

**AUSTRALIAN CRIME COMMISSION BOARD AND
AUSTRALIAN CRIME COMMISSION**



SUBMISSION TO:

The Parliamentary Joint Committee on the
Australian Crime Commission

REVIEW OF:

The Operation of the Australian
Crime Commission Act 2002

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FOREWORD

Since its establishment in January 2003 the Australian Crime Commission (ACC) has worked, under the auspices of the ACC Board, to deliver its functions as prescribed under the *Australian Crime Commission Act 2002*, (*the Act*), and to fulfil the expectations of its federal, state and territory stakeholders.

The Parliamentary Joint Committee (PJC) which has the responsibility to monitor and review the performance by the ACC of its functions resolved in July 2005 to undertake a Review of *the Act*.

Provisions for a review of the operation of *the Act* are outlined in s.61A of *the Act*.

Terms of Reference

The published terms of reference for this review are:

Pursuant to s.61A, the Committee will review the operation of *the Act*, with particular reference to:

1. The effectiveness of the investigative, management and accountability structures established under *the Act*, including:
 - a. the Australian Crime Commission;
 - b. the Chief Executive Officer;
 - c. the Examiners;
 - d. the Australian Crime Commission Board;
 - e. the Intergovernmental Committee; and
 - f. the Parliamentary Joint Committee on the Australian Crime Commission.
2. Whether 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.
3. The need for amendment of *the Act*.
4. Any other related matter.

INTRODUCTION

The Parliamentary Joint Committee's review of the operation of *the Act* provides a platform to assess the statutory framework for the Board and the ACC, to evaluate the effectiveness of the operational and administrative infrastructure and to identify opportunities to improve responses to current and emerging criminality.

The Act enables the Board and the ACC to operate successfully under the governance arrangements prescribed in *the Act* and it provides a sound framework for the continued delivery of ACC investigative and intelligence outputs.

Since its inception the Commission has developed and refined investigative, management and accountability structures to ensure that Board endorsed intelligence and operational priorities are met. The effectiveness of these structures is evidenced by the successful integration of the three antecedent agencies and the generation of tactical and strategic partnerships with national and international law enforcement agencies (LEAs). These structures have also enabled the delivery of enhanced intelligence products and services and operational outcomes.

Under guidance and direction of the Board and oversight of the IGC, the ACC has delivered a broad range of important strategic intelligence products and services, including the classified Picture of Criminality in Australia (PoCA), the Illicit Drug Data Report (IDDR) and the Australian Criminal Intelligence Database (ACID). The Commission will continue to deliver quality criminal intelligence outcomes and to inform national law enforcement strategic policy formulation and direction.

The Commission has also delivered actionable intelligence and operational results that have disrupted the activities of 34 criminal entities and 36 significant individuals. These operational successes have been achieved predominantly in partnership with federal, state and territory LEAs. Using its special powers, a multidisciplinary approach and in-house specialist capabilities, ACC operations have also contributed to substantial seizures of illicit substances, goods, and other property, and the generation of proceeds of crime action and tax assessments of over \$87 million.

The roles, powers and structures granted to the ACC under *the Act* provide an appropriate legislative platform to support its efforts to counter the impact of serious and organised crime. The ACC has achieved significant outcomes under the current framework. There are however opportunities to refine the ACC's operating framework based on experience obtained through the operation of the legislation to ensure the Commission is better positioned to meet the challenges of crime in the 21st century.

THE AUSTRALIAN CRIME COMMISSION

Functions

The functions of the ACC are defined under s.7A of *the Act*. Delivery of these functions is underpinned by the Commission’s strategic and operational intelligence and investigative capability. Operating under the guidance of the Board the ACC aims to reduce the incidence and impact of serious and organised criminal activity on the Australian community by:

- improving criminal intelligence collection and analysis;
- setting clear National Criminal Intelligence Priorities (NCIPs); and
- conducting intelligence-led investigations into federally relevant criminal activity, encompassing investigative and intelligence Task Forces as approved by the ACC Board.

Working within the parameters of *the Act*, the Commission operates effective investigative, management and accountability structures which enable it to meet its statutory functions. ACC compliance with s.7A functions is outlined in the table below.

Table 1

s.7A Functions	Evidence of Compliance
(a) to collect, correlate, analyse and disseminate criminal information and intelligence and to maintain a national database of that information and intelligence	<ul style="list-style-type: none"> • Dissemination of approximately 1900 operational intelligence reports / products • Maintenance and delivery of the Australian Criminal Intelligence Database (ACID) • Maintenance of the Australian Law Enforcement Intelligence Net (ALEIN)
(b) to undertake, when authorised by the Board, intelligence operations	<p>Board approved Intelligence Operations (IO) and Special Intelligence Operations (SIO) conducted:</p> <ul style="list-style-type: none"> • ID Crime and Card Skimming 2003 (IO) • Amphetamines and Other Synthetic Drugs 2003-2005 (SIO) • Identity Crime 2003- 2005 (SIO) • Vehicle Rebirthing 2003-2005 (SIO) • People Trafficking for Sexual Exploitation 2003-2006 (SIO) • Major fraud 2004 (IO) • Serious and Organised Fraud 2005-2006 (SIO) • Crime in Australia’s category one airports and Board approved category two airports 2005 (SIO) • Outlaw Motorcycle Gangs 2005-2006 (IO)

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s.7A Functions	Evidence of Compliance
(c) to investigate, when authorised by the Board, matters relating to federally relevant criminal activity	Board approved special investigations conducted: <ul style="list-style-type: none"> • Firearms Trafficking 2003-2005 • Established Criminal Networks 2003-2005 • Established Criminal Networks (Victoria) 2004-2006 • Money Laundering and Tax Fraud 2003-2006 • High Risk Crime Groups 2005-2006
(d) to provide reports to the Board on the outcomes of those operations and investigations	<ul style="list-style-type: none"> • Monthly Board Output and Activity Reports and periodic reporting of operational and investigative outcomes.
(e) to provide strategic criminal intelligence assessments, and any other criminal information and intelligence, to the Board	<ul style="list-style-type: none"> • Strategic Criminal Intelligence Assessments • Criminal Intelligence Reports • National Criminal Threat Assessments • Alerts • The Picture of Criminality in Australia • The Illicit Drug Data Report
(f) to provide advice to the Board on national criminal intelligence priorities	National Criminal Intelligence Priorities endorsed by the Board annually
(g) such other functions as conferred on the ACC by other provisions of this Act or by another Act	<ul style="list-style-type: none"> • Statutory reports • Law and administrative reform recommendations

Governance

The Commission has made considerable progress in assimilating the systems, processes and operating regimes of the three antecedent organisations. With Board oversight and approval the ACC has reviewed and established key internal governance structures. These structures provide the Commission with an effective strategic planning and efficient decision-making framework and with stringent internal controls and processes to ensure accountability and transparency in its activities. Key internal governance structures include:

The Senior Executive Team

The Senior Executive Team is responsible for the effective day-to-day oversight and management of the ACC and staff and holds regular senior executive meetings, chaired by the CEO.

The Governance Operations Committee (GOC)

The GOC manages and controls the delivery of ACC intelligence and operational outputs. Once the Board has approved work for the ACC, this Committee is the key internal decision-making body in respect of all intelligence and operational activities.

The GOC responsibilities include:

- setting the strategic direction for the National Criminal Intelligence and National Operations Directorates;
- balancing all Board priorities to arrive at appropriate, optimal tasking and resource allocation decisions;
- managing, monitoring, overseeing and reviewing all intelligence and operational activities;
- developing, promulgating, monitoring and reviewing all operational policies and procedures;
- approving all National Project Management Plans for each Determination; and
- ensuring compliance with budget allocations.

The GOC discharges these responsibilities on a 24 hour a day, 7 day a week basis.

The Committee also steers and monitors the ACC's relationships with partner agencies.

The ACC Audit Committee

The ACC's Audit Committee, which is chaired by and includes independent members and an observer from the ANAO, provides advice to the CEO relating to internal and external control and compliance of ACC systems, processes, procedures and financial management. This includes overseeing risk management, fraud and corruption prevention strategies and monitoring compliance with laws and directions.

The audit committee is responsible to the CEO for the provision of advice relating to the following matters:

- the agency's system of internal controls;
- management of risk;
- review of financial statements, accounting policies and reporting, control of public money and assets;
- compliance with relevant laws, rules, regulations and directions;
- ethical policies and code of conduct;
- fraud control; and
- unusual/significant transactions.

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Other additional governance committees and structures include the Professional Standards and Integrity Management framework, the National Operations Sub-Committee, the Information Communication Technology Steering Committee, the National Consultative Committee, the Continuous Development Programme and Senior Management Meetings.

In addition to the ACC's reporting obligations under *the Act* the ACC has met its statutory responsibilities in the following legislated areas:

- controlled operations;
- assumed identities;
- surveillance and listening devices;
- telecommunications interception; and
- search warrants.

Intelligence and Investigations

The Act provides the ACC with an operating framework that enables it to deliver effective intelligence and investigative outcomes. These have been delivered by the Commission's specialist in-house capacity in conjunction with resources provided by state and territory police forces and other Commonwealth agencies. Tactical and strategic utilisation of the ACC's special powers has also contributed to maximising these outcomes. The ACC recognises the contribution of its partner agencies in providing information and intelligence.

Criminal Intelligence Services

The Board has supported the continued development of the ACC's criminal intelligence function and recognised the growing relevance of ACC criminal intelligence products and services. ACC intelligence products address emerging issues of criminality and continue to inform national law enforcement responses to these issues. The following table summarises ACC criminal intelligence outputs since 2003.

Table 2

Intelligence Products and Services	• Over 5000 intelligence products disseminated to partner agencies via the Australian Criminal Intelligence Database (ACID) and Australian Law Enforcement Intelligence Net (ALEIN)
	• 10 Strategic Criminal Intelligence Assessments issued
	• 15 National Criminal Threat Assessments produced
	• Over 70 Alerts, 31 Current Intelligence Reports (CIRs) and over 100 Updates and Bulletins issued
	• Maintenance, delivery and enhancement of the Australian Criminal Intelligence Database (ACID)
	• Hosting of the Australian Identity Protection Registers
	• Identification of National Criminal Intelligence Priorities

The ACC produces a range of intelligence products either targeted at specific issues, or for more strategic use, such as the identification of trends in criminal activities.

Among the key intelligence products delivered and services provided are:

Picture of Criminality in Australia (PoCA)

The critical strategic intelligence product of the ACC is the annual PoCA. The PoCA provides a classified overview of the current state of serious and organised crime in Australia and an estimation of the strategic criminal environment in the next few years. The PoCA includes an analysis of the harms arising from a wide range of criminal commodities, enablers and entities.

Illicit Drug Data Report

The Illicit Drug Data Report (IDDR) which is produced annually provides a unique national overview of domestic and border drug trends, purity, price and seizure statistics and comment on emerging issues. It is the only document of its kind to provide publicly available nationally consistent law enforcement data on illicit drugs.

Australian Criminal Intelligence Database (ACID)

ACID is a secure, centralised, national repository for criminal intelligence used to store and disseminate both intelligence and information used by Australian law enforcement agencies.

Violent Crime Linkage Analysis System (ViCLAS)

ViCLAS captures information for analysis on serial and violent crimes such as attempted/actual homicides and sexual assaults.

Australian Identity Fraud Protection Registers (AIPR)

The AIPR collects information on fraudulent identities and victims of identity theft from 30 law enforcement and government agencies.

Strategic Criminal Intelligence Assessments (SCIAs) form the core of the ACC's assessment program and are designed to inform Board consideration of the implications of likely changes in criminal markets or crime types.

A range of other intelligence and information products are produced to provide advice on the threat posed by organised criminal activities nationally, facilitate the development and review of national law enforcement response options and provide timely information of immediate issues in criminal intelligence in an effort to encourage further collection, analysis and action.

Investigations and Intelligence Operations

The Board has commended the ACC on the outcomes from its investigations. The ACC has made a significant impact, particularly on serious and organised crime groups (see table 3), through its investigative role. The Board acknowledges the value of the ACC's intelligence led investigations. The ACC acknowledges the contributions of the Commonwealth, States and Territories to ACC joint investigative teams and taskforces which support its approach of developing multi-skilled, multi-jurisdictional teams. Key operational results since 2003 are outlined in the table below.

Table 3

Disruptions	<ul style="list-style-type: none"> • 34 criminal entities (syndicates, networks or groups) • 36 significant individuals
Apprehensions	<ul style="list-style-type: none"> • 575 persons charged • 2,588 charges laid
Proceeds of Crime	<ul style="list-style-type: none"> • \$5,304,272 forfeited • \$47,210,784 restrained • \$2,392,980 recouped by Pecuniary Penalty Orders
Tax Assessments	<ul style="list-style-type: none"> • To the value of approx. \$32.2 million issued
Drug Seizures	<ul style="list-style-type: none"> • 265 seizures – including <ul style="list-style-type: none"> - 90kgs 'ice' (street value est \$40m) - 750kgs pseudoephedrine (street value est \$40.5m) - 44kgs cocaine (street value est \$54m) - 340kgs MDMA powder (street value est \$64m) - 161kgs ecstasy tablets (street value est \$40m) <p>Total estimated street value: \$238.5m</p>
Firearms Seizures	<ul style="list-style-type: none"> • 1,287 seized – including over 800 key ring guns and parts to create a further 2,500
Other Seizures	<ul style="list-style-type: none"> • 700 fraudulent credit cards and manufacturing equipment

The ACC has conducted a significant number of tactical operations producing highly successful outcomes; for example:

Established Criminal Networks - Task Force Schumacher

Following extensive intelligence collection and analysis Task Force Schumacher was established by the Board in 2004 as a coordinated response to the activities of separate but closely connected criminal groups operating across four different states. This network was characterised by:



The ACC's 2005-06 Board-approved menu of work is outlined in Appendix A.
Further details on the ACC's key achievements is outlined in Appendix B.

THE CHIEF EXECUTIVE OFFICER

The CEO of the ACC is appointed under s.37 of *the Act*. The CEO is appointed by the Governor-General on the recommendation of the Minister. The Minister must invite the Board to make nominations for appointment and must consult with members of the IGC in relation to the appointment. The CEO is appointed on a full time basis for a period not exceeding five years.

As required under s.46A of *the Act*, the CEO is responsible for the management and administration of the ACC under Board guidance. The CEO manages, coordinates and controls ACC intelligence operations and investigations, and determines the head of operations or investigations, following consultation with the Chair of the Board and other relevant Board members. The CEO also allocates examiners to special operations and investigations as necessary.

The CEO is a member of the ACC's governance committees including the Audit Committee and the Governance Operations Committee and chairs the ACC's Senior Executive Management meeting.

In addition to the exercise of these functions, the CEO discharges his duties and responsibilities for the proper use and management of Commonwealth resources, as prescribed by the *Financial Management and Accountability Act 1997* and its subordinate legislation.¹

¹ The Australian Crime Commission is a 'prescribed agency' within the meaning of the *Financial Management and Accountability Act 1997*. In Schedule 1, the ACC is described as comprising: (a) the Chief Executive Officer and examiners of the ACC; (b) the staff mentioned in s.47 of the *Australian Crime Commission Act 2002*; (c) consultants engaged under s.48 of that Act; and (d) persons whose services are made available under s.49 of that Act. As mentioned in the same Schedule, the 'Chief Executive' for FMA Act purposes is the CEO of the ACC.

THE EXAMINERS AND COERCIVE POWERS

The special powers granted under *the Act* have been, and remain, instrumental in delivering valuable intelligence and evidence in circumstances where traditional methods of law enforcement have not proved sufficient to combat sophisticated criminal activity. The ACC's special powers have proven effective in enhancing the ACC's ability to assess and identify trends and patterns in nationally significant crime. These powers contribute to the overall work of the Commission by:

- contributing to the national criminal intelligence collection requirements for a determination and the National Criminal Intelligence Priorities;
- filling identified or evolving strategic intelligence gaps on a subject matter under a determination;
- informing strategic intelligence products that are prepared on specific areas of interest to a determination;
- gathering information to underpin recommendations for law reform or to direct policy formulation; and
- identifying tactical targeting opportunities for dissemination to partner agencies.

The ACC's special coercive powers can only be used in special intelligence operations or special investigations as determined by ACC Board under s.7C of *the Act*.

Once a particular operation or investigation is declared to be 'special', access to the coercive powers exercisable under *the Act* may be sought by way of application to an independent examiner.

Examiners are appointed by the Governor-General by written instrument, in accordance with s.46B of *the Act*. Before an appointment is made, the Minister must consult the members of the IGC. A person must not be appointed as an examiner unless they have been enrolled as a legal practitioner for at least five years.

The period of appointment must not exceed five years and the appointment must be on a full-time basis.

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Examiners operate in a quasi-judicial role as independent statutory office holders appointed to approve the use of the ACC's coercive powers, to conduct examinations, and to issue notices to produce documents. There is no capacity for the Board or CEO to intervene in the way in which an examiner carries out his or her functions under *the Act*. It is a matter for the independent examiner to be satisfied if it is reasonable, in particular circumstances, to exercise his/her statutory powers. This is a key mechanism in ensuring the accountability of the ACC in its use of coercive authority.

The powers exercised by examiners include both coercive and non-coercive powers. Coercive powers under *the Act* are only available for the purposes of a special intelligence operation or special investigation and include:

- conducting examinations of persons summonsed under s.28 of *the Act* (or State equivalent) to appear before an examiner, and requiring the production of documents or things;
- approving applications for search warrants pursuant to s.22 and s.23 of *the Act*; and
- applying to a judge of the Federal Court for delivery of a passport under s.24 of *the Act*.

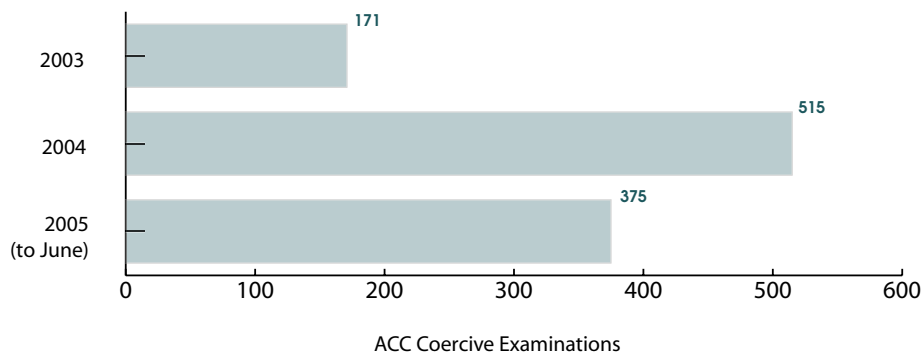
General powers under *the Act* exercisable by an examiner include the capacity to obtain information from Commonwealth agencies pursuant to s.19A and s.20 of *the Act* and the exercise of powers provided under other Commonwealth, State and Territory legislation, such as: *Proceeds of Crime Act 2002* (Cwth); *Customs Act 1901* (Cwth); *Financial Transactions Reports Act 1988* (Cwth); and the *Taxation Administration Act 1956* (Cwth).

The examiners and the special powers they exercise under *the Act* have played a critical role in delivering successful intelligence and operational outcomes for the ACC.

The most significant of the special powers exercised by the examiners is the ability to conduct coercive examinations. Since 2003 the ACC has conducted over 1,080 examinations nationally to support all Board approved special intelligence operations and special investigations. In addition the Commission has also issued over 1,000 notices to produce documents and other things under s.29 of *the Act* to support investigative activities.

Figure 1 highlights the growing use of examinations. It is estimated the Commission will conduct over 600 examinations in 2005 by the end of the calendar year.

Figure 1



One of the most significant examples of the effectiveness of the coercive examinations relates to Operation Backford. Conducted between 2003–2005 this operation dealt with the trafficking of firearms to Outlaw Motorcycle Gangs in Western Australia. The intelligence gained from supporting examinations was critical in establishing that a firearms dealer had diverted in excess of 700 firearms to the illicit market, and facilitated the recovery of approximately 70 of these weapons.

THE ACC BOARD

The Board has been established under legislation, and operates as a key governance mechanism for the ACC. By drawing together State, Territory and Australian Government representatives across a range of agencies, the Board is able to guide the ACC in setting nationally relevant intelligence and investigative priorities. All Board members have equal standing on the Board, although the CEO of the ACC does not have voting rights.

The ACC Board is established by s.7B of *the Act* and consists of the following members:

- Commissioner of the AFP as Chair of the Board;
- Secretary of the Commonwealth Attorney-General's Department;
- CEO of the Australian Customs Service;
- Chairperson of the Australian Securities and Investments Commission;
- Director-General of Security;
- Commissioners of all State and Territory Police Forces;
- Chief Police Officer of the ACT; and
- CEO of the ACC (as a non-voting member of the Board).

Role of the Board

The Board's role is primarily focused on providing strategic guidance to the ACC and the determination of its priorities. The Board is responsible for the determination of National Criminal Intelligence Priorities, authorisation of ACC operational work and the establishment of Task Forces. In executing these functions the Board maintains a close focus on the Commission's governance arrangements and constantly reviews the Commission's performance including the progress of significant operations and investigations and Board-approved Task Forces.

The main functions of the Board are established in s.7C of *the Act* and are:

Table 4

7C (1) (a):	To determine national criminal intelligence priorities
7C (1) (b):	To provide strategic direction to the ACC and to determine the priorities of the ACC
7C (1) (c):	To authorise, in writing, the ACC to undertake intelligence operations or to investigate matters relating to federally relevant criminal activity
7C (1) (d):	To determine, in writing, whether such an operation is a special operation or whether such an investigation is a special investigation
7C (1) (e):	To determine, in writing, the class or classes or persons to participate in such an operation or investigation
7C (1) (f):	To establish task forces
7C (1) (g):	To disseminate to law enforcement agencies or foreign law enforcement agencies, or to any other agency or body of the Commonwealth, a State or a Territory prescribed by the regulations, strategic criminal intelligence assessments provided to the Board by the ACC
7C (1) (h):	To report to the Intergovernmental Committee on the ACC's performance
7C (1) (i):	Such other functions as are conferred on the Board by other provisions of this Act
7C (2):	The Board may determine, in writing that an intelligence operation is a special operation. Before doing so, it must consider whether methods of collecting the criminal information and intelligence that do not involve the use of powers in this Act have been effective
7C (3):	The Board may determine, in writing, that an investigation into matters relating to federally relevant criminal activity is a special investigation. Before doing so it must consider whether ordinary police methods of investigation into the matters are likely to be effective
7C (5):	The Chair of the Board must, within the period of 3 days beginning on the day a determination under subsection (2) or (3) is made, give a copy of the determination to the Intergovernmental Committee

Incidental powers and responsibilities of the Board are set out throughout the legislation.

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Role of the Strategic Direction Committee

The Board has the authority, under s.7K of *the Act*, to establish committees to assist in carrying out its functions. To date, the Board has established one committee, the Strategic Direction Committee (SDC). The SDC was established in May 2003 and its terms of reference are:

To assist and advise the CEO on matters relevant to the implementation of Board-approved strategic directions and priorities and report to the Board accordingly. When appropriate, the Committee shall make recommendations to the Board for support to the ACC and shall undertake such other functions as specified by the Board from time to time.

The SDC comprises the Chair of the Board, the Commissioner of NSW Police, the Chief Police Officer of the ACT and the CEO of the ACC.

The SDC routinely considers a range of administrative issues and provides feedback to the CEO on significant decisions likely to be brought before the Board. Where the SDC has considered it appropriate, it has made recommendations that the Board adopt proposals of the ACC previously considered by the SDC.

Board/SDC Meetings

The Board meets regularly, with five meetings held in 2003, four in 2004 and four scheduled for 2005. The SDC held two meetings in 2003, five in 2004 and four meetings are scheduled for 2005. Four meetings of the SDC and the Board have been scheduled for 2006.

Extra-ordinary Board meetings have been held to address significant issues.

Charter of Governance

The ACC Board approved a comprehensive Charter of Governance outlining the roles and responsibilities of the Board in 2003. In addition, the Board has agreed to a code of conduct requiring it to adopt the highest ethical standards and display those through integrity, honesty, proper regard to the public interest and the public revenue, fairness, conscientiousness, selflessness, objectivity, impartiality and accountability.

Membership of the Board

The current membership of the Board provides for a diverse range of issues and views to be considered in setting the ACC's priorities. In addition to the current membership, the Board has identified potential benefits in the Commissioner of Taxation becoming a Board member to enhance Board expertise and, in light of significant taxation related activity identified in ACC investigations and intelligence operations, increase national investigative capability to counter the impact of serious and organised crime. The Board unanimously supports the inclusion of the Commissioner of Taxation as a member of the Board.

Responsibilities and Key Decisions

A recent review of Board responsibilities and activities indicates that the Board has effectively met its legislated obligations. The Board has undertaken activities in all responsibility areas and the majority of the discretionary areas.

The key Board decisions include:

- supporting proposals for the establishment and continuation of special investigations and special intelligence operations (totaling 33 decisions);
- approving intelligence operations (4 decisions);
- endorsing dissemination of key strategic assessments;
- approving National Criminal Intelligence Priorities;
- establishing Task Forces to address serious criminal issues;
- reviewing and providing feedback on a range of priority ACC corporate documents, policies and procedures; and
- providing ongoing input to the development of the strategic direction of the ACC.

In addition the Board played a significant role in overseeing the development and implementation of the ACC's Professional Standards and Integrity regime. It has taken a particular interest in matters of integrity concerning alleged corruption/inappropriate behaviour by some ACC staff.

The ACC Professional Standards and Integrity Management Plan (PSIMP) was endorsed by the Board in December 2004.

INTERGOVERNMENTAL COMMITTEE ON THE ACC

The IGC-ACC is established under s.8 of *the Act*. In accordance with s.9 of *the Act*, the IGC-ACC monitors the work of the ACC and Board, oversees their strategic direction, receives reports from the Board for transmission to the Governments represented on the IGC-ACC, and transmits those reports accordingly.

The IGC-ACC has a particular responsibility to monitor the authorisation of the use of the ACC's coercive powers. This includes a power under s.9(7) of *the Act* to revoke determinations of the Board that authorise the use of such powers. The IGC-ACC has not revoked any determination issued by the Board.

The IGC-ACC also performs other functions conferred on it by other provisions of *the Act*.

The IGC-ACC comprises the Commonwealth Minister for Justice and Customs, as permanent Chair, and Ministers representing each of the States and Territories.

The IGC-ACC has met five times since the establishment of the ACC. At each of the meetings the ACC has reported on the status of its activities and operations. The ACC Board has also reported on the Board's decisions and strategic planning and its review of the performance of the ACC.

The ACC has provided 12 Outcome and Activity Reports to IGC-ACC members.

On 30 September 2003 the ACC provided reports on carried-forward National Crime Authority References. Other reports or issues considered by the IGC-ACC include:

- ACC Special Investigation into Firearms Trafficking and Intelligence Threat Assessment;
- Funding Arrangements for ACC Task Forces;
- ACC Structure and Terms of Reference relating to:
 - Procedures for preventing, identifying and prosecuting corruption and misconduct;
 - Representation of the Australian Taxation Office on the Board;
 - Broadening of ACC functions to facilitate access to ACC coercive powers and resources by jurisdictions;

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- Commonwealth Ombudsman's Report *Own Motion Investigation – Australian Crime Commission: Own Motion Investigation into a Review of the Operational and Corporate Implications for the Australian Crime Commission Arising from Alleged Criminal Activity by Two Former Secondees*;
- ACC Special Investigation into Firearms Trafficking and Intelligence Threat Assessment – Clarification of Strategic Vulnerabilities;
- Arrangements for the Equitable Sharing of Proceeds of Crime between Commonwealth, State and Territories Arising from Joint ACC/Jurisdictional Operations;
- ACC Performance Measurement; and
- Australian Crime Commission: Presentation - *Picture of Criminality in Australia*.

The IGC has directed the ACC, through the Board, to undertake a range of tasks including:

- consider undertaking specific investigations;
- consider undertaking an intelligence operation of criminal activity in Australia's category one airports;
- the development of a methodology for equitable sharing of proceeds of crime;
- improve ACC performance reporting;
- reporting on the ACC's structure; and
- reporting on the findings of corruption investigations by the Commonwealth Ombudsman.

The IGC has also been an effective mechanism by which the ACC, through the Board, can refer issues to the Australasian Police Ministers' Council for consideration.

OPPORTUNITIES FOR IMPROVEMENT

While acknowledging that the roles, powers and structures granted to the ACC under *the Act* and associated legislation remain appropriate and relevant to meeting the challenges of organised crime in the 21st century, the experience of the ACC indicates that there are a number of areas where the existing legislation could be refined to enhance the Commission's current operating framework. These issues have been identified through operational experiences since 2003 or legal challenges to the powers of the ACC.

Examples of these issues include matters relating to:

- the role and functions of the examiners;
- the scope and application of ACC special powers;
- the use of, and procedures for, issuing warrants;
- the role and powers of the CEO; and
- the impact of the secrecy provisions regarding the use of ACC Board information by Board members in discharging their duties as Commissioners and CEO's of Board member agencies.

A number of law and administrative reform issues are outlined at Appendix C. A range of other, more complex matters, including possible amendment of secrecy provisions and granting to the CEO the authority to designate members of the ACC as having the powers of a police officer when performing specified duties, are under discussion with the Attorney-General's Department.

Examples of court challenges, their nature and outcome (where determined), are outlined in Table 5. While in most cases the ACC has been supported by the courts, these cases indicate that some clarification may be required to support clear interpretation of the intent of the Parliament and reduce the impact of costly legal challenges.

Table 5

Matter	Nature of challenge	Decision
Mansfield-v-ACC (2003) FCA 1059	The basis upon which the ACC proposed to proceed with the examination	The ruling of the examiner be referred to him for further consideration in light of the reasons for judgement
A v Boulton (2004) FCA 56	Notices of a constitutional issue served on the Federal & State Attorneys-General	Application dismissed
A-v-Boulton (2004) FCAFC 101	Notices of a constitutional issue served on the Federal & State Attorneys-General.	Appeal dismissed. This matter is now subject to a High Court challenge
Hak Song Ra-v-ACC (2004) FCA 416	Seeking declarations that the ACC summonses were invalid	Applications dismissed
Barnes-v-Boulton (2004) FCA 1219	Entitlement to a copy of the examiner's reasons for the issue of the summonses; whether the ACC abrogates the privilege against self incrimination; whether the Commonwealth Parliament has the powers to abrogate this privilege in respect of State & Territory offences	Application dismissed
X-v-ACC (2004) FCA 1475 & Loprete-v-ACC (2004) FCA 1476)	Whether the Board of the ACC had power to, and did, lawfully amend an authorisation and determination it had previously made for a special investigation	Application dismissed
S-v-Boulton (2005) FCA 821	Seeking to rely on spousal privilege which extends to defacto relationships	Application dismissed
S-v-ACC	Challenge to the ACC's powers to conduct an examination re s.4A - ACC Act is beyond the power of the Commonwealth to legislate and the decision of A-v-Boulton in Federal Court was wrongly decided and that the ECN determination is invalid	In process

In addition to the legal challenges, a total of 33 people have been charged under *the Act* with 161 counts of offences including: failure to attend an examination (s.30(1)); failure to answer questions (s.30(2)(b)); giving false or misleading evidence (s.33(1)); obstructing the ACC in performance of its functions (s.35(1)); disclosing existence of a summons containing a notation (s.29B.(1)); and refusing or failing to take an oath or make an affirmation (s.30(2)(a)).

CONCLUSION

The ACC has made a significant contribution to law enforcement in Australia in a short period of time, by successfully utilising an intelligence-led, multi-jurisdictional, multi-skilled model. Under this flexible structural model the ACC has effectively developed and deployed innovative tactical options to disrupt serious and organised crime, drawing on the combined expertise of the Australian law enforcement community.

The ongoing development and expansion of ACC capability, including new alliances with the private sector, will ensure the Commission is positioned to respond effectively to the challenges of the emerging criminal environment.

To support a national and coordinated response to criminal activity, the Commission is committed to providing high quality intelligence, including assessments of the impact of serious and organised crime, and bringing this to the attention of the Board and Governments.

The ACC Board strongly supports the ACC in its activities and commends it on the quality of its intelligence and investigative outcomes and outputs.

September 2005

APPENDIX A

NCIPs₁ Present (Board-approved for 2005-06)

	July – Sept 05	Oct – Dec 05	Jan – Mar 06	Apr – June 06
Terrorism/FMV (A4-B4)				
Drugs (A1-B2)	ECN h	High Risk Crime Groups Including organised crime elements of VR		
	SEAOC (combined into ECN 28 April 2004)			
	ECN (Vic)			
		Amphetamines and Other Synthetic Drugs	For consideration 23/11/05	
Money Laundering (B1-2)		MIDAS (money laundering and tax fraud) Gordian Task Force (money laundering and tax fraud)		
		People Trafficking for Sexual Exploitation		
Fraud (B1-3)	Serious and Org. Fraud Intel Op.	Special Intelligence Operation into Serious and Org Fraud Incorporating fraud elements of VR and ID Crime		
Vehicle Rebirthing (no longer listed)	Vehicle Rebirthing h			
ID Crime (A1)	ID Crime No. 2 h			
Firearms (A3-B2)	Firearms (approved 13 May 2003)		For consideration 23/11/05	
	Special Intelligence Op – Crime in Cat 1 and B-A Cat 2 airports		For consideration 23/11/05	
	Intelligence Operation - OMCGs			
Labour Exploitation (B2)		Estimated value of criminal markets (with research bodies)		
Corruption (A1)		Importation/trafficking/concealment		
		Labour exploitation (other than sex ind.)		
		Corruption of public officials		
Hightech Cybercrime (A3-B3)		Russian Org. Crime/Albanian Org. Crims. gps		
Child Sex Offences (A1)				
Other Criminal Behaviour of Interest (B2-4)				
Trade Crimes (B3)				
Environmental Crimes (A2 –B4)				
Illegal Immigration (A4-B4)				
			Exploitation of Intl. trading systems	
				2

KEY

- Spec Intel Op
- Special Invest
- Intel Op
- Intel Assess./
- Probe
- Taskforce
- Absorbed work
- Possible emerging issues
- Determination
- conclusion

Footnotes: 1. NCIP categories and intelligence response levels as recommended in POCA 2005, taking into account Board member comments. 2. Monitoring continues on all 82 crime issues and activities included in the POCA 2005 harms assessment process. Issues identified (see left) have a higher harm rating indicating a greater level of intelligence monitoring. Unallocated strategic intelligence output capacity is most likely to be given to the issues (see left) as a priority but capacity is retained to respond to other rapidly emerging issues.

- Cannabis - Cocaine - Security industry
- Org. crime involvement in kidnapping
- Regulated and unregulated finance markets
- Illegal trade flora/fauna - Welfare fraud
- Intellectual property/copyright fraud
- Strategic Monitoring Issues

APPENDIX B

Appendix B summarises key intelligence and investigative outputs since 2003.



APPENDIX C

Policy and administrative recommendations



