



Parliamentary Joint Committee on Law Enforcement

Inquiry into criminal activity and law enforcement during the COVID-19 pandemic

Introduction

The Australasian Institute of Policing (Aipol) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Law Enforcement (PJCLE) inquiry into criminal activity and law enforcement during the COVID-19 pandemic.

In July 2007, Aipol was established as a not for profit, non industrial, professional body for Australian and New Zealand Policing with the following objects:

- To promote the policing profession;
- To promote professional practice standards within the policing profession;
- To promote professional mobility of police practitioners;
- To endorse education related to the policing profession;
- To develop, promote and encourage ethical standards of policing practice;
- To facilitate the sharing of research and information as to best practice policing; and
- To enhance public confidence in the police profession and the service provided to the public by members of the policing profession.

Aipol has been established independently from the police commissioners and the police industrial organisations to ensure that the objects of the Institute remain separate from political or industrial agendas and is owned and progressed by the police practitioners themselves.

Contagion Crime, Pandemic And Policing

Over the last nine months, the Australasian Institute of Policing (Aipol) has closely monitored the impact of COVID-19 on the illicit economy, from an Australian perspective.

It is evident that the impact of COVID-19 on crime is an issue that needs to be closely analysed by relevant agencies both globally and domestically.

It is apparent that COVID-19 is not just a public-health emergency and a financial crisis but has far-reaching consequences for current and future policing. The implications and the legacy of the pandemic are likely to be far-reaching and the 'new norm'.

Illicit economies have changed, criminal actors have adapted and policing has been so focused on reacting to the pandemic and the subsequent public emergency, that there has been little time for policing agencies to analyse and adapt to the new criminal environment.

COVID-19 as the 'new norm'

This submission is written with a view that the COVID-19 criminal environment will become the 'new norm'.

Although we are awaiting detailed and validated data in relation to the effect of COVID-19 on organised crime, general crime, and policing, some clear observations can be made at this time, based on public reports, media releases, academic papers etc.

For example, the NSW Bureau of Crime Statistics & Research has found that since the start of the COVID-19 containment measures (ie between 15 March and 26 April 2020), there has been a sharp fall in non-domestic related assault, sexual offences, robbery, break and enter (dwelling and non-dwelling), vehicle theft, stealing from vehicles and stealing from retail premises. Domestic violence related assaults remained largely within expected ranges. Drug trafficking and drug possession offences were stable in aggregate while subordinate changes were observed among particular drug types. The report did note that reporting of domestic violence related assaults may not actually reflect the level of assaults due to the fear of victims reporting.¹ This notation is independently supported by other studies that show an increase in domestic violence but not necessarily the reporting to police.

A number of Commonwealth law enforcement and regulatory agencies have reported an increase in cybercrime and other crimes involving transnational and organised crime syndicates during COVID-19 period.

For example, the AFP led Australian Centre to Combat Child Exploitation (ACCCE) saw an increase in online child exploitation activity on the Internet and Darkweb as well as an increase in reporting of cases.

¹ COVID-19 pandemic and crime trends in NSW by Min-Taec Kim and Felix Leung, https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2020/mr-COVID-19-crime-trends-in-NSW.aspx

Interestingly, based on publicly available material, COVID-19 has exposed areas of criminality that has sometimes 'been under the radar' such as the illicit wildlife trade, scammers and fraudsters. COVID-19 has also accelerated the use of other crime types such as cybercrime. Finally, it has exposed weaknesses in our current law enforcement strategies, such as combatting the illicit drug trade and prosecuting and confiscating assets of actors involved in cybercrime.

Cybercrime

There has been considerable surge in cybercrime. A combination of factors, including a shift to remote working, the use of unsecure networks, and an increasingly vulnerable population due to health and financial concerns, has created the perfect storm for online fraudsters, drug dealers, child exploitation syndicates, extortionists and sophisticated cybercriminals, including State based cyber actors.^{2 3 4 5}

The federal government is aware of the significant surge in cyber crime as a result of COVID-19 however if this is to be the 'new norm' then it is imperative that additional funding is given to law enforcement agencies to increase capacity to adequately respond to the increased online criminal activity.

There also needs to be a review of relevant criminal legislation to ensure that any gaps in legislation are addressed to ensure that those involved in online criminal activity can be successfully detected, disrupted and prosecuted.

For example, actors involved in Cybercrime, due to the nature of internet and darknet, are difficult to successfully criminally prosecute in a court of law. The anonymity and the lack of geographical boundaries make it difficult to prove all the elements of the offence to beyond reasonable doubt in a court of law.

At the Commonwealth level, proceeds of crime can be addressed through the Proceeds of Crime Act 2002 (PoCA). So called Unexplained Wealth Provisions were added to PoCA and enacted through the Crimes Legislation Amendment (Serious and Organised Crime) Bill 2010, in February 2010.⁶ Unfortunately, however, the Unexplained Wealth Provision of PoCA has been flawed.

² Coronavirus: shock at rise in online predators by simon Benson National Affairs Editor, the Australian 27 April 2020, <https://www.theaustralian.com.au/nation/politics/coronavirus-shock-at-rise-in-online-predators/news-story/d5e10f3e967f83268071e6514f06617d>

³ ScamWatch <https://www.scamwatch.gov.au/scam-statistics>

⁴ Availability of COVID-19 related products on Tor darknet markets by Roderic Broadhurst, Matthew Ball and Chuxuan Jessie Jiang, <https://www.aic.gov.au/publications/sb/sb24>

⁵ Prime Minister Morrison press conference 19 June 2020 <https://www.themandarin.com.au/135274-australia-under-attack-from-state-based-cyber-actor-with-significant-capabilities/>

⁶ Part 2-6 of the PoCA sets out how unexplained wealth orders work.

Although, their may be 'criminal intelligence' identifying individual actors of Cybercrime, at the federal level, it is difficult to cease proceeds of crime due to the requirement to still link the 'unexplained wealth provisions of the Act to an actual crime. The 'Unexplained Wealth' title of Part 2-6 of the Proceeds of Crime Act (PoCA) is clearly a misnomer.

The idea of confiscation of unexplained wealth in international agreements can be traced back as far as the United Nations Convention against Illicit Traffic in Narcotic Drug and Psychotropic Substances (1988). The Convention stated that 'each party consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation.⁷

In 2003, the Financial Action Task Force on Money Laundering recommended that countries adopt measures laid out in the convention above, including confiscation without conviction and requiring persons to demonstrate the lawful origin of property.⁸

In 2009 the PJC-ACC recommended the introduction of unexplained wealth provisions into Commonwealth legislation noting that:

In the view of the Committee unexplained wealth laws appear to offer significant benefits over other legislative means of combating serious and organised crime including:

- *preventing crime from occurring by ensuring profits cannot be reinvested in criminal activity, as opposed to simply reacting to serious and organised crime;*
- *disrupting criminal enterprises;*
- *targeting the profit motives or organised criminal groups; and*
- *ensuring that those benefiting most from organised crime - i.e. those gaining profits - are the ones captured by the law, which they are often not under ordinary criminal laws, and proceeds of crime laws which require a link to a predicate offence.⁹*

In March 2012 this Committee in its Report on the *Inquiry into Commonwealth Unexplained Wealth legislation and Arrangements* recommended major reform of the way unexplained wealth is dealt with in Australia as part of a harmonisation of Commonwealth, state and territory laws. It was hoped that this harmonisation would allow the Commonwealth to make use of unexplained wealth provisions that are not linked to a predicate offence.

⁷ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, Article 5, Paragraph 7.

⁸ PJC-LE Report into Commonwealth Unexplained wealth legislation and arrangements, March 2002

⁹ PJC-ACC, Inquiry into the legislative arrangements to outlaw serious and organised crime groups, pg 117.

The PJC-LE Committee recommended:

Recommendation 15

4.67 The Committee recommends that the Australian Government seek a referral of powers from states and territories for the purpose of legislating for a national unexplained wealth scheme, where unexplained wealth provisions are not limited by having to prove a predicate offence.

Recommendation 16

4.88 The Committee recommends that the Commonwealth Government actively participate in efforts to establish international agreements relating to unexplained wealth.

In June 2018 the Federal Minister for Home Affairs, the Hon Peter Dutton, introduced the *Unexplained Wealth Legislation Amendment Bill 2018* (Cth) to Parliament. The Bill passed both houses on 19 September 2018. The referral of powers was of a textual or hybrid model, and simply widened the categories of predicate offences to include a greater number of state offences. It does not remove the need for the AFP to identify predicate offences.¹⁰

RECOMMENDATION

That the PJC-LE consider recommending to the Australian Government that law enforcement agencies are additionally resourced and funded to investigate the surge in cybercrime.

RECOMMENDATION

That the PJC-LE consider ‘gaps’ in the current legislative framework to ensure those involved in online criminal activity can be successfully detected, disrupted and prosecuted.

RECOMMENDATION

Consistent with the above Recommendation, that the PJC-LE specifically ascertain the actions taken by Government since the passing of the *Unexplained Wealth Legislation Amendment Bill 2018*, to remove the need to identify predicate offences as recommended in Recommendation 15 and Recommendation 16 of its 2012 Report on the *Inquiry into Commonwealth Unexplained Wealth Legislation and Arrangements*.

RECOMMENDATION

That as a result of the increase in cybercrime, including online fraudsters, drug dealers, child exploitation syndicates, extortionists and sophisticated cybercriminals, including State based cyber actors, that the Australian Cyber Security Centre (ACSC) be allocated additional funding and resources to combat the increased criminal activity on the internet and darknet.

¹⁰ National Cooperative Scheme on Unexplained Wealth 24 June 2018 by Edward Greaves, Barrister.

Illicit Wildlife Trade

COVID-19 is having a positive and negative impact on the illicit wildlife trade and other forms of environmental crime. The novel coronavirus originated in China, which is one of the most important players in the trafficking of illegal wildlife products. Restrictions on air travel in and out of China is having a serious impact on the demand for various environmental products originating in Africa, including the most trafficked form of endangered fauna and flora in the world, including pangolins, the alleged source of COVID-19.

On one hand, it appears as though the trafficking of wildlife products is facing many of the same impediments as other illicit markets, not least the reduction in demand as a result of travel restrictions in and out of a number of source and destination countries.

For example, in South Africa, government officials report a significant decline in rhino poaching incidents and smuggling of pangolins to Asia since the beginning of the lockdown. However, on the other hand, there has been an increase in illegal-logging activity reported in several countries around the world.¹¹

Connections to the wildlife trade as the likely source of the COVID-19 has put the spot light on the devastating impacts this trade can have on human health and economies.

The World Health Organization has determined that COVID-19 is a zoonotic disease, meaning it originated from an animal.

Other zoonotic diseases to date have included SARS, Ebola, Bird Flu, and MERS (transmitted from mammals and birds). Its exact origins are still unknown, but COVID-19 is suspected to have originated in bats and may have jumped to humans via an intermediary wild species in a China wildlife market.

COVID-19 has demonstrated that the illegal wildlife trade occurring in other countries is a threat to the health of Australians and a threat to the Australian economy.

Reducing threats and the potential for pandemic sources from wildlife will require shutting down high-risk markets and strengthening law enforcement efforts in our neighbouring countries.

Recognising the significant threat posed by illegal, unregulated, and high-risk wildlife markets, the Government of China has taken emergency measures to close their wildlife markets and ban the consumption of wildlife for food. But the threat of viral transmission and pandemic spread is not just an issue for China.

Many countries have wildlife markets that are high-risk, particularly in Southeast Asia and parts of Africa. It will take a concerted global effort to mitigate these risks.

¹¹ UNODC World Wildlife Crime Report 2020 https://www.unodc.org/unodc/en/press/releases/2020/July/unodc-world-wildlife-crime-report-2020_-the-covid-19-pandemic-has-shown-that-wildlife-crime-is-a-threat-not-only-to-the-environment-and-biodiversity--but-also-to-human-health.html

Australia needs to play a greater part in combating the illegal wildlife trade in Southeast Asia through utilising the AFP international network. Through this network, greater priority should be given to the illegal wildlife trade, particularly in South East Asia. The AFP Law Enforcement Co-operation Program (LECP) is ideally suited for this purpose.

This is a pivotal moment to build a safer future for Australians and our neighbours in the Asia Pacific region. By utilising the strong relationship the AFP has with its law enforcement partners in the Asian Pacific region it can assist in the detection, disruption and dismantling of the illicit wildlife trade.

RECOMMENDATION

To help prevent future coronavirus pandemics, the AFP International network be better utilised to combat the illegal wildlife trade, particularly in south east Asia and the Pacific utilising the AFP Law Enforcement Cooperation Program.

RECOMMENDATION

The PJC-LE consider recommending to the Australian Government that there be additional funding to the AFP Law Enforcement Cooperation Program to target illegal wildlife trade, particularly in south east Asia and the Pacific.

Illicit Drug Trade

The global drug trade is one of the most adaptable to COVID-19. From the beginning of the COVID-19 outbreak, speculation was rife over the impending collapse of this illegal drug industry, at least in the short term.

On the one hand, lockdown measures are proving problematic to actors in the global drug trade, with some suppliers forced to ship larger quantities of drugs in anticipation of impending travel and trade restrictions, and then being required to stockpile products until normal services can resume; and others taking the risk to continue importing illicit drugs in a far more intense border security environment. This is leading to some significant busts of illicit drugs destined for the Australian market.^{12 13 14}

However, on the other hand, the pandemic is demonstrating that organised drug syndicates are particularly resourceful in the face of a pandemic, from camouflaging drugs in shipments of medical and PPE equipment destined to Australia; to modifying advertising

¹² <https://www.abc.net.au/news/2020-08-01/afp-arrests-png-police-seize-500kg-cocaine-australia-bound/12515158>

¹³ <https://www.abc.net.au/news/2020-08-18/joint-nsw-police-afp-border-force-operation-bust-cocaine-boat/12568230>

¹⁴ Australia's biggest meth bust: Drugs found hidden inside speakers <https://www.bbc.com/news/world-australia-48551669>

methods from human contact to utilising the darknet; and modifying delivery systems to make use of home deliveries, taxis, ubers and even drones; to provide drug deals to users.

COVID19 provides an opportunity, just as much as a crisis, from the perspective of the illicit drug trade. Not only are the organised crime syndicates and networks that produce, traffic and distribute drugs, able to weather the storm of the pandemic, but in many cases illicit drug markets are strengthening as a result of COVID-19 adjustments.

Of worrying concern, is the fact that it appears that the COVID-19 international border restrictions in Australia has had little effect on the supply and demand of imported illicit drugs, including precursor drugs, MDMA, Cocaine, Heroin and Methamphetamine (Ice).¹⁵¹⁶¹⁷

Data obtained by Dr James Martin of Swineburne University, the NSW Bureau of Crime Statistics & Research and two studies conducted by the UNSW have found drug possession and dealing incidents remained stable during the COVID-19 period.

The lack of reduction in supply of these imported illicit drugs indicates that large quantities of drugs are likely being imported through air cargo, sea cargo, undetected sea vessels, including undetected pleasure craft, and undetected small aircraft. Interestingly, the only state to see a reduction in supply of imported illicit drugs is Western Australia (WA), which indicates that the closure of the WA border has in fact disrupted the supply of imported illicit drugs from the eastern states, either via land travel or air travel, or both.

It should be noted that sea cargo only accounts for around 1% of illicit drug detections/seizures at the Australian borders, yet counts for over 80% of cocaine, over 70% of ATS and around 80% of MDMA in total quantity/weight seized by the AFP.

RECOMMENDATION

That the PJC-LE seek from the ACIC, Australian Border Force (ABF) and the AFP more detailed analysis of transnational crime and organised crime, in particular illicit drug data.

RECOMMENDATION

That the PJC-LE seek from the ACIC, ABF and the AFP their strategies to address deficiencies in the detection of illicit drug importations, which have become apparent as a result of COVID-19 restrictions not impacting on the supply of illicit drugs.

¹⁵ Highs and lows of drug trade and organised crime in the wake of pandemic, by Lucy Cormack, Sydney Morning Herald 14 April 2020, <https://www.smh.com.au/national/nsw/highs-and-lows-of-drug-trade-and-organised-crime-in-the-wake-of-pandemic-20200412-p54j3x.html>

¹⁶ Australians' Drug use: Adapting to Pandemic Threats' ADAPT Study, Wave 1 Bulletin June 2020 <https://ndarc.med.unsw.edu.au/resource/key-findings-australians-drug-use-adapting-pandemic-threats-adapt-study>

¹⁷ Pot, pills, and the pandemic: how corona virus is changing the way we use drugs by Amy Peacock, Senior Research Fellow, UNSW and Rachel Sutherland, Research Fellow, UNSW 26 June 2020, <https://ndarc.med.unsw.edu.au/news/pot-pills-and-pandemic-how-coronavirus-changing-way-we-use-drugs>

RECOMMENDATION

The PJC-LE request from the ABF an assessment on its capability and capacity to intercept and monitor coastal shipping, small vessels, light aircraft and cross border interstate movement of illicit and prohibited goods under the Customs Act.

RECOMMENDATION

The PJC-LE consider obtaining from the ABF additional funding requirements needed to increase maritime security and related border controls, including greater examination of air cargo and maritime container shipments.

Scammers & Fraudsters

With Australians staying at home as a result of COVID-19 restrictions, we are seeing an increase in blackmarket sales of counterfeit medicines and personal protective equipment utilising the darknet.¹⁸

The ACCC has received over 3,600 (coronavirus) scam reports with over \$2.4 million dollars in reported losses since the outbreak of COVID-19. Common scams include phishing for personal information; phishing for financial information; online shopping scams; superannuation scams, government impersonation scams; charity impersonation scams; and scams targeting businesses.¹⁹

Australians lost over \$634 million to scams in 2019. This is a 30 per cent increase on 2018, when \$489 million was reported lost.

Australians made 167,797 reports to Scamwatch in 2019 and, of concern, although it received 5 per cent fewer reports than in 2018, financial losses increased by 34 per cent. Based on the combined data, the greatest losses in 2019 by type of scam were:

- \$132 million lost to business email compromise scams
- \$126 million lost to investment scams, and
- \$83 million lost to dating and romance scams.²⁰

¹⁸ Availability of COVID-19 related products on Tor darknet markets by Roderic Broadhurst, Matthew Ball and Chuxuan Jessie Jiang, <https://www.aic.gov.au/publications/sb/sb24>

¹⁹ ScamWatch <https://www.scamwatch.gov.au/scam-statistics>

²⁰ Targeting Scams 2019, A review of scam activity since 2009, June 2010, https://www.accc.gov.au/system/files/1657RPT_Targeting%20scams%202019_FA.pdf

The rise of digital platforms has enabled the growth of online scams, resulting in significant losses for individuals, small businesses in Australia and indeed government agencies.

The ease with which scammers use digital platforms to conduct scams, particularly dating and romance scams, investment scams and advertisements containing false representations, is especially concerning in the COVID-19 environment.

A number of agencies are concerned with fraud directly linked to stimulus and welfare packages introduced as a result of COVID-19. It should be noted that the 2014 Report of the Royal Commission into the Home Insulation Program considered the fraud against the Commonwealth and recommended the possibility of introducing legislation similar to the U.S. False Claims Act and referred the proposal to the Australian Law Reform Commission for consideration. Aipol is aware that the Attorney General's Department completed significant work on adapting the highly effective US anti fraud legislation to the Australian environment but is not aware of its current status.

In light of the recent abuse of the economic stimulus package by private corporations, individuals and organised crime, an Australian False Claims Bill, specifically designed for such criminal activity should be urgently considered. The legislation would establish civil liability when a defendant (usually a corporation) over charges the Federal Government for goods or services. Other typical cases would entail failure to test a product as required by the rigorous government specifications, for example where a pharmaceutical company provides false data to the government on a COVID-19 vaccine which is then subsidised by the Commonwealth. The legislation has a *Qui Tam* provision that encourages whistleblowers to come forward and also has significant financial penalties and sanctions.

The US federal legislation has been so successful as anti fraud legislation that many US states have introduced their own legislation to recover substantial financial losses.

RECOMMENDATION

The PJC-LE ascertain whether the current regulatory and legislative framework requires amendment to better protect Australian businesses and individuals from harm.

RECOMMENDATION

The PJC-LE ascertain what the Australian Government is doing to ensure that Google and Facebook do more to detect and disrupt scammers, such as the timely removal of scam ads and similar content and to provide redress, where appropriate, for Australians that have experienced harm as a result.

RECOMMENDATION

That the PJC-LE seek from the Attorney General's Department a briefing on the current status of an Australian False Claims Bill and a background paper setting out the work conducted by the Department in conjunction with the Australian National University on this important Commonwealth anti fraud legislation.

Criminal Justice System

On the other side of the equation, COVID-19 is affecting the capacity of law enforcement agencies to respond to the normal crime types, community policing and investigations into organised crime and for the court system to deal with offenders.

Police across Australia are consumed with dealing with public order issues, state border controls, quarantine measures, pandemic outbreaks, and enforcing COVID-19 restrictions.

Additionally, police stations, police headquarters and offices have implemented safe distancing measures, staffing number restrictions, and recalibration of operational priorities to meet COVID-19 challenges.

A number of state police and territory police have reported that the engagement in border control functions and enforcement of both health and social distancing directives, has required the redirection of significant operational resources from other core law enforcement activities.

For example, the AFP has diverted federal crime resources to assist community policing in the Australian Capital Territory. If this is to become the 'new norm', then strategies will need to be put in place to ensure that this gap in law enforcement capabilities is addressed.

To combat the surge in community policing workload as a result of COVID-19 the AFP has created a Police Reserve. It contacted former and retired police officers and invited them to submit an expression of interest at the outbreak of COVID-19..

Aipol is not aware of the strategies put in place to ensure that the AFP reservists have the appropriate and current police practice standards. This is a significant issue, as reservists should meet the professional Police Practice Standards Model if we are to ensure that Australian policing continues to be highly professional and respected by the community it serves.

If the current COVID-19 environment becomes the 'new norm' it is questionable, as to whether a Police Reserve model will address shortfalls in core law enforcement activities identified as a result of the current redirection of significant operational resources.. That is, the Police Reserve Model may be appropriate for short term surge capacity, but is not the solution to a permanent 'new norm'.

It is paramount that any strategies implemented by police agencies continue to enhance public confidence in the police and the service provided to the public by members of the policing profession.

During COVID-19 all Australian police agencies and police practitioners have done a magnificent job under very challenging conditions. We owe a great deal to the police officers and other first responders for their professionalism and dedication. Many are suffering fatigue and a number have succumbed to COVID-19 illness. If the COVID-19 criminal environment is to become the 'new norm' then additional resourcing and staffing of police and law enforcement agencies is imperative.

Another key pillar of criminal justice, the judicial system, is also being disrupted, with a number of states and territories shutting down courts during the pandemic or having limited number of hearings being held, causing a significant backlog of matters.

Aipol understands that the Federal Court has refused to have hearings via video conferencing on the basis that it may prejudice the defendant

RECOMMENDATION

The PJC-LE ascertain from the AFP what strategies they have in place to ensure AFP reservists meet appropriate police practice standards and what other strategies the AFP intend to utilise if the current COVID-19 environment becomes the 'new norm'.

RECOMMENDATION

On the basis that the COVID-19 environment is the 'new norm', that the PJC-LE seek from Judiciary the impact that COVID-19 is actually having on case numbers, hearings etc and the strategies that the Judiciary intend to put in place if the current COVID-19 environment becomes the 'new norm'.

National Approach to Crime

Australia is very fortunate that a number of federally funded 'nationally focused' agencies are well placed to obtain relevant data, analyse and respond in a timely manner, on the changes to the criminal environment. This is enabling Australian policing and law enforcement to implement effective strategies in a changed new world.

The key 'nationally focused' federally funded agencies include:

Australian Centre to Counter Child Exploitation (ACCCE) established in 2018;

Australian Criminal Intelligence Commission established in 2016;

Australian Cyber Security Centre (ACSC) established in 2014;

Australian Securities & Investment Commission (ASIC) established in 2001;

Australian Competition and Consumer Commission (ACCC) established in 1995;

Austrac established in 1989; and

Australian Institute of Criminology (AIC) established in 1972.

During COVID-19 the Department of Home Affairs also established a number of Task Forces involving various Commonwealth agencies.

The Australian Federal Police (AFP) also created and leads the *COVID-19 Joint Intelligence Group* that provides the impacts and predicted impacts to Australia's criminal

threat environment from COVID-19. The *Joint Intelligence Group* draws intelligence from international and domestic (State/Territory/Commonwealth) partners to deliver timely and informed advice to assist decision makers.

COVID-19 has demonstrated that the reporting of crime trends and criminal intelligence from various Commonwealth and State agencies will need to be timely, accurately and appropriately reported to the Australian Criminal Intelligence Commission (ACIC) to enable successful analysis and investigation of serious and organised criminal activity both within Australia and impacting on Australia.

RECOMMENDATION

That the PJC-LE seek from relevant law enforcement agencies more detailed analysis of the changes in crime types and their proposed strategies to deal with the changes in the criminal environment as a result of COVID-19.

RECOMMENDATION

That the PJC-LE seek from the Australian Criminal Intelligence Commission an assessment on the cross agency data sharing platforms currently in existence to enable it to receive timely reporting of criminal intelligence from federal, state and territory police and law enforcement agencies; and where improvements need to be made.

RECOMMENDATION

That the PJC-LE review the various task forces formed during COVID-19 to determine which task forces should be retained as permanent bodies, and which task forces should be disbanded and functions placed into existing agencies to avoid duplication of effort.

RECOMMENDATION

That the Department of Home Affairs and the law enforcement agencies within its portfolio; and the Australian Signals Directorate; should be exempt from the efficiency dividend during future federal budget preparations.

Necessity is the mother of Invention

What we can learn from COVID-19 and the National Cabinet approach, is that like the pandemic, certain crimes do not have borders or limitations and this requires a national response in Australian policing, law enforcement and national security.

COVID-19 and the financial impact on Australian governments, is an opportunity for Australian policing, law enforcement and national security to remove duplication of effort, refine operational priorities and consolidate where appropriate. Although this will be largely driven by financial budgetary constraints by federal, state and territory

governments, it can also be of great benefit to the Australian community if those reforms are focused on improved law enforcement capability in a post COVID-19 environment.

Although the ACIC model has and is a great Australian law enforcement success story, it may well need to be expanded or modified to best adapt to the post COVID-19 crime environment, with consideration being given for 'criminal intelligence bodies', such as Austrac; the Australian Centre to Counter Child Exploitation (ACCCE) and Australian Cyber Security Centre (ACSC) and the various 'criminal intelligence sections' within government agencies, such as the AFP, ABF, and within the Department of Home Affairs, being merged into the ACIC.

Or even more radical, is it time to consider Organised Crime investigation sections, Cyber Crime investigation sections and Drug investigation sections and Counter Terrorism sections currently conducted by federal, state and territory police being within a national policing body with state and territory police focusing purely on community policing, domestic violence and public order?

Although many may laugh off the above paragraph as fanciful '*necessity is the mother of invention*' and the Australian governments have made significant changes under the Australian Constitution to improve law enforcement and regulatory compliance in the past.

For example, in 1979 the Australian Federal Police was established after the CHOGM Sydney Hilton Bombing terrorist attack. Inadequacies were identified in relation to the Commonwealth Police and the NSW State police, leading to a totally new federal agency being formed under the Australian Federal Police Act (1979).

In 1990's there was a referral of power to the Commonwealth by the states in relation to Australian corporate laws. The referral allowed the passage of the *Australian Securities and Investment Commission (ASIC) Act 2001* (Cth) and the establishment of ASIC to administer the *Corporations Act 2001* (Cth).

In 2002-2003 all states referred a limited power to allow the enactment of the Criminal Code Amendment (Terrorism) Act 2003. The referral has a 'safeguard' that the Act not be amended without consultation with the states.

In 2009 the National Consumer Credit Protection Act (Cth) transferred regulatory responsibility from the states to the Commonwealth. It was agreed at a COAG meeting that this area of the law should be reformed in the wake of the Global Financial Crisis and at a Constitutional level this was made possible because of the referral power.

As no doubt the Committee is aware, that Section 51 (xxxvii) of the Constitution of Australia (also called the referral power) is a provision in the Australian Constitution which empowers the Australian Parliament to legislate on matters referred to it by any state.

COVID-19 has necessitated the reduction of significant operational resources from core law enforcement activities. This has adversely impacted on organisational capacity and delivery of police services across Australia as a result of the COVID-19 environment.

It is plausible, that the Australian Federal Police Act 1979 could be amended, with the support of the states, through referral of power, to become a national policing body that focuses on national crime types such as transnational crime; cross border crime; and organised crime, freeing up state and territory police agencies to focus on the increasing

community policing, domestic violence and public order roles that are already stretching the core operational capacity of all state and territory police agencies.

An alternative to referral of power, could be to modify and expand on the AFP led Joint Investigation Teams that utilise federal, state and territory police and their full suite of law enforcement powers to detect, disrupt and prosecute criminals.

There is clear precedent. The employment arrangements could replicate those previously used to engage state and territory police at Australian Airports on behalf of the Commonwealth:-

In 2005, in response to the Wheeler Review into Aviation Security, a Unified Policing Model (UPM) was instituted with the Commonwealth, through the AFP, meeting the cost of policing. The UPM saw policing of airports undertaken by AFP Protective Service Officers dealing with Counter Terrorism First Responses, and state and territory police officers dealing with community policing.

In December 2009, in response to a further review into Aviation Security by Mr Roger Beale AO, the Australian Government announced that it would implement the Beale Review recommendations²¹ regarding airport security at Australia's 11 major airports, through a nationally integrated system. As part of the reform, sworn AFP officers filled the majority of airport policing roles at those airports.

The then Minister for Home Affairs, the Hon Brendan O'Connor MP noted that:

The existing Counter Terrorism First response function at airports will also be integrated into the new model of aviation security and policing. The joint airport investigation teams and joint airport intelligence groups will remain with a mix of state or territory and federal police officers as this remains the most effective structure. These changes are consistent with the Beale audit's finding that an all-in model of policing will improve the efficiency and effectiveness of airport policing and security services.

Under this model, the policing presence included *Joint Airport Investigation Teams* (JAIT) and *Joint Airport and Intelligence Groups* (JAIG) consisting of a mix of federal, state and territory police.

The AFP currently has a number of national Joint Investigation Teams with state police. For example, *Joint Counter Terrorism Teams* (JCTTs) are located in each capital city consisting of the AFP, the respective state or territory police and the Australian Security Intelligence Organisation.

Another example is the AFP led *National Anti-Gangs Squads* (NAGS). A further example is the *Joint Organised Crime Task Force* (JOCTF), a multi-agency operational taskforce targeting organised crime and also the *Joint Anti Child Exploitation Teams* (JACET) which is also a multi agency task force.

²¹ Mr Roger Beale AO, *New Realities: National Policing in the 21st Century*. Federal Audit of Policing Capabilities, The Allen Consulting Group, 30 June 2009, pp. 11-12 and pp. 30-31, <https://www.ag.gov.au/Publications/Documents/FederalAuditofPoliceCapabilities/Federal%20Audit%20of%20Police%20Capabilities.pdf>

The AFP, state and territory Joint Investigation Teams utilise the full suite of law enforcement powers to detect, disrupt and prosecute organised criminal activity and are often co-located in AFP offices in each state and territory.

The Commonwealth could fund state and territory police positions currently involved in the investigation of national crime types such as transnational crime, cross border crime and organised crime, including the established Joint Investigations Teams, thereby freeing up state and territory police resourcing to focus on the increased community policing demands existing within the 'new norm' law enforcement environment.

RECOMMENDATION

That the PJC-LE consider the incorporation into the Australian Criminal Intelligence Commission of federal criminal intelligence agencies and/or federal criminal intelligence sections, through transmission of business, for greater efficiency and effectiveness.

RECOMMENDATION

That the PJC-LE consider exploring the advantages and disadvantages of an amendment to the Australian Federal Police Act (1979) to create a national policing body that focuses on national crime types such as transnational crime; cross border crime; and organised crime, in order to free up state and territory police to focus on community policing, domestic violence and public order under the 'new norm' law enforcement environment resulting from COVID-19; noting that such an amendment would require the support of a state or states, utilising referral of power under Section 51 (xxxvii) of the Constitution of Australia (also called the referral power).

RECOMMENDATION

That the PJC-LE consider a Unified Policing Model (UPM) instituted with the Commonwealth, through the AFP, to establish and fund a new joint policing approach to national crime types such as transnational crime; cross border crime; and organised crime, in order to free up state and territory police resources to focus on community policing, domestic violence and public order under the 'new norm' law enforcement environment.

CONCLUSION

If the COVID-19 environment becomes the 'new norm' then federal, state and territory governments will need to reconsider law enforcement resourcing and scope of police agencies to reduce duplication, free up operational resources and provide a greater national approach to law enforcement.

In the 1820s, Robert Peel – the father of our policing model – said,

'The police are the public and the public are the police.'

His words emphasise how the ability of the police to perform their duties is dependent upon public approval and public respect.

In the COVID-19 environment and beyond, the objectives of policing must be to achieve public safety objectives and at the same time continue to counter transnational crime and organised crime negatively impacting on Australian society. To become ineffective in either area will lead to loss of public support, public approval and public respect.

The Australasian Institute of Policing welcomes the opportunity to provide a submission to the Committee and commends the Committee on establishing such an important inquiry to identify the impact of COVID-19 on criminal activity and law enforcement.

Jon Hunt-Sharman
President
Australasian Institute of Policing

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