Crimes Legislation Amendment (Serious and Organised Crime) Bill (No.2) 2009

Senate Legal and Constitutional Affairs Committee

19 October 2009

GPO Box 1989, Canberra
ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612

Telephone **+61 2 6246 3788**
Facsimile +61 2 6248 0639

Law Council of Australia Limited
ABN 85 005 260 622
www.lawcouncil.asn.au

Table of Contents

Introduction **3**

Proposed Introduction of New Association Offences and Criminal Organisation Offences **3**

Association offence – proposed section 390.3 7

Providing Support to a Criminal Organisation 11

Committing an offence for the benefit of, or at the direction of, a criminal organisation 12

Proposed Amendments to the Australian Crime Commission Act 2002 ..... **13**

Requirement to record written reasons prior to issue of summons 13

New power to refer uncooperative witnesses to court to face contempt proceedings 15

General reservations about a contempt procedure for the ACC 16

Comments on proposed procedure 17

Proposed Changes to Search and Seizure Powers under the Crimes Act 1914 ..... **21**

Attachment A: Profile of the Law Council of Australia **26**

Introduction

The Law Council of Australia is pleased to provide the following submission in response to the Senate Legal and Constitutional Affairs Committee Inquiry into the *Crimes Legislation (Serious and Organised Crime) Bill (No.2) 2009* ("the Bill").

In the submission the Law Council addresses the following issues:

- The introduction of four new offence provisions into the *Criminal Code Act 1995* (the Criminal Code), specifically:
  - Associating with a person engaged in criminal activity in a manner which may facilitate organised crime;
  - Providing material support to a criminal organisation;
  - Directing the activities of a criminal organisation; and
  - Committing an offence for the benefit of or at the direction of a criminal organisation.
- Amendment to the *Australian Crime Commission Act 2002* (the ACC Act) to reinstate the requirement that written reasons must be recorded prior to the issue of a summons;
- Amendment to the ACC Act to introduce a new power to refer uncooperative witnesses to court to face contempt proceedings; and
- Amendment to the search and seizure powers in the *Crimes Act 1914* (Crimes Act) to make it easier for law enforcement officers to access and copy data from electronic equipment located at premises in relation to which a warrant is in force (warrant premises).

Proposed Introduction of New Association Offences and Criminal Organisation Offences

Schedule Four of the Bill introduces four new offences into the Criminal Code.

These offences can be summarised as follows:

- Associating with a person engaged in criminal activity in a manner which may facilitate organised crime
- Providing material support to a criminal organisation;
- Directing the activities of a criminal organisation; and
- Committing an offence for the benefit of or at the direction of a criminal organisation.

The first three of these new offence provisions seek to extend the traditional boundaries of criminal liability to capture conduct which is not linked to the commission or planned commission of any specific offence, but which is alleged to facilitate criminal activity on a broader level.

The justification for this extension of criminal liability is that it enables law enforcement agencies to better interrupt general patterns of organised criminal activity and to bring to account those who play an indirect, but nonetheless important enabling role in the commission of serious offences.

The Law Council's specific concerns with the new offence provisions are discussed in more detail below.

However, the Law Council's general position on the proposed offences is that they are unnecessary and potentially expose people to sanction not on the basis of their individual conduct but on the basis of their associations or proximity to an offence or offender.

The Law Council's view is that the existing provisions in the Criminal Code already adequately enable the investigation and prosecution of those who engage in, assist, plan or commission substantive criminal offences.

For example, Part 2.4 of the Criminal Code, which is headed "extension of criminal responsibility", contains the following provisions:

Section 11.1 "Attempt"

A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.

Section 11.2 "Complicity and common purpose"

A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.

Section 11.3 "Innocent agency"

A person who:

- has, in relation to each physical element of an offence, a fault element applicable to that physical element; and
- procures conduct of another person that (whether or not together with conduct of the procurer) would have constituted an offence on the part of the procurer if the procurer had engaged in it;

is taken to have committed that offence and is punishable accordingly.

Section 11.4 "Incitement"

A person who urges the commission of an offence is guilty of the offence of incitement.

Section 11.5 "Conspiracy"

A person who conspires with another person to commit an offence punishable by imprisonment for more than 12 months, or by a fine of 200 penalty units or more, is guilty of the offence of conspiracy to commit that offence and is punishable as if the offence to which the conspiracy relates had been committed.

Part 2.4 explains in further detail the scope and limitations of each of these provisions. For example:

- For a person to be guilty of attempt, the person's conduct must be more than "merely preparatory" to the commission of the offence. It is only when the person's activity begins to approach the completion of the offence that the conduct will be considered an "attempt.

- For a person to be found guilty of aiding, abetting, counselling or procuring an offence it must be shown that:

  - his or her conduct did *in fact* aid, abet, counsel or procure the commission of the offence by another person; and

  - the other person did in fact commit the offence; [1] and

  - he or she *intended* that his or her conduct would aid, abet, counsel or procure the commission of an offence *of the type* the other person committed; or has been *reckless* about the commission of the offence that the other person in fact committed.

These requirements ensure that those who unwittingly support or participate in the principal offence cannot be held to account as accessories. As an additional safeguard, a person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person terminated his or her involvement and took all reasonable steps to prevent the commission of the offence.

- For a person to be found guilty of conspiring to commit an offence, it must be shown that:

  - he or she entered into an agreement with one or more other persons; and

  - he or she and at least one other party to the agreement intended that an offence would be committed pursuant to the agreement; and

  - he or she or at least one other party to the agreement committed an overt act pursuant to the agreement.

In addition to these provisions in Part 2.4 of the Criminal Code, there are also substantive offence provisions which criminalise conduct such as the possession, transfer or receipt of property or funds which are either the proceeds of an offence or are likely to be used as an instrument of an offence.

For example, under Part 10.2, Division 400 of the Criminal Code it is an offence to do any of the following:

- Deal with money or other property in circumstances where either

  - the money or property is, and the person believes it to be, proceeds of crime; or

  - the person intends that the money or property will become an instrument of crime.

[1] However, it is not necessary that the person who committed the offence has been prosecuted or has been found guilty.

- Deal with money or other property in circumstances where either:

  - the money or property is proceeds of crime; or

  - there is a risk that the money or property will become an instrument of crime; and

  the person is reckless as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires).

- Deal with money or other property in circumstances where either

  - the money or property is proceeds of crime; or

  - there is a risk that the money or property will become an instrument of crime; and

  the person is negligent as to the fact that the money or property is proceeds of crime or the fact that there is a risk that it will become an instrument of crime (as the case requires).

The definitions of 'proceeds of crime' and 'instrument of crime' are both very broad:

The term "*instrument of crime*" is defined as follows: *money or other property is an instrument of crime if it is used in the commission of, or used to facilitate the commission of, an offence that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence)*.

The term "*proceeds of crime*" is defined as follows: *money or other property that is derived or realised, directly or indirectly, by any person from the commission of an offence that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence)*.

A person is regarded as "*dealing with money or property*" if he or she does any of the following:

- receives, possesses, conceals or disposes of money or other property;

- imports money or other property into, or exports money or other property from, Australia; or

- engages in a banking transaction relating to money or other property.

When offence provisions such as these are combined with the conspiracy provision, the result is that it becomes possible to successfully prosecute a person for conspiring to handle or transfer money where there is a risk that the money may be used to facilitate an offence and the person is reckless or negligent as to that risk.[2]

The Law Council submits that offence provisions of the type listed above, particularly when coupled with the civil forfeiture provisions set out in the *Proceeds of Crime Act 2002* (Cth), already provide law enforcement agencies with sufficient scope for targeting the activities of those who finance, facilitate and/or profit from organised crime.

[2] *A.Ansari v R; H. Ansari v R* [2007] NSWCCA 204

The Law Council acknowledges that it can be an onerous and difficult task to gather sufficient evidence to prove, beyond reasonable doubt, the complicity of all players, particularly high ranking players, in organised criminal activity.

Nonetheless, the difficulties that law enforcement agencies may face in attempting to prove, beyond reasonable doubt, that certain individuals have committed a particular offence, does not mean that the offence provisions themselves are inadequate. There is a difference between:

- a situation where law enforcement agencies have evidence that certain persons are engaged in conduct which is reprehensible or harmful to the community, but they are unable to act because that conduct is not prohibited by law; and

- a situation where law enforcement agencies have reason to suspect that a person is engaged in conduct which is clearly prohibited by law, but they are unable to act because they cannot gather sufficient admissible evidence to substantiate their suspicion.

The Law Council submits that in the first situation there may be a strong argument in favour of law reform. However, in the Law Council's view, in the second situation, calls for law reform should be treated with great caution.

The Law Council submits that the existing principles of extended criminal liability set out in Part 2.4 of the Criminal Code correctly demarcate the limits of criminal culpability. It is true that those provisions may place an onus on law enforcement agencies to establish a nexus between a particular individual and the commission or planned commission of a specific offence, but the Law Council submits that this is entirely appropriate, whatever challenges it may present to investigators and prosecutors.

In recent years, in the name of tackling serious and organised crime, law enforcement agencies have been provided with significantly enhanced investigative powers[3] and new offences and civil proceedings have been created[4] to allow law enforcement agencies to target the money trail.

It is of concern that despite the reported success of these measures, there is a suggestion that there is still a need for further fundamental law reform, to alter the very principles of criminal responsibility.

If every time law enforcement agencies feel impotent in the face of a particular type of offending, we amend not just the content of our laws but the manner in which we apportion criminal responsibility and adjudicate guilt, then the integrity of our criminal justice system will quickly be compromised.

Association offence – proposed section 390.3

The Bill proposes to insert a new offence provision section 390.3 into the Criminal Code. Under this provision it will be an offence to:

- intentionally associate with another person on two or more occasions;

[3] See for example *Measures to Combat Serious and Organised Crime Act 2001 (Cth*), *Australian Crime Commission Act 2002* (Cth), *Telecommunications (interception and Access) Act 1979* (Cth).
[4] Div 400 of the *Criminal Code* (Cth) and the *Proceeds of Crime Act 2002* (Cth); *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth).

- knowing that the other person engages in or proposes to engage in conduct that constitutes, or is part of conduct constituting, an offence;
- in circumstances where the association facilitates the other person's engagement or proposed engagement in that criminal conduct.

The criminal conduct that is alleged to have been facilitated by the association must:

- involve two or more persons;
- carry a penalty of at least three years imprisonment; and
- be of a type that the Commonwealth can validly legislate in regard to.[5]

The term "associate" is defined as "meet or communicate (by electronic communication or otherwise)."

It is not necessary that the person charged with the offence knows or intends that his or her association with the second person will facilitate the commission of an offence or the proposed engagement in an offence. It is sufficient that he or she is reckless about that possible outcome.

It is not necessary that the person charged with the offence knows that the other person's conduct or proposed criminal conduct involves other people.

The maximum penalty for the offence is three years.

If a person has previously been convicted under the section, he or she may be charged with a repeat offence. The elements and penalty for the repeat offence are the same, except that the prosecution need only prove one instance of relevant association to make out the offence.

Subsection 390.3(6) sets out a defence to the association offence and provides that the section does not apply to an association if

- the association is with a close family member and relates only to a matter that could reasonably be regarded (taking into account the person's cultural background) as a matter of family or domestic concern;
- the association takes place in a place being used for public religious worship and takes place in the course of practicing a religion
- the association is only for the purpose of providing aid of a humanitarian nature, or
- the association is only for the purpose of providing legal advice or representation in connection with:
  - (i) criminal proceedings
  - (ii) proceedings relating to the actual or possible declaration of an organisation under State and Territory criminal organisation laws, or

[5] See definition of "constitutionally covered offence punishable by imprisonment for at least 3 years" and related definitions in proposed section 390.1

(iii) proceedings for a review of a decision relating to a passport or other travel document, or a failure to issue such a passport or travel document.

Subsection 390.3(8) provides that "this section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication."

This offence provision, and in particular the defences, are modelled on section 102.8 of the Criminal Code which makes it an offence to associate with a member of a terrorist organisation in circumstances where that association will provide support to the organisation and is intended to help the organisation expand or continue to exist.

Section 102.8 has been the subject of considerable criticism and after considered review of the section; the Security Legislation Review Committee recommended its repeal.[6]

The Law Council submits that section 102.8 is an inherently flawed provision and should not be replicated in this context.

The Law Council submits that in shifting the focus of criminal liability from a person's conduct to their associations, offences of this type unduly burden freedom of association and are likely to have a disproportionately harsh effect on certain sections of the population who, simply because of their familial or community connections, may be exposed to the risk of criminal sanction. In essence, this offence provision assumes that clear lines can and should be drawn between a certain criminal class and the rest of society. However, this does not reflect the reality of our community where in extended family groups, public housing, the workplace, pubs, clubs and other formal and informal community organisations the lives of many and varied people intersect. Some people have greater choice than others about the extent to which their interaction may include contact with people potentially engaged in criminal activity. The Law Council submits that provided that such people do not themselves plan, assist or participate in the commission of any particular offence, they should not have to live in the shadow of offence provisions such as these.

In addition to its general objection to offence provisions of this type, the Law Council has the following concerns with proposed section 390.3:

- The critical part of this offence provision is that the relevant association must facilitate the second person's engagement in or proposed engagement in conduct constituting an offence. However, the Law Council submits that this key concept of the offence provision is inherently vague. The term "facilitate" is not defined and may encompass a wide range of activity which is only of peripheral or minimal relevance to the commission of an offence. It may encompass activity on which the commission of the offence is in no way contingent. The Law Council submits that any offence provision should be specific about the type of conduct that it seeks to target and deter. As currently drafted, the offence provision casts the net of criminal liability very widely and essentially leaves it to the discretion of law enforcement and prosecution authorities to determine against whom it will be directed.

- The problem with the inherent uncertainty about the scope of the provision is exacerbated by the fact that the provision does not require that the person charged with the offence know or intend that his or her association with the second person will facilitate the commission of an offence or the proposed commission of an offence. It is sufficient if the person is aware of a substantial

[6] Report of the Security Legislation Review Committee, June 2006, Recommendation 15

risk that the association will facilitate criminal conduct. Given the broad nature of the provision and the fact that it does not require knowledge of, agreement to, or participation in the commission of any particular offence – the Law Council submits that at the very least it should require that the person charged with the offence associated with the second person *knowing* that the association would facilitate engagement in or proposed engagement in conduct constituting an offence.

- The defence provisions are very limited in their reach and do not alleviate concerns about the breadth of the provision. For example, only family associations "*that could reasonably be regarded (taking into account the person's cultural background) as a matter of family or domestic concern*" are covered by the defence in 390.3(6)(a). Even then, only immediate family relationships are covered. Relationships with cousins, aunties and uncles and other extended family relationships are not covered. This distinction between immediate and other family is inconsistent with many people's experience of family.

- The defence for legal practitioners only covers association engaged in for the purpose of providing certain limited types of legal advice and legal representation. A legal practitioner seeking to rely on the defence bears an evidential burden. In order to meet this burden it is likely that he or she will have to present at least some evidence about the nature of the legal advice or legal representation that he or she claims to have given in the course of the relevant association. This may prove difficult given that information of that sort is protected by client legal privilege and only the client, and not the legal practitioner, can waive that privilege.

A further overarching concern the Law Council has about this offence provision is that it will potentially allow for much wider and more extensive use of a range of intrusive police powers.

While in practice, because of its complexity and ambiguity, the provision may in fact generate very few successful prosecutions, the danger with broad offence provisions such as this is that they are available to serve as a hook for the exercise of a wide range of law enforcement and intelligence gathering powers.

For example, without more, benign interaction and association with a person engaged in criminal conduct, may not result in conviction and punishment, but it may generate sufficient interest on the part of police to lead to a search warrant, a telephone interception warrant, other surveillance measures and even arrest and questioning.

The subtleties of the various fault elements of this offence provision are not likely to be given careful consideration in an application for a telephone interception warrant or a search warrant. At any rate, the threshold for the issue of such warrants fall well below proof beyond reasonable doubt. .

In short, the Law Council's concern is that because this provision is focused on a person's associations, the provision potentially affords law enforcement agencies very wide latitude to intrude upon people's privacy and liberty, based purely on who they know and interact with, rather than on their conduct.

Ultimately, the fault elements of the offence may operate to limit the risk that innocent interaction will be subject to criminal sanction. However, the Law Council's concern is that in day to day operations the finer details of the offence provision are likely to be overlooked by police in determining when and how they exercise their powers.

These concerns are confirmed by the proposed amendments to the *Telecommunications (Interception and Access) Act* (the TIA Act) contained in item 4, schedule 4 of the Bill. The proposed amendments will ensure that law enforcement agencies have access to interception powers under the TIA Act when investigating the new association and criminal organisation offences, notwithstanding that those offences carry penalties below the threshold ordinarily required to obtain a telephone interception warrant.

Providing Support to a Criminal Organisation

The Bill proposes to insert a new offence provision 390.4 into the Criminal Code. Under this provision it will be an offence to:

- Intentionally provide material support or resources to an organisation or a member of an organisation;
- In circumstances where the provision of support or resources aids, or there is a risk that it will aid, the organisation to engage in conduct constituting an offence.

The criminal conduct which it is alleged has or might be aided by the provision of support or resources must:

- carry a penalty of at least three years imprisonment; and
- be of a type that the Commonwealth can validly legislate in regard to.[7]

The organisation must consist of two or more persons and its aims or activities must include engaging in conduct, or facilitating engagement in conduct, that constitutes an offence that is, or would be if committed, for the benefit of the organisation.

The person charged with the offence does not need to know that the organisation he or she provides support to is an organisation of this kind. It is sufficient that he or she is reckless as to this fact.

Similarly the person charged with the offence does not need to know or intend that his or her provision of support or resources will aid or is likely to aid the recipient organisation in committing an offence. It is sufficient that he or she is reckless about this result.

It is not a requirement that the offences which the support or resources helps the organisation to commit actually be committed.

The offence carries a maximum penalty of 5 years imprisonment.

The Law Council has the following concerns with proposed section 390.3:

- The Law Council submits that the provision should require that a person charged with this offence must intend that the provision of material support or resources to an organisation will aid or is likely to aid the organisation to engage in criminal conduct. It should not be sufficient that a person is reckless as to that outcome, let alone being reckless as to the mere risk of that outcome. As currently drafted, under the proposed section a person may be subject to sanction because he or she provides support to an organisation in circumstances where *there is a risk* that the support may aid the organisation

[7] See definition of "constitutionally covered offence punishable by imprisonment for at least 3 years" and related definitions in proposed section 390.1

to commit an offence. The Law Council submits that this extends the reach of the section too far.

The Law Council notes that that the Government is currently proposing to amend the equivalent terrorist organisation provision, section 102.7 of the Criminal Code, precisely for the purpose of narrowing and clarifying the fault elements of the offence. The proposed changes are prompted by the Clarke Inquiry into the handling of the Haneef Case which considered the interpretation of section 102.7 and found that it was highly confusing and created a risk of judicial error. Mr Clarke expressed particular concern about the difficulties which would be encountered when attempting to direct juries as to the correct physical and mental elements of the offence and recommended that section 102.7 of the Criminal Code be amended to remove these uncertainties. The result is that the Government is now proposing that the elements of the offence of providing support to a terrorist organisation will be as follows:

- the person intentionally provides resources or material support to an organisation; and
- the person does so with the intention of helping the organisation to directly or indirectly engage in, prepare for, plan, assist in or foster the doing of a terrorist act.[8]

The Law Council submits that if a new offence of providing support to a criminal organisation is to be introduced, then the fault elements of the offence should be akin to those proposed for the amended section 102.7

- The maximum penalty for the offence is five years imprisonment. However, the offence that the provision of support or resources is alleged to have aided – may itself only carry a maximum penalty of 12 months imprisonment. The result is that a person may face a possible penalty of five years imprisonment because he or she has provided support to an organisation reckless as to the risk that that support may aid the group to commit an offence which carries a penalty of just one year imprisonment. The Law Council submits that if a new offence of providing support to a criminal organisation is to be introduced, it should be limited to activity which aids the commission of serious offences only.

Committing an offence for the benefit of, or at the direction of, a criminal organisation

The Bill proposes to insert a new offence provision section 390.4 into the Criminal Code. Under this provision it will be a specific offence to commit an offence ("the underlying offence") for the benefit of or at the direction of a criminal organisation.

The maximum penalty for this offence is seven years imprisonment.

The rules against double jeopardy will apply because section 4C of the Crimes Act automatically operates to prevent a person from being punished twice under two Australian offences for the same conduct. This will mean that a person cannot be punished under an offence in section 390.5 and under the Commonwealth, State or Territory law creating the underlying offence, for the same conduct.

[8] Exposure Draft National Security Legislation Amendment Bill Schedule 2, item 18

The person does not need to have been convicted of the underlying offence in order to be successfully prosecuted under this proposed section.

Essentially, proposed section 390.4 seeks to make it an aggravating circumstance where an offence is committed for the benefit of or at the direction of a criminal organisation. However, rather than amending section 16A of the Crimes Act to ensure that this is a matter that the Court must take into account when sentencing the offender for the underlying offence, a separate and additional offence is proposed.

The result is that instead of potentially receiving a longer sentence for the underlying offence because of the circumstances in which the offence was committed, the offender may receive two separate sentences.

How this section will work in practice is difficult to envisage.

The types of conduct that the provision will capture are likely to vary widely, given that the underlying offence may carry any penalty from twelve months imprisonment to life imprisonment. The spectrum of conduct covered may pose significant sentencing challenges for the court.

Further where the person has been convicted and sentenced for the underlying offence, he or she can not be punished again for the same conduct. Therefore, in those circumstances, any penalty imposed under this section would have to result not from the underlying offence but from the related interaction with the criminal organisation. Separating these issues and attempting to attribute a separate and distinct penalty for the interaction with the criminal organisation may again pose significant sentencing challenges for the court.

Further, if the sentences are to be served concurrently then the section would appear to have little utility.

Proposed Amendments to the Australian Crime Commission Act 2002

Requirement to record written reasons prior to issue of summons

In September 2007, the Commonwealth Parliament passed the *Australian Crime Commission Amendment Act 2007* (the "Amendment Act"), which altered the terms of the *Australian Crime Commission Act 2002* (the "ACC Act") as follows:

- It removed the requirement for ACC examiners to record in writing their reasons for issuing a summons to appear at an examination or for issuing a notice to produce documents *before* issuing the summons or notice.[9] Instead the ACC Act now allows examiners to record their reasons:

  (a) before the issue of the summons; or

  (b) at the same time as the issue of the summons; or

  (c) as soon as practicable after the issue of the summons.

[9] For the remainder of this submission the word summons is used to refer both to a summons issued under s28 of the ACC Act and to a notice to produce issued under s29.

- It inserted a validation provision which provides that even where an examiner has not recorded his or her reasons for issuing a summons, either as soon as practicable after issuing the summons or at all, the summons is nonetheless valid.

- It inserted a provision which gives the validation provision retrospective effect. The result is that previously invalid summonses issued prior to the Amendment Act are rendered valid, despite a failure to record written reasons in compliance with the terms of the ACC Act.

The Amendment Act was rushed through Parliament with only limited debate.

At the time, the Law Council voiced strong objections to the Act. Specifically, the Law Council expressed the view that:

- The ACC Act should continue to require examiners to record in writing their reasons for issuing a summons *prior to its issue;*

- Only summonses issued in strict compliance with the provisions of the ACC Act should be regarded as valid; and

- Retrospective legislation should not be passed to overcome the consequences of failures to comply with the ACC Act's provisions.

The Law Council noted that sections 28(1A) and 29(1A) of the ACC Act provide that before issuing a summons either to appear and answer questions or to produce information, an ACC examiner must be satisfied that it is reasonable in all the circumstances to do so.

This requirement is intended to safeguard two things.

- It ensures that a summons will only be issued if there is a reasonable basis for believing that the person who is the subject of the summons has information which will assist the relevant ACC investigation or operation.

- It ensures that a summons will only be issued if it is necessary to have recourse to the ACC's coercive powers in order to obtain that information.

The Law Council submitted that the obligation to record reasons ensures that in each and every case an examiner's compliance with sections 28(1A) and 29 (1A) is documented and is verifiable. It allows for allegations that the ACC's coercive powers are being misused or overused to be meaningfully tested.

The Law Council further submitted that if examiners are permitted to record reasons after the issue of the summons, and more particularly after the conduct of the examination or the production of documents, the value of the safeguard is significantly diminished. The perception will arise, and will be difficult to counter, that summonses have been retrospectively justified by what was revealed in the course of an examination, rather than information which was available at the time of issue. In short, there will be no effective safeguard against fishing expeditions.

These concerns were shared by the Parliamentary Joint Committee on the Australian Crime Commission ("the PJC") when it reviewed the Amendment Act last year. The PJC recommended that the ACC Act be amended to:

- Restore the requirement that written reasons must be issued prior to issuing a summons to appear or notice to produce; and

- Remove the provisions which declare that a summons to appear or notice to produce is valid irrespective of a failure to record written reasons.

Items 9 to 14 of Schedule 7 of the Bill are designed to give effect to these recommendations.

The Law Council supports the enactment of the items.

New power to refer uncooperative witnesses to court to face contempt proceedings

The extraordinary coercive powers conferred on the ACC under the ACC Act include powers to compel a person to produce documents, to attend an examination and to answer questions.

The ACC's coercive powers are reinforced by a number of offence provisions. Under the ACC Act, it a criminal offence to fail to comply with a document production notice[10], to fail to appear at an ACC examination[11] or to fail to answer questions[12]. It is also an offence to provide false of misleading evidence or to obstruct or hinder the work of the ACC.[13]

The ACC examiners have been granted coercive powers, supplemented by offence provisions, in order to allow them to secure the cooperation of witnesses who would otherwise not provide information on a voluntary basis. Underlying the coercive power provisions, and in particular the substantial penalties attaching to non-compliance, is the assumption that an effective way to convince reluctant witnesses to cooperate is to introduce the threat of criminal prosecution.

Notwithstanding the existence of these offence provisions, some witnesses still opt not to cooperate with the ACC.

When Mr Mark Trowell QC reviewed the operation of the ACC Act in 2007, he concluded that the effectiveness of the current offence provisions is undermined by the delays experienced between charging a recalcitrant witness and his or her eventual prosecution and conviction. He concluded that this delay is problematic because the threat of imprisonment is deferred in time to such an extent that its deterrent effect on witnesses is nullified. Further, the aim of some witnesses is simply to disrupt the ACC's operation or investigation, which is a result they have already achieved by the time that they are eventually prosecuted.[14]

Mr Trowell recommended that the ACC Act be amended to give ACC examiners the power to refer an uncooperative witness to the Federal Court or the Supreme Court of a State or Territory to be dealt with as if the witness was in contempt of that court.

Items 18, 20 and 21 of Schedule 7 give effect to that recommendation.

The Law Council's comments on the proposed contempt procedure are set out in further detail below.

[10] ACC Act s30(2)
[11] ACC Act s30(1)
[12] ACC Act s30(2)
[13] ACC Act ss33 and 35
[14] Independent Review of the Provisions of the Australian Crime Commission Act 2002 – Report to the Intergovernmental Committee, March 2007, chapter 7

However, before commenting on the specific provisions introduced by the Bill, the Law Council reiterates its general reservations about the introduction of a contempt procedure of this kind.

General reservations about a contempt procedure for the ACC

Often the discussion and reporting around the use of the ACC's coercive powers assumes that those summonsed to provide evidence to the ACC are experienced and/or willing participants in organised crime and have therefore voluntarily assumed the associated risks.

While this may often be correct, it is not universally the case. For example, domestic partners and other family members associated with someone who is the target of an ACC investigation may be summonsed to give evidence.

Further, in 2007, the ACC Act was amended to bring serious violence or child abuse committed by or against an Indigenous person within the lawful scope of the ACC's intelligence gathering and investigative operations.[15]

If the coercive powers are used in relation to the investigation of Indigenous violence and child abuse, the nature of the witnesses summonsed is likely to be markedly different.

The Law Council submits that discussion about appropriate mechanisms for securing cooperation from witnesses should be based upon a proper understanding of the full range of people from whom information is sought and the competing pressures which operate upon them, including, the fear of harm and retribution if they provide information to the ACC.

The Law Council has long been concerned that the use of the coercive powers may expose people to criminal prosecution who are otherwise not directly involved in criminal activity in any way. That is, a person who is not alleged to have been an accessory to any criminal offence, to have aided and abetted the commission of an offence or to have perverted the course of justice may be summonsed to provide information under compulsion against a family member, partner, community member or employer. Although not involved in any criminal activity, that person may suddenly face the prospect of choosing between the risk of harm and/or desertion and/or extreme financial hardship and the risk of criminal prosecution.

The introduction of a procedure allowing ACC examiners to authorise the detention of an allegedly non-cooperative witness and to refer him or her to a superior court to face immediate contempt proceedings, brings these concerns into sharper focus.

Nonetheless, having now placed these concerns on the record in a number of forums, the Law Council acknowledges that the unambiguous policy behind the ACC Act is that, in the interests of investigating and disrupting certain types of criminal behaviour, anyone thought to have access to relevant information can and should be compelled to provide assistance. The Law Council further acknowledges that review of the operation of the ACC Act has revealed that the introduction of a contempt procedure would significantly assist in the implementation of this policy.[16]

[15] The ACC Act was amended by Schedule 2, Part 1 of the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007.*

[16] Mark Trowell QC, Independent Review of the Provisions of the Australian Crime Commission Act 2002 – Report to the Intergovernmental Committee, March 2007 and Joint Parliamentary Committee on the Australian Crime Commission, Examination of the Australian Crime Commission Annual Report 2007–08, June 2009.

Comments on proposed procedure

The Australian Law Reform Commission ("the ALRC") is currently conducting a review of the *Royal Commissions Act 1902* and related issues. It has recently released a Discussion Paper[17]which considers, amongst other things, the powers that Royal Commissions and other official inquiries should have to deal with non-compliance with their orders and, specifically, whether the law of contempt should be applied.

The issues canvassed by the ALRC and the conclusions it reaches warrant careful consideration.

Consistent with the ALRC's preliminary recommendations on Royal Commissions, the Law Council submits that item 18 of Schedule 7 of the Bill should be amended in the following ways:

> *Application should be made to the court to enforce the orders of the ACC and not to punish contempt of the ACC*

In the Discussion Paper, the ALRC acknowledged that Inquiries "*need powers to protect the integrity of their proceedings and ensure compliance with their notices and directions. The prosecution of the offence of non-compliance may not assist an inquiry because the process of criminal prosecution takes too long. Prosecution also may be an ineffective deterrent in some cases because, if an inquiry has concluded, it may no longer be in the public interest to prosecute*."[18]

However, despite this, the ALRC expressed the view that "*the concept of contempt should not be applied to bodies established by the executive arm of government. The law of contempt was developed to protect the administration of justice, and is not directly applicable to public inquiries. Applying the concept of contempt to Royal Commissions and other public inquiries confuses the role and functions of the judiciary with the role and functions of public inquiries*."[19]

As an alternative the ALRC recommended that "*an attractive model for enforcement of orders is the dual model contained in the United Kingdom and Irish inquiries legislation, and in the ASIC Act*[20]*. This model allows behaviour to be prosecuted as a criminal offence, or upon application by an inquiry, by a court exercising its power to enforce its own orders. The ALRC sees advantages in empowering a Royal Commission to apply to a court for enforcement of its notices and directions. This would apply in addition to criminal offences of refusing to comply with such notices or requirements*."[21]

Specifically, the ALRC recommended that "*the proposed Inquiries Act should provide that, where a person fails to comply with a notice or a direction of a Royal Commission or Official Inquiry, or threatens to do so, the chair of the inquiry may refer the matter to the Federal Court of Australia. The Court, after hearing any evidence or representations on*

---

[17] Royal Commissions and Official Inquiries, ALRC Discussion Paper 75
[18] ALRC Discussion Paper 75 at 19.59
19 ALRC Discussion Paper 75 at 19.57
[20] Section 70 of the ASIC provides that:

> *"Powers of Court where non-compliance with Part*
> *(1) This section applies where ASIC is satisfied that a person has, without reasonable excuse, failed to comply with a requirement made under this Part (other than Division 8).*
> *(2) ASIC may by writing certify the failure to the Court.*
> *(3) If ASIC does so, the Court may inquire into the case and may order the person to comply with the requirement as specified in the order.*

21 ALRC Discussion Paper 75 at 19.60

the matter certified to it, may enforce such a notice or direction as if the matter had arisen in proceedings before the Court."

The Law Council submits that the procedure proposed by the ALRC is preferable to the procedure proposed in the Bill in that, rather than requiring the court to treat contempt of the ACC as contempt of the court, it first requires the court to make a decision whether or not to enforce the relevant order of the ACC.

If the Court decides to enforce that order and the person to whom it is directed still refuses to comply, then this refusal to comply will, in fact, be contempt of the court and may be treated as such.

The Law Council submits that this approach is preferable because, as explained by the ALRC, the law of contempt was developed to protect the administration of justice. Therefore, it should only be employed to safeguard and reinforce the authority of the court, and not executive bodies exercising executive powers – such as the ACC.

Evidentiary certificate should not be prima facie evidence of the facts

The Bill proposes that, if an ACC examiner is of the opinion that a person is in contempt of the ACC, the examiner may apply to the Federal Court or the Supreme Court of the relevant State or Territory for the person to be dealt with in relation to the contempt.

The application must be accompanied by a certificate that states:

(a) the grounds for making the application; and

(b) evidence in support of the application.[22]

This certificate is to be treated as prima facie evidence of the matters specified in the certificate.[23]

The Law Council does not object to the use of a certificate to commence proceedings in the relevant court but submits that the ACC should not dictate to the court what weight or relevance should be afforded to the information contained therein.

For that reason the Law Council submits that proposed subsection 34C(3) should not be enacted.

Again, this submission is consistent with the preliminary recommendations of the ALRC in relation to Royal Commissions.

Specifically, the ALRC expressed the following view:

> *Members of Royal Commissions and Official Inquiries should be able to initiate [an application for enforcement of their orders] by certifying the relevant facts. This is a convenient method of providing evidence in such an application, and it avoids the need for inquiry members to give evidence orally in court. This certificate, however, should not be prima facie evidence of the facts. Rather, the power to determine the facts should be exercised independently of the Royal Commission or Official Inquiry. In determining the*

[22] Proposed subsection 34B(3)
[23] Proposed subsection 34C(3)

facts, the Federal Court will give such certificates due weight in their consideration.[24]

In reaching this view, the ALRC was mindful of the *Guide to Framing Commonwealth Offences* which states that:

Evidentiary certificate provisions are only suitable where they relate to formal or technical matters that are not likely to be in dispute but that would be difficult to prove under the normal evidential rules, and should be subject to appropriate safeguards.[25]

Disruptions etc to an examination etc should not be referrable and can be dealt with adequately by way of prosecution

The Bill proposes that the following matters should be regarded as "contempt of the ACC" and that a person should be able to be referred to the court to be dealt with in relation to the contempt:

A person is in contempt of the ACC if he or she:

(a) when appearing as a witness at an examination before an examiner:

(i) refuses or fails to take an oath or affirmation when required to do so under section 28; or

(ii) refuses or fails to answer a question that he or she is required to answer by the examiner; or

(iii) refuses or fails to produce a document or thing that he or she was required to produce by a summons or notice under this Act that was served to him or her as prescribed; or

(b) is a legal practitioner who is required to answer a question or produce a document at an examination before an examiner, and both of the following apply:

(i) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner;

(ii) he or she refuses to comply with the requirement and does not, when required by the examiner, give the examiner the name and address of the person to whom or by whom the communication was made; or

(c) gives evidence at an examination before an examiner that he or she knows is false or misleading in a material particular; or

(d) obstructs or hinders an examiner in the performance of his or her functions as an examiner; or

(e) disrupts an examination before an examiner; or

[24] ALRC Discussion Paper 75 at 19.65

25Australian Government Attorney-General's Department, *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* (2007), 32.

(f) threatens a person present at an examination before an examiner.[26]

The Law Council submits that there is no need for or utility in giving the ACC the power to refer to the courts the types of conduct captured in paragraphs (d) to (f) above to be dealt with by way of contempt. The Law Council submits that it is sufficient that such conduct may be prosecuted under the offence provisions of the ACC Act.

These types of behaviour occur at a precise moment of time. If they are not dealt with then and there, such that order may be restored to the proceedings and they can continue on uninterrupted, then it makes little difference whether it is referred to the court to be dealt with days/weeks later or whether it is the subject of prosecution months later.

Once more, this submission is consistent with the preliminary recommendations of the ALRC in relation to Royal Commissions.

Specifically, the ALRC expressed the following view:

> *The [referral] procedure proposed by the ALRC, however, should be limited to ensuring compliance with notices or directions. In the ALRC's view, it would not be useful for a court to enforce orders in relation to disruptions and interruptions to a hearing, or the use of insulting language. If done in a court, this conduct could be dealt with promptly by the court itself. On the other hand, a Royal Commission or Official Inquiry would have to refer the matter to a court. As such, there would be no real advantage in terms of speed.*[27]

There should be no power to order detention pending referral to court

Under the Bill it is proposed that if an examiner proposes to make an application to a court to deal with an alleged contempt of the ACC he or she may direct a constable to detain the alleged contemnor for the purpose of bringing the person before the court for the hearing of the application.[28]

The Law Council submits that ACC examiners, who are not judicial officers, should not be given the power to authorise a person's detention, for whatever purpose or period.

The Law Council notes that under the ACC Act, examiners do not have the power to issue arrest warrants to secure the attendance of persons summonsed to appear at an examination. If such a warrant is sought then, appropriately, application must be made to a Judge of the Federal Court or of the Supreme Court of a State or Territory.[29]

The Law Council further notes that if a person is in attendance at an ACC examination, he or she has voluntarily complied with a summons to appear, except in the rare circumstances where he or she is in custody pursuant to section 31. Accordingly, the Law Council submits that there is no reason to provide for a power of detention because it can be assumed that a person who has answered a summons to appear before the ACC, will also voluntarily appear before a court as directed.

In the circumstances, the Law Council is concerned that the power to order a person's detention pending referral to the court is not directed at securing their attendance, but rather is intended to operate in a punitive way and thus provide a very immediate incentive for cooperation.

[26] Proposed section 34A
[27] ALRC Discussion Paper 75 at 19.62
[28] Proposed section 34D
[29] Section 31 ACC Act

The Law Council notes that the ALRC has not recommended that the Royal Commission or other official inquires be given such a power.

The Law Council submits that proposed section 34D should not be enacted.

However, if the section is to be enacted, the Law Council submits that proposed subsection 34D(1) should be amended. At present it provides that a person's detention may be ordered "for the purposes of bringing the [him or her] before the Court." The Law Council submits that the subsection should provide more specifically that an examiner may only direct that a person be detained where he or she believes on reasonable grounds that it is necessary in order to secure that person's attendance before the court.

Proposed Changes to Search and Seizure Powers under the Crimes Act 1914

A number of amendments to the search and seizure powers in the Crimes Act are proposed in Schedule 2, Part 2 of the Bill. These amendments will make it easier for police to access and copy data from electronic equipment located at warrant premises. The Law Council has the following concerns with the proposed amendments:

Threshold test for operating electronic equipment at warrant premises should be retained

Currently under section 3L(1) an executing officer or constable assisting may only operate electronic equipment found at warrant premises to access data (including data not held at the premises) if he or she believes on reasonable grounds that the data may constitute evidential material. It is proposed to amend this subsection to allow a an executing officer or constable assisting to operate equipment found at warrant premises to access any data – regardless of whether he or she reasonably believes or even suspects that the data may be evidential material.

It is argued that this amendment simply allows a computer or phone or other electronic equipment to be searched in the same way a desk or filing cabinet would be searched.

The Law Council does not support this amendment. The Law Council submits that a computer is materially different from a desk or filing cabinet – both in terms of the volume and type of material it may contain and in terms of the fact that it may allow access to data held off-site at multiple secondary locations. The privacy implications of searching a computer and all data accessible from it are considerably more far-reaching than the privacy implications of searching a desk or filing cabinet.

For this reason alone, the Law Council submits that a search warrant should not be regarded as a blanket authorisation to operate a computer found on warrant premises and to access any and all of the data available from it. Some further threshold test, whether it be a reasonable belief or a reasonable suspicion, that the operation of the computer is likely to provide access to evidential material should have to be satisfied.

It is also important to note that not all search warrants issued under the Crimes Act are directed at locating documentary evidence of the type that might be accessible from a computer. For example, a search warrant may directed at finding and seizing drugs, stolen property or weapons. While these things might be located in a drawer or filing cabinet, clearly they can not be located in a computer. The Law Council submits that there should be no suggestion that a search warrant of this type, which is exclusively

directed at locating physical evidential material, provides authorisation to operate and search a computer located at the warrant premises.

Section 3F(1)(c) of the Crimes Act provides that a search warrant only authorises officers to search warrant premises "for *the kinds of evidential material specified in the warrant*", although officers are authorised to seize other types of evidential material if they happen to be located in the course of the search.[30] The Law Council is concerned that the limitation contained in subsection 3F(1)(c) may be undermined by section 3L(1) if it is amended to provide, without limitation or qualification, that:

The executing officer or a constable assisting may operate electronic equipment at the warrant premises to access data (including data not held at the premises).

For the above reasons, the Law Council submits that the threshold test in section 3L(1) for operating equipment located at warrant premises should be retained. If it can be demonstrated that the current test of "reasonable grounds to believe" has in practice proved unworkable, the Law Council submits that it should be substituted by a test of "reasonable grounds to suspect". (Although the Law Council notes that the test in the equivalent NSW provision, section 75B(1) of the *Law Enforcement (Powers and Responsibility) Act 2002*, is belief on reasonable grounds.)

If the threshold test is not retained the Law Council submits that proposed section 3L(1) should at least be amended, even by way of the addition of a note, to clarify that the authorisation to operate electronic equipment located at the search premises is subject to the limitation in section 3F(1)(c), namely that the warrant only authorises officers to search for *the kinds of evidential material specified in the warrant.*

The threshold test for when data may be copied should be the same as the test for when items may be seized

Currently sub-section 3L(1A) provides that if an executing officer or constable assisting believes on reasonable grounds that any data accessed by operating electronic equipment at the warrant premises might constitute evidential material, he or she may copy the data to a disk, tape or other associated device.

It is proposed to amend sub-section 3L(1A) to allow data accessible from electronic equipment at warrant premises to be copied if the executing officer has reasonable grounds to *suspect* (rather than believe) that the data might constitute evidential material.

It is argued in the Explanatory Memorandum that "*the 'reasonable grounds to believe' test is the same test that the executing officer or constable assisting must apply in determining whether a thing that is not specified in the warrant may be seized under paragraph 3F(1)(d). If an executing officer or constable assisting genuinely holds 'reasonable grounds to believe' the thing is evidential material, then it is questionable why they would elect to copy the thing for further analysis under section 3L(1A) when they would already have grounds to seize the thing under section 3F.*

The Law Council does not support this amendment.

Contrary to the justification provided in the Explanatory Memorandum, the Law Council submits that copying and removing data under sub-section 3L(1A) is akin to seizing the data. It is not a preliminary or lesser step.

[30] Section 3F(1)(d)

Copying data from electronic equipment located at the search premises is intended to be a practical and more convenient alternative to seizing the equipment itself. This is made clear in sub-section 3L(2). As such, the Law Council submits that the test for when data can be copied should be the same as the test for when a thing may be seized, that is, reasonable grounds to believe that the data constitutes evidential material.[31]

Where data accessible from one source is reasonably suspected to be evidential material, it should not justify the copying of data from all the sources accessible from the same computer

Currently sub-section 3L(1A) provides that if an executing officer or constable assisting believes on reasonable grounds that any data accessed by operating electronic equipment at the warrant premises might constitute evidential material, he or she may copy *the data* to a disk, tape or other associated device.

It is proposed to amend sub-section 3L(1A) to provide that where, after operating the electronic equipment, the officer suspects on reasonable grounds that some of data constitutes evidential material, he or she will be able to copy *any or all data* accessed.

It is argued in the Explanatory Memorandum that the amendment "*is necessary as it is often not practicable for officers to search all the data for evidential material while at the search premises and to then copy only the evidential material which is found given the large amounts of data that can be held on electronic equipment.*

The amendment will ensure that officers are able to copy all the data on a piece of electronic equipment where an initial search of the equipment uncovers some data which constitutes evidential material.

In *Kennedy v Baker* [2004] FCA 562, the provision in its current form has already been interpreted in such a way that it allows police to copy all of the data from a particular source, if some of the data from the source is reasonably believed to be evidential material. Further, in that case, the Court held that, for the purposes of understanding and applying the sub-section, a hard drive, rather than, for example, a particular file is one source.

To the extent that the proposed amendment is simply meant to reinforce the court's interpretation of sub-section 3L(1A) in *Kennedy v Baker*, the Law Council does not object.

However, the Law Council would be concerned if the intended or actual effect of the amended provision was to allow officers to copy data from all sources accessible from a computer at the warrant premises, if some data from one source accessible from that computer was reasonably believed to be evidential material.

For example, the Law Council submits that a reasonable belief that data stored on a personal computer's hard drive is evidential material should not provide justification for copying all the data stored on a server accessible from that computer.

Likewise, the Law Council submits that a reasonable belief that data stored on a USB key plugged into a particular computer is evidential material should not provide justification for copying all the data on the computer's hard drive.

The Law Council acknowledges that it is too onerous for officers to search through individual computer files before making a decision whether to copy them one by one.

[31] Consistent with this submission the Law Council submits that the test in proposed section 3LAA(2) should also be reasonable grounds to believe.

However, the Law Council submits that it is not too onerous or impractical to expect officers to individually consider each disk, hard drive, or other discreet data source accessible from a computer before copying it.

Occupier should be given notice of when and where electronic equipment is being examined even if not permitted to be present

Under section 3K of the Crimes Act, electronic equipment may be temporarily removed from warrant premises for the purposes of examination (as opposed to being seized) where certain conditions are met.

Currently under sub-section 3K(3), where equipment is removed from warrant premises for the purposes of examination – the occupier of the premises has a right to be informed where and when it is going to be examined and to be present. It is proposed to insert a new sub-section 3K(3AA) which will allow an executing officer not to comply with the requirements in 3K(3), if the executing officer believes on reasonable grounds that having the person present might endanger the safety of a person or prejudice an investigation or prosecution.

The Law Council submits that while it might be reasonable that proposed sub-section 3K(3AA) allows an officer on certain limited grounds to refuse an occupier the right to be present at the examination of equipment removed from his or her premises, there is no reason to relieve the officer of the duty to nonetheless inform the occupier of when and where the examination will take place. In this way, the occupier will at least have the opportunity to make a timely application, if so desired, to challenge the decision to refuse him or her opportunity to be present at the examination.

On that basis the Law Council submits that proposed sub-section 3K(3AA) should be amended to provide that the executing officer may only opt not to comply with subparagraph 3K(3)(b) and not 3K(3)(a).

Time period allowed for examination of removed electronic equipment should not be extended to 14 days

Currently section 3K allows electronic equipment to be removed from warrant premises for the purposes of examination for up to 72 hours, although one or more extensions of this time period may be authorised by an issuing officer.

It is proposed to amend Section 3K(3A) and 3K(3B) to increase the time period that equipment may be moved to another place for examination from 72 hours to 14 days.

It is argued in the Explanatory Memorandum that "*the 72 hour limit for moving a thing for examination or processing poses operational difficulties where it is necessary to examine a large volume of both documentary and electronically stored material."*

The Explanatory Memorandum further elaborates that "*operational advice from the AFP indicates that the factors that have directly increased the time required to forensically search and examine data stored on electronic equipment include:*

- *an increase in the types of electronic equipment that data is able to be stored on including 'thumb' and micro drives, personal organisers, mobile phones, smart cards (including stored value cards and controlled access cards), flash cards (as found in hand held devices and digital camera), GPS systems and navigation units*
- *an increase in the complexity of electronic storage mediums*

- *an increase in electronic storage capacity, and*
- *an increase in the prevalence of security software and encryption technology.*

The Law Council accepts this explanation for the proposed amendments but submits that the extended timetable proposed does not take account of the financial impact and disruption that the removal of equipment can have on a business.

In the circumstances, the Law Council submits that seven days, with the possibility of extension on application, is a more reasonable timeframe. This would be consistent with the equivalent NSW provision, section 75A(2) of the *Law Enforcement (Powers and Responsibility) Act 2002.*

To a large extent the problem identified by police is one of insufficient resources. The Law Council submits that resourcing issues should be addressed as such and should not be remedied by legislative amendments which result in individual members of the community bearing the cost, financial or otherwise, of inadequate police resources to conduct a timely and efficient investigation.

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia is the peak national representative body of the Australian legal profession. The Law Council was established in 1933. It is the federal organisation representing approximately 50,000 Australian lawyers, through their representative bar associations and law societies (the "constituent bodies" of the Law Council).

The constituent bodies of the Law Council are, in alphabetical order:

- Australian Capital Territory Bar Association
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society of the Australian Capital Territory
- Law Society of the Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar Association
- The Victorian Bar Inc
- Western Australian Bar Association
- LLFG Limited (a corporation with large law firm members)

The Law Council speaks for the Australian legal profession on the legal aspects of national and international issues, on federal law and on the operation of federal courts and tribunals. It works for the improvement of the law and of the administration of justice.

The Law Council is the most inclusive, on both geographical and professional bases, of all Australian legal professional organisations.