



Families and Friends for Drug Law Reform (ACT) Inc.

committed to preventing tragedy that arises from illicit drug use

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Mr Jonathan Curtis
Committee Secretary
Parliamentary Joint Committee on the
Australian Crime Commission
Parliament House
CANBERRA ACT 2600

Dear Mr Curtis

I refer to your letter of 12 January to Mr Bush on behalf of our organisation concerning the enquiry of the Parliamentary Joint Committee on the Australian Crime Commission and his telephone conversation with your office on Friday 8 April regarding the provision this week of our submission. Accordingly, the following is the submission of Families and Friends for Drug Law Reform on the 2003-2004 annual report of the Australian Crime Commission.

Performance measures

2. Performance measures adopted by the Commission can be criticised because they are largely measures of activity and not whether this activity is effective in achieving a substantive objective. To take as an example investigations into federally relevant criminal activity, three of the six key performance measures mentioned on page 54 purely relate to the level of activity, namely:

- the number of investigations conducted and allocated by the Board;
- the use of coercive powers; and
- collaboration with partner law enforcement agencies.

3. These criteria can even be criticised on the ground that none set any particular level of activity as a goal. Is the conduct of one or ten investigations a measure of success? At a deeper level, with a level of activity specified in the criteria, each could be satisfied without any progress having been made towards the declared overriding substantive objective. This objective is specified clearly as disrupting and deterring serious organised crime through investigations into federally relevant criminal activity (p. 53).

4. Furthermore, even success according to the other three performance criteria do not necessarily indicate progress towards the overriding substantive objective. For investigations into federally relevant criminal activity these are:

- the number and significance of arrests and charges arising from investigations;
- achievement of objectives of investigations;
- the value of proceeds of crime forfeited.

5. Just as in any military campaign, the mere fact that some casualties and damage are inflicted on the enemy does not demonstrate military success. What is important is whether the injury inflicted on the enemy reduces the enemy's capacity to prevail. If it were otherwise a party to a conflict trounced by its opponent would still be able to claim victory simply because it had inflicted some damage before being overwhelmed.

6. In other words, what is required for the performance criteria to be meaningful is that they provide a measure of whether the level of serious organised crime is disrupted and deterred. The number of arrests and value of proceeds of crime forfeited are a measure of this only with an estimate of the amount of crime involved and of the financial turnover of that criminal activity. Incorporating as it does the intelligence functions of the former Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments, the Commission is uniquely competent to make these links. The annual report gives little evidence of this being done.

7. Assessment of performance against meaningful goals has a moral aspect too. It should be a manifestation of the values proclaimed in the Commission's corporate plan of honesty and transparency and commitment to deliver objective advice without fear or favour.

Recommendations:

1. The performance criteria should not reflect mere activity but instead whether there has been meaningful progress towards the achievement of substantive objectives.

2. Having regard to the unique intelligence and assessment capacities of the Commission, annual reports should incorporate an assessment of whether law enforcement effort is making progress towards the achievement of substantive objectives.

8. The report's treatment of the illicit drugs is an example of the inadequacy and lack of rigour employed in reporting. On page 36 it lists "key findings" of the Illicit Drug Data Report 2003-04 as:

- more than nine tonnes of illicit drugs were seized in Australia in 2002-03 in over 46,830 seizures;
- cannabis is the most widely used illicit drug in Australia;
- MDMA border detections have been increasing since the mid-1990s, with weight of detections increasing since 1999-2000;
- there was an increase in the seizure of amphetamine-type stimulants and an increase in its availability;
- heroin seizures and heroin-related arrests increased;
- there has been a relative decline in cocaine purity seized since 1997-98 and a significant drop in the number of arrests in 2002-03 compared with 2001-02; and
- there was a decline in the number of seizures of performance-and-image-enhancing drugs for the first time since reporting began in 1994-95.

9. There is no indication what these activity outcomes signify for the drug situation in Australia. Are illicit drugs becoming less available and, if so, is the effort of law enforcement effective in containing or reducing the problem?

10. It is recognised that levels of drug seizure generally are an indication of the level of drugs available. This means that “seizures of drugs by law enforcement agencies . . . can provide an important insight into the actual trends in illicit drug production and trafficking.”¹ Thus, police intelligence has acknowledged that: “While seizure rates do not necessarily correspond with production, they can be a good indicator of production trends.”² Research agencies regularly cite rising trends in the rate of seizure as evidence of greater availability.³ In fact, the officially funded study of the heroin shortage acknowledges that the annual weights of heroin seized is “an indication of the amount of heroin imported.”⁴

11. Thus the foregoing “key findings” may, for example, point in different directions. The declining purity of cocaine seized and number of arrests for offences concerning cocaine point to less cocaine being imported. They throw little if any light on what may have brought about that decline. The key findings themselves state that the increase in the seizure of amphetamine-type stimulants was accompanied “an increase in its availability”, not a reduction. Indeed the annual report states on page 34 that “Australian law enforcement agencies agree that amphetamines is the big growth area due to the scale of profits involved”.

Recommendation:

3. When measures of law enforcement activity such as the levels of drug seizures are provided, the annual report should also include an assessment of the extent to which this activity impacts on the overall level of criminal activity involved.

12. The whole point of using the criminal law to prohibit dangerous drugs is to make them less available to the general population and particularly children. An accurate estimate of the size of the Australian illicit drug market is essential in order to judge the bearing of arrests, seizures and other law enforcement effort on that level of availability. Pursuing the analogy already mentioned of a military campaign, the capacity of organised crime to meet the demand for illicit drugs is the equivalent of the enemy’s capacity. We are not winning the military campaign if, in spite of the arrests and seizures we make, the enemy is still able to supply all that the market can consume. Thus, if the market is fully supplied it cannot be claimed, as the 2002-03 report did, that seizure of a large quantity of drugs which “had the potential to cause physical harm or death . . . reduced a serious threat to public health” (p. 59).

13. The National Crime Authority has shown that it is possible to make useful estimates of the size of the heroin market.⁵ With its intelligence and assessment capacity the Commission

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1. Western Australian, Legislative Assembly, Select Committee into the Misuse of Drugs Act 1981, *Taking the profit out of drug trafficking: an agenda for legal and administrative reforms in Western Australian to protect the community from illicit drugs* (November 1997) WA 1997, v.1, §3.2.4, p. 61.
 2. Sandy Gordon, “Technology impacts on drug production in Asia: The role of amphetamines in Asia’s growing drug problem” in *Platypus Magazine*, no. 72, pp. 17-22 (Sept. 2001) p. 18 & similarly United Nations Office of Drug Control and Crime Prevention, *Global illicit drug trends 2002*, ODCCP studies on drugs and crime, Statistics (United Nations, New York, 2002) pp. 18 & 29).
 3. E.g. Libby Topp, Sharlene Kaye, Raimondo Bruno, Marie Longo, Paul Williams, Bridie O’Reilly, Craig Fry, Gabrielle Rose & Shane Darke, *Australian drug trends 2001: findings from the Illicit Drug Reporting System (IDRS)* (Monograph no. 48, National Drug and Alcohol Research Centre, University of New South Wales, Sydney, 2002) p. 67.
 4. Louisa Degenhardt, Carolyn Day and Wayne Hall (eds.), *The causes, course and consequences of the heroin shortage in Australia*, NDLERF Monograph Series no. 3 (Funded by the National Drug Law Enforcement Research Fund, an initiative of the National Drug Strategy, 2004) pp. 45-46.
 5. National Crime Authority, *NCA Commentary 2001* (August 2001) pp. 21-22.

is in an even better position to continue that work and extend it to estimate the size of the market for other illicit drugs. After all the key variables are either known or determinable by surveys, namely, the number and pattern of the drug using population and the average amount consumed by different classes of consumer. Estimates are used by law enforcement agencies of other countries and Australia should do the same. For example, the Royal Canadian Mounted Police estimated that in 1999: “One to two tonnes of heroin are required annually to meet the demand by the Canadian heroin user population”⁶

Recommendation:

4. As part of its intelligence assessment, the Commission should regularly included in its report estimates of the the size of the market in Australia for different illicit drugs.
5. Rather than using the gross level of drugs seized, estimates of effectiveness of law enforcement should have regard to the extent that law enforcement effort reduces the quantity of drugs needed to satisfy the demand of the Australian market.

Capacity of the Commission to disrupt and deter official corruption

14. Families and Friends for Drug Law Reform shared the concern of those who regretted the dissolution of those features of the National Crime Authority that fitted it to be a standing Royal Commission with the capacity to investigate corruption. The independence and tight governance of the Authority were key elements of that capacity. Families and Friends for Drug Law Reform was pleased to see that some recognition of the importance of independence was reflected in the November 2002 report of this Committee’s predecessor and that the Government did incorporate recommendations on the subject into the Act establishing the Commission. These added some security to the tenure of the Chief Executive Officer and further entrenched the role and position of Examiners but did not alter the substitution of the tight governance of the Authority by a Chair and two other members for a large committee of many law enforcement agencies.

15. The high level corruption that prompted the establishment of the Authority in the early ‘80s did not appear to be a consideration behind the Government’s decision to replace the Authority. Since then corruption has come to the fore not only within a number of law enforcement agencies represented on the Commission’s Board, namely the Western Australian and Victorian police forces, but also within the new Commission itself.

16. The chairman of the Board notes in his letter of transmittal of the 2003-04 report that:

“The period covered by the report has been a challenging time for the ACC as it has confronted serious allegations of corruption. These allegations were of considerable concern to the Board and it has worked closely with the ACC to ensure a robust and comprehensive anti-corruption prevention and response system is developed.”

17. This and the reference on page 17 of the report to the briefing of the Parliamentary Joint Committee on the subject on 24 June 2004 by the Chief Executive Office are the only substantial references to corruption found in the latest annual report. The robust and comprehensive anti-corruption prevention and response system should be reflected in the

6. Royal Canadian Mounted Police, *Criminal Intelligence Directorate, Drug Situation, Canada, - 1999 -* <http://www.cfdp.ca/rcmp99.pdf>

governance of the Commission. This aspect of the governance of the Commission should be publicly scrutinised by the Parliamentary Joint Committee.

Recommendation:

6. As it bears on its governance, the anti-corruption prevention and response system being instituted for the Commission should be the subject of public scrutiny by the Committee and be covered in the Committee's report.

18. Given the importance of independence of the Commission for its effectiveness and credibility as an intelligence gathering, assessing and operational law enforcement agency, the Committee should affirm the importance of respecting and strengthening the values the Commission as set out in its corporate plan for 2004-07. In particular, the Committee should highlight the importance of the Commission being "honest, ethical and transparent" and that it should "deliver objective advice without fear or favour".

Recommendation:

7. All Governments and Agencies involved in the management of the Commission should commit themselves to maintain and strengthen the values of the Commission as set out in its corporate plan.

Yours sincerely,

(Brian McConnell)
President