

Chapter 4

Issues relating to both the ACC and AFP

State and Commonwealth cooperation

4.1 The federal nature of Australian government requires close cooperation between the jurisdictions and their agencies to effectively combat crime. Historically, competition and lack of communication between law enforcement agencies has, on occasion, undermined this goal.

4.2 The committee is aware, through statements made in the context of its other inquiries, of a general consensus that relationships and cooperation between state and federal law enforcement agencies have improved significantly in recent years. For example, Acting Commissioner of the AFP, Mr Andrew Colvin observed:

From my experience in the AFP I can say that I am quite confident that I have not seen our relationships with states and territories as positive and as productive as they are at the moment.¹

4.3 The committee therefore sought information from the ACC and AFP about the status of cross-border cooperation and the mechanisms in place to enable them to work together with state law enforcement agencies.

4.4 Mr Lawler noted that the ACC had established offices in each state and territory, creating an ACC presence in each jurisdiction. In smaller states and territories, the ACC typically seconds a representative of the local police force to ensure good communication. This keeps state police agencies briefed on the ACC's capability and intelligence and improves the flow of information to the ACC itself.² Mr Paul Jevtovic, Executive Director, Intervention and Prevention, reflected on the good relationships that have developed, stating:

I think it would be fair to say that, in every jurisdiction of Australia, the relationship at all levels from our state office representatives to our operatives in each jurisdiction, will even receive phone calls where law enforcement officers will want to strategise around opportunities against a particular crime type. So we have that cascading relationship, from the CEO's role with the board all the way through to the people who are the coalface.

Having just come from a jurisdiction over a number of years I can say that that relationship at the working level is of a very high standard.³

1 Mr Andrew Colvin, Acting Commissioner, AFP, *Committee Hansard*, 2 March 2012, p. 9.

2 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 7.

3 Mr Paul Jevtovic, ACC, *Committee Hansard*, 2 March 2012, p. 7.

4.5 When asked about the contribution of resources to the ACC's work made by state agencies, Mr Lawler responded:

I find it difficult to put myself in the position of a state and territory police commissioner in determining what resource they might provide to the commission versus their own challenges in meeting the demands of their state and territory governments in dealing with crime in their particular territories. That having been said, clearly the work that we do is collaborative. It is fiscal at one level but then there are often partnership arrangements—and I could name a number—where state and territory police and state and territory commissioners contribute very significant resources in operations and the provision of capability that the commission may not have.⁴

4.6 \$4.1 million was provided to the ACC in 2010–11 in return for services rendered to states and territories. However, as the ACC explained, this figure did not account for various in-kind contributions made by states and territories.⁵

4.7 The AFP also indicated that cooperation with state and territory partner agencies was a priority. As the Acting Commissioner, Mr Andrew Colvin remarked:

You may recall that Commissioner Negus has said on a number of occasions, and when he was sworn in as commissioner, that there is nothing the AFP does that we can do alone, so our relationship with other state and territory law enforcement agencies, the ACC and private sector and other agencies that have an interest in our business is a core focus.⁶

4.8 Mr Colvin informed the committee that the AFP's 2010–11 focus on reinvigoration of investigative and operational capabilities was in part to improve relationships with national and international counterparts. As at 6 January 2012, 54 per cent of serious and organised crime investigations were conducted under a formalised joint agency agreement. Mr Colvin also noted that the other 46 per cent of investigations would also be a form of joint investigation that did not progress to a formal agreement.⁷

Calculating the cost of organised crime

4.9 Ms Christine Ma, an intern working for a committee member, Senator Stephen Parry, conducted a research assignment on the costs of serious and organised crime in Australia. The report was accepted by the committee as additional information in support of the examination of the ACC annual report.

4 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 8.

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

6 Mr Andrew Colvin, Acting Commissioner, AFP, *Committee Hansard*, 2 March 2012, p. 8.

7 Mr Andrew Colvin, Acting Commissioner, AFP, *Committee Hansard*, 2 March 2012, p. 8.

4.10 The report reviewed methodologies used by law enforcement agencies and academics to account for the cost of organised crime. Using one of these methodologies, the report found the cost of organised crime in Australia to be between \$44 and \$88 billion in 2010.⁸ This is much higher than the ACC's conservative estimate of \$15 billion annually.

4.11 Mr Lawler noted that the Australian Institute of Criminology had spent some time considering the calculation of the true cost of serious and organised crime, which is a challenging undertaking. As Mr Lawler noted:

If one puts out a figure in the public arena then, quite rightly, that figure can and should be challenged as to the basis on which these assertions are made, which is why the commission has adopted a conservative position here. It has done so on the basis of authoritative world standards adopted by the World Bank, the UNODC and others, which put the cost of organised crime at between one and two per cent of GDP. They even acknowledge that that might be on the low side. In the context of the most recent GDP figures for Australia, which I think are about \$1.34 trillion, that puts it in the range of about \$13 billion to \$26 billion, give or take, acknowledging that even that range is conservative. Indeed the UK figures have a much higher percentage. I think it is about four or five per cent...

The commission is landing at between \$10 and \$15 billion. We think we are in an absolutely defensible position. Whether it is \$15 or \$17 billion, in one sense, a \$15 billion cost to the Australian community is just an enormous amount of money. But we would concede from the good work that was done in that work that, in fact, the figure might be much higher. One reason is the percentages we have spoken of and the second is it is fair to say this is an illicit environment, so the figures are not publicly available, and one makes best judgments and estimates around the cost.⁹

4.12 Mrs Harfield informed the committee that the publication of the report had stimulated some discussion within the agency and further consideration of the costs of organised crime. She also noted that the global financial crisis had complicated the issue, with debate over whether economic downturn affects organised crime in a positive or negative fashion.¹⁰

4.13 The committee requested the AFP's feedback on the methodologies employed in the Real Underbelly report. In response, the AFP noted that while there are aspects of the methodology which are sound and consistent with approaches used by other

8 Ms Christine Ma, 'The Real Underbelly', http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=le_ctte/annual/2012/hearings/underbelly_report.pdf, p. 42.

9 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, p. 8.

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

researchers and other aspects which require further validation and in some cases, further data.¹¹ Positive aspects included:

- enumeration of external costs including productivity losses medical costs policing/law enforcement and intangible costs;
- full specification of component costs including specifying crime type, data sources, country and year of collection;
- adjustment for unreported crime;
- inclusion of ‘victimless crimes’ i.e. crimes against commercial and public sectors;
- greater use of Australian data where available; and
- explicit referencing of all key numerical quantities such as the Gross Domestic Product.¹²

4.14 Aspects that, according to the AFP, required further validation or data were:

- the estimation of the impact of money laundering of \$1.39 for every dollar laundered, in that a sensitivity analysis should be conducted to determine robustness (particularly regarding the currency/applicability of component data such as the ABS Input-Output tables from 1996-97);
- the estimation of the proportion of crime attributable to organised crime groups in Australia, in that the international data used in the underbelly report may not be applicable in Australia; and
- the estimation of policing/law enforcement costs could be expanded to include more accurate figures, other agency costs, court and prison costs, and private sector prevention.¹³

4.15 The AFP noted that the report's value may include acting as a catalyst for a consensus among researchers and agency experts on the strengths, weaknesses and gaps in the current data and prompt further collection of relevant data.¹⁴

Declarations of interest

4.16 The committee requested that both the ACC and the AFP provide their policy on declarations of interest, including financial interests and other possible conflicts of interest. Copies of these policies are provided at Appendix 4 and 5.

4.17 The AFP informed the committee that all senior officers had reported as required. The AFP advised that, in practice, the Chief Operating Officer was

11 AFP, answer to question on notice 3, 2 March 2012 (received 28 March 2012), p. 1.

12 AFP, answer to question on notice 2, 2 March 2012 (received 28 March 2012), p. 1.

13 AFP, answer to question on notice 2, 2 March 2012 (received 28 March 2012), pp 1–2.

14 AFP, answer to question on notice 2, 2 March 2012 (received 28 March 2012), p. 2.

responsible for collecting each declaration, reading them and advising the Commissioner of any relevant conflicts of interest. Mr Andrew Wood, the COO, explained that he discussed the declaration with the staff member in order to heighten their understanding of the risks arising from particular interests.¹⁵

4.18 The ACC also informed the committee that the reporting regime had been complied with. Mr John Lawler, CEO, explained that all senior officers reported to him, while he reported to the Minister. Mr Lawler observed that the ACC aimed to ensure a culture where people understand what a conflict of interest is and when they identify it, are able to bring it forward in a transparent and documented way.¹⁶

Audit of Project Wickenby

4.19 In February 2012, the ANAO tabled a report performance audit report on the administration of Project Wickenby. The Project Wickenby cross-agency taskforce was established in 2006 to protect the integrity of Australia's financial and regulatory systems by preventing people from promoting, facilitating or participating in illegal offshore schemes, particularly those involving the abusive use of secrecy havens.¹⁷

4.20 The taskforce includes the Australian Taxation Office, the ACC, the AFP, the Australian Securities and Investments Commission, AGD, the Commonwealth Director of Public Prosecutions and the Australian Transaction Reports and Analysis Centre.¹⁸ The committee has considered the activities of this taskforce in the course of previous inquiries and annual report examinations.

4.21 The ANAO found that as a result of Project Wickenby's focus on preventing the abusive use of secrecy havens, Australia is presently less attractive for international tax fraud and evasion than it otherwise would have been. Results included the conviction of 20 people and more than \$1 billion in tax liabilities being raised.¹⁹

4.22 The ANAO observed sound governance arrangements for Project Wickenby. In relation to the ACC and AFP, it found that:

Undertaking serious criminal investigations is challenging when dealing with complex tax evasion schemes in foreign secrecy haven jurisdictions, where critical evidence to support prosecutions is difficult to obtain, and investigation processes are subject to extensive legal disputation. Within this environment, the ACC and AFP have worked effectively, together with other taskforce agencies, to investigate and prosecute the participants,

15 Mr Andrew Wood, AFP, *Committee Hansard*, 2 March 2012, p. 7.

16 Mr John Lawler, ACC, *Committee Hansard*, 2 March 2012, pp 6–7.

17 ANAO, *Administration of Project Wickenby*, Performance Audit No. 25, 2011–12, pp 13–14.

18 ANAO, *Administration of Project Wickenby*, Performance Audit No. 25, 2011–12, p. 14.

19 ANAO, *Administration of Project Wickenby*, Performance Audit No. 25, 2011–12, p. 16.

facilitators and promoters of secrecy haven schemes. However, responding to these challenges and disputes has been resource intensive and costly to the administration of the project, resulting in investigations being completed much later than planned. ACC investigations were completed in an average 49 months (compared to the planned 18 months), and AFP investigations 36 months (compared to the planned 12 months).²⁰

4.23 The ANAO reported that both agencies, but particularly the ACC, could improve elements of investigation planning and case management, including maintaining comprehensive records. Specifically, ANAO noted:

Major investigation plans generally lacked specific risk assessment and mitigation, and significantly underestimated the resource requirements. The incomplete recording on both agencies' electronic case management system of key investigation management documents, such as investigation and tactical plans, poses a risk to the effectiveness of investigations, given the complexity and extent of challenge experienced.²¹

4.24 The ANAO made two recommendations relating to the ACC and AFP as follows:

- To better manage criminal investigations, the ANAO recommends that the ACC and AFP improve procedures and practices to:
 - (a) approve and record critical investigation decisions, activities and outcomes in case management systems; and
 - (b) store, locate and retrieve investigation documentation from investigation management systems.
- To support timely and effective case management, the ANAO recommends that the AFP revise its practices for allocating serious tax and financial crime investigations among state and territory offices.

20 ANAO, Administration of Project Wickenby, Performance Audit No. 25, 2011–12, p. 19.

21 ANAO, Administration of Project Wickenby, Performance Audit No. 25, 2011–12, p. 19.

Conclusion

4.25 The committee thanks the ACC and the AFP for their engagement with the parliamentary oversight process, and congratulates both agencies on another successful year.

4.26 The committee looks forward to continuing to oversee the agencies' activities, and, through these examinations, providing an assessment of the contribution to Australian law enforcement made by each.

Mr Chris Hayes MP

Chair