



SOUTH AUSTRALIA POLICE
KEEPING SA SAFE

Your Ref:
Our Ref: PCO2009/2788
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4 August 2009

Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600



Dear Mr Hallahan,

Inquiry into the Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009

Thank you for your recent correspondence dated 17 July 2009, inviting South Australia Police to make a submission to the current Inquiry.

As you may be aware, a Senior Officers Group on Organised Crime (SOGOC) has been established to undertake work on legislative interoperability and information sharing as part of developing a nationally coordinated response to organised crime. The SOGOC is currently developing recommendations for the Standing Committee of Attorney's General and the Ministerial Council for Police & Emergency Management – Police.

South Australia Police is represented on the SOGOC and is contributing to the development of those recommendations.

Recent submissions made to the SOGOC by South Australia Police are complementary to the proposed amendments contained within the Commonwealth Bill. I provide the following submission in relation to the respective components of the Commonwealth Bill with reference to current and proposed South Australian legislation.

Unexplained Wealth

South Australia has recently introduced into Parliament the *Serious and Organised Crime (Unexplained Wealth) Bill 2009* which adopts the 'Unexplained Wealth' provisions based on the model used in the Northern Territory as well as 'Declared Drug Trafficker' legislation akin to the Western Australian provisions. South Australia will continue to maintain its existing civil based forfeiture provisions for persons suspected of committing a serious offence. The effectiveness of the proposed unexplained wealth declarations rests on the Crown being relieved of the need to prove the defendant is, or has been, involved in criminal activity or that a particular asset is linked to a particular crime.

In respect of the proposed Declared Drug Trafficker legislation in South Australia, the legislation will permit police to apply to the court for forfeiture of assets of repeat or major drug offenders. A declared drug trafficker are persons convicted of any 'commercial' drug offence or convicted of a third prescribed drug offence within 10 years (excluding any time incarcerated). Prescribed drug offences are proposed to include trafficking, manufacturing and cultivating controlled drugs for sale, selling controlled precursors for manufacture or drug offences involving children or school zones. Upon declaration as a drug trafficker it will be assumed that all assets owned by the person are derived from or are proceeds of their illicit drug activities and are forfeited to the crown.

Arguably the single most effective means to combat the activities of organised crime groups is to confiscate their profits of crime. To achieve this law enforcement agencies must also develop a more sophisticated and consistent enforcement model across all jurisdictions.

The Commonwealth Bill proposes the adoption of unexplained wealth legislation, however consideration may also be given to incorporating Declared Drug Trafficker provisions for applicable Commonwealth offences.

The adoption of a multi-faceted legislative approach is essential for an effective national model. This would include maintaining the more traditional methods of asset confiscation through criminal and civil based targeting of proceeds and instruments of crime as well as the implementation of the 'Unexplained Wealth' and 'Declared Drug Trafficker' legislation. This would enable jurisdictions (including the Commonwealth) to pro-actively target the assets of persons involved in serious organised crime, including drug trafficking.

Enhanced Police Powers

South Australia has passed model legislation for Assumed Identities and Witness identity protection, and this legislation commenced operation on 1 July 2009. Mutual recognition is a key component of this legislation and it is noted that the Commonwealth Bill contains similar provisions.

Controlled Operations legislation has also been amended however the legislation is non-model and it is not intended to fully adopt the model legislation due to the successful operation of the existing legislation in this state. Like the Commonwealth Bill, the new amendments do however, provide cross border recognition which will assist with interoperability of controlled operations between Commonwealth and State jurisdictions.

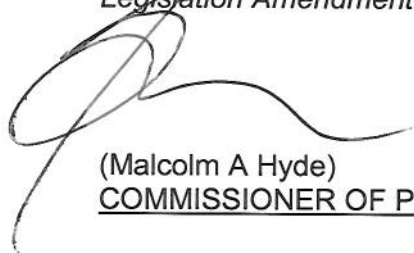
Joint Commission of Criminal Offences

The Commonwealth Bill creates offences for crimes committed in joint enterprise where the activities of individuals can be aggregated. With the current legislative reform occurring across the country which allows organised crime groups to be 'declared', there may be consideration to provide higher penalties for offenders who commit Commonwealth offences whilst a member of a declared organisation in a state.

Telecommunications Interception

The proposed amendments to the *Telecommunications (Interception and Access) 1979 Act* contained within the Commonwealth Bill are supported by South Australia Police. These amendments would enhance organised crime investigations in this State particularly in respect to offences contained within the *Serious and Organised Crime (Control) Act, 2008*.

Thank you for the opportunity to make this submission to the Inquiry into the *Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009*.

A handwritten signature in black ink, appearing to be 'M. Hyde', with a long horizontal flourish extending to the right.

(Malcolm A Hyde)
COMMISSIONER OF POLICE