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Australian Criminal Intelligence Commission Board - Submission to the Parliamentary Joint Committee on Law Enforcement's inquiry into the operation of the *Australian Crime Commission Amendment (Special Operations and Special Investigations) Act 2019*

The Australian Criminal Intelligence Commission (ACIC) Board welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Law Enforcement's inquiry into the operation of the *Australian Crime Commission Amendment (Special Operations and Special Investigations) Act 2019* (SOSI Act).

The ACIC is Australia's national criminal intelligence agency, responsible for working in partnership with its international and domestic law enforcement and intelligence partners to improve its ability to respond to serious organised crime impacting Australia.

Role of the ACIC Board

The ACIC Board, representing Commonwealth, state and territory law enforcement and key national security and regulatory agencies, provides strategic direction to the ACIC. The Board has legislated functions under the *Australian Crime Commission Act 2002* (Cth) (ACC Act) to:

- a) provide strategic direction and determine priorities for the ACIC (section 7C(1)(b))
- b) authorise, by determination, special ACIC operations (SOs) and special ACIC investigation (SIs) to occur (section 7C(1)(c) and (d))
- c) to determine, in writing, the class or classes of persons to participate in SOs or SIs.

Implementation of the SOSI Act and the impact on the ACIC Board

The SOSI Act amended the ACC Act to streamline the process for making SO and SI determinations and confirm the validity of current and former special operations and special investigations determinations.

The previous requirement for the Board to consider whether ordinary police methods of investigation were likely to be, or ordinary methods of intelligence collection had been, effective at understanding, disrupting or preventing the federally relevant criminal activity to be investigated, or to which the operation related, was repealed, and replaced with a public interest criterion. A number of other changes were made to the way the Board exercises its powers.

The public interest criterion allows the Board to consider a wide range of matters, limited only by the subject matter, scope and purpose of the ACC Act.

The reference to 'collective experience of the Board' directs attention to the qualifications and experience of those who comprise the Board and contemplates that each member of the Board voting at the meeting will bring their relevant experience to bear upon the question of what is in the 'public interest'.

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The ACIC Board comprises the following members:

- Commissioner of the Australian Federal Police (Chair)
- Secretary of the Department of Home Affairs
- Comptroller-General of Customs (Commissioner, Australian Border Force)
- Chairperson of the Australian Securities and Investments Commission
- Director-General of Security (Australian Security Intelligence Organisation)
- Commissioner of Taxation
- Commissioner of Police of each State and the Northern Territory
- Chief Police Officer of the Australian Capital Territory, and
- Chief Executive Officer of the ACIC (non-voting member).

Membership of the Board also includes two non-voting observers (who may provide input but not formally vote on SIs and SOs) :

- Chief Executive Officer of the Australian Transaction Reports and Analysis Centre, and
- Secretary of the Attorney-General's Department.

The Board comprises highly experienced professionals that bring a collective understanding of serious organised crime and law enforcement and is well placed to make an informed public interest assessment for the authorisation of SIs and SOs.

It should be noted, these changes were technical and procedural in nature and did not expand or otherwise alter the powers available to the ACIC in the course of undertaking a special operation or special investigation.

The reformulation of the public interest test provides the Board the opportunity to consider what types of matters it might ordinarily want to consider in making determinations. Matters involving consideration of the impact, sophistication and scope of federally relevant criminal activity, whether the federally relevant criminal activity meets the requirements in the ACC Act, and the impact of the ACIC's unique capabilities, are the kind of matters that the Board takes into consideration.

Current SIs and SOs

On 28 July 2020, the Board approved, by determination, nine SIs and SOs pursuant to the new public interest test.

- Outlaw Motor Cycle Gangs (OMCG) Special Operation 2020
- National Security Impacts from Serious and Organised Crime (NSISOC) Special Operation 2020
- High Risk and Emerging Drugs (HRED) Special Operation 2020
- Firearm Trafficking (FT) Special Operation 2020
- Emerging Organised Crime Threats (EOCT) Special Operation 2020
- Cyber-Related Offending (CRO) Special Operation 2020
- Criminal Exploitation of Australia's Migration System (CEAMS) Special Operation 2020
- Targeting Criminal Wealth (TCW) Special Investigation 2020

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- Highest Risk Criminal Targets (HRCT) Special Investigation 2020

Conclusion

Changes made under the SOSI Act enable the Board to better exercise its powers through strengthening the Board's ability to make SIs and SOs.

The new manner in which the Board exercises its powers has better equipped the ACIC to confidently exercise its powers for the purpose of collecting criminal intelligence insights through examinations. The ACIC's examination powers and associated notices to produce are pivotal to obtaining high-level, strategic intelligence insights to collect, correlate, analyse and disseminate criminal information and intelligence to our national and international partners.

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