Parliamentary Joint Committee on Law Enforcement

Examination of the *Annual Report of the Australian Crime Commission 2009-10*

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Abbreviations

AAT	Administrative Appeals Tribunal
ACC	Australian Crime Commission
the ACC Act	*Australian Crime Commission Act 2002*
ACID	Australian Criminal Intelligence Database
the Act	*Parliamentary Joint Committee on Law Enforcement Act 2010*
ACT	Australian Capital Territory
AFP	Australian Federal Police
ALEIN	Australian Law Enforcement Intelligence Network
APM	Australian Police Medal
CEO	Chief Executive Officer
the committee	Parliamentary Joint Committee on Law Enforcement
KPI	Key Performance Indicator
Ombudsman	Commonwealth and Law Enforcement Ombudsman
PBS	Portfolio Budget Statement
the report	Australian Crime Commission Annual Report 2009–10

Chapter 1

Introduction

The committee's duty to examine reports

1.1 The Parliamentary Joint Committee on Law Enforcement (the committee), formerly the Parliamentary Joint Committee on the Australian Crime Commission, has had a statutory duty to examine the annual report of the Australian Crime Commission (ACC) for a number of years, under the *Australian Crime Commission Act 2002*.

1.2 The committee continues this responsibility under the *Parliamentary Joint Committee on Law Enforcement Act 2010* (the Act), which broadened the committee's jurisdiction to include oversight of the Australian Federal Police (AFP).

1.3 Subsection 7(1) of the Act lists the following committee functions:

(a) to monitor and to review the performance by the ACC of its functions;

(b) to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the ACC or connected with the performance of its functions to which, in the opinion of the Committee, the attention of the Parliament should be directed;

(c) to examine each annual report on the ACC and report to the Parliament on any matter appearing in, or arising out of, any such annual report;

(d) to monitor and to review the performance by the AFP of its functions;

(e) to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the AFP or connected with the performance of its functions to which, in the opinion of the Committee, the attention of the Parliament should be directed;

(f) to examine each annual report on the AFP and report to the Parliament on any matter appearing in, or arising out of, any such annual report;

(g) to examine trends and changes in criminal activities, practices and methods and report to both Houses of the Parliament any change which the Committee thinks desirable to the functions, structure, powers and procedures of the ACC or the AFP;

(h) to inquire into any question in connection with its functions which is referred to it by either House of the Parliament, and to report to that House upon that question.[1]

1.4 Under paragraph 7(1)(c), the committee will therefore continue to review each annual report of the ACC.

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1 *Parliamentary Joint Committee on Law Enforcement Act 2010*

Report under consideration

1.5 The ACC's Annual Report 2009–10 (the report) was presented to the Minister for Home Affairs, the Hon Brendan O'Connor MP, on 19 November 2010. It was tabled in both the Senate and the House of Representatives on 24 November 2010.

Examination of the report

1.6 In examining the report, the committee held a public hearing at Parliament House, Canberra on 13 June 2011. The witnesses who appeared before the committee are listed in Appendix 1.

Acknowledgments

1.7 The committee acknowledges the cooperation of the ACC Chief Executive Officer, Mr John Lawler APM, and other officers of the ACC. The committee appreciates the ongoing high level of engagement with committee processes demonstrated by the ACC.

Note on references

1.8 References to the committee *Hansard* are to the proof *Hansard*: page numbers may vary between the proof and the official *Hansard*.

Chapter 2

Australian Crime Commission Annual Report 2009–10

Background

2.1 The Australian Crime Commission (ACC) is Australia's national criminal intelligence agency. It works in partnership with other law enforcement agencies to develop a national understanding of serious and organised crime to provide target information for action by partner agencies and to predict future criminal trends.[1]

2.2 The ACC describes its purpose as being to unite the fight against nationally significant crime. It does so through the delivery of specialist capabilities and intelligence to other agencies in the law enforcement community and broader government. The ACC's special capabilities include coercive powers which enable it to source information that cannot be accessed through traditional policing methods, intelligence sharing frameworks provided to other agencies and special investigations approved by the ACC Board, called determinations.[2]

2.3 The ACC's CEO, Mr John Lawler APM, noted in the report that 2009–10 was a landmark year for the agency after a period of significant change. Mr Lawler described the agency's ability to add value to partner agencies' work as being to both operate as a conduit or point of fusion for criminal intelligence across the country, and to collaborate on investigations.[3]

Annual reporting and compliance

2.4 The ACC Annual Report must comply with requirements specified in section 61 of the *Australian Crime Commission Act 2002* (the ACC Act). Under subsection 61(2), the report must include the following:

- a description of any investigation into matters relating to federally relevant criminal activity that the ACC conducted during the year and that the Board determined to be a special investigation;
- a description, which may include statistics, of any patterns or trends, and the nature and scope, of any criminal activity that have come to the attention of the ACC during that year in the performance of its functions;
- any recommendations for changes in the laws of the Commonwealth, of a participating State or of a Territory, or for administrative action, that, as a result of the performance of the ACC's functions, the Board considers should be made;

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1 ACC, Welcome to the Australian Crime Commission, http://www.crimecommission.gov.au/ (accessed 26 July 2011).

2 ACC, Our work, http://www.crimecommission.gov.au/our_work/index.htm (accessed 26 July 2011).

3 ACC, *Annual Report 2009–10*, p. 8.

- the general nature and the extent of any information furnished by the CEO during that year to a law enforcement agency;
- the extent to which investigations by the ACC have resulted in the prosecution in that year of persons for offences;
- the extent to which investigations by the ACC have resulted in confiscation proceedings;
- particulars of the number and results of:
  - applications made to the Federal Court or the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for orders of review in respect of matters arising under the ACC Act; and
  - other court proceedings involving the ACC;

  being applications and proceedings that were determined, or otherwise disposed of, during that year.[4]

2.5 In addition, the report must comply with the Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies (June 2010), prepared by the Department of the Prime Minister and Cabinet and approved by the Joint Committee of Public Accounts and Audit.

2.6 Based on the committee's assessment the report meets the above requirements.

ACC performance reporting framework

2.7 The ACC's performance reporting framework changed for the 2009–10 financial year, in line with a government-wide shift to program based reporting, and a revision of the agency's outcome statement under the Operation Sunlight Outcome Statements Review.[5]

2.8 The outcome statement for the ACC in 2009–10 was:

> Reduction in the threat and impact of serious and organised crime, through analysis of and operations against national criminal activity, for governments, law enforcement agencies and private sector organisations.[6]

2.9 This outcome was served by two programs, being:

- strategic criminal intelligence services; and
- investigations and intelligence operations into federally relevant criminal activity.

2.10 The following section describes the agency's performance for these two programs.

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4 *Australian Crime Commission Act 2002*, ss. 61(2).

5 Attorney-General's Portfolio Budget Statement, 2009–10, p. 97.

6 Attorney-General's Portfolio Budget Statement, 2009–10, p. 98.

Program 1.1: Strategic Criminal Intelligence Services

2.11 The ACC's strategic intelligence services include assessments, reports and other products that provide governments and partner agencies with information used to combat nationally significant crime.[7]

2.12 In addition, the ACC also provides to its board an annual assessment of national criminal intelligence priorities, which informs the intelligence collection requirements of Commonwealth, state and territory law enforcement agencies.

2.13 The report outlines the national criminal intelligence priorities and the strategic intelligence products delivered by the ACC. Specific intelligence products include:

- an Illicit Drug Data Report, published annually;
- an Organised Crime Threat Assessment, focussing on organised crime threats and risks, updated every two years;
- a National Criminal Target Report, which provides a picture of known organised crime entities that represent the highest level threats; and
- the forward looking Organised Crime 2020 product which forecasts likely trends in the organised crime environment.[8]

2.14 2009–10 marked the first publication of the Organised Crime 2020 product. The report notes the ACC's intention to provide forward-looking updates every two years.[9]

2.15 The ACC's success in achieving the aims of Program 1.1 is measured through stakeholder feedback on two Key Performance Indicators (KPIs):

- strategic intelligence products align with the ACC Board endorsed National Criminal Intelligence Priorities; and
- partner agencies agree or strongly agree that their understanding of the overall criminal environment has increased as a result of ACC intelligence.

2.16 For the first KPI, the ACC set a target of 90 per cent of strategic intelligence products meeting the intelligence priorities. The ACC surpassed this target, achieving a result of 100 per cent. Of the 1664 intelligence products produced during the year, including operational and tactical intelligence (in addition to strategic products), 68 per cent met the board-endorsed priorities.[10]

2.17 For the second KPI, 67 per cent of partner agencies agreed or strongly agreed that their understanding of the overall criminal environment had increased as a result of ACC intelligence. This fell short of the target of 85 per cent.

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7 ACC, Annual Report 2009–10, p. 31.

8 For full descriptions of these documents, see ACC, Annual Report 2009–10, p. 35–36.

9 ACC, Annual Report 2009–10, p. 36.

10 ACC, Annual Report 2009–10, p. 39.

2.18 Mr John Lawler, CEO, explained to the committee that there were typically higher rates of satisfaction within senior management of partner agencies, stating:

> In the survey we undertook which informs those figures in the PBS we surveyed quite a large number of our stakeholders. We found that there were different striations in response to how the ACC was viewed at a senior level. Our most recent survey, which has just been completed, indicates that there are mixed results. At the highest levels in organisations there is extraordinarily strong support for the ACC and what it is doing, but as we go down in agencies that support diminishes quite rapidly.[11]

2.19 Mr Lawler expressed his intention to increase stakeholder satisfaction, observing:

> I think to change that result substantially will require a number of years of hard work and quite deliberate planning and an understanding of what actually forms the view in our stakeholders' minds that that is the case. So there is lots of work to do.[12]

2.20 The report notes that this KPI had been changed for the 2010–11 budget year. Rather than measuring stakeholders' understanding of the overall criminal environment, the revised KPI would instead focus on understanding of the serious organised criminal environment.[13]

2.21 In principle, the committee has some concerns with agencies changing unmet KPIs. This practice can potentially be used to abuse the KPI structure, ensuring more positive results without actually improving performance. However, in this case, the committee agrees that the revised KPI is a more logical measurement of the ACC's performance, given that the ACC appropriately focuses on serious and organised crime.

Program 1.2: Investigations and intelligence operations into federally relevant criminal activity

2.22 The ACC's investigations and intelligence operations provide it and partner agencies with unique intelligence collection capabilities. The report notes that the ACC contribute specialist operational capability including surveillance, telephone intercept support and coercive powers, in addition to its investigative capability and use of covert human sources (informants).[14]

2.23 In addition, the ACC supports partner agencies by analysing and sharing criminal intelligence through its national criminal intelligence database and analytical tools.[15]

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11 Mr John Lawler, ACC, *Committee Hansard*, 13 July 2011, p. 3.

12 Mr John Lawler, ACC, *Committee Hansard*, 13 July 2011, p. 4.

13 ACC, Annual Report 2009–10, p. 39.

14 ACC, Annual Report 2009–10, p. 41.

15 ACC, Annual Report 2009–10, p. 41.

2.24 In response to priorities identified by the ACC Board, the ACC undertakes a number of activities that gather information about the extent, impact and threat of criminal activity.

2.25 Special intelligence operations focus on gathering intelligence around particular criminal activity. In 2009–10, the ACC conducted three special intelligence operations, into the illicit firearms market in NSW, amphetamine type stimulants and new synthetic drugs, and national indigenous violence and child abuse.[16]

2.26 Special investigations are designed to disrupt and deter criminal groups through the collection of evidence and intelligence. Five such special investigations were conducted in 2009–10, broadly relating to high risk crime groups, including a focused investigation in South Australia, established criminal networks in Victoria, financial crimes and the ongoing Project Wickenby investigation of tax crimes.[17]

2.27 The ACC also undertakes, often jointly with partner agencies, a number of projects and operations, and contributes to various taskforces.

2.28 The ACC was very close to meeting all its Key Performance Indicators for Program 1.2 in 2009–10.

2.29 The first KPI for Program 1.2 was that 'targeted ACC investigations and operations are aligned with ACC board priorities and approved by the ACC board.' The ACC reported that all investigations and operations during 2009–10 were Board approved.[18]

2.30 The second KPI was that 'the ACC's contribution to joint intelligence investigations and operations and operational intelligence enhances the efficiency and effectiveness of law enforcement efforts to disrupt and deter serious and organised crime, as measured by stakeholder feedback.' The report indicates that 86 per cent of partner agencies agree or strongly agreed with this statement, exceeding the target of 75 per cent.[19]

2.31 The third KPI was that 'the ACC's coercive powers are effective in resolving partner agencies' intelligence gaps or investigative needs that pertain to serious and organised crime, as measured by stakeholder feedback.' The report indicates that 83 per cent of partner agencies agreed or strongly agreed with this statement in 2009–10, falling just short of the target of 85 per cent.[20]

2.32 The fourth KPI for the program was that 'the activities of targeted criminal entities are disrupted as a result of ACC investigation and operations, and activity is undertaken to confiscate proceeds of crime.' The ACC reported that 86 per cent of

16 ACC, Annual Report 2009–10, p. 43.

17 ACC, Annual Report 2009–10, p. 43.

18 ACC, Annual Report 2009–10, p. 90.

19 ACC, Annual Report 2009–10, p. 90.

20 ACC, Annual Report 2009–10, p. 90.

partner agencies agreed or strongly agreed with this statement. Though there was no specific target to meet, the ACC reported the following results:

- 24 disruptions;
- 102 people charged;
- 372 charges laid;
- 96 convictions;
- $630 000 of proceeds of crime restrained;
- $2.53 million proceeds of crime forfeited;
- $840 000 in pecuniary penalty orders recovered;
- approximately $10 million in tax recoveries or tax assessments issued;
- seizure of 15 firearms;
- $13.7 million in cash seized; and
- $74 million in drugs seized.[21]

2.33 The final KPI for Program 1.2 was that 'a national criminal intelligence database and analytical tools are available, to facilitate the sharing and analysis of criminal intelligence across jurisdictions.' The report indicates that the ACC achieved greater than 99 per cent availability of the Australian Criminal Intelligence Database (ACID) and the Australian Law Enforcement Intelligence Network (ALEIN).[22]

Financial results and human resources

2.34 In its two previous examinations of the ACC's annual report, the committee raised questions about staffing cuts and significant decreases in the numbers of seconded law enforcement officers. In 2009–10 the number of staff grew from 518 to 546 and the number of secondments grew from 66 to 88.[23]

2.35 The ACC received a total appropriation of $94.904 million in 2009–10, which was a 3 per cent decrease from 2008–09, following a 1.5 per cent decrease from 2007–08. The ACC's financial result for 2009–10 was a surplus of $4.803 million.[24]

Issues addressed at hearing

Ombudsman's report on controlled operations

2.36 One major issue arising from the 2009–10 period was compliance with approval requirements for extensions to controlled operations. The committee received briefings from both the Commonwealth Ombudsman (Ombudsman) and the ACC on this matter, and discussed the issue with the ACC at a public hearing.

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21 ACC, Annual Report 2009–10, p. 90.

22 ACC, Annual Report 2009–10, p. 90.

23 ACC, Annual Report 2009–10, p. 201.

24 ACC, Annual Report 2009–10, p. 144, and previous ACC Annual Reports.

2.37 The Ombudsman's 2009–10 report on controlled operations clearly identified that in a 2009–10 inspection, the particulars of a number of controlled operations certificates were identical, while it also appeared that a series of certificates had been used to authorise what were effectively two ongoing operations. Examination of records showed that the certificates were the most recent in a series relating to the same operations dating back to 2007.[25]

2.38 The Ombudsman indicated a view that the extension of a controlled operation beyond an initial three month period (and for every further three month period) requires the authorisation of an Administrative Appeals Tribunal (AAT) member.[26]

2.39 While the Ombudsman noted ACC advice that it believes that appropriate internal controls exist, in the Ombudsman's view it would be inappropriate for an agency to 'bypass' the AAT oversight mechanism and seek to conduct controlled operations by means of consecutive internal certificates.[27]

2.40 It was not clear to the committee why the extension of controlled operations beyond three months were reauthorised internally, rather than externally reviewed by the Administrative Appeals Tribunal (AAT) as required under the legislation. Consideration and questioning by the Legal and Constitutional Affairs committee during the May estimates hearing did not entirely resolve this issue.[28]

2.41 The committee therefore raised the issue with the ACC during its examination of the 2009–10 Annual Report. Mr Lawler responded to the issue, stating:

> Acting on legal advice, the ACC proceeded with a process of internal reapplication in the belief that the legislation is written to contemplate the flexibility required in the investigative process. The ACC's view has been that a controlled operational authority may be issued for less than three months in a form designed to keep control of the activity and with the potential for further similar authorities to be issued in support of the same ACC investigation. The Acting Commonwealth Ombudsman, Ms Larkins, agreed with the ACC, noting that its regular processes of internal reapplication demonstrated good internal governance. However, Ms Larkins noted that this removed the avenue of external scrutiny of these operations. She noted that the Commonwealth Parliament's clear intention in passing the legislation was for the AAT to provide external scrutiny of ongoing controlled operations.[29]

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25 Commonwealth Ombudsman, A Report on the Commonwealth Ombudsman's activities in monitoring controlled operations, November 2010, p. 14–15..

26 Commonwealth Ombudsman, A Report on the Commonwealth Ombudsman's activities in monitoring controlled operations, November 2010, p. 15.

27 Commonwealth Ombudsman, A Report on the Commonwealth Ombudsman's activities in monitoring controlled operations, November 2010, p. 15.

28 Senate Legal and Constitutional Affairs Committee, *Estimates Hansard*, 25 May 2011, pp 72–75.

29 Mr John Lawler, ACC, *Committee Hansard*, 13 July 2011, p. 9.

2.42 Mr Lawler advised the committee that legal advice provided by the Australian Government Solicitor had found the ACC had acted lawfully. On the basis that the ACC's actions may be misconstrued by the public, however, Mr Lawler noted that he had directed ACC staff to adhere to the Ombudsman's interpretation of the application of the relevant act.[30] As Mr Lawler explained:

> Where renewals are sought for authorities that have been granted by the ACC authorising officers for three months, this should be done, where legally possible, through the Administrative Appeals Tribunal and we will see a number of circumstances where it is not legally possible to do that.
>
> On review of the ACC's long-term covert intelligence operational strategy, it is now clear that the legislation, notwithstanding the amendments in February 2010, was not designed to take into account a series of controlled operations, different in nature, aggregating to an overall strategy of targeting a particular person or group. It would appear that the legislation envisaged a more transactional regime—that is, one drug importation rather than participants being involved generally in criminal activity, often of an early conspiratorial nature, which necessitated decision points for managers based upon the direction of targets of the operation. So in fact it was not the ACC which could ultimately direct what was going to happen; it was the targets making decisions, often at short notice, as to what would occur. This ultimately caused changes in the scope of activity and resulted in the ACC adopting the internal variation and re-issue regime.[31]

2.43 The committee recognises the range of views and concerns expressed by the ACC and the Ombudsman.

2.44 The committee considers that, in essence, three categories of variation of controlled operation authorities are being discussed:

- where there is just a change in scope of an operation, there is agreement that the authorisation is required from an appropriate authorising officer;
- where there is just a change in duration of an operation beyond three months, there is agreement that the change must be authorised by the AAT; and
- when there is both a change in scope and a change in duration of a controlled operation authority beyond three months, there is uncertainty arising around the appropriate authority.

2.45 The committee considers that in a case where both the scope and the duration of an operation is being varied that the scope change should be approved by the appropriate authorising officer internally, and the change in duration of the controlled operation authority beyond three months should be approved by the AAT. The committee considers that this approach would most accurately reflect the intention of the legislation as it currently stands. The committee further considers that that if there are any administrative or legislative impediments to such an approach, that the

30 Mr John Lawler, ACC, *Committee Hansard*, 13 July 2011, p. 9.

31 Mr John Lawler, ACC, *Committee Hansard*, 13 July 2011, pp 9–10.

Government make appropriate adjustments to administrative arrangements or legislation to enable this approach.

Recommendation 1

2.46 The committee recommends that where a variation to a controlled operation authority is sought that would change both the scope and the duration of the authority beyond three months, that the scope change should be approved internally by the appropriate authorising officer and the change in duration of the controlled operation authority beyond three months should be approved by the AAT.

Recommendation 2

2.47 The committee further recommends that that if there are any administrative or legislative impediments to the approach outlined in Recommendation 1, that the Government make appropriate adjustments to administrative arrangements or legislation as necessary to enable such an approach.

2.48 The committee notes, through ongoing briefing from the ACC and the AFP, the level of complexity, global reach and significant use of communications technologies including internet-based communications, to facilitate crime. Criminal enterprise facilitated by these new technologies does not necessarily originate in Australia and often involves significant levels of international coordination. Nevertheless, internationally-coordinated criminal activity can have a devastating impact on local communities.

2.49 In this context, the committee believes that a further review of the controlled operations regime may be appropriate to ensure that it remains an effective tool in the fight against serious and organised crime in a rapidly evolving criminal environment.

Complaints against the agency

2.50 The report includes statistics on the number of formal complaints made to the ACC. In 2009–10, there were five complaints made to the agency, which, although low, was as many as had been recorded in the previous three years.

2.51 The committee sought further clarification as to the nature of these complaints, and was given a description of the complaints by Ms Jane Bailey, ACC, who stated:

> There was one where a member of public complained to the Attorney-General about mistreatment by ACC officers. Not to put too much detail on it but it was about the conduct of officers in issuing a warrant or a summons I understand. That was subsequently found to be unsubstantiated. An ACC officer's attitude during an investigation again was about the professionalism of our staff. There was a complaint that the ACC had leaked some information to the media which was found to be unsubstantiated by ACLEI. There was a person who was dissatisfied with the amount of time we took to return, I think it was, a computer laptop to them after an investigation. Those officers involved were asked to give a fully detailed explanation as to why it had taken so long and that was dealt

> with. I think there was another, which was substantiated, where a person had used the ACC's email system to send an email about a private matter that was inappropriate in its language and tone.[32]

2.52 The committee notes that the majority of complaints were not substantiated, but encourages the ACC to continue to exercise diligence in the handling of complaints against the agency.

2.53 More broadly, the committee heard that the agency was continuing to develop a strong anti-corruption culture. As Mr Lawler explained:

> One of the key areas from my perspective is the issue of culture within organisations which can lead to corrupt activity—particularly in how the organisation is viewing and feeling about itself. Where an organisation and its staff feel disenfranchised or unable to raise matters of concern or do not feel as though they have an open environment, issues of potential corruption and impropriety are often not brought forward to management in the way they need to be.
>
> One of the key findings of the second of our staff surveys, which was recently conducted, goes to the point of agency health from the perspective of staff; the issues around corruption go very much to that particular point. In 2009, when the first survey was held, we had a 90 per cent participation rate, but only 25 per cent of the agency actually valued or were happy to be working for the commission—only a quarter of the staff. Our latest survey, in 2011, had a 94 per cent participation rate—the highest on record—and 90 per cent of the staff were happy to work in the agency. So there was a turnaround from 25 to 90 per cent. This is about how the staff feel about the work they are doing and how they are valued within the commission, and that is one of the key planks to an anti-corruption strategy.[33]

2.54 The committee is encouraged by the large increase in staff satisfaction within the ACC, and congratulates the agency on this result. The committee agrees that high staff morale is likely to be an insulating factor against corruption.

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32 Ms Jane Bailey, ACC, *Committee Hansard*, 13 July 2011, p. 8.

33 Mr John Lawler, ACC, *Committee Hansard*, 13 July 2011, p. 4–5.

Conclusion

2.55 The committee thanks the ACC for its engagement with the parliamentary oversight process, and congratulates it on another successful year. The committee looks forward to the ACC's account of achievements in the 2010–11 year, as the agency continues to evolve as the nation's premiere house of criminal intelligence. Though the ACC may, by necessity, operate in the shadow of more operationally-based law enforcement agencies, the committee understands that the ACC's role in supporting these operations and activities with the knowledge needed to succeed is vital in the fight against serious and organised crime.

Mr Chris Hayes MP

Chair

Appendix 1

Witnesses who appeared before the Committee at the Public Hearing

Wednesday, 13 July 2011

Parliament House, Canberra

Australian Crime Commission

Mr John Lawler, APM, Chief Executive Officer

Ms Jane Bailey, Executive Director, People, Business Support and Stakeholder Relations

Dr David Lacey, Acting Executive Director, Intervention and Prevention

Mrs Kim Ulrick, Acting Executive Director, Fusion, Target Development and Performance