

Chapter 2

Australian Crime Commission Annual Report 2015–16

Background

2.1 The Australian Crime Commission (ACC) is established under the *Australian Crime Commission Act 2002* (ACC Act) as a statutory authority to combat serious and organised crime.¹ It is the only agency 'solely dedicated to combating serious and organised crime of national significance.'²

2.2 The ACC works with partners across law enforcement, national security, government and industry and provides Australia with 'the ability to discover, understand and respond to federally relevant serious and organised crime.'³

Annual report compliance

2.3 The ACC annual report must comply with requirements specified in section 61 of the ACC Act. Subsection 61(2) requires that the report must include the following:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) the general nature and the extent of any information furnished by the ([Chief Executive Officer (CEO)]) during that year to a law enforcement agency;
- (da) the general nature and the extent of any information disclosed by the CEO during that year to a body corporate under section 59AB;
- (e) the extent to which investigations by the ACC have resulted in the prosecution in that year of persons for offences;
- (ea) the extent to which investigations by the ACC have resulted in confiscation proceedings;
- (g) particulars of the number and results of:

1 Australian Crime Commission (ACC), *About the Australian Crime Commission*, www.crimecommission.gov.au/about-us/legislation (accessed March 2017).

2 ACC, *Annual Report 2015–16*, p. 8.

3 ACC, *Annual Report 2015–16*, p. 8.

(ii) applications made to the Federal Court or the Federal Circuit Court under the Administrative Decisions (Judicial Review) Act 1977 for orders of review in respect of matters arising under this Act; and

(iii) other court proceedings involving the ACC;

being applications and proceedings that were determined, or otherwise disposed of, during that year.⁴

2.4 As the CEO, Mr Chris Dawson APM, explained in the annual report, this is the final ACC annual report that will be published, following the merger of the ACC and CrimTrac to form the Australian Criminal Intelligence Commission (ACIC), which began operating from 1 July 2016.⁵

2.5 As a Commonwealth entity, the ACC must comply with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which requires Commonwealth entities to provide an annual report to the entity's responsible minister for presentation to the Parliament on the entity's activity during the reporting period,⁶ and with the Public Governance, Performance and Accountability Rule 2014.⁷

2.6 Under the PGPA Act, Commonwealth entities are also required to prepare annual performance statements and include a copy of these statements in the entity's annual report tabled in the Parliament.⁸ The ACC's annual performance statement appears at chapter 2 of the annual report.

2.7 Based on the committee's assessment, the annual report meets the above requirements.

ACC achievements in 2015–16

2.8 The annual report sets out a comprehensive summary of intelligence products and advice, investigations and intelligence operations, and national criminal databases in the 2015–16 reporting period.

Intelligence products and advice

2.9 The ACC aims to 'build up a national picture' of serious and organised crime by:

...producing intelligence products, advice and recommendations that enhance national understanding of the organised criminal environment and inform collaborative responses, both immediate and longer-term including hardening the environment against such crime.⁹

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

5 ACC, *Annual Report 2015–16*, p. 17. The CEO's review also foreshadows a further merger with the Australian Institute of Criminology.

6 *Public Governance, Performance and Accountability Act 2013*, s. 46.

7 Public Governance, Performance and Accountability Rule 2014, div. 3A.

8 *Public Governance, Performance and Accountability Act 2013*, s. 39.

9 ACC, *Annual Report 2015–16*, p. 43.

2.10 In 2015–16, the ACC produced the following intelligence products and advice:

- flagship products:
 - *Organised Crime Threat Assessment 2016*;
 - *Illicit Drug Data Report 2014–15* (produced in 2015–16, released in 2016–17); and
 - *Organised Crime 2025* (produced in 2015–16, to be released);
- 2618 intelligence products shared with 176 agencies;
- 25 252 automated alerts on significant criminal targets;
- 12 strategic assessments of crime types, markets or criminal issues; and
- eight strategic insights products.¹⁰

Investigations and intelligence operations

2.11 The ACC aims to 'break the business of serious and organised crime by working with our partners on investigations, operations and associated task forces.'¹¹

2.12 The ACC's investigations collect intelligence and evidence to disrupt and deter criminal groups; its operations gather intelligence about criminal activity in order to understand the extent, impact and threat of this activity.¹²

2.13 The ACC Board determines which of these investigations and operations require the use of coercive powers, where traditional methods have not been, or are not expected to be, effective.¹³

2.14 The ACC focused on the following priorities in 2015–16:¹⁴

- tackling criminal profit through:
 - the Targeting Criminal Wealth No. 2 Special Investigation;
 - the ACC-led Eligo 2 National Task Force;
 - contribution to the Criminal Assets Confiscation Taskforce, led by the Australian Federal Police (AFP); and
 - contribution to the multi-agency Serious Financial Crime Taskforce;
- tackling highest risk criminals through:
 - the Highest Risk Criminal Targets No. 2 Special Investigation;

10 ACC, *Annual Report 2015–16*, p. 42.

11 ACC, *Annual Report 2015–16*, p. 57.

12 ACC, *Annual Report 2015–16*, p. 57.

13 ACC, *Annual Report 2015–16*, p. 57.

14 For more detail on each of the priorities and the investigations and intelligence operations, see ACC, *Annual Report 2015–16*, pp 58-105.

- the National Criminal Target List;
- the National Target System;
- automated alerting; and
- state-specific special investigations, namely the Highest Risk Criminal Targets in Victoria and South Australia;
- tackling criminal gangs through:
 - the Outlaw Motor Cycle Gangs Special Operation;
 - the ACC-led Australian Gangs Intelligence Coordination Centre;
 - the Gangs Intelligence Hub;
 - the National Gangs List; and
 - the national task force, Operation Morpheus;
- informing responses to Australia's illicit drug markets through the High Risk and Emerging Drugs No. 2 Special Operation;
- contributing to national security through the National Security Impacts from Serious and Organised Crime No. 2 Special Operation and the ACC's contribution to national efforts to combat foreign fighters;
- making Australia a more hostile place for serious and organised crime through:
 - the Making Australia Hostile to Serious and Organised Crime No. 2 Special Operation;
 - the Wildlife and Environmental Crime Team;
 - other strategic intelligence helping to make Australia more hostile to organised crime; and
 - the Child Sex Offences No. 2 Special Operation.

2.15 Through this investigation and intelligence work, the ACC contributed to 65 disruptions of criminal entities and 52 convictions in 2015–16.¹⁵

National criminal databases

2.16 The ACC aims to maintain national databases of criminal information and intelligence in order to contribute to the work of law enforcement agencies, and inform and influence longer-term strategic planning and policy development.¹⁶

2.17 The ACC's Australian Law Enforcement Intelligence Network is the secure extranet that provides a gateway for its partners to access the following services and databases:

- the Australian Criminal Intelligence Database;

15 ACC, *Annual Report 2015–16*, p. 57.

16 ACC, *Annual Report 2015–16*, p. 107.

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- the National Target System;
 - the automated alerting service;
 - the Gangs Intelligence Hub;
 - the National Gangs List;
 - the National Clandestine Laboratory Database; and
 - the Violent and Sexual Crime Database.¹⁷

2.18 On 1 July 2015, following a successful bid for funding under the *Proceeds of Crime Act 2002*, the ACC also began work on proof of concept testing for the National Criminal Intelligence System (NCIS), to address the ACC's maintenance of aggregated national holdings of criminal information and intelligence, which has been found to be no longer fit for purpose.¹⁸ The NCIS Pilot Program, which seeks to address the inadequacies of the current system, runs to 30 June 2017.¹⁹ The NCIS is considered further in chapter 4.

Contribution to law reform and parliamentary inquiries

2.19 The ACC has continued its engagement with various parliamentary committees. Specifically, the ACC contributed to parliamentary inquiries and other reviews as follows:

- appearance before the Parliamentary Joint Committee on Law Enforcement inquiry into crystal methamphetamine (ice) on 14 October 2015;
- appearance before the Senate Economics Committee inquiry into the third party certification of food on 24 September 2015; and
- appearance before the Parliamentary Joint Committee on Law Enforcement inquiry into illicit tobacco on 4 March 2016.²⁰

Staffing and financial management

2.20 At 30 June 2016, the ACC comprised 595 staff across nine offices around Australia. This is a slight increase from previous years (581 staff at the conclusion of 2014–15, and 562 staff at the conclusion of 2013–14).²¹

2.21 In addition, the ACC had a total of 25 secondees from Commonwealth, state and territory law enforcement agencies at 30 June 2016, and hosted a total of 50 secondees from 15 other Commonwealth and law enforcement agencies on short-term and long-term assignment during 2015–16.²²

17 ACC, *Annual Report 2015–16*, p. 107.

18 ACC, *Annual Report 2015–16*, pp 110-112.

19 ACC, *Annual Report 2015–16*, pp 110-112.

20 ACC, *Annual Report 2015–16*, p. 52.

21 ACC, *Annual Report 2015–16*, p. 159.

22 ACC, *Annual Report 2015–16*, p. 159.

2.22 The Australian National Audit Office (ANAO) determined that the ACC had complied with the *Australian Accounting Standards and the Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*, and presented fairly its financial position as at 30 June 2016, its financial performance and cash flows for 2015–16.²³

2.23 The ACC reported a deficit of \$9.911 million in 2015–16, noting that apart from unfunded depreciation and revenue received to fund capital items, the ACC realised a deficit of \$2.670 million for the financial year.²⁴ The annual report notes that the ACC had received prior approval from the Minister for Finance to incur a loss of \$3.545 million.²⁵

2.24 The annual report notes that the major components of the actual deficit primarily relate to:

- the recognition of an onerous contract provision required following the relocation of the Canberra Headquarters (\$2.100 million); and
- the impact of non-cash accounting adjustment relating to the revaluation of leave entitlements (\$0.370 million).²⁶

Commonwealth Ombudsman—controlled operations

2.25 Section 10 of the *Parliamentary Joint Committee on Law Enforcement Act 2010* requires the Commonwealth Ombudsman, at least once per calendar year, to brief the committee under Part 1 AB of the *Crimes Act 1914* (Crimes Act) during the preceding 12 months, about the involvement of the ACC and AFP in controlled operations. On 21 June 2017, the committee met with and was briefed in private by representatives from the Commonwealth Ombudsman.

2.26 The Ombudsman's inspection and reporting functions in respect of controlled operations are found in subsection 15HS(1) of the Crimes Act that provides:

The Ombudsman must, from time to time and at least once every 12 months, inspect the records of each authorising agency to determine the extent of compliance with this Part [Part IAB—Controlled operations] by the agency and by law enforcement officers.

2.27 The ACC is one such authorising agency.²⁷

2.28 According to the ACC, controlled operations are broadly described as 'covert operations carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious Commonwealth offence'. If a controlled operation is authorised under the Crimes Act, 'participants are exempt from any criminal liability and indemnified from civil liability arising from their acts or

23 ACC, *Annual Report 2015–16*, p. 184.

24 ACC, *Annual Report 2015–16*, p. 176.

25 ACC, *Annual Report 2015–16*, p. 176.

26 ACC, *Annual Report 2015–16*, p. 176.

27 *Crimes Act 1914*, s. 15GC.

omissions during the course of the operation, providing that certain conditions under the [Crimes Act] are met'. The Crimes Act also imposes a number of reporting obligations upon agencies with such powers.²⁸

2.29 On 21 June 2017, the Commonwealth Ombudsman informed the committee regarding the ACC's involvement in controlled operations under Part 1AB of the Crimes Act. This report is relating to the inspection of the controlled operation records of the ACC for the period of 1 July 2015 and 30 June 2016 (published April 2017).

2.30 A general summary of the information produced in these reports is available in the Ombudsman's public report in respect of the controlled operations activities of the Australian Commission for Law Enforcement Integrity, the AFP and the ACC for the period 1 July 2015 to 30 June 2016.

2.31 The Commonwealth Ombudsman reported that the inspections of the ACC's authorisations did not result in recommendations. It was satisfied that the ACC had actioned issues identified or self-disclosed from the previous reporting period and that no further issues were identified. During its December 2015 inspection, the Commonwealth Ombudsman was unable to provide its 'usual level of assurance that activities engaged in during one controlled operation were covered by the authority'; however, it noted 'there was nothing on file to indicate that the activities were not authorised'. The ACC advised the Commonwealth Ombudsman that this issue was rectified by including additional information on file.²⁹

Committee view

2.32 Based on the information provided by the Ombudsman, the committee is satisfied that the ACC's controlled operations were conducted within the relevant boundaries and requirements.

Commonwealth Ombudsman—telecommunications interception records and stored communication records

2.33 In March 2017, the Commonwealth Ombudsman published its *Report on the Commonwealth's Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapter 3 and 4 of the Telecommunications (Interception and Access) Act 1979* for the period 1 July 2015 to 30 June 2016.

2.34 The *Telecommunications (Interception and Access) Act 1979* (TIA Act) permits for '20 specialised law enforcement agencies access to an individual's telecommunications data and/or stored communications when investigating certain offences'. These powers are exercised covertly. The Commonwealth Ombudsman's role under the TIA Act is to provide independent oversight of each agencies' conduct when exercising these powers, including assessments of whether agencies comply

28 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, 1 July 2014 to 30 June 2015, January 2016, p. 1.

29 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, 1 July 2015 to 30 June 2016, April 2017, p. 7.

with legislation 'and whether they have used these powers in line with the spirit of the legislation'.³⁰

2.35 With regard to the stored communications inspection, the Commonwealth Ombudsman found that the ACC had complied with the requirement to properly apply for preservation under the TIA Act; however, noted six instances that it was 'unable to determine compliance with mandatory revocation requirements under [section] 107(2)(a)(ii) of the [TIA] Act'.³¹ The Commonwealth Ombudsman reported that despite these six instances, the ACC had sufficient procedures and had planned enhancements to its compliance database to prevent future recurrences of these issues. The Commonwealth Ombudsman suggested that the ACC 'amend its request form for preservation notices to remind applicants of the obligation to revoke'. The ACC made this amendment accordingly.³²

2.36 The Commonwealth Ombudsman was unable to assess the ACC's compliance with record-keeping provisions under subsections 150A and 151 of the TIA Act. During this reporting period, the ACC had been issued with five stored communication warrants; however, these warrants were not presented to the Commonwealth Ombudsman for inspection. The warrants in question had not been executed, and the relevant stored communication had been accessed under corresponding telecommunications interception warrants. The Commonwealth Ombudsman reported that this led to a misunderstanding at the inspection that the ACC had been issued with telecommunications interception warrants during this inspection period.³³

2.37 A further six preservation notices were not presented to the Commonwealth Ombudsman at the inspection due to administrative oversight. These records were subsequently presented at a further inspection date and will be reported on at the end of the 2016–17 inspection period. The Commonwealth Ombudsman

30 Commonwealth Ombudsman, *Report on the Commonwealth's Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapter 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, 1 July 2015 to 30 June 2016, March 2017, p. 1.

31 Commonwealth Ombudsman, *Report on the Commonwealth's Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapter 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, 1 July 2015 to 30 June 2016, March 2017, p. 16.

32 Commonwealth Ombudsman, *Report on the Commonwealth's Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapter 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, 1 July 2015 to 30 June 2016, March 2017, p. 16.

33 Commonwealth Ombudsman, *Report on the Commonwealth's Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapter 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, 1 July 2015 to 30 June 2016, March 2017, p. 17.

concluded that this issue was 'an outlier which is not representative of the ACC's general record-keeping practices'.³⁴

2.38 The Commonwealth Ombudsman's inspection of telecommunications data was very positive and commended the ACC for its commitment to a compliance culture and comprehensive operating procedures. The Commonwealth Ombudsman's report did not note any concerns.³⁵

Commonwealth Ombudsman—surveillance devices

2.39 The Commonwealth Ombudsman did not finalise the results from its inspection of agencies' compliance under section 55 of the *Surveillance Devices Act 2004*. The results of these inspections will be considered in the Commonwealth Ombudsman's next report.³⁶

34 Commonwealth Ombudsman, *Report on the Commonwealth's Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapter 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, 1 July 2015 to 30 June 2016, March 2017, p. 17.

35 Commonwealth Ombudsman, *Report on the Commonwealth's Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapter 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, 1 July 2015 to 30 June 2016, March 2017, pp 18–19.

36 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, 1 July to 31 December 2016, March 2017, p. 1.

