Parliamentary Joint Committee on the Australian Crime Commission

Examination of the Australian Crime Commission Annual Report 2007–08

June 2009

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The Committee

Members:

Senator Steve Hutchins (**Chair)**

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Senator Helen Polley

Senator Steve Fielding

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Mr Nicholas Champion MP

Mr Stephen Gibbons MP

Mr Christopher Hayes MP

The Hon. Sussan Ley MP

Secretariat

Dr Jacqueline Dewar, Secretary

Dr Robyn Clough, Principal Research Officer

Mrs Nina Boughey, Senior Research Officer

Mrs Danielle Oldfield, Executive Assistant

Parliament House
CANBERRA

Telephone: (02) 6277 3419
Facsimile: (02) 6277 5866
Email: acc.committee@aph.gov.au
Internet: www.aph.gov.au/senate_acc

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Recommendations

Recommendation 1

2.56 The committee recommends that the Australian Government amend the *Australian Crime Commission Act 2002* to include a statutory definition of contempt, the statutory power of referral, plus ancillary provisions and/or expedite the judicial process for Australian Crime Commission contempt matters.

Recommendation 2

2.112 The committee recommends that the Australian Government expedite the process to include the Commissioner of Taxation as a full member of the Australian Crime Commission Board.

Recommendation 3

2.133 The committee recommends that the Australian Crime Commission and the Australian Commission for Law Enforcement Integrity develop a practice to ensure publication of corruption or possible corruption matters in an appendix of Australian Crime Commission annual reports is done in a manner which will neither compromise current investigations nor the reputations of individuals facing allegations.

Recommendation 4

2.145 The committee recommends that the Australian Government review existing arrangements for the suspension and dismissal of Commonwealth law enforcement agency employees believed on reasonable grounds to have engaged in serious misconduct or corruption, and that the Government take action as appropriate, bearing in mind the need to respect the rights of employees.

Acronyms and abbreviations list

ACC	Australian Crime Commission
ACC Act	*Australian Crime Commission Act 2002*
ACC Board	Australian Crime Commission Board
ACID	Australian Criminal Intelligence Database
ACLEI	Australian Commission for Law Enforcement Integrity
AFP	Australian Federal Police
ALEIN	Australian Law Enforcement Intelligence Network
APS	Australian Public Service
CEO	Chief Executive Officer
FMA Act	*Financial Management Accountability Act 1997*
NCA	(former) National Crime Authority
NCIPs	National Criminal Intelligence Priorities
NIITF	National Indigenous Violence and Child Abuse Intelligence Task Force
NSWPol	New South Wales Police
OMCG	Outlaw Motorcycle Gang
PJC-ACLEI	Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
QPS	Queensland Police Service
SAPol	South Australia Police
SIEF	Standard Information Exchange Format
TASPol	Tasmania Police

tax commissioner	Commissioner of Taxation
Trowell Report	Mr Mark Trowell QC, *Independent Review of the Provisions o f the Australian Crime Commission Act 2002: Report to the Inter-Governmental Committee*, March 2007
the Minister	Minister for Justice and Customs
the Act	*Australian Crime Commission Act 2002*
the Board	Australian Crime Commission Board
the committee	Parliamentary Joint Committee on the Australian Crime Commission
the Ombudsman	Commonwealth Ombudsman
the Report	Australian Crime Commission Annual Report 2007-08
VicPol	Victoria Police
WAPS	Western Australia Police Service

Chapter 1

Introduction

The committee's duty to examine reports

1.1 The Parliamentary Joint Committee on the Australian Crime Commission (the committee) has a statutory duty under paragraph 55(1)(c) of the *Australian Crime Commission Act 2002* (the Act) to examine each annual report of the Australian Crime Commission (ACC), and report to the Parliament on any matter appearing in, or arising out of, any such annual report.

1.2 This is part of the committee's wider duties under paragraphs 55(1)(a) and (b) of the Act to monitor, review and report on the ACC's performance of its statutory functions.

Report under consideration

1.3 The ACC's Annual Report 2007-08 (the Report) was presented out of sitting on 9 January 2009, and was tabled in both the Senate and House of Representatives on 3 February 2009.

Inquiry into the Report

1.4 In examining the Report, the committee held a public hearing at Parliament House, Canberra on 24 March 2009. The witnesses who appeared before the committee, the submissions received and answers to questions on notice are listed in Appendix 2.

Acknowledgments

1.5 The committee acknowledges the cooperation of the ACC Chief Executive Officer, Mr John Lawler APM, the former CEO, Mr Alistair Milroy, as well as other officers of the ACC. The ACC regularly provides the committee with written reports and briefings on its operation, and is always willing to assist the committee with its various inquiries. The committee is pleased that the ACC continues to be frank and forthcoming with the information it provides to the committee.

1.6 The committee thanks Mr Bob Bottom, whose expertise and experience with organised crime matters has greatly assisted the committee during this inquiry.

1.7 The committee wishes to record its appreciation and gratitude to Mr Alistair Milroy who retired from his position as Chief Executive Officer of the ACC in February 2009. Mr Milroy oversaw the establishment of the ACC in 2002 and the development of the organisation's strong foundations.

1.8 The committee also wishes to acknowledge the achievements of the Chair of the ACC Board, Australian Federal Police (AFP) Commissioner Mick Keelty. The committee notes that Commissioner Keelty will retire from his position as Commissioner of the AFP in September this year, and that consequently this will be Commissioner Keelty's last year as chair of the ACC Board. The committee acknowledges the valuable leadership Commissioner Keelty has provided to the ACC as chair of its Board.

Adoption of this Report

1.9 The committee adopted this report at a private meeting on 25 May 2009.

Chapter 2

Australian Crime Commission Annual Report 2007-08

2.1 The Australian Crime Commission (ACC) is Australia's national criminal intelligence and investigation agency. Its work involves the collection and dissemination of criminal intelligence, and undertaking criminal investigations with and for its partner agencies.

2.2 The ACC is able to utilise special coercive powers to collect information that is not available through traditional policing methods. These powers, the use of which must be approved by the ACC Board, enable the ACC's Examiners to summons witnesses, require witnesses to give evidence and require people to provide documents or other things.

Annual reporting and compliance

2.3 Annual reporting by government agencies is based on an 'outcome and output' structure. The ACC's outcome and output framework is set out in the Attorney-General's Portfolio Budget Statements.

2.4 The ACC had one outcome in the 2007-08 year: Enhanced Australian Law Enforcement Capacity.

2.5 This outcome was supported by two outputs:

1. Criminal intelligence services, and
2. Investigation and intelligence operations into federally relevant criminal activity.

2.6 The ACC's Annual Report is also required to fulfil a number of statutory requirements. The Report's compliance with these requirements is outlined in Appendix 1.

Performance: Output 1 – Criminal Intelligence Services

2.7 The Key Performance Indicators for output 1 are:

- provision and maintenance of effective and efficient criminal intelligence systems;
- quality and value of strategic criminal intelligence assessments, threat assessments and other products and services;
- provision of timely, high quality advice to the ACC Board on national criminal intelligence priorities; and
- number and value of disseminations to law enforcement agencies and other relevant agencies.

2.8 The committee was particularly interested in three aspects of the ACC's performance in providing criminal intelligence services:

(a) the quality of the ACC's databases;

(b) the security of information stored on the ACC's databases; and

(c) the value of the ACC's intelligence products.

Database quality

2.9 The Report states that during 2007-08 the ACC continued to upgrade and support its information and communications technology infrastructure to keep pace with the increasing demands required by the agency.[1] The ACC administers and manages national criminal intelligence systems including the Australian Law Enforcement Intelligence Net (ALEIN) and the Australian Criminal Intelligence Database (ACID).

Australian Law Enforcement Intelligence Network

2.10 ALEIN is a secure national intranet used by national police services, the New Zealand Police, and a number of other government and law enforcement agencies. The use of ALEIN as a secure means of sharing criminal intelligence between organisations increased in 2007-08, with a ten per cent increase in the number of active users and a nine per cent increase in the number of documents downloaded. In addition, the hours of downtime, in which ALEIN was not available to users, dramatically decreased during 2007-08. The committee commends the ACC on these results.

Australian Criminal Intelligence Database

2.11 ACID is a secure, centralised national repository for criminal intelligence. During 2007-08 a number of significant improvements were made to ACID's functionality, including:

- the creation of new entities and links to assist in searching;
- a text analysis tool for analysing documents;
- a socio network analysis tool which enables law enforcement to analyse patterns within text and detect and map criminal networks;
- a centralised clandestine laboratory information repository and a standardised national approach for recording information collected at seizures, making it easier for officers to contribute information from the field;

1 Australian Crime Commission, *Annual Report 2007-08*, p. 18.

- improving the accuracy of the Assisted Entity Discovery functionality, which links entities within a document and charts entity relationships;
- a more streamlined, user friendly search tool;
- a graphical analysis tool which provides advanced users with the ability to discover patterns, trends, associations and hidden networks within ACID data; and
- providing a new, standardised national approach for recording information collected at clandestine laboratory seizures.

2.12 Former CEO, Mr Alastair Milroy, said that:

> The upgrade will encourage law enforcement agencies across Australia to contribute a greater diversity of information and intelligence, making the database a highly valuable intelligence tool in fighting organised crime.[2]

2.13 The overall number of uploads onto ACID fell during 2007-08, by over 11 per cent, although the ACC's input increased substantially. The ACC explained that:

> A review of agency uploads to ACID by financial year indicates decreases in the number of document uploads by five agencies: Queensland Police Service (QPS); South Australia Police (SAPol); Tasmania Police (TASPol); Victoria Police (VicPol); and Western Australia Police (WAPS).[3]

2.14 The ACC informed the committee that while the decline in uploads was consistent amongst most of these agencies, the lower number of uploads from Victoria Police appears to be an anomaly "due to a technical error in the VicPol transfer mechanism which has since been rectified."[4]

2.15 With regard to the decline in uploads by other agencies, the ACC stated:

> Variations in the volume of document contributions by agencies do occur between reporting periods due to fluctuations in jurisdictional operational and intelligence collection activities.[5]

2.16 However, the ACC is working with its partner agencies in various ways to improve the volume of document transfers, including:[6]

- Working with WAPS and SAPol on implementing the Standard Information Exchange Format (SIEF). Implementation of SIEF has

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2 Australian Crime Commission, *ACC unveils latest crime fighting intelligence tool*, Media Release, 29 July 2008, available at http://www.crimecommission.gov.au/html/pg_media_joint.html.

3 Australian Crime Commission, answer to question on notice, 20 May 2009, p. 1.

4 Australian Crime Commission, answer to question on notice, 20 May 2009, p. 1.

5 Australian Crime Commission, answer to question on notice, 20 May 2009, p. 1.

6 Australian Crime Commission, answer to question on notice, 20 May 2009.

enabled WAPS to retrospectively transfer approximately 189,000 documents onto ACID;

- Working with Customs and Border Protection and the New South Wales Crime Commission to transfer files from their systems to ACID; and
- Liaising with NSWPol about increasing its contributions to ACID which has resulted in NSWPol making a recommendation to its Commissioner recommending the automatic upload of some documents.

2.17 In addition, the ACC is:

> …promoting ACID/ALEIN to users through the publication of a newsletter, through a user survey to better understand how people are using it and by providing expanded training to external agencies…the ACC has delivered training to approximately 150 external users in the first half of this calendar year.[7]

2.18 The ACC also noted that it is:

> …working with approximately 15 Commonwealth, State and Territory agencies which have expressed an interest in connecting to ACID/ALEIN. The ACC is in the process of understanding their requirements, and connecting them to the system so they can share information and intelligence at a national level. [8]

2.19 The committee observes that the ACC is committed to improving its intelligence and information systems, as evidenced by the significant upgrades to ACID. The committee commends the ACC for proactively working with partner agencies to address the issue of information sharing through ACID during 2007-08. The committee will continue to monitor this issue.

Database security

2.20 The committee was concerned about the security and integrity of information on ACID, following media revelations in October 2008 that the ACC had a "secret file" on the Minister for Home Affairs, the Hon Bob Debus MP.[9] This incident revealed weaknesses in the ACC's databases in respect of both its content, and the security of information.

2.21 The committee notes that following this incident an audit of ACC data holdings and access was undertaken.

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7 Australian Crime Commission, answer to question on notice, 20 May 2009, p. 2.

8 Australian Crime Commission, answer to question on notice, 20 May 2009, p. 2.

9 Nick McKenzie and Richard Baker, 'Secret File on Minister', *The Age*, 3 October 2008, available at: http://www.theage.com.au/national/investigations/secret-file-on-minister-20081002-4suv.html

2.22 Since becoming CEO of the ACC in March 2009, Mr Lawler has implemented a number of reviews of the ACC's operations and procedures, including requesting that the Ombudsman inspect the ACC's intelligence holdings to ensure that they are consistent with the ACC's role. Mr Lawler told the committee:

> The ACC has faced some challenges recently, and I fear these have reduced the confidence levels of our stakeholders. I cannot stress strongly enough to the committee that I am intent on addressing this.[10]

2.23 The Ombudsman was due to complete his investigation on 30 March 2009, and is expected to table a report on the investigation in Parliament. The Ombudsman also has the option of undertaking further investigations into the ACC's information and intelligence holdings.[11]

2.24 The committee commends Mr Lawler for his proactive approach to improving the integrity and security of the ACC's databases, and looks forward to the Ombudsman's report and to the ACC's implementation of any recommendations made therein.

2.25 Whilst applauding the action the ACC has taken with respect to its database security, the committee notes the severity of the breach in Minister Debus' case and calls on the ACC to take all actions necessary to ensure that such an incident is never repeated.

Value of the ACC's products and services

2.26 The ACC produces a range of intelligence products, some of which are designed to provide agencies with the context to understand current trends and threats, and others of which are "forward-looking".[12]

2.27 The ACC reports that it has received positive feedback from partner agencies on the quality and relevance of its intelligence products.[13] The feedback from partner agencies is encouraging, and in the committee's view, indicates that the ACC is appropriately targeting the information it provides and is providing a high-quality, useful product.

Working groups and forums

2.28 The ACC coordinates and participates in a range of national, regional and international working groups, conferences and forums on various law enforcement issues of relevance to serious and organised crime. These are outlined on pages 26-28 of the Report.

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10 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 2.

11 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 2.

12 Australian Crime Commission, *Annual Report 2007-08*, p. 22.

13 Australian Crime Commission, *Annual Report 2007-08*, p. 30.

2.29 Concerns were raised at Additional Estimates in February 2009 about the ACC's capacity to continue its participation in these forums and working groups, and specifically in the Asian Collaborative Group on Local Precursor Control (ACOG), given its budgetary constraints.[14] The ACC noted that its funding to participate in that particular forum came from the Attorney-General's Department, through a grants program.[15]

2.30 The committee notes that the various forums that the ACC is involved in provide valuable opportunities for intelligence sharing and networking between the ACC and law enforcement officers in other jurisdictions. These opportunities not only assist in the ACC's knowledge of organised criminal activity in our region, but also create cooperative pathways between agencies which are crucial to effectively combating serious and organised crime.

2.31 The working groups on precursor chemicals are particularly important as they provide an opportunity for law enforcement to explore effective measures to divert precursor chemicals from the illicit manufacture of amphetamines. The working groups also strengthen international cooperation in this area, which is integral to combating the drug manufacturing and trafficking which underpins a large proportion of organised criminal activity.[16]

2.32 The committee urges the government to ensure that the ACC is able to continue its important work in these national and international forums on precursor chemicals and other matters, by providing ongoing funding for these forums.

Performance: Output 2 – Investigation and intelligence operations into federally relevant criminal activity

2.33 The Key Performance Indicators for output 2 are:

- effective collaboration with partner law enforcement agencies to progress criminal intelligence and investigative priorities;
- effective use of coercive powers to support criminal intelligence and investigative objectives;
- disruption of criminal syndicates;
- effective and efficient delivery of the ACC Board-approved criminal intelligence and investigative priorities;
- number and value of disseminations to law enforcement and other relevant agencies;

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14 Senate Standing Committee on Legal and Constitutional Affairs, *Additional Estimates Hansard*, 23 February 2009, pp. 134-137.

15 Ms Elizabeth Kelly, First Assistant Secretary, Criminal Justice Division, Attorney-General's Department, Senate Standing Committee on Legal and Constitutional Affairs, *Additional Estimates Hansard*, 23 February 2009, p. 137.

16 Australian Crime Commission, *Annual Report 2007-08*, p. 27.

- number and significance of arrests and charges; and
- value of proceeds of crime

2.34 The ACC conducts three different kinds of investigations: intelligence operations; special intelligence operations; and special investigations.

Intelligence operations

2.35 Intelligence operations are intelligence-gathering exercises aimed at providing decision-makers with information about the true extent, impact and threat of criminal activities. In 2007-08, the Board approved three intelligence operations and task forces:

- Outlaw Motorcycle Gangs National Intelligence Task Force;
- National Indigenous Violence and Child Abuse Intelligence Task Force; and
- Serious and Organised Crime National Intelligence Task Force.

Special intelligence operations

2.36 Special intelligence operations have similar objectives to intelligence operations, but involve the use of coercive powers as approved by the Board. They do not involve electronic surveillance or telephone intercepts. In 2007-08, ten special intelligence operations were approved by the Board:

- Amphetamines and Other Synthetic Drugs;
- Amphetamine Type Stimulants and New Synthetic Drugs;
- Serious and Organised Fraud;
- Fraud and Financial Crimes;
- Crime in the Transport Sector;
- Illicit Firearm Markets;
- Illicit Firearm Markets (NSW)
- Illegal Maritime Importation and Movement Methodologies;
- Private Security Industry; and
- Indigenous Violence or Child Abuse.

Special investigations

2.37 Special investigations are designed to collect intelligence and to disrupt and deter criminal groups, and may result in arrests and the seizure of assets. Coercive powers can be used, as can telephone interception, surveillance devices and controlled operations. In 2007-08 the Board authorised five special investigations on:

- High Risk Crime Groups;

- Established Criminal Networks – Victoria;
- Money Laundering and Tax Fraud;
- Wickenby matters; and
- Financial Crimes.

Summary of results

2.38 The table reproduced below from page 34 of the Report shows the overall results for all ACC determinations in 2007-08.

Table 1: Overall results for all ACC determinations 2007-08

	2004-05	**2005-06**	**2006-07**	**2007-08**
People charged	294	218	176	**210**
Charges laid	1665	894	429	**591**
Summonses issued	747	705	856	**895**
Examinations conducted	629	605	703	**760**
Notices to produce documents issued	516	480	604	**556**
Drug seizures	175	106	86	**105**
Firearms seized or quarantined	284	1300	323	**18**
Estimated street value of drugs seized	$66.6 m	$4.9 m	$1562 m[a]	**$60.11 m**[b]
Proceeds of crime restrained	$13.4 m	$20.7 m	$6.68 m	**$8.94 m**
Proceeds of crime forfeited	$0.9 m	$1.6 m	$6.44 m	**$2.46 m**
Tax assessments issued	$12.2 m	$6.3 m	$5.5 m	**$76.97 m**
Tax recoveries	$0.3 m	$20.8 m	$0.49 m	**$0**

[a] $1550 m was attributed to potential illicit drug production from precursors seized.

[b] $53.47 m was attributed to potential illicit drug production from precursors seized.

Source: *Australian Crime Commission Annual Report 2007-08*, p. 34.

2.39 Mr Bob Bottom, an investigative journalist and author on organised crime issues in Australia since 1963, expressed his concern about the decreasing number of

charges and arrests by the ACC since its establishment in 2003.[17] This issue was raised by the committee in its examination of the ACC's Annual Report for 2006-07, and the committee was informed that:

> A lot of the investigations the ACC conducts are quite protracted and they run across more than one reporting period, so you see some fluctuations in relation to the arrests and charges, seizure of assets and seizure of drugs from one reporting period to another.[18]

2.40 Mr Bottom's submission is critical of that explanation given that:

> …with a budget rising to nearly double that of the National Crime Authority it replaced in 2003, the ACC arrest rates was less than half that for the NCA.[19]

2.41 Mr Bottom added:

> Indeed, such an arrest rate raises even more concern when compared with the results of the NSW Crime Commission.
>
> During 2006-2007, the NSW commission had been responsible for 445 arrests, compared with the ACC's 176. That was achieved with a staff of just 110, as against 619 with the ACC, and with an annual budget of under $14million, compared with more than $100million for the ACC.[20]

2.42 The committee notes that the arrest figures giving rise to Mr Bottom's concern were 2006-07 figures, and that in the 2007-08 financial year there was an increase in the number of charges by the ACC from 176 in 2006-07 to 210 in 2007-08. However, this rise was not so significant as to dispel Mr Bottom's concerns.

2.43 Mr Bottom argued that the relatively low number of arrests by the ACC compared with the National Crime Authority and NSW Crime Commission can be attributed to it having:

> …grown from a law-enforcement agency to a gatherer and disseminator of criminal intelligence.[21]

2.44 The same issue arose in the committee's examination of the 2007-08 Report, Mr Lawler told the committee:

> There would be a school of thought that would have some strong support that it is about arrests and charges and prosecutions. Without in any way downgrading the importance of that—and that is very important—I would

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17 Mr Bob Bottom, *Submission 1*, p. 1.

18 Mr Alastair Milroy, CEO, ACC, *Committee Hansard*, 9 April 2008, p. 5.

19 Mr Bob Bottom, *Submission 1*, p. 2.

20 Mr Bob Bottom, *Submission 1*, p. 2.

21 Natalie O'Brien, *The Australian*¸24 September 2008, quoted in Mr Bob Bottom, *Submission 1*, p. 6.

> like to submit to the committee that the broader intelligence—both the strategic intelligence … and some of the very focused targeting of who are the key players and sophisticated ways of doing that—is, I think, where the ACC can really add its maximum value...Then you give that material—well-honed, well-developed target packages—either to the policymakers or indeed to the partner agencies on the board…to put the Mr Bigs and the Mr Big-Enoughs out of business.[22]

2.45 The ACC's shift in focus from traditional law enforcement to intelligence gathering is illustrated in the decline in the number of firearms seizures from 323 in 2006-07 to 18 in 2007-08. Mr Outram from the ACC told the committee:

> In terms of priorities we determined, with the concurrence of the board, that our investigative resources would be better placed elsewhere, focusing on groups. Also, in terms of intelligence, the investigation of firearms offences would be better undertaken by our police partners and that our role would be much more an intelligence role, focusing on collecting intelligence and identifying vulnerabilities and the sources of some of the firearms that were coming into the illegal firearms market.[23]

2.46 Mr Lawler added:

> Part of the decision making that both the organisation and the board need to make is about tactical incisions and tactical outcomes around seizure of firearms or arrests, or whether there is a view—and it is the view of the ACC—that more benefit to the community can be gained by actually understanding the networks and markets, understanding who the key facilities are…and making sure that the resources are directed to those efforts. In my experience—and it is my strong view—if we direct the resources in that way, we will have a greater impact on the problem. That is not to say that the seizure of firearms is not an important activity; it most certainly is. That is not to say that arrests are not an important activity; they most certainly are. But it is a case of whether that is the best activity or whether the arrests and the seizures and the charges might be better done by some of our partner agencies.[24]

2.47 The committee accepts the importance of the ACC's role in collecting and disseminating criminal intelligence between national police forces. The committee also notes that the ACC is not intended to be an eighth Australian police force.

2.48 The committee is also aware that a significant portion of the ACC's work occurs in support of other agencies, so that arrest and assets seizure statistics may be

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22 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 16.

23 Mr Michael Outram, Executive Director, Programs Division, ACC, *Committee Hansard*, 24 March 2009, pp. 3-4.

24 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 4.

reflected in the work of the ACC's partner agencies. In 2007-08, 87 per cent of ACC operations were conducted in partnership with other agencies.[25]

2.49 In addition, the committee notes the continued success of the ACC in disrupting criminal entities and significant individuals. Its special investigation on High Risk Crime Groups resulted in 76 prosecutions in the reporting period, which resulted in 69 convictions, 53 of which attracted custodial sentences and 16 of which resulted in non-custodial or suspended sentences. Three cases were withdrawn and one resulted in the case been proven but no conviction recorded.[26] The committee considers this to be a good achievement, and an illustration of the ACC's success in disrupting serious and organised crime.

Coercive powers

2.50 During 2007-08 the ACC issued 895 summonses to attend an examination, conducted 760 examinations and used its power to obtain documents under section 29 of the ACC Act on 556 occasions.[27]

2.51 The ACC laid a total of 17 charges against eight people for failing to cooperate with these summonses, including failure to attend an examination or giving false and misleading evidence.[28]

2.52 The committee has commented on a number of previous occasions on the need for the ACC to have stronger and more expedient mechanisms for dealing with contempt.[29] The ACC informed the committee that contempt remains a problem:

> …there have been, not only in these [Wickenby and Midas] determinations but certainly with the outlaw motorcycle gang and the high-risk crime groups determination, a significant number of persons summonsed who have failed to cooperate with the examiners and the examination process. Indeed, we have intelligence in relation to the latter group that there have been specific directions given whereby gang members are expected to be charged rather than provide evidence to the commission examinations.[30]

2.53 Mr Lawler further noted that this was a rising trend:

> We have seen, as I indicated, very good intelligence that indicates to us that concerted, organised groups are effectively thumbing their noses at the

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25 Australian Crime Commission, *Annual Report 2007-08*, p. 38.

26 Australian Crime Commission, *Annual Report, 2007-08*, Appendix A.

27 Australian Crime Commission, *Annual Report, 2007-08*, p. 38.

28 Australian Crime Commission, *Annual Report, 2007-08*, p. 39.

29 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the Australian Crime Commission Amendment Act 2007*, September 2008, pp. 43-49; Parliamentary Joint Committee on the Australian Crime Commission, *Review of the Australian Crime Commission Act 2002*, November 2005, pp. 37-41

30 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 7

> powers of the commission before such examinations. We understand that some outlaw motorcycle gangs have promulgated to their members that they would prefer them to be charged by the ACC for noncompliance than to acquiesce to the examination process. In my view, this is a serious development...[31]

2.54 The committee again heard that delays in the courts' hearing of contempt matters often result in "the importance, relevance and value of the information that comes from those hearings…[being] greatly degraded."[32]

2.55 This matter is of great concern to the committee and the committee has previously recommended that the government expedite its response to the Trowell Report, to address the recommendations made in that report regarding the ACC's ability to deal with contempt.[33] The committee reiterates this recommendation:

Recommendation 1

2.56 The committee recommends that the Australian Government amend the *Australian Crime Commission Act 2002* to include a statutory definition of contempt, the statutory power of referral, plus ancillary provisions and/or expedite the judicial process for Australian Crime Commission contempt matters.

Progress of investigations

2.57 Some of the key law enforcement outcomes that have resulted from ACC intelligence include:

- the seizure of over 400 kg of cocaine, ecstacy and methylamphetamines concealed within fibreglass foot spas;
- two people being charged with drug trafficking offences for trafficking 10.5 kg of cannabis from South Australian to Queensland;
- south Australian Police arresting a person identified as having manufactured and sold a large volume of firearms silencers both nationally and internationally;
- locating several clandestine drug laboratories;
- the restraint of over $1 million of assets and the recovery of over $600 000 of assets;
- detection of a large scale welfare fraud involving 300 people; and

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31 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 12.

32 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 12.

33 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the Australian Crime Commission Amendment Act 2007*, September 2008, pp. 42-49; Parliamentary Joint Committee on the Australian Crime Commission, *Examination of the Australian Crime Commission Annual Report 2006-07*, June 2008, p. 22.

- numerous arrests and prosecutions.

2.58 Pages 40 to 73 of the Report detail the outcomes for, reforms to, and outlook for, the ACC's operations, investigations and taskforces over the 2007-08 period.

Special investigations

2.59 The special investigations into High Risk Crime Groups, Established Criminal Networks – Victoria and Wickenby were continued into 2008-09.

2.60 The special investigation on money laundering and financial crime (MIDAS) will continue under the Financial Crimes determination.

Special intelligence operations

2.61 The special intelligence operations on illegal maritime importation, illicit firearms markets, Indigenous violence or child abuse and the private security industry have been extended into 2008-09.

2.62 The special intelligence operations on drugs and fraud were both replaced by new determinations which follow on from the intelligence collected, the latter of which is a special investigation.

2.63 The determination for the special investigation into Crime in the Transport Sector expired on 30 June 2008 and has not been replaced.

Taskforces

2.64 The Outlaw Motorcycle Gang National Intelligence Task Force (OMCG task force), which was Board-approved, and formed under the High Risk Crime Groups special investigation determination, expired on 30 June 2008. The work of the OMCG task force has been subsumed under the Serious and Organised Crime National Intelligence Task Force, which was established on that day.

2.65 The ACC explained the rationale for the expansion of the Task Force's jurisdiction:

> This brought in these much broader linkages that we were seeing developing in the OMCG context. The focus of the new task force on high-risk crime groups is designed to unearth the intricate networks and connections of our most serious organised crime threats, many of which involve OMCG in some form.[34]

[34] Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 8.

2.66 Mr Bottom criticised the change, and expressed the view that it is symptomatic of the ACC becoming more concerned with intelligence than arrests, and shifting away from its 'core priorities'.[35]

2.67 Through its ongoing inquiry into legislative arrangements to outlaw serious and organised crime, the committee is aware of the threat that OMCGs pose to Australia in terms of their role in organised crime. Mr Lawler emphasises this threat in his evidence to the committee in the current inquiry:

> …motorcycle gang members continue to represent a real and present criminal threat to Australia. This should not be confused, and nor should the general public be fooled, by the propaganda that links these individuals to law-abiding motorcycle riders. Outlaw motorcycle gangs' activities range from social nuisance in residential communities through to involvement with some of the most significant criminal syndicates operating in Australia today.[36]

2.68 Given the links between OMCGs and other organised criminal groups operating in Australia, the broadening of the OMCG task force's scope appears to be strategically sound. However, it is the committee's view that the ACC's investigations into OMCGs should not be diluted as a result of the broad scope of the new task force.

2.69 The National Indigenous Violence and Child Abuse Intelligence Task Force (NIITF), which was approved under the determination on Indigenous violence or child abuse, was due to cease on 30 June 2009, but has now been extended. The decision has met mixed reactions from the community.[37]

2.70 The committee has concerns regarding the ACC's involvement in this area. One of the committee's initial concerns about the decision was its cost of approximately $5.5 million. However, the committee notes that the funding for the continuation of the task force is additional to the ACC's 2009-10 departmental appropriation. The committee is pleased with this outcome.

2.71 The committee remains concerned, however, about the suitability of the ACC for its current role in the Northern Territory Emergency Response through the NIITF. The committee does not question the value of the ACC's work in collecting intelligence about violence in indigenous communities, nor the professionalism and effectiveness with which the ACC's officers are performing their roles. The committee's concern is with the continued use of a body established to unite Australia's fight against serious and organised crime, which has appropriate powers and oversight for that purpose, being used to gather intelligence about violence in indigenous communities.

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35 Mr Bob Bottom, *Committee Hansard*, 24 March 2009, p. 38.

36 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 8.

37 ABC News Online, *Extending Crime Commission taskforce intervention 'unacceptable'*, 14 March 2009, at www.abc.net.au/news/stories/2009/03/14/2516319.htm, (accessed 16 March 2009).

2.72 The suitability of the ACC for this role has been questioned by various groups, including the Australian Police Federation.[38] Mr Vince Kelly, the president of the Australian Police Federation said that:

> [the ACC] wasn't established to investigate sexual assaults, and other types of assaults, in indigenous communities.
>
> That's a job best done by the Northern Territory Police Force.

2.73 The committee agrees with this view, and would encourage the government to consider alternative arrangements to allow the Northern Territory Police, or appropriate agency, to take the lead on the NIITF.

2.74 The changes to the ACC's investigations, operations and taskforces demonstrate that the organisation's strategic direction is responsive to the dynamism of the Australian serious and organised crime environment.

2.75 The committee will continue to monitor changes to the ACC's investigations, operations and taskforces, including the discontinuation, or changes to the scope, of any determination. The committee will also continue to monitor the impact of budgetary constraints on the ACC's capacity to perform its functions effectively, and in particular the impact on the organisation's ability to combat specific criminal groups including OMCGs.

Financial and physical performance

2.76 Chapter three of the Report provides details of the ACC's financial and physical performance during 2007-08.

Budget deficit and efficiency dividend

2.77 The ACC's financial result for 2007-08 was a deficit of $2.086 million.[39] A $3 million operating loss was approved.[40]

2.78 During the 2008 Budget Estimates, the ACC informed the Senate Standing Committee on Legal and Constitutional Affairs that the efficiency dividend did not impact on the ACC's "core business in the area of intelligence and operations" in 2007-08.[41]

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38 ABC News Online, 'We should investigate Indigenous sexual assault: police union', 12 March 2009, available at http://www.abc.net.au/news/stories/2009/03/12/2514670.htm, accessed 12 March 2009.

39 Australian Crime Commission, *Annual Report, 2007-08*, p. 92

40 Australian Crime Commission, *Annual Report, 2007-08*, p. 92

41 Senate Standing Committee on Legal and Constitutional Affairs, *Additional Estimates Hansard*, 19 February 2008, pp. 78-9.

2.79 The ACC's appropriation for 2008-09 is $96.663 million. In addition the ACC obtains revenue from other Commonwealth, state and territory agencies of $12.335 million, making its total revenue for 2008-09 $108.99 million. In real terms this equates to a reduction in the ACC's budget of approximately 2.7 per cent.[42]

2.80 Despite this reduction in its budget, the ACC projects a balanced budget for 2008-09. The Legal and Constitutional Affairs Committee, when it was examining the ACC's 2008-09 budget in May 2008, was informed that the ACC planned to achieve efficiencies by:

> …looking at areas in which to be more efficient in terms of infrastructure costs, operational costs and supply costs. We are also looking at our attrition rate. Yes, there will be some reductions in staff numbers to meet this efficiency dividend, but we are reviewing all our operational functions and looking at ways where we can save and make it more efficient.[43]

2.81 The committee is concerned about the impact of budget cuts on the critically important work of the ACC. Staff reductions and decreases in operational costs will inevitably lead to less work being done to combat serious and organised crime, either through the ACC undertaking fewer investigations and operations, or through investigations not being as thorough, well-resourced or expedient.

2.82 Commissioner Keelty told the committee that the ACC Board, which determines the ACC's strategic priorities, is cognisant of the impact the ACC's budgetary reductions will have on its capacity:

> The board is serious about trying to ensure that the workload of the ACC matches its budget because one of the problems for the ACC in the past has been that it has been trying to be all things to all people. If I am representing the board members fairly, that consensus is one that the board has reached.[44]

2.83 The committee urges the ACC to keep it informed of the impact on budget cuts on the ACC's capacity to deliver its outputs, and to voice any legitimate requests for additional funding in order to combat serious and organised crime.

Human resources

2.84 The reduction of the ACC's budget resulted in a substantial reduction in staffing levels, which began in 2007-08 and has accelerated in 2008-09. During 2007-08 there was a net decrease in ACC staff of 25 staff, predominantly those

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42 Senate Standing Committee on Legal and Constitutional Affairs, *Budget Estimates Hansard*, 26 May 2008, p. 119.

43 Mr Alastair Milroy, CEO, ACC, Senate Standing Committee on Legal and Constitutional Affairs, *Budget Estimates Hansard*, 26 May 2008, p. 119.

44 Commissioner Mick Keelty, Chair, ACC Board, *Committee Hansard*¸24 March 2009, p. 20.

employed on a contract basis.[45] The total number of ACC staff declined from 666 to 641 over the period.

2.85 The ACC projected further reductions in staffing in 2008-09 to meet its budgetary constraints. [46] At Budget Estimates in May 2009, Mr Lawler confirmed that staffing numbers had declined further in 2008-09, and at 30 April 2009 the ACC had a total of 584 staff, a reduction of 57 from June 2008. The decline was all in contract staff. [47]

2.86 The committee is particularly interested in two aspects of the staffing cuts: the loss of seconded staff; and the ACC's high staff turnover.

Loss of seconded staff

2.87 An important aspect of the ACC's role as a national organised crime fighting body is its ability to second staff from partner agencies. This has a number of advantages, including providing important links between the ACC and its partner agencies, and ensuring that there is mutual understanding about the operation of law enforcement agencies around Australia.

2.88 During 2007-08 there was an almost 20 per cent reduction in the number of secondees and task force staff working with the ACC from the previous year.[48] The decline has largely been in the numbers of staff funded by jurisdictions as opposed to those funded by the ACC. The ACC told the committee that the decline should not be of concern as "it just reflects the menu of work."[49]

2.89 The committee notes that at Budget Estimates in May 2009, Mr Lawler stated that at 30 April 2009, the total number of secondees and task force staff had fallen by over 30 per cent from June 2008 levels. At 30 June 2008 there were a total of 103 secondees and task force staff working with the ACC, and by 30 April 2009 there were 72.[50] The committee notes that there was a decline in the number of ACC funded secondees over that period, from 47 to 28.

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45 The total number of staff employed on a permanent basis increased from 555 to 573, while the number of contractors decreased from 111 to 68. Australian Crime Commission, *Annual Report, 2007-08*, p. 97.

46 Australian Crime Commission, *Annual Report, 2007-08*, p. 94; Senate Standing Committee on Legal and Constitutional Affairs, *Budget Estimates Hansard*, 26 May 2008, p. 119

47 The ACC now has 10 contract staff. Mr John Lawler, CEO, Australian Crime Commission, Senate Standing Legislation Committee on Legal and Constitutional Affairs, *Budget Estimates*, 26 May 2009.

48 Australian Crime Commission, *Annual Report, 2007-08*, p. 105.

49 Ms Jane Bailey, Executive Director, Organisational Services, ACC, *Committee Hansard,* 24 March 2009, p. 13.

50 Comprising 28 secondees funded by the ACC, 24 funded by partner agencies, and 20 task force staff. Mr John Lawler, CEO, Australian Crime Commission, Senate Standing Legislation Committee on Legal and Constitutional Affairs, *Budget Estimates*, 26 May 2009. =

2.90 This decline in seconded staff is of great concern to the committee. The committee will continue to monitor this area.

Staff turnover

2.91 The table on page 104 of the Report outlines that there has been a significant increase in the staff turnover of the ACC during 2007-08. During 2006-07 a total of 63 staff left the ACC, and in 2007-08 this increased to 111. The ACC has accounted for the high turnover as:

> …primarily due to decisions to reduce the workforce to meet budgetary constraints.[51]

2.92 A large portion of the increase in terminations can be accounted for by non-renewal of contracts, however, there were also 51 resignations, which is a 50 per cent increase from the previous financial year. The committee has expressed concern about the impact of high staff turnover on the organisation in previous reports.[52] Although the committee acknowledges the fact that the ACC's budgetary position may require a reduction in staffing numbers, the ACC's high staff turnover also results in a loss of expertise and corporate knowledge and inefficiencies associated with training new staff.

2.93 The committee urges the ACC to develop or enhance retention policies and programs, within its budgetary constraints.

Accountability and governance

2.94 The ACC has a number of internal and external governance and accountability mechanisms. These mechanisms provide oversight of the ACC's operations, and assist the ACC to achieve its outcomes. There are eight bodies with such responsibility, including:

- the Minister for Home Affairs (the Minister);
- the Inter-governmental Committee on the Australian Crime Commission;
- the ACC Board;
- the Parliamentary Joint Committee on the Australian Crime Commission (the committee);
- the Commonwealth Ombudsman (the Ombudsman);
- the Australian Commission for Law Enforcement Integrity (ACLEI);
- judicial comment and review; and

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51 Australian Crime Commission, *Annual Report, 2007-08*, p. 104.

52 Parliamentary Joint Committee on the Australian Crime Commission, *Examination of the Australian Crime Commission Annual Report 2006-07*, June 2008, p. 26.

- the Australian National Audit Office (ANAO)

2.95 For 2007-08, the ACC's interaction with these bodies is summarised in Chapter 3 of the Report. The committee was particularly interested in the following bodies and issues in its inquiry into the Report.

Australian Crime Commission Board

2.96 The ACC Board is responsible for providing strategic direction to the ACC and approving the use of the ACC's coercive powers. The Board meets four times per year, and at its meetings assesses the ACC's performance in its key areas of work and identifies new work for the agency.

2.97 The Board is comprised of the following office-holders:

- Commissioner of the Australian Federal Police (AFP) as chair;
- Secretary of the Commonwealth Attorney-General's Department;
- CEO of the Australian Customs Service (Customs);
- Chairperson of the Australian Securities and Investments Commission;
- Director-General of Security, Australian Security Intelligence Organisation;
- Commissioners of all state and territory police forces;
- Chief Police Officer of the ACT; and
- CEO of the ACC (as a non-voting member).

2.98 The committee identified two issues relating to the Board that warrant discussion:

- the ACC's strategic agenda; and
- the composition of the Board.

ACC's strategic agenda

2.99 Subsection 7C(1)(a) of the ACC Act provides that one of the functions of the ACC Board is to determine national criminal intelligence priorities (NCIPs), which underpin the strategic direction of the agency. These priorities are determined in consultation with Board member agencies, and rely on advice from the ACC and from the states and territories. Commissioner Keelty explained that in determining NCIPs:

> The board receive material from ACC and we actually go through a rating framework on the priorities. That is one of the strengths and, I guess, at the same time one of the weaknesses of the board. The strength is that each of the members of the board, particularly the states and territories, have an opportunity to represent their issue during that process.[53]

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53 Commissioner Mick Keelty, *Committee Hansard*, 24 March 2009, p. 19.

2.100 Mr Bottom's submission questions the direction and breadth of the NCIPs:

> Such a diverse list of priorities has unfortunately served to diminish the capacity of the ACC to deal with drug trafficking, high risk crime groups and entrenched criminal networks, with the emphasis more on intelligence than investigation.[54]

2.101 Mr Bottom expressed concern that the ACC is:

> …being diverted away from its original core business of tackling drug trafficking and entrenched organised crime networks.[55]

He considers that the ACC is too focussed on financial crimes, which he argues are more appropriately dealt with by the Taxation Office and the Australian Federal Police.[56]

2.102 In response to Mr Bottom's concerns, the chair of the ACC Board, Commissioner Keelty, said:

> It is hard to try and please everybody, but the approach that has been taken by the ACC is, I think, a sensible one. The approach, particularly in the last 12 months since the board expressed concern to the previous CEO about the targeting packages and the way targeting was occurring, has resulted in different targeting packages and a new way of looking at how performance will be measured. At its board meeting in June this year, the board will continue to do some work around ensuring that the strategic direction of the ACC, which is our statutory obligation as a board, and the performance measurement of the ACC are a lot more tangible than what they have been in the past.[57]

2.103 Regarding the NCIPs focus on financial crimes, Mr Lawler said:

> I have a view that [violent crime and financial crime] are equally significant and dangerous—dangerous in a different way, dangerous in different profile. But, as for the damage they do, it is not comparing like with like. I understand how people, quite properly, get affronted by serious violence, murder and horrendous crimes that are committed by organised criminals. But, equally on the other side of the spectrum, we have people that are doing serious damage but in a different way. It is organised and, if the amounts of money involved here are as we believe them to be, definitely serious.[58]

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54 Mr Bob Bottom, *Submission 1*, p. 4.

55 Mr Bob Bottom, *Submission 1*, p. 3.

56 Mr Bob Bottom, *Submission 1*, pp. 2-3.

57 Commissioner Mick Keelty, Chair, ACC Board, *Committee Hansard*, 24 March 2009, p. 19.

58 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 16.

2.104 Mr Lawler emphasised the financial motives of organised criminal groups and argued the importance of targeting those motives in order to effectively combat serious and organised crime.[59]

2.105 The committee accepts that the NCIPs reflect a strategic direction agreed by the Commonwealth, state and territory law enforcement agencies. The committee appreciates the difficulties mentioned by Commissioner Keelty of "trying to please everybody", and believes that the Board is in the best position to determine the appropriate focus of the ACC.

2.106 The committee's only real concern regarding the breadth of current NCIPs is the impact of budget reductions on the ACC's ability to properly address such a wide variety of issues. This concern has been canvassed in detail above, in the committee's discussion of output 2 and the ACC's financial performance.

Composition of Board

2.107 The committee recommended in its 2005 Report on the Review of the *Australian Crime Commission Act 2002* that the Commissioner of Taxation be appointed to the Board.[60] Commissioner Keelty succinctly summarised the history of the issues involved:

> The consideration for having the Commissioner of Taxation on the board of the ACC goes back to the formation of the ACC when it was proposed who would comprise the board. The tax commissioner was considered at that point but ultimately rejected… along numbers' lines…because…there was concern that it would outnumber the states and territories considerably in having so many Commonwealth members of the board. [61]

2.108 The committee remains of the view that the tax commissioner should have a permanent position on the Board, and Commissioner Keelty expressed his agreement with this position:

> …over the time of the life of the ACC, it has become more apparent to the board and, I suspect, to the ACC more generally that there is great benefit in having the tax commissioner on the board, particularly given the links between organised crime and taxation.
>
> One of the things that the board and this committee have in common is that we are both in fierce agreement about having the taxation commissioner on the board. [62]

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59 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 16.

60 Parliamentary Joint Committee on the Australian Crime Commission, *Report on the Review of the Australian Crime Commission Act 2002*, November 2005, Recommendation 6, p. ix.

61 Commissioner Mick Keelty, Chair, ACC Board, *Committee Hansard*, 24 March 2009, p. 18.

62 Commissioner Mick Keelty, Chair, ACC Board, *Committee Hansard*, 24 March 2009, p. 18.

2.109 The committee reiterated this recommendation in a number of subsequent reports.[63] In 2006, the government informed the committee that the recommendation was under consideration,[64] but to date there has been no substantive response from the government. The committee asked the Board for an update as to progress on the inclusion of the tax commissioner, and was informed that:

> The matter lies with the Attorney-General's Department and with the government to actually pass legislation to amend the Act to include the taxation commissioner on the board. However, notwithstanding that, the board took a decision last year, having had the taxation commissioner on a number of occasions as a visiting person to the board meeting to discuss particular issues, after we looked at the legislation. There is nothing in the legislation to prevent us from having the tax commissioner as a permanent observer to the board meetings. Whilst he has no voting rights he can still inform the board and be consulted by the board. So for the interim the board has invited the taxation commissioner to attend board meetings. The taxation commissioner was not able to attend the last board meeting but certainly attended the meeting before that.[65]

2.110 The committee commends the Board for the action it has taken in allowing the tax commissioner to attend Board meetings as an observer. The committee urges the government to make the tax commissioner a permanent member of the Board under the ACC Act.

2.111 In light of law enforcement's increasing focus on both the financing and assets of serious and organised crime, it is appropriate for the tax commissioner to be on the Board of the ACC.

Recommendation 2

2.112 The committee recommends that the Australian Government expedite the process to include the Commissioner of Taxation as a full member of the Australian Crime Commission Board.

2.113 The committee notes the comments of Commissioner Keelty, at paragraph 2.107 above, that the addition of the tax commissioner to the ACC Board may cause an imbalance between the input of the Commonwealth and that of the states and territories. The committee recognises the crucial role of state and territory commissioners on the ACC Board in ensuring that the Board considers the different law enforcement issues and priorities in each jurisdiction

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63 Parliamentary Joint Committee on the Australian Crime Commission, *Report on the Examination of the Australian Crime Commission Annual Report 2005-06*, June 2007, p.7; Parliamentary Joint Committee on the Australian Crime Commission, *Report on the Examination of the Australian Crime Commission Annual Report 2006-07*, June 2008, p. 5.

64 Parliamentary Joint Committee on the Australian Crime Commission, *Report on the Examination of the Australian Crime Commission Annual Report 2005-06*, June 2007, p.7

65 Commissioner Mick Keelty, Chair, ACC Board, *Committee Hansard*, 24 March 2009, p. 18.

2.114 The chair of the Board, Commissioner Mick Keelty told the committee that, while Board members "often are very much in agreement":

> But they are, as you would have noticed as you travelled around the country, prone to have their own views. There is quite a diverse group of people on the board, from the Director-General of ASIO…to each of the commissioners. So it is a challenge, and I do not say that in a negative way, but it is a challenge to try and get consensus and make sure that we are all travelling in the same direction. [66]

2.115 The committee appreciates that commissioners have specific state and territory government and operational law enforcement priorities, while attempting as a group to reach national law enforcement priorities with respect to serious and organised crime.

2.116 Commissioner Keelty summarised the challenges for the Board in weighing up these competing priorities:

> I think for me it is best summed up by trying to meet the needs of all the states and territories that are party to the Australian Crime Commission as well as the Commonwealth. It is hard to try and please everybody, but the approach that has been taken by the ACC is, I think, a sensible one. [67]

2.117 The committee considers that these diverse views and law enforcement priorities are a healthy feature of the ACC Board culture. In order to ensure that a balance is maintained between the views of the Commonwealth and the states and territories in determining the strategic directions of the ACC, the committee suggests that consideration be given to the appointment of a rotating deputy chair position within the ACC Board to be filled by state and territory commissioners. This would ensure that state and territory police forces, on a rotational basis, have greater executive input into the ACC Board.

Commonwealth Ombudsman

2.118 Under section 15UB of the *Crimes Act 1914*, the Ombudsman is required to inspect the controlled operations reports of the ACC and other law enforcement agencies. The purpose of the Ombudsman's inspection is to ensure that law enforcement agencies have complied with requirements under the Crimes Act in respect of controlled operations.

2.119 The Ombudsman's report on his inspection of the two records relating to ACC controlled operations found that the ACC was compliant with the requirements of the Crimes Act, and the Ombudsman did not make any recommendations as a result of the

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66 Commissioner Mick Keelty, Chair, ACC Board, *Committee Hansard*, 24 March 2009,p. 23.

67 Commissioner Mick Keelty, Chair, ACC Board, *Committee Hansard*, 24 March 2009, p. 19.

inspection.[68] The Ombudsman's report also notes that the ACC records inspected by the Ombudsman were:

> …of a high standard and reflect a continued commitment to procedural review and quality assurance.[69]

2.120 The Ombudsman specifically noted the ACC's improvement in recording details of informants by using a code, which enables the involvement of informants to be recorded at the same time as protecting their identities.[70]

2.121 In addition to inspecting the ACC's controlled operations reports, the Ombudsman can receive and investigate complaints made against the ACC. No matters were referred to the Ombudsman during 2007-08.[71]

Australian Commission for Law Enforcement Integrity

2.122 During 2007-08 the Australian Commission for Law Enforcement Integrity (ACLEI) did not make any adverse findings against the ACC or its staff. [72]

2.123 In 2007-08, 13 corruption issues were notified or referred to ACLEI involving the ACC, six of which related to unauthorised disclosure.[73] All of the matters were referred to ACLEI, either by the ACC, or by third parties.[74]

2.124 The committee was informed that, as ACLEI is still in its establishment stages, it is not yet in a position to conduct continual integrity monitoring and identify corruption issues on its own:

> The question of detection does, as you indicate, raise the prospect of whether ACLEI has the resources and the capacity on its own to detect such matters. So far, we do not have much capacity to do that. What we rely on is the requirement under the framework provided by our legislation for heads of agencies to notify us of corruption issues. [75]

2.125 As a result, ACLEI currently relies on its relationship with the ACC, and on strong internal integrity arrangements within the ACC to ensure that the ACC is

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68 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations 2007-08*, September 2008, p. 8.

69 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations 2007-08*, September 2008, p. 8.

70 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations 2007-08*, September 2008, p. 8.

71 Australian Crime Commission, *Annual Report 2007-08*, p. 81.

72 Australian Crime Commission, *Annual Report 2007-08*, Appendix B, p. 81.

73 Mr Philip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 24 March 2009, p. 28.

74 Mr Peter Bache, Acting Executive Director, ACLEI, *Committee Hansard*, 24 March 2009, p. 28.

75 Mr Philip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 24 March 2009, p. 29.

identifying and reporting corruption. On the ACC's internal integrity arrangements, the Integrity Commissioner, Mr Philip Moss said:

> …apart from one or two issues which have been in a predecessor agency—that is, the National Crime Authority—the integrity of the ACC in a general sense is sound, although we do have examples before us now where we are testing that proposition by way of investigation of matters. However, I think in an overall sense it is sound. You will appreciate that ACLEI was not established in any climate or context of crisis or doubt about the integrity of these agencies but to ensure that they remain so. My comment would be that, in a general sense, I have no doubt about the ACC's integrity.[76]

2.126 The committee notes that ACLEI is currently undertaking a 'pilot review' of anti-corruption measures in both the ACC and AFP.[77] The committee will monitor the results of this review.

Listing of ACLEI corruption issues in ACC annual reports

2.127 Mr Moss, informed the committee of his concerns regarding the ACC's listing of the complaints it receives in an appendix to its annual report. [78] The 2007-08 Report lists complaints about the ACC in Appendix C:

> I considered it would be counterproductive to continue to publicise what corruption issues ACLEI may be investigating. At the same time, I am not convinced that continuing to publish this information in the present form adds greatly to the ACCs accountability measures.[79]

2.128 The Parliamentary Joint Committee on the National Crime Authority – the predecessor to this committee – recommended the Report include a list of complaints received. Mr Moss explained the circumstances leading to that recommendation:

> I understand that the committee suggested this measure because the NCA was excluded from the Commonwealth Ombudsman's jurisdiction and it was felt that greater accountability was warranted. Since that time, the ACC has continued to publish the list despite its inclusion in the Commonwealth Ombudsman's jurisdiction and, since January 2007, its inclusion in ACLEI's jurisdiction in respect of corruption issues.[80]

2.129 Mr Moss stated that the list is no longer necessary to ensure transparency in the ACC's complaints handling process because:

> …I note that ACLEI publishes annually a summary of each corruption issue that has been the subject of a report to the minister, and publishes statistics about all other matters that have been received and dealt with. In this way,

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76 Mr Philip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 24 March 2009, p. 31.

77 Mr Philip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 24 March 2009, p. 31.

78 Mr Philip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 24 March 2009, p. 27.

79 Mr Philip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 24 March 2009, p. 27.

80 Mr Philip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 24 March 2009, p. 27.

> transparency obligations are fulfilled and the potential for compromise to ongoing investigations and any undeserved harm to reputations would be avoided.[81]

2.130 Mr Moss informed the committee that the list in its current form does not jeopardise any ACLEI investigations,[82] however:

> [the] concern is an anticipated one, that at some future stage there might be a difference in the way that ACLEI might decide to report on a corruption issue and the way that the Australian Crime Commission might so decide. My interest here is that investigations are sometimes ongoing and to report them in this format might at some future time compromise those investigations. As I indicated in my opening statement, it might even go to harming reputations of those people who are merely facing allegations and, at the end of the investigation, may be completely exonerated. [83]

2.131 The committee accepts ACLEI's concerns and notes the range of transparency mechanisms relating to the reporting of corruption or possible corruption issues by ACLEI itself. The committee however, views the reporting by the ACC of these matters in its annual reports as an important accountability measure and therefore, until otherwise persuaded, considers that this practice should continue.

2.132 However, the committee sees merit in the ACC and ACLEI developing a practice to address concerns regarding the compromise of investigations or the harming of the reputations of individuals facing allegations.

Recommendation 3

2.133 The committee recommends that the Australian Crime Commission and the Australian Commission for Law Enforcement Integrity develop a practice to ensure publication of corruption or possible corruption matters in an appendix of Australian Crime Commission annual reports is done in a manner which will neither compromise current investigations nor the reputations of individuals facing allegations.

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81 Mr Philip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 24 March 2009, p. 27.

82 Mr Philip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 24 March 2009, p. 30.

83 Mr Philip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 24 March 2009, p. 30.

Internal governance arrangements

2.134 The Report outlines a number of internal groups and committees concerned with internal governance of the ACC. It also sets out some of the internal policies and arrangements that regulate the ACC's internal governance, including risk management strategies, professional standards and integrity and internal complaints handling procedures.

New initiatives and reviews

2.135 Mr Lawler informed the committee of a number of strategies that he has introduced for "rebuilding stakeholder confidence in the agency".[84] These strategies are:

> Firstly, the Commonwealth Ombudsman has agreed to undertake an inspection of the Australian Crime Commission's intelligence and information holdings to ensure compliance with the ACC's statutory function. The inspection commenced on 10 March and will hopefully be completed by 30 March…Secondly, a broader governance and administration audit will be undertaken by a panel of experts… it is hoped that the first phase of this audit will commence on 30 March and be completed by 30 June 2009. Thirdly, I have engaged with Mr Roger Beale in relation to his review of federal policing capacity. I have held discussions with Mr Beale to reinforce the importance of the Australian Crime Commission in Australia's overall law enforcement context. [85]

2.136 The committee commends Mr Lawler for these initiatives, and the emphasis he is placing on ensuring stakeholder confidence in the ACC's integrity, and looks forward to receiving the results of each of these reviews.

CEO's lack of summary dismissal power

2.137 It has come to the committee's attention that the ACC is unique amongst law enforcement agencies in that the CEO has no power to dismiss staff members based on loss of confidence in that staff member's integrity.

2.138 'Loss of confidence' or equivalent powers exist in all of the state police forces, and the Commissioner of the AFP may terminate the employment of an employee, under section 40K of the *Australian Federal Police Act 1979*, on the basis that he believes on reasonable grounds that they have engaged in serious misconduct. In addition, the *Australian Federal Police Regulations 1979* provide for suspension from duties of AFP employees.[86]

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84 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 2.

85 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, pp. 2-3.

86 *Australian Federal Police Regulations 1979*, regulation 5(2).

2.139 The CEO of the ACC does not have an equivalent power to summarily dismiss or suspend employees while under investigation. Employees of the ACC are engaged under the *Public Service Act 1999* which regulates their employment. Section 29 of the Public Service Act provides that an agency head can only terminate the employment of an ongoing officer on specified grounds, one of which is a breach of the APS Code of Conduct. The APS Code of Conduct requires that officers must behave honestly and with integrity and uphold the APS Values, one of which is having high ethical standards.[87] These requirements would likely cover situations in which an ACC officer has caused the CEO to loose confidence in them. However, the CEO is required to comply with the procedures set out in the *Public Service Commissioner's Directions 1999*, and the decision will be subject to a review process, which may be lengthy.

2.140 The committee notes that the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (PJC-ACLEI), in its recent report on law enforcement integrity models, found that:

> …the capacity to stand down and/or dismiss an appointee can be critical to preserving the integrity of investigations.[88]

2.141 The PJC-ACLEI recommended that government review whether there is a need for such a provision in the ACC Act. [89]

2.142 The Integrity Commissioner, Mr Philip Moss, expressed agreement with the PJC-ACLEI's recommendation, and stated:

> My own view is that it would be helpful for the CEO of the ACC to have that power... In matters that I assess or investigate as corruption issues, a number of them—in fact, about half of them—relate to unauthorised disclosure. Provided there were adequate protections for the individual ACC officer concerned, I think for the ACC CEO to have that power would be beneficial and be consistent with the nature of the ACC as a law enforcement agency.[90]

2.143 It is of concern to the committee that ACC employees suspected of serious misconduct or corruption remain within the organisation and may seek to jeopardise investigations, thereby potentially compromising the security of the ACC's operations.

2.144 The committee supports the recommendation of the PJC-ACLEI that the government review the appropriateness of existing arrangements and consider

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87 *Public Service Act 1999*, subsection 10(1)(d)

88 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into Law Enforcement Integrity Models*, February 2009, p.76.

89 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into Law Enforcement Integrity Models*, February 2009, p.76.

90 Mr Philip Moss, Integrity Commissioner, ACLEI, *Committee Hansard,* 24 March 2009, p. 28.

amending the ACC Act to enable the CEO to stand down employees in whom he has lost confidence. The committee reiterates that recommendation:[91]

Recommendation 4

2.145 The committee recommends that the Australian Government review existing arrangements for the suspension and dismissal of Commonwealth law enforcement agency employees believed on reasonable grounds to have engaged in serious misconduct or corruption, and that the Government take action as appropriate, bearing in mind the need to respect the rights of employees.

Conclusion

2.146 The committee has reviewed the ACC's activities, as reported in its 2007-08 Annual Report, against the performance framework of outputs and outcomes, and compared this with the agency's performance over recent years.

2.147 Although the committee has some reservations – mainly related to the ACC's ability to continue to perform effectively in the absence of certain legislative amendments,[92] and with a reduced budget – the committee has found that the ACC appears to be working efficiently and effectively.

2.148 The ACC has extensive accountability frameworks, which the committee is pleased are being reviewed and expanded to encourage stakeholder confidence in the agency. This inquiry has demonstrated to the committee that ACC is a flexible organisation capable of responding to the changing demands of the dynamic Australian organised crime environment. The ACC, and its executive officers in particular, have also shown a commitment to improving the agency.

2.149 The new CEO, Mr John Lawler, appears to have a clear strategic view of the ACC's role in enhancing the capacity of Australian law enforcement to combat serious and organised crime. The committee is particularly impressed with Mr Lawler's commitment to the agency's professional standards and integrity. In a message to all staff issued on his first day at the ACC, Mr Lawler said:

> Another important focus for us all needs to be on organisational performance. This means enhancing the outcomes performance of others working in the law enforcement environment. Even exceptional outcomes will be worthless achieved with poor governance or without proper regard to our code of conduct and values. Failure to follow due process and maintain a strong governance damages your standing and our organisation immeasurably. Examples can include unlawful access and/or disclosure of ACC information; the failure to secure accoutrements or assets; the failure

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91 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into Law Enforcement Integrity Models*, February 2009, p.76.

92 See Recommendation 1 and Recommendation 2.

> to protect information; conflicts of interest; and improper associations—to name a few. You should not allow this to occur.[93]

2.150 The committee commends Mr Lawler and support his strong stance on these issues.

2.151 The committee also acknowledges the work of the staff of the ACC, who have continued to be helpful to the committee and committed to their important work. During 2007-08, the ACC's officers and partner agencies have produced some impressive results, and have been effective in uniting national efforts against serious and organised crime. The committee congratulates the ACC's officers on their achievements.

Senator Stephen Hutchins

Chair

93 Mr John Lawler, CEO, ACC, *Committee Hansard*, 24 March 2009, p. 3.

Appendix 1

Compliance with reporting requirements

Each annual report of the Australian Crime Commission (ACC) must be prepared in accordance with the requirements set out under the *Australian Crime Commission Act 2002* (the ACC Act). In addition, there are a number of policy documents that set out further requirements for the annual reports of all Commonwealth agencies, and legal reporting requirements arising out of other acts.

An index to the Annual Report's compliance with these requirements is on pages 174 to 176 of the Report.

ACC Act

Under section 61 of the *Australian Crime Commission Act 2002* (the ACC Act), the Australian Crime Commission (ACC) is required to prepare a report of its operations for each financial year ending 30 June.[1] This report must include:

- a description of any investigation into matters relating to federally relevant criminal activity that the ACC conducted during the year and that the ACC Board (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 has come to the attention of the ACC during the 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;
- 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; and
- 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;
  - other court proceedings involving the ACC;

[1] *Australian Crime Commission Act 2002*, section 61.

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

Financial Management Accountability Act 1997

The *Financial Management Accountability Act 1997* (FMA Act) sets out the framework for the proper management of public money and public property by the Government and its departments and agencies. Subsection 49(2) of the FMA Act requires annual reports to be prepared in accordance with the Finance Minister's Orders (FMOs), including the Australian Accounting Standards.

It was the Auditor's opinion that the ACC's financial statements for 2007-08 were prepared in accordance with the FMOs and that they give a 'true and fair view' of the ACC's financial position and performance for the 2007-08 financial year.

Joint Committee of Public Accounts and Audit approved guidelines

Each year the Department of Prime Minister and Cabinet publish *Requirements for Annual Reports*[2] that have been approved by the Joint Committee of Public Accounts and Audits under subsections 63(2) and 70(2) of the *Public Service Act 1999*. The Requirements cover both mandatory and suggested matters.

Compliance with other government requirements

In addition to the above annual reporting obligations, the ACC has fulfilled the following requirements:

- Publishing information under section 8 of the *Freedom of Information Act 1982* (at appendix H of the Report);
- Reporting on contracts with greater than $100 000 value in accordance with the Senate Order for Departmental and Agency Contracts;[3]
- Listing of file titles in accordance with the Senate Order for the Production of Indexed Lists of Departmental and Agency Files;[4] and
- Providing a statement of legal services expenditure in accordance with the *Legal Services Directions 2005*, issued by the Attorney-General under the *Judiciary Act 1903*.[5]

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[2] Department of Prime Minister and Cabinet, *Requirements for Annual Reports*, 18 June 2008. See: http://www.pmc.gov.au/guidelines/docs/annual_report_requirements.rtf (accessed 25 February 2009). Part 1 paragraph 3 notes that these requirements apply to the ACC 'as a matter of policy'.

[3] Murray Motion as amended December 2003 J.2851; ACC's report on contracts available at www.crimecommission.gov.au (accessed 25 February 2009).

[4] Senate Order J.270 (as amended 3 December 1998 J.265); ACC's file titles available at www.crimecommission.gov.au (accessed 25 February 2009).

[5] Legal Services Directions 2005, paragraph 11.1(ba); ACC's statement of legal expenditure available at www.crimecommission.gov.au (accessed 25 February 2009).

Appendix 2

Public hearings, submissions and answers to questions taken on notice

Public Hearings

Tuesday 24 March 2009 – Canberra

Australian Crime Commission

Mr John Lawler APM, Chief Executive Officer

Ms Jane Bailey, Executive Director, Organisational Services

Mr Kevin Kitson, Executive Director, Strategy, Outlook and Policy

Mr Michael Outram, Executive Director, Programs Division

Australian Crime Commission Board

Commissioner Mick Keelty APM

Australian Commission for Law Enforcement Integrity

Mr Philip Moss, Integrity Commissioner

Mr Peter Bache, Acting Executive Director

Mr Nicholas Sellars, Manager Policy and Research

Mr Bob Bottom OAM (private capacity)

Submissions

1 Mr Bob Bottom

Answers to questions taken on notice

Australian Crime Commission, public hearing, 24 March 2009, (received 17 April 2009)

Australian Crime Commission, 14 May 2009, (received 20 May 2009)