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Our ref: 11/55743

Ms Julie Dennett
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Ms Dennett

Inquiry into the Combating the Financing of People Smuggling and Other Measures Bill 2011

1. The Australian Crime Commission (ACC) is Australia's national criminal intelligence agency. Our purpose is to unite the fight against nationally significant crime. This involves working in partnership with other law enforcement agencies to develop a national understanding of serious and organised crime. The ACC achieves this by delivering intelligence, investigations with and for its partners, intelligence database services, policy development, law reform advice, and cross-sectoral partnerships.
2. In doing so, the ACC utilises its specialist capability based on its national criminal data holdings, coercive powers, strategic products, and national legislative and organisational framework. As a result, the ACC gives governments and partner agencies the information they need to protect Australia from nationally significant crime.
3. The lifeblood of serious and organised crime groups is money. The ability to effectively and discreetly launder money is a key capability for criminal networks. The speed, anonymity, reach, complexity and variety of criminal financing is increasing—as is the harm financial crimes cause to society.
4. Targeting the money is essential in disrupting serious and organised crime activities. The Australian Crime Commission takes a 'top down' approach, tracking money movements throughout the country to look for the profits that both reward and motivate organised crime. By combining this information with intelligence about the criminal environment from our ongoing fieldwork, we gain deeper insights that allow us to more effectively prioritise and target the highest risk threats be they groups, individuals or facilitating methodologies. This enables us to focus resources accordingly.

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Nexus between serious organised crime, national security and financial advantage

5. The linkage between serious and organised crime and national security has been acknowledge in a range of statements including the National Security Statement by the former Prime Minister, Mr Kevin Rudd MP.

6. International investigations of terrorist groups since the September 11 terrorist attacks in the United States have confirmed terrorist involvement in organised criminal activity.^{1 2} While there is limited evidence in Australia, internationally, organised crime is increasingly being used to fund terrorist activity and the proceeds of criminal enterprises such as drug trafficking, extortion and people smuggling have been channelled to international terrorist campaigns as state sponsorship of terrorism has declined and anti-terrorist financing legislation has had an impact on traditional sources of funds.³

Money laundering and Serious Organised Crime

7. The remittance sector continues to pose major challenges for regulatory and law enforcement agencies, with widespread chronic non-compliance and limited AML awareness key enablers for money laundering.

8. Intelligence probes and investigations are examining the link between international remitter networks (including Australian dealers) and funding channels for people smuggling.

9. The sector is an intersection point where many critical threats and vulnerabilities meet: specialist money laundering syndicates operating as professional 'service providers', weak or absent AML controls that enable ID crime, poor quality reporting (including misreporting) distorting money trails, susceptibility to criminal manipulation or infiltration, signs of trade based money laundering and close connections to higher risk countries or regions (South East Asia, East Asia, Middle East).

¹ The Philippines based Abu Sayyaf Group (ASG) for example, includes kidnapping and extortion among its methods of raising finance for its terrorist activities. By including international business executives, tourists, missionaries and journalists among its kidnapping victims, the ASG gained significant global media exposure. This notoriety has assisted the group negotiate larger ransom payments, as well as publicising its cause to a wider audience.

Intelligence now suggests that the Madrid train bombings in 2004 attributed to Al Qa'ida, were made possible logistically and financed by a drug network which trafficked in hashish and MDMA. These examples evidence an increasing synthesis between organised crime and terrorist groups, and a conscious decision by terrorist groups to engage in organised crime.

² Williams, P 2009, *Perspectives on Terrorism – In Cold Blood: The Madrid Bombings*, www.terrorismanalysts.com/pt/index, viewed 20 May 2009; and www.usdoj.gov/dea/pubs/news_releases.htm, viewed 18 May 2009

³ See for example Diaz, T 2009, *Terrorist Organizations Like Hezbollah Finding Big Money in Drug-Trafficking*, www.tomdiaz.wordpress.com/2009/03/25, viewed 18 May 2009; Carter, SA 2009, 'Hezbollah uses Mexican drug routes into US', *The Washington Times*, 27 March 2009; and Braun, MA 2008, *Drug Trafficking and Middle Eastern Terrorist Groups: A Growing Nexus?*, www.washingtoninstitute.org/a...acePolicyWatch, viewed 18 May 2009 (also sdoj.gov/dea/speeches.html)

10. The presence of remittance dealers operating as specialist money laundering syndicates merges with the broader trend of organised crime groups engaging professional facilitators and operating entrepreneurially. While small in number, these groups represent a key enabler for the high-end of the criminal economy and a significant threat in their own right.

11. New and pending regulatory and enforcement measures, combined with targeted operational responses and improved intelligence about high risk remitters, will help to disrupt money laundering in parts of the sector and make it more hostile for organised crime, although it will take time before their deterrent and compliance effect can be measured.

12. Given the scale and nature of the sector, the endemic compliance problems, and organised crime's ability to conceal itself among remittance businesses and switch dealers to elude detection, improvements are likely to be gradual.

CASE NOTE⁴

Where the money leads

Pre-dawn raids, arrests and seizures of illicit commodities and proceeds of crime always make good headlines but sometimes the stories behind the news are just as interesting.

For example, a long-running investigation that began by following suspect money flows evolved into a joint operation which busted a major drug syndicate.

The multi-agency Task Force Gordian investigated the key structures and networks used by organised crime to finance criminal enterprises, launder the proceeds of crime and evade tax. The task force disrupted established criminal networks by targeting their accountants and financial service providers, and money remitters.

Operation Gordian-Katakan, a specific investigation conducted by the task force, investigated four money remittance services operating in Sydney and Melbourne. Investigators analysed a wide range of information, including financial records provided by the Australian Transaction Reports and Analysis Centre, and telephone and facsimile intercepts. We uncovered international airline staff couriering this cash into other countries as part of an intricate and highly sophisticated network with links to organised crime in Asia.

The investigation determined that the remittance services were being used to transfer criminal proceeds offshore, primarily money from selling illicit drugs. As a result of the task force's work, 73 people had been charged by the end of 2009–10 with money laundering and serious drug offences, including seven principal targets conspiring to launder a total of \$93 million. But the story doesn't end there. That long investigation has prompted other investigations within the ACC and with law enforcement authorities around Australia.

We continued to monitor the activities of targets associated with Operation Gordian-Katakan, focusing more keenly on the criminal activities that were generating the funds and pursuing them in conjunction with Victoria Police through Operation Sethra. The search of a safe house in April 2010 uncovered more than half a million in cash and 1.75 kilograms of heroin, bagged ready for sale, with an estimated street value of \$3.25 million. Like many organised crime groups, this syndicate quickly recovered from that loss and continued trafficking drugs. However, in August 2010 a series of search warrants in Melbourne resulted in what has been described as the largest single proceeds-of-crime restraint made in Victorian criminal history—netting tens of millions of dollars of assets and resulting in numerous arrests.

⁴ Australian Crime Commission, *Annual Report 2009-2010*, p.59

National Criminal Intelligence Fusion Capability

13. The National Criminal Intelligence Fusion Centre established in July 2010 under the Organised Crime Strategic Framework and is a key part of the ACC's efforts to prevent, detect and disrupt serious and organised crime involvement in relation to people smuggling and the alternative remittance dealer sector. Its specific target generation and development work on alternative remittance dealers includes work of direct relevance to people smuggling investigations. Moreover, on-going dedication of resources against the alternative remittance dealer network is being applied within the Fusion Centre as part of the high-risk funds strategy and is supported by ACC examinations where appropriate.

Proposed Legislative Changes

14. The changes that would be introduced by Schedule 1 to the Bill would make a significant contribution to preventing the use of remittance agencies as a means of laundering criminal proceeds and financing terrorism, by giving AUSTRAC a greatly enhanced capacity to supervise the activities of the remittance sector and exclude unsuitable operators. This in itself is a highly desirable development and is supported by the ACC.

15. We provide the following comments in respect of the highlight outcomes of the proposed legislation:

Registration of remitters:

16. Registration of remitters would be a useful tool to increase the regulation of the remittance sector, however a potential consequence of increased regulation may be where illegitimate remittance providers might become more covert and move into a more unregulated and non-reporting environment than currently exists. This 'black market' would need to be carefully monitored over an extended period of time to identify what, if any, emerging methodologies might be used to facilitate financial crimes including money laundering activities or the financing of people smuggling / trafficking activities.

AUSTRAC CEO Powers to restrict / suspend remitter registrations:

17. The ACC, whilst supportive of the intention of the proposed amendments, notes that there may be some unintended impacts of the proposed new Division 4 of Part 6 of the AML-CTF Act, especially as the information the AUSTRAC may rely upon could be drawn from classified operational intelligence that should not be revealed. It will be important that adequate safeguards are established that not only protect sensitive operational intelligence, but balance the rights of individuals to due process and natural justice.

18. The ACC also notes that past experience with a range of interdiction activity has demonstrated that in the remittance sector attempts to disrupt illicit activity have been only partially successful. As an example, the joint law enforcement agency Operation Gordian-Kakatan, Australia's most successful money laundering intervention, saw an increase of almost 150% in remittance activities following the arrests. Law enforcement agencies noted that over this period a number of the arrested personnel were replaced and suspicious remitters continued their practices.

Infringement Notices and Penalties:

19. The ACC supports the introduction of these regulatory processes, but again the type of information and intelligence that AUSTRAC uses to support these decisions will need to be balanced by adequate safeguards that not only protect sensitive operational intelligence, but balance the rights of individuals to due process and natural justice.

20. The introduction of new offences in support of the regulatory scheme may also be of some relevance to the ACC however the penalties are too low for the offences to be expressly listed in the definition of 'serious and organised crime' in the ACC Act. This may mean that some conduct in the remittance sector will in future have the potential to constitute incidental offences for the purpose of particular ACC operations/investigations and thus fall outside their scope.

Access to AUSTRAC information:

21. The changes to be made by Schedules 2 (access to AUSTRAC information for all members of the AIC) and 3 (use of credit reporting agencies to verify customer identity) do not raise any legal issues for the ACC.

22. The ACC notes that the intention stated in the explanatory memorandum is that the changes to be made by Schedule 2 will allow AUSTRAC information to be shared with foreign agencies to assist in the international coordination of financial intelligence. The ACC also notes that in the Minister's second reading speech for this bill that these changes are intended to continue to build on the sharing of information across relevant government agencies. The ACC's National Criminal Intelligence Fusion Capability use a range of information and data sources, including AUSTRAC information, to provide value-added intelligence across our partner agencies.

ACC Contact

23. On behalf of the ACC, I thank you for this opportunity to provide comment on the Inquiry into the *Combating the Financing of People Smuggling and Other Measures Bill 2011*. Should you wish to discuss any aspect of this submission further, please contact

Yours sincerely

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Chief Executive Officer
Australian Crime Commission

11 March 2011