

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
AUSTRALIAN CRIME COMMISSION

**Question No. 62**

**Senator Ludwig asked the following question at the hearing on 14 February 2006:**

Of the 20 or so cases or challenges against the ACC, following the commencement of Operation Wickenby:

- a) What was the nature of each challenge?
- b) Was the challenge successful at the primary judgement?
- c) If ACC did not appeal the decision, why not?
- d) Have any of the appeals been heard, or finalised?
- e) Where you did not appeal a case lost by the ACC, what remedial action (legislative amendment for example) was undertaken?

**The answer to the honourable senator's question is as follows:**

**Overview**

Since 1 January 2003, 23 challenges have been made against the ACC in the Federal Court.

In respect of ACC Operation Wickenby there have been seven challenges before a primary judge in the Federal Court since the commencement of the Operation in June 2005.

Responses to each of the questions are provided in the following table.

<b>MATTER AND COURT CITATION</b>	<b>(A) NATURE OF CHALLENGE</b>	<b>(B) WAS THE CHALLENGE SUCCESSFUL AT PRIMARY JUDGMENT</b>	<b>(C) WHY DID THE ACC NOT APPEAL THE DECISION?</b>	<b>(D) HAVE APPEALS BEEN HEARD OR FINALISED</b>	<b>(E) REMEDIAL ACTION TAKEN BY THE ACC WHERE APPEAL WAS LOST</b>
Stoten v. Sage [2005] FCA 935	Whether spouse could refuse to answer questions because of doctrine of spousal privilege.	No	ACC appeal not required	Not applicable	Not applicable

B v ACC [2005] FCA 1314	Validity of section 4A of the <i>ACC Act 2002</i> and compliance of terms of the Summons with the <i>ACC Act</i> .	No	ACC appeal not required.  The Applicant has appealed the decision	Yes.  By a majority of 2-1, the Full Federal Court dismissed the Applicant's appeal	Not applicable
B v ACC (No 2) [2005] FCA 1368	Release of the applicant's name to the media.	No	ACC appeal not required	Not applicable	Not applicable
C, R, D, A and M v ACC [2005] FCA 1736	Application to use pseudonyms in Federal Court proceedings	Yes, but the ACC supported the Application	ACC appeal not required	Not applicable	Not applicable
B2, C, R, D, A and M v ACC [2006] FCFA 5	Challenge to validity of section 4A of the <i>ACC Act</i> and Summonses.	No	ACC appeal not required  An appeal to the High Court by the applicant has been foreshadowed	Not applicable	Not applicable
A2 v. ACC [2006] FCA 27	Application to access to affidavits used in support of a search warrant application	No	ACC appeal not required	Not applicable	Not applicable
A2 v. ACC [2006] FCA 106	Challenge to the ACC's power to apply for 3E <i>Crimes Act 1914</i> search warrants in support of a special investigation	No	ACC appeal not required.  The Applicant had not appealed however the date for filing has not yet expired	Not applicable	Not applicable.

<p>Hogan v ACC [2005] FCA 913</p> <p>This is not a Wickenby matter but the decision had implications for Operation Wickenby investigations</p>	<p>Whether the ACC Act abrogates privilege against self-incrimination; and the right to legal representation by a chosen adviser.</p>	<p>Yes.</p>	<p>ACC appeal not required.</p>	<p>Not applicable</p>	<p>It is not proposed to seek legislative amendment as the case turned on its own facts. The ACC is presently drafting its Practice and Procedures Manual to reflect the decision.</p>
<p>AA Pty Ltd v ACC [2005] FCA 1178</p> <p>This is not a Wickenby matter but the decision had implications for Operation Wickenby investigations.</p>	<p>Whether the ACC could disseminate information to the ATO, in particular whether the ATO is a 'law enforcement agency' within the meaning of that term under the <i>ACC Act</i>.</p>	<p>Yes</p>	<p>The ACC appealed the decision and argument was heard by the Full Federal Court on 21 February 2006.</p>	<p>The Court has reserved its decision.</p>	<p>After the primary judgment Regulations to the ACC Act were amended prescribing the ATO (and other agencies) as bodies to which the ACC could disseminate information under section 59(7) of the <i>ACC Act 2002</i>.</p>