

Chapter 2

Australian Crime Commission Annual Report 2010–11

Background

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

2.2 The ACC's stated purpose is to unite the fight against nationally significant crime. It is described in the budget papers as a niche, complementary agency that delivers specialist capabilities and intelligence to other agencies in the law enforcement community and broader government.²

2.3 Mr John Lawler APM, CEO of the ACC, noted that this niche role was a recent development, stating:

Three years ago the ACC was very much focused on long-term criminal investigations, and I think the figure was 25 per cent of our resource in court. As a small niche agency, it was our collective view and our partners' view that in actual fact our resource and capability could be better used than that. That is not to say that court procedures and prosecution are not important; they are, but there are others with much greater agencies, much more significant capacity to be able to do that. So the ACC had to profoundly and fundamentally look at where it was that it could add value to the partners that it worked with and what sort of value proposition that looked like for various partners.

What we think needs to be at the heart of our vision and the way we operate is that we do not duplicate any activity with any other agency and that we do not embark upon an activity where we do not have a partner to join with us that will ultimately take the criminal prosecution through to finality; and to understand what our partners might need whether it is strategic intelligence products or the tactical insights around targets that might have previously been unknown to law enforcement.³

2.4 The ACC's special capabilities include coercive powers which enable it to source information that cannot be accessed through traditional policing methods, intelligence sharing frameworks provided to other agencies and special investigations approved by the ACC Board, called determinations.⁴

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

2 ACC, Our work, <http://www.crimecommission.gov.au/our-work> (accessed 30 March 2012).

3 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 2.

4 ACC, Our work, http://www.crimecommission.gov.au/our_work/index.htm (accessed 30 March 2012).

- 2.5 Mr Lawler noted several significant developments in 2010–11, including:
- the launch of the National Criminal Intelligence Fusion Capability in June 2010;
 - development of the agency's approach to accessing, analysing and sharing information;
 - the public release of a larger amount of information to increase national understanding of organised crime;
 - establishment of the multi-agency Task Force Galilee to combat boiler-room fraud; and
 - participation in the newly established Criminal Assets Confiscation Taskforce.⁵

Annual reporting and compliance

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

- a description of any investigation into matters relating to federally relevant criminal activity that the ACC conducted during the year and that the Board determined to be a special investigation;
- a description, which may include statistics, of any patterns or trends, and the nature and scope, of any criminal activity that have come to the attention of the ACC during that year in the performance of its functions;
- any recommendations for changes in the laws of the Commonwealth, of a participating State or of a Territory, or for administrative action, that, as a result of the performance of the ACC's functions, the Board considers should be made;
- the general nature and the extent of any information furnished by the CEO during that year to a law enforcement agency;
- the extent to which investigations by the ACC have resulted in the prosecution in that year of persons for offences;
- the extent to which investigations by the ACC have resulted in confiscation proceedings;
- particulars of the number and results of:
 - applications made to the Federal Court or the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for orders of review in respect of matters arising under the ACC Act; and
 - other court proceedings involving the ACC;

5 ACC, Annual Report 2010–11, pp 14–15.

being applications and proceedings that were determined, or otherwise disposed of, during that year.⁶

2.7 In addition, the report must comply with the Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies, prepared by the Department of the Prime Minister and Cabinet and approved by the Joint Committee of Public Accounts and Audit.⁷

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

ACC performance reporting framework

2.9 The ACC's performance reporting framework remained largely the same for the 2010–11 financial year.

2.10 The outcome statement for the ACC in 2010–11 was:

Reduction in the threat and impact of serious and organised crime, through analysis of and operations against national criminal activity, for governments, law enforcement agencies and private sector organisations.⁸

2.11 The two programs established in previous years to deliver this outcome were combined to create a single program in 2010–11. This single program instead includes two components, reflecting the two programs from previous years:

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

2.12 The following section describes the agency's performance for these two components.

Component 1: Strategic Criminal Intelligence Services

2.13 The ACC's criminal intelligence services are designed to provide Commonwealth, state and territory law enforcement and relevant government agencies with the understanding of the criminal environment that they need to effectively and efficiently disrupt serious and organised criminal activity and reduce the vulnerabilities posed by serious and organised crime.⁹

2.14 The ACC gathers intelligence directly through collaborative intelligence operations and investigations, as well as through intelligence feeds from partner agencies. The agency seeks to add value to this intelligence base by fusing, assessing and analysing it to produce intelligence for its partners, sharing this information in both a strategic and more immediately 'actionable' form.¹⁰

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

7 FMA Act refers to the *Financial Management and Accountability Act 1997*.

8 Attorney-General's Portfolio Budget Statement, 2010–11, p. 99.

9 Attorney-General's Portfolio Budget Statement, 2010–11, p. 101.

10 ACC, Annual Report 2010–11, p. 57.

2.15 The ACC's strategic criminal intelligence services include the provision of:

- an annual assessment of National Criminal Intelligence Priorities, for endorsement by the ACC Board, which informs the intelligence collection requirements of Commonwealth, state and territory law enforcement agencies, and contributes to the national understanding of serious and organised crime;
- intelligence products which provide law enforcement agencies with detailed analyses of organised crime trends and methodologies, significant criminal targets, and emerging issues;
- a biennial Organised Crime Threat Assessment, which underpins the Commonwealth's Organised Crime Response Plan; and
- strategic intelligence reports, which provide partner agencies with intelligence that enables them to focus resources and strategies to combat serious and organised crime.

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

- an Illicit Drug Data Report, published annually, focussing on historical drug data;
- an Organised Crime Threat Assessment, focussing on current organised crime threats and risks, updated every two years;
- the publicly available Organised Crime in Australia report;
- a National Criminal Target Report, which provides a picture of known organised crime entities that represent the highest level threats; and
- the forward looking Organised Crime 2020 product which forecasts likely trends in the organised crime environment.¹¹

2.17 The ACC's success in achieving the aims of Component 1 is measured through stakeholder feedback on two Key Performance Indicators (KPIs):

- ACC strategic intelligence is aligned with ACC Board endorsed National Criminal Intelligence Priorities; and
- the understanding of serious and organised crime by partner agencies is enhanced by ACC intelligence services, as measured by stakeholder feedback.

2.18 For the first KPI, the ACC set a target of 90 per cent of strategic intelligence products meeting the intelligence priorities. The ACC surpassed this target, achieving a result of 100 per cent. Of the 1398 intelligence products produced during the year, including operational and tactical intelligence (in addition to strategic products), 86 per cent met the board-endorsed priorities.¹²

11 For full descriptions of these documents, see ACC, Annual Report 2010–11, pp 64–68.

12 ACC, Annual Report 2010–11, p. 76.

2.19 For the second KPI, 70 per cent of partner agencies agreed or strongly agreed that the ACC's intelligence enhances their understanding of serious and organised crime. This fell short of the target of 90 per cent, although the report noted that 87 per cent of senior executives in partner agencies agreed that their understanding had improved.¹³

2.20 In the course of the committee's examination of the previous annual report, Mr Lawler had noted that there were typically higher rates of satisfaction within senior management of partner agencies and undertook to increase stakeholder satisfaction.¹⁴ Mr Lawler made similar comments during the current examination, stating:

It is fair to say that the other executives of law enforcement, both at a Commonwealth and a state level, are seen to very clearly understand the business model, clearly understand and support the direction of the commission and have an exquisite understanding of just where it is that we can assist. As we go down into agencies, and some of these are very large agencies, that starts to dissipate. Whilst the levels that we spoke of in our opening statement are good, I think we can improve on them.¹⁵

2.21 This KPI was amended in the 2010–11 budget year. Rather than measuring stakeholders' understanding of the overall criminal environment, as in previous years, the revised KPI now focuses on the understanding of the serious organised criminal environment.¹⁶

2.22 This change does not appear to have significantly altered the stakeholder survey response results. The result for 2010–11 (70 per cent) was not significantly different from the previous year's result of 67 per cent.

2.23 Mr Lawler noted that, while he saw room for improvement in this regard, there was a trade-off in the amount of effort the ACC could expend in raising the ACC's profile within larger partner agencies and the resources it could apply to other endeavours such as the Fusion Capability.¹⁷

2.24 The committee notes that the result may also point to partner agency dissatisfaction with the ACC's contribution. The committee will therefore continue to monitor this KPI and, if necessary, may seek evidence directly from partner agencies in future annual report examinations to determine the significance of this result.

Component 2: Investigations and intelligence operations into federally relevant criminal activity

2.25 The ACC's investigations and intelligence operations underpin its criminal intelligence services by providing unique intelligence collection capabilities. ACC

13 ACC Annual Report 2010–11, p. 75.

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

15 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 3.

16 ACC, Annual Report 2009–10, p. 39.

17 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 3.

investigations are conducted in partnership with law enforcement agencies with the objective of disrupting and deterring federally relevant serious and organised criminal activity.¹⁸

2.26 In response to priorities identified by its Board, the ACC, in collaboration with law enforcement and related Commonwealth, state and territory government agencies, undertakes intelligence operations, special intelligence operations and special investigations, which gather relevant information about the extent, impact and threat of criminal activity.

2.27 In addition to collecting criminal intelligence, special investigations are designed to disrupt and deter criminal activity through arrests and seizure of illegally obtained assets, in cooperation with partner agencies.

2.28 The use of coercive powers under special intelligence operations and special investigations enables the ACC to collect information that may not otherwise be available to law enforcement.

2.29 The ACC also provides a national criminal intelligence database and analytical tools, which facilitate the sharing and analysis of criminal intelligence across jurisdictions.¹⁹

2.30 Special intelligence operations focus on gathering intelligence around particular criminal activity. In 2010–11, the ACC conducted ten special intelligence operations, into:

- amphetamine type stimulants and new synthetic drugs;
- indigenous violence and child abuse;
- illicit firearms markets in NSW;
- child sex offences;
- people smuggling;
- cocaine;
- terrorism;
- serious and organised crime penetration of the border;
- superannuation and investment fraud; and
- complex organised technology enabled crime (incorporating identity crime).²⁰

2.31 Special investigations are designed to disrupt and deter criminal groups through the collection of evidence and intelligence. Five such special investigations were conducted in 2010–11, broadly relating to:

18 ACC, Annual Report 2010–11, p. 83.

19 ACC, Annual Report 2010–11, p. 83.

20 ACC, Annual Report 2010–11, p. 84.

- high risk and established crime groups, including focused investigations in South Australia and Victoria;
- money laundering; and
- Wickenby matters (including abusive secrecy havens and tax evasion schemes).²¹

2.32 The ACC also undertakes, often jointly with partner agencies, a number of projects and operations, and contributes to various taskforces. In 2010–11, these included:

- the National Indigenous Intelligence Task Force;
- Task Force Chamonix (card skimming); and
- Task Force Galilee (fraudulent offshore investment schemes).²²

2.33 Component 2 is measured through three five performance indicators. These are:

- (a) partner agencies agree, or strongly agree, that the ACC's contribution enhances efforts to combat serious and organised crime;
- (b) partner agencies agree, or strongly agree, that the ACC's coercive powers are effective;
- (c) availability of the Australian Criminal Intelligence Database (ACID) and the Australian Law Enforcement Intelligence Network (ALEIN);
- (d) targeted ACC investigations and operations are aligned with ACC Board priorities and approved by the ACC Board; and
- (e) The ACC's operational intelligence and contribution to joint intelligence investigations and operations enhance the efficiency and/or effectiveness of law enforcement efforts to disrupt and deter serious and organised crime, as measured by stakeholder feedback. The activities of targeted criminal entities are disrupted as a result of ACC intelligence, investigations and operations, and activity is undertaken to confiscate proceeds of crime.

2.34 The ACC achieved its target (80 per cent) for the first KPI, with 85 per cent (97 per cent of senior executives) of partner agencies agreeing, or strongly agreeing that the ACC's contributions enhance efforts to combat serious and organised crime.

2.35 Only 78 per cent (83 per cent of senior executives) agreed that the ACC's coercive powers are effective, against a target of 90 per cent. This was slightly less than the 83 per cent who agreed to a similar statement in 2009–10. The committee will monitor this indicator in future examinations.

21 ACC, Annual Report 2010–11, p. 84.

22 ACC, Annual Report 2010–11, p. 84.

2.36 The ACID and ALEIN were available for use more than 99 per cent of the time, exceeding the target of 98 per cent.

2.37 The ACC reported that all investigations and operations during 2010–11 were Board approved.

2.38 For the final KPI, the ACC reported that its stakeholder research had found that:

- 54 per cent of partner agencies achieved a result or operational success in the last 12 months as a result of intelligence/information received
- 44 per cent identified a new criminal target; and
- 41 per cent identified a new law enforcement operational opportunity.

2.39 In addition, the ACC also reported that during 2010–11, it achieved the following:

- 34 disruptions;
- 141 people charged;
- 467 charges laid;
- 55 convictions;
- \$29.88 million proceeds of crime restrained;
- \$4.88 million proceeds of crime forfeited;
- \$0.37 million pecuniary penalty orders recovered;
- \$45.06 million tax assessments issued;
- 24 firearms seized;
- \$5.31 million in cash seized;
- \$141 million estimated street value of drugs seized; and
- \$617.6 million value of the illicit drug production potential of precursors seized.²³

2.40 While the committee notes that KPIs are a necessary part of the budgetary process, and provide a means to measure performance of an agency, the nature of some of the work of the ACC may not be directly quantifiable. As Mr John Lawler, CEO of the ACC stated:

While law enforcement results are traditionally measured in quantity—arrests, seizures and forfeitures—the real value the ACC brings to the fight against organised crime is best measured in its quality and harm reduction impacts. That is not to say we do not have arrests, seizures and forfeitures and you can see those clearly in the annual report. We have gone part way, I think, to capturing the view of quality through our stakeholder survey and the results are positive...This is a complex task which involves thinking

23 ACC, Annual Report 2010–11, p. 138.

about how we can best inform government policy and legislative reform where we see vulnerabilities and opportunities to enhance law enforcement capability.²⁴

2.41 The committee notes that the nature of intelligence and information within an investigation makes it hard to attribute success to any one source. As Mr Lawler explained:

If you have a very stark case of, if we contact the state police tomorrow and say if you stop car X and look in the boot you will find Y, which might be 10 kilos of heroine, and they do that and they make the arrests and they find cash and seize the drugs, the nexus is very clear and immediate and obvious. What we often deal with is less clear nexuses. So it may well be that we do a hearing that provides a weakness where the state police might then go and execute a search warrant, have somebody cooperate with them and then roll on and seize a whole lot of drugs or money or whatever it might be.

Then you have got more obtuse examples, again, where, for example, the ACC's intelligence holdings and intelligence activity or its investigative activity might actually be the last piece in the jigsaw puzzle in relation to a brief against somebody. Relatively small in the scheme of things but against the tapestry, absolutely the crucial piece of evidence that is required that allows the prosecution.²⁵

2.42 The committee agrees that it is difficult to accurately assess the impact of intelligence products, particularly given the role they play in broader investigations. Similarly, the trend towards joint investigations makes it harder to measure the contribution of a single agency, as such investigations become a team exercise.

2.43 The committee therefore considers that part of its role is to assess the ACC's performance from a qualitative point of view, in addition to the quantitative process undertaken through the budget and its KPIs. The committee has had the opportunity to interact with the ACC and its Commonwealth, state and territory partner agencies in the course of various inquiries, which has contributed to its knowledge of the ACC's activities over time. As noted above, the committee may approach this exercise more formally in the future, to complement the quantitative measures available through the budgetary process.

Financial results and human resources

2.44 In 2010–11 the number of staff grew from 546 to 628 and the number of secondments fell from 86 to 82.²⁶

2.45 The ACC received a total appropriation of \$92.2 million in 2010–11, which was a three per cent decrease from 2009–10, following a three per cent decrease from 2008–09. The ACC's financial result for 2010–11 was a deficit of \$3.5 million.²⁷

24 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 2.

25 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 9.

26 ACC, Annual Report 2010–11, p. 199.

2.46 Mr Lawler informed the committee that the ongoing budget cuts would affect the agency's performance, stating:

It would be remiss if I did not mention resources. Our stakeholders increasingly recognise the value we can bring to the national priority setting and coordination but our success brings increased demand at a time when our financial base is decreasing. Our operating model, however, is designed to be flexible and scalable—one of the reasons we brought in Project Sentinel—but it is fair to say we have reached a point where we will have to make some hard decisions about the scope of our capability and where our resources are best directed.²⁸

2.47 Mr Lawler also noted that with an increased budget, the ACC could be more effective in tackling serious and organised crime.²⁹

Trends and changes in serious and organised crime

2.48 The committee has a statutory duty to examine trends and changes in criminal activities, practices and methods.³⁰ As part of this year's examination of the ACC annual report, the committee sought information about recently identified patterns in organised crime.

2.49 The ACC informed the committee that Australia had become an attractive target for international crime groups, explaining:

The impacts of globalisation, advances in telecommunications and computer technology, the rise of Asia as the world's economic powerhouse and trends in world trade have increased the threat posed by transnational crime to Australia because we are no longer isolated and immune to world trends. Similarly, Australia's stable political system, tolerant social attitudes, relatively robust economy and high standard of living make it an attractive target country for crime groups.³¹

2.50 The ACC further noted that transnational crime groups had established a domestic beach-head within Australia, broadening their reach into illicit markets. Australia's traditional isolation from international crime, resulting from its geographical distance, has been eroded by advances in telecommunications and e-commerce.³²

2.51 Specific trends identified by the ACC include:

- exploitation of the cyber environment to:

27 ACC, Annual Report 2010–11, p. 199, and previous ACC Annual Reports.

28 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 2.

29 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 2.

30 PJC-LE Act 2010, ss. 7(1).

31 ACC, answer to question on notice, 2 March 2012 (received 10 April 2012), p. 1.

32 ACC, answer to question on notice, 2 March 2012 (received 10 April 2012), p. 1.

- enable traditional crimes such as fraud, drug trafficking, theft of personal identity information and child exploitation;
- facilitate criminal activity, including through enhanced communication and money laundering; and
- conduct criminal activity against computer networks;
- growing markets for drug analogues, novel substances and illicit pharmaceuticals;
- importation and distribution of illicit drugs, tobacco, counterfeit goods and other illicit commodities, with associated corruption and infiltration of sea and air ports, security and the entertainment sectors; and
- sophisticated money-laundering schemes, involving the inter-mingling of criminal proceeds with the legitimate economy, facilitating complex fraud, large-scale laundering and tax evasion using large, legitimate companies.³³

2.52 The ACC outlined a number of measures that could assist to disrupt these illicit ventures, including:

- making ACC information and intelligence more widely available, including to private sector stakeholders;
- using criminal intelligence for additional purposes, including advising on the suitability of certain individuals to hold licenses to work in specific areas, such as the Maritime Security Identity Card;
- ensuring newly identified drug analogues and novel substances are included in policy responses in a timely manner;
- targeting criminal wealth, including through reformed unexplained wealth provisions;
- revising the telecommunications interception regime to address technological changes since the regime was introduced in 1979; and
- consideration and cooperation to counter the evolving threat of serious and organised investment fraud, involving non-traditional partner agencies.³⁴

2.53 The committee understands the rapidly evolving and opportunistic nature of serious and organised crime requires flexible and forward-looking policy development. The committee will continue to use the information provided by the ACC and partner agencies in its consideration of these issues, both through these examinations and in its major inquiries.

33 ACC, answer to question on notice, 2 March 2012 (received 10 April 2012), pp 1–2.

34 ACC, answer to question on notice, 2 March 2012 (received 10 April 2012), pp 3–4.

Issues addressed during examination

Fusion Capability

2.54 The National Criminal Intelligence Fusion Capability is intended to enhance monitoring of the most significant serious and organised crime threats, detect previously unknown but significant serious and organised crime threats, enhance links between serious and organised crime intelligence and national security, and provide better assessments and intelligence to Government and program delivery agencies on the risks posed by serious and organised crime for predictive analysis.

2.55 The Fusion Capability brings together a variety of specialists from different government agencies, with access to their own agency's information holdings. They work collaboratively to put the pieces together and provide a more comprehensive picture of criminal targets, risks, threats and vulnerabilities. Experts include financial investigators, operational psychologists, data-mining technicians, statisticians and experts in database management and architecture.

2.56 The partnership involves the ACC, the Australian Customs and Border Protection Service, the Australian Federal Police, the Australian Securities and Investments Commission, the Australian Taxation Office, the Australian Transaction Reports and Analysis Centre (AUSTRAC), Centrelink, the Department of Immigration and Citizenship, the national intelligence community and state and territory law enforcement agencies.

2.57 The committee heard that the Fusion Capability had resulted in the identification of over 70 new persons of interest, through the matching of information already held by the Commonwealth. As Mr Lawler noted:

It is progressing on schedule and already delivering tangible results. Fusion, which is in the second year of a four-year implementation schedule, promises to deliver new intervention and prevention opportunities for law enforcement. It has already identified more than 73—up from the annual report figure of 52—previously unknown high-threat targets. The near real time reporting that Fusion delivers will enable more law enforcement action on emerging threats before they become entrenched.³⁵

2.58 Mrs Karen Harfield, Executive Director, Fusion, Target Development and Performance, elaborated on the intent of the Fusion Capability, explaining:

The way to think of it in terms of what it presents as an opportunity for Australia in relation to understanding organised crime is particularly around the discovery element of previously unknown aspects in relation to risk—the identification of threat and risk. Clearly we have opportunities with partners that already exist around the knowns. I will try not to be Donald Rumsfeld, but the known knowns are an important aspect for our agency to be clear about, certainly in terms of also establishing what is already known but is currently in disparate pockets across agencies. So it gives us that opportunity. What it creates then is an understanding of true intelligence

35 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 1.

gaps and where we can focus effort and also an understanding of what are currently unknown unknowns, which is the element of discovery. Part of the unknown targets that we have created are people who have not come to light in a traditional crime theme type, methodology or particular type of facilitator, so it presents new opportunities for conventional law enforcement intervention but also unconventional treatment of that threat and risk.³⁶

2.59 The committee heard that the combination of data sets held by the Fusion Capability, and the connections that could be established between them allowed for new questions to be asked of existing information. As Mrs Harfield explained:

The fusion capability and the experts that we have in there in terms of data analysis and data mining as a collective come together with our partners to say, 'What are the intelligence gaps that we know about and what specific intelligence questions can we ask the data that then raise for us suspicion about particular types of criminality?' Those are intelligence questions that could never have been asked before because we have not connected the data together before in those ways.³⁷

2.60 The ACC noted that it had spoken to the Privacy Commissioner and could only work with partner agencies within legislative frameworks. Interrogation of the data still requires a specific authorisation under the relevant legislation.³⁸

2.61 The Fusion Capability is currently funded on a four-year basis, to expire in two years' time. The committee heard that the bulk of the funding provided was for the staff involved in the project, although thought may need to be given to future capital expenditure to support an extension of the project's life.³⁹

Illicit firearms assessment

2.62 On 13 February 2012, the Minister for Home Affairs and Justice, the Hon Jason Clare, announced the ACC would conduct a National Intelligence Assessment of the illegal firearm market and its links to gang activity in Australia.⁴⁰

2.63 The committee heard that the ACC has previously undertaken work in this area, with the last assessment completed in 2008.⁴¹ Mr Lawler noted that the current assessment would update this information, stating:

It is fair to say that there has been over decades a black market in handguns. We see handguns predominantly being used in the drive-by shootings of more recent times. There is no question that some of those drive-by

36 Mrs Karen Harfield, ACC, *Committee Hansard*, 2 March 2012, p. 4.

37 Mrs Karen Harfield, ACC, *Committee Hansard*, 2 March 2012, p. 4.

38 Mrs Karen Harfield, ACC, *Committee Hansard*, 2 March 2012, p. 5.

39 Mr David Lacey, ACC, *Committee Hansard*, 2 March 2012, p. 5.

40 The Hon Jason Clare, Minister for Home Affairs and Justice, 'Firearms used in drive by shootings to be traced by the Australian Crime Commission, media release, 13 February 2012.

41 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 5.

shootings—in fact a significant number—are linked to serious and organised criminals. Particularly the outlaw motorcycle gangs feature prominently. We know from our broader strategic work that firearms are an enabler to assist organised crime to exercise authority and control over markets and their organisations. This is what we see in New South Wales and, indeed, more broadly around the country.⁴²

2.64 Mr Lawler informed the committee that the ACC intended to complete a classified report on the matter by mid-year.⁴³

Security breaches

2.65 On 28 February 2012, the Daily Telegraph published Australian Crime Commission documents obtained through a freedom of information request, detailing security breaches since 2007.⁴⁴ The committee sought further information from the ACC on these matters, and was informed that, since 2007, there had been 62 security incidents.⁴⁵

Table 1: Number of security breaches by year

Year	2007	2008	2009	2010	2011
No.	2	8	13	21	18

2.66 The ACC informed the committee that, of these incidents, 80 per cent related to lost or stolen security passes or assets and ten per cent were security breaches or contravention of policy which occurred within the ACC with no external loss of information. Of the remainder, four were more serious, relating to the loss of information, or in one case, a weapon. The ACC noted that Code of Conduct action is taken in the more serious cases where there may be an element of negligence or intent.⁴⁶

2.67 The ACC told the committee that it has a positive culture of staff self-reporting incidents, despite the possibility of disciplinary action, stating:

This culture is supported by a rigorous regime of awareness raising and education within the agency. When security breaches do occur they are reported and investigated accordingly and should there be any trends of concern, briefings are released across the ACC and changes incorporated to training and awareness. The experience of other agencies is that the

42 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 5.

43 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 5.

44 The Daily Telegraph, 'Sorry about that, Chief: Australian Crime Commission bungles revealed', 28 February 2012.

45 ACC, answer to question on notice 3, 2 March 2012 (received 16 March 2012), p. 1.

46 ACC, answer to question on notice 3, 2 March 2012 (received 16 March 2012), pp 1–2.

reported security incidents may well increase as staff become more aware of security related requirements and the reporting framework.⁴⁷

2.68 The committee agrees that a positive reporting culture is an essential element of protecting security, but notes the significance of security breaches within an agency like the ACC. The committee will therefore continue to assess the ACC's ongoing efforts to turn around the current upward trend in the number of security breaches.

2.69 The committee sought similar information from the AFP, which reported that the consolidated recording of all security incidents commenced in May 2010. While not all reported security incidents are determined to be security breaches or violations as defined by the Protective Security Manual, each reported incident is reviewed by the AFP Security Portfolio and where a breach or violation is identified, the matter is referred to the Security Investigations Team for investigation.

2.70 In 2011, seven breaches or violations required investigation within the AFP, compared to 17 in 2010. Breaches or violations are categorised as follows:

- unsolicited or suspicious contact;
- compromise of covert or discreet or sensitive capability;
- harm directed towards an AFP appointee;
- loss or compromise of documents or information owned or held by AFP (both national and non-national);
- loss, damage or compromise of AFP property;
- loss of ICT equipment; and
- incidents in relation to a computer.

2.71 The committee is not able to determine whether the figures provided by the AFP are compiled on the same basis as those of the ACC. It has therefore not sought to draw a comparison between the figures, but notes trend of decreasing numbers of breaches within the AFP in recent years.

Ombudsman's reports

2.72 The committee's previous examination of the ACC's annual report included consideration of the Commonwealth Ombudsman's report on controlled operations. The Ombudsman has a statutory duty to inspect the ACC's compliance with the requirements of the controlled operations provisions.

2.73 The Ombudsman and the ACC had identified an issue with the process around extending a controlled operation beyond three months in cases where the scope of the operation also changed.⁴⁸

2.74 The committee recommended that where a variation to a controlled operation authority is sought that would change both the scope and the duration of the authority

47 ACC, answer to question on notice 3, 2 March 2012 (received 16 March 2012), p. 2.

48 See PJC-LE, Examination of the ACC 2009–10 Annual Report, p. 11.

beyond three months, that the scope change should be approved internally by the appropriate authorising officer and the change in duration of the controlled operation authority beyond three months should be approved by the AAT.

2.75 Furthermore, the committee recommended that if there are any administrative or legislative impediments to the approach outlined in this first recommendation, that the Government make appropriate adjustments to administrative arrangements or legislation as necessary to enable such an approach.

2.76 The committee sought to obtain further information about how this issue had been handled subsequently. The Ombudsman's most recent report on the inspection of controlled operations records (for the period 2010–11) canvasses the ongoing issue, stating:

We have had a significant amount of discussion and correspondence with the ACC about this issue. The ACC's view is that when a 'significant alteration' of the nature of controlled activity is required, a variation is not permitted by s. 15GO(5) and an application for a new authority is the only option available. This, in effect, prevents an application to the nominated AAT member to vary the duration of an existing authority. We agree with this view.

Further, the ACC believes that the requirement to attend before an AAT member is not mandatory and even if consecutive authorities do not differ significantly, a new authority can still be obtained internally. The ACC has advised that advice it obtained from the Australian Government Solicitor is consistent with this view.⁴⁹

2.77 The Ombudsman noted that, since March 2011, the ACC has undertaken to adopt the practice of seeking AAT review where legally possible – that is, when the nature of controlled activity is not significantly altered.⁵⁰

2.78 Both the ACC and the Ombudsman agree that where there has been a significant alteration to the nature of a controlled operation, the authority must not be varied and the agency must apply for a new authority.

2.79 However, at the time of the release of the Ombudsman's most recent report (January 2012), the ACC and Ombudsman apparently disagreed about what constituted a significant alteration.⁵¹

2.80 The ACC informed the committee that in response to the ambiguity of interpretation of what constitutes the elements of a 'significant alteration', the ACC had engaged with the Attorney-General's Department (AGD) and the Ombudsman. As a result of that engagement, and based on guidance from AGD, the ACC has

49 Commonwealth Ombudsman, A report on the Commonwealth Ombudsman's activities in monitoring controlled operations 2010–11, January 2012, p. 14.

50 Commonwealth Ombudsman, A report on the Commonwealth Ombudsman's activities in monitoring controlled operations 2010–11, January 2012, p. 14.

51 Commonwealth Ombudsman, A report on the Commonwealth Ombudsman's activities in monitoring controlled operations 2010–11, January 2012, pp 14–15.

altered internal policies in relation to controlled operations to reflect an agreed position reached between all parties.⁵²

2.81 Due to the retrospective nature of the Ombudsman's inspections, it will not be able to report on the outcomes of the ACC's approach, agreed in consultation with AGD as noted above, until after the 2011–12 financial year inspections.

2.82 The committee will therefore wait until the release of the 2011–12 inspection results before making further comment.

2.83 The committee received a private briefing on these matters from the Acting Commonwealth Ombudsman, Ms Alison Larkins, on 19 March 2012.

52 ACC, answer to question on notice 1, 2 March 2012 (received 16 March 2012), p. 1.