

Government Response

Parliamentary Joint Committee on the Australian Crime Commission Report

Inquiry into the Future Impact of Serious and Organised Crime on Australian Society

Recommendation 1: The committee recommends that the Commonwealth Government examine the cost of provision of telecommunications data by telecommunications companies, with particular reference to methods by which that cost can be met or controlled.

Accepted

The Government, in association with the Australian Communications and Media Authority (ACMA), will continue to facilitate discussions between agencies and industry that will review the costs associated with access to telecommunications data. Ongoing discussions will explore options for greater standardisation of costs and investigate technical or procedural efficiencies that may reduce those costs. While ACMA has an arbitrator role, the *Telecommunications (Interception and Access) Act 1979* (the TI Act) also deals with the division of costs between carriers and agencies as it applies to the interception of communications.

Recommendation 2: The committee recommends that the issue of failure to cooperate with the Australian Crime Commission examination process be resolved immediately; and that the Commonwealth Government release the Trowell Report as a matter of priority.

Accepted

The *Independent Review of the Provisions of the Australian Crime Commission Act 2002* by Mr Mark Trowell QC was tabled in the House of Representatives on 21 February 2008 and the Senate on 11 March 2008.

The *Crimes Legislation Amendment (Serious and Organised Crime) Act No. 2 2010* (the SOC No. 2 Act) amended the *Australian Crime Commission Act 2002* to include a mechanism for examiners to refer uncooperative witnesses to a superior court to be dealt with as if in contempt of that court.

Recommendation 3: The committee recommends that the Australian Customs Service continue to have access to telecommunications interception through law enforcement agencies, and that those agencies liaise to enhance the provision of telecommunications interception information to the Australian Customs Service.

Accepted-In-Principle

The Government proposes that current arrangements continue and that within the framework of the TI Act, the Government will consider ways to enhance the provision of telecommunications interception information to the Australian Customs and Border Protection Service.

Recommendation 4: The committee recommends that the Commonwealth and Queensland governments collaborate to expedite the granting of telecommunications interception powers to the Queensland Police Service and the Queensland Crime and Misconduct Commission.

Accepted

On 8 July 2009, the Attorney-General declared the Queensland Police and the Queensland Crime and Misconduct Commission to be agencies for the purposes of the TI Act. The declarations mean that these agencies are able to apply for warrants to intercept communications to assist in the investigation of serious offences.

Telecommunications interception powers are an essential investigative tool for modern law enforcement agencies and will assist Queensland to better combat serious criminal activity. The Commonwealth will work with Queensland to help establish its technical capability to use these powers.

This brings Queensland into line with every other police force in Australia.

Recommendation 5: The committee recommends that recommendations of the Sherman report into the Proceeds of Crime Act 2002, where appropriate, be implemented without delay.

Accepted

The Government is committed to ensuring effective proceeds of crime legislation at the Commonwealth level. The *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010* (the SOC Act) and the SOC Act No. 2 implemented recommendations from the Sherman Report.

Recommendation 6: The committee suggests that the Parliamentary Joint Committee on the Australian Crime Commission in the next term of the Federal Parliament conduct an inquiry into all aspects of international legislative and administrative strategies to disrupt and dismantle serious and organised crime.

Accepted

The Government supports the conduct of an inquiry into all aspects of international legislative and administrative strategies to disrupt and dismantle serious and organised crime.

The Government welcomes the 17 August 2009 report of the Parliamentary Joint Committee on the Australian Crime Commission (PJC-ACC) inquiry into the effectiveness of legislative efforts to disrupt and dismantle serious and organised crime groups and associations with these groups.

Recommendation 7: The committee recommends that any future review of the Corporations Act 2001 identify provisions which could be amended to inhibit the activities of organised crime, including, but not limited to, those provisions dealing with directors.

Accepted

The Government will continue to monitor corporations law to identify opportunities for reform to inhibit the activities of organised crime groups, in line with the national response to combating organised crime agreed by Commonwealth, State and Territory Attorneys-General in April 2009.

At its 17 April 2009 meeting, the Ministerial Council for Corporations (MINCO) considered the issue of director disqualification under the corporations legislation, in response to concerns about the use and management of companies by organised criminal groups. The States and Territories were asked to outline their position in relation to five options for reform, put forward by the Commonwealth, that range from extending automatic disqualifications to establishing a national register of prohibited persons. At its 6 August 2009 meeting, MINCO resolved that officers would undertake further work on the potential to expand the categories of offences that result in automatic disqualification from managing companies under the *Corporations Act 2001*.

Recommendation 8: The committee recommends that, as a matter of priority, the Commonwealth, State and Territory governments enact complementary and harmonised legislation for dealing with the activities of organised crime.

Accepted

The Government recognises that serious and organised crime is a national issue which would benefit from a complementary and harmonised legislative approach. In April 2009, the Standing Committee of Attorneys-General (SCAG) agreed to a set of resolutions for a national response to organised crime. Those resolutions dealt with both legislative and operational measures to combat organised crime activity.

In August 2009, SCAG agreed to further measures to support the national response to organised crime. Through the April and August 2009 SCAG resolutions, all jurisdictions have agreed to consider introducing laws to enhance criminal asset confiscation and offences organised criminal activity. Jurisdictions also agreed to implement the model laws for cross-border investigative powers, developed in 2003 by the SCAG and then Australasian Police Ministers Council Joint Working Group.

The SOC Act and the SOC Act No. 2 implemented measures aimed at organised crime agreed to by State and Territory Attorneys-General and strengthened existing laws by:

- introducing new criminal offences targeting those involved in organised crime
- strengthening criminal asset confiscation and anti-money laundering regimes
- requiring individuals suspected of possessing unexplained wealth to demonstrate it was legally acquired
- broadening access to telecommunications interception for the investigation of organised crime offences
- enhancing police powers to investigate organised crime by implementing model laws for controlled operations, assumed identities and witness identity protection
- enhancing money laundering, bribery and drug importation offences
- enhancing search and seizure powers
- extending criminal liability to individuals who jointly commit a Commonwealth offence
- improving the operation and accountability of the Australian Crime Commission (ACC), and
- improving the operation of the National Witness Protection Program by increasing protection for current and former participants and officers.

The Commonwealth has also endorsed an Organised Crime Strategic Framework which will provide a unified strategic direction for all Commonwealth agencies with responsibility for combating organised crime. It will also enhance collaboration and coordination across government and provide a greater understanding of criminal networks and threats from organised crime.

Recommendation 9: The committee recommends that the government seeks to expedite the telecommunications industry's adoption of option B of the *Telecommunications (Service Provider—Identity Checks for Pre-Paid Mobile Telecommunications Services) Determination 2000*, so as to require 100 points of identity documentation upon activation of prepaid mobile phone services.

Not Accepted

At their inaugural meeting on 16 June 2009, the Commonwealth and Telecommunications Industry Experts Group examined the current identity checking requirements for the purchase of prepaid mobile phone services. The Group identified significant deficiencies and difficulties with the operation of the identity checking regime.

As a result, the Group agreed that a review of the arrangements was required to ensure the policy objectives were being met and the arrangements are effective and efficient. The Department of Broadband, Communications and the Digital Economy established a working group, comprising industry representatives, ACMA, the Attorney-Generals Department and law enforcement and national security agencies to guide the review and explore options for improved arrangements.

The working group is currently considering a proposal for an improved identity checking regime based on the collection of information at the point of activation. The proposal aims to better meet the requirements and objectives of law enforcement and national security agencies by collecting a richer set of information about the purchasers of pre-paid SIMs at the point of activation and improved access to collected information. The proposal also aims to provide industry with opportunities to better streamline the process while ensuring that consumers can reasonably access these services. The working group is progressing development of the proposal as a priority.

Recommendation 10: The committee recommends that the Ministerial Council for Police and Emergency Management—Police consider a more strategic and national approach to recruitment and retention of sworn police officers across all jurisdictions; and that consideration be given to enhancing cross-jurisdictional mobility, including secondments, of sworn police officers and other police service personnel.

Accepted

The March 2008 Police Commissioners Conference endorsed a resolution to refer the issue of 'recruitment and retention' to the Australian and New Zealand Policing Advisory Agency (ANZPAA) Board for examination. While the nature and scope of ANZPAA's Work Program is subject to its Board's endorsement, it is expected that this and a broad range of related issues will be addressed as part of that program. ANZPAA reports routinely to MCPEMP on its activities and its work could inform any consideration of more strategic and national approaches in due course.

The Commonwealth commissioned a federal audit of police capabilities in 2009 conducted by Mr Roger Beale AO. The findings of the Audit were presented to Government through the Minister for Home Affairs on 30 June 2009. Relevant stakeholders within the Commonwealth, States and Territories and the non-government sector were consulted in its development. The 2008 Budget provided the Australian Federal Police (AFP) with \$191.9 million dollars over five years commencing 2008–09 to recruit 500 police officers. The Government also provided \$20 million over four years for a recruitment and retention program, which will include strategies to recruit more women and Indigenous officers.

Recommendation 11: The committee recommends that the Productivity Commission inquire into the cost effectiveness and benchmarking of law enforcement bodies and current national arrangements to address serious and organised crime.

Noted

The Government agrees that the cost effectiveness of law enforcement responses should be examined.

An inquiry of national arrangements to address serious and organised crime does not fall within the mandate of the Productivity Commission. The Productivity Commission is not the appropriate organisation to undertake such an inquiry. The Commission is the Australian Government's principal advisory body on microeconomic policy and regulation. It undertakes inquiries and provides advice on matters relating to industry, industry development and productivity.

The outcomes from the Federal Audit of Police Capabilities deal with the issue of national arrangements to address serious and organised crime.

Recommendation 12: The committee recommends that the Commonwealth Government increase funding to the Australian Institute of Criminology.

Noted

The Australian Institute of Criminology (AIC) is funded by direct budget allocations and revenue from project based work for clients. Any proposals for increased funding for the AIC will be developed and considered as part of the Government's annual budget process including within the context of cross government and portfolio funding proposals.

Recommendation 13: The committee recommends that a formal relationship be established between law enforcement agencies, government departments and the Australian Institute of Criminology to enhance the provision of data, information and research; and that particular emphasis be placed on the removal of any legislative impediments to the provision of data to the Australian Institute of Criminology by Commonwealth, State and Territory departments and agencies.

Accepted

The Government recognises the value of information and data to the quality research of the AIC and agrees that the AIC should identify the precise requirements to access that data. The AIC will provide any issues for consideration of possible improvements in AIC access to data to the Heads of Commonwealth Operational Law Enforcement Agencies and MCP EMP.

AIC access to State and Territory data and information is a matter for consideration by State and Territory governments as well as other appropriate forums.

Recommendation 14: The committee recommends that public education programs about emerging criminal activities, such as credit card fraud, banking fraud, identity theft and internet-based criminal activity, be given a higher priority and increased resources.

Noted

The Government will continue to assess the resources and needs for further public awareness campaigns targeting emerging crimes. Previous initiatives have targeted identity crime, e-security and online protection. The Government is also working closely with the private sector to raise awareness of particular crime types, for instance through the Australian Consumer Fraud Taskforce which is focused on consumer protection in relation to frauds and scams.

Public education campaigns on specific new and emerging crime types and risks will continue to be developed and funded on a case by case basis in conjunction with industry, non-government organisations and the community. The ThinkUKnow campaign, a joint initiative of the AFP, Microsoft and ACMA has already been successful in raising public awareness of the need for child safety on the internet. In July 2009, the Government launched the CyberSmart website which sets the benchmark for cyber-safety advice and targeted information for Australian children, parents and teachers.

Recommendation 15: The committee notes that the Australian Crime Commission has prepared a public version of the *Picture of Criminality in Australia* and recommends that the ACC Board make this report available at the earliest possible date.

Accepted

The public version of the *Picture of Criminality in Australia, Organised Crime in Australia* was released on 16 January 2008. An updated report was released on 25 February 2009. It will be updated periodically to ensure its continued relevance to increasing the public's awareness of the impacts of serious and organised crime on the community.

Recommendation 16: The committee recommends that the Commonwealth Government seek to ensure the comprehensive and public reporting of online fraud, particularly within the banking and finance industry.

Accepted-In-Principle

The Government supports the fullest possible reporting of all crimes including online fraud in order to better inform banking consumers of the potential and associated online fraud risks. The Government is also working closely with the private sector to raise awareness of particular crime types, for instance through the Australian Consumer Fraud Taskforce which is focused on consumer protection in relation to frauds and scams.

Recommendation 17: The committee recommends that CrimTrac be funded to examine the legislative, administrative and technical aspects to allow the inclusion of additional datasets to the Minimum Nation Wide Person Profile; particular consideration should be given to Aviation Security Identification Cards, Maritime Security Identification Cards, explosives licences and ammonium nitrate licences.

Accepted-In-Principle

The National Police Reference System, hosted by CrimTrac, has the technical capacity to include additional information sets such as Aviation Security Identification Cards, Maritime Security Identification Cards, explosives licences and ammonium nitrate licences. The legislative and administrative aspects of providing additional datasets would need to be considered in consultation with States and Territories and Commonwealth agencies.

The Government is seeking the support of the CrimTrac Board of Management to have CrimTrac and the Attorney-General's Department consider the technical, legislative and administrative aspects of including additional datasets on the Minimum Nationwide Person Profile (MNPP). The Government has asked CrimTrac, the Attorney-General's Department and the ACC to review any impediments to the Australian Criminal Intelligence Database accessing MNPP data.

These reviews will also need to consider the privacy implications of providing access to this information through the MNPP. Any Commonwealth funding required to support enhancements to MNPP would need to be considered in the annual Commonwealth Budget process.

Recommendation 18: The committee recommends that the Commonwealth Government review CrimTrac's current funding model in order to provide it with a greater level of funding certainty.

Accepted

The Attorney-General's Department is currently working with CrimTrac to review both their funding model and their governance structure. Any future funding model will need to be considered by the CrimTrac Board. The Commonwealth is a member of the CrimTrac Board.

Recommendation 19: The committee recommends that the Commonwealth, State and Territory governments implement a national number plate recognition system.

Noted

The Commonwealth has provided \$2.23 million of funding from the confiscated assets account under the *Proceeds of Crime Act 2002* to carry out the Scoping Study.

Recommendation 20: The committee recommends that the Australian Crime Commission give consideration to the extent to which its information handling protocols incorporate, and could be enhanced by, the principles of the Privacy Act 1988 (Cth).

Accepted

It is acceptable that the ACC's criminal intelligence holdings remain exempt from the provisions of the *Privacy Act 1988*. However, the ACC's current policy is to comply with the Information Privacy Principles to the greatest extent possible. This policy position is supported by compliance with a range of specific provisions in the *Australian Crime Commission Act 2002* and other statutes that require the ACC to maintain the confidentiality of information it holds. The dissemination of ACC information in accordance with such legislation carries specific conditions, typically including the requirement that no further dissemination shall occur without prior ACC approval. The ACC will continue to give consideration to the extent to which its information handling protocols incorporate, and can be enhanced by, privacy principles in the context of this recommendation and other relevant considerations.

The Government notes that recommendation 37-1 of the Australian Law Reform Commission's (ALRC) *Report 108 – For Your Information: Australian Privacy Law and Practice* (2008) proposes that:

- (a) the ACC, in consultation with the Office of the Privacy Commissioner, should develop and publish information-handling guidelines for the ACC and the Board of the ACC. The information-handling guidelines should address the conditions to be imposed on the recipients of personal information disclosed by the ACC in relation to further handling of that information.
- (b) the PJC-ACC should monitor compliance by the ACC and the Board of the ACC with the information-handling guidelines.

The Government has announced that it will be responding to the ALRC's recommendations in two stages, with recommendations relating to exemptions (including recommendation 37-1) to be considered in the Government's second stage response.

Recommendation 21: The committee recommends that the Commonwealth Government provide funding for a feasibility study into the development of a single national case management system.

Recommendation 22: The committee recommends that the Ministerial Council for Police and Emergency Management—Police give consideration and support to the development of a single national case management system.

Accepted-In-Principle

The issue of a national case management solution has arisen in a number of forums, including in the Clarke Inquiry recommendations. In March 2009, the CrimTrac Board approved the proposal for CrimTrac to conduct a feasibility study into a national case management capability.