

CDPP

PARLIAMENTARY JOINT COMMITTEE ON
THE AUSTRALIAN CRIME COMMISSION

REC'D: 21 OCT 05

FROM: CDPP

AUTHORISED FOR PUBLICATION:

SECRETARY

Commonwealth Director of Public Prosecutions

Your reference:

Our reference:

21 October 2005

Mr Jonathan Curtis
Committee Secretary
Parliamentary Joint Committee on the Australian Crime Commission
PARLIAMENT HOUSE
CANBERRA ACT 2600

Dear Mr Curtis

Review of the Australian Crime Commission Act 2002 ("the Act")

I refer to your letter inviting our comments in relation to Mr John Hannaford's remarks regarding the CDPP at pages 82 and 83. We would like to make the following comments and would be grateful if these be regarded as providing further information to the Committee.

Mr Hannaford's remarks concerned the operation of the Act with respect to the extent to whether examinations can be conducted of persons who have been charged. These followed earlier discussion in the hearing when the Attorney-General's Department raised (at page 3) a lack of clarity about whether a person may be summoned by an examiner under section 28 of the Act if that person has been charged with a criminal offence and the examiner proposes to question a person on matters relating to those proceedings. Furthermore this matter was raised with the CDPP at pages 18 -20. That discussion concerned the examination of persons on facts the subject of charges that the person currently faces.

The CDPP is firmly of the view that a person charged with a criminal offence should not be subsequently examined for the purpose of obtaining further information or evidence in relation to that criminal offence. The CDPP would advise the ACC accordingly if asked. We have made inquiries within the CDPP and are not able to identify an instance where the CDPP has been asked to advise on the proposed examination of a person by the ACC in relation to charges that a person already faces.

At page 82 Mr Hannaford referred to difficulties about the legislation not being clear stating, "The police might have laid charges against a particular person and we might want to ask questions of that person about their knowledge of a related criminal activity. We are aware of situations like that where the police have gone and spoken to the DPP about it and the DPP have indicated that they would be reluctant to proceed with the charges if the examiner conducts any further questioning of that person, because the legislation is not clear and they would not want to put at risk those particular charges or risk the prosecution being stayed because of an element of unfairness. We have faced that situation. We have faced similar situations in relation to the conduct of these matters, because of the DPP's reluctance to face having to run a trial where there might be a question about the element of fairness".

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HEAD OFFICE

4 Marcus Clarke Street Canberra City 2601
GPO Box 3104 Canberra ACT 2601
Telephone (02) 6206 5666 Facsimile (02) 6206 5688

We do not understand this comment to relate to the ACC conducting examinations of a person for the purpose of obtaining further information or evidence in relation to a criminal offence that the person is already facing. Further we do not understand Mr Hannaford's reference to "a related criminal activity" to mean the criminal activity for which the person has already been charged.

We have spoken with Mr Hannaford and the ACC about these comments to try and identify the particular incidents he was referring to. We have also made inquiries of our regional offices. We have identified two matters that may have relevance to the comments made.

The CDPP is aware of a matter where the ACC examined a person in relation to a number of areas of inquiry and arrested the person on the basis of that person giving false or misleading evidence in that examination. The ACC later examined the person further on one of the areas of inquiry and the person was charged with further offences of giving false or misleading evidence on the second occasion. None of the evidence obtained on the second occasion is relevant to establishing the charges against the person arising out of the first occasion. These matters are currently before the court.

In the other matter, a person had been charged with fraud and was subsequently examined about drug matters. On being examined, the person gave some evidence but then questioned the authority of the examination on the basis that counsel assisting the examiner was not admitted as a legal practitioner in the State where the examination was being conducted and thereafter refused to give further evidence on that basis. The person was subsequently prosecuted and convicted of an offence of failing to answer a question. The person pleaded guilty to the fraud.

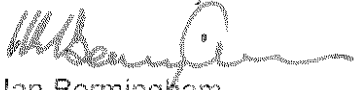
At pages 82-83 Mr Hannaford stated, "The position that we take would be that we are entitled to ask questions about matters, provided that they do not impinge upon the charges which lay upon the person. But sometimes you can have an unavoidable consequence. I will give you an example of where, in one particular case, charges had been laid against a person. We were conducting an examination of that person, and the person disclosed a significant amount of evidence. It subsequently became clear to us that the evidence that he had given was evidence that related to the charges, but we were not aware of it at that time. We are now aware that that defendant is going to seek to have stayed that prosecution because that person voluntarily gave evidence in response to questions that impinged - we were not aware of it - and, therefore, could give an unfair advantage".

From inquiries made by the CDPP it is our understanding that Mr Hannaford is not referring to a prosecution being conducted by the CDPP. The CDPP has however prosecuted the person involved for an offence arising out of an examination in relation to his disclosure to another that he had received a summons to attend an examination.

The CDPP is liaising with the Attorney-General's Department with respect to that Department's consideration of the examination provisions in the Act.

Thank you very much for the opportunity to provide these comments. We are happy to provide any further assistance that the Committee may require.

Yours sincerely



Ian Bermingham
Deputy Director