

PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT

ACIC ANNUAL REPORT 2023-24 PUBLIC HEARING

Written Questions on Notice

Senator Polley asked the following question on 12 February 2025:

Questions from Chair:

1. In September 2024, in its report: *Surveillance device powers: are agencies complying?*, the Commonwealth Ombudsman expressed concerns that the ACIC's 'planning documents and internal oversight for intelligence operations were not fully effective' and that it had 'failed to use its policy and procedures to support the lawful use of surveillance devices and computer access powers'. In response, the ACIC accepted or accepted in part five recommendations which the Ombudsman made to improve internal safeguards and ensure lawful use of the ACIC's surveillance powers. What actions is the ACIC taking to address these findings and give effect to the recommendations?
2. What work is underway in relation to the implementation of the recommendations from the *Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements* ('Independent Review') and what timeline is proposed in relation to this work?
3. Will the changes proposed by the recommendations in the Independent Review result in a change of focus for recruitment of the ACIC's workforce?
4. The ACIC's 2022-23 Annual Report posted a \$10.2 million operating surplus (p. 59). However, the 2023-24 Annual Report posts an operating deficit of \$8.0 million (p. 70). Can the ACIC account for this change in financial performance?
5. Regarding performance criterion 6 in the 2023–24 Annual Report (p. 46), the stakeholder survey found 40 per cent of respondents said ACIC provides intelligence products that identify changes within the criminal environment. This is below the target of 82 per cent and a significant drop from 100 per cent in the 2022-23 survey.
 - How does the ACIC explain this result and what is being done to attain a better result next year?
 - The report states (on p. 46) 'due to changes in survey methodology, these results are not comparable between years'. Could the ACIC expand on why the results are not comparable?

The response to the senator's question is as follows:

1. The Commonwealth Ombudsman's ('Ombudsman') independent oversight role promotes transparency and agency accountability and is a critical part of the legal framework that regulates how agencies can use powers under the *Surveillance Devices Act 2004* ('SD Act').

The Ombudsman's Report did not make a finding that the ACIC had used these powers inappropriately or unlawfully.

The ACIC has undertaken additional assurance, which has not identified any unlawful use of powers under the SD Act and supports the ACIC's assessment that it is accessing and utilising powers for lawful purposes, as intended by relevant legislation. The ACIC has a robust compliance framework that supports the lawful exercise of covert and intrusive powers.

The ACIC operates within a complex operating environment, and under multiple legislative frameworks. This presents an ongoing challenge for the ACIC as an intelligence agency relying on a legal framework predominantly designed to support law enforcement.

On 14 November 2024, the Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements ('the Review') and accompanying Government Response was published. The recommendations from the Review set out the blueprint for comprehensive reform to the ACIC and provide the strongest foundation for its critical national criminal intelligence role into the future.

- Implementation of recommendations from the Review will shift the ACIC's role, function and purpose to make clear that the ACIC is an intelligence agency (not a law enforcement agency).
- It will also include the repeal and replacement of the *Australian Crime Commission Act 2002* to provide the ACIC with a fit-for-purpose legislative framework, and enable it to better fulfil this intelligence role.
- This will be accompanied by strong oversight and safeguard mechanisms reflective of the ACIC's role as an intelligence agency.

These legislative changes will reduce risk by aligning the purpose and use of these powers more directly with the ACIC's remit as a criminal intelligence agency.

In addition, the ACIC was able to undertake some immediate steps in respect to internal policies and procedures and training to address the Ombudsman's findings. Further uplift is planned over the coming months with progress monitored by the ACIC's Compliance and Risk Committee. The actions include:

- Additional training for staff, directly addressing the risks raised in the report and focussing on ensuring a sound understanding of the complex legislative regime the ACIC operates within.
- Review and identification of improvements to planning documentation, policy and procedure documents and oversight procedures.
- Improved role clarity to ensure compliance with policy and procedure.
- Internal review of use of powers to closely assess against recommendations in report.

2. The ACIC is working in close collaboration with the Attorney-General's Department ('AGD') to implement the ACIC Review recommendations. The recommendations from the Review set out the blueprint for comprehensive reform to the ACIC and provide the strongest foundation for its critical national criminal intelligence role into the future. The replacement of the ACIC legislation will clarify the ACIC's role, function and purpose and to firmly establish its identity as an intelligence agency, not a law enforcement agency. The law reform is critical to give effect to the Review recommendations.

The ACIC is carefully assessing the government response to identify recommendations that can be put into effect prior to legislative reform and is developing a Future Operating Model which will facilitate the ACIC's transition.

AGD will lead the repeal and replacement of the ACIC legislation in close consultation with the ACIC and other stakeholders. Questions about timeframes for the legislative reform should be directed to the Department.

3. A strategic workforce plan, including the ACIC's approach to recruitment, will be developed in alignment with the recommendations from the Independent Review.

The ACIC continues to recruit key capabilities required for the future, including intelligence officers, analysts and legal officers, and focuses on optimising our application of those capabilities in both our future recruits and existing workforce.

4. The ACIC notes that for 2023-24, excluding unfunded depreciation (\$5.947 million) and capital funding income (\$0.895 million) which are not attributable to the ACIC, the agency realised a deficit of \$2.948 million for the 2023-24 financial year.

The main contributing factors were:

- An increase in employee expenses.
- An increase in supplier expenses primarily due to jurisdiction fees and payments as the ACIC continue to support development and integration of partner agencies onto the National Criminal Intelligence System (NCIS).

It is largely these factors which resulted in the change in financial performance between 2022-23 and 2023-24.

5. For the 2023-24 reporting period, the ACIC refined its survey approach to increase participation and gain additional detail in responses. This provided the ACIC with valuable stakeholder feedback.

The ACIC has undertaken extensive consultation with partners, and significant planning to improve service delivery following the results. In addition to implementing the Independent Review of the ACIC and associated Commonwealth law enforcement arrangements, which will better enable timely sharing of intelligence with relevant stakeholders, the ACIC has developed a future operating model which informs strategic prioritisation and resource realignment to support the ACIC to effectively deliver on its mission.

A change in the providers used to deliver performance surveys and alternating methodological approaches have led to differences in format between surveys. The ACIC continues to mature and strengthen its stakeholder survey design, including the performance measure methodologies, to ensure a robust approach which supports the consistent monitoring and reporting of trends across future surveys.