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THE AUSTRALIAN CRIME COMMISSION

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**PARLIAMENTARY JOINT COMMITTEE
ON THE
AUSTRALIAN CRIME COMMISSION**

***SECTION 61A(4) REVIEW OF THE
ACC ACT 2002***

Submission by:

THE AUSTRALIAN FEDERAL POLICE

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1. Introduction

1. The Australian Federal Police (AFP) welcomes the opportunity to contribute to this Review by the Parliamentary Joint Committee on the Australian Crime Commission (ACC).
2. This submission addresses the relationship between the AFP and the ACC. It consists of two parts; an overview of the AFP-ACC relationship and specific comments against relevant elements of the Review's Terms of Reference. The role of the ACC Board and the relationship between the Board and the ACC are addressed in detail in the separate submission made by the Board to the PJC.
3. The AFP's strategic position in its operating environment and its priorities are determined in accordance with the *Australian Federal Police Act 1979* (the AFP Act), section 8, and by Ministerial Directions issued under section 37(2) of the Act. The AFP's strategic directions are reflected in the outcomes and outputs framework agreed to with the Australian Government.
4. Section 8 of the AFP Act specifies that the functions of the AFP include the provision of police services in relation to:
 - the laws of the Commonwealth;
 - the property of the Commonwealth (including Commonwealth places) and property of authorities of the Commonwealth;
 - the safeguarding of Commonwealth interests; and
 - anything else that is incidental or conducive to the provision of these services.
5. In executing these functions, the AFP works closely with the ACC to assist with its efforts to identify and combat nationally significant crime across multiple jurisdictions.
6. The AFP engages with the ACC on a number of levels including the ACC Board, Operational and Intelligence work and administrative cooperation. The AFP enjoys probably the closest working relationship of any Australian Police Service with the ACC on account of: its role as Chair of the ACC Board; the large number of AFP officers seconded to the ACC or participating in ACC taskforces and operations; close intelligence linkages and shared infrastructure arrangements.
7. The underpinning framework for cooperation between the AFP and the ACC is the AFP Act and the *Australian Crime Commission Act 2002* (the ACC Act).

2. AFP Engagement with the ACC

2.1 ACC Board

8. Under the ACC Act, the Board is the primary mechanism by which all Australian Police Services, including the AFP, interact with the ACC. The Board sets the ACC's Menu of Work via Determinations authorised under Section 7C (1) of the ACC Act. The majority of ACC operational work is conducted jointly with other police services. The AFP, via its program of seconding officers to the ACC and through joint operations conducted under the Determinations, is involved in the majority of this work.

9. The ACC Board also sets the National Criminal Intelligence Priorities (NCIPs) which provide the ACC with a basis for conducting and developing its intelligence and investigative work for the following year. As a Board member agency, the AFP's individual intelligence priorities and interests are taken into account, along with other Board agencies, in the formulation of the NCIPs. This ensures that ACC intelligence products which are based on the NCIPs are of benefit both to the AFP and the Board agencies.
10. The AFP, as a member of the Board, has been closely involved in the development of governance and performance measures to assist in the oversight of the ACC. Specific highlights include the development of the ACC's Professional Standards and Integrity Management Plan, development of a revised performance measurement system and improved Board processes for the consideration and authorisation of operational work against identified intelligence priorities.
11. Further details of the work of the Board can be found in the Board submission to this Review.

2.2 *Intelligence*

12. As the national criminal intelligence agency, the ACC works closely with the AFP to collect information and intelligence, provide targeting advice and produce criminal intelligence products. Intelligence is generally collected via operations conducted by either agency or jointly and shared. The AFP and ACC also cooperate on certain aspects of human source intelligence collection as part of single and joint agency operations.
13. In addressing the NCIPs, the ACC produces operational and strategic intelligence against subjects which the AFP has a direct interest in. The ACC provides operational and strategic intelligence to the AFP and consults closely with the AFP in the drafting of major intelligence products. The AFP and ACC also collaborate on the production of joint-agency intelligence products and conduct regular liaison at management and analyst levels on intelligence issues.
14. AFP intelligence analysts have access to the ACC-maintained Australian Criminal Intelligence Database (ACID) and the Australian Law Enforcement Intelligence Net (ALEIN) which provide the IT infrastructure necessary to share intelligence between Australian law enforcement agencies (LEAs) effectively and efficiently. The AFP has the ability to export data holdings from its internal database to ACID.
15. The AFP and ACC (along with Charles Sturt University) cooperate on running the National Strategic Intelligence Course (NSIC) and the AFP provides lecturers, assessors and the resources of the AFP's Barton College for the duration of the two-week residential course.
16. The AFP also makes available the International Liaison Network (ILN) to the ACC for the purposes of intelligence and information requests through one of the 30 posts located in 27 countries around the world.

2.3 *Joint Operations*

17. In addition to the secondments described above, the AFP also assists the ACC in joint operations on a needs basis. Depending on the operation undertaken, the AFP may deploy technical, investigative or intelligence assets to assist the ACC. In accordance with Section 7(C) of the ACC Act, any joint operations undertaken with the ACC are conducted under the appropriate ACC Board Determination. During joint operations AFP officers may come under the command of the ACC or the agency designated as lead agency for the operation; however they remain subject to the AFP's integrity and governance framework.

2.4 *Secondment of AFP Officers to the ACC*

18. As at May 2005 there were 24 AFP officers seconded to the ACC with the majority located in Sydney and Melbourne reflecting the concentration of work in the largest population centres.
19. The ACC relies heavily upon its seconded workforce from the AFP and other agencies as it does not have the ability to appoint investigators with police powers in its own right under the ACC Act. Sworn AFP secondees to the ACC are able to use their police powers when investigating criminal activity involving Commonwealth offences, giving the ACC an investigative capability otherwise unavailable to it.
20. Seconded officers are funded by the ACC via reimbursement to the AFP and are attached for an average of two years. These officers are involved in a range of operational roles including investigative work, surveillance work and other roles as required by the ACC.
21. During their secondment AFP officers are under the command of the ACC and are subject to both ACC and AFP Professional Standards and integrity requirements. Secondees are not available for specific AFP requirements for the term of their secondment.

2.5 *Special Members*

22. The AFP also grants access to the Special Member provisions of the AFP Act to designated ACC individuals. These powers provide the ACC employees with certain police powers including 'use of force'. The granting of powers is necessary to allow ACC employees in certain high-risk functions such as Surveillance and Special Projects to have the protections necessary for them to undertake their tasks safely.
23. Any ACC employees designated as AFP Special Members are subject to AFP requirements relevant to Use of Force and must meet minimum training and experience requirements

2.6 *PROMIS*

24. The Police Real-time Online Management Information System (PROMIS) is the AFP's principal case management database. PROMIS undergoes constant development to enhance its functionality across a range of law enforcement environments.

25. The ACC uses PROMIS with support provided by the AFP via an agreement between the agencies. ACC PROMIS is not an exact clone of the AFP version, nor does it store AFP-specific information. The ACC has modified it to suit their own operating environment, however the commonality in the underlying systems allow for more efficient and cost effective maintenance methods.

2.7 *Accommodation*

26. The AFP provides office space to the ACC in its Canberra and Melbourne buildings on a long term tenancy basis. In Canberra, the ACC pays a reduced rental for most of its office space within AFP National Headquarters via a MoU with the AFP.
27. The ACC is also collocated with the AFP in Commonwealth premises in Adelaide and Perth. Shared office space provides efficiencies for both agencies including shared costs and closer working relationships.

3. **Terms of Reference**

3.1 **The Effectiveness of the Investigative, Management and Accountability Structures Established Under the Act.**

28. The AFP recognises that the first two years of operation have been a challenging period for the ACC as it has developed from three distinct existing agencies to a single new agency with new governance arrangements involving a new Act and a Board with considerable powers vested in it.
29. The overall effectiveness of the ACC Act is best demonstrated in some of the achievements by the ACC and its Board since January 2003, including:
- The substantial conclusion of carried over NCA operational work;
 - The establishment of National Criminal Intelligence Priorities designed to inform ACC operational priorities and provide the basis for ACC Strategic Intelligence and National Threat Assessments;
 - The authorisation of new operations and investigations by the ACC including the establishment of ACC Task Forces under the Act;
 - Publishing of ACC Strategic Intelligence Assessments pursuant to the ACC Act;
 - Establishment of regular reporting to the Board on operations, finances and other performance indicators; and the
 - Establishment of a Strategic Directions Committee to guide the Board in its decision making.
30. In the AFP's view the ACC has evolved into a demonstrably effective operational agency which is responsive and accountable to its law enforcement partners as represented on the Board.

3.1.1 Investigations

31. The AFP recognises that on its creation, the ACC inherited considerable legacy investigative work from the former National Crime Authority, some of which had been in progress for several years. This legacy work required careful management to conclusion before the ACC was in a position to shift resources to pursue its primary mission as an operational national criminal intelligence agency.
32. During that period of transition resource use was biased towards investigations and the operational and analytical intelligence capability was underdeveloped. This meant that the organisation appeared to be reactive to critical issues rather than proactive in the identification of an area of criminality and the design of a suitable response.
33. With the conclusion of the NCA legacy work, the ACC, under Board guidance, has moved to introduce a holistic approach to its work. All ACC current operational work has its foundations in the Board endorsed National Criminal Intelligence Priorities (NCIP) system which in turn is underpinned by the annual Picture of Criminality Threat Assessment which outlines the state of nationally significant crime in Australia and is endorsed by the Board.
34. The AFP notes that the alignment of the operational work with intelligence processes and outcomes is a significant achievement for the ACC and its partner agencies and provides the ACC's partners and its primary oversight bodies, the ACC Board, IGC-ACC and PJC-ACC with greater levels of visibility of ACC priorities and activities.

3.1.2 Task Forces

35. The AFP welcomes moves by the ACC to actively embrace the Task Force mechanism provided by Section 7C(1)(f) of the ACC Act. A strength of the ACC Act is its provisions for the ACC, through the Board, to respond quickly to a given situation and form a Task Force with interested Board members as participants at their own cost.
36. Task Forces can be established for a specific task, for a specific period and then concluded to allow resources to be used elsewhere. This approach is in contrast to the previous system of large standing references inherited from the NCA which would pursue a certain area of criminality over many years and were cumbersome and inflexible.
37. The ACC has had considerable success with Task Force *Schumacher*, which ran for approximately a year during 2004-05 and targeted an entrenched national criminal network and is currently experiencing success with Task Force *Gordian* which is targeting a discrete number of money laundering and tax avoidance groups.
38. Task Forces ease the resource burden on the ACC with agencies participating responsible for funding most of their own costs, allowing the ACC to use its own resources more flexibly and over a larger spread of work.
39. In the AFP's view the Task Force model provided by the ACC Act should be the default mechanism by which the ACC pursues cooperative operational work with its partners.

3.1.3 *Domestic Focus*

40. In the AFP's view the ACC should continue to build its role as an operational domestic criminal intelligence agency. International law enforcement issues and intelligence are catered for primarily via the AFP's international operations, facilitated by its International Liaison Network, and the Customs International Network. Direct ACC involvement in international liaison and activities diverts resources from other national priorities and poses a risk of duplication of effort with agencies already well established in this field.
41. The AFP is cognisant of the transnational nature of some serious organised crime syndicates and is well positioned to provide assistance to the ACC via the ILN and Interpol.

3.1.4 *ACC Board*

42. The AFP is both a member and Chair of the ACC Board and as such has been intimately involved in all Board deliberations since the ACC's inception.

AFP as Chair of Board

43. Under the ACC Act, the Commissioner of the AFP is the standing Chair of the ACC Board. This necessitates close liaison between elements of the ACC and AFP in facilitating the discharge of the Commissioner's responsibilities as Chair, distinct from those as a member of the Board.
44. There are a variety of mechanisms in place to ensure the Chair is briefed on issues of relevance to the ACC and receives appropriate administrative support and the AFP finds these to be generally sound. In particular the AFP supports the dedication of specific and appropriate resourcing to the ACC Board Secretariat which has continued to effectively handle increasing detail, volume and complex in Board matters as the ACC has continued to develop and establish itself.
45. The AFP is of the view that the current legislative arrangements for the Chair of the Board are appropriate.

Operation

46. In the AFP's view the Board works effectively and cohesively. The functions given to the Board under Section 7C of the ACC Act are appropriate and the Board has fulfilled all of these functions since 2003.
47. The AFP feels that the agendas and issues examined by the Board are appropriate and that the ACC has generally been responsive in identifying and progressing Board issues.
48. The AFP is cognisant of the trust placed in the Board as the primary body oversighting the ACC's governance arrangements and ACC's use of coercive powers – a role previously entrusted to the Ministerial Council on the Administration of Justice (MCAJ). In the AFP's view this responsibility of the Board continues to be critical to the good operation and governance of the ACC.

Membership

49. The AFP is of the view that the current Board membership operates with a high degree of cooperation, ensuring the Board remains focused on the best interests of the ACC and the pursuit of its legislative mandates, particularly in terms of *nationally significant/federally relevant* crime.
50. The Board has previously benefited from a briefing from the Commissioner of Taxation on the latest developments in fraud and taxation, and the AFP suggests there would be considerable benefit in formalising the significant role the Australian Tax Office plays in many ACC operations and Task Forces by extending full Board membership to the Commissioner of Taxation.
51. The majority of investigative work undertaken by the ACC involves either proceeds of crime action or pursuit of unpaid tax or unassessed income. During 2003 and 2004 in joint operations involving the ACC and the ATO, over \$19 million in tax assessments and penalties were issued and \$26 million in tax deductions disallowed.
52. Impressive as recent results of joint ACC and ATO operations may be, having the ATO as a member of the Board would allow a more formal, coordinated approach to be taken to ACC investigations and information sharing and allow for a more effective use of the ACC's and ATO's powers in pursuing significant criminal syndicates.
53. While admission of the ATO to the Board would alter the numerical ratio of Commonwealth to State/Territory members, in the AFP's view it should not present undue difficulties given the collaborative spirit in which the Board operates.

3.1.5 PJC-ACC and IGC-ACC

54. The AFP believes that the existing accountability mechanisms through the PJC-ACC and IGC-ACC provide appropriate Parliamentary and Executive scrutiny of the ACC and its Board's activities.
55. Both Committees receive regular detailed reporting of ACC Outputs and Activities and as per Section 7C(5) of the Act, the IGC receives notification of the Board's

authorisation of the use of special powers for an ACC Determination, within 72 hours of a such a Determination being made.

56. The AFP notes that the accountability burden placed on the ACC is an onerous one, particularly when compared to other agencies, however the ACC is a Commonwealth agency with a unique role in domestic criminal intelligence and its access to a suite of coercive powers necessitates a correspondingly high level of scrutiny and oversight.

3.2. Roles, Powers and Structure of the ACC and the Appropriateness of its Legislation.

3.2.1 Investigations and Intelligence

57. 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.

58. The Commission's ability to conduct investigations should be primarily directed at the collection of intelligence for analysis and referral to its partners, and to conduct joint operations with its partners against specific targets. The ACC needs to ensure that at all times the investigative activity it pursues fully meets the criteria of nationally significant organised crime. This approach will assist in ensuring the ACC uses its available resources for maximum effect and also avoid unnecessary duplication of effort with other Police Services.

59. The ACC's primary focus on intelligence activities allows full and productive use of its coercive powers for maximum effect to its partners via disseminations and careful intelligence-based targeting.

3.2.2 Professional Standards and Integrity

60. The AFP recognises the development of the ACC's professional standards and integrity plan and the steps taken by ACC management to address the issue of corruption and misconduct among some seconded and permanent staff. In the AFP's view however the ACC is hindered by its integrity framework being based on the Public Service Act and the accompany APS Code of Conduct.

61. The Public Service Act does not provide for the suite of investigative and discretionary powers available to the Commissioner of the AFP under the AFP Act to address misconduct or corruption. Directing officers to answer questions and random drug testing are two measures open to the Commissioner of the AFP which are not available to the CEO ACC due to the constraints of the ACC's employment framework.

62. In the AFP's view the ACC, as the Commonwealth's national criminal intelligence agency with access to a suite of coercive powers, should be above reproach on matters of integrity and conduct. In our view the current ACC integrity framework, while a marked improvement over the previous system, does not provide the ACC or the Board with the powers necessary to address allegations of misconduct and corruption within the ACC.

63. The AFP notes the proposed establishment of the Australian Commission For Law Enforcement Integrity (ACLEI) which we understand will have coverage of the ACC. The oversight provided by ACLEI will represent a welcome strengthening of the ACC's integrity regime.

3.2.3 ACC Structures

64. The structures of the ACC are largely an internal concern of the organisation and from an AFP perspective can be considered to be effective when assessed against the performance of the ACC since inception.

Policy Capacity

65. The AFP notes however that the ACC does not have a dedicated policy capacity, with responsibility for the development of ACC policy shared by Executive Services, Intelligence and Operations branches in several offices. This leaves the ACC at a relative disadvantage in effectively engaging with government policy processes and can lead to confusion for partner agencies when engaging the ACC on specific issues. The ACC's position in having multiple stakeholders across multiple agencies further reinforces our view that the ACC should have a dedicated Policy capability.
66. The ACC has an important complementary role to play in Australian government policy processes, primarily through the provision of advice on intelligence issues which provide the evidential basis for policy formulation and advice. In the AFP's view the Commission's primary policy focus should be in providing high quality intelligence support to the agencies on its Board when they are engaged in developing policy advice and guidance.

Provision of Intelligence

67. As referred to earlier, a considerable strength of the ACC is its ability and mandate to produce robust intelligence advice for the consideration of its partners and other stakeholders. It is important for the ACC to ensure that intelligence it produces is not subject to undue editing and shaping by non-intelligence practitioners to fit with current views on particular issues. The delineation between intelligence and policy positions must continue to be understood and maintained.
68. The ACC Act provides considerable protections for ensuring that ACC intelligence remains confidential to the Board and its partners unless specifically authorised for dissemination – in the AFP's view there is a corresponding responsibility on the ACC to ensure that it continues to produce accurate and robust intelligence for its stakeholders to consider and make decisions upon.

3.2.4 Opportunities for Improvement

69. The AFP's view is that the ACC's operating framework is generally sound and provides the ACC and the Board with the powers necessary to perform their functions. However the ACC has now been in operation for almost 3 years and there is a useful opportunity to consider what improvements to framework could usefully be made based on the experiences during this time.

70. Accordingly, the AFP recommends that consideration be given to three areas.

Membership of the Board

71. Firstly as referred to in paras 49-53 above, the Commissioner of Taxation could usefully be added to membership of the ACC Board. The AFP sees no need for a corresponding removal of any existing member from the Board at this Section.

Special Members

72. Secondly, the necessity for ACC members to become *Special Members* of the AFP when executing particular duties should be addressed.

73. The ACC Act does not provide for ACC staff exercising police powers including 'use-of force'. While this is largely managed via a process of seconding AFP, State and Territory Police to the ACC (with the police powers bestowed upon them by their parent service) there remain a number of ACC employees in the surveillance and technical fields who require use of force powers to safely undertake their duties which may be particularly hazardous.

74. Following an approach from the ACC in 2003 and subsequent negotiations, the AFP agreed in mid-2004 to a limited system of swearing specific ACC officers as AFP Special Members allowing them to exercise certain police powers, including use of force. The AFP has placed a range of conditions on the use of the Special Member provision including minimum training requirements for ACC officers and the applicability of AFP critical incident management procedures in any incident involving AFP Special Members within the ACC.

75. Underpinning the agreement is the understanding that access to the AFP Special member provision is being sought by the ACC on grounds of safety of ACC officers and that all relevant officers to which the provision will apply are former police officers with substantial experience.

76. The AFP's position is that access to the Special Member provision of the AFP Act by the ACC should be considered as an interim measure with a longer term solution being for the ACC to seek appropriate protections under its own legislation.

Refusing to Answer Questions During An Examination

77. Section 30 of the ACC Act outlines the penalties for refusing to answer questions at an Examination. Currently this penalty is 200 penalty units or 5 years imprisonment. Although not directly involved, the AFP is aware of deliberate obfuscation by members of an Established Criminal Network being subject to Examination in the Northern Territory in late 2004. It appears that the penalties, combined with an underlying presumption of bail accompanying the matters, were considered to be more advantageous than the ramifications from other network members if they complied with the questions from the Examiners.

78. The effectiveness of the Coercive Powers authorised by the ACC Act are central to the effectiveness and credibility of the ACC. The AFP notes that the issue of appropriate

penalties for con-compliance at an Examination is under consideration by the Attorney General's Department and we are hopeful for a positive outcome in the near future.

Conclusion

79. The first years of the ACC have been a period of achievement in a difficult environment with a new agency emerging from the shadows of its three predecessors under a new legislative framework.
80. In the AFP's view, the Board and the ACC has produced tangible outcomes strategically and operationally and the ACC has emerged as an effective national law enforcement body.
81. Significant challenges remain however. A focus on intelligence analysis and operations rather than traditional al enforcement investigations and the development of enhanced policy linkages with government and partner agencies are just some of the challenges facing the ACC which, if unaddressed, could deny national law enforcement the unique capability promised in the ACC Act – for a new, innovative national criminal intelligence agency which serves as a significant enabler to the agencies represented on its Board.