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Submission to the Parliamentary Joint Committee on Law Enforcement inquiry into criminal activity and law enforcement during the COVID-19 pandemic

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This submission does not reflect the Australian Strategic Policy Institute perspective. It is the opinion of Dr. John Coyne, Strategic Policing and Law Enforcement, and Leanne Close head of the Counter Terrorism Centre ASPI.

Background

On 24 June 2020, the Parliamentary Joint Committee on Law Enforcement (PJCLE) resolved to inquire into, and report on trends and changes in criminal activity and law enforcement because of the COVID-19 pandemic.

In this submission we seek to address the following

- how the pandemic has affected the prevalence of certain types of crime, particularly crime types associated with transnational, serious and organised crime.
- the nature and effectiveness of responses by law enforcement to trends and changes in criminal activity related to the pandemic, including any changes in the practices, methods, and procedures of law enforcement; and
- changes that might be desirable, in light of any current and possibly longer-lasting trends and changes in criminal activity related to the pandemic, and in view of the preparedness of Commonwealth law enforcement in undertaking its work during the pandemic, to the functions, structure, powers and procedures of the Australian Federal Police and the Australian Criminal Intelligence Commission.

Covid-19: Testing our organised crime assumptions

By necessity, most organised crime groups initially responded to Covid-19 by reducing their activities. Many are weakened by the seismic societal changes being brought about by Covid-19. However, those entrepreneurial groups with dynamic business models and flexible organisational structures will be quick to either find and then exploit new opportunities or develop new methods of operation.

The Covid-19 pandemic is already showing that some of the assumptions underpinning Australian law enforcement strategies need to be reconsidered in the face of current changes. Illicit drug supply illustrates this point particularly well.

Australia's national drug strategy has a three-pronged approach: supply reduction, demand reduction and harm minimisation. Supply reduction has traditionally been a frontline program that targets drug dealers and importers to reduce the availability of drugs. It is believed that, if we can reduce the number of dealers and the availability of drugs, we may prevent drug use as well. The strategy's underpinned by a straightforward assumption that the seizure of

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increasingly larger quantities of drugs results in reduced supply in our communities. In practice, seizures, be they large or small, are unfortunately not resulting in reductions in the availability or purity of drugs.

Law enforcement agencies' second assumption is that the impacts on domestic illicit drug availability resulting from large law enforcement seizures are often masked by criminals stockpiling drugs in Australia. Early indications suggest that the federal and state and territory governments' Covid-19 measures have had more impact on the domestic availability of drugs than seizures have. If there are illicit drug stockpiles, they don't appear to be sizeable enough to outlast the Covid-19 lockdown, which raises the question of why, under normal circumstances, law enforcement seizures have such a limited impact on domestic supply. The Australian Criminal Intelligence Commission's wastewater monitoring program remains a world leading diagnostic of supply impacts.

Recommendation 1. Australia's law enforcement community needs to test the assumptions that underpin operational and strategic decision making regarding transnational serious and organised crime.

Covid-19: Fake pharmaceuticals

Organised crime groups, especially those with deep transnational links, will be looking for new criminal opportunities to offset the short-term decline in illicit drug profits. In its 2018 Transnational organised crime threat assessment, the UN Office on Drugs and Crime estimated that the market for fraudulent essential medicines in Southeast Asia and Africa was worth US\$5 billion per year. It is likely that the market for such goods in Australia, and across the region, is now worth substantially more.

Organised crime groups located in mainland China or with deep connections to China's industrial heartlands will probably seek to move into manufacturing and distributing fake medical supplies (masks and hand sanitiser) and fraudulent essential medicines. The market is likely to be particularly attractive to organised crime groups because of the current demand for those products. For groups in some jurisdictions, the legal penalties for the distribution of fake or contraband medical supplies are substantially less than those for their traditional criminal activities.

While business models will vary, groups are likely to focus initially on selling those goods for inflated prices in markets in which demand has outstripped supply. However, over time and with the deep impacts of an economic recessions the goods may be sold at a cheaper price than those legally available.

For Australian law enforcement, the investigation of crimes related to counterfeit goods, fake pharmaceuticals and breaches of intellectual property rights generally have a low organisational priority.

Recommendation 2. During the Covid-19 pandemic, the investigation of those crimes and the disruption of the associated illicit supply chains will need to become a priority—perhaps even higher than that for illicit drugs.

Covid-19: Illicit wildlife trade

The origins of Covid-19 are yet to be agreed upon, but the continued trade in and consumption of exotic wildlife presents a future pandemic risk. While the future of Asia's 'wet markets' is far from certain, it seems probable that the demand for exotic animal meat and by-products will continue unabated: despite efforts by countries like Vietnam to curtail them. That demand creates the illicit trade in exotic wildlife across the Mekong region. To date, investigations into the illegal trade in wildlife have not been an Australian law enforcement or policy priority.

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Recommendation 3. In the wake of Covid-19, Australia needs to play a much stronger role in supporting its regional partners efforts to combat the illicit trade in wildlife.

Covid-19: The Mekong region as the new global organised crime hub

It appears likely that the Covid-19 pandemic will bring about significant changes to transnational serious and organised crime. For much of the past decade, Mexican cartels were the dominant organised crime groups in central and north America, especially for the manufacturing, trafficking, and sale of illicit drugs. Those groups have regularly adapted to meet consumer demands and now enjoy market domination for a variety of drug types, from cocaine to fentanyl. Those same groups have expanded their operations across the globe and integrated their supply chains with those of other groups.

The Mexican cartels' domination of global illicit drug supply chains is likely to be substantially disrupted during the Covid-19 pandemic. Their access to cocaine from Central America and synthetic drug precursors from China will be severely constrained. Their access to North American markets will be increasingly constricted by reduced trade and people flows across the US border. Without a product to sell, the cartels' international relationships will rapidly dissipate.

The production and distribution of illicit drugs and their precursors in China have been constrained by national lockdowns. The Mexican cartels' adoption of 21st-century 'just in time' global supply chains, and supply-chain integration with Chinese organised crime groups, have left them with diminishing access to the precursors needed to manufacture synthetic illicit drugs for their global markets.

In contrast, risk-averse organised crime groups operating in the Mekong region maintained their old stockpiling habits. Local authorities in the Mekong estimate that those groups' existing precursor stockpiles could continue to support industrial-level methamphetamine production for a further four to six months. Over the coming months, the Mekong region's organised crime groups are likely to cement their status as a global methamphetamine source. Their deep connections with the Chinese chemical and pharmaceutical industry and international markets will see them well placed to emerge from Covid-19 as a dominant global organised crime force.

In addition to dominating the global manufacture and supply of methamphetamine, those groups are likely to adapt and begin producing other synthetic drugs, such as fentanyl.

Covid-19 has resulted in a drastic reduction in regional law enforcement operations. While the activities of many organised crime groups will be curtailed during the pandemic, some will be able to exploit the opportunities presented by preoccupied governments, reduced law enforcement activity, and decreased multilateral and bilateral cooperation.

Recommendation 4. In a post-Covid-19 world, arresting senior criminal figures and making large drug seizures will have even less impact on illicit drug availability. Law enforcers and policymakers need to adopt an effects-based approach to the disruption and mitigation of organised crime threats.

Recommendation 5. Regional engagement and law enforcement capacity development will continue to be critical. The Mekong subregion and China are likely to become even more important to Australia's counter organised crime campaign. For that campaign to be effective, governments and other policymakers will need to work more closely with law enforcers. That close relationship will need to create the conditions for a far more agile law enforcement capability.

Policing Responses Post-Covid 19

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Throughout the Covid-19 response, everyday policing tasks and requests for assistance did not diminish. Police, however, were called upon to redirect resources to assist with these emerging crises. This has included policing people gathering in large numbers in breach of new pandemic rules, issuing and administering new infringement regimes, and providing guarding support to areas not previously policed – for example, at supermarkets or in suburban areas under lockdown – and manning checkpoints at State / Territory borders. At the federal level we understand the Australian Federal Police redirected large numbers of staff to assist in guarding Costco in Western Australia. A further large contingent of officers were sent to the Northern Territory to assist with guarding duties and manning checkpoints.

While the legislative basis on which these activities occurred is questionable, these examples demonstrate the need for additional surge capacity for police. The aim of this capacity would be to limit the diversion of highly trained and experienced police and protective service officers from their core duties and support law enforcement activities, should numbers diminish due to the impact of additional roles or reduced capacity.

The diversion of military resources to act as a surge capacity has also been extensive but raises considerable questions about their ongoing availability in increasing turbulent times, the lack of legislative support for their actions and their lack of training in the domestic response roles.

Consideration should be given to establish a National Police Reserve Force, similar to the Defence Reserves model¹. A Police Reserve capability could be part-time or casual and trained regularly each year to undertake a wide range of law enforcement activities within the context of the already extensive accountability and integrity frameworks. This reserve should be made available to state, territory and federal authorities under established rules and regulations.

Recommendation 6: Parliament consider developing a National Police Reserve Force model.

If the Australian Defence Force (ADF), including Defence Reserves, are to continue to have a role in addressing law enforcement issues in civil society, then they should be provided with additional ongoing training in associated law enforcement issues.

Recommendation 7: ADF members likely to be deployed to support domestic policing operations should be provided an appropriate level of law enforcement training.

Continued surge support by the ADF should be surrounded by appropriate legislative support clearly outlining issues such as: call out provisions; command and control arrangements for operations; criminal and code of conduct responsibilities and oversight.

Recommendation 8: Consideration of modernised legislative amendments and frameworks support for domestic ADF deployments.

Raise-Train-Sustain

After Covid-19, or perhaps living with Covid-19, will require government, police and their partners to commit to building a raise-train-sustain model for planning, building networks, training and exercising for various scenarios - with the lessons of Covid-19 and the bushfires in the forefront of people's minds. Systematic embedding of national scenario planning, training and exercising needs to become a key feature of policing organisations, with commensurate dedicated resourcing.

Investment in the building and maintenance of broader networks, extensive national scenario planning and training supported by multiagency exercising would improve Australia's responses in times of national crisis. Benefits are also likely to flow to the everyday work of

¹ There are approximately 30,000 Active and Standby Reservists in Australia.

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police and first responders. The 2020 bushfire emergency and Covid-19 have demonstrated that national coordination of Australia's security and safety apparatus has never been more important.

A review of Covid-19 responses might also consider standardisation of practices and capabilities, such as communication and information technology systems, across federal, state / territory and local government to improve interoperability.

A broad overarching Law Enforcement Strategy for Australia is also required. A starting place should be the development of a Law Enforcement White Paper. This paper should also consider the resourcing requirements for a national sustainment plan for exercising, training and scenario planning across all police and emergency services. Most importantly, consideration must be given to sustainable funding to law enforcement.

Recommendation 9: A White Paper on Australia's National Security and Law Enforcement should be developed for National Cabinet.

Emergency Legislation Review

Throughout Covid-19 responses, rapidly changing policies and laws have caused confusion in the community and for police implementing responses. This needs to be assessed, perhaps with a suite of emergency national 'stand-by' laws ready for activation under certain circumstances. This will allow a more effective and nationally consistent response than has been experienced.

Recommendation 10: Parliament should review current emergency legislation provisions and consider a broad range of national 'stand-by' laws for activation during certain security emergencies.

National Coordination Review

The Department of Home Affairs is responsible for Commonwealth policy, legislation, and coordination of support across federal, state and territory governments for all Australian national security responses. It also has responsibility for Emergency Management Australia. Resourcing and capabilities of these national coordination responsibilities have diminished, despite being required to respond to rolling crises since late 2019.

The role of the Department in areas including counter-terrorism, foreign interference, trans-national organised crime, cyber-crime, anti-corruption, money-laundering and financial crimes requires strong leadership and effective national coordination. These areas are somewhat eclipsed by the vast effort required to secure Australia's borders, manage the social cohesion and immigration programs, and effectively govern transport security.

It is timely, after three years since the inception of Home Affairs, to conduct a wide-ranging review of its resourcing, capabilities, and ability to achieve the vast array of responsibilities it is charged with delivering.

Recommendation 11: The Department of Home Affairs role, responsibilities, capabilities and funding should be reviewed to ensure it can effectively deliver its charter to keep Australia safe.

Conclusion

Covid-19 has brought unprecedented challenges and a rapidly changing environment for all Australians and all first responders. They have performed in an outstanding manner under extremely difficult circumstances.

The Covid-19 pandemic, and the bushfires proceeding them, have also highlighted tactical and strategic gaps in crisis management that must be addressed. Policing in this 'new normal'

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environment will require significant change in the way law enforcement plans, leads and collaborates with government, the community and private sector partners. Assessing the responses, legislative framework, leadership and governance model for Covid-19 will deliver improved national security frameworks and support for policing, and the Australian community, for future crises.

We would like to thank the Committee and the Secretary for allowing us to make this submission.