting laws were used for in the past, especially considering community concern over the gangland war which has resulted in 27 murders over the past five years.

When a retired policeman, David Lenton, wrote to the press in April 2004, urging enactment of a special Consorting Act for Victoria, to "keep track of criminal activity in the drug market", he recalled how consorting powers had been responsible for "breaking up the big gangs in the 1940s, '50s and '60s ... and most got prison."

More significantly, in the light of the current fashion for even some of Australian's police chiefs, judges, magistrates, politicians, church leaders and academics to portray action against illicit drugs as an unwinable war, consorting powers were originally introduced to fight a forgotten drug war - back in the 1930s.

And it was a war that was won.

A serious illicit drug trade had emerged during the second half of the 1920s and first half of the 1930s. Back then, there was a more straightforward approach - on the one hand, community abhorrence of illicit drug use, and, on the other hand, community acceptance of a get tough approach by law enforcement.

That was at the time when American authorities were battling the legendary Al Capone era in Chicago America, when at the same time similar gangsters were on the rage in Sydney and Melbourne Australia promoting not bootleg liquor but a cocaine trade.

After strict laws were enacted against the carrying of concealed weapons, to strip criminals of their pistols, gang members resorted to using cut-throat razors, spawning what became known as the razor gangs who fought battles over control of the drug trade.

Such was the reaction in Sydney to casualties with L-shaped slashes appearing in hospitals, coupled with a then universal community condemnation of illicit drug taking, that parliament with bipartisan support enacted a law providing for jail sentences for anyone "habitually" consorting with "reputed" criminals.

Not only did that law enable the police to wipe out the razor gangs but allow authorities in 1936 to ultimately proclaim total victory over the cocaine trade.

As recorded in Dr Alfred McCoy's authoritative book, DRUG TRAFFIC, when just two officers, Thomas Wickham and Wharton Thompson, were appointed the sole members of NSW's first drug squad, they "swept the streets, making hundreds of arrests of drug dealers and users" using consorting powers.

"Outraged by razor violence and narcotics traffic," McCoy wrote, "the Sydney community - the press, public and parliamentary parties - decided to eliminate a noxious vice and those responsible for it. Drawing on such Draconian, pre-modern legal practices as ostracism, rustication and arbitrary detention, the courts and police simply cast out the pariahs.

"In retrospect the suppression of the cocaine traffic does not appear to have been a terribly difficult task. The regular and repeated contact between addicts and street pedlars, pedlars and distributors, distributors and importers, made identification relatively simple ... It was a remarkable exercise in social control ... For all of their bravura, the criminal gangs of the 1930s crumbled under police pressure".

The reality was that nobody could habitually use illicit drugs without habitually consorting with criminals to buy supplies. Thus the illegal trade evaporated.

Seldom is it acknowledged that it remained suppressed for three decades. Even during World War 11, Australia had no significant illicit drug trade.

It was not until the 1960s when a serious illicit drug trade began to re-emerge, initially attributable to a large influx of American servicemen using Australia for rest and recreational leave from the Vietnam War and it was not until the 1970s that the modern drug trade became widespread.

It so happens that that is when consorting laws were put on hold. Except for occasional use only in Victoria, most notably in recent times to combat youth gang activity in Bendigo.

Unlike the establishment of a much-advocated crime commission for Victoria, which remains a matter for political consideration, the "re-introduction" of the use of consorting laws is a strategic option available for implementation forthwith.

Simply put, pending any review by the Attorney-General, all that would be required would be a policy direction from the Chief Commissioner, with the obvious approval of the Minister who suggested it, for Victoria Police to re-introduce the use of consorting powers to "create a hostile environment for organised crime".

- Bob Bottom was awarded the Order of Australia Medal in 1997 for "investigating and reporting upon organised crime"