

RECEIVED

16 SEP 2005



AUSTRALIAN FEDERAL POLICE ASSOCIATION SUBMISSION

REVIEW OF THE AUSTRALIAN CRIME COMMISSION

The Australian Federal Police Association (AFPA) welcomes the opportunity to tender this submission on behalf of those employees we represent within the Australian Crime Commission (ACC). The AFPA provides a voice for Commonwealth employees within the ACC and as a part of the Police Federation of Australia, we represent the overall majority of the ACC workforce including seconded and ongoing employees.

We provide the following for your consideration against the Terms of Reference defined for the Committee :

1. The effectiveness of the investigative, management and accountability structures established under the Act including:

a. the Crime Commission

It has become a cliché within the management circles to state that people are an organisations most important asset. Though a cliché it is certainly true of an organisation like the ACC that relies on experienced investigators, intelligence officers, lawyers and support staff that understand the needs of these professions and how their efforts have to be seamlessly blended into multi-skilled teams if the ACC is to achieve its goals. The ACC though is facing grave difficulties in maintaining these teams.

Due to a combination of factors the ACC steadily haemorrhages each week experienced officers across a range of disciplines. Some of these losses occur as seconded officers return to their home services, however the ACC also loses a number of staff to other employers who value their skills and knowledge more than the ACC. Due to its small size the ACC only offers very limited career development opportunities for its staff. This results in staff frustration, low morale, staff separation and difficulty in recruiting new staff with sufficient experience and qualifications.

In terms of competing with other organisations for experienced and qualified staff the ACC is also at a disadvantage. The AFP for example offers superior terms and conditions of service as well as vastly enhanced career development opportunities. ASIO also offers better career opportunities.

PARLIAMENTARY JOINT COMMITTEE ON
THE AUSTRALIAN CRIME COMMISSION

REC'D: AFPA

Australian Federal Police Association

t... 02 6285 1677 f... 02 6285 2090 e... info@afpa.org.au w... www.afpa.org.au

a... level 1, 43 geils court, deakin act 2600 po box 130, curtin act 2605

FROM: 16 Sep 05
AUTHORISED FOR PUBLICATION:

SECRETARY: [Signature]

Due to its small size the ACC also lacks the resources needed to efficiently and effectively manage allegations of corruption, mismanagement and fraud against the organisation. The ACC has a single internal auditor to cover both financial and performance audit issues. Clearly one officer cannot provide adequate services even to an organisation of the ACC's size. While the AFP has an extensive IT security apparatus the ACC has two officers principally allocated to this task. Similarly while the AFP has a well developed practice for dealing with corruption and has a well resourced Professional Standards unit the ACC has a single officer who deals with policy development in relation to these matters.

The most efficient and effective manner to redress these issues would be to transfer ACC employees to the AFP and then have the AFP second employees to the ACC. This could operate in a model similar to that of the Auditor-General who as an officer of the Parliament has officers seconded from Prime Minister and Cabinet (PM&C) in order to assist him in his duties.

This was also the proposition that the AFPA advanced at the time of the establishment of the ACC in submissions to the Legal and Constitutional Committee on the legislation. The AFPA argued at the time that there were, and remain, real impediments to the application of an appropriate integrity regime in agencies where the employment framework is predicated under the Commonwealth Public Service Act.

The AFPA concerns were subsequently confirmed in a public debate that has now given rise to moves to establish the separate Integrity Commission announced in recent months. This situation would remain readily resolved through the use of the AFP Act as the employment vehicle as was previously done under the Australian Bureau of Criminal Intelligence structure.

b. the Chief Executive Officer

The AFPA has the utmost respect for the current CEO of the ACC. However, we see that the CEO does not have the resources or managerial independence needed to run the ACC in the manner that was initially expected by the Parliament. If the Parliament expected that the ACC would evolve into a national criminal intelligence body, similar to ASIO's role in national security, then it will be sorely disappointed. Unlike the Director-General of ASIO, the CEO is answerable to Board on which he does not even have voting rights. Moreover on simple day to day matters such as sending ACC officers overseas the CEO first has to obtain the permission of the AFP Commissioner. It would be seen as laughable if ASIO or the AFP had to seek the permission of the Secretary of PM&C before sending their officers overseas, yet the ACC CEO is in this very position.

As a result of the ACC Act the organisation is an Australian Public Service Organisation. The CEO therefore does not enjoy the powers of many police commissioners in being able to dismiss employees if they lose the employers confidence. It is therefore possible that an ACC employee could face legal proceedings for the use of an illicit substance, be found guilty with no conviction recorded, and maintain employment with ACC, as the APS generally will not impose an administrative penalty such as loss of employment that exceeds a judicial penalty.

The AFPA would also contend that the CEO has been remiss in not implementing better practice in relation to not bringing his senior management team together at ACC central office in Canberra. Some examples include the senior SES level 2 policy officer being able to base himself in Melbourne, the Director of Operations while nominally located in Canberra deciding to base himself in Sydney, the principal legal advisor being located in Sydney, the general manager intelligence living in Melbourne and working with his ACT based branch three to four days per week and the general manager operations being relocated from Sydney to Brisbane. In contrast the AFP Commissioner has concentrated his senior officers within Canberra to provide him and subsequently the government with more timely and accurate advice. The AFPA is happy for the committee to decide whether the

AFP Commissioner or the ACC CEO has the wrong structure. The current approach adopted by the ACC to this matter can be seen to have contributed to the ongoing failure for the ACC to effectively evolve a corporate culture or cohesiveness since establishment.

c. the Examiners

The AFPA views the ACC examiners as being a valuable tool in the law enforcement arsenal. The ACC Act though has distanced the working relationship between the examiners and other ACC staff. The AFPA supports this distancing as the closer relationship between examiners and staff under the former National Crime Authority did not protect the civil liberties of those giving evidence as well as the current system does. The examiners operate within the ACC as a very discrete and independent unit. Should the role and function of the ACC ever be transferred to a body such as the AFP the examinations unit could be very easily detached and become part of the Attorney-General's Department (AGD).

d. the Australian Crime Commission Board

The Board has become a millstone around the neck of the ACC. Within the ACC there is confusion on what the Board can direct the organisation to do and what documents need Board approval before they are presented to a wider audience. The cycle of board meetings, with the need for papers to go through managers, Directors, the CEO, the Chair of the Board and in some instances sub-committees before the Board sees them results in a highly bureaucratic process that stifles operational initiative and the development of timely and accurate intelligence.

Board member agencies also have their own agendas and at different times feel threatened by the existence of the ACC. A number of board agencies have been remiss in not providing information on which they are the Australian experts to the ACC. The AFPA does not believe that a general submission is the place to outline in detail these faults of the ACC Board as it could endanger current investigation in a number of areas. The Committee though could request the ACC CEO to provide it with a list the National Criminal Intelligence Priorities and how well Board agencies have contributed to them.

The AFPA sees value in an advisory Board but real power should be invested in the CEO of the organisation.

e. Intergovernmental Committee

The ACC has provided the IGC with little hard hitting advice on battling serious and organised crime within Australia. Rather it has presented the IGC with the results of operations. While these operations have been successful and crime syndicates have been dismantled there is nothing to suggest that police services given the same resources would not have achieved the same outcome. In fact national coordination of police action by a police agency such as the AFP may have been even more successful. Possibly the Committee could compare the operational outcomes of the AFP and the ACC respective investigations into illicit substances such as amphetamines to determine their respective operational effectiveness.

The AFPA believes that by incorporating the functions of the ACC into the AFP better advice could be given to the IGC. The ACC as an external agency cannot access important assets of the AFP such as its overseas officer network as well as AFP officers. Similarly the disproportionately rising number of public servants joining the ACC, with no or little law enforcement or intelligence experience detracts from the ACC's ability to give professional operational advice of the highest order to the IGC.

f. the Parliamentary Committee on the ACC

The AFPA believes that the PJC is well placed to assess its own relationship with the ACC. The AFPA would like to remind the Committee that on a number of occasions it has been less than satisfied with answers supplied by the ACC. The ACC has developed a culture of answering Committee questions in limited terms and if possible avoiding answering questions at all. The AFPA would encourage the committee to speak with ACC middle managers who run investigations, intelligence teams, data bases etc for itself to determine what the ACC is actually doing. The AFPA does not support a lack of transparency or accountability by the ACC.

2. whether the roles, powers and structure granted to the ACC under the Act and associated legislation remain appropriate to meeting the challenge of organised crime in the 21st century.

The parliament and the government have recognised that 21st century organised crime in its many facets requires a well resourced professional organisation to effectively fight and win the battle. The AFPA maintains that the AFP is that body. To fund other agencies, including the ACC, merely dilutes resources into unnecessary duplications. For example, by incorporating the ACC into the AFP the senior level efficiencies would become leave more resources available for the employment of federal agents and specialist intelligence officers. Similarly a range of support positions in human resources and IT could more effectively employed within a larger organisation.

With the exception of the Examiners Unit the AFP could easily subsume the role and functions of the ACC. The successful incorporation of the Australian Protective Services into the AFP serves as a model of better practice.

Combating organised crime relies heavily on liaison and understanding of the culture of other agencies. The AFP has already and extensive network of liaison officers within Australia and overseas. Without substantial funding increase that ACC cannot hope to duplicate this network. The question then remains as to why government would wish to duplicate an already highly professional network.

Existing ACC structures would benefit from examining better practice within organisations such as ASIO and AFP on information management. The ACC operates a number of different systems, including systems designed for national use. The AFPA believes that the ACC has been remiss in not developing these national systems, that is the Australian Criminal Intelligence Database (ACID) and the Violent Criminal Linkage Analysis system (VICLAS). The ACC has been unsuccessful in convincing most law enforcement agencies to contribute meaningfully data in an ongoing capacity to these databases. Even more disappointing is the ACC's own attitude in contributing data, especially to ACID. The AFPA believes that the Committee would find it interesting to see the number of contributions made by agencies to the ACC national data holdings over the last three years and compare this to the statistics achieved by the former ABCI.

The ACC has effectively stopped the futures forecasting previously undertaken by the Office of Strategic Crime Assessment (OSCA). OSCA gave the Commonwealth strategic criminal intelligence forward looking for the next five years. OSCA identified gaps in law enforcement and intelligence and reported them without fear or favour, even if this caused embarrassment to government agencies. This function has been lost within the ACC as can be seen by the disbanding of the Emerging Issues section within the intelligence directorate.

3. The need for amendment of the Act.

The most cost effective amendment to the ACC Act would be to transfer to the AFP all ACC functions, with the exception of the Examination Unit which could go to AGD. Despite any major reorganisation

the ACC would benefit from changes to the legislation regarding product from telephone intercepts and listening devices. Current legislation does not allow for information from these sources to be shared in a manner to other sensitive information for example that provided from covert human intelligence.

The Act could also be amended to give protection to ACC staff similar to that given to ASIO employees. Further the Act could take ACC employees out of the public service and make them meet the probity standards expected of AFP employees.

4. Any other related material

As the Committee itself recognises fighting serious and organised crime in the 21st century is different to the crime scene that Australia faced in the 1980's. However the amalgam of agencies that came together to form the ACC still has cultures that are based in the last century. The AFPA would contend that there is no strong or vibrant ACC culture with new employees adopting the culture of the major agency at the time of merger that is the NCA. The AFPA supports this allegation by asking the Committee to reflect upon evidence and submission given by the ACC. A close examination will demonstrate that the NCA culture of disregarding government objectives is still alive within the ACC.

In conclusion the AFPA would like the Committee to examine the urgent consideration of an option to see the ACC abolished and its role, employees and functions, with the exception of the examinations unit be transferred to the AFP. A further option, should the Parliament decided to retain a ACC, could see all of the employees with the exception of the CEO transferred back to employment with AFP and then seconded back to the ACC.

Should the Committee support the retention of the ACC as an agency, the AFPA then urges urgent and critical attention then be given to the structure of the agency (in consideration of the matters raised in this submission), its resourcing and obligations. Current funding levels have eroded the objective of establishing a National Criminal Intelligence agency of benchmark effectiveness. In fact it is now questionable as to whether the Commonwealth capacity in this critical area has not in fact eroded since September 11 and the establishment of the ACC, rather than been upgraded. Last estimates by the AFPA as at the time of this submission indicates that approximately 65% of intelligence roles within the ACC remain vacant. A critical problem we believe.

The current and anticipated funding levels for the ACC undermine the capacity of the ACC to establish a workforce of appropriate remuneration and experience and this directly contributes to an erosion of morale within the agency. The AFPA supports the significant contributions of all ACC employees, in spite of the issues we have raised in this submission. They are in fact victimised in this process. It is our belief that a failure to act on these concerns may only directly contribute to a further undermining of the employees and their efforts.

Craig Shannon
Director Workplace Relations
Australian Federal police Association Branch
Police Federation of Australia

15 August 2005