

PARLIMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT

AUSTRALIAN FEDERAL POLICE

Question No. 1

The Committee asked the below question at the hearing on 21 September 2012:

Senator NASH: So comparatively, in Australia—if we were to superimpose that model over here—who would the members be and how would it operate? I ask that question in the context of some evidence saying that there should be some sort of mandatory or legislative requirement in terms of the obligation to provide the information. But how would that Europol model look in Australia? Who would be on the committee and how would it work?

Mr Morris: I suppose they would be the members who are represented on the ACC board. That would be the starting point. It may not be the intelligence agencies; that might be difficult because of certain caveats around the likes of ASIO, obviously. They might need to keep their information separate, but certainly from the law enforcement agency perspective that would be the exact people you would want around the table.

Senator NASH: So it would obviously be a within-the-sector committee. Would that able to be set up from within the sector or is it something that would take some sort of regulatory government oversight? Is it something where the sector could say, 'Okay, we want to go down this road. We believe there should be an obligation from all. Within the sector we'll set up this committee to be the oversight body.'

Mr Morris: I might have to take that one on notice.

Senator NASH: That is absolutely fine.

Mr Morris: It was only a recent visit.

Senator NASH: I am just trying to get my head around, if we were to do something similar here—there does seem to be a view that there should be an obligation—how we would oversight that obligation. If you could take that on notice that would be very useful.

The answer to the Committee's question is as follows:

In short, Australia could look at adopting the Europol approach to information and intelligence sharing described below, however, that process would need to work within Australian statutory frameworks for police services and their oversight authorities.

The architecture for the Europol approach is based on the establishment and governance of Europol and the liaison relationships between member police services. As the AFP evidence indicated on 21 September 2012, the Board of the Australian Crime Commission might be the logical starting point for developing an Australian approach to mandatory or more formalised reciprocal information sharing between Australian police services and an accountability and oversight system that drew on relevant authorities in each jurisdiction, such as Ombudsman or Privacy Commissioners.

Agencies currently share a range of information where there are effective and efficient information-sharing mechanisms to facilitate this. This is shown by their participation in national systems such as the National Automated Fingerprint Identification System, the National Criminal Investigation DNA Database and the National Police Reference System.

Imposing a mandatory obligation on agencies to share information would require legislation, both at the Commonwealth level and in each State and Territory. Such legislation would require careful consideration of what categories of information should be required to be shared and what further

restrictions would need to be imposed to ensure information would be handled appropriately and in a manner consistent with current statutory and protective security requirements.

Furthermore, it would be necessary to ensure that appropriate systems and technology are in place to give effect to any obligation to share information. Currently a lack of consistent standards, protocols, and technology poses a barrier to information sharing which would not be addressed by the imposition of mandatory obligations to share information. The work of the Australian Crime Commission in developing the National Criminal Intelligence Model is seeking to address this issue.

Europol's establishment

By virtue of the Europol Council Decision of 2009 (ECD) Europol is an EU entity funded from the general budget of the EU with oversight by the Council of Ministers for Justice and Home Affairs in consultation with the European Parliament.

The ECD not only serves as the EU “establishment legislation” for Europol, but also as the governing tool, determining Europol's remit, organisational and management structure, operating processes, and specifically the rules regarding information exchange.

In terms of an “obligation to provide information” the ECD has two specific Articles: Article 8(4) and 8(5) that specify the information sharing obligations of the Member States (EU countries) to Europol. Article 8(4) provides Member States the obligation to exchange current and relevant information with Europol, while Article 8(5) enables a Member State not to share where the information may harm national security, current operations or an individual's safety. Noticeably, no coercive tools or sanctions exist to ensure the provision of information. Therefore Europol is highly dependent on the Member State cooperation and willingness in particular to supply the requisite information by creating high levels of goodwill. Europol achieves this level of goodwill through the provision of relevant products and services to the Member States that directly assist law enforcement objectives and outcomes.

Below the EU Parliament and Council of Ministers for Justice and Home Affairs, oversight of Europol is maintained at a number of levels, strategically by the Europol Management Board, organisationally by the Directorate and operationally by the Heads of Europol National Units (HENUs). It is the HENUs that provide the most practical oversight of information sharing and compliance with the ECD obligation.

The HENUs represent the national liaison point within each Member State directly responsible for the movement of information to and from Europol. By virtue of this role the HENU is expected to provide the impetus within the Member State law enforcement environment for information exchange with Europol at the national level.

Additional bodies including the Data Protection Officer and Joint Supervisory Body have specific oversight functions in terms of compliance re: the processing, storage and use of personal data.

Europol Oversight Environment

Council of the European Union and European Parliament

Europol is accountable at EU level to the Council of Ministers for Justice and Home Affairs (the Council). The Council is responsible for the main control and guidance of Europol. It appoints the Director and the Deputy Directors and approves Europol's budget (which is part of the general budget of the EU), together with the European Parliament. It also can adopt, together with the European Parliament, regulations related to Europol's work. Each year the Council forwards a special report to the European Parliament on the work of Europol.

Management Board

Europol's governing board, the Europol Management Board, gives strategic guidance and oversees the implementation of Europol's tasks. It comprises one high-ranking representative from each Member State and the European Commission. It takes its decisions by two-thirds majority, with each member having one vote.

The Management Board must meet at least twice a year; but in 2012 will meet 3 times, to discuss a wide range of Europol issues which relate to its current activities and its future developments. Each year the Management Board adopts Europol's final budget, work programme of future activities and a general report on activities carried out during the previous year, which are submitted to the EU Council for endorsement and promulgation to the European Parliament for information.

Directorate

The Head of Europol is the Director who is appointed by the Council acting unanimously, after obtaining the opinion of the Europol Management Board. The Director is appointed for a four-year period which may be extended once for a further period of four years. Current Director Mr Robert WAINWRIGHT was granted an extension by the Council in 2012 for a second term. The Director is responsible for the administration of Europol, the performance of tasks assigned to Europol, the management of personnel and any other tasks consigned to him by the Europol Council Decision or by the Management Board. He is assisted in this position by three Deputy Directors who are also appointed by the Council, for a four-year period which may be extended once.

Heads of Europol National Units (HENUs)

Each EU Member State has a designated Europol National Unit which is the liaison body between Europol and the competent authorities of EU Member States. The heads of national units (HENUs) meet 6 times per year to assist Europol on operational matters. The HENUs can also meet at the request of the Management Board or Director. Each national unit seconded at least one liaison officer to Europol, who is hosted at Europol headquarters in their own liaison bureau. They represent the interests of their national unit at Europol in accordance with the national law of the seconding Member State. Australia is a third party, non voting member of the HENUs represented by the AFP Liaison Officer to Europol. Effectively the HENUs represent the oversight of information flow to Europol from the various competent authorities within their respective countries. The HENU positioned at the operational level provides the appropriate level of interaction with Europol, and the various Intelligence projects therein to monitor information provision. Additionally the HENU, through the natural reporting and advisory role to the Management Board (via its relevant Management Board member) can influence strategic planning and agreements directly linked to the information provision to Europol.

Data Protection Officer (DPO)

The DPO is appointed by the Europol Management Board on a proposal of the Director and acts independently. The DPO has access to all the data processed by Europol and to all Europol premises in the performance of his or her tasks. The main activity is the assurance on the lawfulness and compliance with the ECD of processing of personal data, including the processing of personal data relating to Europol staff. The DPO is also responsible for ensuring that data subjects are informed of their rights and for preparing an annual report which is communicated to the Management Board and Joint Supervisory Body.

Joint Supervisory Body

The Joint Supervisory Body is an independent entity set up to review the activities of Europol in order to ensure that the rights of the individual are safeguarded during the storage, processing and utilisation of personal data held by Europol. This body is composed of two representatives of each

of the national Supervisory Bodies who are appointed for a period of five years by each Member State. Each delegation is entitled to one vote for decision-making purposes. The Joint Supervisory Body also monitors the permissibility of the transmission of data originating from Europol. Any individual has the right to request the Joint Supervisory Body to ensure that the manner in which his personal data have been collected, stored, processed and utilised by Europol is lawful and accurate. JSB Inspection team - ensure quality and lawful use of product.