

Government Response

Parliamentary Joint Committee on the Australian Crime Commission Report

Review of the Australian Crime Commission Act 2002

Recommendation 1: The Committee recommends that the Attorney General's Department and the Australian Crime Commission develop legislation as a matter of urgency to ensure that a person summonsed by the ACC, at a time when they are the subject of criminal or confiscation proceedings, may only be examined in relation to matters quarantined from those material to the pending proceedings.

Accepted

The Government agrees that it is appropriate to develop legislation to ensure a person subject to criminal proceedings is not able to be examined in relation to matters material to the pending proceedings. The Government notes that this issue is the subject of a current appeal to the Full Court of the Federal Court of Australia following the Federal Court's decision in *OK v Australian Crime Commission*¹.

Recommendation 2: The Committee recommends that both the summons and the memorandum be revised to ensure that as far as possible, recipients understand what is required of them, and that procedures allowing adjournments for the purpose of seeking legal advice be included in the ACC's examination practice.

Accepted and completed

Recommendation 3: The Committee recommends that the ACC develop without delay, a practice and procedure manual for the benefit of practitioners and those summoned for examination or to produce documents.

Accepted and completed

Recommendation 4: The Committee recommends that the ACC in consultation with the Attorney General's Department identify barriers to information sharing, and where regulatory or legislative remedies are necessary these be developed and implemented.

Accepted

Continued information sharing is vital to the effectiveness of the intelligence function and the success of the Australian Crime Commission (ACC). Steps have been taken to ensure the ACC can share information with appropriate government agencies by prescribing a list of agencies and amending the *Australian Crime Commission Regulations 2002*. Further consideration may be given to information sharing with the private sector.

¹ [2009] FCA 1038.

The Government notes that this recommendation was made in the context of information sharing between the ACC and non-police government agencies. At the time of the Committee's review, a Federal Court decision prevented the ACC from disseminating information to Commonwealth agencies that were not a police force unless they were prescribed by regulation under the *Australian Crime Commission Act 2002* (ACC Act). In response to this decision, which has since been overturned by the Full Federal Court, regulations have been made facilitating information sharing between the ACC and other relevant government agencies.

Recommendation 5: The Committee recommends that the ACC consider statutory proposals to amend the ACC Act to provide categories of ACC officers with the necessary identified powers, including such matters as the powers to apply for or execute a warrant, and the right to carry a firearm. These should replace the current system of the use of Australian Federal Police special constable provisions.

Not Accepted

The secondment of State and Territory police and access to Australian Federal Police (AFP) special member status for some ACC staff enables the ACC to carry out its functions. The Government recognises that further consideration of providing the ACC with enforcement powers may be necessary in the future.

Recommendation 6: The Committee recommends that the ACC Act be amended to provide for the appointment of the Commissioner of Taxation to the ACC Board.

Accepted

The *Crimes Legislation Amendment (Serious and Organised Crime) Act No. 2 2010* amended the ACC Act to include the Commissioner of Taxation as a member of the ACC Board.

Recommendation 7: The Committee recommends that formal arrangements be instituted to confirm the current practice of reporting allegations of misconduct to relevant accountability organisations, including the PJC, the IGC, the Commonwealth Ombudsman, and the proposed Australian Commission for Law Enforcement Integrity.

Accepted

The ACC has well established processes for communicating with the Commonwealth Ombudsman on complaints against the ACC or members of its staff relating to serious matters of alleged misconduct or corruption. Processes for reporting of matters to the Australian Commission for Law Enforcement Integrity (ACLEI) are contained in the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act). The Government does not consider it appropriate for formal mechanisms to be put in place for allegations of misconduct to be reported to the Parliamentary Joint Committee on the Australian Crime Commission (PJC-ACC) or Inter-Governmental Committee of the Australian Crime Commission.

Recommendation 8: The Committee recommends that formal arrangements be put in place to require the Commonwealth Director of Public Prosecutions to notify the Commonwealth Ombudsman, and the proposed Australian Commission for Law Enforcement Integrity of any allegations of misconduct by officers of the ACC.

Accepted

The ACC has well established processes for communicating with the Commonwealth Ombudsman on complaints against the ACC or members of its staff relating to serious matters of alleged misconduct or corruption. Processes for reporting of matters to ACLEI are contained in the LEIC Act. The Government does not consider that separate formal arrangements are required in relation to the Commonwealth Director of Public Prosecutions.

Recommendation 9: The Committee recommends that the CEO of the ACC direct, in the ACC Policy and Procedures, that in any case where the ACC procedurally has a choice of regulatory regime for the use of investigatory powers, it adopts as a matter of practice, the Commonwealth protocols.

Not Accepted

The ACC works in close collaboration with States and Territories on various investigations and it may be more appropriate for the ACC to pursue other regimes and protocols than those of the Commonwealth to meet operational requirements.

Recommendation 10: The Committee recommends that section 55AA of the Australian Crime Commission Act 2002 be amended to broaden the scope of the Commonwealth Ombudsman's briefing to the PJC to include any matter relating to the operations of the ACC.

Noted

The Government will give further consideration to the issues raised in this recommendation as part of a proposal to improve the operation and accountability of the ACC's powers.

Recommendation 11: The Committee recommends that the ACC Act 2002 be amended to provide explicit requirements to Board agencies to provide enumerated classes of information to the PJC on the ACC.

Not Accepted

The Government considers that it would be inappropriate to legislate to require State and Territory government agencies to provide information to a Commonwealth Parliamentary Committee. Such a requirement may conflict with legislation that those agencies currently operate under. In addition, the Committee noted that in most cases agencies cooperate with the PJC-ACC to provide the required information.

Recommendation 12: The Committee recommends that the Australian Commission for Law Enforcement Integrity Bill, when introduced, include provisions that provide for scrutiny of the agency's operations by this Committee.

Not Accepted

The effective oversight of the ACC would be compromised if the Committee charged with scrutinising its activities also had responsibility for scrutinising the activities of ACLEI, a body charged itself with scrutinising specific aspects of the ACC.

The LEIC Act commenced operation on 30 December 2006. ACLEI is responsible for investigating allegations of corruption in the ACC and the AFP. As such, the LEIC Act provides that a separate Parliamentary Joint Committee oversee its operations.

Recommendation 13: The Committee recommends that the Parliament create a new Parliamentary Joint Committee on Commonwealth Law Enforcement, with jurisdiction to supervise the operations of the Australian Crime Commission, the Australian Federal Police and other Commonwealth law enforcement agencies.

Accepted

The Parliamentary Joint Committee on Law Enforcement Bill 2010 (the Bill) was introduced into Parliament on 18 March 2010, and is currently being considered by the Senate Legal and Constitutional Affairs Committee. An exposure draft of the Bill was circulated with the Discussion Paper on proposed legislative reforms to Australia's counter-terrorism and national security legislation which was released on 12 August 2009.

Recommendation 14: The Committee recommends that the legislation for the creation of the Australian Commission for Law Enforcement Integrity includes provision for the Committee to refer matters to the Commission for investigation, with a requirement to report to the Committee on the results of such investigations. This ensures the completeness and effectiveness of arrangements for scrutinising the operations of agencies, and - were its jurisdiction expanded as recommended above - prevents the Committee's workload from becoming too great for effective Parliamentary supervision of the relevant agencies.

Accepted-In-Principle

Under section 23 of the LEIC Act, a member of the PJC-ACC can refer allegations of corruption in the ACC and AFP to the Integrity Commissioner for investigation either personally or on behalf of the PJC-ACC. However, it should be noted that ACLEI's role is not to undertake investigations on behalf of the PJC-ACC.

Under section 25 of the LEIC Act, a person making a referral may elect to be kept informed of the action taken by ACLEI in response to the referral. For example, where the Integrity Commissioner decides to investigate a matter referred under section 23 and the person has elected to be kept informed in accordance with section 25, the Integrity Commissioner must take steps as the Integrity Commissioner

considers reasonable to keep the person informed of the progress of the investigation of that corruption issue. Further, in accordance with subsection 58(1), the Integrity Commissioner must also advise the person of the outcome of the investigation of the corruption issue.

It would not be appropriate for the PJC-ACC, charged with oversight of the ACC, to also scrutinise ACLEI's activities.

Recommendation 15: The Committee recommends that where priority issues involving the ACC arise, the Commonwealth continue to grant funds on a 'once-off basis' when this occurs between budgetary cycles.

Noted

The Government will provide the ACC with tied funding for specific purposes subject to normal budgetary processes.

Recommendation 16: The Committee recommends that the issue surrounding the employment of secondees be addressed as a priority. Any review should address the standardisation of salary and working conditions through the development of a common secondment arrangement, as well as the implications of this system on the integrity and disciplinary framework.

Accepted

There have been attempts to introduce a common employment framework which have proven challenging due to the wide disparity in conditions in different jurisdictions. Seconded arrangements were reviewed in August 2009 and the ACC intends to amend the arrangements so that secondees retain the salary and conditions of service applicable to their home jurisdiction. This will provide the following benefits:

- certainty on the use of relevant police powers when seconded
- more flexibility in the timing of secondments and capacity to extend where required for operational purposes
- greater capacity to attract secondees to the ACC as they will not need to alter employment arrangements
- some state police officer conditions, particularly in relation to superannuation, are affected by the movement to leave without pay, and
- reduced administration the ACC due to the requirements around recruitment under the *Public Service Act 1999* leading to more efficient recruitment and management.

Ongoing efforts will be made towards standardisation of salary and working conditions. However, this is a complex matter that requires detailed consideration and consultation at Commonwealth, State and Territory government level.

Recommendation 17: The Committee recommends that section 46B of the Australian Crime Commission Act 2002 be amended to provide that the maximum number of examiners allowed to work with the Commission at any one time be limited to three. The Committee also recommends that a further provision be inserted

allowing the regulations to review and prescribe a higher number of examiners if and when the need arises.

Not Accepted

There are currently four examiners appointed under the ACC Act. The Government is open to considering provision for part-time or short duration appointments to meet the operational cycles. While examiners may be appointed for a maximum of ten years, the Government considers that the ACC requires a degree of flexibility to stagger and overlap appointments to enable examination programs to continue effectively and efficiently and to maintain a high degree of examiner expertise.

Recommendation 18: The Committee recommends that regulatory, or if necessary legislative changes be introduced to allow persons summonsed for an Examination to be eligible for legal aid from the legal aid commissions, subject to the usual means tests.

Not Accepted

The Attorney-General's Department already provides assistance in ACC proceedings under section 27 of the ACC Act. The Department also provides assistance to witnesses before other Australian Government bodies, royal commissions and other major inquiries under a range of other schemes.

It is not accepted that allowing legal aid commissions to provide assistance directly would be a 'far more efficient procedure for representation than having to provide an application to a government department before even approaching a lawyer' as stated in the report. There would be little difference if the statutory scheme arrangements were administered by legal aid commissions rather than the Department. Grants of aid from legal aid commissions are made for specific purposes and a lawyer would still need to make a separate application for a grant of aid for an appearance before the ACC, even if a grant of aid had previously been made for a related criminal matter.

The Attorney-General's Department administers 26 statutory and non-statutory schemes of legal assistance and has demonstrated its capability of efficiently assessing applications for grants of assistance. It is also noted that the ACC Act scheme gives rise to a relatively small number of applications (six applications were received in 2008–2009 and ten in 2007–2008), all of which are dealt with promptly.

It is not correct to say that applicants must contact the Department before approaching a lawyer. In the Department's experience, most, if not all, applicants for assistance under the scheme have contacted a lawyer before applying for assistance. In most cases this is a lawyer who has been assisting the applicant with matters related to the examination before the ACC.