

Our ref: 10/42300

Ms Julie Dennett
Committee Secretary
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Dennett

Thank you for the opportunity for the ACC to make a submission to the parliamentary inquiry on *National Security Legislation Amendment Bill 2010* and *Parliamentary Joint Committee on Law Enforcement Bill 2010*.

The Context of the ACC's Submission

The Role and Function of the ACC

As Australia's national criminal intelligence agency, the ACC provides law enforcement and other government agencies with a unique and valuable understanding of serious and organised crime, through intelligence and investigative activity. The ACC's primary objective is to support and complement the law enforcement community and broader government efforts to reduce the threat and impact of serious and organised crime.

Understanding the dynamics of the organised criminal environment is imperative to disrupting the highest threat criminal targets. Collaboration between the ACC and law enforcement agencies is critical to ensuring those disruptions have the highest impact.

In response to the threat posed by serious and organised crime, the ACC is focused on the following priority areas of work:

- high level strategic assessments, including specialist advice on national criminal intelligence priorities
- criminal intelligence products and national criminal intelligence and information systems
- national criminal investigations with our partner agencies.

The ACC's work is supported by a strong value proposition that highlights its unique and specialist capability including:

- national criminal data holdings
- use of coercive powers where traditional law enforcement methods are not successful
- high quality strategic intelligence products
- a national legislative and organisational framework that facilitates collaboration on a range of operational outcomes.

The ACC's role and function are supported by the *Australian Crime Commission Act 2002*. Key activities and priorities are determined and authorised by the ACC Board.

National Security Legislation Amendment Bill 2010

The bill will implement a package of reforms to Australia's national security legislation. The reforms will introduce a number of changes to the *Criminal Code Act 1995*, including amendments to the treason and sedition offences and to the provisions concerning terrorist organisations. It will also make changes to the *Crimes Act 1914*, including amendments dealing with the investigation powers of law enforcement officers in relation to terrorist offences, and rights of appeal in relation to bail decisions for persons charged with terrorism or other national security offences. The bill will also seek to improve the standard for listing a person, entity, asset or class of assets under the *Charter of the United Nations Act 1945*; improve the operation of the *National Security Information (Criminal and Civil Proceedings) Act 2004* in relation to the disclosure, storage and handling of national security information; and amend the *Inspector-General of Intelligence and Security Act 1986* to enable the Prime Minister to request the Inspector-General of Intelligence and Security to inquire into an intelligence or security matter relating to any Commonwealth department or agency. Finally, the bill will make a number of consequential amendments as a consequence of the Parliamentary Joint Committee on Law Enforcement Bill 2010.

The ACC is supportive of the Bill.

ACC comment on the *National Security Legislation Amendment Bill 2010*

Schedule 8 – Changes to the *National Security Information (Criminal and Civil Proceedings) Act 2004*

The ACC deals primarily with criminal intelligence, however, it may be possible that the ACC will have, from time to time, national security classified information that may be before the courts and this could affect the ACC.

Schedule 9 - *Schedule 9*

The ACC notes that Schedule 9 of the Bill seeks to amend the *Inspector-General of Intelligence and Security Act 1986 (the Act)*. The Act will be amended to enable the Inspector-General of Intelligence and Security (IGIS), on the request of the Prime Minister, to inquire into an intelligence or security matter relating to the ACC and any other Commonwealth agency. This broadens the current mandate of IGIS who presently may only examine matters relating to the six Australian intelligence community agencies; Australian Security Intelligence Organisation, Defence Imagery and Geospatial Organisation, Defence Intelligence Organisation, Defence Signals Directorate and Office of National Assessments.

The ACC notes that the IGIS may need to consult with the ACC to fully consider intelligence and security matters. The ACC notes that the IGIS' inspection function will continue to apply only to Australian Intelligence Community agencies and will not be extended to the ACC (item 18), however, we do note that the amendments will provide the IGIS powers of entry to ACC premises for the purposes of an inquiry in accordance with section 9A (item 28).

The ACC notes the current protections applying to national security classified information obtained by the IGIS for an inquiry will be extended to documents that have a non-national security classification (e.g. Highly Protected) (item 30).

Schedule 10 - Consequential amendments relating to the establishment of the Parliamentary Joint Committee on Law Enforcement

Schedule 10 sets out consequential amendments that arise as a consequence of the *Parliamentary Joint Committee on Law Enforcement Bill 2010*.

No additional comments on this schedule.

Parliamentary Joint Committee on Law Enforcement Bill 2010

This Bill will establish the Parliamentary Joint Committee on Law Enforcement (PJC-LE), and set out the functions and administrative arrangements for this new committee. The PJC-LE will be established by renaming and extending the functions of the current Parliamentary Joint Committee on the Australian Crime Commission, and will be responsible for providing parliamentary oversight of the Australian Federal Police and the Australian Crime Commission. It will also examine trends and changes in criminal activities, and inquire into any question in connection with its functions that is referred to the PJC-LE by either house of parliament.

The ACC is supportive of the Bill.

ACC comment on the *Parliamentary Joint Committee on Law Enforcement Bill 2010*

Clause 7

The ACC notes that clause 7 clarifies that the PJC-LE functions relate to the broad operation and effectiveness of the ACC rather than operations, investigations or complaints. The proposed changes expressly extend the scope of activities that the current Parliamentary Joint Committee is prohibited from engaging in. In accordance with the proposed changes the PJC-LE will not be able to:

- reconsider the findings of the ACC in relation to a particular ACC operation/investigation that has been concluded (7(2)(b)) (while the PJC-ACC is currently not permitted to reconsider findings in relation to a particular ACC operation/investigation, the ACC Act is silent as to whether this includes a *concluded* operation/investigation)
- review sensitive operational information or operational methods available to the ACC (7(2)(c)) (the PJC-ACC is not currently expressly prohibited from doing this but is currently prohibited from undertaking an intelligence operation or investigating a matter relating to a relevant criminal activity)
- review past, current or proposed particular operations or investigations of the ACC (7(2)(d)) (there is no current equivalent express restriction on the PJC-ACC)
- review information provided by foreign governments/agencies where they do not consent to the disclosure (7(2)(e)) (there is no current equivalent express restriction on the PJC-ACC), or
- conduct inquiries into individual complaints about the activities of the ACC (7(2)(f)) (there is no current equivalent express restriction on the PJC-ACC).

However, the PJC-LE may still be able to consider information about particular operations or investigations if this is relevant to the Committee's functions, eg for the purposes of examining trends and changes in crime, but the PJC-LE will not be able to review or reconsider the findings of that particular investigation.

Clause 8

The ACC notes that this clause will make a substantive change to current arrangements in that the CEO will be obliged to comply with requests by the PJC-LE to provide information in relation to an ACC operation/investigation or about the performance of the ACC's functions.

The current arrangement under section 59 of the ACC Act gives that responsibility to the Chair of the ACC Board, although it is noted the CEO often provides the information on his behalf. The ACC does not see any difficulty with maintaining the current position. With the expanded role of the Committee to include both the AFP and ACC there may be occasions when the Chair, who is also the AFP Commissioner, could be in a perceived position of conflict of interest. The ACC anticipates that any potential issue could be managed under the existing lines of responsibility by ensuring on such occasions the CEO took on the responsibility on behalf of the Chair.

Although the CEO will be able to decide not to comply with the request (in circumstances where the CEO is satisfied that the information requested is sensitive and the prejudicial consequences outweigh the public interest in providing the information to the PJC-LE), there is a mechanism for the CEO's decision to be reviewed by the Minister. The Minister would not be obliged to disclose his reasons for the decision on review. The Minister's decision would not be reviewable under the Administrative Decisions (Judicial Review) Act 1977.

ACC contact

Should you require any further information from the ACC, please contact
National Manager, Legal Services, on

Yours sincerely

John Lawler
Chief Executive Officer
9 May 2010