

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
AUSTRALIAN CRIME COMMISSION

**Question No. 77**

**Senator Ludwig asked the asked the following question at the hearing on 25 May 2006:**

Please provide an update to the reply to Question No. 62 from 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 judgment?
- 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:**

In respect of ACC Operation Wickenby, the following judgments have been delivered in the Federal Court and the High Court or the proceedings have been otherwise discontinued.

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                                                          | The decision was not appealed                       | Not applicable                                  | Not applicable                                                    |

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| B v ACC<br>[2005] FCA<br>1314 (first<br>instance) and on<br>appeal reported<br>as S v ACC<br>[2006] FCFCA 5 | Challenge to the<br>constitutional<br>validity of the<br>ACC Act.                                               | No                                               | The Applicant<br>appealed the<br>decision to the<br>Full Federal<br>Court and then<br>sought special<br>leave to appeal<br>that decision in<br>the High Court      | By a majority of<br>2-1, the Full<br>Federal Court<br>dismissed the<br>appeal.<br><br>The High Court<br>refused the<br>application for<br>special leave to<br>appeal.<br><br>The matter is<br>finalised      | Not applicable |
| B v ACC (No 2)<br>[2005] FCA<br>1368                                                                        | Release of the<br>applicant's name<br>to the media.                                                             | No                                               | The decision<br>was not appealed                                                                                                                                   | Not applicable                                                                                                                                                                                               | Not applicable |
| C, R, D, A and<br>M v ACC<br>[2005] FCA<br>1736                                                             | Application to<br>use pseudonyms<br>in Federal Court<br>proceedings                                             | Yes, but the<br>ACC supported<br>the Application | The decision<br>was not appealed                                                                                                                                   | Not applicable                                                                                                                                                                                               | Not applicable |
| B2, C, R, D, A<br>and M v ACC –<br>in the Full<br>Federal Court<br>reported as S v<br>ACC [2006]<br>FCFCA 5 | Challenge to the<br>constitutional<br>validity of the<br>ACC Act.                                               | No                                               | The Applicants<br>were<br>unsuccessful<br>before the Full<br>Federal Court<br>and then sought<br>special leave to<br>appeal that<br>decision in the<br>High Court. | By a majority of<br>2-1, the Full<br>Federal Court<br>dismissed the<br>application.<br><br>The High Court<br>refused the<br>application for<br>special leave to<br>appeal.<br><br>The matter is<br>finalised | Not applicable |
| B3 v ACC VID<br>236 of 2006                                                                                 | Challenge to<br>Summons to<br>appear at an<br>ACC<br>Examination,<br>relying upon the<br>same grounds as<br>B2. | No                                               | The matter was<br>discontinued<br>following the<br>outcome in B2.                                                                                                  | The matter is<br>finalised                                                                                                                                                                                   | Not applicable |

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| B4 v ACC 402 of 2006                                                                                                                                                                           | Injunction sought to prevent an Examination on the basis that the Examination may traverse matters that are the subject of an LPP claim                                  | No   | The decision was not appealed                             | The application for an injunction was unsuccessful, but the Federal Court referred a claim that documents were subject to LPP to a mediation process. | Not applicable                                                                                                                                                                                                |
| A2 v. ACC [2006] FCA 27                                                                                                                                                                        | Application to access to affidavits used in support of a search warrant application                                                                                      | No   | The decision was not appealed                             | 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   | A2 has appealed the decision                              | The matter has not been finalised.                                                                                                                    | Not applicable.                                                                                                                                                                                               |
| Hogan v ACC [2005] FCA 913<br><br>This was not a Wickenby matter but the decision had implications for Operation Wickenby investigations                                                       | Whether the ACC Act abrogates privilege against self-incrimination; and the right to legal representation by a chosen adviser.                                           | Yes. | The decision was not appealed by the ACC or the applicant | Not applicable                                                                                                                                        | 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.                               |
| AA Pty Ltd v ACC [2005] FCA 1178 at first instance<br><br>ACC v AA Pty Ltd [2006] FCAFC 30<br><br>(note This was not a Wickenby matter had implications for Operation Wickenby investigations) | 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 ACC Act. | Yes  | The ACC appealed the decision                             | The ACC succeeded on appeal                                                                                                                           | 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 ACC Act 2002. |