Senate Committee inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime

Submission of: Dr Lorraine Beyer

Thank you for the opportunity to make this submission. My submission is relevant to the terms of reference related to: (a) methods used by serious and organised criminal groups and (b) information and intelligence sharing measures to manage the risk of serious and organised criminal activity. I have previously submitted two other papers:

Between 2002 and 2004, I completed an extensive research into Australian heroin importation offending with a particular focus on offender characteristics and the organisation and relationships involved in arranging the importation. I was supported in this endeavour by Australian Customs. During the course of the research I learnt much about the management of information and data across the agencies tasked to respond to heroin importation. I noted a number of limitations especially related to lack of integration of databases, lack of categorisation of role of offenders and little data obtained through 'debriefing' of offenders once their cases had been finalised. This latter would inform Customs border protection activities and planning but was the exception rather than the rule as there was a need to access via Police which had proved to be difficult over many years. Additionally, there are many factors existing that prevent research and thus data being available to policy makers in their endeavours to develop evidence-based policy in this area.

Although conducted some years ago, this work is still current as there has been no other similar research conducted before or since. (I recently spoke to two researchers who had sought me out to discuss conducting their own research into illegal drug offending and it appears little has changed.) The funding and legislatively restrictive environment in which it was necessary to conduct the research has not changed and the limitations for Australian research into serious criminal offending still exists.

I have obtained considerable information about heroin importers and their methods through examining data bases, interviewing of a wide range of law enforcement officers across several countries and interview of incarcerated heavy weight heroin import offenders. These are reported in the following documents and I would recommend them to the Inquiry.

Beyer L R 2004 *Heroin importation and higher level drug dealing in Australia : opportunistic entrepreneurialism* (A PhD thesis, University of Melbourne)
http://www.radar.org.au/viewproject.aspx?projectid=826&index=1&search=yes

Beyer L R 2008 *Burnt Boats and Barbeques: Heroin Importation and Higher Level Drug Dealing in Australia.* Book published by VDM academic books
http://www.amazon.co.uk/Burnt-Boats-Barbeques-Lorraine-Beyer/dp/3639033396

Beyer L R 2004 *The experiences of incarcerated high-level drug importers: a study of the mechanics of cross border trafficking of heroin*. (National Drug Law Enforcement Research funded via the Australian Police Research Unit
http://www.radar.org.au/viewproject.aspx?projectid=543&index=0&search=yes

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Very briefly the research I conducted comprised:
1. Interviews with law enforcement officers in Australia, Thailand and Hong Kong. Customs and narcotics police were interviewed as well as Asian liaison personnel from Australia, Canada and the USA based abroad, financial investigators in Hong Kong, personnel from the Office of the Narcotics Control Board and the United Nations International Drug Control Program and members of the 'Foreign Anti Narcotic Community';
2. Interviews with incarcerated major heroin importers convicted of importing 5 kilograms or more of heroin (a NDLERF funded study); and
3. Customs offender detection data divided into two cohorts:
    1) *'Major heroin importer (MHI) cohort',* consisting of 171 individuals detected in with importations of heroin weighing 5kg or more in the import episode immediately preceding arrest; and
    2) *'Other heroin importer (OHI) cohort',* consisting of 286 individuals, detected with importations of heroin weighing less than 5kg in the import episode immediately preceding arrest.

Characteristics of Heroin Importers
In brief summary, the characteristics of heroin importers was found to be as follows

Detected heavy weight heroin importers (5 kilograms or more) were found to be:
- Very similar to one another (homogenous)
- 3 out of 4 had an Asian country of birth
- They were of a younger middle age (average 40 years)
- More often they were from a business or professional background
- 50% were Australian citizens

Detected lighter weight heroin import offenders (under 5 kilograms) differed from those importing heavy weights of heroin. They had:
- Much more variety in their demographic characteristics
- 3 out of 4 had a non-Asian country of birth
- A wide range of ages were observed but many were quite old with nearly one in 3 aged 56 years or more and 31 aged 71 years and over
- Most usual occupation was trade/ skill occupation or labourer
- 50% were Australian citizens

Key conclusion:
Law enforcement detection methodologies seem to heavily influence the type of importers detected. Intelligence led methods of detection for the heavy weight, unaccompanied cargo imports, resulted in a very homogenous group of offenders, while a variety of screening methods (such as is conducted at airports for the smaller weights) and greater percentage screened, yielded a much more diverse group of import offenders.

Importers of large weights of heroin to Australia behave as equal status merchants who are coming together for the purpose of organising an importation. They each work as freelance operators in a way that essentially segments the offence. There is little or no penetration into the domestic heroin market by the large weight heroin importers and violence at this level is rare. They differ from the Columbian/South American drug importer groups and have very different levels of violence and ways of 'doing business'.

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Body of Knowledge
When I started to research heroin import offending I was shocked to realise that despite the billions of dollars being spent in Australia on drug import counteraction, data and research on drug importation in Australia was almost non-existent and there was no substantive body of research.

There is very little information on heroin or other drug import offenders in even the official reported crime statistics. Import offenders are subsumed into the 'provider' category of drug offenders in official reporting but this category includes domestic street level dealers as well. This is not a useful way to report since drug import offending is vastly different to street level dealer offending. It means there is not even a rudimentary way for an outsider to see the extent to which agencies such as ACC and AFP are successful in detecting offenders.

As there is extremely tight gate -keeping of information by law enforcement it means few papers or reports are available publicly and few available even to the wider Customs and law enforcement community. The literature (protected or not) that I looked at within the context of Customs and its partner agencies was very basic level analysis of limited variables and occasional narratives of individual 'high profile' offending. None had attempted to bring a variety of perspectives to bear on the offending or conducted any type of criminological research.

Achieving Agency Goals
While all State and Territory police and Federal law enforcement agencies give high priority to investigation and apprehension of 'high level' drug crime and the dismantling of 'serious' and 'organised' crime, there is little data collected to show the extent to which this is being achieved. A predominant focus on movement and seizure of heroin means there is a possibility that law enforcement priority is focused on areas that have limited efficacy, not only in counteracting the importation of illegal drugs overall, but of achieving stated agency goals. This side stepping from core functions has been able to continue unremarked because the data that would help illuminate it is not collected.

Heroin importation counteraction is measured primarily in terms of seizures of heroin. Therefore, this remains the main focus for law enforcement activity. However, the pre-eminence of the focus on the drugs themselves and their movement is not compatible with overall agency goals involving targeting of high level dealers, dismantling organised crime groups and so on. This is because, while laudable in itself, the research shows that a focus on heroin is a focus on the bottom worker role level. While fulfilling public and political expectations, a primary focus on movement and seizure of heroin is not responsive to the realities of the offending, nor can this focus be expected to achieve current agency goals. The extensive practise of sub-contracting by offenders further confounds the narrow focus on heroin movement and seizure. Arrest of several offenders as a result of tracking movement of heroin over several hand-overs, may in reality have remained at the Number 4 worker level and not approached the middleman or organiser levels.

Among other things, establishing the extent to which sub-contracting occurs, would be easier if there was a classification system in place and strategies developed to assist a higher reach into drug import groups. Historically offenders arrested with seizures of heroin, (particularly those involving heavy weights), are considered to be high level drug offenders.

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This description may be true by virtue of the arrestee being charged with importation - which is the top of the domestic 'drug chain' or the size of the heroin. However such a description is misleading if it is meant to convey the arrestee has a high role level in the importation and is critical to the syndicate or group. Arrestees may have been employed by an import group just for their skills in driving a forklift and helping in unloading for example.

Systematic definition and collection of role data for arrestees would enable quantification of the extent to which agency goals are being achieved. It will also aid clarity and consistency of understandings, enable transparency and assist policy development.

Categorising Offenders to Better Understand the Offending and Assess the Extent to Which Agency Goals are Being Achieved
Based on discussions with law enforcement operatives and examination of the heroin import offenders in the ACS database, the following four categories were developed as the most useful in helping identify and understand the role played by the various offenders in a heroin importation.

1. Number 1 Import Organisers Number 1 import organisers are those who set the arrangements for a heroin importation in motion but are careful to remain remote from the heroin and the activities associated with it. None were identified. This type of heroin import offender was considered by law enforcement interviewees to often live in Hong Kong or in the North of Thailand. These locations were attractive to Number 1s because:

> Hong Kong is a centre for finance, communication and transport. Our belief is that the higher echelons have their bases in Hong Kong (Law Enforcement Interviewee).

> Thailand is now becoming more a base for organisers like is the case in Hong Kong, with the drugs not going through [Thailand or Hong Kong now] but out via China from Myanmar (Law Enforcement Interviewee).

> Some unusual people are living there [northern Thailand] in very luxurious lifestyles with huge houses and condominiums and driving Ferraris. They have no apparent means of support and there is a great reluctance to tell you where their wealth has come from ((Law Enforcement Interviewee).

Number 1 organisers will sometimes make contact with people living in other parts of the world or the initiative may sometimes be with interested people who visit Hong Kong or Thailand for the purpose of making contact with a Number 1 organiser. This is how the connections for drug runs are established "It works both ways" (LE). Once a Number 1 import organiser has identified a large scale wholesale buyer they will contact a 'middleman' to make all the arrangements. The middleman role is fundamental to the success of the Number 1 importer as will be seen below.

2) Number 2 Import Organisers Number 2 import organisers are people who do the organising of the heroin importation themselves and carry out some or all of the arrangements themselves. They may be in direct contact with the heroin at certain points. Nine individuals in the heavy weight cohort (MHI) were identified as Number 2 import organisers. Four of these were involved in the same import episode and were considered in the database narrative as equally responsible as organisers. All Number 2s in the MHI

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cohort were aged between 26 and 55 years, all were born in an Asian country and half were Australian citizens. All occupation groups were represented among this type of importer.

While the Number 2 organiser role is higher on the role scale it appears these organisers were not considered at the higher end of the offending scale by the courts since the sentences given were relatively low. Of the eight Number 2 individuals with finalised court cases two were acquitted, one was given a sentence of less than three years and another a sentence of three to five years. A further three Number 2 importers received more severe sentence of nine to fourteen years although two of these were given non-parole periods between 6 and 8 years. (No sentence length was identified for one of those convicted.) The low sentences reflect a lower level of seriousness based on factors presented at court such as weight of the heroin - four of the nine had imported weights of heroin at the lower end of the major scale (five to ten kilograms) or there may have been other mitigating circumstances.

3) Number 3 Import Middlemen Number 3 importers know the organiser and are doing the hands-on work for them. A total of thirty-five heavy weight importers in the MHI cohort were identified as Number 3 importers. They were of various ages with highest proportion in the younger middle-aged group of 26 to 40 years (46% N=16). Eighty-three percent were born in an Asian country, none were born in Australia and only 20% were Australian citizens. Occupations were mainly those involving a trade/skill (45%) with a further 30% having a business/professional occupation.

Number 3 importers were detected importing the heaviest quantities of heroin. While 24% of the twenty-one whose cases were finalised in court were acquitted, sentences for the convicted were relatively severe for this role. Eight were given sentences between 9 and 14 years – of whom five received non-parole periods between 6 and 8 years. Four were sentenced to more than 20 years - of whom two were given non-parole periods of 15-20 years. Only three received a lower sentence of between three and five years.

The middleman was considered by law enforcement interviewees to be the 'sales representative', to have lots of contacts and know all the right people, or to know people who know people (LE). The middleman does all the arranging so the heroin "never comes near the organisers" (Law Enforcement Interviewee).

> The [number 1 organiser] will . . . order heroin for [the customer] through a broker or middleman who has the connections with the hill tribe people or the minority groups in Thailand. This relationship has been well developed for the last sixty years or so and is the original trading partnership for heroin (Law Enforcement Interviewee).
> .

Middlemen may have multiple Number 1 organiser customers, and they may also have more directly linked customers of their own:

> There are some middlemen in the North [of Thailand] who also get involved with all levels of the trade. For example they will have their customers and they will buy from the growers and transport the heroin right through to the customer (Law Enforcement Interviewee).
>
> A single drug run being organised by a middleman, may involve the investment of multiple Number 1 organisers and multiple customers. For example one person may have financed thirty kilograms of the

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heroin load and another person fifty kilograms - all within the same run (Law Enforcement Interviewee).

Usually the middleman will send someone on to the destination country to collect the money from the customer prior to the heroin arriving. If the heroin goes by private vessel rather than a commercial craft, they may also send someone to supervise the off loading as well as collecting payment. Locals in the destination country are often used as labourers. The Australian based buyers then sell it on in ten to twenty kilogram lots to a number of their [domestic] customers (Law Enforcement Interviewee).

Middlemen were considered to be the most essential and controlling part of a drug organisation – the lynch-pin of the whole heroin import process.

The people who buy from the growers – the middlemen - they control the market. The middlemen are the ones the top-level organisers rely on to get their supply of heroin from. They make an order and the middleman will arrange to buy a supply and provide it to the buyers that the top level organisers have line up. . . . (Law Enforcement Interviewee).

4) Number 4 Import Worker. Number 4 importers, doing a specific task and not knowing the organiser are individual workers paid to carry out a specific task which usually involves direct contact with the heroin. They may be couriering the heroin from one country to another, or from one place to another within a country. They may be paid to assist with unloading a container, to pick up a package, or to wait for a package to be delivered.

Thirty-one individuals in the MHI cohort were identified as Number 4 importers, doing a specific task and not knowing the organiser. They were relatively evenly divided across the two middle age groups with a slightly higher proportion in the younger group - 26 to 40 years (48%, N=15). Two were born in Australia and a majority were Australian citizens (53%). Eighty-four percent were born in an Asian country. A majority had trade/skill occupations and a further 17% were in a business/professional occupation.

A majority of Number 4 importers were involved with weights at the lower end of the heavy weight scale - between 5 and 25 kilograms (84% N=26). Of the eighteen who had their cases finalised in court half were acquitted and half were convicted. Sentences for the nine who were found guilty varied considerably. Two received sentences of five years or less, four sentences between 6 and 14 years; one a sentence of 15-20 years (with no parole), and one a sentence of more than 20 years (with no parole). (One had sentence missing.) It was found that the two most severe sentences were given to individuals who were involved in an importation of heroin weighing 26 – 100 kilograms. However, sentences involving the lower weights of heroin between 5 – 25 kilograms varied considerably for level 4 importers. Two with these weights received a sentence of 3 – 5 years, one a sentence of 6 – 8 years and two sentences of 9 – 14 years. Of the nine individuals acquitted, two had been alleged to be involved in an importation of heroin weighing over 100 kilograms, and seven were alleged involved in amounts between 5 and 25 kilograms. Among the heroin import interviewees nine were Number 4 importers, doing a specific task and not knowing the organiser. See the diagram below which illustrates how the various role levels fit together in a complex heroin importation.

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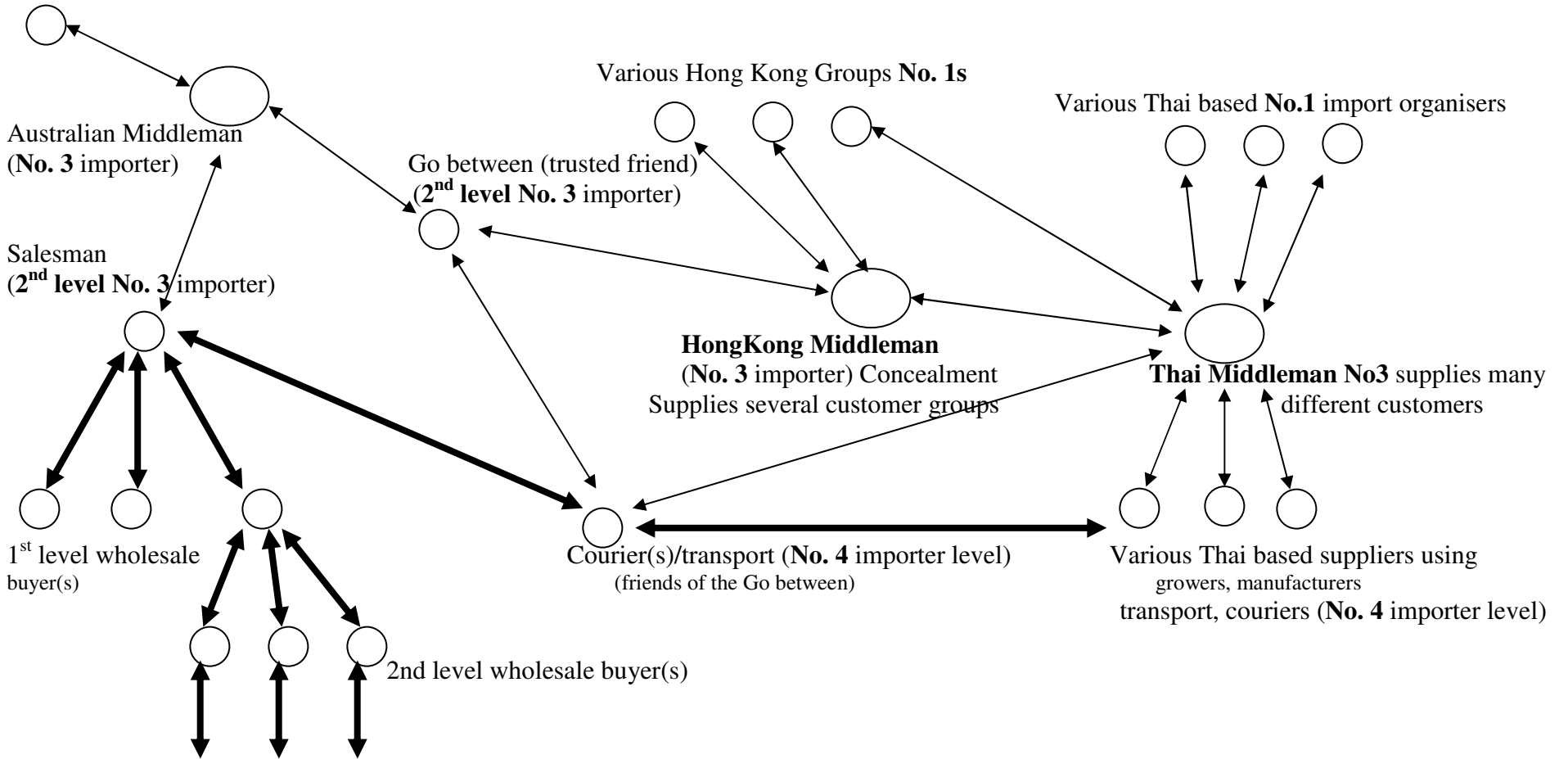
Core Complex Heavy-weight Heroin Import Run to Australia

Thicker arrows denote the movement of the heroin. Middle men and No 1 organisers will not be identified if law enforcement focus is on the movement of the heroin cargo

AUSTRALIA   **HONG KONG**   **THAILAND**

Australian **No. 1** organiser

Various Hong Kong Groups **No. 1s**

Various Thai based **No.1** import organisers

Australian Middleman
(**No. 3** importer)

Go between (trusted friend)
(**2nd level No. 3** importer)

Salesman
(**2nd level No. 3** importer)

HongKong Middleman
(**No. 3** importer) Concealment
Supplies several customer groups

Thai Middleman No3 supplies many
different customers

1st level wholesale
buyer(s)

Courier(s)/transport (**No. 4** importer level)
(friends of the Go between)

Various Thai based suppliers using
growers, manufacturers
transport, couriers (**No. 4** importer level)

2nd level wholesale buyer(s)

Australian middle market, then down in several levels to street level

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Agencies' Categorisation of Offenders

Law enforcement agencies' methods for categorising heroin traffickers in their databases were found to have many similarities across countries. Greatest divergence related to categorisation of role the individual offender played in the offence. With the exception of Australia, all agencies had some type of systematic categorisation for role of the offenders and considered it to be advantageous. In both Thailand and Hong Kong police and Customs categorise drug traffic offenders by the type of role or activity they undertook in the offence. In Hong Kong drug traffickers are segmented depending on whether the offences are committed in a domestic environment only, or are committed across other countries. "If they have links to consuming countries then they will be classified as a number 1 target" (Law Enforcement).

In Thailand drug importers and drug exporters are categorised separately. Within these broad categories individual offenders are then rated as " . . . top class, middle and bottom class, depending on their role in the organisation" (Law Enforcement). Drug offenders operating within Thailand are also categorised by geographical province and by place in the drug chain. For example,

> Street pusher, . . . the middle person managing/overseeing the street
> pushers, . . . those involved with the money or who are organising the
> supply of drugs (Law Enforcement).

In Canada and the USA offenders are classified by their role in the drug trafficking offence.

> For individuals we look at the type of role they are doing . . . are they
> in the manufacturing side, the transport, or are they an overseer (that
> is looking over five or more workers), or are they the overall organiser
> (Law Enforcement).

In the USA a comprehensive coding system is used for drug offenders. A 'GO DEP' identification tag within the database "tells at a glance quite a lot about the individual or organisation under investigation" (Law Enforcement) including:

- level of significance - regional if it only operates in the USA, or international if it involves offences committed overseas;
- whether other law enforcement agencies are, or should be, involved in the investigation and who is or should be the lead investigative agency;
- type of drug involved;
- structure of the organisation - laboratory operation, import only, or an import and distribution organisation.

Australian law enforcement were found to not systematically record the role of individual offenders in their databases.

> We may describe their role but we don't have standard categories for
> roles. However, we may call an offender a 'principal' or 'courier' . . .
> (Law Enforcement).

Individual offenders are categorised by type of offence they have been charged with. "We don't label people - we charge them with an offence, so they will be categorised by offence" (Law Enforcement). Australian police were the only agency to express a view that it was not useful to categorise drug traffickers and import offenders by their role in the offence. Comments included:

- It is better to handle things case by case;
- It is no good trying to standardise this type of offence as it may be wrong;

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- An entity or individual may change categories over time which would be misleading;
- It is a very subjective thing to put a label on something;
- Categorising is open to manipulation in that the agency may elevate the rating to make it look better; and
- Until an offence has progressed we wouldn't know what role each person might be doing.

To help make sense of organisational and behavioural complexities in illegal drug organisations and as a starting point to explain and classify behaviours, law enforcement in Australia have often used race and ethnic background – particularly in anecdotal descriptions. While assessments about the level of sophistication of the organisation behind an importation is assessed, it is not 'tagged' to each individual offender in Australia. Rather, it forms part of the general assessment and intelligence process.

A contextual shift in definition and understanding of illegal drug trafficking both nationally and offshore will result in greater legitimacy for alternate strategies. Confidence in making any contextual shift will grow when a body of knowledge through research is allowed to develop.

Counteraction by Law Enforcement
The flexible, trans-national, fragmented and freelance nature of heroin import offending in Australia, together with the enormous profits, makes it a very difficult offence to counteract. One way to assist a better understanding and to develop alternative or supplementary strategies is to have a better understanding of the behaviour and contextual environment of import offending.

The nature of the heroin market and the myriad variables that influence it make it unlikely law enforcement activity on its own can make a visible difference to the illegal drug market. It seems that an illegal drug market characterised by small, unrelated and diverse illegal drug groups operating in a free trade market environment is a much more serious threat within Australia than are hierarchically organised drug crime. The market's disconnectedness and unpredictable nature enables it to adapt and self generate - even in the face of very successful policing activities and outcomes. The findings in my study of heroin importers raises a number of questions about the expectations government and community have for law enforcement approaches. Is it reasonable to expect even successful law enforcement activity to stop the flow of illegal drugs to Australia.

Reasons are complicated and various and it was interesting to identify detailed reasons. I have summarised the various reasons below as articulated by what the law enforcement interviewees told me. The full detail is included in my previous submission Report of interviews with Law Enforcement. Reasons given by law enforcement as to why they can't stem the tide, include:
1. A focus on the movement and seizure of heroin (or other drugs) by law enforcement essentially means the risk of detection for drug import organisers is remote as they are never in contact with the heroin – usually a few steps away.
2. The sub-contracting behaviour used by drug importers in arranging drug importations reduces the risk of detection to organisers even more and means tracking the drugs by surveillance through several handovers may still only be on the lowest courier level.
3. The USA lists for "transit country", "production country" and so on do not encourage open communication between jurisdictions as countries are very sensitive to these labels.

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4. Institutional failures rather than individuals result in corruption (especially in the poorly paid agencies). Not knowing who is corrupt is a barrier to sharing information within and between agencies.
5. Competition between personnel and agencies in drug interdiction is high. This and ownership of intelligence reduces sharing and cooperation. Information may have been 'bought' and the sense of ownership is strong.
6. Countries' different political and legal systems and lack of appropriate laws make cooperation difficult
7. Poor evidence gathering in developing countries means the evidence is inadequate in the event of an extradition to a western country.
8. Level of education and training of officers in many Asia/Pacific countries is low
9. Law enforcement has difficulty in following highly mobile importers not just because of cost but also because of differing priorities in the destination countries.
10. Drug importation is a trans national crime and extraditions are generally difficult
11. Sharing information is very restricted between death and non-death penalty countries – so each country will often have only half the picture.
12. Debriefing with import offenders by Australian Customs is difficult for Customs to achieve and rarely happens once an offender is handed to AFP. Because AFP are focused on gathering evidence for a conviction, and not on obtaining information that might be used by Customs in future border detection activity and intelligence, there is an untapped source of useful information and intelligence.
13. Defined as a War on Drugs, (rather than for example a supply and demand market place) the issue of drug importation is tackled via traditional policing and para-military methods. If the offending were to be defined as more closely resembling a free market place (as revealed by my research findings) the crime might be counteracted differently. For example, reducing the demand in Australia through provision of controlled doses of heroin to registered addicts[1].
14. Given the complexity of the offence, the vast profits to be made, the difficulties in counteraction, the huge amount of heroin still entering the country despite the best efforts of law enforcement, and no evidence showing that current counteraction is working well, it would seem logical that alternative approaches should be implemented as well as traditional methods. Continuing to characterise Australian heroin importation along the lines of the loosely constructed and defined 'organised crime' conceptualisation is faulty if the findings of my research are considered.

Incomplete, Inadequate and Scattered Agency Data
Ability of agencies and researchers to use aggregate data collected on illegal drug importers and higher level dealers is hampered by:
- data being scattered across several databases;
- a large number of missing variables in data bases;
- lack of collection of the sort of information that could improve understandings of the offence and the offenders, such as type of role of the arrestee and groups' organisational complexity, and
- lack of working definitions that contain clear inclusion and exclusion criteria and clear definitions for commonly used terms such as major offender, significant offender and high level offender.

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[1] See support for this approach to demand reduction also by Australian law enforcement interviewees in Beyer L Crofts N. and Reid G. (2002) 'Drug offending and criminal justice responses: practitioners' perspectives' in *International Journal of Drug Policy* 13 (2002) pp199-207

To identify the total number of known heroin import offenders in Australia, I needed to consult several databases:

1. The Australian Commonwealth Department of Public Prosecutions (DPP) was able to provide name and conviction date for all persons convicted of Commonwealth drug offences and who were currently in custody serving prison sentences. Drug type and specific offence were unable to be easily extracted from DPP records. The DPP list of names was compared with those extracted from the Customs database and NCA annual reports to establish which had been involved in heroin importation offences.

2) The Australian Customs Service database provided demographic data of heroin importers detected and, in comparison to the other databases the database was information rich although much of the information was in narrative form. The Customs database included details of all heroin seizures made at the Australian border. Date of detection, method of importation, weight of the importation, role in the importation, number of co-offenders, occupation, nationality, country of birth and date of birth were able to be extracted from narratives and placed into a research database to enable quantification. Not all variables were recorded for all offenders however. And, co-offenders identified by Federal police at a later date were not usually notified to Customs and therefore did not appear in the Customs database. These additional offenders were identified in the DPP, AFP and or ACC databases and from some annual reports. Court outcomes were not contained in the Customs database, but were in the AFP database.

3) Australian Crime Commission reported offenders convicted and court outcomes in their Annual Reports. This source provided conviction date and sentence length. Particularly in the case of earlier reports however type of illegal drug and drug offence type was not reported. Thus it was not possible to identify those people who were involved in the importation of heroin from this source. However, a list of drug offenders who were given substantial sentences and others (indicated in the DPP list) was submitted to the ACC and they were able to confirm those that had charges for importation of heroin weighing five kilograms or more. No demographic information was obtainable from this source.

4) Australian Federal Police enabled double-checking with the Customs data and gave offences charged with and convictions.

Some discrepancies in the final numbers of confirmed heroin import offenders were to be expected. However, eleven offenders confirmed from more than one other sources, did not appear in the AFP database. They may have been entered into the NSW state police database but this is only supposition as inquiries failed to identify the reason for the missing offenders. None of the data bases classified the role the offenders played in the import offending in any way.

In summary:
1. The lack of existence of explicit cross-agency definitions and parameters for key concepts and lack of classification and systematic collection of data on role and organisation type is severely limiting to attempts to improve and progress understandings about illegal drug import offending.
2. Lack of a single database containing all data collected on illegal drug importers and higher level dealers is a severely limiting factor to a better understanding of the offending.
3. Lack of a framework and funding for import and higher-level drug deal offending research is problematic in the context of evidence based law enforcement policy and practice.

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4. Lack of legislative protection for researchers and research participants seriously undermines the articulated commitment to evidence based practice in law enforcement.

Why is there such a scanty body of research into drug importation offending and when:
1. there are huge budgets allocated to counteracting organised crime and illegal drug crime;
2. border detections yield the most heroin per seizure; and
3. it is such an important point of focus for supply reduction for Australia. It is at the Australian border that the largest quantities of drugs are detected (most often by ACS) and seized – far greater than all seizures made nationally by total state and federal police agencies each year within Australia's borders?

The very, slender evidence base for the development of policies and strategies in this area is not, in my opinion, related to perceptions of personal danger to researchers from offenders, reticence by law enforcement, or to do with issues of national security. Rather it is the lack of legislative protection that is the significant factor. Where the penalties attached to the offending being studied are substantial, lack of legislative protection becomes a significant block to research.

Despite support from the highest levels of government and law enforcement agencies across Australia to do interviews with heavy weight heroin import offenders, it was rejected by the NSW Corrections Ethics Committee. Quite rightly the legal advice received by the ethics committee was that the researcher was unable to guarantee confidentiality of the research material or anonymity for the participants.

In order to be able to guarantee confidentiality an amendment to Commonwealth legislation was required. This was duly accomplished and the research became one of only a handful of studies ever to be 'prescribed' under the provisions of the Commonwealth's Epidemiological Studies (Confidentiality) Act, 1981. Primarily through my doggedness and Customs' determination was this achievement accomplished. This hugely cumbersome and time-consuming process was the _only_ way in which this relatively simple research project was able to proceed. What struck me about the whole experience was that the policy of _evidence- based practise_ that is widely promoted and accepted, exists without any reference to the necessary supports and safeguards to achieve relevant, unbiased evidence. The lack of legislative protection for criminological researchers in Australia has three main outcomes:

1. Rejection of research submissions by ethics committees
The impact of not having legislative protection manifests itself invisibly through the numerous ethics committees who reject research proposals on the basis that confidentiality cannot be guaranteed to subjects. The extent to which research is rejected on this basis is invisible. However, this fact together with a lack of guidelines for ethics committees on these issues, is probably having a large and widespread affect on the quality and type of research currently being undertaken. Evidence of this is the lack of research conducted. I am aware of two examples of this, this year.

2. Bias in research results
Lack of guarantee of confidentiality influences decisions by the subjects to participate or not - particularly where high penalties are attached to the offending. Considerable bias is to be expected in results obtained where the researcher was diligent in explaining that confidentiality cannot be guaranteed.

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3. Duty of care compromised
Criminal offenders generally are among the most marginalised and vulnerable people in the community. Many have poor literacy skills, drug and alcohol issues, and many have diagnosable mental illnesses. The extent to which such people participating in research are able to understand the full implications of their participation in research is debatable. How often is the lack of an ability to guarantee confidentiality stressed by researchers to ensure potential participants are giving fully informed consent? My guess is that those with any consciousness of their conflicting obligations do not stress the point for fear they will frighten people away from participating. And, those researchers not fully aware of their conflicting obligations may wrongly assure participants they can guarantee confidentiality.

4. Risk to the researcher
A final, not inconsiderable consideration is the lack of protection afforded to researchers of illegal behaviours, who may be liable to jail terms for failing to disclose to law enforcement indictable offences revealed to them by participants during the course of their research, or who may be required through subpoena to reveal their data and identifying information to law enforcement, or face legal sanctions.

While it is understandable that law enforcement agencies in Australia would not want to lose a power - that is to subpoena research - the existence of the threat of this power, whether it is used or not, will continue to be counterproductive because it stymies and biases research and information that may be of considerable benefit to law enforcement and to Australia's law enforcement and border protection policy makers.

From a financial and efficacy point of view, lack of legislative protection for researchers should be of considerable concern to government who have 1) committed enormous amounts of money to research – particularly drug research, and 2) rely on research to provide the 'evidence' on which policy and practice may be based.

Criminological researchers conduct research under risky conditions. In these days of litigation and complex privacy and ethical requirements however it is not reasonable – never mind good policy - to continue to compromise researchers and research participants in this way. Peak criminological research bodies should lobby for change in this area and for the necessary legislative protection. However, the reality is that while research bodies are funded by government and they need to work with law enforcement, it is unlikely they will take this fight on. There are a number of countries where research into criminal behaviour has protection, Canada among them. Without the removal in Australia of the current restrictive legislation, researchers will continue to place themselves and their research participants at risk and policy and practise will continue to be based on severely limited data.

A major stumbling block to development of an evidence base for illegal drug importation (and domestic middle level drug markets) is the lack of legislative protection for research in Australia. No research into illegal behaviours in Australia is immune from the possibility of the research material being subpoenaed. Research participants are vulnerable but so to are researchers who risk prosecution and jail terms for failure to disclose an indictable offence obtained in the course of their research.

For studies of less serious criminal offending with lower penalties legislative protection is worked around by ethics committees and researchers - although there are still ethical implications here. Where the offending has heavy penalties such as for illegal drug importing it becomes a severely limiting factor. Ethics Committees and researchers are reluctant to approve or conduct research under such conditions. While there is no

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legislative protection for researchers into study of illegal behaviours in Australia the widely promoted and accepted philosophy of evidence-based policy and practise for law enforcement is severely undermined.

To conduct social research into serious criminal offending in Australia necessitates compromise, risk and bias.

I might just briefly touch on my experience with the NDLERF, which unfortunately was very poor and possibly another reason researchers are put off from pursuing research involving more serious crime. Despite a number of requests I have still not been provided with the final version of my research '*The experiences of incarcerated high-level drug importers: a study of the mechanics of cross border trafficking of heroin*'. Secondly, I learned by accident that the report I originally submitted had had sections of the findings cut out although at no time was I consulted about the cut outs. I was disappointed to find that high level policy makers and law enforcement practitioners in Australia had not apparently been given the opportunity to read the full version. The role of research is to find out 'new truths' – so to retain, as I suspect, only the findings that support the status quo and current policy, is in direct conflict with this basic research tenant. It seems extraordinary too that findings from the research could be deleted even though:

- Nothing else is known about the opinions and perceptions of high level heroin import offenders;
- The questions in the interview schedule (approved by the Fund) were open-ended for the very purpose of eliciting as much and as broad amount of information as possible, and the research methodology (also approved by the Funders) was explorative in nature;
- There had been enormous difficulties and delays involved in gaining access to the prisoners for interview and it was only achieved through enormous effort, three years of delays and changes to Federal Legislation; and
- There will be similar huge difficulties in any replication of the study.

It seems there is a need for guidelines to funders such as NDLERF for their ethical treatment of researchers and research findings.

Not many people would dispute the value of social research in the area of crime and criminal behaviour. Considerable money is spent on such research each year. Social research supplements the quantitative facts and figures and fills in the gaps. Deeper knowledge of the characteristics, motivations, behaviours, environments - and the nature and complexities within and surrounding criminal offending - provides policy makers and practitioners with valuable evidence on which to base policies, strategies and practice, and on which targeting and efficacy of programs can be developed and evaluated. However, my research into heroin import offending appears to have been the first and I suspect will be the last unless legislative restrictions are considerably modified or removed.

There is a need to develop a broader, sophisticated body of knowledge to enable development of a depth and breadth of understanding. Clearly there is a role for independent supplementary criminological research to enrich the knowledge base for illegal drug import offending. When different sources of data support one another there can be greater confidence in the veracity of the findings and in using it to identify and support most appropriate strategy.

Independent social research is valuable in understanding any criminal behaviour and considerable money is spent on such research each year. Knowledge of characteristics, motivations, behaviours, complexities and environments provides policy makers and

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practitioners with evidence on which to base sound, targeted policies and on which to assess efficacy of current programs.

How a Problem is Defined Dictates the Type of Measures Used to Counteract
In Australia there is an expectation that choice of policy is based on best practice evidence. In their role as gatekeepers to information, and in a context of little other available information, law enforcement agencies are the primary providers of information on which to define the problem of heroin (and other drug) import offending - and thus its solution. Law enforcement has a preoccupation with activities and enterprises. This preoccupation is the reason why there is an absence of a systematic approach to development of frameworks for organised crime or for illegal drug import behaviour. Very broad definitions and a lack of national or cross-agency working definitions for key concepts and terms is resulting in drug import offending and 'organised crime' and so on being defined along stereotypical lines that are not easily understood nor quantified.

Whilst heroin importation is defined as one of criminals engaged in 'organised crime', other ways of defining the problem have not been able to develop. There is a strong indication it is useful to examine heroin import offending in the context of economic and business frameworks rather than the less developed and functionally rhetorical one of organised crime. While intuitively appealing in its simplicity it appears that instead of tailoring counteraction efforts to fit illegal drug import characteristics and environments illegal drug offending is being defined in ways that accommodate existing law enforcement counteraction activities and tradition.

The illegal drug import environment needs to be systematically and pragmatically examined and scoped using multiple methodologies and perspectives (of which law enforcement is but one), to ensure policy and focus is accurately targeted. A more complete evidence base to inform policy and practise in Australia will occur if the knowledge and literature base increases *and* broadens. Illegal drug policies and goals for law enforcement should be re examined and aligned to what can realistically be achieved.

While the current Australian policy of adopting a holistic, cross-sector approach to the *management* of illegal drug markets is a sound one for reduction of harm it does not extend to the import and middle level markets - perhaps because of the narrow evidence base that would guide market management approaches. In particular further work is needed to better understand the domestic heroin market and its links to the importing segment. Work that would quantify the efficacy and achievement of current strategies and research to test alternative market-based solutions should be also be undertaken.

Policy development should not continue to rely so heavily on evidence derived from the activities of law enforcement because such information is necessarily derived from one perspective – which also is focused primarily on collection of evidence for convictions, rather than developing a body of broader knowledge.

In my view there are many structural areas, including those mentioned here, that need to be in place, improved or revised in order to improve the strategic underpinning and efficacy of activities in aviation and maritime security measures to combat serious and organised crime. Thank you again for the opportunity to make this submission.

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