

The Senate

Legal and Constitutional Affairs
Legislation Committee

Australian Crime Commission Amendment
(Criminology Research) Bill 2016
[Provisions]

November 2016

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Members of the committee

Members

Senator the Hon Ian Macdonald (LNP, QLD) (Chair)

Senator Louise Pratt (ALP, WA) (Deputy Chair)

Senator David Fawcett (LP, SA)

Senator Nick McKim (AG, TAS)

Senator Linda Reynolds (LP, WA)

Senator Murray Watt (ALP, QLD)

Secretariat

Ms Toni Matulick, Committee Secretary

Ms Charlotte Fletcher, Senior Research Officer

Ms Jo-Anne Holmes, Administrative Officer

Suite S1.61

Telephone: (02) 6277 3560

Parliament House

Fax: (02) 6277 5794

CANBERRA ACT 2600

Email: legcon.sen@aph.gov.au

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Recommendation

Recommendation 1

2.78 The committee recommends that the Senate pass the bill.

Chapter 1

Introduction and Background

1.1 On 13 October 2016, pursuant to a recommendation of the Selection of Bills Committee, the Senate referred the Australian Crime Commission Amendment (Criminology Research) Bill 2016 [Provisions] (the bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 9 November 2016.

1.2 The committee inquired into and reported on the Australian Crime Commission Amendment (Criminology Research) Bill 2015 in November 2015. However, the bill in question lapsed upon the prorogation of parliament in May 2016, and was not passed into law.

1.3 The provisions of this bill are exactly the same as those of the 2015 bill (save for the proposed date of commencement), however the Explanatory Memorandum (EM) accompanying this bill does differ in some respects from that which accompanied the 2015 bill.

Conduct of the inquiry

1.4 In accordance with usual practice the committee advertised its inquiry on its website, and also wrote to various organisations and individuals inviting written submissions.

1.5 The committee received 25 submissions, listed at Appendix A.

1.6 Due to the short time for conducting this inquiry the committee resolved not to hold a public hearing.

Background

1.7 The composition and functions of the Australian Crime Commission (ACC) and Australian Institute of Criminology (AIC) were set out in the previous report into this bill, and will not be repeated here. By way of summary, the AIC was formed in 1973 and is a statutory authority focused on conducting criminological research. The ACC was established in 2003 to collect and analyse criminal and intelligence information, undertake intelligence operations and investigate matters relating to federal criminal activity.

1.8 As of 1 July 2016, the Australian Crime Commission (ACC) became known as the Australian Criminal Intelligence Commission (ACIC). The report will refer to the ACIC as the ACC, as this is the name contained in the bill, and the name by which the agency is still legally known.

Purpose of the bill

1.9 The bill seeks to provide the legislative framework for a merger of the AIC with the ACC. Specifically, the bill would:

- insert a new definition of 'criminological research' (Item 1);
- enable the ACC to carry out criminological research, whether or not there is a link between that research and past, present or future criminality (Item 3);
- enable the ACC to charge fees for functions associated with criminological research (Item 4);
- enable the Australian Crime and Justice Research Centre (ACJRC), as which the AIC area of the ACC would then be known, to access datasets and make data and research available in the same way the AIC current does (Item 5);
- continue the Criminology Research Special Account (CR Special Account) to ensure that the ACC continues to manage the funds associated with commissioned research in the future (Item 6); and
- repeal the *Criminology Research Act 1971*, under which the AIC currently operates (Schedule 2).

1.10 The proposed merger of the AIC with the ACC is part of a broader plan to create one agency which combines the resources of a number of currently separate agencies. As the second reading speech states:

We need to find ways so that police officers doing their job can get the information they need. To do this we have created the Australian Criminal Intelligence Commission. This brings our intelligence analyst capabilities together with our datasets when we merged the Australian Crime Commission with CrimTrac. We are also merging into that new entity the Australian Institute of Criminology to give the ACIC all of the resources that it needs to be able to do this job of providing timely criminal intelligence to Australia's law enforcement community.¹

Changes to the bill since the previous inquiry

1.11 Since the committee's report to the 44th Parliament, the EM has been amended to include new information.

1.12 The EM now states that:

- the ACC's criminological function will have a wide remit and extend beyond purely law enforcement;²
- the non-legislated Research Advisory Committee, which will provide advice to the ACC Board about strategic research priorities and research grants, will consist of existing Criminology Research Advisory Council members, two law enforcement representatives, two members from the ACC, and a representative from the Australian and New Zealand Society of Criminology (ANZSOC);³

1 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 14 September 2016, p. 850.

2 Explanatory Memorandum (EM,) p. 7.

3 EM, p. 7.

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- having a non-legislated committee 'ensures there is flexibility to add other members if subject matter expertise would assist on particular subjects';⁴
 - the ACJRC will continue to have access to the datasets available to the AIC, and 'will continue to make that data and research available in the same way the AIC currently does';⁵ and
 - the JV Barry Library will continue to exist and provide the same level of public access to its holdings, and the process of digitising of those holdings will continue following a merger.⁶

4 EM, p. 7.

5 EM, p. 8.

6 EM, p. 9.

Chapter 2

Key issues

2.1 During the course of this inquiry a number of issues were put to the committee, many of which reflected concerns that were raised during the previous inquiry into this bill. The issues raised in the course of this inquiry included:

- the risk of research subsequent to the merger being perceived as less credible, and the research arm of the Australian Crime Commission (ACC) being viewed as less independent, and subservient to the needs of the ACC more broadly;
- the risk of staff losses and a consequent degradation of criminological discourse and research in Australia;
- the potential impacts on the JV Barry Library, including access to its holdings;
- the fact that many steps have already been taken to merge the Australian Institute of Criminology (AIC) with the ACC, despite the bill not yet having passed into law; and
- the overall lack of justification for merging the AIC and ACC.

2.2 A number of submitters also raised alternative propositions to the proposed merger of the AIC with the ACC.

2.3 These issues, and alternative propositions, will be discussed in this chapter.

The work and reputation of the AIC

2.4 Nearly all of those individuals and organisations who made submissions highlighted the excellent quality of research produced by the AIC and the very strong reputation which the AIC has developed internationally.¹

2.5 Professor Laycock, of the University College of London, stated that the AIC is a 'significant presence in the international criminological research community'.² She argued that, while the AIC is not the only criminological organisation in Australia, 'the

1 See Professor Gloria Laycock, University College of London (UCL) Jull Dando Institute of Security and Crime Science (JDISCS), *Submission 1*; Professor Ernesto Savona, Professor of Criminology, Director of the Research Centre on Transnational Crime (RSTC), Università Cattolica del Sacro Cuore (UCSC), *Submission 2*; Professor Tim Prenzler, University of the Sunshine Coast (USC), *Submission 6*; Master Peter Norman OAM, National Chairman, Australian Crime Prevention Council (ACPC), *Submission 15*; Commissioner Michael O'Connell APM, Commissioner for Victims' Rights, South Australia (CVR SA), *Submission 17*.

2 Professor Gloria Laycock, UCL, *Submission 1*, p. 2.

AIC speaks uniquely to the Commonwealth's agenda', and is 'the only independent research voice which addresses issues across the whole of Australia'.³

2.6 Professor Ernesto Savona, Director of the Research Centre on Transnational Crime at the Univerita Cattolica del Sacro Cuore in Milan, stated that the AIC's research has, over time, been of great significance and has been used regularly by organisations in Europe.⁴ He also noted that it played an important role as a United Nations Office on Drugs and Crime research body.⁵

2.7 Professor Tim Prenzler of the University of the Sunshine Coast stated that since it was established, the AIC has 'been an essential source for reliable and accurate statistics on the very large and complex problem of crime in Australia', and has a 'strong reputation for integrity and rigour'.⁶

2.8 Master Peter Norman, National Chairman of the Australian Crime Prevention Council (ACPC), submitted that:

The AIC's research and its impact on practice, legislation and policy has been off immense value in setting budgets and forming policy in the law and order field. It has been quoted in many academic and practitioner publications and is of great assistance to others working in the area. It has been a well respected and highly regarded professional source of criminological data which has the same value as does medical research in the formulation of the health budget.⁷

2.9 The South Australian Commissioner for Victims' Rights, Mr Michael O'Connell APM, noted that the AIC has partnered with the World Society of Victimology (WSV) to host two international symposiums on Victimology, and that it did so effectively and efficiently.⁸ He stated that at the 2015 symposium:

Keynote speeches were audio-visually recorded and posted on Criminology TV, which has made such available to a global audience, including WSV members, at no cost to such audience. This is a treasured resource that has proven of great assistance to some WSV members and others who could not attend the symposium. It also raises the prestige of the AIC as a leader in fostering debate on contemporary crime and criminal justice issues – independent of the political ideology of the party governing Australia.⁹

2.10 Describing the institute as a 'fine example of cooperative federalism at work', Professor Duncan Chappell of the University of Sydney, highlighted the AIC's role as

3 Professor Gloria Laycock, UCL, *Submission 1*, p. 2.

4 Professor Ernesto Savona, RSTC, UCSC, *Submission 2*, p. 1.

5 Professor Ernesto Savona, RSTC, UCSC, *Submission 2*, p. 1.

6 Professor Tim Prenzler, USC, *Submission 6*, p. 1.

7 Master Peter Norman, National Chairman, ACPC, *Submission 15*, pp. 2 - 3.

8 Commissioner Michael O'Connell, CVR SA, *Submission 17*, p. 2.

9 Commissioner Michael O'Connell, CVR SA, *Submission 17*, pp. 2 - 3.

a key resource for comprehensive and reliable research about crime and justice for over four decades.¹⁰

Research

2.11 A number of submitters raised concerns about the independence and perceived integrity of research which would be conducted by the AIC arm of the ACC, as well as the direction of the research agenda.

Independent research

2.12 The key criticism levelled against the proposed merger of the AIC and ACC was that the ACC would no longer be an independent organisation capable (or viewed as being capable) of producing independent research. A majority of submitters argued that for criminological research to be viewed as being credible, it must be produced by an organisation which is independent, and has no stake in the findings.¹¹

2.13 Dr Peter Grabosky of the Australian National University (ANU), and a former Director of the AIC, argued that the institute should remain a statutory authority, and stated that the proposed amendments would 'strip the [AIC] of the last vestiges of independence'.¹² Professor Kathleen Daly of Griffith University argued that the AIC's work must remain independent 'to ensure integrity and trust in the data gathered and results reported'.¹³

2.14 Professor Peter Norden AO, a fellow of the Australian and New Zealand Society of Criminology (ANZSOC), argued that:

[T]he suggestion that an academic research body such as the AIC being able to successfully merger with an intelligence agency of the nature of the ACIC shows a complete lack of understanding of the role of the two bodies.¹⁴

2.15 Professor Roderick Broadhurst of the ANU likewise argued that:

[C]riminological research and the intelligence products (Focused on threats, suspects and operations) are independent endeavours best served as mutually informative but independent aspects of the constant need to assess ever evolving criminal threats (both low and high) to our economy, social cohesion and good governance.¹⁵

10 Honorary Professor Duncan Chappell, University of Sydney, *Submission 16*, p. 1.

11 See Dr Peter Grabosky, ANU, *Submission 4*; Professor Tim Prenzler, USC, *Submission 6*; Professor Kathleen Daly, Griffith University, *Submission 5*; Dr Ross Coomber, Director, GCI, *Submission 9*; Dr Kristine Klugman OAM, President, CLA, *Submission 13*; Master Norman, National Chairman, ACPC, *Submission 15*; Dr Jason Payne, ANU, *Submission 10*; Professor Murray Lee, Sydney Law School, *Submission 23*.

12 Dr Peter Grabosky, ANU, *Submission 4*, p. 1.

13 Professor Kathleen Daly, Griffith University, *Submission 5*, p. 1.

14 Professor Peter Norden AO, Adjunct Professor, School of Global, Urban and Social Studies, RMIT University Melbourne (RMIT), *Submission 3*, p. 1.

15 Professor Roderick Broadhurst, ANU, *Submission 24*, p. 1.

2.16 Professor Ross Coomber, Director of the Griffith Criminology Institute, arguing that the importance of academic independence was not sufficiently addressed in the previous inquiry into this bill, submitted that:

Another important issue that was arguably understated on the original bill relates to *perceptions of academic independence*, and thus the *perceived* credibility of outputs/research. When an organisation produces data that, depending on how they are prevented, it can benefit from it is not seen as independence. The police already suffer from having even the barest of descriptive statistics produced internally subjected to critique because of assumed bias and thus there is an almost inherent lack of credibility built into any analysis it carries out.¹⁶

2.17 Professor Coomber argued that even though police might be using exemplary standards comparable to those of independent researchers, 'the research will often be *perceived* to not be credible because it is produced by those that may benefit from it'.¹⁷

2.18 Professor Adam Graycar AM of Flinders University, and the longest serving Director of the AIC, agreed, arguing that:

If [the AIC's] future outputs come through an intelligence agency there are two likely scenarios. One is that much of what is researched will not be publicly available as it will be stamped with a security classification. The second is that it might not be believed, as coming from an intelligence agency people might always question hidden agenda and transparency of methodology and data. In short, people are less likely to take the output seriously and give it credibility. Without credibility research is hollow.¹⁸

2.19 Ms Patricia Mayhew OBE, a former consultant to the AIC, stated that the Institute's independence from government is essential to ensuring that outputs and services are 'seen as untainted from political concerns and sensibilities'.¹⁹ She argued that 'the merger will alter the way output is perceived'.²⁰ Professor Broadhurst agreed, stating that 'extraordinary efforts to ensure transparency would be required'.²¹

2.20 Civil Liberties Australia (CLA) likewise argued that:

[T]he two organisations have antithetical philosophies, especially around transparency and evidence-based work (as opposed to mere 'intelligence'), and the AIC's independence will be fatally compromised if it is brought within the national security community.²²

16 Dr Ross Coomber, Director, GCI, *Submission 9*, pp. 1 - 2.

17 Dr Ross Coomber, Director, GCI, *Submission 9*, p. 2.

18 Professor Adam Graycar AM, Flinders University (FU), *Submission 8*, p. 2.

19 Ms Patricia Mayhew OBE, *Submission 14*, p. 1.

20 Ms Patricia Mayhew, *Submission 14*, p. 2.

21 Professor Roderick Broadhurst, ANU, *Submission 24*, p. 1.

22 Dr Kristine Klugman, President, CLA, *Submission 13*, p. 1.

2.21 Professor Chappell, an AIC Director from 1987 to 1994, discussed the AIC's capacity to deliver robust recommendations in challenging situations. He cited the lead-up to the introduction of Australia's gun control laws as an example:

[During my time as Director of the AIC] I experienced at first hand the often sensitive and challenging interactions required to offer robust, research based independent advice and assistance in support of Government crime and justice policy while also remains aloof and neutral from actual participation in law enforcement and allied activity. Perhaps nowhere was this challenge more evidence than in the very substantial research that the AIC undertook for the National Committee on Violence (NCV) in the late 1980's when two tragic mass shootings occurred in Melbourne. The NCV made comprehensive and detailed recommendations regarding measure[s] that might be taken to reduce such violence in Australian society (NCV 1990), including introducing strict uniform gun laws. These recommendations, and especially those relating to gun control, were resolutely opposed by many in the community.²³

2.22 Professor Toni Makkai of the ANU, and former Director of the AIC, likewise stated that:

In my time as director there were occasions where findings from research were not necessary supportive of the government of the day (state/territory and commonwealth), private sector organisations or the non-government sector. These were handled sensitively, but the AIC always maintained its commitment to the publication of its findings...[W]here research involved either consultancy payments or powerful agencies, including law enforcement and corrections, the independence of the director and its board of management was critical when a serious dispute arose.²⁴

2.23 Dr Jason Payne of the ANU, and an employee of the AIC for 12 years, noted the AIC's research into violent crimes and property crime victimisation of international students in Australia in response to several attacks against students from India. At the time, Australia's international student market generated approximately \$18.3 billion per annum, and that India was a large source of international students. Dr Payne noted that concerns had been publicly aired by officials from India about the apparent racial targeting of Indian students, and the potential that this could have to adversely impact the intake of international students from India.²⁵ Dr Payne stated:

At the time, there was no national or state-level data source capable of examining the prevalence and overrepresentation of Indian international students as victims of crime. Yet, to meet the ongoing concerns of government officials in India, it was essential for Australia to undertake a credible, methodologically robust, and (most importantly) *independent* empirical analysis of this issue. As an independent statutory agency, the

23 Professor Duncan Chappell, *Submission 16*, p. 1.

24 Professor Toni Makkai, ANU Centre for Social Research and Methods, Research School of Social Sciences (ANU), *Submission 21*, p. 3.

25 Dr Jason Payne, ANU, *Submission 10*, p. 1.

AIC was uniquely placed to undertake this research. Its long-held position of trust with state and territory police agencies made possible the complex data matching and extraction processes. This, coupled with its position of independence, was critical to securing the information and data necessary to examine the issues with the transparency and breadth demanded by the Indian government.²⁶

2.24 Dr Payne argued that the AIC was well-placed to undertake this research cost-effectively, swiftly, and using its criminal justice experience, submitting that:

[N]o research produced under the auspices of an intelligence agency...would have had the level of independence necessary to assure the Australian and international community of our commitment to openly and transparently investigating issues concerning the safety of its citizens and visitors.²⁷

2.25 Professor Makkai argued that the AIC's independence enabled it to manage both short and long-term priorities. She stated that the institute's reputation has been built not only on its capacity to engage in independent research about current crime and justice issues, but also focus on future concerns which might not seem relevant to national crime and justice agencies of the day.²⁸

2.26 Professor Rick Sarre, President of ANZSOC, argued that, 'to think one can merge the work of the ACIC and AIC and keep the latters' broad base and independence is simply fanciful'.²⁹ He also submitted that the AIC would be conflicted as a result of the merger, stating:

It will simply not be possible for a merged body to do research on the accountability and effectiveness of police and intelligence agencies themselves. Who could ever say that the outcomes were not tainted?³⁰

2.27 Addressing these concerns, the Minister for Justice, the Hon Michael Keenan MP, explained that the proposed ACJRC would be subject to peer review, which would ensure that it was capable of producing independent research, which would then be used to inform evidence-based policy.³¹ He stated that the ACJRC would produce world-leading criminological research on widely defined crime and justice issues of national importance.³²

26 Dr Jason Payne, ANU, *Submission 10*, p. 1.

27 Dr Jason Payne, ANU, *Submission 10*, p. 2.

28 Professor Toni Makkai, ANU, *Submission 21*, p. 1.

29 Professor Rick Sarre, President, Australian and New Zealand Society of Criminologists (ANZSOC), *Submission 18*, p. 1.

30 Professor Rick Sarre, President, ANZSOC, *Submission 18*, p. 1.

31 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 14 September 2016, p. 850.

32 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 14 September 2016, p. 850.

2.28 The Attorney-General's Department (AGD), ACIC and AIC jointly noted that the proposed ACJRC would be headed by a senior criminologist,³³ and that the Centre would be guided by independent criminology research expertise through a non-legislated Research Advisory Committee.³⁴

Research agenda

2.29 Several submitters raised concerns about a possible shift in the research agenda of a research wing within the ACC, and expressed concern that such a wing would become subservient to the agenda of the ACC.³⁵ Submitters also highlighted the value of the AIC's research into broad issues relating to crime and justice.

2.30 Professor Sarre of the ANZSOC argued that:

For over 40 years the AIC has examined the vast array of crime that continues to bedevil our nation...It has analysed - and provided policy-relevant information concerning - family violence, Indigenous crime and victimisation, deaths in custody, homicide monitoring, drug use monitoring, alcohol and substance abuse, firearms trafficking, youth justice, restorative conferencing, violent crime, corrections and rehabilitation, and therapeutic courts to name but a few areas of important research that will not be given secondary status, if any at all.³⁶

2.31 Master Norman of the ACPC agreed, noting that the AIC has focused on the prevention of all crime, and analysed the little-studied areas of corrections and rehabilitation.³⁷ He highlighted in particular the value of the AIC's research into deaths in custody, national homicide monitoring, drug use monitoring, and national firearms trafficking, and argued that this research must continue, and continue to be made available to researchers and relevant agencies.³⁸

2.32 Commissioner O'Connell likewise highlighted the value of the AIC's research in the area of victimology, and stated that he has 'turned often to AIC research findings to validate assertions on crime victims' plights'.³⁹

2.33 Professor Daly submitted that the merger would lead to a more narrow ACIC-focussed research agenda, with an emphasis on policing and organised crime.⁴⁰ She

33 Attorney-General's Department (AGD), Australian Institute of Criminology (AIC) and Australian Criminal Intelligence Commission (ACIC), *Submission 20*, p. 1.

34 AGD, AIC and ACIC, *Submission 20*, p. 2.

35 Professor Ernesto Savona, Director, RCTC, UCSC, *Submission 2*; Professor Gloria Laycock, UCL JLDSCS, *Submission 1*; Professor Kathleen Daly, Griffith University, *Submission 5*; Professor Tim Prenzler, USC, *Submission 6*; Dr Rebecca Scott Bray, Co-Director, Sydney Institute of Criminology (SIC), *Submission 22*.

36 Professor Rick Sarre, President, ANZSOC, *Submission 18*, p. 1.

37 Master Peter Norman OAM, National Chairman, ACPC, *Submission 15*, p. 2.

38 Master Peter Norman OAM, National Chairman, ACPC, *Submission 15*, p. 2.

39 Commissioner Michael O'Connell, CVR SA, *Submission 17*, p. 2.

40 Professor Kathleen Daly, Griffith University, *Submission 5*, p. 2.

argued that the AIC's research agenda would be subservient to that of the ACC, and that this would 'impoverish fundamental research on crime and justice'.⁴¹ Ms Mayhew, a former consultant to the AIC, agreed, arguing that the merger would inevitably result in a re-direction of the research agenda to narrow issues of law enforcement and police intelligence.⁴²

2.34 Dr Biles argued that if the merger were to proceed, any criminologist prepared to work in the kind of high security environment such as that which would exist in the ACC:

...will inevitably be drawn or gently guided to projects which are central to the ACIC (such as organised crime, terrorism etc.) and broader criminal justice issues...will become relatively neglected.⁴³

2.35 Dr Biles also highlighted the small size of the proposed research wing of the ACC in comparison with the rest of the organisation. He estimated that approximately 20 AIC staff would be merged with over 1000 police staff from the AIC and Crimtrac, and described this as a 'smothering' rather than a merger.⁴⁴ Professor Laycock likewise argued that the AIC would be a 'junior partner' in the merger.⁴⁵

2.36 Professor Makkai also agreed, and argued that it is highly likely that over time the culture of secrecy and need to protect intelligence data and methodologies will 'assert itself'.⁴⁶ She noted that under the proposed merger the ACIC board, which is dominated by law enforcement agencies, would determine priorities, and not an advisory board, which would also have significant law enforcement representation.⁴⁷

2.37 Professor Sarre also argued that a narrowing of research scope would have a corresponding impact on funding decisions of the Criminology Research Council (CRC).⁴⁸

2.38 The AGD, AIC and ACC, in a joint submission, stated that the ACC research branch (the ACJRC) would be headed by a senior criminologist and conduct research which would be subject to both peer and ethics review.⁴⁹ The submission notes that:

The ACJRC's research priorities will become more closely aligned with law enforcement's high level priorities. However, the ACJRC's priorities will also continue to be guided by an advisory body similar to the current Criminology Research Advisory Council...This will continue to allow

41 Professor Kathleen Daly, GU, *Submission 5*, p. 2.

42 Ms Patricia Mayhew, *Submission 14*, p. 1.

43 Dr David Biles, *Submission 12*, p. 2.

44 Dr David Biles, *Submission 12*, p. 2.

45 Professor Gloria Laycock, UCL JLDSCS, *Submission 1*, p. 2.

46 Professor Toni Makkai, ANU, *Submission 21*, p. 2.

47 Professor Toni Makkai, ANU, *Submission 21*, p. 2.

48 Professor Rick Sarre, President, ANZSOC, *Submission 18*, p. 1.

49 AGD, AIC and ACIC, *Submission 20*, p. 1.

independent criminology research expertise to guide the work of the ACJRC.⁵⁰

2.39 The submission further noted that, while the ACIC board would assume responsibility for providing strategic direction about research functions, and determining criminological research priorities, it would be advised by a non-legislated Research Advisory Committee.⁵¹ The submission states that this Committee would consist of existing Criminology Research Advisory Council members, an ANZSOC representative, two members of the ACIC and two law enforcement representatives.⁵²

2.40 The joint submission states that the ACIC is 'subject to a robust accountability framework which provides significant oversight for the operations of the agency'.⁵³

2.41 The submission also notes that if an individual has a complaint about the way in which the ACIC handles its personal information, complaints can be made to the Commonwealth Ombudsman, Integrity Commissioner, or the Parliamentary Joint Committee on Law Enforcement.⁵⁴

Publicly available research

2.42 A number of submitters raised concerns about the potential for research conducted subsequent to the proposed merger not being publicly available.

2.43 The Community and Public Sector Union (CPSU) argued that since AIC employees had been transferred to the ACC in October 2015, 'AIC/ACC employees have experienced difficulties in designing, conducting and disseminating high-quality criminological research'.⁵⁵ It argued that a primary cause of these difficulties is 'restrictions in the way criminological research is communicated'.⁵⁶

2.44 Professor Graycar argued that security classifications are sometimes needlessly applied, and that some information subject to classification is of a poor quality:

While I was Director of the AIC I had a 'top secret' security clearance. From time to time I would see classified material, and often would have no idea why it was classified, because there was nothing special or secret in it. What I soon discovered was that the quality of the material was so very poor that the author or agency would have been ashamed or even humiliated were it open to public scrutiny. Not only that, there were times when material came marked as classified, which was entirely plagiarised. The material which I recall, produced by the former [National Crime

50 AGD, AIC and ACIC, *Submission 20*, p. 2.

51 AGD, AIC and ACIC, *Submission 20*, p. 2.

52 AGD, AIC and ACIC, *Submission 20*, p. 2.

53 AGD, AIC and ACIC, *Submission 20*, p. 3.

54 AGD, AIC and ACIC, *Submission 20*, p. 3.

55 Community and Public Sector Union (CPSU), *Submission 19*, p. 5.

56 CPSU, *Submission 19*, p. 5.

Authority] and other agencies, was on occasion an AIC or other public research document, word for word, but re-titled and classified.⁵⁷

2.45 Mr Cameron Langfield, a student of criminology at the ANU, argued that the proposed amendments would make it more difficult to gather and assess information about criminology in Australia, as well as statistics on crime, victimisation and incarceration rates.⁵⁸ He submitted that such data 'is essential to the next generation of aspiring criminologists'.⁵⁹

2.46 In their joint submission the AGD, ACIC and AIC highlighted that the EM attaching to this bill has been amended to confirm that 'criminological research and access to datasets will continue to be made available to the public', and 'the ACIC will have access to the same databases to inform research that are currently available to the AIC'.⁶⁰

2.47 Noting that the ACIC can conduct work which involves personal information, the submission further states that:

The Bill contains a new information disclosure regime to allow the ACIC CEO to disclose and publish the ACIC's criminological research and related information in a manner similar to the way in which the AIC Director can currently disclose that information. Where the ACIC's criminological research or related information contains personal information...the new information disclosure regime will outline additional requirements that must be met before the ACIC can disclose that information.⁶¹

Work cultures

2.48 Several submitters raised concerns about the professional cultures of the AIC and ACC, and their potential incompatibility.

2.49 Dr Scott Bray of the Sydney Institute of Criminology (SIC) argued that the concept of a merger resulting in a unified workforce of two different organisational cultures with different functions seems inappropriate.⁶²

2.50 Dr Biles argued that criminologists require very different skills to those required of individuals working for policy and law enforcement agencies. He argued that 'criminologists are essentially academics who provide advice to governments and also to criminal justice practitioners', whereas policing focuses on individuals or a small number of individuals, makes use of specialist information, typically in a confidential environment.⁶³ He also argued that the police culture encourages 'absolute

57 Professor Adam Graycar AM, Flinders University, *Submission 8*, p. 2.

58 Mr Cameron Langfield, *Submission 11*, p. 1.

59 Mr Cameron Langfield, *Submission 11*, p. 1.

60 AGD, AIC and ACIC, *Submission 20*, p. 2.

61 AGD, AIC and ACIC, *Submission 20*, p. 3.

62 Dr Rebecca Scott Bray, Co-Director, SIC, *Submission 22*, p. 2.

63 Dr David Biles, *Submission 12*, pp. 1-2.

loyalty to colleagues and to the police service in general' whereas criminologists 'favour an environment which has close contacts with university' and where 'differences of opinion are expected and encouraged'.⁶⁴

2.51 Professor Makkai likewise argued that 'the AIC research culture will not survive the larger ACIC culture which is command and control, secretive and risk averse', and which has 'no track record of successfully managing either researchers or potential pitfalls of consultancies'.⁶⁵

2.52 The AGD, ACIC and AIC jointly emphasised that, while the proposed ACJRC would be more closely aligned with ACIC priorities and strategic goals than the AIC currently has been, there would be measures in place to ensure that the work of the centre would be guided by independent criminological research expertise.⁶⁶ The Minister also highlighted the positive impacts that the proposed merger would have on the capabilities of the ACC more broadly, stating that it would provide staff with all the resources it would need to access not just timely criminal intelligence, but also comprehensive consolidated research on issues of criminal justice.⁶⁷

Impact on AIC staff

2.53 Submitters raised both short and long-term concerns about the impact of the proposed merger on AIC staff, and potential future staff.

2.54 Both Professor Daly and Dr Scott Bray argued that the merger could lead to AIC staff losses,⁶⁸ with staff 'unwilling to work within an intelligence agency and its security compacts', as well as 'difficulties in recruiting suitable researchers suspicious of security organisational structures'.⁶⁹

2.55 The CPSU argued that the machinery of government changes which have led to AIC staff being transferred to the ACC and then seconded back to continue work has adversely impacted on the timely recruitment of researchers.⁷⁰ It noted that:

The AIC experienced a high rate of attrition between July 2015 and October 2016. The Institute lost 21 full-time equivalent (FTE) positions: 14 employees permanently left the Institute, four went on long-term maternity leave and three took leave without pay or secondment to other APS agencies. Fourteen of the 21 FTE were research positions.⁷¹

64 Dr David Biles, *Submission 12*, p. 2.

65 Professor Toni Makkai, ANU, *Submission 21*, p. 4.

66 AGD, AIC and ACIC, *Submission 20*, p. 2.

67 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 14 September 2016, p. 850.

68 Dr Kathleen Daly, GU, *Submission 5*, p. 2.

69 Dr Rebecca Scott Bray, Co-Director, SIC, *Submission 22*, p. 2.

70 CPSU, *Submission 19*, p. 3.

71 CPSU, *Submission 19*, p. 3.

2.56 The CPSU also noted, however, that 11 new 'AIC' employees have commenced since June 2016, and ten of those new employees are researchers.⁷²

The J V Barry Library

2.57 Mr John Myrtle, Principal Librarian of the JV Barry Library for 17 years, noted that since being moved to the ACC, the library has reduced in size with much of its holdings being located off-site, and is less accessible by virtue of being in a high security building.⁷³ He argued that:

Overall, the Institute's J V Barry Library has retreated from being a highly regarded open source information centre with comprehensive criminal justice collections, to a narrower service, principally serving the research requirements of the [ACC]. The irony is that the Institute's Library could operate in an open environment as part of an independent statutory authority and still provide information services for staff of the ACC.⁷⁴

2.58 In their joint submission, the AGD, ACIC and AIC confirmed that the J V Barry Library will be maintained and that the ACIC will continue to provide public access to its holdings, as the AIC currently does,⁷⁵ and noted that the EM has been amended to confirm this.⁷⁶ The EM states that public access will be by appointment only, as was the case when the library was separately housed in the AIC. Although the EM does not specifically address whether and how physical access to the library may be affected by housing it in a high security building, it does note that the AIC has begun digitising library holdings in order to enhance access.⁷⁷

Steps to merge the AIC with the ACC, despite the bill not yet having passed into law

2.59 The CPSU raised concerns about commencing the proposed merger despite the enabling legislation not having been enacted.⁷⁸ It noted that all AIC employees were transferred to the ACC 'via a machinery of government change in October 2015', before being seconded back to the AIC to ensure that institute could operate while legislation to enable the move was introduced in the Parliament.⁷⁹

2.60 The CLA argued that such actions indicate that the government has defied the Parliament (which is yet to pass the enabling legislation), and show contempt for both the Parliament and the rule of law.⁸⁰ Machinery of government changes are, however,

72 CPSU, *Submission 19*, p. 3.

73 Mr John Myrtle, *Submission 7*, p. 1.

74 Mr John Myrtle, *Submission 7*, pp. 1 - 2.

75 AGD, AIC and ACIC, *Submission 20*, p. 2.

76 AGD, AIC and ACIC, *Submission 20*, p. 2.

77 Explanatory Memorandum (EM), p. 9.

78 CPSU, *Submission 19*, p. 1.

79 CPSU, *Submission 19*, p. 3.

80 CLA, *Submission 13*, p. 1.

standard practice and will, as a matter of course, generate consequential legislative changes. The committee has no concerns about the transparency of this process in the case of the ACIC.

Lack of justification for a merger

2.61 A number of submitters questioned whether there was any justification for the proposed merger.

2.62 Professor Prenzler argued that, '[i]t is difficult to see how amalgamation of the Institute with another organisation would generate any public benefits'.⁸¹ Highlighting the differences in the work of the ACC and AIC, Professor Chappell argued:

I cannot perceive what real benefits will be gained by the proposed merger of the AIC with the ACIC. The fundamental aims and ethos of both agencies are radically different. The ACIC stands at the vanguard of active and vital law enforcement measures designed to combat serious organised criminal activity... The AIC's work...covers the entire spectrum of and justice policy and practice whether it affects law enforcement, prosecution, courts or corrections.⁸²

2.63 Dr David Biles OAM, who was employed at the AIC from 1974 to 1993, stated:

It is not clear to me why the ACC or ACIC, was interested in promoting this merger in general, or taking over part of the J V Barry Library in particular. Nothing I have read or heard suggests that measurable improvement can be seen in the performance of the ACIC. If the ACIC wanted to have more access to the AIC library there is no reason why they could not have had it simply by asking, as many other individuals and organisations have been doing for many years. On the other hand, the harm or damage done by the merger is easily identifiable. NO longer is there an independent and highly respected body of criminological knowledge that is widely available to governments at all levels, to other organisations and to Australian and overseas individuals.⁸³

2.64 The minister advised that this merger is intended to take place in order to establish the new ACIC.⁸⁴ Noting that CrimTrac has already been merged with the ACC, the minister stated:

Bringing three of our nation's justice, law enforcement and intelligence agencies together does significantly enhance support for law enforcement around the country and bolster Australia's response to serious and organised crime and national security issues. The new agency allows police, justice

81 Professor Tim Prenzler, USC, *Submission 6*, p. 1.

82 Professor Duncan Chappell, University of Sydney, *Submission 16*, pp. 1 - 2.

83 Dr David Biles OAM, *Submission 12*, p. 2.

84 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 14 September 2016, p. 850.

agencies and policy makers at all levels of government to adopt a more effective, efficient and evidence based response to crime.⁸⁵

2.65 The minister also explained that the new ACJRC, to be headed by a senior criminologist, would have 'increased access to classified information', meaning that its research would be expected to have 'increased value and relevance for Australian policy decision-making' and 'an enhanced evidence base to support a proactive and targeted response to crime by all of Australia's law enforcement community'.⁸⁶

2.66 The minister concluded that:

The merger will enable the ACIC to better fulfil its role as Australia's national criminal intelligence agency, supporting and informing the efforts of law enforcement agencies around the country.

Similarly, the new [ACJRC] held within the ACIC will continue to prepare and disseminate world-leading criminological research, which informs our understanding of the trends and developments in crime and justice.⁸⁷

Alternative proposals

2.67 A number of submitters discussed alternatives to merging the AIC and ACC. These included:

- moving the AIC to a university;⁸⁸
- posting a small cohort of AIC staff to the ACC to conduct research specific to the ACC;⁸⁹
- allocating 0.25% of the ACC's budget to the AIC to conduct research specific to the ACC;⁹⁰ and
- morphing the AIC from an organisation which conducts its own research, into one which funds and manages research by administering funding grants, similar to the US National Institute of Justice.⁹¹

2.68 Professor Makkai noted that National Commission of Audit recommended that the AIC be relocated to a university, and that this recommendation has been ignored.⁹² She submitted that for such a move to be effective, it would require 'an

85 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 14 September 2016, p. 850.

86 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 14 September 2016, p. 850.

87 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, *House of Representatives Hansard*, 14 September 2016, p. 850.

88 Professor Toni Makkai, ANU, *Submission 21*, p. 4; Professor Gloria Laycock, UCL JDISCS, *Submission 1*, p. 3; Professor Adam Graycar, Flinders University, *Submission 8*, p. 2.

89 Professor Gloria Laycock, UCL JDISCS, *Submission 1*, p. 3; Ms Mayhew, *Submission 14*, p. 2.

90 Professor Toni Makkai, ANU, *Submission 21*, p. 5.

91 Professor Toni Makkai, ANU, *Submission 21*, p. 5.

92 Professor Toni Makkai, ANU, *Submission 21*, p. 4.

affective contractual arrangement with strong high level board oversight coupled with a mandated review process'.⁹³ She argued that this option would provide researchers with access to the resources and infrastructure that a university could provide, as well as access to 'training of undergraduate and postgraduate students creating a pathway into the Institute's research programs'.⁹⁴

2.69 In contrast, Professor Laycock submitted that moving the AIC to a university would make the ACC's research capability worse (noting that the justification for the merger is to improve the ACC's research capabilities), and submitted that agencies such as the ACC are 'more open to research that is sponsored by a government organisation than by a university'.⁹⁵ Professor Graycar likewise argued that moving the AIC to a university would be a better idea than merging it with the ACC, but was not the best solution.⁹⁶

Committee view

2.70 This is the second inquiry of this committee into a bill proposing to enable the merger of the AIC and ACC. When the committee inquired into the 2015 version of this bill it expressed support for the bill's objectives, and accepted the ACC and AGD's assurances that the independence and integrity of criminological research would be maintained.⁹⁷ The committee recommended that the Senate pass the bill.

2.71 Despite the relatively short time for inquiring into this bill, the committee received 25 submissions to this inquiry from as far afield as Italy and the United Kingdom. It is clear that the AIC has developed a global reputation for excellence in criminological research. The committee notes concerns that have been raised regarding the quality of AIC output following the merger but are of the view that the government would not jeopardise the safety of Australian citizens or the efficacy of Australian law enforcement by diluting the utility of this critical resource.

2.72 The committee has reflected carefully on the issues raised by submitters to this inquiry, in particular concerns about the independence of the ACJRC, the credibility of its research (perceived and actual), and management of the ACJRC's research agenda, noting that the research arm's research priorities 'will become more closely aligned with law enforcement's high-level priorities'.⁹⁸

2.73 The committee notes concerns raised regarding the independence of research conducted by the AIC as the ACJRC. The committee is of the view that independence can be ensured through legislative and non-legislative safeguards (including the input of a Research Advisory Committee), and regular parliamentary scrutiny of the work of

93 Professor Toni Makkai, ANU, *Submission 21*, p. 5.

94 Professor Toni Makkai, ANU, *Submission 21*, p. 5.

95 Professor Gloria Laycock, UCL JDISCS, *Submission 1*, p. 3.

96 Professor Adam Graycar, Flinders University, *Submission 8*, p. 2.

97 Legal and Constitutional Affairs Legislation Committee, *Australian Crime Commission (Criminology Research) Bill 2015*, November 2015, p. 13.

98 AGD, AIC and ACIC, *Submission 20*, p. 2.

the ACIC (such as would take place at Senate Budget Estimates, and in the scrutiny of Annual Reports). It is also clear from the submissions to this inquiry that any research outputs by the proposed ACJRC would be subject to scrutiny by the national and international fraternity of criminologists and associated professionals.

2.74 The committee believes that the same safeguards could be applied in relation to the research agenda of the proposed ACJRC, and the different working cultures of criminal intelligence and criminology research communities. While the ACJRC would be a relatively small wing of the proposed ACIC, that does not mean that the research wing would necessarily be subsumed into the culture of the broader organisation. Again, regular scrutiny would help to ensure that while a research wing operated as part of a broader criminal intelligence organisation, and actively participated in improving the research capabilities of that organisation, the wing itself would be engaging in a related but separate endeavour.

2.75 The committee notes the comments of the CPSU, but does not agree that the recent staff re-organisation at the AIC indicates that the proposed merger is flawed. The committee is pleased to note that since the re-organisation, the AIC has hired ten new researchers.

2.76 The committee notes that the collections of the JV Barry Library will be retained and that public access will continue. The committee commends the AIC for beginning the process of making its holdings more accessible through digitisation.

2.77 The committee supports the objectives of this bill and recommends that it be passed by the Senate.

Recommendation 1

2.78 The committee recommends that the Senate pass the bill.

**Senator the Hon Ian Macdonald
Chair**

Dissenting Report of the Australian Labor Party

1.1 The Australian Crime Commission Amendment (Criminology Research) Bill 2016 (the bill) should not be passed. The proposed merger is unnecessary, and would lead to the degradation of valuable independent criminological research.

Independence of research is critical

1.2 As the majority of submitters to this and previous inquiries highlighted, the independence of the Australian Institute of Criminology (AIC) is critical. Labor senators agree that the proposed merger will impinge on the capacity of criminologists working as part of the Australian Crime Intelligence Commission (ACIC) to produce independent research. Correspondingly, it would jeopardise the quality of crime research in Australia. The AIC is also the only independent source of nation-wide crime statistics in Australia. It is not in the public or national interest for such statistics to be seen to be anything less than completely accurate and compiled by independent and skilled professionals. The continued integrity and independence of criminological research in Australia is vital for both the quality of research itself, and the public trust in crime statistics.

Breadth of research should be maintained

1.3 The breadth of the AIC's research is also a serious consideration. The AIC is an internationally renowned institute undertaking general criminological research on a wide range of areas, from child sexual assault to lockout laws, recidivism and problem gambling. Under the planned merger, the ACIC would be responsible for setting the research agenda. Historically, the ACIC's aim has been to 'reduce serious and organised crime threats of most harm to Australians and the national interest'. Clearly, many of the AIC's research projects would not fit within that framework.

1.4 Labor senators believe there is a serious risk that many of the AIC's research projects unrelated to organised crime and other ACIC priorities would be neglected and ultimately abandoned. Labor senators are concerned that the merger would see the AIC shift from important research about high-volume crimes such as assault, domestic violence and theft. These crimes cost the Australian community billions of dollars. A degradation of the research and statistical data in these areas would have broad-reaching impacts. Law- and policy-makers should be able to turn to reliable and credible data in these areas to inform the development of effective and responsive policies.

The proposed merger is unnecessary

1.5 Labor senators also note that the proposed merger will not save any significant amount of money. As the Explanatory Memorandum states, the merger will deliver only small savings over the forward estimates.

1.6 Labor senators believe that merging two bodies with very different aims and functions will be inefficient. Even the 2014 National Commission of Audit did not suggest the possibility of the AIC merging with the ACIC (then the ACC), proposing instead the possible relocation of the AIC to a university.

Conclusion

1.7 There are better ways to improve information sharing between the AIC and ACIC. Access to classified data can be secured through legislation or inter-agency agreements. A merger is not required.

Recommendation 1

1.8 Labor senators recommend that this bill not be passed.

Senator Louise Pratt
Deputy Chair

Dissenting Report of the Australian Greens

1.1 The Australian Crime Commission Amendment (Criminology Research) Bill 2016 seeks to merge the functions of the Australian Institute of Criminology (AIC) into the Australian Crime Commission (ACC).

1.2 This bill was first introduced in 2015 and lapsed on prorogation of the parliament in May 2016. The 2016 bill has had changes made to the Explanatory Memorandum.

1.3 The government has stated that it sees great opportunity in combining the resources of the AIC and ACC to provide Australian law enforcement agencies with central access to a consolidated and comprehensive criminal research and intelligence resource.

1.4 As per the previous inquiry into this bill, the majority of submitters raised significant concerns about the proposed merger. Professor Adam Graycar AM, former Director of the AIC stated that 'people are less likely to take the output seriously and give it credibility. Without credibility research is hollow'.¹

1.5 Concerns were expressed to the committee that merging the research function of the AIC with the law enforcement function of the ACC would compromise the perception of the independence of the AIC.

1.6 Professor Duncan Chappell submitted that the 'fundamental aims and ethos of both agencies are radically different',² and Professor Peter Norden AO, a fellow of the Australian and New Zealand Society of Criminology (ANZSOC) submitted that, 'the suggestion that an academic research body such as the AIC being able to successfully merger with an intelligence agency...shows a complete lack of understanding of the role of the two bodies'.³

Conclusion

1.7 Should this bill pass there is a significant risk that broad ranging criminological research that focusses on understanding the causes of crime, and recommending crime prevention strategies, will take second place to the law enforcement needs of the ACC.

1.8 The government's stated aim of providing Australian law enforcement agencies with central access to criminological research could have been achieved by administrative changes which would not require merging the AIC into the ACC.

1 Professor Adam Graycar AM, Flinders University, *Submission 8*, p. 2.

2 Professor Duncan Chappell, University of Sydney, *Submission 16*, pp. 1 - 2.

3 Professor Peter Norden AO, Adjunct Professor, School of Global, Urban and Social Studies, RMIT University Melbourne (RMIT), *Submission 3*, p. 1.

Recommendation 1

1.9 The Australian Greens recommend that the bill be rejected by the Senate.

**Senator Nick McKim
Australian Greens**

Appendix 1

Public submissions

- 1 Professor Gloria Laycock PhD FRSA OBE
- 2 Professor Ernesto Savona
- 3 Mr Peter Grabosky
- 4 Adjunct Professor Peter Norden
- 5 Professor Tim Prenzler
- 6 Professor Kathleen Daly
- 7 Mr John Myrtle
- 8 Professor Adam Graycar
- 9 Griffith Criminology Institute
- 10 Dr Jason Payne
- 11 Mr Cameron Langfield
- 12 Dr David Biles OAM
- 13 Ms Pat Mayhew
- 14 Civil Liberties Australia
- 15 Australian Crime Prevention Council
- 16 Professor Duncan Chappell
- 17 Mr Michael O'Connell, Commissioner for Victims Rights, South Australia
- 18 Australian and New Zealand Society of Criminology
- 19 Community and Public Sector Union
- 20 Attorney-General's Department, the Australian Criminal Intelligence Commission and the Australian Institute of Criminology
- 21 Professor Toni Makkai, Emeritus Professor of the ANU College of Arts and Social Sciences
- 22 Sydney Institute of Criminology
- 23 Professor Murray Lee
- 24 Professor Roderic Broadhurst
- 25 Professor Michael Levi PhD, DSc (Econ), FAcSS, FLSW

