



Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements

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Acronyms and Abbreviations

ABF	Australian Border Force
ACC	Australian Crime Commission
ACC Act	<i>Australian Crime Commission Act 2002</i>
ACIC	Australian Criminal Intelligence Commission
AGD	Attorney-General's Department
AIC	Australian Institute of Criminology
AFP	Australian Federal Police
APS	Australian Public Service
ASD	Australian Signals Directorate
ASIC	Australian Securities and Investment Commission
ASIC/MSIC	Aviation Security Identification Card/Maritime Security Identification Card
ASIO	Australian Security Intelligence Organisation
ATO	Australian Taxation Office
ATSOCC	Australian Transnational Serious and Organised Crime Committee
AUSTRAC	Australian Transaction Reports and Analysis Centre
CR Act	<i>Criminology Research Act 1971</i>
Crimes Act	<i>Crimes Act 1914 (Cth)</i>
FOI Act	<i>Freedom of Information Act 1982 (Cth)</i>
Home Affairs	Department of Home Affairs
IGIS	Inspector-General of Intelligence and Security
NCA	National Crime Authority
NCCHC	Nationally Coordinated Criminal History Checks
NCIS	National Criminal Intelligence System
NIC	National Intelligence Community



NPCS	National Police Checking Service
NPP	New Policy Proposal
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PJCIS	Parliamentary Joint Committee on Intelligence and Security
PJCLE	Parliamentary Joint Committee on Law Enforcement
SD Act	<i>Surveillance Devices Act 2004</i>
SOCCC	Serious and Organised Crime Coordination Committee
TIA Act	<i>Telecommunications (Interception and Access) Act 1979</i>

Context of the Review

The *Australian Crime Commission Act 2002* (ACC Act) provides the statutory basis for the Australian Criminal Intelligence Commission (ACIC). The ACIC was established in 2016 through the merger of the Australian Crime Commission (ACC) and CrimTrac to ensure Australia was using its national law enforcement information and intelligence capabilities as effectively as possible to support police agencies in protecting the community. The functions of the ACIC, provided for under section 7A of the ACC Act, set out at a high level the Commission's contribution to the Commonwealth law enforcement and criminal intelligence capabilities.

On 27 July 2023, the Prime Minister approved the commission of the Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements (the Review). The Review is a 'first principles' review, intended to assess the operation and effectiveness of the ACIC as Australia's national criminal intelligence agency within the context of Commonwealth law enforcement and criminal intelligence arrangements more broadly. The Terms of Reference for the Review are at Appendix 1.

This version of the Report has been prepared for public release with the removal of sensitive information to ensure that intelligence and law enforcement capability is not compromised. Changes from the classified version have been kept to a minimum.

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Executive Summary

The threat and impact of serious and organised crime on Australia continues to grow. There is significant benefit in Australia having a specialised and highly skilled national criminal intelligence organisation supporting the disruption work of law enforcement agencies. However, we have concluded that at present the ACIC is inhibited from fulfilling this intelligence mandate by a lack of clarity about its role, complicated legislative frameworks and uncertainty about its funding.

Through the Review, we have reached the conclusion that comprehensive reform of the ACIC and the *Australian Crime Commission Act 2002* is required to ensure the ACIC can be better positioned as Australia's national criminal intelligence agency. For the Commission, this requires a shift away from its existing law enforcement or investigative powers and functions. Instead, the ACIC would be focused on providing unique and incisive intelligence on serious and organised crime to Commonwealth, state and territory law enforcement agencies.

Accordingly, we recommend existing powers under telecommunications and surveillance devices legislative frameworks be shifted from an evidentiary collection and investigative threshold to a threshold that aligns with the ACIC's role in intelligence collection. This would allow the ACIC to develop a more flexible and agile intelligence collection posture, differentiating it from law enforcement agencies. This should also allow the ACIC to produce more actionable and targeted intelligence that is responsive to law enforcement needs and supports partners to achieve operational outcomes.

We consider the existing coercive powers of the ACIC remain a valuable tool for the Commission, complementing its covert collection capabilities. But they require a more legally robust framework. We recommend this would involve a 'double lock' approval process requiring authorisation by the Attorney-General for the use of coercive powers in relation to nominated criminal networks, with each individual summons or notices then also considered and issued by an independent Examiner. This process would aim to provide a more legally robust framework without reducing flexibility or timeliness of operations.

In addition to the recommendations that require comprehensive legislative reform, we also make recommendations on external governance to provide a clearer focus on national strategy, and on internal governance to improve the way that risk is identified and managed by the Commission. This includes recommendations that go to organisational design within the ACIC, including strengthening its in-house legal and risk assurance functions. We also make recommendations on the Commission's capabilities and workforce, its public profile, and funding arrangements. Finally, the recommendations also address the future of the Australian Institute of Criminology (AIC), which is currently partially merged with the ACIC.

We acknowledge the scale of the reform proposed is significant. Implementing these recommendations and reforming the ACIC to be a first-class criminal intelligence agency will take time, commitment and investment. We also recognise the recommendations will mean a significant period of change for the Commission, and law enforcement partners. However, we consider these changes will deliver significant benefit to efforts to make Australia hostile to serious and organised crime.

A handwritten signature in dark ink, appearing to read 'Stephen Merchant', with a stylized, flowing script.

Stephen Merchant PSM

A handwritten signature in dark ink, appearing to read 'Greg Wilson', with a stylized, flowing script.

Greg Wilson

Recommendations

Roles and Functions

Recommendation 1

As Australia's national criminal intelligence agency, the ACIC have two distinct roles:

- To obtain, analyse, evaluate and communicate intelligence relating to serious and organised crime in Australia, including where it has a transnational dimension.
- To ensure there are systems and services that enable criminal intelligence and police information to be shared across jurisdictions, including the provision of Nationally Coordinated Criminal History Checks.

In undertaking those roles, the ACIC work closely with Commonwealth and state and territory jurisdictions.

Recommendation 2

The *Australian Crime Commission Act 2002* be repealed and replaced.

Recommendation 3

To reduce duplication of effort between agencies:

- the ACIC be responsible for the production of intelligence on the impact of serious and organised crime on the border,
- the Australian Federal Police (AFP) second intelligence analysts to the ACIC to help reduce duplication of effort, ensure the ACIC's and AFP's access to relevant operational intelligence, and build the AFP's confidence in the ACIC, and
- the secondment of state and territory police intelligence analysts into the ACIC continues.

Powers

Recommendation 4

The ACIC's ability to use covert collection powers under the *Telecommunications (Interception and Access) Act 1979*, *Surveillance Devices Act 2004* and other relevant legislation be aligned with the agency's intelligence function. Legislation should allow ACIC intelligence collected under covert powers to be used as evidence in limited circumstances and at the discretion of the ACIC.

Recommendation 5

The ACIC retain its ability to utilise coercive powers incorporating a 'double lock' approval process which utilises authorisations by the Attorney-General and an independent Examiner.

Recommendation 6

Existing provisions in the *Australian Crime Commission Act 2002* relating to the qualifications, appointment, independence and tenure of Examiners be retained in the new legislation.

Recommendation 7

The Solicitor-General be provided the opportunity to provide advice on the formulation of the draft legislative provisions and instruments underpinning the exercise of coercive powers.

Recommendation 8

Following implementation of the new legislation, the ACIC undertake an annual assessment of the coercive powers authorisation instruments to enable early identification and remediation of any vulnerabilities which might result in a successful legal challenge to the powers.

Recommendation 9

The ACIC have controlled operations-style powers with an intelligence collection purpose, similar to the Special Intelligence Operations framework in the *Australian Security Intelligence Organisation Act 1979*.

The ACIC not have the legal function of undertaking operations that are primarily designed to disrupt criminal activities.

Recommendation 10

ACIC staff be able to apply for and execute relevant warrants for the purposes of the ACIC's intelligence functions. This does not require the establishment of a class of ACIC authorised officers.

A formal mechanism be established, and appropriately resourced, for the ACIC to reliably receive support from the AFP for the provision of policing powers. These arrangements replace the existing practice of ACIC officers being sworn in as special members by the AFP.

Such an arrangement not preclude state or territory police agencies from providing support through the provision of policing powers to the ACIC where collection of particular intelligence is a priority for their jurisdiction.

Recommendation 11

The new legislation for the ACIC contain information disclosure provisions that enable the ACIC to:

- use its intelligence to inform all its legislated functions, and
- share it in a timely and equitable way with relevant government entities (Commonwealth, states and territories) and other agencies to assist those agencies perform their functions, as well as private sector bodies.

External Governance

Recommendation 12

A new committee, the National Committee to Combat Serious and Organised Crime (the Committee), be established. The Committee be responsible for developing the national strategy and setting priorities for the national effort against serious and organised crime, including the national criminal intelligence priorities, and advising governments on the appropriate alignment of policy, intelligence and operational capabilities. The Committee prepare an annual report to the Attorney-General and all state and territory Police Ministers through the Police Ministers Council.

Recommendation 13

Legislate a committee responsible for overseeing the development of National Policing Information Systems. The committee also be responsible for providing oversight, advice and making recommendations on expenditure from the National Policing Information Systems and Services Special Account.

Recommendation 14

Once new legislation has been enacted and the committees in Recommendations 12 and 13 have been established, the ACIC Board be disbanded.

Recommendation 15

Parliamentary oversight of the ACIC be exercised by the Parliamentary Joint Committee on Intelligence and Security. As the ACIC would be an intelligence agency, there be no residual oversight by the Parliamentary Joint Committee on Law Enforcement.

The ACIC be oversighted by the Inspector-General of Intelligence and Security, replacing the Commonwealth Ombudsman.

Recommendation 16

The ACIC be exempt from the provisions of the *Freedom of Information Act 1982* (Cth).

Internal Governance and Organisational Design

Recommendation 17

The ACIC have a Legal Counsel at the SES Band 2 level reporting directly to the CEO. The position be supported by two SES Band 1s: one responsible for legal advice, compliance and integrity; and one responsible for legal and operational risk.

Recommendation 18

The ACIC retain a SES Band 3 Deputy (Intelligence) responsible for the intelligence function. The ACIC also have a SES Band 3 Deputy (Information Systems & Corporate Management) responsible for the National Policing Information Systems and for ACIC corporate management issues.

Recommendation 19

A separate Office of the Examiners be established within the Intelligence Group, overseen by a legally qualified SES Band 2.

Recommendation 20

A High-Risk Oversight Committee be established that focuses on significant organisational risk and undertakes the annual assessment of the authorisation instruments underpinning the coercive powers (see Recommendation 8).

Recommendation 21

The Department of Home Affairs continue to undertake the technical development and delivery of the National Criminal Intelligence System, under a fee-for-service arrangement with the ACIC. This arrangement be reviewed once critical components of policing agency integration and the National Firearms Register are delivered.

Capabilities and Workforce Skills

Recommendation 22

The ACIC focus its recruitment and secondments primarily on the development of high-quality intelligence officers and analysts, through prioritising its annual graduate intake and complementing that with direct recruitment and secondments.

Recommendation 23

The ACIC continue to develop and manage human sources both onshore and offshore. The ACIC continue to develop and manage relationships with international partner agencies, as appropriate for its intelligence function.

Recommendation 24

The ACIC and the Australian Federal Police develop and manage their international relationships and human sources to ensure they are complementary, not duplicative. The obligation to collaborate on these issues be captured in a Ministerial direction to ensure it is an enduring practice.

Recommendation 25

The ACIC work with other agencies in the National Intelligence Community (NIC) to explore sharing of capabilities that address the NIC capability priorities. The ACIC continuously benchmarks its technical capabilities against those of other agencies in the NIC and where possible share capabilities with states and territories to uplift the national criminal intelligence capability.

Recommendation 26

The ACIC CEO present an annual public threat assessment to:

- increase the public's awareness of the prolific and serious nature of the threat from transnational serious and organised crime,
- increase public understanding of the ACIC and its work, and
- raise the public profile of the Commission and thereby assist recruitment.

Funding

Recommendation 27

The ACIC be provided a base level of funding sufficient to ensure uplift and staffing required to support its remit as Australia's national criminal intelligence agency and to sustain the following capability pillars:

- Coercive examinations
- Technical intelligence
- Human intelligence
- Data analytics

The suitable level of base funding be assessed jointly by the ACIC and the Department of Finance.

Recommendation 28

The National Policing Information Systems and Services Special Account continue to provide an adequate base level of funding for the development of the National Criminal Intelligence System and other systems that maintain policing systems and support the sharing of police information across jurisdictions.

The Australian Institute of Criminology

Recommendation 29

The Australian Institute of Criminology (AIC) remain within the Attorney-General's Portfolio and continue to operate under its own Act, the *Criminology Research Act 1971*.

The Director of the AIC be a statutory appointment, with staff to be Australian Public Service employees of the AIC.

Where practicable and cost-effective, the Attorney-General's Department provide corporate services to the AIC, under a fee-for-service agreement.

Chapter 1: The Serious and Organised Crime Threat Environment

Serious and organised crime poses a formidable threat to Australia. A complex and dynamic enabling environment has led to the proliferation of illicit activities that undermine the integrity of Australia, its national security, border operations and prosperity.

Serious and organised crime is no longer contained within geographic boundaries. This complicates both intelligence collection and attempts to apprehend and prosecute high priority targets. Over 70 per cent of high-risk targets impacting Australia are located offshore. They take advantage of areas of geo-political instability, countries with poor governance, as well as vulnerable states such as the microstates of the South Pacific. In the latter region there are also disturbing signs of links between organised crime and foreign interference in domestic politics and decision making.

Many of the criminal networks targeting Australia are engaged in sophisticated and highly profitable trade in illicit drugs. Drug trafficking has been identified as the most persistent ongoing threat, causing the greatest community harm and consuming significant Commonwealth, state and territory resources.

Australians pay some of the highest prices in the world for illicit drugs, providing international criminal networks with a powerful motivation to target Australia. One of the consequences of the high price is that criminal groups are developing increasingly complex ways to launder profits and then invest those profits in other criminal activities. It is increasingly common for criminal groups to span across a diverse range of activities: drug smuggling, money laundering, human exploitation and cybercrime, for example.

Also, in contrast to earlier eras, while competition between serious and organised crime groups can still erupt into violence, they are increasingly prioritising collaboration and profit. They will readily cooperate with each other to achieve business goals. The collaboration between criminal enterprises, across different criminal activities, is enhancing the professionalism of these groups as they share operating practices and increase their combined capability. This collaboration enables criminal networks to better protect themselves from conventional law enforcement and intelligence efforts, increasing the challenge for Australian authorities attempting to disrupt or deter their activities.

Serious and organised crime activity is supported by a range of critical enablers, many of which are a criminal activity in their own right. Collaboration between criminal networks allows enablers to be shared – such as extremely capable lawyers and other individuals who can help them evade law enforcement, increase profits and expand activity under the cover of legitimate businesses engaged in otherwise lawful activity.

Other key enablers such as the use of technology and digital infrastructure have increased the complexity of the challenge Australia faces in combating serious and organised crime. The rate of cybercrime, particularly in financial and victim-based crime, is increasing as the Australian Government, the private sector and the Australian community become increasingly dependent on connected platforms in a data-driven world. Australia's relative wealth and high level of internet connectivity makes it an attractive target for organised cybercriminals. Often, they operate from jurisdictions that place them beyond the reach of many of the methods traditionally used by Australian law enforcement agencies. This, combined with relatively low levels of cyberliteracy and cybersecurity and a whole-of-government cyber capability still in development, means threats to Australia from cybercrime are likely to remain high for the foreseeable future.

Criminal exploitation of emerging technology will continue to amplify a broad range of cyber-enabled crime as new technology is invented, used, spread and then overtaken by more advances. This is likely to present unprecedented challenges as criminal exploitation of technology outpaces prevention and regulation, with criminal groups proving to be early adopters of new technology.

The overall result of these trends is that the threat and impact of serious and organised crime on Australia continues to grow. In 2013-14, the then ACC assessed the cost of serious and organised crime to Australia at \$36 billion. By 2020-21, the estimated cost of serious and organised crime to the Australian community had almost doubled to \$60.1 billion, representing a significant increase of profits in the hands of criminal networks at the expense of the community.

The growth in the number and impact of serious and organised crime networks, indicates that Australia's current settings to combat serious and organised crime are not having the desired results. In our view there is a clear need to reconsider Australia's strategic and operational posture against this persistent, sophisticated and evolving threat. In the following chapters we address how the national criminal intelligence capability could be enhanced to enable it to provide the critical inputs needed by law enforcement agencies, and how that could take place in conjunction with improved mechanisms for the development of national strategy and ensuring that policy, intelligence and operational capabilities are appropriately aligned.

Chapter 2: The ACIC's Roles and Functions

This Chapter addresses the roles and functions of the ACIC, including the suitability of its legislative framework and whether the Commission's existing roles and responsibilities are appropriately defined and complementary to other Commonwealth law enforcement and intelligence agencies.

The ACIC's contemporary value proposition

If the ACIC is to continue as a separate organisation, it must have a distinct value-adding role in the fight against serious and organised crime. In the 1980s when its predecessor, the National Crime Authority (NCA), was established, the distinctive value proposition came from the provision of coercive powers to the NCA. Akin to those of a standing Royal Commission, the coercive powers were not available to other Australian law enforcement agencies. They provided a powerful addition to the national effort combating the most sophisticated types of organised crime.

The coercive powers remain valuable; however, their value has been diminished. The leadership of serious and organised crime networks now extends overseas, placing important criminal figures beyond the reach of the ACIC's coercive powers. In addition, New South Wales, Queensland and Western Australia have established state-based crime commissions over the decades with similar coercive powers within their enabling legislation.

As a result, the coercive powers alone no longer represent a distinctive value-adding capability that justifies the continued existence of the ACIC. Further, we consider the ACIC has in recent times suffered by attempting to simultaneously operate in both the law enforcement and intelligence spheres. This has made the role and purpose of the ACIC unclear, with the Commission operating at different times as either an intelligence agency or a law enforcement agency depending on the background and preference of the leadership of the day.

Importantly, the observation in the report of the Australian Royal Commission of Inquiry into Drugs (1977-1980) that 'intelligence is the most important single weapon in the armoury of law enforcement' remains true. The national effort to make Australia a hostile environment for serious and organised crime would derive significant benefit from a specialised and highly skilled criminal intelligence organisation, with covert collection powers and capabilities that are agile, flexible and tailored to threat discovery. The benefit would increase if the powers and capabilities were backed by sophisticated systems for sharing police information and criminal intelligence across agencies and jurisdictions.

Together with the coercive powers, a redefined, intelligence-focused purpose provides a compelling contemporary value proposition for the continuation of the ACIC, complementary to existing partnerships with law enforcement agencies. However, at present, the ACIC falls well short of where it needs to be to fulfil that value proposition. Comprehensive reform is needed to position the ACIC so that it can provide a unique and value-adding role.

Redefining the ACIC's role and purpose to fulfil its criminal intelligence mandate

We consider the ACIC would bring most value to the broader law enforcement and criminal intelligence community if it was clearly defined as Australia's national criminal intelligence agency, focused on the production of unique and incisive intelligence on serious and organised crime.

Clarifying its role in this way would provide a clear direction for the future development of the Commission. It would give the ACIC a firm legal foundation from which to build on the successes it has already achieved by providing intelligence reports to law enforcement partners that has enabled important operational outcomes.

Strategic intelligence products currently produced by the ACIC, such as the National Wastewater Drug Monitoring program reports and Organised Crime Threat Assessments, provide valuable insights into the criminal landscape in Australia. However, we consider that in addition to these high-level strategic products, it is essential that the ACIC also continue to produce actionable and targeted criminal intelligence products to support operational outcomes.

The ACIC's intelligence assessments should aim to provide its partner agencies with an in-depth understanding of the characteristics of serious and organised crime impacting Australia and the networks/organisations involved. It should arm Australia with actionable intelligence to identify networks, emerging methodologies, commodities, infiltration of enforcement agencies and supply chains, and points of vulnerabilities. This intelligence should be responsive to the priorities and requests of law enforcement agencies and be directly relevant to the functions and operations of those agencies. In addition, the intelligence produced and delivered by the ACIC should support the development of government policy and the functions of regulatory agencies that utilise ACIC intelligence.

The current legislative frameworks inhibit the ACIC from fulfilling this intelligence mandate. The ACC Act was substantially informed by the *National Crime Authority Act 1984*, and is no longer fit for purpose. In particular, the breadth of functions contained in section 7A of the ACC Act include both the conduct of special investigations as well as the collection and dissemination of intelligence. This wide breadth of functions creates a lack of clarity with respect to the Commission's purpose.

As part of this Review, stakeholders commented that the Commission was ‘neither fish nor fowl’ and was ‘trapped between a rock and a hard place’. We agree with those comments. In our view, this results in the agency being neither a first-class investigative agency nor a first-class criminal intelligence agency.

Under the existing legislative framework, the special investigation function activates the Commission’s access to investigative powers; powers which characterise the ACIC as a law enforcement agency. This means that the exercise of these powers relies upon the ACIC meeting legislative thresholds that include the establishment of an investigation and the identification of specific offences, forcing the Commission to rely on powers that were designed for evidence collection, to collect intelligence.

Importantly, the investigatory function creates a reliance on staff who are authorised as Australian Federal Police (AFP) special investigators or seconded to ACIC to access law enforcement powers. This skews the ACIC workforce toward supporting an investigative capability. The current framework leads to the ACIC undertaking investigations, diverting resources and effort from intelligence collection. It has also, in some instances, resulted in conflict with the operations and equities of law enforcement agencies.

This Review provides a valuable opportunity to consider the functions, powers and legislation underpinning the ACIC and clarify its role and purpose. By repealing and replacing the current ACC Act with new legislation, there is an opportunity to ensure that the ACIC is positioned as Australia’s national criminal intelligence agency with the continuation of the complementary function of ensuring there are systems and services that enable criminal intelligence and police information to be shared across jurisdictions.

In summary, in line with the ACIC’s contemporary value proposition, new legislation should be progressed as a priority and should make clear through both an objects clause and the Commission’s functions that the ACIC is an intelligence agency, not an investigative or law enforcement agency. There should not be any references to investigations or investigative activities within the new legislation, and new thresholds for accessing covert collection powers for intelligence collection should be established (outlined in detail at Chapter 3). In practice, this would mean that the Commission would no longer undertake investigations – at least as they are understood in the law enforcement context, that is for the purpose of collecting evidence to support a prosecution.

For clarity, the new legislation should specify that the intelligence role encompasses undertaking Nationally Coordinated Criminal History Checks (NCCHCs) and the preparation and provision of individual criminal intelligence assessments. These are an integral part of the ACIC’s role in the provision of criminal intelligence and hardening the environment against serious and organised crime.

Similarly, retaining the function for the provision of National Policing Information Systems and Services aligns with the ACIC's role as a criminal intelligence agency. Although we heard different opinions from some stakeholders, we consider retaining custodianship of these systems, which are critical to the sharing of intelligence and information with frontline officers, is a natural alignment for the ACIC. We judge that the importance of these systems to the ACIC's intelligence mandate will increase as the National Criminal Intelligence System (NCIS) develops and matures to capture more intelligence sources and more policing systems are integrated into the NCIS. This will enrich the information available to the ACIC to support intelligence assessments and partner agencies in their operations.

Recommendation 1

As Australia's national criminal intelligence agency, the ACIC have two distinct roles:

- **To obtain, analyse, evaluate and communicate intelligence relating to serious and organised crime in Australia, including where it has a transnational dimension.**
- **To ensure there are systems and services that enable criminal intelligence and police information to be shared across jurisdictions, including the provision of Nationally Coordinated Criminal History Checks.**

In undertaking those roles, the ACIC work closely with Commonwealth and state and territory jurisdictions.

Recommendation 2

The *Australian Crime Commission Act 2002* be repealed and replaced.

Reducing duplication of effort between agencies

Within the Commonwealth government, criminal intelligence functions are now undertaken, to varying degrees, by the ACIC, Department of Home Affairs (Home Affairs) and the AFP. For example, Home Affairs staff undertake a range of intelligence activities, including offering intelligence analytics to support border operations through strategic assessments and analysis of supply chains and insider threats. This may include generating insights into serious and organised crime entities' interaction with the border and directing requests for criminal intelligence assessments to the ACIC.

The AFP similarly undertakes a range of operational, tactical and strategic functions to facilitate the collection and assessment of criminal intelligence. It uses intelligence and specialist and technical capabilities to undertake analysis of the continuously changing criminal threat environment and operational analysis relating to groups or crime types.

While the AFP noted in its submission that there has been some consolidation of specialist and technical capabilities between agencies, there continues to be duplication, particularly in human intelligence and surveillance capabilities. At times, the individual arrangements have led to duplicative strategic intelligence efforts on serious and organised crime priority topics.

In order to immediately enhance the ACIC's criminal intelligence capability, and to reduce the duplication between agencies, the ACIC should take responsibility for the production of intelligence on the impact of serious and organised crime on the border. This should enable Home Affairs to focus on tactical and operational activities at the border, while ACIC prepares strategic assessments on serious and organised crime at the border. We acknowledge the importance of ensuring criminal intelligence support to the border is not lost due to competing priorities within the ACIC. In addition, AFP intelligence analysts should be made available to the ACIC via secondment. This would concentrate the Commonwealth's criminal intelligence capability in the ACIC, where the capability can be nurtured and developed in a holistic way, rather than maintaining piecemeal capability across dispersed agencies.

In practice we acknowledge that there will continue to be some overlap between the three agencies. It is necessary for both Home Affairs and the AFP to continue to undertake operational and tactical intelligence functions to support their respective agencies. Stronger partnerships and deconfliction strategies will be required in the criminal intelligence landscape. At the very least, however, positioning the ACIC to become Australia's national criminal intelligence agency, should enable Home Affairs to focus on tactical and operational activities at the border, while also over time enabling the AFP to rely more on intelligence produced by the ACIC to support its own investigations.

To avoid any misunderstanding on this point, we consider the secondment of state and territory police intelligence analysts into the ACIC remains important and we propose this continue in addition to the secondments from the AFP.

Recommendation 3

To reduce duplication of effort between agencies:

- **the ACIC be responsible for the production of intelligence on the impact of serious and organised crime on the border,**
- **the Australian Federal Police (AFP) second intelligence analysts to the ACIC to help reduce duplication of effort, ensure the ACIC's and AFP's access to relevant operational intelligence, and build the AFP's confidence in the ACIC, and**
- **the secondment of state and territory police intelligence analysts into the ACIC continues.**

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Chapter 3: Powers

This Chapter addresses the ACIC's legislative powers and recommends significant changes to the way in which the ACIC accesses powers to enhance its role as an intelligence agency while maintaining the support it provides to Commonwealth, state and territory law enforcement partners.

Covert collection powers

The *Telecommunications (Interception and Access) Act 1979* (TIA Act), *Telecommunications Act 1997* (Telecommunications Act), *Surveillance Devices Act 2004* (SD Act) and Part IAB of the *Crimes Act 1914* (Crimes Act) authorise many of the Commission's covert collection powers. Under these frameworks the ACIC is defined as a law enforcement agency, with covert powers to investigate and enforce the criminal law and obtain evidence in relation to serious and organised crime. The ACIC is reliant on these powers for intelligence collection. This reliance is problematic as these capabilities are designed for the collection of evidence in a legal proceeding, and as noted previously, requires that an investigation be underway with specific offences identified. We consider that evidentiary or investigation-based thresholds such as these are not fit for purpose for a criminal intelligence agency, as they do not enable the Commission to exercise the capabilities in an anticipatory phase where a specific offence may not be able to be identified, but where conduct or the existence of a particular network is indicative of serious and organised crime. Further, under the current framework, the ACIC is also unable to use material collected using its covert collection powers in relation to the full range of its functions, resulting in an inability for the ACIC to effectively combat the threat of serious and organised crime.

Currently, the only pure 'intelligence' collection warrants the ACIC can access are network activity warrants under the *Surveillance Legislation Amendment (Identify and Disrupt) Act 2021*. Network activity warrants are different to other warrants that are available to the ACIC under the SD Act as they allow the collection of intelligence, rather than evidence. Network activity warrants enable the collection of intelligence that relates to criminal networks operation online and can be applied for by the ACIC CEO or a delegate. In order to obtain one of these warrants, the CEO must suspect on reasonable grounds that:

- a group of individuals is a criminal network of individuals, and
- access to data held in a computer being used, or likely to be used from time to time by individuals in the group, will substantially assist in the collection of intelligence that relates to the group or its members, and is relevant to the prevention, detection, or frustration of one or more kinds of relevant offences.

These warrants allow the ACIC to target the devices used by criminal networks of individuals to uncover identities and discover the scope of the network and their offending, without knowing the identities of the individuals or the location or identity of their devices. The intelligence threshold required to apply for one of these warrants allows the ACIC to collect valuable information and intelligence on serious and organised criminals without needing to meet evidentiary thresholds that would require the CEO to suspect an offence is being committed.

We consider the ACIC should have a similar ability to use other covert collection powers. This would align the Commission with other National Intelligence Community (NIC) agencies. It should also be able to use intelligence and information collected using these capabilities for its functions, including in any criminal intelligence assessment or criminality check.

The Australian Security Intelligence Organisation (ASIO) for example, has various intelligence collection powers under the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act), including access to computer access warrants and surveillance device warrants where the Attorney-General is satisfied that access will substantially assist the collection of intelligence in relation to ASIO's functions. A similar type of threshold for the ACIC would differentiate the Commission from law enforcement agencies, and enhance its value proposition for those law enforcement partners, particularly state and territory police.

That threshold would give the ACIC more agility in the collection of information and intelligence, particularly in the initial discovery phase where it is seeking to identify criminal methodologies and map criminal networks. Operating exclusively as a criminal intelligence agency, the ACIC would have responsibility for providing intelligence to law enforcement agencies, or other agencies with a disruption mandate, to assist them to identify criminal networks, methodologies, or persons of interest. It would then be up to those agencies to use powers available to them to target or collect evidence on those persons or disrupt their activities.

With an intelligence threshold for covert collection powers, we consider that the ACIC would be able to provide critical early intelligence to law enforcement partners enabling those partners to expeditiously seek and serve their own warrants based on that intelligence. This would eliminate the concerns from a number of stakeholders on the timeliness of ACIC intelligence to support ongoing law enforcement operations and investigations.

It is important to clarify that the information and intelligence obtained by the ACIC using these covert collection powers should not ordinarily be used in an evidentiary capacity or included in briefs of evidence. However, we acknowledge that there may be circumstances where the ACIC's material may be required in an evidentiary capacity. Examples are where there is an imminent threat to life or where other methods fail to provide intelligence critical to a successful prosecution. We consider the covert collection powers based on an intelligence threshold should also include a mechanism where exceptions can be made to allow law enforcement to use ACIC intelligence as evidence. This should be weighted to occur in limited circumstances, where capabilities and methodologies can be protected, and should be at the discretion of the ACIC.

While other intelligence agencies do not in practice provide their intelligence to law enforcement for evidentiary purposes, so as to ensure their capabilities and methodology can be protected from disclosure in court, there is a precedent where they are not prevented from doing so under legislation. For example, section 63AA(d) of the TIA Act provides that ASIO's interception warrant information may be used as evidence in a proceeding.

The ACIC is currently required under section 12 of the ACC Act to provide to law enforcement agencies any evidence of a crime against a law of the Commonwealth or state or territory it obtains as part of carrying out a special ACIC operation or special ACIC investigation if it would be admissible in proceedings. This provision is currently the only disclosure provision that allows for evidence obtained by the ACIC to be used in prosecutions not involving the ACIC. Over the last decade, the number of section 12 disclosures made by the ACIC to partners is in the low hundreds, while the number of intelligence products disclosed under section 59AA of the ACC Act is in the tens of thousands. We consider that, should our recommended change be implemented, the number of intelligence products disclosed to partners would only increase, and the value of those products would also increase.

While the ACIC would no longer ordinarily disclose intelligence for evidentiary purposes, we consider this would be outweighed by the ACIC's enhanced ability to provide critical 'early warning' intelligence on serious and organised crime to Commonwealth and state and territory law enforcement partners.

Recommendation 4

The ACIC's ability to use covert collection powers under the *Telecommunications (Interception and Access) Act 1979*, *Surveillance Devices Act 2004* and other relevant legislation be aligned with the agency's intelligence function. Legislation should allow ACIC intelligence collected under covert powers to be used as evidence in limited circumstances and at the discretion of the ACIC.

We acknowledge the ongoing work of the Electronic Surveillance Reform Taskforce within the Attorney-General's Department, and recommend ongoing engagement between the department and the ACIC to implement this recommendation as part of broader Commonwealth electronic surveillance reform as recommended by the *Comprehensive Review of the Legal Framework of the National Intelligence Community*.

Coercive powers

The ACIC has access to a suite of coercive powers, similar to those of a Royal Commission, which may be exercised by an ACIC Examiner in the course of a special ACIC operation or special ACIC investigation. These powers permit the ACIC to understand and address sophisticated serious and organised crime groups which have historically remained insulated from conventional law enforcement efforts.

Coercive powers are a core capability of the ACIC and give Examiners the power to compel persons to appear at an examination and answer questions on oath or affirmation, and the power to compel persons, corporations and government agencies to produce documents or things. Under the current model, coercive powers may only be exercised by the ACIC for the purposes of a special ACIC operation or special ACIC investigation in relation to federally relevant crime. Special ACIC operations and special ACIC investigations are authorised by the ACIC Board in the form of a written determination, which relates to a particular type of criminal activity and provides a threshold and framework to guide the use of the powers.

The recognition that coercive powers are necessary in order to effectively identify, investigate and understand organised crime was a key part of the rationale for the initial creation and subsequent evolution of the NCA into the ACIC. In written submissions to the Review, key stakeholders almost unanimously agreed that the ACIC's coercive powers continue to provide key insights into serious and organised crime. This was particularly the case for state and territory police agencies.

We consider that the ACIC's access to coercive powers remains essential to the successful performance of the ACIC's functions as an intelligence agency. The ACIC's coercive powers should be used in the future for the purpose of collecting intelligence on the highest priority criminal networks and organisations involved with serious and organised crime in Australia. Using the coercive powers in tandem with the reformed covert collection powers outlined above should be a powerful mechanism to produce actionable criminal intelligence which is of value to law enforcement partners.

The ACIC's collection and presentation of evidence obtained under a special ACIC operation or special ACIC investigation routinely exposes the ACC Act and determination instruments to legal challenge. Serious and organised criminals targeted by the ACIC through its coercive powers are generally well-funded and litigious, and are continuously challenging summonses and notices to appear issued by Examiners as well as the determination instruments that underpin them. Despite constant challenges, the ACIC has not regularly tested and addressed legal risk in this space proactively.

In recent years, urgent legislative amendments to provisions in the ACC Act relating to special ACIC operations and special ACIC investigations have been progressed on three separate occasions in order to address urgent and significant legal challenges and risks. This demonstrates the inadequacy of the current authorisation model.

It is clear that the current authorisation model, whereby the ACIC Board makes a determination authorising a special ACIC operation or special ACIC investigation under a broad theme of federally relevant crime, is no longer effective.

We consider a new authorisation model for the approval of the ACIC's use of coercive powers is needed. The new model should ensure there is an appropriate authorisation process in place, but remove the Commission's reliance on determination instruments.

The authorisation of coercive powers will need to maintain the existing constitutional link to 'federally relevant crime', which is defined at section 4 of the ACC Act as a crime that is an offence against a law of the Commonwealth or of a territory, or an offence against a law of a State that has a federal aspect. This link is not only required to ensure the use of these powers remains constitutional, but to ensure the authorisation is linked to particular types of offences typical of serious and organised crime networks.

While the existing system is based around broad themes of crime such as drugs, firearms and serious financial crime, the new model should target particular networks or organisations that may be active across different types of criminal activity. This approach acknowledges that serious and organised crime no longer operates as it did in 1984 when the NCA was established, that networks collaborate and operate across the spectrum of illicit commodities, and that actions by intelligence and law enforcement should not be siloed under one theme.

We recognise that a key component of the ACIC's coercive powers is the independence of the ACIC Examiners, who are senior statutory office-holders appointed by the Governor-General, and are required to have the same legal qualifications necessary for appointment as a Justice of the High Court of Australia. In the understanding that the independence of these Examiners has been carefully considered in the development of the relevant legislative provisions of the ACC Act, we have concluded that these provisions should be retained in their entirety.

Existing safeguards applicable to the ACIC's use of coercive powers should also be retained in their entirety, including non-disclosure duties and specific secrecy offences in the ACC Act that prohibit the disclosure of information relating to an examination, except in specific circumstances. However, we acknowledge that the decision to retain each non-disclosure duty or secrecy offence should have consideration for recommendations made by the Commonwealth Review of Secrecy Provisions and accepted by Government in November 2023. This should also include those safeguards that apply to an individual who has received a notice or summons to appear before an Examiner, for example that evidence provided in an examination is not admissible in proceedings against the person.

The Review has not received any information suggesting that the way in which examinations are conducted under the ACC Act requires amendment, and as such we are satisfied the provisions relating to the operation of an examination should be retained. This should include the relevant offences within the ACC Act to ensure attendance at examinations (section 30), prevent false or misleading evidence from being provided (section 33), or otherwise ensure effective examinations.

With these considerations in mind, we propose a new 'double lock' process for authorising the ACIC's use of coercive powers.

Lock 1

Long-standing arguments against traditional law enforcement having these powers is currently negated by the fact the ACIC's use of coercive powers is authorised by the ACIC Board, made up of heads of law enforcement agencies. In our view, it is more appropriate that the use of coercive powers akin to a Royal Commission should be authorised by the Executive – as is the case for a Royal Commission.

We propose that the CEO request the Attorney-General to authorise the exercise of coercive powers for the purpose of obtaining intelligence in relation to a criminal network or organisation. Before authorising the use of these powers, the Attorney-General would need to be satisfied that there were reasonable grounds for concluding that the criminal network/organisation referred to in the request was, or was reasonably likely to be, involved in federally relevant crime that met the threshold of serious and organised crime. In reaching this conclusion, we expect that the Attorney-General would seek advice from his department to confirm the threshold had been met by the request.

Should this recommendation be accepted, consideration should also be given to the appropriate duration of an authorisation. We suggest an authorisation should generally be valid for 12 months.

Lock 2

An independent Examiner may summon a person to appear before the Examiner to give evidence, or produce any documents or other things referred to in the summons. The Examiner must be satisfied that issuing the summons is reasonable in all the circumstances, and that the examination would substantially assist the collection of intelligence on a criminal network or organisation authorised by the Attorney-General. The Examiner must record these reasons in writing either before the issue of the summons, or at the same time as the issue of the summons.

We consider that, among other things, these reasons should set out why the Examiner is satisfied that the use of their coercive powers in the specific case in question is reasonable, and identify why the individual who is proposed to be summonsed is relevant to efforts to obtain intelligence on the criminal network or organisation authorised by the Attorney-General.

The summons requiring a person to appear should be required to include information such as a copy of the authorisation given by the Attorney-General, the general nature of the matters in relation to which the person is to be questioned, and any other information the Examiner considers reasonable. This should be consistent with the existing power to summon witnesses and take evidence available to ACIC Examiners under section 28 of the ACC Act.

We note that a number of stakeholders highlighted the importance of timely dissemination of information and intelligence obtained using the ACIC's coercive powers. We do not consider that this double lock process would reduce flexibility or affect the timeliness of the exercise of the ACIC's coercive powers or information sharing processes. Under the current arrangement the ACIC Board, made up of a number of heads of agencies including state and territory police commissioners, may make a determination authorising a special ACIC operation or special ACIC investigation to occur, and therefore authorise the use of the ACIC's coercive powers as it relates to a broad crime theme. The Board currently reviews determinations annually. We consider the first lock would replace the Board process and reviews of authorisations would also be generally undertaken annually.

The ACIC's current agility to apply for summonses from an Examiner would not change and would remain appropriately flexible.

Recommendation 5

The ACIC retain its ability to utilise coercive powers incorporating a ‘double lock’ approval process which utilises authorisations by the Attorney-General and an independent Examiner.

Recommendation 6

Existing provisions in the *Australian Crime Commission Act 2002* relating to the qualifications, appointment, independence and tenure of Examiners be retained in the new legislation.

Ensuring the powers are legally robust

In order to ensure the new authorisation model is legally robust, we recommend that in the formative stages of the ACIC’s new legislative framework, the draft legislation as it relates to coercive powers be reviewed and in the first instance the Solicitor-General should be provided the opportunity to provide advice on the formulation of the provisions. The Solicitor-General should also review the initial instruments provided to the Attorney-General for authorisation to ensure the identification and remediation of any vulnerabilities in the draft instruments.

Following implementation, the ACIC should undertake an annual assessment of the authorisation instruments underpinning the coercive powers to enable early identification and remediation of any vulnerabilities which might result in a successful legal challenge to the powers.

Once the ACIC has settled its new position in the intelligence community, and tested the new authorisation model (both in practice through use, and through inevitable challenges in the courts), this assessment mechanism could become less frequent. The ACIC should remain proactive in considering its ability to effectively utilise its coercive powers, and ensure it is best placed to identify and remediate any vulnerabilities.

We acknowledge that challenges to these powers can often be novel and unforeseen, and that these assessments will not prevent or close off all avenues for challenge by serious and organised crime. But we consider there is value in this exercise occurring to identify issues that may not be apparent to the ACIC in-house legal counsel.

Recommendation 7

The Solicitor-General be provided the opportunity to provide advice on the formulation of the draft legislative provisions and instruments underpinning the exercise of coercive powers.

Recommendation 8

Following implementation of the new legislation, the ACIC undertake an annual assessment of the coercive powers authorisation instruments to enable early identification and remediation of any vulnerabilities which might result in a successful legal challenge to the powers.

Controlled operations and disruption activities

Part IAB of the Crimes Act permits certain law enforcement agencies, including the ACIC, to undertake covert activity which would, in the absence of legislation, constitute an offence against the Commonwealth or that of a state or territory. Controlled operations permit law enforcement agencies to use covert and coercive powers to uncover criminal activity and gather evidence with a view to prosecuting transnational serious and organised crime syndicates.

Controlled operations currently form part of the ACIC's operational methodologies under special ACIC operations and special ACIC investigations, and can result in interventions such as arrests and seizures, with evidence from the controlled operations forming part of the prosecution brief of evidence.

Focusing the ACIC on its criminal intelligence role would mean the purpose of future controlled operations would need to be tied to the collection or analysis of intelligence, not arrests or seizures.

We consider the most appropriate mechanism would be for the ACIC to have access to powers akin to the Special Intelligence Operations (SIO) framework in the ASIO Act. The threshold for the powers would need to be tied to the ACIC's intelligence functions. Safeguards within the SIO framework, such as ministerial authorisation and notification to the Inspector-General of Intelligence and Security, should be similarly applied to the ACIC. Arrangements to inform states and territories of controlled operations taking place in their jurisdiction would also be appropriate, although that information would then need to be very tightly held.

We consider that disruption activities go beyond the ACIC's intelligence functions and should be the preserve of law enforcement and other appropriately authorised agencies. We acknowledge that intelligence activities undertaken by the ACIC may have a disruptive effect on criminal entities, as a by-product of the intelligence activity. However, the ACIC should not have a legislated function to undertake activities which have the primary purpose of disrupting criminal activity via arrest and prosecution.

Recommendation 9

The ACIC have controlled operations-style powers with an intelligence purpose, similar to the Special Intelligence Operations framework in the *Australian Security Intelligence Organisation Act 1979*.

The ACIC not have the legal function of undertaking operations that are primarily designed to disrupt criminal activities.

Authorised Officers

The ACIC was intentionally established by Parliament in a way that makes the Commission reliant on its policing partners for the use of policing powers, because policing agencies are best placed to ensure those powers are oversighted and exercised appropriately.

The ACIC has continued to access policing powers through special member provisions under the *Australian Federal Police Act 1979* (the AFP Act) since 2004. Subject to an Instrument of Appointment, ACIC staff sworn in as AFP special members may have access to particular enforcement powers and associated immunities that are used to service notices and summonses for coercive examinations, including use of force and arrest powers, access to weapons, or the ability to apply for particular warrants only available to law enforcement.

The use of special members has expanded over time leading to a situation where there is a growing number of special members within the ACIC with limited control or visibility by the AFP of their activities. We consider the ACIC's reliance on special members results in an unreasonable risk for the AFP and should not continue.

We acknowledge there are aspects of the ACIC's functions and operations, particularly the exercise of warrants and powers outlined in this Chapter, that support some form of access to policing powers. Such powers are needed to ensure those functions can be effectively fulfilled, and to address the physical risk to ACIC staff when engaging with serious and organised criminals. Throughout the Review, we also heard concerns about the ability of policing agencies to deploy resources to support these activities were ACIC officers not equipped with their own appropriate powers.

In considering whether establishing an authorised officer model would be appropriate for the Commission, this Review has contemplated a number of existing legislated models, including ASIO, the National Anti-Corruption Commission (NACC), and the Victorian Independent Broad-based Anti-corruption Commission (IBAC).

We consider that intelligence staff at the ACIC should be authorised to apply for and execute warrants under the newly proposed covert collection warrants for the ACIC's intelligence functions, as well as similar search warrants to those already available at section 22 of the ACC Act. We do not consider that this alone requires the establishment of a class of ACIC authorised officers.

There will be circumstances where, in carrying out an operation, an ACIC member may be at high physical risk in order to obtain intelligence. Despite this, we see significant policy and practical problems with ACIC officers having arrest powers and the ability to use force, as part of its intelligence operations.

Any authorised officer framework incorporating the full suite of police powers would risk re-introducing the current ambiguity about whether the ACIC is an intelligence or law enforcement agency. Also, such powers would need to be appropriately legislated to address training and qualification requirements of officers, oversight and reporting requirements to the Attorney-General, and the appropriate use of these powers, including the storage, disposal and use of lethal weapons. Establishing a rigorous oversight mechanism in the ACIC would require resources and effort to be diverted from its intelligence mission.

Given these considerations, we have concluded that the ACIC should rely on police partners to provide support in circumstances where police powers are needed for a particular operation.

We see merit in a formal mechanism being agreed between the ACIC and the AFP for the Commission to reliably receive support from the AFP for the provision of policing powers. One possible model would be to permanently embed a small unit of AFP officers within the ACIC. This unit would be dedicated to assisting the ACIC in high-risk circumstances where policing powers are required to safely undertake its intelligence functions. The unit could be integrated into ACIC operational planning and risk management, with a focus on providing support for high risk operations and deployments. In order to ensure the AFP has appropriate oversight of its staff and their use of policing powers, this unit could have an integrated AFP manager to provide assurance to the AFP senior executive.

We consider the model in the preceding paragraph offers many advantages over the current reliance on special members. Providing agencies access to standing policing powers is not an unusual model in the Commonwealth, with ASIO accessing policing powers through the standing Joint Counter-Terrorism Teams comprised of the AFP and state and territory police. Also, the Office of the Special Investigator has an embedded AFP unit to support its work. We acknowledge that such a model in this context would need detailed consideration by both agencies, and legal advice on whether the AFP Act would need to be amended to ensure the legality of the arrangement.

Irrespective of the model finally adopted to formalise the arrangement between the ACIC and the AFP there is likely to be a heavy demand on AFP resources for the provision of appropriate policing support. We consider it important the AFP be appropriately resourced to support this increase in activity.

We do not consider any arrangement between the ACIC and the AFP would preclude the Commission from seeking assistance and support from state and territory police agencies. It would also be open to state and territory police agencies to actively provide this support to the ACIC where collection of particular intelligence is a priority for their jurisdiction.

Recommendation 10

ACIC staff be able to apply for and execute relevant warrants for the purposes of the ACIC's intelligence functions. This does not require the establishment of a class of ACIC authorised officers.

A formal mechanism be established, and appropriately resourced, for the ACIC to reliably receive support from the AFP for the provision of policing powers. These arrangements replace the existing practice of ACIC officers being sworn in as special members by the AFP.

Such an arrangement not preclude state or territory police agencies from providing support through the provision of policing powers to the ACIC where collection of particular intelligence is a priority for their jurisdiction.

Simplifying the communication and sharing of ACIC intelligence

The ACIC must be able to share information easily with whoever they need to in order to achieve the stated purpose of hardening the environment against serious and organised crime.

The ACC Act provides that 'ACC information' means anything that is in the ACIC's possession. Currently all ACIC information is subject to the ACC Act's disclosure provisions, regardless of classification. This could include human resources documents, payslips and general corporate information and governance documentation, and can also include information obtained through open source and then stored on ACIC systems. Under the ACC Act, only the CEO or a delegate may authorise the disclosure of ACIC information.

The current information disclosure regime, including authorisation requirements, inhibits the ACIC from fulfilling its core statutory functions in relation to the dissemination of criminal information and intelligence in a timely and effective manner. This can impact the usefulness of, and reliance on, ACIC information by partner agencies. Further, the current information disclosure regime is significantly more burdensome than that of partner agencies which not only enable the disclosure of information for the purposes of functions, but also incorporate safeguards and protections if such information is disclosed for other purposes. For example, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* permits authorised officers to make a record, and disclose or use it for the purposes of, or in connection with, the performance or exercise of the person's functions, duties or powers as an official of a Commonwealth, state or territory. Similarly, both the TIA Act and SD Act provide exceptions for use and disclosure of information obtained by ASIO for the purposes of ASIO's functions, including ASIO security assessments.

The problems caused by the existing disclosure regime have been evident for many years. While significant drafting work has been undertaken on a new information disclosure regime, legislation has not yet been introduced to amend the existing provisions.

Reform would improve the timeliness of information and enable equitable intelligence sharing, resulting in immediate benefits for both the ACIC and its partner agencies. Also, amendments would enable the ACIC to access its national policing information holdings for intelligence purposes. The ACIC has limited access to the national police information systems which it administers. This limitation is largely due to the federated nature of Australian policing and the sensitivity of the information. However, it prevents the Commission from using the full suite of intelligence it holds. By undertaking legislative reform to enable the ACIC to access its national police information holdings for intelligence purposes, the ACIC would have additional access to information to generate intelligence – realising one of the benefits of the merger between the former ACC and CrimTrac. To date, that has not been realised due to the constraints of the existing information sharing regime.

The proposed reform to simplify the disclosure and sharing of information held within the ACIC would not impact existing safeguards. The ACC Act currently provides that the penalty for unauthorised disclosure of ACC information is imprisonment for two years. This provision protects sensitive information however, at present, means that ACIC staff members may breach the relevant provision by sharing information with partner agencies.

The new information disclosure regime would need to continue to acknowledge the sensitive nature of certain types of information held by the ACIC (including examination and telecommunications interception material). We consider the existing safeguards and protection should continue to apply to sensitive information. Noting the current Review of Secrecy provisions led by the Attorney-General's Department, the new legislation should have safeguards in-line with proposed best practice from that Review.

Recommendation 11

The new legislation for the ACIC contain information disclosure provisions that enable the ACIC to:

- **use its intelligence to inform all its legislated functions, and**
- **share it in a timely and equitable way with relevant government entities (Commonwealth, states and territories) and other agencies to assist those agencies perform their functions, as well as private sector bodies.**

Chapter 4: External Governance

This Chapter addresses the external governance arrangements and oversight of the ACIC including the ACIC Board. We outline improvements that could be made both to external governance of the ACIC and to broader national arrangements relevant to serious and organised crime.

In addition to external oversight bodies (parliamentary and the Inspector-General of Intelligence and Security discussed later in this Chapter), the ACIC also has an external governance body, the ACIC Board. The ACIC Board is chaired by the AFP Commissioner with membership including state and territory Police Commissioners, the ACIC CEO, the Commissioner of Taxation, the Secretary of the Attorney-General's Department, the ABF Commissioner, the Chair of the Australian Securities and Investment Commission (ASIC) and the Director-General of Security, as well as the Australian Transaction Reports and Analysis Centre (AUSTRAC) CEO as a non-voting observer.

The ACIC Board's functions are legislated in the ACC Act, with its main functions being to determine national criminal intelligence priorities, issue determinations which authorise the use of coercive powers and make recommendations in relation to National Policing Information Systems, including expenditure of the National Policing Information Systems and Services Special Account (the Special Account) and criminal checks.

Chapter 3 outlines our recommendations to provide improved safeguards applicable to the ACIC's use of coercive powers in place of the determinations issued by the ACIC Board. This Chapter proposes an alternate governance structure to allow for greater focus on the development of national strategy to combat serious and organised crime. We also propose an alternative arrangement for continued oversight and development of the national policing information systems and the Special Account.

Establishing a Commissioner/Agency Head-level Committee to Combat Serious and Organised Crime

A frequent theme in stakeholder consultation was the lack of a high-level national mechanism to collaborate and strategise on serious and organised crime threats impacting Australia. We note Australia has come together as a nation, along with New Zealand, to combat the threat of terrorism. Many stakeholders reported on the success of Australia's Counter-Terrorism collaboration and deconfliction model. The Australia-New Zealand Counter Terrorism Committee (ANZCTC) ensures the closest possible coordination and cooperation on counter-terrorism matters. During consultation, senior policing officials reported that they had a desire to see such a forum replicated in the serious and organised crime space, as it provided a clear understanding of priorities, areas of shared responsibility and risk, clear lines of reporting, and the ability to deconflict appropriately.

We acknowledge that the counter-terrorism remit represents a somewhat easier space in which to allocate shared risks and responsibilities and that this may be contributing to the success of its collaboration and deconfliction model. Combating serious and organised crime at a national level is likely to be more difficult. Jurisdictions tackle crime differently and under their own legislation, with differing levels of resourcing and technical capabilities. This makes a national model more difficult to implement. However, given the strength of stakeholders' feedback regarding the need for such a model, we see it as an important and much needed step forward in combating serious and organised crime in Australia.

We consider a new Committee, the National Committee to Combat Serious and Organised Crime (NCCSOC), should be established by the Commonwealth, as a joint effort across the Commonwealth and state and territory law enforcement agencies, to create a high-level national mechanism to collaborate and strategise on serious and organised crime threats impacting Australia. We acknowledge the Deputy-level Australian Transnational Serious and Organised Crime Committee (ATSOCC) has produced the *National Strategy to Fight Transnational, Serious and Organised Crime* (the Strategy) and its role in influencing national priorities, particularly at an operational level.

The success of the counter-terrorism model is due to many aspects that do not feature in the current transnational serious and organised crime (TSOC) model, including a capability fund, a dedicated Counter-Terrorism Coordinator and clearly documented structures. Achieving this level of success for TSOC may be contingent on many of these factors being adapted to suit the TSOC environment. Elevating the ATSOCC to the Commissioner/Agency Head level and more closely aligning the model to the ANZCTC represents the first step in this journey.

Consistent with the title, the Committee's role would be to develop the national strategy and set priorities for the national effort against serious and organised crime, including the national criminal intelligence priorities, and advise governments on the appropriate alignment of policy, intelligence and operational capabilities. The Committee would report annually to the Police Ministers Council, including on progress made in the fight against serious and organised crime.

Membership of the NCCSOC would be the Commissioner of the AFP, all state and territory Police Commissioners, the Director-General of National Intelligence, the Commissioner of Taxation, the CEO of AUSTRAC, the CEO of the ACIC, the Commissioner of the ABF and Secretaries of Attorney-General's/justice departments. Noting there will be inevitable crossover in responsibilities and equities across intelligence functions and jurisdictions, the Director-General of Security, the Chair of the ASIC, and the Director-General of the Australian Signals Directorate (ASD) should be invited if issues particularly relevant to their responsibilities are on the agenda or if they wish to raise issues with the Committee.

To ensure buy-in from every jurisdiction, meetings of the Committee should be held on rotation through all jurisdictions. The meetings should be co-chaired by the Commissioner of the police agency and the Head of the relevant justice department of the jurisdiction in which the meeting is held. It is our view the Secretariat should be jointly staffed by AGD, the AFP and the ACIC.

The Committee should establish sub-committees and working groups it considers necessary to support its work. We suggest using the successful model for counter-terrorism cooperation as a blueprint. We acknowledge there are already several committees in this space, most notably ATSOCC, and the Assistant Commissioner-level Serious and Organised Crime Coordination Committee. In the process of establishing these sub-committees and working groups, the Committee should also streamline and rationalise existing committees and working groups.

Establishing a Committee for the development of National Policing Information Systems

The remit of the NCCSOC would not extend to oversight and development of the national policing information systems, nor would it extend to oversight and management of the Special Account, both of which are currently core functions of the ACIC Board. We consider this should be the responsibility of a separate lower-level Committee.

The ACIC's national policing information systems are critical enablers that allow law enforcement and intelligence agencies to perform their duties. Throughout our consultation, stakeholders noted the critical role these systems play in supporting policing operations and judicial processes. Stakeholders also commented that, despite some initial challenges in the development stage of NCIS, overall the ACIC's provision of national policing information systems and the NCIS is operating effectively.

Jurisdictions work closely with the ACIC in the delivery, use and maintenance of the national policing information systems, including through the provision of data. These systems for core policing capabilities include fingerprint and DNA checks, among other items. It is essential that policing jurisdictions continue to have oversight and input into the development of these systems in a forum of their peers. It is, however, unreasonable and unnecessary for this forum to consist of Police Commissioners, particularly when the purpose of such a forum is to make decisions on technical elements of the systems.

In addition to feedback on the operation of the national policing information systems and the criticality of these systems, stakeholders also offered strong opinions on the Special Account. The Special Account was established under the *Financial Management and Accountability Determination 2006/07 — National Policing Information Systems and Services Special Account Establishment 2006*. Section 59E of the ACC Act sets out the purposes of the Special Account, including to pay for the development, implementation and operation of information technology systems and services in connection with the national policing information functions. Stakeholders emphasised the importance of preserving the jurisdictions' ability to provide input with regard to the expenditure of the Special Account, noting the Special Account funds the development of systems directly impacting on policing agencies.

We consider there should be a committee involving all jurisdictions that would be responsible for overseeing the development of National Policing Information Systems. This Committee should be established under legislation and would retain, in legislation, functions relating to the Special Account. This would include, for example, making recommendations on expenditure from the Special Account and providing advice on the fees and charges associated with the NCCHC, consistent with existing legislated functions. The existing intergovernmental agreement relating to the Special Account should be maintained.

Members of the Committee could, for example, be the Deputy Commissioners or Chief Information Officers of the relevant Commonwealth, state and territory organisations (including the Department of Home Affairs). The choice would be made by each organisation, but our expectation is that the representation be suitably senior to ensure decisions can be reached. The Committee should be chaired by the ACIC Deputy responsible for the systems that enable information to be shared.

The existing National Policing Subcommittee of the ACIC Board and the Law Enforcement Information Services Capability Committee should be disbanded and their roles taken over by this new committee.

The ACIC Board

The establishment of the NCCSOC and the separate, committee for national policing information and the Special Account, together with the improved safeguards applicable to the ACIC's use of coercive powers, in our opinion, provides a more robust and effective governance structure. This new structure results in significant changes to the external governance arrangements of the ACIC, and removes the need for the continuation of the ACIC Board.

Stakeholders were critical of the operation of the ACIC Board. ACIC Board members reported that the agenda is weighted toward procedural items, systems and financial updates, with less emphasis on efforts to combat the threat of serious and organised crime.

Stakeholders identified the ACIC Board was performing duplicative functions, overlapping with other existing serious and organised crime forums, such as the ATSOCC, as well as other national policing information forums, including its own subcommittee, the National Policing Systems Subcommittee. At a national level, stakeholders identified a gap in Australia's approach to serious and organised crime, noting the country does not have a consolidated, mature structure to coordinate the response to serious and organised crime threats.

It is clear from the stakeholder feedback that the issue with the ACIC Board extends beyond its current transactional role and goes to a lack of strategy and national coordination in Australia's framework to tackle serious and organised crime. This should be addressed by the establishment of the national Commissioner/Agency Head level committee discussed earlier in this Chapter.

Recommendation 12

A new committee, the National Committee to Combat Serious and Organised Crime (the Committee), be established. The Committee be responsible for developing the national strategy and setting priorities for the national effort against serious and organised crime, including the national criminal intelligence priorities, and advising governments on the appropriate alignment of policy, intelligence and operational capabilities. The Committee prepare an annual report to the Attorney-General and all state and territory Police Ministers through the Police Ministers Council.

Recommendation 13

Legislate a committee responsible for overseeing the development of National Policing Information Systems. The committee also be responsible for providing oversight, advice and making recommendations on expenditure from the National Policing Information Systems and Services Special Account.

If the two committees recommended above are established, we do not consider there is a continuing requirement for the ACIC Board. Accordingly, it should be disbanded once the ACC Act is repealed and new legislation is in place.

In recommending the ACIC Board be disbanded, our intention is not to disconnect the ACIC from state and territory partners. We consider the external governance arrangements proposed in this Chapter would provide states and territories with alternative mechanisms to shape the ACIC's intelligence collection priorities, discussions on the ACIC's national policing information systems and the conduct of criminal history checks, and oversight the Special Account.

Recommendation 14

Once new legislation has been enacted and the committees in Recommendations 12 and 13 have been established, the ACIC Board be disbanded.

Oversight

The Intelligence and Security Legislation Amendment Bill 2023 (ISLAB) is currently before Parliament and seeks to amend legislation to ensure holistic and robust oversight of all ten NIC agencies, including the ACIC. The Bill would expand the jurisdictions of the Inspector-General of Intelligence and Security (IGIS) and the Parliamentary Joint Committee on Intelligence and Security (PJCIS) to include the ACIC, among other agencies.

In addition, the Bill will also strengthen the relationships between IGIS, PJCIS and the Independent National Security Legislation Monitor (INSLM) by allowing the PJCIS to request the IGIS to conduct an inquiry, complementing the PJCIS' existing ability to request that the INSLM undertake a review. Finally, the Bill provides an own-motion power to the PJCIS to review certain legislation. In our view, this Bill contains essential and entirely appropriate changes to ACIC oversight given the changes to ACIC functions and powers recommended in this Review.

Under the ISLAB, the ACIC will be overseen by both the PJCIS and the Parliamentary Joint Committee on Law Enforcement (PJCLE) – the current body responsible for monitoring and reviewing the ACIC's performance of its functions. While some oversight of the ACIC will transfer to the PJCIS, the PJCLE will continue to monitor, review and examine the annual reporting functions of the ACIC.

The proposed role for the PJCLE runs counter to successfully positioning the ACIC as an intelligence agency rather than a law enforcement agency. In order to remove any ambiguity about the Commission's purpose, both externally and within the Commission, there should be nothing inferring a connection to law enforcement functions.

We agree that, as proposed under the ISLAB, parliamentary oversight of the ACIC should be exercised by the PJCIS. However, unlike what is specified in ISLAB, we consider there should be no residual oversight by the PJCLE of the annual reporting function, as the ACIC would solely be an intelligence agency.

Recommendation 15

Parliamentary oversight of the ACIC be exercised by the Parliamentary Joint Committee on Intelligence and Security. As the ACIC would be an intelligence agency, there be no residual oversight by the Parliamentary Joint Committee on Law Enforcement.

The ACIC be oversighted by the Inspector-General of Intelligence and Security, replacing the Commonwealth Ombudsman.

Freedom of Information

The ACIC is currently subject to the *Freedom of Information Act 1982* (Cth) (the FOI Act), despite the functions of the Commission being closely aligned to other agencies in Australia's intelligence community that are exempt from the FOI Act.

Dr Allan Hawke AC's 2013 Review of the Freedom of Information Act (the Hawke Review) recommended the ACIC (or the then Australian Crime Commission) be excluded from the operation of the FOI Act to provide protection for criminal intelligence. By contrast, the 2019 Comprehensive Review of the Legal Framework of the National Intelligence Community recommended the ACIC remain subject to the FOI Act. The Government disagreed with this recommendation, reasoning that the ACIC's functions are closely aligned with the functions of other agencies that are members of Australia's intelligence community and exempt from the FOI Act. But a lack of action means the ACIC is still subject to the FOI Act.

The approach taken in the Hawke Review provides consistency across Australia's intelligence agencies and is appropriate given the nature of the information held by the ACIC. Such an approach seems logical when considering the functions of the ACIC and how these would interact with the FOI framework. At present, the available exemptions within the FOI Act for the ACIC to protect sensitive information are not well suited to the varying types of sensitive information held by the Commission.

The law enforcement exemption under the FOI Act is a practical example of the issues the ACIC is currently presented with when assessing material subject to release under FOI. The law enforcement exemption only applies to *current* investigations, however the ACIC may have sensitive holdings relating to inactive investigations. These sensitive holdings are often owned by the states and territories who have their own FOI legislation that provides for broader exemption provisions.

Exempting the ACIC from the provisions of the FOI Act would ensure partner intelligence capabilities are protected and allows for FOI requests to be handled by the agency contributing information to the ACIC (for example into the national policing information systems), rather than the ACIC as the information conduit. This lowers the risk of sensitive information inadvertently being released by the ACIC, as contributing agencies are best placed to make decisions on their own information.

We consider that the ACIC be exempt from the provisions of the FOI Act to ensure its intelligence and capabilities are protected, and partner agencies are confident their collaboration and shared information is protected. This is consistent with the recommendations from the Hawke Review.

Recommendation 16

The ACIC be exempt from the provisions of the *Freedom of Information Act 1982* (Cth).

Chapter 5: Internal Governance and Organisational Design

This Chapter addresses improvements that could be made to ensure appropriate governance and accountability within the ACIC. Specifically, this Chapter makes recommendations about the internal governance arrangements of the ACIC and its organisational design to ensure they are attuned to the level of risk the Commission carries.

Traditionally, the ACIC has adopted an agile and forward-leaning operational risk posture in order to counter the challenging nature of the serious and organised crime environment. In our view, this agile approach is not supported by an effective, mature governance framework that adequately assesses and responds to risk, nor does it have the appropriate level of leadership oversight. This gap is evident from a number of significant operational and legal issues that arose during the period of this Review.

This Review was conducted at a time where the ACIC was the subject of several unfavourable media reports. The suspension of two of its employees over allegations of administrative misconduct, a senior executive leader with a family connection to a convicted criminal, and the alleged inappropriate handling of human sources, reflect the tenor of media reporting during the course of this Review.

The ACIC advised that it has no appetite for risk in several areas of its business, including examinations, legal, compliance and financial. The reality is the agile approach in intelligence operations and capability objectives has given rise to significant risks occurring in most of those key business areas. The tendency for operational risk to bleed into other business areas is heightened by a risk framework that creates silos between individual business areas and gives inadequate attention to risks at an enterprise level.

Senior Management Structure

It is our view that the Commission needs more depth in its leadership for the significant amount of risk it carries. In the current organisational structure, the Commission has two SES Band 3 officers. The first is responsible for intelligence functions, including covert collections, examinations and intelligence operations. This officer is also responsible for data and analytics and the NCIS. The second SES Band 3 is responsible for corporate functions, including finance, property, procurement, workforce capabilities, assurance and legal services. This second officer is also responsible for the Commission's information systems and the NCCHC function.

In the current structure, and under the SES Band 3 Corporate, there is an SES Band 2 General Counsel. The General Counsel is not only responsible for the provision of legal advice and the assessment of legal risk, but also carries responsibility for corporate functions such as workforce capability and assurance, finance, property and procurement. This structure does not align with the importance of the management of legal advice or legal risk in the Commission, nor is it proportionate to the level of risk the Commission carries. Some of the current issues the Commission is facing may have been prevented, or at least better mitigated, if the legal counsel was focused entirely on legal and legal-related issues and reported directly to the CEO.

We consider the ACIC should have a legal counsel at the SES Band 2 level reporting directly to the CEO. The position should have responsibility for legal advice, compliance, integrity and legal and operational risk. It should be supported by two SES Band 1s: one responsible for legal advice, compliance and integrity; and one responsible for legal and operational risk. This would ensure legal risks are assessed and managed at a senior level and provide an appropriate avenue for escalation of these risks. The role also provides an independent assurance outside of the operational context. It is envisaged this would also occur for compliance and integrity matters. The establishment of a legal counsel with sole responsibility for legal issues at the Band 2 level would also send a clear message to the workforce about the importance of the legal function.

Operational risk needs to be identified, assessed and managed at a senior level, with an appropriate course for escalation. Considering the majority of operational risk will result from the intelligence function and its associated powers; and that the collection, analysis and communication of intelligence is one of the Commission's core roles, we consider the retention of an SES Band 3 Deputy to lead and oversee the intelligence function is appropriate. To that end, we consider the ACIC should retain an SES Band 3 Deputy (Intelligence) responsible for the intelligence functions.

In regard to the second role of the Commission, its responsibilities for systems and services enabling the sharing of criminal intelligence and police information across jurisdictions, we consider the function should also continue to be managed by an SES Band 3 officer. The effective delivery of these systems to law enforcement agencies is crucial to the ACIC's partner relationships, but are also a critical tool used to combat serious and organised crime. When considering where the function would be best placed in the organisational structure, as an enabling function, it seems logical to group this function with other enabling services. Therefore, we consider the ACIC should have an SES Band 3 Deputy (Information Systems & Corporate Management) responsible for the systems that allow intelligence and police information to be shared across jurisdictions and for ACIC corporate management issues.

Recommendation 17

The ACIC have a Legal Counsel at the SES Band 2 level reporting directly to the CEO. The position be supported by two SES Band 1s: one responsible for legal advice, compliance and integrity; and one responsible for legal and operational risk.

Recommendation 18

The ACIC retain a SES Band 3 Deputy (Intelligence) responsible for the intelligence function. The ACIC also have an SES Band 3 Deputy (Information Systems & Corporate Management) responsible for the National Policing Information Systems and for ACIC corporate management issues.

An Office of the Examiners

Underpinning these intelligence functions are the coercive powers used for collecting intelligence on high priority serious and organised crime threats. These powers are addressed in Chapter 3; however, the powers are relevant in an organisational design context when considering enterprise risk and governance.

Between January 2018 and August 2023, the ACIC faced 18 challenges to its coercive powers which involved a constitutional ground. Significant legislative reform was required in 2019, 2022 and 2023 to address challenges to the determinations. Stakeholder consultation during the Review has confirmed that coercive powers are a valuable intelligence gathering tool. However, serious and organised crime figures are well-funded, well-resourced and will continue to mount legal challenges to the exercise of these powers in an attempt to frustrate the gathering of intelligence. To provide more rigour around the function, we are of the view there should be an Office of the Examiners within the Intelligence Group, headed by an SES Band 2, responsible for the use and management of the coercive powers. This positions the examinations function with dedicated high-level oversight, while still remaining embedded in the broader intelligence function.

When considering the optimal organisational design of the Commission, the coercive powers function presented as both a critical enabler of the Commission's functions *and* under the current legal framework, as a major source of risk for the Commission. We note that previously the examinations function had been located within the Commission's legal branch, however in recent years it was relocated to the intelligence and operations area. In our view, this move has increased the organisational risk.

Some stakeholders argued that to better manage risk, the coercive powers be removed from the ACIC and placed in a separate Office in the Attorney-General's Portfolio. However, we judge that removing the powers from the ACIC and placing them in an independent construct would reduce the value of the powers by disconnecting them from the functions they service, and in turn, are serviced by.

The model of embedding an Office of the Examiners within the ACIC's intelligence function with a dedicated legally trained SES Band 2 is, in our view, a more effective option. It provides additional assurance to help mitigate risk by creating a degree of separation between the powers and the function it underpins, coupled with the additional, dedicated oversight of an SES Band 2. To ensure legal risks are identified and assessed within the operational context, that officer should also have legal qualifications and experience. This role would be complementary to the SES Band 2 Legal Counsel and SES Band 1 position responsible for legal and operational risk by providing an operational lens to the legal risks.

Recommendation 19

A separate Office of the Examiners be established within the Intelligence Group, overseen by a legally qualified SES Band 2.

Improving Internal Governance and Risk Oversight

The ACIC faces significant organisational risks, including operational and legal risks, in part due to the challenging nature of the serious and organised crime environment. As part of this Review, we considered whether the current governance structures within the ACIC are appropriate to oversight the risks faced by the Commission. We have formed the view that the ACIC could benefit from a more robust governance framework that allows it to appropriately assess and respond to risk in a holistic way. We therefore recommend there should be a High-Risk Oversight Committee that focuses on the risks associated with the intelligence function and the use of the coercive powers. We consider this necessary to put the Commission in a better position to actively, holistically and robustly assess, mitigate and respond to risk at an enterprise level.

The Committee would consider risks across the business, including legal, operational and strategic risks, where matters have been identified as high-risk or sensitive in nature and escalated to the Committee. The Committee should establish the ACIC's position on the risks the organisation is carrying and advise the CEO on mitigation strategies. The Committee should also undertake the recommended annual assessment of the authorisation instruments underpinning the coercive powers to enable early identification and remediation of any vulnerabilities (Recommendation 8). Having a Committee responsible for establishing the organisational position on risks will promote a cohesive and collaborative culture, increasing transparency and improving communication within the Commission. This, in turn, reduces risk within the Commission.

To ensure a holistic view can be reached by the Committee, the membership will need cross-representation across the high-risk areas of the business. In our view, it should be chaired by the Legal Counsel, and include the SES Band 1 responsible for legal and operational risk, the Deputy (Intelligence), the head of the Office of the Special Examiners, and a senior officer from the Attorney-General's Department. Other members could be determined by the CEO.

Recommendation 20

A High-Risk Oversight Committee be established that focuses on significant organisational risk and undertakes the annual assessment of the authorisation instruments underpinning the coercive powers (see Recommendation 8).

Developing and delivering the National Criminal Intelligence System

The feedback from stakeholders on the NCIS was positive, with many noting the increased efficiencies and the value of the information to frontline officers. Stakeholders were also generally positive about the delivery of other systems delivered by the ACIC, noting that part of the business was operating well. NCIS is clearly a critical information sharing system, connecting law enforcement with accurate and contemporary data from multiple jurisdictions to enable law enforcement to perform their frontline duties. Beyond this, NCIS has scope not only to service frontline officers, but the wider law enforcement and intelligence communities.

Home Affairs is currently responsible for hosting NCIS and providing technical support in the delivery and sustainment of the project. We understand this arrangement is a legacy of the ACIC previously being in the Home Affairs Portfolio. The ACIC does not have the cloud infrastructure to host NCIS. It would take funding, time and an uplift in resources to enable the ACIC to develop this infrastructure.

While we consider the ACIC is the correct business owner of the NCIS, there is no compelling reason at present to transfer the technical delivery of NCIS from Home Affairs to ACIC.

Efforts to onboard four mid-to-late adopter agencies into the NCIS would be at risk if this transfer were attempted in the next year. Even in the longer-term, attempting to transfer complete responsibility to the ACIC would pose a significant risk to the system and with already 50,000 users, and more to come, there is the clear potential for any disruption to have an adverse impact on policing operations. With the adoption of, and reliance on NCIS within local systems for states and territories, as well as the upcoming development of the National Firearms Register, the NCIS Program requires stability to focus on sustainment of its capabilities.

We consider the current arrangements, whereby the ACIC relies on Home Affairs for the technical delivery of NCIS under a fee-for-service arrangement, is the most appropriate way forward considering the scale and maturity of the two agencies' IT capabilities. For these reasons, it is our view that the technical delivery and sustainment of NCIS continue to be outsourced to Home Affairs, under an agreement that sets out the respective responsibilities of the ACIC and Home Affairs and with an appropriate fee for the service. We consider that it could be appropriate to review these arrangements at a later time, but only after critical components, such as mid-late adopter integration and the National Firearms Register, are delivered.

Recommendation 21

The Department of Home Affairs continue to undertake the technical development and delivery of the National Criminal Intelligence System, under a fee-for-service arrangement with the ACIC. This arrangement be reviewed once critical components of policing agency integration and the National Firearms Register are delivered.

Chapter 6: Capabilities and Workforce Skills

This Chapter identifies opportunities for improvements in the ACIC's capabilities, in order to maximise its effective operation and to work in concert with law enforcement partners.

A breakdown of the workforce shows that at 1 December 2023, the ACIC had 848 Australian Public Service (APS) employees and statutory office holders, inclusive of investigators, intelligence analysts, data scientists, psychologists, physical and technical surveillance operatives, lawyers, specialist examinations staff, business and systems analysts, information architects, and corporate services staff.

Additionally, from a partnerships' perspective, the ACIC had 37 secondees, 3 of which are funded by the ACIC and 34 secondees funded by jurisdictions from a range of agencies including: AUSTRAC, the AFP, Home Affairs, Northern Territory Police, New South Wales Crime Commission, New South Wales Police, New Zealand Police, Queensland Police, Tasmania Police, Victoria Police and ABF.

Recruitment

As the ACIC shifts the Commission's focus to reflect its criminal intelligence remit they will likewise need to shift their recruitment strategies. In particular, as there will no longer be an investigative capability, the Commission will need to focus on recalibrating its workforce away from the recruitment of former police officers, and toward recruitment of intelligence analysts and intelligence officers.

A graduate program focused on recruiting intelligence officers and analysts will be key in developing its future workforce and strengthening its intelligence capabilities. Within the NIC, ASD and ASIO have undertaken a similar process which has brought the agencies 'out of the shadows' while maintaining operational secrecy. This approach has fostered an exponential increase in applications across a range of roles. The ACIC could benefit from studying ASD's and ASIO's approaches.

To support the capabilities of the ACIC workforce, it would be beneficial for the Commission to focus its recruitment and secondments primarily on the development of high-quality intelligence analysts and intelligence officers and a smaller number of similarly high-quality officers with legal or judicial experience to support the capabilities of the Commission.

As well as considering secondments from NIC agencies, the ACIC should work with agencies in the NIC to better understand the training and development opportunities available across the intelligence community and begin to develop a training package in support of this.

Recommendation 22

The ACIC focus its recruitment and secondments primarily on the development of high-quality intelligence officers and analysts through prioritising its annual graduate intake and complementing that with direct recruitment and secondments.

Collection capabilities

With encrypted platforms and devices becoming ubiquitous, it is now easier for serious and organised crime to obfuscate the criminality they are conducting online or via phone. This rise in encryption presents significant challenges for intelligence collection through the use of telecommunications intercepts and surveillance devices. There is a consequential increase in the importance of human sources.

The ACIC indicates that human sources, both domestically and offshore, represent a significant intelligence stream for the Commission. The intelligence gathered from human sources assists the Commission to create criminal intelligence threat assessments that inform the operational focus of the ACIC and its partner agencies. The AFP also has a covert human source capability to support its functions.

We consider the ACIC and AFP should develop, coordinate and manage their human sources to ensure they are complementary, not duplicative. The obligation to collaborate should be captured in a Ministerial Direction to ensure it is an enduring practice. Similar provisions should apply to the agencies' liaison arrangements with international partners. Both the ACIC and the AFP need relationships with international partners, but better coordination and deconfliction is also needed.

The ACIC should engage with the AFP and other NIC agencies in order to train and develop appropriate human source tradecraft. In a similar fashion, the ACIC should also develop relationships across the NIC with a view to benchmarking its technological and covert collection capabilities. As serious and organised crime groups continue to utilise and invest in advanced anonymising technologies, the ACIC must continue to compete with these well-funded groups by ensuring their covert intelligence capabilities stay ahead of serious and organised crime. With limited resources available, NIC agencies should work together with the ACIC to pool resources and capabilities as much as possible. Similarly, the ACIC should, where possible, share capabilities with states and territories to uplift the national criminal intelligence capability.

Finally, we consider the ACIC has a key role to play in the fight against cybercrime through the delivery of strategic level assessments and work on target development. The provision of ACIC intelligence to partner agencies would enable them to deploy disruptive effects and remove threats posed by syndicates.

Recommendation 23

The ACIC continue to develop and manage human sources both offshore and onshore. The ACIC continue to develop and manage relationships with international partner agencies, as appropriate for its intelligence function.

Recommendation 24

The ACIC and the Australian Federal Police develop and manage their international relationships and human sources to ensure they are complementary, not duplicative. The obligation to collaborate on these issues be captured in a Ministerial direction to ensure it is an enduring practice.

Recommendation 25

The ACIC work with other agencies in the National Intelligence Community (NIC) to explore sharing of capabilities that address the NIC capability priorities. The ACIC continuously benchmarks its technical capabilities against those of other agencies in the NIC and where possible share capabilities with states and territories to uplift the national criminal intelligence capability.

An Annual Public Threat Assessment Presentation

In order to raise the ACIC's intelligence profile, while at the same time removing some of the Commission's secretive mystique, an annual threat assessment presented by the ACIC CEO would be beneficial. It would increase the public's understanding of the ACIC and its work, with a particular focus on raising the public's awareness of the threat from serious and organised crime.

We consider that in the same way as ASIO now delivers 'The Director-General's Annual Threat Assessment', there would be significant benefits for the ACIC in delivering a criminal intelligence-based threat assessment to increase the public's awareness of the seriousness and nature of the threat from serious and organised crime; increase public understanding of the ACIC and its work; and raise the public profile of the Commission and thereby assist recruitment.

Recommendation 26

The ACIC CEO present an annual public threat assessment to:

- increase the public's awareness of the prolific and serious nature of the threat from transnational serious and organised crime,**
- increase public understanding of the ACIC and its work, and**
- raise the public profile of the Commission and thereby assist recruitment.**

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Chapter 7: Funding

In examining the issues related to the ACIC's current funding arrangements we considered the manner in which its funding is appropriated and allocated across the Commission.

At present, about 50 per cent of the ACIC's funding is received through appropriations, while the other 50 per cent is revenue derived from national police checks and the Special Account. The ACIC relies on revenue in the Special Account to maintain and develop National Policing Information services. Funding from the Special Account can only be utilised for the development, implementation and support of information technology and policing systems that support the sharing of police information.

It is critical to the ACIC's core functions that its base funding arrangements are stabilised. Too much of its funding is derived from short-term New Policy Proposals (NPPs). Changes to the ACIC's funding arrangements will require budgetary discussions and a transitional period in which to enact longer-term change. In order to support this process, it would be appropriate for the ACIC to be provided with one year of funding that removes the onus on terminating measures. This funding would provide a stronger footing for the Commission to determine a more stable level of base funding, including funding associated with the implementation of our recommendations for FY2025-26.

Funding for intelligence

Over the last decade the ACIC's criminal intelligence capabilities have been heavily reliant on various short-term funding measures.

Without secure funding, the ACIC's core capabilities can neither grow nor remain agile to target serious and organised crime threats. It is difficult for the Commission to invest in long-term capabilities and uplift its enabling capabilities with short-term funding.

Long-term funding would encourage ongoing support for the ACIC's capability pillars and intelligence capability, as well as ensuring uplift and stability of critical enabling functions. Noting the ACIC's role as a national data custodian, long-term funding would enable the ACIC to invest in its technology and systems, and deliver reliable systems and services to enable national intelligence and information exchange to support data analytics and outcomes.

In order to address this issue, a comprehensive restructure of the ACIC's funding is required. A base funding level is needed that would support the ACIC's critical criminal intelligence functions, its capability pillars and provide certainty to ensure the ACIC can continue to evolve its capabilities to respond to the dynamic serious and organised crime threat.

Base funding should also incorporate costs incurred as a result of recommendations from this Review that are agreed by Government. Moving forward, NPPs should be used solely to seek funding for new capabilities or for significant enhancement of existing capabilities.

Recommendation 27

The ACIC be provided a base level of funding sufficient to ensure uplift and staffing required to support its remit as Australia's national criminal intelligence agency and to sustain the following capability pillars:

- **Coercive examinations**
- **Technical intelligence**
- **Human intelligence**
- **Data analytics**

The suitable level of base funding be assessed jointly by the ACIC and the Department of Finance.

National Policing Information Systems

On 1 July 2016, the *Australian Crime Commission Amendment (National Policing Information) Act 2016* amended the ACC Act to implement the carrying over of CrimTrac's functions to the ACC, including the provision of systems and services relating to national policing information and NCCHCs. Since that time, the ACIC has held a critical role as a national data custodian for law enforcement and intelligence agencies, including through the provision of a range of national policing information and services which support officer safety.

Ninety-eight per cent of the Special Account balance is made up of revenue derived from NCCHCs. The ACIC is legislated to deliver NCCHCs through the National Police Checking Service (NPCS). Established in 2003, the NPCS is delivered by the ACIC, together with state and territory police agencies and must meet a growing demand for background checks. Checks can be submitted for the purpose of general employment, working with children and vulnerable people, volunteers, National Disability Insurance Scheme, government employment, ASIC/MSIC cards, and other applications. The ACIC coordinates the NCCHC process, but the criminal history information is held by the Commonwealth and state and territory police, who the ACIC works alongside in order to deliver the NPCS. Due to this arrangement, the states and territories have a strongly-vested interest in decisions surrounding investment of this funding.

Expenditure from the Special Account is legislatively tied and must be used solely to support information technology and policing systems that support the sharing of police information. The purposes of the Special Account are to pay for scoping, developing, procuring, implementing and operating information technology systems and services in connection with national policing information functions.

The Commission would prefer a funding arrangement that gives it more flexibility in how it uses the totality of its funds. But the existing set of arrangements that apply to the Special Account seem to work for the majority of stakeholders. In our view, there is no compelling case to change these arrangements. We are also mindful that if the arrangements were to change, it could introduce new tensions in relationships with Commonwealth, state and territory stakeholders.

Recommendation 28

The National Policing Information Systems and Services Special Account continue to provide an adequate base level of funding for the development of the National Criminal Intelligence System and other systems that maintain policing systems and support the sharing of police information across jurisdictions.

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Chapter 8: The Australian Institute of Criminology

This Chapter considers the role of the AIC, its relationship with the ACIC, and proposes reforms to further the independence and research of the Institute.

The Australian Institute of Criminology

The AIC was established in 1973 under the *Criminology Research Act 1971* (CR Act). The AIC, a Commonwealth statutory agency, is Australia's national research and knowledge centre on crime and justice, compiling trend data and disseminating research and policy advice. The functions of the AIC are set out in section 6 of the CR Act and include promoting justice and reducing crime by conducting criminological research and communicating the results of that research to the Commonwealth, states and territories and the community. Further, the AIC supports its Director and administers programs for awarding grants for criminological research relevant to public policy of states and territories.

The AIC's current research program focuses on contemporary criminology concerns and aims to better understand them in order to promote justice and reduce crime among the Australian community. With crime in Australia rapidly evolving, this mission remains as relevant today as when the AIC was first founded.

In 2023-24 the research priorities of the AIC are:

- Indigenous over-representation in the criminal justice system
- Transnational serious and organised crime
- Economic crime
- Family, domestic and sexual violence
- Human trafficking and modern slavery
- Online sexual exploitation of children
- Cybercrime

Annual priorities allow the AIC to respond to new and emerging areas of concern to Australian governments. Further, the AIC collaborates with stakeholders both nationally and internationally to bring together a research knowledge base that is both qualitative and quantitative in nature. The AIC relies on data provided by the Commonwealth and state and territory governments in order to undertake a large range of its research activities.

Current relationship with the ACIC

Since a Machinery of Government change in July 2015, the CEO of the ACIC has been the Director of the AIC. This was intended to be a temporary arrangement pending legislative changes in 2016, outlined below, that would have abolished the AIC and created the Australian Crime and Justice Research Centre as a branch within the ACIC.

The Australian Crime Commission Amendment (Criminology Research) Bill 2016 (CR Bill) was introduced into Parliament in 2016 however lapsed on dissolution of the government in 2019. As well as transferring selected functions of the AIC to a newly created Australian Crime and Justice Research Centre within the ACIC, the CR Bill proposed certain protections to prevent AIC data holdings being accessed for ACIC purposes.

At the time, and as described in the CR Bill's second reading speech, the proposed merger between the AIC and ACIC was seen as an opportunity to combine the resources of the AIC and ACIC to provide Australian law enforcement agencies with central access to a consolidated and comprehensive criminal research and intelligence resource. As the CR Bill lapsed, the extension of temporary arrangements between the AIC and ACIC have, in effect, resulted in a partial merger between the agencies, where the ACIC CEO remains the AIC Director and the ACIC provides corporate services on a fee-for-service basis to the AIC through a memorandum of understanding.

The partial merger of the AIC and ACIC was considered an opportunity to make classified information readily available and accessible for criminological research, however since that time only six data extracts have been supplied by the ACIC to the AIC. This is largely due to the sensitivities around the data, which has meant that the information could not be used for the intended research purposes. The merger in its current state has therefore not achieved its intended purpose.

There are a number of reasons why the data sharing has not occurred, including due to differing legislative functions, requirements and demands on the two agencies. The AIC is a public-facing organisation that publishes research and delivers events to inform policy-making. Its purpose extends beyond law enforcement, counter-terrorism and organised crime, and while there is an overlap with the ACIC's functions (especially in relation to organised crime) this is a relatively limited aspect of AIC research.

Proposed reform to further the independence of the AIC and its research

There are a number of factors that suggest the current arrangement between the AIC and the ACIC is detrimental to the operations of both agencies. In particular, the Review heard concerns about the independence of the AIC being compromised as a result of being linked with the ACIC through the partial merger.

The AIC, in its submission, argued that there is a growing concern associated with the extent to which research directed and controlled by another government agency undermines the credibility of the AIC. The submission also raised concerns over whether government can rely on objective research to inform policy if there is an underlying concern over the impartiality and credibility of the research. In order to address these concerns, it argued that reform is required to reinforce the AIC's independence.

The AIC Director is responsible for representing the work of the AIC at Senate Estimates and parliamentary fora. Noting that under current arrangements the AIC Director is also the ACIC CEO, combining the two agencies at these appearances weakens the perceived independence of the AIC by highlighting the role played by the ACIC in overseeing the Institute. As the ACIC develops further as a NIC member, this will only accentuate the difference between the two agencies.

The nature of running a complex and dynamic intelligence agency means that ACIC matters will always take precedence over the AIC. The AIC's operating revenue has declined by 27 per cent, and government appropriation by 15 per cent, since the partial merger in 2015.

In order to achieve its independence and better position itself, the AIC should have a director, independent of the ACIC, who can represent the best interests of the Institute. The AIC Director should be a statutory appointment. This would raise the standing of the AIC in the criminological research community.

Given the remit of the Attorney-General's Portfolio, including its focus on national security and criminology, we consider it is appropriate for the AIC to remain in the Portfolio and continue to operate under the CR Act. Further, noting that the AIC has a small footprint (25 staff as at 13 October 2023), where practicable and cost-effective, the Attorney-General's Department should provide corporate services under a fee-for-service agreement.

Importantly, it is not the intention of our recommendations that the new arrangement place any additional administrative burden on the AIC or the Attorney-General's Department. The AIC should continue to prepare its annual report, as required by the PGPA Act, and any materials required for the budget process as it already does.

Recommendation 29

The Australian Institute of Criminology (AIC) remain within the Attorney-General's Portfolio and continue to operate under its own Act, the *Criminology Research Act 1971*.

The Director of the AIC be a statutory appointment, with staff to be Australian Public Service employees of the AIC.

Where practicable and cost-effective, the Attorney-General's Department provide corporate services to the AIC under a fee-for-service agreement.

Appendices

Appendix 1: Terms of Reference

Independent Review of the Australian Criminal Intelligence Commission and Commonwealth law enforcement arrangements

The review, to be led by an independent reviewer, will examine the operation and effectiveness of the Australian Criminal Intelligence Commission (ACIC) as Australia's national criminal intelligence agency within the context of Commonwealth law enforcement and criminal intelligence arrangements more broadly, and prepare findings and recommendations for any reforms.

The independent reviewer will prepare a report for the Government within six months of the review's commencement.

The review will consider the purpose, powers and functions of the ACIC as Australia's national criminal intelligence agency and its operation and effectiveness in the contemporary transnational, serious and organised crime threat environment including:

- the suitability of the legislative framework, internal governance and accountability of the ACIC's activities
- whether the role and responsibilities of the ACIC are appropriately defined and complementary to other Commonwealth law enforcement and intelligence agencies

Without limiting the matters that the review may have regard to, it will have regard to:

- the current transnational, serious and organised crime threat environment and any emerging threats or trends
- international law enforcement and criminal intelligence operational arrangements that may provide relevant models in the Australian context
- relevant policies and legislation including the *Australian Crime Commission Act 2002*, *Australian Federal Police Act 1979*, *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, and the *Australian Border Force Act 2015*, *Crimes Act 1914*, *Telecommunications (Interception and Access) Act 1979* and *Surveillance Devices Act 2004*
- funding arrangements
- other relevant reviews relevant to the operations, governance, and legislative framework of the ACIC, including the Comprehensive Review of the Legal Framework of the National Intelligence Community and any available findings of the 2024 Independent Intelligence Review of the National Intelligence Community

- improvements that could be made to:
 - maximise the effective operation of, and cooperation between, Commonwealth law enforcement agencies and avoid any unnecessary duplication,
 - enhance the ability of the ACIC and other Commonwealth law enforcement agencies to collaborate with each other and with state and territory and international law enforcement partners to combat transnational, serious and organised crime,
 - improve the way in which Commonwealth law enforcement and criminal intelligence strategic priorities are determined and implemented,
 - the provision of policing information through the delivery of national policing information systems, and
 - ensure appropriate governance, accountability, and oversight of the ACIC (including the role and operation of the ACIC Board) and Commonwealth law enforcement activities targeting transnational, serious and organised crime more broadly.

Appendix 2: Stakeholder Engagement

Stakeholder Consultation

- Ms Katherine Jones PSM, Secretary Attorney-General's Department
- Ms Sarah Chidgey PSM, Deputy Secretary Attorney-General's Department
- Mr Andrew Warnes, First Assistant Secretary Attorney-General's Department
- Ms Heather Cook, CEO Australian Criminal Intelligence Commission
- Mr Matthew Rippon, then Acting CEO Australian Criminal Intelligence Commission
- Members of ACIC Executive
- Mr Tim Sage, Examiner Australian Criminal Intelligence Commission
- Dr Rick Brown, Deputy Director Australian Institute of Criminology
- Mr Reece Kershaw APM, Commissioner Australian Federal Police
- Members of AFP Executive
- Ms Stephanie Foster PSM, Secretary Department of Home Affairs
- Mr Michael Pezzullo AO, then Secretary Department of Home Affairs
- Members of Home Affairs Executive
- Mr Michael Outram APM, Commissioner Australian Border Force
- Ms Rachel Noble PSM, Director-General Australian Signals Directorate
- Mr Cameron Ashe, Deputy Director-General Australian Signals Directorate
- Mr Joseph Longo, Chairperson Australian Securities and Investments Commission
- Mr Mike Burgess, Director-General of Security Australian Security Intelligence Organisation
- Ms Kerri Hartland, Director-General Australian Secret Intelligence Service
- Mr Rob Heferen, Commissioner of Taxation Australian Taxation Office
- Mr Chris Jordan AO, then Commissioner of Taxation Australian Taxation Office
- Mr Jeremy Hirschhorn, then Acting Commissioner of Taxation Australian Taxation Office
- Mr Brendan Thomas, CEO Australian Transaction Reports and Analysis Centre
- Mr Peter Soros, then Acting CEO Australian Transaction Reports and Analysis Centre
- Mr Scott Bruckard PSM, then Acting Director Commonwealth Director of Public Prosecutions
- Mr Iain Anderson, Commonwealth Ombudsman
- Mr Andrew Shearer, Director-General of National Intelligence Office of National Intelligence
- Mr Scott Lee APM, Chief Police Officer ACT Policing
- Mr Neil Gaughan APM, then Chief Police Officer ACT Policing
- Ms Karen Webb APM, Commissioner New South Wales Police Force
- Mr Michael Murphy APM, Commissioner Northern Territory Police Force
- Mr Steve Gollschewski APM, Commissioner Queensland Police Service
- Ms Katarina Carroll APM, then Commissioner Queensland Police Service
- Mr Grant Stevens APM, Commissioner South Australia Police

- Ms Donna Adams APM, Commissioner Tasmania Police
- Mr Shane Patton APM, Chief Commissioner Victoria Police
- Mr Col Blanch APM, Commissioner Western Australia Police Force
- Mr Michael Phelan APM, Former CEO Australian Criminal Intelligence Commission
- Mr Mick Keelty AO, Former Commissioner Australian Federal Police
- Mr Chris Tierney, ILO Australia and New Zealand National Crime Agency
- Dr Heather Smith PSM and Mr Richard Maude, Reviewers 2024 Independent Intelligence Review

Written Submissions

- ACT Policing
- Attorney-General's Department
- Australian Border Force
- Australian Criminal Intelligence Commission
- Australian Federal Police
- Australian Institute of Criminology
- Australian Secret Intelligence Service
- Australian Security Intelligence Organisation
- Australian Securities and Investments Commission
- Australian Signals Directorate
- Australian Taxation Office
- Australian Transaction Reports and Analysis Centre
- Commonwealth Director of Public Prosecutions
- Commonwealth Ombudsman
- Department of Finance
- Department of Home Affairs
- New South Wales Police Force
- Northern Territory Police Force
- Office of National Intelligence
- Queensland Police Service
- Victoria Police
- Western Australia Police Force