



## Parliamentary Joint Committee on the Australian Crime Commission

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Inquiry into the future impact of serious and  
organised crime on Australian society

September 2007

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## Executive summary

Serious and organised crime covers a diverse range of criminal activities and includes such activities as the trafficking of people, identity theft, the importation, manufacture and distribution of illicit drugs, money laundering, bribery, and financial fraud.

A profit motive is at the heart of serious and organised crime. Organised crime groups usually trade in commodities that provide maximum profit while posing the lowest risk of detection and prosecution. In adapting to emerging business opportunities, organised crime groups have established fluid connections to other groups across Australia and transnationally, and to legitimate businesses. Within Australia, outlaw motorcycle gangs continue to dominate serious and organised crime, particularly in the area of illegal drug manufacture and distribution. Externally, transnational crime poses a significant and growing threat to Australia, as organised crime groups are highly professional, sophisticated and able to exploit multiple jurisdictions within and outside Australia to avoid detection, apprehension and prosecution.

Many traditional areas of organised crime have no parallel in the legitimate economy. However, technological developments such as the internet have seen the development of a new range of opportunities and markets that organised crime groups are seeking to exploit. While illicit drugs continue to be the major organised crime activity, the inquiry found that high-tech crime is an area of opportunity for organised crime groups to pursue new types of crime. The evidence provided a sense of the potentially vast scope of high-tech crime, which includes electronic piracy, counterfeiting and forgery, credit card fraud, child pornography, electronic funds transfer fraud, money laundering and denial-of-service attacks. The technological environment in or by which these crimes are conducted makes, and will increasingly make, the task of law enforcement agencies in addressing high-tech crime both complex and costly.

The economic cost of countering current and future organised crime is difficult to quantify. This is due to the fact that organised crime groups pursue a diffuse and shifting range of activities. The committee found that organised crime imposes vast costs on all sectors of Australian society, and that these costs will continue to escalate.

In assessing the adequacy of current legislative arrangements, the committee discovered that Australia has taken some important steps toward establishing national legal regimes that are collectively hostile to, and effective in stemming, the activities of organised crime. These include the creation of statutory bodies such as the Australian Crime Commission (ACC) and crime and corruption bodies, and the recent development of anti money laundering and proceeds of crime legislation. However, the committee identified particular areas of concern in the conduct of contempt proceedings arising from ACC examinations and Queensland's lack of telephone interception powers. The committee also considered international experiences with laws proscribing organised crime groups, and relevant design factors in developing similar laws for the Australian environment. An abiding lesson of the inquiry is that legislative gaps or inconsistencies across Australia advantage organised crime and undercut the efforts of law enforcement. Australia must

develop a harmonised legislative approach across all jurisdictions. This will require the ability to quickly identify legislative weaknesses and respond rapidly with well-designed laws.

The committee also identified a number of administrative and regulatory arrangements to be addressed. In particular, the current requirements for recording SIM card user details are deficient and therefore represent a significant difficulty to authorities needing to accurately track suspect mobile phone users. This is a critical area needing urgent attention. The committee also looked closely at the issue of staffing for police agencies, an area where growing demands on and for police are seeing emerging problems in sourcing and retaining sufficient staff, particularly in state forces. An effort to properly assess and to carefully manage this issue is needed to avoid greater stress on Australia's police in future. As a related issue, the committee examined how police efforts and strategies can and must in the future be established around a targeted, comprehensive and ongoing research effort involving police, government and academia.

One of the most important aspects of the inquiry centred on the adequacy of Australia's information and intelligence databases and case management systems. These systems are central to the ability of police to detect and investigate organised crime. As with legislation, the committee found Australia to have made substantial recent improvements to its information and intelligence systems, particularly with the establishment of CrimTrac and the ACC and specific initiatives to improve the interoperability and national coverage of law enforcement related databases. Nevertheless, substantial areas of potential improvement exist around the addition of new datasets, such as ammonium nitrate licences, to CrimTrac's Minimum Nation-wide Person Profile, and in the priority development of a national automatic number plate recognition system. The committee found police case management systems to be lamentably fragmented in their operation, and the task of developing a single national police case management system is perhaps the most important identified by the inquiry.

The committee has made recommendations that it is hoped will contribute to both understanding and responding effectively to organised crime. The recommendations go to the creation and maintenance of regimes that enable police to anticipate, adapt to and address the activities of organised crime groups.

The committee expresses its gratitude for the assistance of Australia's police and law enforcement agencies, whose professionalism and expertise were critical to the conduct of the inquiry. The evidence of civilian and academic contributors formed an important counterpoint to the evidence received by LEAs. These contributors brought into the frame greater detail on policing practices overseas, and different perspectives on the various issues thrown up by the terms of reference. As organised crime becomes more complex and sophisticated into the future, such opportunities to share knowledge and experience will become increasingly relevant to fighting organised crime and to assessing and shaping the responses of Australian LEAs. This is a national issue that will require greater harmonisation and collaboration between all Australian jurisdictions in the future. In this, the ACC has a critical role to play.

# Recommendations

## Recommendation 1

**5.24** 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.

## Recommendation 2

**6.19** 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.

## Recommendation 3

**6.31** 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.

## Recommendation 4

**6.37** 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.

## Recommendation 5

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

## Recommendation 6

**6.87** 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.

## Recommendation 7

**6.90** 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.

**Recommendation 8**

**6.102** 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.

**Recommendation 9**

**7.21** The committee recommends that the government seek 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.

**Recommendation 10**

**7.37** 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.

**Recommendation 11**

**7.46** 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.

**Recommendation 12**

**7.66** The committee recommends that the Commonwealth Government increase funding to the Australian Institute of Criminology.

**Recommendation 13**

**7.67** 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.

**Recommendation 14**

**7.72** 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.

**Recommendation 15**

**7.80** 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.

**Recommendation 16**

**7.100** 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.

**Recommendation 17**

**8.25** 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.

**Recommendation 18**

**8.31** 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.

**Recommendation 19**

**8.36** The committee recommends that the Commonwealth, state and territory governments implement a national number plate recognition system.

**Recommendation 20**

**8.52** 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).

**Recommendation 21**

**8.60** 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**

**8.61** 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.



# Acronyms

ABC	Australian Broadcasting Corporation
ACC	Australian Crime Commission
ACC Act	<i>Australian Crime Commission Act 2002</i>
ACID	Australian Criminal Intelligence Database
ACMA	Australian Communications and Media Authority
ACT	Australian Capital Territory
AFMA	Australian Fisheries Management Authority
AFP	Australian Federal Police
AGD	Attorney-General's Department
AHTCC	Australian High Tech Crime Centre
AIC	Australian Institute of Criminology
AIFPR	Australian Identity Fraud Protection Register
ALEIN	Australian Law Enforcement Intelligence Network
ALERT	Australian Law Enforcement and Targeting (project)
AMTA	Australian Mobile Telecommunications Association
AML/CTF	anti-money laundering and counter-terrorism financing
AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>
ANCOR	Australian National Child Offender Register
AOSD	amphetamines and other synthetic drugs
APMC	Australasian Police Ministers Council
ASCA	Advocates for Survivors of Child Abuse
ASIC	Aviation Security Identification Card
ATO	Australian Taxation Office
ATS	amphetamine type substances

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AUSTRAC	Australian Transaction Reports and Analysis Centre
CCCWA	Corruption and Crime Commission of Western Australia
CDPP	Commonwealth Director of Public Prosecutions
CEO	Chief Executive Officer
CPRS	CrimTrac Police Reference System (development program)
Customs	Australian Customs Service
DOTARS	Department of Transport and Regional Services
FATF	Financial Action Task Force on Money Laundering
FFDLR	Families and Friends for Drug Law Reform
FTR Act	<i>Financial Transactions Reports Act 1988</i>
HREOC	Human Rights and Equal Opportunity Commission
IT	information technology
IPND	Integrated Public Number Database
LEAs	law enforcement agencies
LEAC	Law Enforcement Advisory Committee
MEOC	Middle Eastern Organised Crime
MCDS	Ministerial Council on Drug Strategy
MCPEMP	Ministerial Council for Police and Emergency Management— Police
MNPP	Minimum Nation-wide Person Profile
MSIC	Maritime Security Identification Card
NAFIS	National Automated Fingerprint Identification System
NCA	National Crime Authority
NCIDD	National Criminal Investigation DNA Database
NCHRC	National Criminal History Record Checking (Service)



NDVS	National Document Verification Service
NFLRS	National Firearms Licensing and Registration System
NNI	National Names Index
NPMs	new payment methods
NSW	New South Wales
NT	Northern Territory
NVOI	National Vehicles of Interest (System)
OMCGs	outlaw motorcycle gangs
PCs	personal computers
PFA	Police Federation of Australia
PoCA	<i>Picture of criminality in Australia</i> report
QCMC	Queensland Crime and Misconduct Commission
QPS	Queensland Police Service
RICO	<i>Racketeer Influenced and Corrupt Organizations (Act)</i>
SA	South Australia
SAPOL	South Australia Police
SIEF	Standard Intelligence Exchange Format
SIM	Subscriber Identity Module
SOCA	Serious and Organised Crime Agency (UK)
TDS	Telephone Directory Service
the Act	<i>Crimes Act 1914</i>
the Code	<i>Criminal Code Act 1996</i>
TI	telecommunications interception
TI Act	<i>Telecommunications (Interception and Access) Act 1979</i>

UK	United Kingdom
US	United States
USA	United States of America
ViCLAS	Violent Crime Linkage Analysis System
VoIP	Voice over Internet Protocol
WA	Western Australia
WAPOL	Western Australia Police

# Chapter 1

## The conduct of the inquiry

### Terms of reference

1.1 The duties of the Parliamentary Joint Committee on the Australian Crime Commission (ACC) are set out in section 55(1)(d) of the *Australian Crime Commission Act 2002*. These duties, inter alia, require the committee to examine trends and changes in criminal activities, practices and methods and report to both houses of the parliament any change that the committee thinks desirable to the functions, structure, powers and procedures of the ACC.

1.2 On 4 December 2006, pursuant to its remit under paragraph 55(1)(d), the committee initiated an inquiry into the future impact of serious and organised crime on Australian society. The terms of reference required the inquiry to have particular reference to:

- (a) Future trends in serious and organised crime activities, practices and methods and their impact on Australian society;
- (b) Strategies for countering future serious and organised crime;
- (c) The economic cost of countering future organised crime at a national and state and territory level; and
- (d) The adequacy of legislative and administrative arrangements, including the adequacy of cross-jurisdictional databases, to meet future needs.

### Conduct of the inquiry

1.3 In accordance with usual practice, the committee advertised the inquiry in the *Australian* newspaper. The advertisement first appeared on Tuesday 12 December 2006, and subsequently ran for several months. In addition, the committee wrote to a range of organisations and individuals with a likely interest in the inquiry.

1.4 The inquiry received 25 written submissions. These were published and made available on the committee's website. A list of submissions received is contained in appendix 1.

1.5 The committee conducted seven public hearings as part of the inquiry. Hearings were held in Perth on 30 April 2007; Melbourne on 1 May 2007; Brisbane on 7 June 2007; Sydney on 8 June 2007; and Canberra on 5 July 2007, 6 July 2007 and 13 August 2007. Details of witnesses who appeared at these hearings are listed in appendix 2.

1.6 A number of documents were tabled in the course of the inquiry. These are listed at appendix 3.

1.7 Additional information received by the committee is listed at appendix 4.

1.8 Appendix 5 contains the definition of serious and organised crime as set out in section 4 of the *Australian Crime Commission Act 2002*.

## **Report structure**

1.9 The report addresses the committee's terms of reference in the following chapters:

1.10 Chapter 2 deals with the character of organised crime groups in Australia, as well as examining trends in their practices and methods.

1.11 Chapter 3 addresses the present and emerging trends in the activities of organised crime groups.

1.12 Chapter 4 outlines broad strategies for countering these trends.

1.13 Chapter 5 endeavours to assess the cost of organised crime and its consequences, including its effect on individuals, communities and society more generally.

1.14 Chapter 6 examines the legislative environment in which law enforcement operates against organised crime, the adequacy of that environment and strategies to improve it.

1.15 Chapter 7 scrutinises the administrative and regulatory arrangements under which law enforcement and the ACC operate in dealing with organised crime. It identifies several weaknesses and proposes a number of strategies to address them.

1.16 Chapter 8 assesses the adequacy of the databases available to the ACC and law enforcement agencies. The committee examines improvements which could be made in the performance and accessibility of cross-jurisdictional databases.

1.17 The evidence given to the committee during its hearings on the nature and extent of organised crime in Australia was in parts, alarming.

1.18 Given the sensitive nature of investigatory processes and the confidentiality of much of the operational information of law enforcement agencies, the committee has been able to look at the issues of the extent of organised crime, its cost to the community and the adequacy or otherwise of the current level of law enforcement in only general terms.

1.19 Nevertheless, the committee has highlighted some shortcomings in national crime fighting capacities and has throughout the report identified a number of areas where further scrutiny by the committee may be warranted.

## **Recommendations**

1.20 The committee's report makes 22 recommendations arising from the inquiry's findings.

1.21 Due to the broad nature of the inquiry, it was difficult to examine any one area in great detail. Rather, this inquiry served to bring to the surface several issues that are currently or may in the future pose a challenge to the effectiveness of law enforcement agencies' efforts to address serious and organised crime in Australia. The committee urges all governments in Australia to give consideration to these findings.

## **Acknowledgments**

1.22 The committee wishes to express its appreciation to all parties that contributed to the conduct of this inquiry, whether by making a written submission, by personal attendance at a hearing or, as in many cases, by making both written and oral submissions.



# Chapter 2

## The character of organised crime groups in Australia

### Introduction

2.1 This chapter outlines the character of organised crime groups operating in Australia, and explores the trends in their practices and methods.

### Defining organised crime<sup>1</sup>

2.2 Organised crime in Australia has changed since the 1970s.<sup>2</sup> The Australian Crime Commission (ACC) notes that the fundamental characteristics of serious and organised crime are that it involves substantial planning and organisation and the use of sophisticated methods and techniques, and is primarily motivated by financial gain. The nature of the criminal activity undertaken by organised criminal groups is fluid, responding to a range of influences including market dynamics, law enforcement focus and emerging opportunities.<sup>3</sup>

2.3 A profit motive is at the heart of serious and organised crime.<sup>4</sup> To make money, organised criminal groups usually trade in commodities which will provide maximum profit while posing the lowest risk of detection and prosecution. Organised crime groups will adapt to legislative change and will exploit new opportunities.<sup>5</sup>

2.4 Mr Frank Costigan QC, appearing in a private capacity, noted that the 'major object of organised crime...in the widest possible definition...is to acquire cash and hide it from the authorities'.<sup>6</sup> Detective Superintendent Stephan Gollschewski, Queensland Police Service, added that organised crime have 'distribution networks that they can...exploit to be able to meet market demand'.<sup>7</sup>

2.5 Mr Christopher Keen, Director, Intelligence, Queensland Crime and Misconduct Commission, observed that the profit motive has led organised crime groups and networks towards diversification of their activities.<sup>8</sup> Crime groups

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1 For the purposes of this inquiry the relevant definition of organised crime is contained in section 4 of the *Australian Crime Commission Act 2002*, which is set out in appendix 5.

2 Australian Institute of Criminology, 'The worldwide fight against transnational organised crime', *Technical and Background Paper*, no.9, 2004, p. 6.

3 Australian Crime Commission, *Submission 17*, p. 4.

4 The committee notes that paedophilia is the exception. Paedophilia is discussed in more detail in chapter 3.

5 Attorney-General's Department, *Submission 21*, p. 3.

6 *Committee Hansard*, 1 May 2007, p. 35.

7 *Committee Hansard*, 7 June 2007, p. 24

8 *Committee Hansard*, 7 June 2007, p.55.

therefore no longer have a loyalty to a particular type of activity—for example, car rebirthing—but will move to enterprises which they see as profitable.

2.6 This assessment was endorsed by Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, who noted that for organised crime it is:

...a matter of taking whatever opportunity presents itself at any given time. There do not seem to be the loyalties within any particular industry area or in relation to a commodity...<sup>9</sup>

### **Membership and structure of organised crime groups**

2.7 The ACC submission notes that organised crime groups in Australia continue to evolve from being communally based, strongly hierarchical, and easily defined by ethnicity or ethos, towards more flexible, loosely associated and entrepreneurial networks. These networks bring together groups and individuals with differing roles and levels of involvement in the criminal activity, and generally involve individuals of different ethnicities, skill sets and criminal interests. Some groups form for short periods for specific activities, while others are more enduring.<sup>10</sup>

2.8 The Australian Institute of Criminology (AIC) argues that organised crime in Australia today is perpetrated by a combination of:

- local criminal milieux that are typically loosely structured groups involved in a variety of illicit enterprises;
- networks or secret societies based in other countries that have local networks in Australia and are characterised by shared ethnic backgrounds; and
- other criminal groups such as paedophile networks and outlaw motorcycle gangs.<sup>11</sup>

### ***Entrepreneurial networks***

2.9 Much of the evidence received by the committee emphasised the dynamic and shifting membership and structures of organised crime groups, as opposed to the traditional or stereotypical notion that they are exclusive hierarchies.<sup>12</sup>

2.10 The evolution of these groups is closely connected with the profit-centred purpose of organised crime. Organised crime is increasing in sophistication and, as

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9 *Committee Hansard*, 6 July 2007, p. 15.

10 *Submission 17*, p. 5.

11 Australian Institute of Criminology, 'The worldwide fight against transnational organised crime', *Technical and Background Paper*, no.9, 2004, p. 6.

12 Frank Costigan QC, Private Capacity, *Committee Hansard*, 1 May 2007, p. 42.



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Professor Adam Sutton, appearing in a private capacity, observed, 'will exploit opportunities and any kinds of niches'.<sup>13</sup>

2.11 The South Australia Police,<sup>14</sup> the NSW Police Force<sup>15</sup> and the Queensland Crime and Misconduct Commission<sup>16</sup> all noted that traditional crime group allegiances are giving way to entrepreneurial networks formed around profit opportunities. Rather than organising hierarchically, they 'consist of many smaller interdependent and adaptable enterprises willing to share methodologies and expertise'.<sup>17</sup> Further, they are 'willing to trade in different commodities...work across regions [and] are quite willing to work with a business partner who may have been a competitor last week'.<sup>18</sup> These groups now tend to seek 'some advantage for their various business enterprises' over notions of brotherhood, loyalty or honour.<sup>19</sup>

2.12 Professor Rod Broadhurst, appearing before the committee in a private capacity, made a similar observation and gave the example of the Asian triad gangs, which now display sophisticated and recognisably modern or commercial modes of organisation and operation:

...amongst triads...the traditional role of the chair was to actually order things to happen. Now they act as negotiators. They become the umpire, and they charge fees to resolve problems between gangs, between project groups, whatever you want to call them.<sup>20</sup>

2.13 These changing modes of interaction and operation present significant challenges to police. A 2005 report provided to the committee by the Corruption and Crime Commission of Western Australia observes that groups which previously operated independently now 'increasingly work collaboratively, and across state borders, not unlike legitimate businesses'.<sup>21</sup> This has significant ramifications in terms of the level of threat and complexity that organised crime now represents.

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13 *Committee Hansard*, 1 May 2007, p. 10.

14 *Submission 7*, p. 4.

15 *Submission 20*, p. 4.

16 Mr Christopher Keen, Director, Intelligence, Queensland Crime and Misconduct Commission, *Committee Hansard*, 7 June 2007, p. 44.

17 NSW Police Force, *Submission 20*, p. 4.

18 Mr Christopher Keen, Director, Intelligence, Queensland Crime and Misconduct Commission, *Committee Hansard*, 7 June 2007, p. 44.

19 Mr Christopher Keen, Director, Intelligence, Queensland Crime and Misconduct Commission, *Committee Hansard*, 7 June 2007, p. 44.

20 *Committee Hansard*, 7 June 2007, p. 66.

21 Corruption and Crime Commission of Western Australia, *Report to the Joint Standing Committee on the Corruption and Crime Commission with regard to the commission's organised crime function and contempt powers*, December 2005, p. 2.

2.14 Further challenges are a result of the increasing sophistication of modern organised crime groups and their ability to 'respond to legislative change by adapting their methodologies'.<sup>22</sup> The ACC submission notes:

Higher threat organised criminal groups are typically flexible, entrepreneurial and resistant to law enforcement intervention. They are innovative and able to identify and enter new markets and create opportunities for profit from illegal activity. The sectors or goods targeted by organised crime are often areas where little criminal activity has been detected, or where regulations or criminal penalties are yet to be fully established or currently provide insufficient deterrent.<sup>23</sup>

2.15 Certain consequences flow from the characteristics of organised crime groups in present-day Australia, as identified in the preceding discussion. Although traditionally recognised organised crime such as ethnic and club based groups continue to persist in Australia, their adaptable and opportunistic pursuit of profit means that their membership and identity is neither fixed nor predictable. Equally, it should be recognised that the dominance or notoriety of a particular group at any given point in time is almost certainly temporary, and must not be allowed to obscure the activities of other organised crime groups. While the inquiry identified a number of organised crime groups operating in Australia today, the committee urges caution in taking the following discussion of organised crime groups in Australia as either definitive or prescriptive.

### ***Outlaw motorcycle gangs***

2.16 The committee's inquiry confirmed an Australia-wide growth in the membership and illegitimate activities of outlaw motorcycle gangs (OMCGs). Both Detective Chief Superintendent Ross Barnett, Queensland Police Service,<sup>24</sup> and Assistant Commissioner Tony Harrison, Crime Service, South Australia Police,<sup>25</sup> told the committee of increased OMCG membership and participation in criminal activity in their respective states, and about the significant threat to community safety these gangs pose.

2.17 The quasi-military modes of organisation and discipline of OMCGs make them particularly difficult to deal with from a law enforcement perspective. Detective Superintendent Kim Porter, Divisional Superintendent, Organised Crime Division, Western Australia Police, explained that OMCGs emerged after the Vietnam War and were formed by people seeking a similar camaraderie to what they experienced in the military. He concluded: 'In fact...[OMCGs] are frighteningly like the police, except their motives are different. They are very strictly controlled and disciplined.'<sup>26</sup>

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22 NSW Police Force, *Submission 20*, p. 3.

23 Australian Crime Commission, *Submission 17*, p. 5.

24 *Committee Hansard*, 7 June 2007, p. 2.

25 *Committee Hansard*, 6 July 2007, p. 15.

26 *Committee Hansard*, 30 April 2007, p. 12.

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*Expansion of outlaw motorcycle gangs*

2.18 Assistant Commissioner Graeme Morgan, Commander, State Crime Command, NSW Police Force, told the committee that OMCGs have broadened from being motorcycle club members that are involved in crime to being leaders in syndicates that are national and international.<sup>27</sup>

2.19 This shift in the organising principles of OMCGs has seen an expansion of their criminal associations and 'all serious organised crime...bar none...have a linkage with outlaw motorcycle gangs'.<sup>28</sup> OMCGs continue to have significant connections with more traditional crime groups and seek to establish opportunistic connections to enhance their reputations and ability to perpetrate illegal activities:

I think the outlaw motorcycle gangs see it as improving their status within the serious organised crime world...From the perspective of the more traditional serious organised crime figures, they can call upon the outlaw motorcycle gangs for...debt collection, extortion, blackmail, intimidation and violence. There is no doubt that it is a two-way process and that the outlaw motorcycle gangs are infiltrating more widely into serious organised crime, but also the more traditional serious organised crime figures want to be seen and want to have linkages with outlaw motorcycle gangs.<sup>29</sup>

2.20 The committee also heard evidence that expansion of OMCG activities into businesses such as security companies is occurring in Western Australia.<sup>30</sup>

*Australian Crime Commission: focus on OMCGs*

2.21 The committee received evidence of continuing efforts to establish a better understanding of OMCGs in Australia. The ACC has established an outlaw motorcycle group task force. This intelligence and investigative task force is working closely with jurisdictions, and is able to use its coercive powers to support its operations.

*Ministerial Council for Police and Emergency Management—Police*

2.22 The committee was also informed that the Ministerial Council for Police and Emergency Management—Police (MCPEMP) has recently supported the establishment of a working party to assess the current measures in place to address OMCGs and, crucially, to develop recommendations on proposals to enhance police

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27 *Committee Hansard*, 7 June 2007, p. 16.

28 Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, *Committee Hansard*, 6 July 2007, p. 16.

29 Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, *Committee Hansard*, 6 July 2007, p. 16.

30 Assistant Commissioner Wayne Gregson, Portfolio Head, Specialist Crime Portfolio, Western Australia Police, *Committee Hansard*, 30 April 2007, p. 11.

and legislative responses.<sup>31</sup> The committee considers that such assessments at this level will contribute to the process of assessing and designing effective laws, and commends this recent undertaking.

### *Ethnic organised crime groups*

2.23 The committee was told that in recent years there has been an increase in ethnic based groups involved in serious organised crime. The challenges for law enforcement of ethnic organised crime groups include language, culture and community barriers to intelligence gathering, and particularly in infiltration and communication.<sup>32</sup>

### *Middle Eastern organised crime groups*

2.24 The existence of Middle Eastern Organised Crime (MEOC) groups was noted in NSW<sup>33</sup> and Western Australia,<sup>34</sup> and they are seeking to obtain a foothold in Queensland.<sup>35</sup> Both NSW and Queensland noted an increasing involvement between Middle Eastern groups and OMCGs. The major criminal activities of these groups include drug trafficking, property crime and vehicle rebirthing.

2.25 The committee notes that law enforcement for these groups presents significant challenges. Detective Superintendent Porter said of Middle Eastern groups in Western Australia:

We have some very strong Middle Eastern and other ethnic groups who...come from backgrounds where the police do not ask you questions; they shoot you. We do not have that ability and, as a consequence, they look at us, laugh and say: 'We know you can't do anything to us. We're not going to talk to you.'<sup>36</sup>

### *Asian organised crime groups*

2.26 Historically and stereotypically, Asian organised crime groups have been associated with extortion and protection rackets largely within their own communities. Evidence received by the committee suggests that these groups are involved in a broad range of activities including the manufacture, importation and trafficking of

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31 Mr Alastair Milroy, Chief Executive Officer, Australian Crime Commission, *Committee Hansard*, 6 July 2007, p. 29.

32 Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, *Committee Hansard*, 6 July 2007, p. 16.

33 Commissioner Ken Moroney, NSW Police Force, *Committee Hansard*, 8 June 2007, p. 2.

34 Detective Superintendent Kim Porter, Divisional Superintendent, Western Australia Police, *Committee Hansard*, 30 April 2007, p. 18.

35 Queensland Crime and Misconduct Commission, *Submission 8*, p. 9.

36 *Committee Hansard*, 30 April 2007, p. 12.

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amphetamine type substances (ATS),<sup>37</sup> fraud, identity crime and money laundering. They also appear to be involved in hydroponic cannabis growing.<sup>38</sup>

2.27 Further, the Western Australia Police reported that the increased demand for crystal methamphetamine in Australia is:

...being reflected in an increase in the number of attempted importations from Asian countries. Intelligence reports also lend support to the reputation of South East Asian syndicates based in WA being able to source high quality crystal methamphetamine'.<sup>39</sup>

### *Romanian organised crime groups*

2.28 The submission from the Western Australia Police notes that European crime syndicates, commonly of Romanian origin, are involved to a significant level in drug trafficking activities, particularly high purity methamphetamine. In particular, 'Romanian and Serbian crime syndicates remain prominent within WA and have strong links to international and interstate crime figures'.<sup>40</sup>

2.29 The Queensland Crime and Misconduct Commission also commented upon the involvement of Romanian crime groups in drug trafficking; the commission observed that their activities appear to be extending to Melbourne and Perth and involve drugs other than ATS, notably cocaine.<sup>41</sup>

### **Practices and methods of organised crime in Australia**

2.30 The ACC submission notes that, consistent with global trends, organised crime groups operating in Australia are adopting business practices and methodologies that enable them to adapt to changes in demand for illicit goods and services and, in some cases, influence the shape of the markets.<sup>42</sup>

2.31 In evidence to the committee, Mr Alastair Milroy, Chief Executive Officer, Australian Crime Commission, noted:

Organised crime is a business. Some of the people who run them are just as good at it as people who run businesses in the private sector.<sup>43</sup>

2.32 The business model and the use of legitimate business structures to commit organised crime were the subject of extensive comment during the inquiry.

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37 This represents a shift away from heroin.

38 Commissioner Ken Moroney, NSW Police Force, *Committee Hansard*, 8 June 2007, p. 2.

39 *Submission 15*, p. 2.

40 *Submission 15*, p. 3.

41 *Submission 8*, p. 9.

42 *Submission 17*, p. 6.

43 *Committee Hansard*, 6 July 2007, p. 34.

### *Infiltration of legitimate business*

2.33 Infiltration of legitimate business has always existed as an element of organised crime operations, primarily as a means to launder money and ultimately as a vehicle of movement into the legitimate economy.<sup>44</sup> Deputy Commissioner John Lawler, National Security, Australian Federal Police, told the committee that criminals might have a long term involvement with organised crime and, once they have accumulated sufficient wealth, either move into legitimate businesses or interweave their criminal activity with a legitimate business enterprise.<sup>45</sup> The 2005 report of the Corruption and Crime Commission of Western Australia makes a similar observation.<sup>46</sup>

2.34 The committee notes that the combination of legitimate business with organised crime activity supports money laundering, which is critical to enabling criminals to use their profits. The committee was informed that there is a move by organised crime into industries such as transport, the security industry and, more recently, finance, money lending and telecommunications for the purpose of laundering the proceeds of their criminal activities. This pattern is found across all jurisdictions within Australia as well as in countries such as the UK, Canada and New Zealand.<sup>47</sup>

2.35 The committee identified an increasing use of professional support to establish and maintain the business structures of organised crime groups. Recognisably commercial in nature, such arrangements involve 'delinquent professionals' such as IT practitioners, accountants and lawyers assisting organised crime groups.<sup>48</sup> The ACC argued:

[Such Assistance]...may be legitimate with the service provider unaware of the organised crime association, or collusive, where the service provider is a knowing participant in the criminal activity. Increasing complexity in the regulatory environment will continue to drive the demand for the acquisition of such professional services.<sup>49</sup>

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44 Mr Michael Monaghan, Deputy Commissioner, Australian Taxation Office, *Committee Hansard*, 5 July 2007, pp 29-30.

45 *Committee Hansard*, 5 July 2007, p. 67.

46 Corruption and Crime Commission of Western Australia, 'Report to the Joint Standing Committee on the Corruption and Crime Commission with regard to the commission's organised crime function and contempt powers', December 2005, p. 9.

47 Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, *Committee Hansard*, 6 July 2007, p. 15.

48 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, pp 65-67.

49 Australian Crime Commission, *Submission 17*, p. 6.

2.36 A similar development was identified as occurring internationally. For example, in Hong Kong organised crime groups are project driven and operate in a networked environment, which allows the assembly of expertise as required.<sup>50</sup>

2.37 Clearly, once organised crime groups or individuals become established within legitimate businesses it is far harder for law enforcement to investigate, detect, gather evidence and subsequently prosecute any illegal activities.<sup>51</sup>

### ***Transnational crime***

2.38 The role of globalisation in the expansion of serious and organised crime cannot be underestimated. The Attorney-General's Department noted that the same processes that support economic growth and diversification also provide opportunities for the participation of organised crime.<sup>52</sup>

2.39 The Australian Federal Police observed that such opportunities can flourish in locations with poor governance, justice systems and social conditions. 'Such environments both mitigate the risks of operation for organised crime groups and provide ready access to potential members'.<sup>53</sup>

2.40 In particular, the Queensland Police Service argued that political instability in the South Pacific region supports organised crime by providing offshore opportunities to produce and ship illegal drugs and precursor chemicals. Detective Chief Superintendent Barnett noted that 'Australia generally and Queensland specifically, due to its geographic proximity, loom as likely markets for both, based on the expanding demand for amphetamine type substances'.<sup>54</sup>

2.41 The committee heard that organised crime developments in Asia will be 'pivotal' to defining trends in Australia.<sup>55</sup> Further, as modern organised crime becomes increasingly internet based, as discussed in the following chapter, their activities are effectively 'borderless' and will be increasingly difficult to police and address.<sup>56</sup>

### ***Links between organised crime and terrorism***

2.42 While not central to this inquiry's terms of reference, terrorism's relationship to organised crime was canvassed. In particular, there is evidence that ideologically motivated groups are attempting to fund potential terrorist activities via partnerships with established organised crime groups. The Australian Federal Police submission

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50 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 64.

51 Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, *Committee Hansard*, 6 July 2007, p. 15.

52 *Submission 21*, p.5.

53 *Submission 16*, p. 5.

54 *Committee Hansard*, 7 June 2007, p. 1.

55 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 60.

56 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 68.

notes that, recently, philosophical beliefs have provided another significant motive for organised criminal activity. In this instance, the economic and social effects are potentially dramatic. Such groups may rely on criminal connections that are more motivated by financial return to provide resources for terrorist activity.<sup>57</sup>

2.43 The Attorney-General's Department submission links vulnerabilities to criminal activity with vulnerabilities to terrorist activity:

...many of the opportunities that may be exploited by organised criminal groups may also be exploited by terrorists. In 2002, the Council of Australian Governments (COAG) acknowledged this link in its Agreement on Terrorism and Multi-Jurisdictional Crime...The Agreement recognised that presumptions about terrorism that existed prior to 11 September 2001, in particular about the nature of its links with organised and multi-jurisdictional crime, were no longer valid...<sup>58</sup>

2.44 Professor Leslie Holmes, Deputy Director of the Contemporary Europe Research Centre at the University of Melbourne, also identified links between terrorism and organised crime. In his analysis, organised crime can link-up with terrorism through 'so-called transmutation'. He continued:

Not a lot of people know that the triads...were originally political activists who then switched to more economic activity, if you like, after they had largely achieved their ends. Much more recently, the IRA in Ireland and ETA, the Basque terrorist group, have become what one American analyst has called 'fighters turned felons', not completely but that transmutation is occurring.<sup>59</sup>

### *The ACC approach*

2.45 Mr Milroy emphasised that the targeting of criminal organisations is aimed not at specific identities or groups but at any potential for the committing of serious and organised crime. This is in keeping with the ACC's awareness of the changes to organised crime group membership and structure, as discussed above, and their practices and methods.<sup>60</sup>

## **Conclusion**

2.46 The committee received substantial evidence about the nature of organised crime groups in Australia and their methods of operation. Serious and organised crime groups are dynamic and motivated by profit, and have developed highly adaptable organisational structures and modes of operation. The current trend towards greater transnational crime has provided new opportunities for organised crime groups within Australia and internationally.

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57 *Submission 16*, p. 3.

58 *Submission 21*, p. 4.

59 *Committee Hansard*, 1 May 2007, p. 45.

60 *Committee Hansard*, 6 July 2007, p. 44.



2.47 While this chapter has described the characteristics of serious and organised criminal groups and how they operate, the following chapter examines the trends in their activities.



# Chapter 3

## Future trends in serious and organised crime

### Introduction

3.1 From the outset, it is difficult to predict accurately and in a detailed way the future trends in serious and organised crime. However, the committee has identified present and emerging activities of organised crime groups and has used this evidence to make observations about how these relate to likely future trends in the activities of organised crime.

### High-tech crime<sup>1</sup>

3.2 The inquiry found that high-tech crime is a major area of opportunity for organised crime groups to pursue existing and new types of crime. The evidence provided some idea of the potential scope of high-tech crime, which includes:

...electronic piracy; counterfeiting and forgery; credit card fraud...child pornography; communications in the furtherance of criminal conspiracies; electronic funds transfer fraud; money laundering; advance fee frauds, like the Nigerian 419 offences; online dealing in illicit products of all kinds, from Viagra to drugs and so on; intelligence and counterintelligence—[and] there is a lot going on there in terms of industrial espionage, formal intelligence and counterintelligence; and, I think, denial of service...<sup>2</sup>

3.3 The committee heard that there are two aspects of high-tech crime: enabling and facilitating. Technology enabled crime is where technology creates entirely novel opportunities for criminal gain; for example, phishing.<sup>3</sup> Technology facilitated crime occurs where technology facilitates traditional or known types of crime, such as using the internet to launder the proceeds of real-world crimes.<sup>4</sup>

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1 This report uses the term 'high-tech crime' as opposed to 'cybercrime'.

2 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 67.

3 'Phishing' is the act of 'sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft. The email directs the user to visit a website where they are asked to update personal information, such as passwords and credit card, social security, and bank account numbers, that the legitimate organisation already has. The website, however, is bogus and set up only to steal the user's information': Australian High Tech Crime Centre, <http://www.ahtcc.gov.au/glossary/>, viewed 5 September 2007.

4 Deputy Commissioner John Lawler, National Security, Australian Federal Police, *Committee Hansard*, 5 July 2007, p. 70.

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### *Incidence and growth of high-tech crime*<sup>5</sup>

3.4 New and improved technologies offer great potential for serious and organised crime groups to undertake their existing activities and to enable new means and methods of criminal gain.

...organised crime groups will continue to exploit society's increasing uptake of technology and the opportunities it provides to both target victims and make their own operations more efficient and secure.<sup>6</sup>

3.5 The Australian Institute of Criminology (AIC) submission highlights cost-benefit reasons for the growth in high-tech crime and argues that the movement by traditional transnational organised crime groups into fully-fledged high-tech crime will be determined as much by the diminished profitability, or increased risk, of real world criminal activities as it will by the innate attractiveness and relatively low risk of high-tech crimes.<sup>7</sup>

3.6 The committee notes that the benefits of technology are being delivered in near-equal measures to the criminal world as to legitimate business operations, and that developments in communications and information management, which have greatly enhanced the efficiency of legitimate businesses, are also being exploited by criminal organisations to enhance the efficiency and effectiveness of their own operations.<sup>8</sup> Advances in technology, readily available and often low cost, are increasing the effectiveness of many criminal activities.<sup>9</sup>

3.7 However, despite evidence of organised crime's growing online presence, organised crime groups have not as yet fully engaged with the online environment and still use the internet primarily to facilitate or commit real-world crimes.<sup>10</sup>

3.8 Nevertheless, once organised crime ultimately harnesses the online environment, the impact on society will be significant.<sup>11</sup> The committee heard that the this trend has already emerged with the activities of 'super-empowered criminals'—groups that use the internet to advertise their services to other criminal groups:

There have been examples of criminal elements (known colloquially as 'super-empowered criminals') operating in the online environment as

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5 The committee notes the recent release by the Australian Institute of Criminology of the paper 'The future of technology-enabled crime in Australia', *Trends & issues in crime and criminal justice*, no. 341, July 2007.

6 Commissioner Mick Keelty, Australian Federal Police, *Committee Hansard*, 5 July 2007, p. 53.  
7 *Submission 4*, p. 2.

8 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 65.

9 Australian Crime Commission, *Submission 17*, p. 8.

10 Mr Rob McCusker, Research Analyst, Transnational Crime, Australian Institute of Criminology, *Committee Hansard*, 5 July 2007, p. 89.

11 Mr Rob McCusker, Research Analyst, Transnational Crime, Australian Institute of Criminology, *Committee Hansard*, 5 July 2007, p. 89.

obtainers and disseminators of identity and identity-related information. Operation Firewall, for example, in 2004 in the US and Canada culminated in the arrest of 28 people from six countries for offences including the buying and selling of 1.7 million credit card numbers...<sup>12</sup>

### *Crime in virtual worlds*

3.9 High-tech crime is likely to pose considerable challenges to LEAs because the online environment blurs notions of identity and jurisdiction. A number of examples indicate the potential for technology to undermine some of the established foundations of Australia's criminal justice system.

3.10 One such example is the virtual world, such as *Second Life* or *World of Warcraft*. Large values of real-world money are transacted in virtual worlds. These developments make it difficult to identify offenders and capture virtual-world criminal communications.<sup>13</sup> Commissioner Mick Keelty, Australian Federal Police, commented that such developments had already changed the nature of how [the AFP] approached policing and how it would approach policing in the future.<sup>14</sup>

3.11 The jurisdictional issues raised by crime located in virtual worlds need to be settled so that clear approaches can be applied to the investigation and prosecution of online and high-tech crime:

...the internet poses a whole array of jurisdictional issues. One of the key planks in treating that risk...is to have strong linkages with our international counterparts and strong linkages with the attorneys-general departments and the departments of justice in the various jurisdictions, so that...we are able to nimbly, quickly and efficiently gather the data and the evidence that is needed to track these global criminals as they move in cyberspace.<sup>15</sup>

3.12 Detective Chief Superintendent Ross Barnett, Queensland Police Service, also drew attention to anticipated jurisdictional difficulties:

High take-up rates of home internet usage make the Queensland and Australian communities vulnerable to victimisation from groups who are often overseas based, making identification, enforcement, asset forfeiture and compensation action highly problematic.<sup>16</sup>

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12 Australian Institute of Criminology, *Submission 4*, p. 2.

13 Commissioner Mick Keelty, Australian Federal Police, *Committee Hansard*, 5 July 2007, p. 53.

14 *Committee Hansard*, 5 July 2007, p. 53.

15 Deputy Commissioner John Lawler, National Security, Australian Federal Police, *Committee Hansard*, 5 July 2007, p. 66.

16 *Committee Hansard*, 7 June 2007, p. 2.

### *Denial-of-service attacks*

3.13 Denial-of-service attacks involve the disruption of internet businesses and their services by concerted online attacks. Such attacks commonly involve botnets—remotely controlled individual computers—which are directed to the targeted website.<sup>17</sup> The sheer volume of traffic causes the target site to freeze, and in this way the attack causes commercial damage or facilitates extortion or some other offence. For example:

[One offender]...basically used thousands of computers as robots. He used their computer power to focus an attack on a particular enterprise in order to crash that enterprise, to bring that enterprise down so that they could not trade electronically, and he did that by stealing, without people knowing it, the computing power of thousands of individuals' PCs.<sup>18</sup>

3.14 Denial-of-service attacks have immense potential to bring down banking, finance and government systems. In a recent program on online crime on ABC Radio's *Background Briefing*, the view was expressed that America's internet security is extremely weak and could not withstand a concerted denial-of-service attack. Elsewhere, the government computer network of Estonia has been disabled using botnets; the attackers were thought to be an organised crime group.<sup>19</sup>

3.15 In the same program, Mr David Vaile, from the Cyberspace Law Policy Centre at the University of New South Wales, expressed concerns about the vulnerability of government IT security generally, and how this could ultimately undermine systems vital to the maintenance of national security:

I'm hearing more and more about specifically targeted...attackers trying to breach the IT security of government agencies. But the other national security issue is probably a wider one, and that's to do with critical infrastructure. Both the Internet in general and the electronic payment systems are at the heart [sic] of what you'd call critical financial infrastructure, and to the extent that malware and other sorts of threats to that system, or even just the confidence in that system, undermine the capacity of that infrastructure to work, then it's a threat to national infrastructure.<sup>20</sup>

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17 'Botnet' is jargon for a collection of software robots, or bots, which run autonomously. A botnet's originator can control the group remotely, usually for nefarious purposes. A botnet can comprise a collection of compromised computers running programs—referred to as worms, Trojan horses, or backdoors—under a common command and control infrastructure: Australian High Tech Crime Centre, <http://www.ahtcc.gov.au/glossary/#botnet>, viewed 5/09/2007.

18 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 67.

19 ABC Radio National, 'Your money dot con', *Background Briefing*, 24 June 2007, transcript, p. 4.

20 ABC Radio National, 'Your money dot con', *Background Briefing*, 24 June 2007, transcript, p.18.

3.16 The Attorney-General's Department submission notes that the potential for damage from such attacks develops in step with society's increasing reliance on electronic infrastructure for dealing with information, transacting business and communicating.<sup>21</sup> The committee concurs with the Attorney-General's Department conclusion that attacks on electronic infrastructure motivated by political, malicious or criminal agents could have considerable and threatening consequences for Australia in the future.<sup>22</sup>

3.17 The committee accepts that organised crime groups have rapidly pursued high-tech opportunities for the support and furtherance of their criminal activities, and concludes that there is a vast potential for such exploitation of technology in the future. The characteristics of modern organised crime groups appear well suited to exploiting a range of opportunities provided by the internet.

3.18 The committee believes that technology enabled crime is a significant trend and area of growth in the activities of organised crime groups in Australia. In this, the committee agrees with the majority of witnesses, who saw high-tech crime as a considerable present and future danger:

...looking ahead over the next two to three years, I do not see it getting better in terms of the way organised crime is going to play with these sorts of new technologies. I see it getting more dangerous.<sup>23</sup>

3.19 The committee therefore believes that it is essential for Australian police forces to have the workforce, skills and legislative environment that allow them to quickly identify, adapt and react to technology based crime. The committee examines the need for appropriate numbers and training for LEAs to counter high-tech serious and organised crime in depth in chapter 7. The committee commends the AFP and other state and territory police services and agencies that are directing resources at this growing and harmful area of crime.<sup>24</sup>

## Money laundering

3.20 Money laundering is a longstanding activity of organised crime groups that 'provides a cloak of legitimacy to wealth derived from crime and provides a funding base from which further criminal activity can be financed'.<sup>25</sup> The AIC submission notes:

The economic driver of serious and organised crime...remains a constant and this will continue to necessitate an understanding of money laundering typologies, both current and prospective.<sup>26</sup>

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21 *Submission 21*, p. 6.

22 *Submission 21*, p. 6.

23 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 69.

24 Commissioner Mick Keelty, Australian Federal Police, *Committee Hansard*, 5 July 2007, p. 53.

25 Australian Transaction Reports and Analysis Centre, *Submission 10*, p. 4.

26 *Submission 4*, p. 2.

3.21 A range of criminal activities are undertaken by organised crime groups solely to facilitate money laundering. For example, while identity fraud and credit card fraud may be used to steal funds from individuals, they may also be utilised to legitimise illegally obtained funds. Of all organised crime activities, money laundering is perhaps the most consistently evolving activity.

3.22 The Australian Crime Commission (ACC) indicated that the estimated amount of money laundered globally in one year ranges between \$500 billion and \$1 trillion. The likely extent of money laundering in and through Australia has been estimated to be at least \$3.5 billion and represents, among other consequences, a significant loss to taxation revenue. Furthermore, money laundering places a sizeable financial burden on associated regulatory and law enforcement response and control measures as well as on private sector companies.<sup>27</sup>

3.23 Much of the evidence received indicates a significant and growing nexus between money laundering and technology. For example, apart from money laundering opportunities through online banking and identity fraud, a range of new opportunities for organised crime groups to launder money are emerging:

One new prospective avenue for illicit transfer of money...is that of new payment methods (NPMs) such as internet payment systems, mobile payments and digital precious metals...Designed primarily to facilitate cross-border funds transfer they contain a number of potential risk factors:

- the distribution channel is the internet
- there is no face to face contact with the 'customer' (a process known as disintermediation)
- the NPM process operates through an open and accessible network.<sup>28</sup>

3.24 The AUSTRAC submission notes that developments in technology offer criminal groups anonymity, opacity and liquidity in their money laundering activities.<sup>29</sup> The committee considers that the migration towards electronic banking and funds transfer will see the continued escalation of this area of organised crime; it will provide an environment that will cloud financial trails and make the recovery of proceeds of crime by authorities difficult and protracted.

## **Identity crime**

3.25 Identity crime involves either the theft and fraudulent use of another's personal information or the manufacturing and use of entirely fictitious identities.<sup>30</sup> Identity theft is described as 'one of the world's fastest growing crimes'.<sup>31</sup>

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27 Australian Crime Commission, *Submission 17*, p. 8.

28 Australian Institute of Criminology, *Submission 4*, p. 2.

29 *Submission 10*.

30 NSW Police Force, *Submission 20*, p. 3.

31 Attorney-General's Department, *Submission 21*, p. 7.



3.26 Commissioner Ken Moroney,<sup>32</sup> NSW Police Force, highlighted the growth in identity crime and provided a useful overview of the various types of identity crime:

Identity crime is an issue of concern...[and] would appear to us to be becoming more prevalent. The use of stolen identity information to commit offences appears to be on the rise. Technology has enhanced criminal capability to produce false identities. We note the emergence of fraudulent identity manufacturers to service a number of separate organised crime groups at the one time. We also note the ease with which equipment capable of manufacturing identification can be bought...<sup>33</sup>

3.27 The Queensland Crime and Misconduct Commission rates the threat of identity crime as 'high' and as a priority for a whole-of-government response across Australia.<sup>34</sup> Incidents of identity theft and fraud are increasing, with the centralised online processing of banks and credit providers being chief targets.<sup>35</sup>

3.28 The illegal exchange and retrieval of personal information is also occurring,<sup>36</sup> with stolen identities being used as a means to commit further crimes.<sup>37</sup> The South Australia Police submission notes that advances in technology have enabled the production of better forgeries of identity documents.<sup>38</sup> This was confirmed by the South Australian Director of Public Prosecutions, who highlighted the use of forged identity documents to apply for personal loans:

...it has become a relatively easy matter for an offender to make an application for a personal loan or credit card with a significant credit facility either over the telephone, by facsimile or online...supported by forged documents as to the applicant's employment and financial status.<sup>39</sup>

3.29 The value of identity information to organised crime groups will result in the infiltration of legitimate businesses in order to access personal identity data.<sup>40</sup> The committee notes the involvement in this trend of transnational criminal groups:

This sharing has extended internationally, with evidence that international criminal syndicates have financed criminals to travel to Australia to commit identity theft offences.<sup>41</sup>

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32 The committee notes that Commissioner Ken Moroney has since retired from the NSW Police Force and acknowledges the long and valuable service he has given to law enforcement.

33 *Committee Hansard*, 7 June, 2007, p. 3.

34 *Submission 8*, p. 6.

35 Queensland Crime and Misconduct Commission, *Submission 6*, p. 1.

36 Mr Rob McCusker, Research Analyst, Transnational Crime, Australian Institute of Criminology, *Committee Hansard*, 5 July 2007, p. 95.

37 NSW Police Force, *Submission 20*, p. 2.

38 *Submission 7*, p. 6.

39 *Submission 6*, p. 1.

40 Western Australia Police, *Submission 15*, p. 3.

41 NSW Police Force, *Submission 20*, p. 4.

3.30 The anonymity and flexibility of the online environment suggests that identity crime is likely to continue to expand and to present ongoing costs and challenges for LEAs:

There are any number of variations of...[identity crime] limited only by the imagination of the offenders and the credulity of the potential victims. In most cases the relative anonymity afforded by electronic banking and communications is used to advantage by the offenders. This...can be difficult to prove and is investigated and prosecuted at great expense to the community.<sup>42</sup>

3.31 The committee considers that the intersection of technology and identity crime is a significant challenge for Australian authorities.<sup>43</sup> Identity crime is likely to be a major area of future organised crime activity, particularly as a facilitator of money laundering activities and the illegal attainment of funds, goods and services.

### **Credit card fraud**

3.32 The escalation in credit card fraud is connected to the growth of opportunities for identity and fraud crime over the internet.<sup>44</sup> In a report on its inquiry into cybercrime, this committee previously observed:

With the credit card purchasing power...[comes] the potential for large scale fraud.<sup>45</sup>

3.33 The use of credit cards offers multiple ways to commit offences. For example, certain groups are engaging in the online theft and sale of credit card information to other criminal groups. Credit card fraud is often associated with identity fraud, and involves the fraudulent purchase of goods over the internet. In yet another example of organised crime's adaptable opportunism, recent security enhancements incorporating security chips and PINs in credit cards are being circumvented by online 'card not present' transactions.<sup>46</sup>

### **Financial crime**

#### *Tax-related crime*

3.34 The Australian Taxation Office (ATO) reported a shift from opportunistic crime to organised crime, and an increasing degree of sophistication, organisation and

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42 Office of the Director of Public Prosecutions South Australia, *Submission 6*, p. 1.

43 Queensland Crime and Misconduct Commission, *Submission 8*, p. 5.

44 Detective Chief Superintendent Ross Barnett, Queensland Police Service, *Committee Hansard*, 7 June 2007, p. 2.

45 Parliamentary Joint Committee on the Australian Crime Commission, *Cybercrime*, March 2004, p. 41.

46 Mr Rob McCusker, Research Analyst, Transnational Crime, Australian Institute of Criminology, *Committee Hansard*, 5 July 2007, p. 95.

collusion in taxation crimes.<sup>47</sup> Evidence suggests a relationship between taxation and other forms of crime—notably, money laundering and identity theft.<sup>48</sup> Tax crime usually involves the theft of another's identity to make a false taxation refund claim. The committee heard from the ATO that organised crime groups are systematically attacking the process:

We have seen...some fairly sophisticated attempts, where it almost looks like they have been piloting our system and trying a few to see if they get under the radar before going for one big attack. We have seen an instance of an operation almost like a call centre to change details in the system.<sup>49</sup>

### *Superannuation-related crime*

3.35 The introduction in Australia of compulsory superannuation has seen massive wealth accumulate in superannuation funds. Considering the opportunism of organised crime groups, the committee considers it highly likely that such funds could be the target of serious and organised criminal activity. Additionally, retirees who are the recipients of a substantial superannuation payment may also be targeted by organised crime groups. The ACC submission notes:

Organised criminal groups will also continue to be attracted to opportunities for substantial levels of fraud across the financial sector (including superannuation, banks and securities) and in other related industries such as telecommunications and insurance. Characteristics of these sectors that are especially attractive to criminal groups include the availability of 'arm's length' transactions and the growth, size and complexity of the markets, particularly those that facilitate cross-border trade.<sup>50</sup>

## **Illicit drugs**

### *Amphetamines and other synthetic drugs*

3.36 Illicit drugs have long been a significant aspect of organised criminal activity in Australia. In the 1970s, three royal commissions investigated organised crime and the drugs trade, finding substantial connections between the two.<sup>51</sup> Mr Christopher Keen, Director, Intelligence, Queensland Crime and Misconduct Commission, bluntly observed that illicit drugs are 'the major cash cow of organised crime';<sup>52</sup> and AOSD-

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47 Ms Jennie Granger, Second Commissioner of Taxation, Australian Taxation Office, *Committee Hansard*, 2007, 5 July 2007, p. 24.

48 Ms Jennie Granger, Second Commissioner of Taxation, Australian Taxation Office, *Committee Hansard*, 2007, 5 July 2007, p. 25.

49 Ms Jennie Granger, Second Commissioner of Taxation, Australian Taxation Office, *Committee Hansard*, 2007, 5 July 2007, p. 27.

50 *Submission 17*, p. 7.

51 Corruption and Crime Commission of Western Australia, 'Organised crime report to the Joint Standing Committee on the Corruption and Crime Commission', December 2005, p. 2.

52 *Committee Hansard*, 7 June 2007, p. 44.

related crime is the most significant organised crime activity in Australia at present.<sup>53</sup> Organised crime groups have gravitated toward the production of AOSD,<sup>54</sup> with OMCs, in particular, largely responsible for their production and distribution.<sup>55</sup>

3.37 In the context of transnational crime, Australia is geographically vulnerable to the illicit drug trade, as pursued by organised crime groups:

Political instability in the South Pacific region presents opportunities for organised crime groups to base offshore operations focused on the large-scale production and/or transshipment of illegal drugs and precursor chemicals. Australia generally and Queensland specifically, due to its geographic proximity, loom as likely markets for both, based on the expanding demand for amphetamine type substances.<sup>56</sup>

3.38 The committee notes that the locating of illicit drug activities in overseas jurisdictions has the potential to increase, following recent moves to combat AOSD, such as the Project STOP program, which is a reporting initiative designed to reduce access to precursor chemicals in Australia.<sup>57</sup> It is likely that organised crime groups have already adjusted their production processes in response to stricter regulatory and legislative schemes.<sup>58</sup>

3.39 Given the importance of the profit motive to organised crime groups, these groups are not attached to a particular drug or method of production. These groups are already altering their behaviours in response to anti-AOSD initiatives:

...[organised crime groups] are very market driven, so where there is an opportunity to make inroads into a market—we are talking crime markets here, drug markets—we are seeing a move back into large-scale cannabis production. We have had some detections recently indicating that. Where there is money to be made, they have the distribution networks that they can utilise and exploit to be able to meet market demand.<sup>59</sup>

3.40 The committee notes that the involvement of organised crime in the illicit drug market is long established, and this is unlikely to change fundamentally in the

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53 Detective Chief Superintendent Ross Barnett, Queensland Police Service, *Committee Hansard*, 7 June 2007, p. 10.

54 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the manufacture, importation and use of amphetamines and other synthetic drugs (AOSD) in Australia*, 28 February 2007, pp 10-20.

55 Detective Superintendent Stephan Gollschewski, Queensland Police Service, *Committee Hansard*, 7 June 2007, pp 29-30.

56 Detective Chief Superintendent Barnett, Queensland Police Service, *Committee Hansard*, 7 June 2007, p. 1.

57 Detective Chief Superintendent Barnett, Queensland Police Service, *Committee Hansard*, 7 June 2007, p. 2.

58 Commissioner Ken Moroney, NSW Police Force, *Committee Hansard*, 8 June 2007, p. 2.

59 Detective Superintendent Stephan Gollschewski, Queensland Police Service, *Committee Hansard*, 7 June 2007, p. 24.

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foreseeable future. Whether it is new or newly in-vogue drugs, such as AOSD, the primacy of drugs as the economic engine of organised crime will undoubtedly continue.

3.41 The committee draws attention to its recent inquiry into the manufacture, importation and use of AOSD in Australia, in which it canvasses the growing trend in the supply and use of AOSD.<sup>60</sup>

## **Paedophilia**

### *Online paedophilia*

3.42 New technology has allowed the online and offline activities of paedophiles to converge. The online environment supports the easy exchange of images and information related to the procuring and abuse of children, and allows predators to groom children for future contact. The online environment presents an area of escalating risk to children.<sup>61</sup>

3.43 Commissioner Keelty outlined the issues for policing arising from these new forms of criminal congregation, communication and behaviour:

This convergence...is a new phenomenon and makes evidence gathering quite difficult. It will be a problem for us into the future, as will be the simple art of telephone interception and listening device activity. If you think about it, a lot of that activity could actually happen in the virtual world, where it will be difficult, if not almost impossible, to prove who indeed has had the conversations or who indeed has been part of the conspiracy...<sup>62</sup>

3.44 The internet is a 'powerful distributive network' for pornography.<sup>63</sup> The potential for this environment to provide paedophiles with the means of organisation and communication, as well a new forum for exchanging information on and targeting of victims is a development of great concern.

### *Family-based ritual child sexual abuse*

3.45 The committee received a submission from the Advocates for Survivors of Child Abuse (ASCA), which raised allegations of organised family-based paedophilia, involving the exchange of children for the purposes of ritual or ongoing sexual abuse.

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60 For a detailed examination of the AOSD market in Australia see Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the manufacture, importation and use of amphetamines and other synthetic drugs (AOSD) in Australia*, February 2007.

61 Detective Superintendent Barnett, Queensland Police Service, *Committee Hansard*, 7 June 2007, p. 2.

62 *Committee Hansard*, 5 July 2007, p. 66.

63 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 55.

3.46 Mr Michael Salter, a member of the ASCA board, informed the committee that these groups employ psychologically damaging methods to subordinate their child victims and undermine their trust of law enforcement and health professionals. Such acts were claimed to successfully prevent the reporting and subsequent detection and prosecution of the offences alleged.<sup>64</sup>

3.47 The committee regards allegations of paedophilia with the utmost seriousness, and has carefully considered the evidence of ASCA as provided in their submission and at the Sydney hearing. The committee sought to establish the extent to which family-based sexual abuse of children was organised by criminal groups. At the Brisbane hearing, Ms Elizabeth Foulger, Manager, Intelligence, Queensland Crime and Misconduct Commission, told the committee that investigations of paedophile groups in Queensland had revealed a culture of 'loose associations' among paedophiles, as opposed to highly developed or sophisticated networks of offenders.<sup>65</sup>

3.48 Ultimately, the committee was unable to determine the extent of organised intra-familial ritual sexual abuse of children on the evidence received. The committee commends ASCA for its support of around 600-800 members, and acknowledges that the service this organisation renders is done without any government assistance. The committee believes that governments should give consideration to ensuring that funding for organisations such as ASCA is available.

## **Conclusion**

3.49 The committee is concerned about the developing trends in serious and organised crime. Regardless of the type of activity, the increasing use of technology, transnational connections and fluidity of organised crime groups will make law enforcement's task of policing organised crime's illicit activities more difficult. The committee considers that trends in serious and organised crime will require an increasingly coordinated approach involving partnerships across agencies and jurisdictions as well as internationally. In the following chapter, the committee highlights matters around which successful strategies for countering serious and organised crime should be built.

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64 *Committee Hansard*, 7 June 2007, pp 33-34.

65 *Committee Hansard*, 8 June 2007, p. 52.

## Chapter 4

### Strategies for countering future serious and organised crime

4.1 During the course of the inquiry, the committee heard from a range of law enforcement agencies (LEAs) across the Australian jurisdictions, and from a range of academics and experts, and attempted to explore strategies that could be undertaken to counter the emerging trends in serious and organised crime. It is the committee's primary concern that those we ask to deal with the impact of serious and organised crime are best equipped to do so.

4.2 The submission from the South Australia Police argues the need to establish an agreed philosophical basis across all jurisdictions that will guide and underpin interventions in this area of crime. It suggests that such a philosophical basis must seek to:

- achieve recognition by governments and law enforcement that effective intervention is not necessarily confined to apprehension and imprisonment;
- understand the business that organised crime is in, recognise opportunities for intervention and task those with the necessary skills and legislative support to undertake the activity;
- intervene at the earliest opportunity in enterprises such as drug manufacture;
- acknowledge that deployment of finite law enforcement resources must be to those interventions that have the most disruptive effect on organised crime;
- achieve recognition by regulatory agencies including those that issue forms of identity that they are part of the solution;
- establish a consensus that proof-of-identity documents must incorporate biometrics and other emerging technologies;
- establish a 'joined up' approach between state and Commonwealth law enforcement and regulatory agencies within and across jurisdictions;
- coordinate intervention activities between agencies to optimise outcomes;
- establish a 'joined up' approach between ministerial bodies such as the Ministerial Council for Police and Emergency Management—Police, the Standing Committee of Attorneys General and the Ministerial Council on Drug Strategy;
- remove the incentive to engage in profit motivated serious and organised crime by the confiscation of unexplained wealth;

- ensure that organised crime cannot engage in legitimate business structures and practices that facilitate crime and the protection of proceeds and intervene at the earliest opportunity in attempts by crime entities to establish such structures;
- recognise that organised crime depends on professional service providers in the business and legal environments;
- achieve acceptance by professional bodies that there are ethical and professional boundaries within which their members can extend assistance to clients;
- establish effective and uninhibited exchange, access to and collation of information about criminal activity, associated money movement and those that engage in it;
- maintain a legislative environment in which the inhibitions created by state and territory boundaries are minimised;
- establish a legislative environment that accepts that some intrusions into privacy is part of the price paid for safer communities; and
- engage law enforcement practitioners in the development of legislation intended to intervene in organised crime.<sup>1</sup>

4.3 The committee agrees with many of the issues raised by the South Australia Police, and believes that these must be addressed in order to develop effective strategies to counter serious and organised crime. Particular emphasis must be placed on dealing with information exchange, the harmonisation of legislative and operational approaches and the mechanisms required to achieve this.

4.4 Strategies to counter future serious and organised crime will continue to require LEAs, agencies and the private sector to develop strategic partnerships. The Australian Federal Police (AFP) actively pursues a strategy of establishing partnerships in fulfilling its law enforcement responsibilities. These partnership activities include:

- providing direct operational, technical and forensic support;
- enhancing the number and nature of formal relationships with domestic and international police services and regulatory bodies;
- establishing joint strike teams on a range of crime types, involving the Australian Crime Commission (ACC), state and territory police and/or regulatory agencies;
- engaging actively with partner agencies in working groups on key issues;

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1 South Australia Police, *Submission 7*, pp 15-16.



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- hosting collaborative arrangements such as the Australian High Tech Crime Centre and managing Australia's Interpol and Europol interactions;
  - providing capacity building in resources, training, and mentoring to regional agencies to assist in strengthening their intelligence, investigative, forensic, and technical capabilities; and
  - funding and contributing to transnational crime and cooperation centres in key Asia-Pacific locations.<sup>2</sup>

4.5 Similarly, at a state level, LEAs are increasingly forming partnerships with a range of sectors and across jurisdictions in order to address serious and organised crime within their individual jurisdictions:

The strategic partnership between NSW Police and government at both state and federal level is essential in order to develop effective policy and legislation to address emerging threats. The ongoing development of networking and information sharing protocols between partner agencies and increased liaison with industry in select fields will facilitate targeting of organised crime networks on a wider scale and provide greater options for investigations.<sup>3</sup>

4.6 The ACC outlined that its multi-agency ACC Board approved task force approach has provided the mechanism through which a coordinated and targeted response to serious criminal activity can be achieved in a time critical environment. The strategy of engaging partner agencies, who supply resources commensurate to the level and nature of the targeted activity within their jurisdiction or sphere of responsibility, has proved extremely successful. The task force model is an intelligence-based process that involves:

- identifying and profiling nationally significant criminal groups, including developing insights into their activities, structures and methodologies;
- assessing the level of threat represented by each group;
- considering and selecting operational response options in relation to those groups that represent the highest threat;
- building a multi-disciplinary team that includes the specific skill sets required to disrupt the identified high threat groups; and
- conducting investigations and operations utilising various intelligence and evidence collection methods, including the coercive powers.<sup>4</sup>

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2 Australian Federal Police, *Submission 16*, p. 5.

3 NSW Police Force, *Submission 20*, p. 4.

4 Australian Crime Commission, *Submission 17*, p. 12.

4.7 The ACC submission further notes the importance of collaboration between law enforcement and wider government and industry. This is seen as vital to generating effective responses to serious and organised crime, both in building the understanding of the changing criminal environment and in developing strategies that combine the strengths of operational law enforcement activity, regulatory and legislative change and community involvement. Partnerships between law enforcement, industry specialists and government offer the opportunity for law enforcement to build its capability and to increasingly access specialised skills and tools.<sup>5</sup>

## **Conclusion**

4.8 The committee has not attempted to list exhaustively the programs and legislative reforms aimed at addressing serious and organised crime canvassed in the evidence received. Rather, chapters 6 and 7 will, in examining the adequacy of legislative and administrative arrangements, highlight specific strategies in areas where the committee sees potential for a contribution to countering future serious and organised crime.

4.9 While the committee appreciates the need for partnerships and cross-agency and multi-jurisdictional taskforces, it is extremely concerned that there is a broad range of cross-jurisdictional issues that must be resolved before more streamlined strategies to address the emerging trends in serious and organised crime can be effectively implemented.

4.10 It is the committee's opinion that the current federated system of law enforcement creates obstacles for LEAs and opportunities for serious and organised crime groups. Consequently, the cost of organised crime to society, and particularly the cost of countering organised crime into the future, continues to escalate. These issues are discussed in the following chapter.

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5 *Submission 17*, p. 14.

# Chapter 5

## The cost of countering future organised crime

### Introduction

5.1 The economic cost of countering current and future organised crime is difficult to quantify. This is due to the fact that the activities of organised crime cover a range of areas such as organised fraud, money laundering, bribery, corruption of public officials and illicit drug manufacture, importation and distribution.<sup>1</sup> The cost of organised crime also encompasses lost productivity, the cost of law enforcement and judicial systems and the profound social costs borne by individuals and communities.

5.2 The committee examined, in broad terms, the cost of serious and organised crime to Australian society as part of considering whether the efforts of Australian policymakers and law enforcement agencies (LEAs) against organised crime will match sufficiently the scope of the problem in the future. There is no doubt that organised crime imposes vast costs on all sectors of Australian society.

### The economic cost

5.3 The committee received very little detailed evidence on the future economic costs of combating serious and organised crime. These costs, at a national and state and territory level, are diffuse and difficult to quantify.<sup>2</sup>

5.4 Mr Frank Costigan QC, appearing in a private capacity, observed that the weapons used in fighting organised crime are found in numerous agencies and are therefore considerable.<sup>3</sup> The Australian Transaction Reports and Analysis Centre (AUSTRAC), Australia's specialist financial intelligence unit, whose purpose is to detect and counter money laundering and the financing of terrorism, illustrated the significant cost to the Commonwealth Government of funding departments and agencies to undertake their role in addressing organised criminal activity.<sup>4</sup>

5.5 The Commonwealth Government has agreed to increase appropriations to fund anti-money laundering and counter-terrorism financing (AML/CTF) reforms. AUSTRAC's total appropriation funding until 2010 is:

- 2006-07: \$36.693 million;
- 2007-08: \$59.274 million;
- 2008-09: \$54.928 million; and

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1 Western Australia Police, *Submission 15*, p. 4.

2 Western Australia Police, *Submission 15*, p. 4.

3 *Committee Hansard*, 1 May 2007, p. 36.

4 *Submission 10*, p. 3.

- 2009-10: \$56.136 million.<sup>5</sup>

5.6 The escalating cost of combating serious and organised crime over time is demonstrated by a comparison of the combined budget allocations for the range of agencies that are, to varying degrees, responsible for the dismantling and disruption of serious and organised crime. The committee compared the budget allocations for the 1997-98 and 2007-08 financial years of the Australian Crime Commission (ACC),<sup>6</sup> the Australian Federal Police (AFP), CrimTrac<sup>7</sup> and AUSTRAC in order to estimate the increase in the core expense of fighting organised crime.<sup>8</sup>

5.7 The figures for 1997-98 are based on the budget allocations for that year, which appear in the various annual reports, and include additional estimates figures. They are:

- AFP: \$256.278 million;<sup>9</sup>
- National Crime Authority (NCA): \$43.236 million;<sup>10</sup> and
- AUSTRAC: \$8.305 million.<sup>11</sup>

5.8 Total budget spending for the NCA, the AFP and AUSTRAC in the 1997-98 budget year was \$307.8 million.

5.9 The budget figures for 2007-08 were taken from the portfolio budget statements for the Attorney-General's Department.<sup>12</sup> They show the following funding figures:

- ACC: \$96.2 million;<sup>13</sup>
- AFP: \$975.801 million plus a departmental capital equity injection of \$90.066 million;<sup>14</sup>

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5 Australian Transaction Reports and Analysis Centre, *Submission 10*, p. 6.

6 The Australian Crime Commission replaced the National Crime Authority in 2003; the committee has used the latter's budget figures for 1997-98.

7 CrimTrac was established in 2002.

8 The committee notes that accrual accounting was introduced after the 1997-98 financial year.

9 Australian Federal Police, *Australian Federal Police Annual Report 1997-98*, p. 16, [http://www.afp.gov.au/about/publications/annual\\_reports/afp.html](http://www.afp.gov.au/about/publications/annual_reports/afp.html), viewed 3 September 2007.

10 National Crime Authority, *National Crime Authority Annual Report 1997-98*, p. 61.

11 Australian Transaction Reports and Analysis Centre, *AUSTRAC Annual Report 1998-99*, p. 155, [http://www.austrac.gov.au/annual\\_report.html](http://www.austrac.gov.au/annual_report.html), viewed 3 September 2007. Note there is no online report for 1997-98. However, the figure for 1997-98 is quoted in the 1998-99 annual report, and it is this figure which has been used.

12 Attorney-General's Department, Portfolio Budget Statement 2007-08, <http://www.ag.gov.au/www/agd/agd.nsf/AllDocs/A47E49EA0B93FFE8CA2572D50006682E?OpenDocument>, viewed 3 September 2007.

13 Attorney-General's Department, Portfolio Budget Statement for the ACC 2007-08, p. 106, <http://www.ag.gov.au/www/agd/agd.nsf/AllDocs/A47E49EA0B93FFE8CA2572D50006682E?OpenDocument>, viewed 3 September 2007.

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- AUSTRAC: \$59.37 million;<sup>15</sup> and
  - CrimTrac: \$3.181 million.<sup>16</sup>

5.10 The total allocation for the four agencies for 2007-08 is \$1.224 billion.<sup>17</sup> While this figure is a useful indicator, it should not be considered definitive. The committee acknowledges that these allocations cover a range of activities not solely directed to addressing serious and organised crime. However, they are indicative of the massive and escalating investment in specialised law enforcement agencies, much of which is directed to addressing organised crime. Conversely, the figure of \$1.224 billion does not reflect the expenditure of non-police agencies in relation to organised crime. The Australian Customs Service (Customs), for example, has the responsibility of maintaining the integrity of Australia's borders. This, in practical terms, is a major involvement in preventing the movement of illicit and dangerous goods by organised crime into Australia, and the related costs could be legitimately included in the comparison of budget allocations for organised crime conducted above.

5.11 The cost to health services of dealing with drug abuse is another consequence of organised crime. The committee notes the difficulty in quantifying this amount, as there are many agencies involved, both state and Commonwealth. In its report into amphetamines and other synthetic drugs, the committee commented extensively on the cost implications of drug use, not only in relation to health service providers and treatment facilities but also in relation to the cost of preventative programs that emphasise the health risks associated with drug use.<sup>18</sup>

5.12 The cost of countering serious and organised crime to law enforcement agencies is also significant. The South Australia Police submission, while highlighting the difficulty of putting a precise figure on countering organised crime, argues that the direct and indirect annual expenditure on organised crime in SA is around \$15.6 million.<sup>19</sup> The Western Australia Police (WAPOL) submitted that the amount

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14 Attorney-General's Department, Portfolio Budget Statement for the AFP 2007-08, p. 167, <http://www.ag.gov.au/www/agd/agd.nsf/AllDocs/A47E49EA0B93FFE8CA2572D50006682E?OpenDocument>, viewed 3 September 2007.

15 Attorney-General's Department, Portfolio Budget Statement for AUSTRAC 2007-08, p. 256, <http://www.ag.gov.au/www/agd/agd.nsf/AllDocs/A47E49EA0B93FFE8CA2572D50006682E?OpenDocument>, viewed 3 September 2007.

16 Attorney-General's Department, Portfolio Budget Statement for CrimTrac 2007-08, p. 299, <http://www.ag.gov.au/www/agd/agd.nsf/AllDocs/A47E49EA0B93FFE8CA2572D50006682E?OpenDocument>, viewed 3 September 2007. The allocation for CrimTrac is predicated on CrimTrac raising \$39,692 million in services sold.

17 This figure does not include the amounts for additional estimates; however, the committee does not consider this likely to have a significant effect.

18 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the manufacture, importation and use of amphetamines and other synthetic drugs (AOSD) in Australia*, 28 February 2007.

19 *Submission 7*, p. 5.

specifically directed to organised crime in WA in 2006 was approximately \$4.2 million.<sup>20</sup> The Queensland Police Service has an annual budget of \$1.4 billion, of which the State Crime Operations Command, which deals specifically with organised crime, receives \$58.438 million.<sup>21</sup>

5.13 The committee heard that these costs will increase significantly in the future across all Australian jurisdictions.<sup>22</sup> In part, these increases will occur as a result of the increasing sophistication and transnational nature of serious and organised crime groups, and the equivalent level of technological and international solutions that will be required in response.<sup>23</sup>

5.14 The Western Australia Police submission notes that domestic organised crime groups such as OMCGs will also make considerable demands on the budgets of LEAs in the future, as the activities of these groups continue to cross jurisdictional boundaries, and they increase their use of technology to counter law enforcement efforts:

Given the current climate of increased co-operation between O[M]CGs, the emergence of technologies which make traditional police work difficult and the large economic incentives connected with organised crime, it should be noted that a significant increase in law enforcement resources will be necessary to counter/prevent the activities of O[M]CGs. This cost is anticipated to increase year by year.<sup>24</sup>

5.15 The national nature of organised crime, whereby criminal groups do not respect jurisdictional boundaries, has seen a shifting of responsibility between the various levels of government. Mr Mark Burgess, Chief Executive Officer, Police Federation of Australia, observed:

...the lines of demarcation between Local, State & Federal Governments in respect to law & order issues are becoming increasingly blurred...crime does not operate on State boundaries. It transcends not only State borders, but also national boundaries. Crime undermines the security of Australia and Australians.<sup>25</sup>

5.16 The committee notes that state and territory governments experience a pull of resources away from the more traditional areas of local policing toward high-end organised and serious crime:

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20 *Submission 15*, p. 4.

21 Detective Chief Superintendent Ross Barnett, Queensland Police Service, *Committee Hansard*, 7 June 2007, p. 25.

22 Mr Mike Silverstone, Executive Director, Corruption and Crime Commission of Western Australia, *Committee Hansard*, 30 April 2007, p. 26.

23 NSW Police Force, *Submission 20*; Australian Crime Commission, *Submission 17*; Australian Federal Police, *Submission 16*.

24 *Submission 15*, p. 4.

25 *Submission 5*, p. 3.

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The economic cost of addressing crime will continue to be a major drain in the future, particularly as we see the state[s] moving into roles which have traditionally been those of Commonwealth agencies, and probably because of the Commonwealth agencies' commitments to things which were, a few years ago, inconceivable.<sup>26</sup>

5.17 The cost borne by state and territory police forces for obtaining telecommunications data, which is largely required as a result of policing the activities of serious and organised crime groups, illustrates the escalating cost to state and territory police.

*The cost of obtaining telecommunications data*

5.18 Serious and organised crime groups are increasingly exploiting mobile phone technology to communicate and to facilitate their activities. Police access to telecommunications is expensive and draws valuable resources away from more traditional areas of policing.<sup>27</sup> Detective Superintendent Mark Porter, State Intelligence Division, Victoria Police, told the committee that the cost of obtaining such information is significant and, over the last three years, has consistently increased:

Our cost so far was just over \$500,000 at the end of March [2007], but I believe the projection is approaching \$800,000 for a full 12 months, just for telephone checks.<sup>28</sup>

5.19 Chief Commissioner Christine Nixon, Victoria Police, highlighted the cost not only to Victoria Police but also to a range of agencies:

It is a key investigation tool for us...[The figure cited above] is just Victoria Police costs, let alone Federal Police costs and other people's costs...We believe that access is important. But the cost to us of getting that kind of information continues to escalate.<sup>29</sup>

5.20 In NSW, the committee also heard about the significant cost imposed on police services for telecommunications data as part of the efforts to address serious and organised crime:

...for the financial year ended 30 June 2006, the cost to the NSW Police Force of authorised telecommunications interception was \$1.63 million. As at 30 April this year it is \$1.43 million...These costs are borne by the agency as part of its focus and direction towards organised crime.<sup>30</sup>

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26 Assistant Commissioner Wayne Gregson, Portfolio Head, Specialist Crime Portfolio, Western Australia Police, *Committee Hansard*, 30 April 2007, p. 3.

27 Detective Superintendent Kim Porter, Divisional Superintendent, Organised Crime Division, Western Australia Police, *Committee Hansard*, 30 April 2007, p. 18.

28 *Committee Hansard*, 1 May 2007, p. 32.

29 *Committee Hansard*, 1 May 2007, p. 20.

30 Commissioner Ken Moroney, NSW Police Force, *Committee Hansard*, 8 June 2007, p. 10.

5.21 The committee was advised that, under current arrangements for obtaining telecommunications data, telecommunications companies are required by the *Telecommunications Act 1997* to provide 'reasonable necessary assistance' to LEAs to ensure an interception capability for any service provided to the public, and to document the extent and scope of the assistance they will provide under an interception capability plan administered by the Attorney-General's Department.<sup>31</sup> Provision of such information occurs on a cost recovery basis, with LEAs able to seek review by the Australian Communications and Media Authority (ACMA) of the costs being charged by a carrier.<sup>32</sup>

5.22 The committee considers that the provision of telecommunications data is a vital necessity to effectively deal with organised crime groups and criminal activity. The committee acknowledges that police budgets are affected by the cost of obtaining telecommunications data and that the high cost of obtaining this information is drawing resources away from more traditional areas of state policing.

5.23 Equally, the committee recognises that requirements to collect, retrieve and provide telecommunications data represent a commercial impost on telecommunications companies. The committee believes that a balance between the public interest in enabling police to access telecommunications data and the commercial interests of telecommunications providers in being free of regulatory and administrative burdens is best achieved through the Attorney-General's Department, LEAs and telecommunications companies continuing to work together under the current model to resolve any issues of cost, access or regulatory burden.

### **Recommendation 1**

**5.24 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.**

### **Undermining the integrity of political and institutional systems**

5.25 Beyond the issue of financial cost, the committee considered evidence going to the various significant social costs of serious and organised crime. The late Mr Athol Moffitt observed that organised crime has the capacity to infiltrate political and institutional systems to devastating effect:

Organised crime differs from other forms of crime in possessing this capacity to infiltrate a nation's political and institutional systems, and unless

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31 Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch, Attorney-General's Department, *Committee Hansard*, 5 July 2007, p. 13-14.

32 Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch, Attorney-General's Department, Attorney-General's Department, *Committee Hansard*, 5 July 2007, p. 14.



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eradicated by measures which are not a compromise, eventually to paralyse them.<sup>33</sup>

5.26 The committee notes that the potential for organised crime networks to damage the integrity of political and institutional systems is considerable. In essence, the infiltration of public institutions by organised criminal groups—for example through the 'corruption of public officials'<sup>34</sup>—undermines public confidence and trust in those institutions. In Melbourne, Chief Commissioner Nixon told the committee:

[The]...issue of growing organised serious crime really comes at the heart of policing. It undermines public confidence in not only police institutions but also many other government institutions and business as well...<sup>35</sup>

5.27 The Australian Federal Police submission also identifies significant potential interruption of orderly and good government:

The principal motive of the vast majority of organised crime groups, including those operating in Australia, has traditionally been financial return. Without address, this often limitless pursuit of financial return has, in its extreme, the potential to result in organised crime groups affecting the delivery of good government, government services and effective law enforcement and justice.<sup>36</sup>

### **Undermining the integrity of financial markets and the business sector**

5.28 The committee notes that organised and serious crime can inflict considerable harm on Australia's and international financial markets. Dr George Gilligan has argued that the cost of financial crime to Australia includes:

- costs in anticipation of crime, such as insurance and security expenditure, which is borne largely by potential victims;
- costs as a consequence of crime, such as damage to reputation and property loss, which are borne largely by actual victims; and
- costs in response to crime, such as the costs of the justice process, which are borne both by the state and civil actors.<sup>37</sup>

5.29 The integrity of the nation's financial institutions can be eroded due to the undermining of currencies and interest rates, and the effect on legitimate small businesses of the unfair business advantage of laundering money.<sup>38</sup>

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33 Mr Athol Moffitt, *A quarter to midnight, the Australian crisis: organised crime and the decline of the institutions of state*, Angus and Robertson, Sydney, 1985, p. 6.

34 Australian Transaction Reports and Analysis Centre, *Submission 10*, p. 4.

35 *Committee Hansard*, 1 May 2007, p. 13.

36 *Submission 16*, p. 2.

37 Dr George Gilligan, 'Financial crime in Australia', *Economic Affairs*, vol. 27, no.1, March 2007, pp 10-13.

38 Australian Transaction Reports and Analysis Centre, *Submission 10*, p. 4.

Organised crime in Australia is...dynamic. Its tax free wealth injects new capital into its businesses at a rate far below that available for legitimate business operations. With the increase in its wealth and power, there is increased sophistication in its operations, in the performance of its crimes, their concealment, and the washing of profits.<sup>39</sup>

5.30 Further, the committee notes that large sums of illicitly obtained Australian currency is, and continues to be, taken out of Australia, thereby undermining the assets, liabilities and operations of financial institutions. Tax revenue is also lost to money laundering activities, which in turn undermines the provision of government services. The scale and severity of financial fraud has seen the Australian Government address these crimes through the establishment of agencies such as AUSTRAC and the development of tailored legislation. The committee will examine these measures in detail in chapter 5. The issue of the reporting of banking fraud is examined in greater detail in chapter 6.

### **The social cost**

5.31 The committee is concerned about the high cost of serious and organised crime activities to Australian society. These costs are often not tangible but are visible in the emotional, physical and psychological costs borne by victims, their families and the wider community, and in the substantial health and welfare costs that are the inevitable result of human tragedy.

5.32 In a 2002 submission to the Parliamentary Joint Committee on the National Crime Authority inquiry into the provisions of the Australian Crime Commission Establishment Bill 2002, the Families and Friends for Drug Law Reform (FFDLR) noted the substantial social costs imposed by organised crime on Australia:

The reach of organised crime in Australia is pervasive, multi-faceted and carries enormous social and economic costs. Significantly, the cost is not just in direct monetary terms but in terms of lost productivity, health, violence and well being. Another cost is the diminution of societal security, both in perception and reality...<sup>40</sup>

5.33 The illicit drugs market is probably the most visible and most researched cost, economic and social, of organised crime.<sup>41</sup>

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39 Mr Athol Moffitt, *A quarter to midnight, the Australian crisis: organised crime and the decline of the institutions of state*, Angus and Robertson, Sydney, 1985, p.11.

40 Friends and Families for Drug Law Reform, *Submission 5*, Parliamentary Joint Committee on the National Crime Authority, *Australian Crime Commission Establishment Bill 2002*, 6 November 2002, p. ii.

41 For a detailed examination of the AOSD market in Australia see Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the manufacture, importation and use of amphetamines and other synthetic drugs (AOSD) in Australia*, February 2007.

5.34 The use of drugs extends beyond the injury to the user. In its recent report on amphetamines and other synthetic drugs, the committee noted the comments of Associate Professor Janie Sheridan, from the University of Auckland, in relation to the widespread effect on carers and families of amphetamine users.<sup>42</sup> Professor Sheridan argued that US and New Zealand research has shown that families, support personnel, bystanders and, indeed, any person with whom an affected user comes into contact, can suffer the consequences of a violent episode or attack induced by AOSD use.<sup>43</sup> This was a view endorsed by the FFDLR, who made particular observations about the incidence of unreported intra-familial violence related to methamphetamine use.<sup>44</sup>

5.35 The committee notes that, at the very least, the financial costs of drug availability and subsequent use include medical treatment, rehabilitation and the human costs of the breakdown of family and social cohesion, all of which have significant implications for Australian society.

## Conclusion

5.36 It is the committee's view that the economic costs of countering serious and organised crime are significant. While it was not possible to quantify this cost across a range of sectors, the committee believes that the cost of serious and organised crime places a financial burden on all of Australian society. Along with the tangible cost to law enforcement agencies and government departments, there is the huge yet unquantifiable cost to society of the undermining of confidence in public institutions, the financial sector and the economy. There is also the human cost to individuals, families and communities that are affected by the activities of organised and serious crime, as is the case with drug addiction and people trafficking.

5.37 The committee is concerned that, at present, there is no clear picture of the economic cost of countering serious and organised crime. The committee notes that the Australian Institute of Criminology (AIC) has undertaken to establish the cost of countering crime in Australia generally, but that no work has yet been done specifically in the area of serious and organised crime. A paper produced by the AIC notes that, because it is ultimately communities that are negatively affected by organised crime, this is an area worthy of greater and ongoing investigation.<sup>45</sup>

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42 Parliamentary Joint Commission on the Australian Crime Commission, *Inquiry into the manufacture, importation and use of amphetamines and other synthetic drugs (AOSD) in Australia*, February 2007, p. 47.

43 Associate Professor Janie Sheridan, 'Methamphetamines and Injury', Anex Australasian Amphetamines Conference, 29 September 2006.

44 Parliamentary Joint Commission on the Australian Crime Commission, *Inquiry into the manufacture, importation and use of amphetamines and other synthetic drugs (AOSD) in Australia*, February 2007, p. 47.

45 Ms Shona Morrison, 'Approaching organised crime: where are we now and where are we going?', *Trends and Issues in Crime and Criminal Justice*, no. 231, Australian Institute of Criminology, 2002, p.1 (footnotes omitted).

5.38 The committee acknowledges that all jurisdictions are bearing the cost of serious and organised crime. However, the committee believes that, given the increasing national and transnational nature of serious and organised crime, there is an opportunity for a more strategic approach in how Australia deals with this issue to avoid duplication and an undue strain on the police budgets of all jurisdictions.

5.39 The committee considers that there is potential to reduce costs related to serious and organised crime by taking a more national approach.<sup>46</sup> This is discussed further in chapter 7. The committee believes that the Commonwealth Government, in establishing the ACC, has sought to develop a model to allow federal, state and territory agencies to counter serious and organised crime in a more strategic and potentially cost effective manner.<sup>47</sup>

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46 Commissioner Ken Moroney, NSW Police Force, *Committee Hansard*, 8 June 2007, p. 11.

47 Australian Crime Commission, *Australian Crime Commission Annual Report 2005-06*, p. 10.

# Chapter 6

## The adequacy of legislative arrangements

### Introduction

6.1 This chapter discusses the adequacy of current legislation dealing with organised crime. The discussion includes legislative weaknesses as well as legislative strategies that have potential to support law enforcement's efforts against serious and organised crime.

### The adequacy of Australian legislation

6.2 Both the Australian Crime Commission (ACC) and the Australian Federal Police (AFP) expressed general satisfaction with the legislation under which they operate. The AFP submission observes:

While each agency's legislative program is constantly being updated to reflect changes in their operating environment, the AFP is not aware of any significant legislative or administrative impediments limiting its collaboration with the ACC. The AFP is also not aware of any systemic failings in the ACC's legislative or administrative regimes that fundamentally prevent it from countering nationally significant organised crime.<sup>1</sup>

6.3 The ACC submission, which also notes the sufficiency of current arrangements, indicates that the nature of organised crime will inevitably require further legislative initiative to combat it. At the heart of present and future legislative developments there is a tension between the need for more expansive police powers and the foundations of individual rights and freedoms on which Westminster style democracies are founded:

While...legislative and administrative arrangements are considered adequate to address the current criminal environment, it may be necessary...to consider amendments to counter the increasing sophistication of serious and organised criminal activity. While acknowledging potential community unease in relation to increases in law enforcement powers, the high level negative impact of serious and organised crime may require consideration of such approaches in the future.<sup>2</sup>

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1 *Submission 16*, pp 7-8.

2 *Submission 17*, p. 16.

### ***Crimes Act 1914 and Criminal Code Act 1996***

6.4 Central to the ACC's and AFP's organised crime law enforcement activities are the *Crimes Act 1914* (the Act) and the *Criminal Code Act 1996* (the Code).

6.5 Although the Act details a number of offences, it is concerned mainly with process as opposed to substantive definitions of offences. Part 1, for example, deals with search, information gathering, arrest and related powers. Part 1AB deals with controlled operations for obtaining evidence about suspected Commonwealth offences. The Code is intended to be a statement of the criminal law of the Commonwealth. Chapter 2 of the Code describes the principles of criminal responsibility—previously a matter for the common law—and sets out offences related to such matters as the security of the Commonwealth, the proper administration of government and national infrastructure.

#### *Expansion of Commonwealth legislation*

6.6 The committee heard that there has been a trend towards expansion of the area of Commonwealth criminal law across broad categories of offences. The submission of the Commonwealth Director of Public Prosecutions observes:

The areas of activity regulated at least in part by federal criminal law have expanded considerably. This trend has continued rapidly, as demonstrated by offences being created in areas such as terrorism, domestic drug activity, the contamination of goods, sexual servitude, transnational crime, cybercrime, and telecommunications offences including offences involving the use of carriage services for child abuse and child pornography material.<sup>3</sup>

6.7 The committee notes that, in general, there has been a swift legislative response to the need for updated criminal offences and new and enhanced investigative powers to deal with emerging matters. Nevertheless, some weaknesses were identified. The following section examines the weaknesses in Australian legislation identified by the inquiry.

### **Weaknesses in current legislation**

#### ***The Australian Crime Commission Act 2002***

6.8 The *Australian Crime Commission Act 2002* (the ACC Act) was modelled on the legislation it replaced, the *National Crime Authority Act 1984*. The ACC's powers to combat organised crime are broad and are set out in part II of the ACC Act. The ACC has search and seizure powers, which are currently the subject of legislation before the parliament intended to bring them into line with those contained in the *Crimes Act 1914*. While there was broad support for the current legislation, the issue of failure to cooperate with ACC examination processes was brought to the committee's attention.

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3 *Submission 11*, pp 1-2.

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*The ACC and the lack of an efficient contempt process*

6.9 At present, a person who does any of the following is liable for a penalty of five years imprisonment or a fine of 200 penalty units:

- refuses to answer a question put by an ACC examiner; or
- refuses to take the oath or make an affirmation at an ACC examination; or
- fails to appear in response to a summons to an ACC examination; or
- fails to provide requested documents.<sup>4</sup>

6.10 The committee was advised that this process is protracted and ineffective in leading to disclosure of the information sought or to a significant penalty for an examinee guilty of contempt. Mr William Boulton, an Australian Crime Commission examiner, argued that the efficiency of the ACC's examination process would be improved by changes to the current contempt provisions. Mr Boulton informed the committee that the significant delays in contempt matters being addressed by the courts were being used by witnesses to frustrate investigations. Such delays can significantly compromise an investigation and in some cases they are, in Mr Boulton's opinion, orchestrated by groups such as outlaw motorcycle gangs:

The real problem for us...is that a lot of the investigations and operations go cold...not only that, but a lot of the investigative staff who are secondees return to their home environments and no-one is left to pick up the trail.<sup>5</sup>

6.11 The committee heard that a former Minister for Justice and Customs had, under section 4 of the *National Crime Authority Legislation Amendment Act 2002*, commissioned a review and report on the operation of certain provisions in the *National Crime Authority Act 1984* and the *Australian Crime Commission Act 2002*. Included in the terms of reference for the review was a requirement to:

...consider whether the ACC Act should be amended to provide the ACC with a contempt power for witnesses not fulfilling their obligations under the ACC Act.<sup>6</sup>

6.12 The review was conducted by Mark Trowell QC. The report has been referred to the Inter-Governmental Committee on the ACC for comment. Following that comment, a copy of the report will be tabled in each house of parliament.<sup>7</sup>

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4 *Australian Crime Commission Act 2002*, section 30.

5 *Committee Hansard*, 6 July 2007, p. 41.

6 Attorney-General's Department, [http://www.ag.gov.au/www/agd/agd.nsf/Page/Crimeprevention\\_Reviewofspecificprovisionsoft heNationalCrimeAuthorityAct1984andtheAustralianCrimeCommissionAct2002](http://www.ag.gov.au/www/agd/agd.nsf/Page/Crimeprevention_Reviewofspecificprovisionsoft heNationalCrimeAuthorityAct1984andtheAustralianCrimeCommissionAct2002), viewed 6 July 2007.

7 Mr Alastair Milroy, Chief Executive Officer, Australian Crime Commission, *Committee Hansard*, 6 July 2007, p. 42.

6.13 Mr Boulton foreshadowed that the review was likely to support changes to contempt processes, and clarified the changes being sought:

...the committee's concern in the past was the thought that the examiners themselves were asking to deal with the contempt, but they never were. They always said that it was a matter for the courts. They just wanted to be able to certify the contempt and then have the courts deal with it. If someone has a perfect defence, they will be able to raise that before the courts.<sup>8</sup>

6.14 Mr Boulton noted that constitutional constraints would prevent examiners from being able to personally deal with contempt offences:

There is a constitutional problem, and that is the fact that we are only quasi-judicial officers and we cannot exercise the judicial power of the Commonwealth...<sup>9</sup>

6.15 The ACC advised the committee that the Queensland and NSW jurisdictions already allow the certification of contempt charges. For example, in Queensland the *Crime and Misconduct Commission Act 2001* deals with contempt under section 199 by allowing the presiding officer to certify the contempt by writing to the Supreme Court of Queensland. The presiding officer has the power to issue a warrant directly to police to have the alleged offender brought before the court for the allegation to be dealt with.<sup>10</sup> Further, the presiding officer's certificate of contempt is evidence of the matters contained in the certificate.<sup>11</sup> Certification of the offence by the presiding officer expedites bringing the contempt before a court for a finding to be made on whether or not the contempt charge is proved.<sup>12</sup>

6.16 In contrast, the ACC's current procedure involves the ACC referring the matter to the Director of Public Prosecutions, who then drafts the charges for the court to consider in the usual way.

6.17 The committee's review of the *Australian Crime Commission Act 2002* discussed extensively the issue of delays in dealing with those who refuse to cooperate with the examination process. The committee at that time suggested that a timely disposition of these matters could be achieved through the implementation of the suggestion that a protocol between the Commonwealth and the courts be developed to enable priority to be given to disposition of these matters.<sup>13</sup> The committee notes with great disappointment that this issue has still not been resolved.

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8 *Committee Hansard*, 6 July 2007, p. 42.

9 *Committee Hansard*, 6 July 2007, p. 43.

10 *Crime and Misconduct Commission Act 2001*, section 199(4).

11 *Crime and Misconduct Commission Act 2001*, subsection 199(10).

12 Mr William Boulton, Examiner, Australian Crime Commission, *Committee Hansard*, 6 July 2007, pp 42-43.

13 Parliamentary Joint Committee on the Australian Crime Commission, *Review of the Australian Crime Commission Act 2002*, November 2005, p. 42.



6.18 The committee acknowledges the serious potential for current arrangements surrounding the prosecution of contempt charges arising from ACC examinations to undermine investigations of organised crime in Australia. While the committee appreciates that the matter is the subject of a review, it believes the amendments to state schemes should serve as a ready model for the necessary changes to the ACC Act. The committee believes that resolution of this issue is well overdue.

## **Recommendation 2**

**6.19 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.**

### *Telecommunications (Interception and Access) Act 1979*

6.20 The history of the amendments to the *Telecommunications (Interception and Access) Act 1979* (the TI Act) reflects the changing technology of the communications industry and the increasingly sophisticated use to which telecommunications equipment can be put to commit crime. The TI Act is designed to be technologically neutral, meaning its definitions and offences are constructed so as not to limit their application to extant technologies—an important aspect of design in considering how best to prepare to combat organised crime in the future.

6.21 Deputy Commissioner John Lawler, National Security, Australian Federal Police, emphasised the need for flexible legislation designed to encompass the rapid pace of advance and change in new technologies, and the need for the kind of 'broad generic laws which have been enacted in recent times'.<sup>14</sup>

6.22 The telecommunications environment supports offences that, as described by section 4 of the ACC Act, involve two or more offenders, substantial planning and organisation and the use of sophisticated methods and techniques. For this reason, the ACC's telecommunications interception (TI) powers are central to its work on organised crime.

### *Telecommunications interception powers: Australian Customs Service*

6.23 TI is authorised by a warrant issued by a Federal Court judge or a member of the Administrative Appeals Tribunal nominated for the purpose of issuing the warrants.<sup>15</sup> Section 39 of the TI Act lists the agencies that are able to apply for TI warrants.

6.24 The Australian Customs Service (Customs) submission notes that Customs' access to TI warrants and subsequent information is restricted. Customs is not

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14 *Committee Hansard*, 5 July 2007, p. 65.

15 For circumstances concerning security matters, the Attorney-General issues the warrants under section 9 of the TI Act.

authorised to seek a warrant under the TI Act for the interception of telephone calls or other telecommunications transmissions, and relies for this on other agencies such as the AFP, the ACC or state police and crime commissions.<sup>16</sup> Customs' submission identifies the following ways that this has a negative or potentially negative effect:

- agencies' investigative priorities may delay or prevent Customs access to TI material; this may seriously affect Customs' ability to investigate and respond to serious criminal offences;
- agencies may not have experience in the Customs environment; where interception material that is not the result of a joint operation is provided, information which could affect Customs' 'targeting and profiling' can easily be overlooked; and
- Customs' reliance on agencies such as the ACC to both interpret accurately and provide information from interceptions is a burden on those agencies, and results in a diversion of resources away from critical operations.<sup>17</sup>

#### *The changing nature of Customs investigations*

6.25 Mr Brian Hurrell, Acting National Director, Enforcement and Investigations Division, Australian Customs Service, explained that historically there was a view that Customs were not necessarily 'investigating that higher end of criminal activity that warranted [granting them TI powers in their own right]'.<sup>18</sup> He told the committee that this has now changed:

We are finding...that the sorts of investigations that Customs is getting involved in, either initially on its own as an agency or then later in company with other policing or law enforcement agencies, are tending towards the higher end of criminal activity.<sup>19</sup>

6.26 Mr Hurrell indicated that there are links between various criminal activities through criminals who have an intimate knowledge of the Customs system and are therefore able to move goods through the border:

...the same people who may be involved in substantial illegal tobacco importations will also be involved in activities involving narcotics or, indeed...a precursor...[They] are linked in all of those activities at a certain level of organised crime.<sup>20</sup>

6.27 Mr Hurrell reiterated the submission's contention that the present situation places limitations on Customs' ability to obtain evidence in certain circumstances:

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16 *Submission 14*, p.6.

17 *Submission 14*, p.6.

18 *Committee Hansard*, 5 July 2007, p. 101.

19 *Committee Hansard*, 5 July 2007, p. 101.

20 *Committee Hansard*, 5 July 2007, p. 101.

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...there are specialist areas within law enforcement, and a Customs officer might interpret raw product from interception in a different way, knowing how the import-export system works, to what a police officer or an intelligence analyst from another agency.<sup>21</sup>

6.28 Customs has had exploratory discussions with the Attorney-General's Department on this issue, and acknowledges that complex policy and legislative issues are involved, including the need for balancing privacy concerns with Customs' operational needs.<sup>22</sup>

6.29 The committee notes that powers permitting TI, the conduct of search and seizure operations and the use of surveillance devices are usually given to law enforcement and investigative bodies and royal commissions within a framework of accountability requirements. This ensures that these highly invasive powers are used responsibly in limited circumstances. Customs maintains that the law enforcement element of its work and its regulatory responsibilities are inhibited by it being unable to apply for telecommunications interception warrants and, in some cases, by being unable to assess raw interception information. However, the committee is of the view that requests to extend the power to seek interception warrants to agencies outside law enforcement agencies should be considered with great care.

6.30 The committee considers telecommunications interception to be an invasive power, particularly since the 2006 amendments to the Act that allowed access not only to communications but also to stored communications.<sup>23</sup> The potential gravity of the exercise of such powers should properly be restricted to those agencies whose exclusive area of operation is law enforcement. Greater effort should be made by Commonwealth Government departments and agencies to collaborate in a more planned and strategic manner to prevent the need for the granting of such invasive powers to a plethora of bodies outside law enforcement.

### **Recommendation 3**

**6.31 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.**

#### *Telecommunications interception powers: Queensland*

6.32 The committee was made aware of the inability of Queensland agencies to access TI warrants—except in Commonwealth matters and in joint operations. In

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21 *Committee Hansard*, 5 July 2007, p. 101.

22 *Submission 14*, p. 6.

23 Senate Scrutiny of Bills Committee, *Entry, Search and Seizure Provisions in Commonwealth Legislation*, <http://www.aph.gov.au/senate/committee/scrutiny/entrysearch/report/c04.htm>, viewed 18 July 2007.

Queensland, Detective Chief Superintendent Barnett, Queensland Police Service, told the committee:

The QPS, in not having telephone interception powers, is unique as a policing jurisdiction within Australia. Consequently, partnerships with policing agencies that can facilitate access to telecommunications intercept, TI, powers are often critical to QPS investigations targeting significant criminal entities and networks. Every major investigation conducted between the ACC and the QPS has utilised telephone interception as a key investigative strategy and this support will continue to be critical to the QPS investigations targeting serious and organised crime.<sup>24</sup>

6.33 Detective Chief Superintendent Barnett explained that there have been some attempts to introduce legislation to remedy the problem but these have not been successful.<sup>25</sup>

6.34 The committee raised this issue with the Commonwealth Attorney-General's Department. Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch, confirmed that, to Commonwealth agencies such as the ACC and the AFP, TI is available in every state of Australia. At the state level, however, the power is not universally available:

There is only one police force, the Queensland Police Service, that does not have interception powers. The Queensland Crime and Misconduct Commission also does not have interception powers. We are currently working with our colleagues in the Queensland Attorney General's department and we are working our way forward to look at interception powers for the Queensland police.<sup>26</sup>

6.35 The committee notes that the difficulty in granting TI powers at this level seems to arise from questions surrounding the appointment of a public interest monitor in Queensland to oversee the process. Ms Smith noted that there is no prohibition on the Queensland government having whomever they choose involved in the development of affidavits and applications for warrants; however:

At the moment the act requires that a law enforcement agency approach either the AAT or the Federal Court and it is a judicial decision as to whether that warrant is issued. Bringing in a third party to then appear before an AAT member or a Federal Court judge is not actually provided for in the legislation. There is no issue with a public interest monitor working with the Queensland police, if that is what they want to do, to look at the basis of applications. The Queensland government has put in legislation which oversights after the fact to ensure that the accountability

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24 *Committee Hansard*, 7 June 2007, p. 3.

25 *Committee Hansard*, 7 June 2007, p. 5.

26 *Committee Hansard*, 5 July 2007, p. 12.

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regimes have all been adhered to, like the Commonwealth Ombudsman does. So it is within their power to appoint that work.<sup>27</sup>

6.36 The committee is extremely concerned that Queensland is at present the only jurisdiction not to have TI powers. Overwhelmingly, the evidence to the inquiry highlighted the need for a nationally consistent approach to dealing with serious and organised crime. In not having TI powers, Queensland is undermining the efforts of all LEAs and providing a less hostile environment in which serious and organised crime groups are able to develop. It is the committee's view that there are benefits for Queensland law enforcement in having access to their own TI powers. The inability of one jurisdiction to access such powers creates a weak link in addressing criminal activity nationally. On this point Mr Bob Bottom, appearing in a private capacity, observed:

The state wants the Commonwealth to acknowledge that the procedure for Queensland would be different from the other states, in that it would enable Queensland to have an extra mechanism—that is, all applications to tap telephones whether they be of organised criminals or any policeman or politician they dealt with, would have to go through a public interest monitor, who would then report to the Attorney-General and the Premier. That does not happen in other states. It has not been deemed necessary.<sup>28</sup>

#### **Recommendation 4**

**6.37 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.**

#### ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Financial Transactions Reports Act 1988***

6.38 The Australian Transaction Reports and Analysis Centre (AUSTRAC) submission focuses upon legislation that deals with money laundering and associated activities, particularly the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and the *Financial Transactions Reports Act 1988* (the FTR Act). This legislation places obligations on financial institutions and other financial intermediaries to report to the AUSTRAC CEO:

- suspicious transactions;
- cash transactions of A\$10,000 or more or the foreign currency equivalent; and
- international funds transfer instructions.<sup>29</sup>

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27 *Committee Hansard*, 5 July 2007, p. 13.

28 *Committee Hansard*, 7 June 2007, p. 35.

29 *Submission 10*, pp 6-7.

6.39 AUSTRAC explains that the AML/CTF reforms are intended to ensure:

...Australia's financial sector remains hostile to criminal activity by providing law enforcement, security, social justice and revenue agencies with valuable sources of information to investigate and prosecute serious organised crime and terrorist activity. They also bring Australia into line with international standards, including standards set by the Financial Action Task Force on Money Laundering.<sup>30</sup>

6.40 The AML/CTF Act will be implemented in stages over two years 'in order to allow industry to develop necessary systems in the most cost efficient way'.<sup>31</sup> A second phase of reforms will encompass combating money laundering and terrorism financing involving real estate agents, jewellers and professionals such as accountants and lawyers.

6.41 The reforms also address the Financial Action Task Force on Money Laundering (FATF) 2005 mutual evaluation report on AML/CTF measures in Australia, which identified the strengths and weaknesses in Australia's financial system.<sup>32</sup> The AML/CTF Act additionally covers services provided by the financial sector, including gambling, bullion dealers and other professionals or businesses.<sup>33</sup>

6.42 Chapter 3 identifies financial crime, particularly money laundering, as a present and future trend in the activities of organised crime groups. While recent legislation has addressed this area of activity, the committee notes that the question of its effectiveness remains open. The committee intends to monitor the performance of the AML/CTF Act, as well as the programmed second phase of reforms.

### ***Proceeds of Crime Act 2002***

6.43 The Commonwealth *Proceeds of Crime Act 2002* commenced in January 2003. Previously, confiscation proceedings were available under the *Customs Act 1901* and the *Proceeds of Crime Act 1987*; however, these proceedings were conviction based, meaning they relied on the successful prosecution of a person in order to recover assets from proven criminal activity.

6.44 The principal Commonwealth agencies involved in proceeds of crime work are:

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30 *Submission 10*, p.7. The Financial Action Task Force on Money Laundering (FATF) is 'an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF was established in 1989 by the G7 and Australia was a founding member. The FATF currently has 33 members, of which two are regional organisations': Attorney-General's Department, [http://www.ag.gov.au/www/agd/agd.nsf/Page/Anti-moneylaundering\\_TheFATFsmutualevaluationofAustralia](http://www.ag.gov.au/www/agd/agd.nsf/Page/Anti-moneylaundering_TheFATFsmutualevaluationofAustralia), viewed 16 July 2007.

31 Australian Transaction and Reports Centre, *Submission 10*, p. 7.

32 Financial Action Task Force on Money Laundering, *Third mutual evaluation report on anti-money laundering and combating the financing of terrorism*, 14 October 2005.

33 Australian Transaction and Reports Centre, *Submission 10*, p. 7.

- Australian Crime Commission;
- Australian Customs Service;
- Australian Federal Police;
- Australian Securities and Investments Commission; and
- Australian Taxation Office.<sup>34</sup>

6.45 Broadly, the *Proceeds of Crime Act 2002* operates to restrain proceeds of crime. The restrained proceeds are frozen until further action is taken to confiscate them. Assets are frozen by the court after an application, usually made by the DPP, which must support a reasonable suspicion that the assets are proceeds of crime.

6.46 The *Proceeds of Crime Act 2002* allows confiscation of assets based on civil forfeiture—that is, where a court is satisfied on the balance of probabilities that a serious offence has been committed, the assets will be forfeited. The then Attorney-General, the Hon. Daryl Williams QC, emphasised in his second reading speech on the bill that the provisions are about 'accounting for unlawful enrichment in civil proceedings, not the imposition of criminal sanctions...[and that] the object or focus of the proceeding is the recovery of assets and profits, not putting people in jail'.<sup>35</sup>

6.47 In a submission to the inquiry, Mr David Lusty expressed concern at the ratio of restrained assets to those forfeited. Mr Lusty observed that, despite having some of the widest confiscation laws in the world, 'the value of criminal proceeds confiscated...each year in Australia is still disappointingly low'.<sup>36</sup> The ACC proceeds of crime figures for the last three years, set out in table 6.1 below, are illustrative:

**Table 6.1: Proceeds of crime recovery 2003-06<sup>37</sup>**

	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>
<b>Proceeds restrained</b>	\$16 million	\$13.4 million	\$20.7 million
<b>Proceeds forfeited</b>	\$2.4 million	\$0.9 million	\$1.6 million

6.48 Table 6.1 highlights the considerable difference between the proceeds restrained and the proceeds confiscated. In evidence, Dr Dianne Heriot, Acting First Assistant Secretary, Security and Critical Infrastructure, Attorney-General's

34 Mr Tom Sherman, 'Report on the independent review of the operation of the *Proceeds of Crime Act 2002* (Cth)', July 2006, p. 6.

35 *House Hansard*, 13 March 2002, p. 1,113.

36 *Submission 2*, p. 1.

37 Australian Crime Commission, *Australian Crime Commission Annual Report 2005-06*, October 2006, p. 40.

Department, explained that to some extent this reflects a 'lead time', with some proceeds of crime matters still being dealt with under the 1987 Act.<sup>38</sup>

6.49 In 2006, Mr Tom Sherman AO presented to the then Minister for Justice and Customs a report, being the review required under section 327(2) of the *Proceeds of Crime Act 2002*. In the course of the review, Mr Sherman found difficulties in obtaining comprehensive statistical information about the results achieved under the Act. In part, this was attributable to the fact that no one agency possessed all the information necessary to compile a complete picture of the Act's results.<sup>39</sup> Other difficulties included inconsistency in valuations of property across agencies and the reduced value of encumbered properties.

6.50 The agencies involved in the review expressed various positive views about the proceeds of crime regime, although some were qualified. The ACC, for example, told the review that criminals are well aware that it is to their advantage to hold assets in jurisdictions other than those where they conduct their business, and in entities that cannot be traced to them. While the new provisions support the earlier recovery of assets in a wider range of circumstances, the main challenge—which has not been affected by the 2002 legislation—is to identify proceeds before they have been laundered.<sup>40</sup>

6.51 Dr Heriot told the committee that the Sherman report showed, in comparison to the 1987 Act, a 45 per cent increase in average annual recoveries under the 2002 Act. She continued:

Because the act has not been in place very long, some proceedings are still happening under the 1987 act. With the nature of court proceedings, it will take a while to gain legs.<sup>41</sup>

6.52 Mr Sherman's report notes that there are indications that the *Proceeds of Crime Act 2002* is having more effect than its predecessor.<sup>42</sup> However, the limitations of the legislation are acknowledged:

The Act has enabled law enforcement authorities to trace proceeds of crime more effectively. But the Act is no panacea in this regard...[T]here are still challenges in tracing proceeds that the Act does not solve. But it is also true

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38 *Committee Hansard*, 5 July 2007, p. 16.

39 Mr Tom Sherman, 'Report on the independent review of the operation of the *Proceeds of Crime Act 2002* (Cth)', July 2006, p. 16.

40 Mr Tom Sherman, 'Report on the independent review of the operation of the *Proceeds of Crime Act 2002* (Cth)', July 2006, p. 14.

41 *Committee Hansard*, 6 July 2007, p. 16.

42 Mr Tom Sherman, 'Report on the independent review of the operation of the *Proceeds of Crime Act 2002* (Cth)', July 2006, p. 23.



that a complete solution to these challenges may be beyond the scope of reasonable legislation in any event.<sup>43</sup>

6.53 Dr Heriot noted that the Sherman report had made recommendations on improving the scheme and that these are currently being considered.<sup>44</sup>

6.54 The committee considers that the confiscation of proceeds of crime is clearly a critical strategy against organised crime, and one with considerable deterrent value. In this, the committee concurs with the observation of Mr Sherman that, while underlings can be paid to take risks:

...[c]onfiscating...illicit profits is often the most effective form of punishment and deterrence for...[the] leaders.<sup>45</sup>

6.55 In the light of the evidence received, the committee believes that the rate of recovery of criminal proceeds under the *Proceeds of Crime Act 2002* should be accelerated.

## Recommendation 5

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

## Possible additional legislative strategies

### *Proscription of organised crime groups: anti racketeering and consorting style laws*

6.57 Proscription of OMCs and similar criminal groups—whereby a group, membership of the group or associating with its members is banned outright—is often suggested as a means of addressing the problem of organised crime groups in Australia. This approach has been used with success in some overseas jurisdictions. The committee notes that calls for such an approach often quickly follow and increase in the light of highly publicised organised crime related incidents, which tend to stimulate media and public interest.

### *Racketeer Influenced and Corrupt Organizations legislation*

6.58 Despite there being some satisfaction about the current legislative environment, concerns were expressed that authorities are 'not terribly well-equipped to deal with serious organised crime'.<sup>46</sup> As a result, some witnesses suggested that legislation based on the *Racketeer Influenced and Corrupt Organizations* legislation

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43 Mr Tom Sherman, 'Report on the independent review of the operation of the *Proceeds of Crime Act 2002* (Cth)', July 2006, p. 23.

44 *Committee Hansard*, 5 July 2007, p. 16.

45 Mr Tom Sherman, 'Report on the independent review of the operation of the *Proceeds of Crime Act 2002* (Cth)', July 2006, p. 24.

46 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, pp 59-60.

(RICO) in the United States of America might prove useful in dealing with organised crime in Australia.<sup>47</sup>

6.59 The purpose of RICO is:

...to seek the eradication of organised crime in the United States by strengthening the legal tools in the evidence gathering process, by establishing new penal prohibitions and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organised crime.<sup>48</sup>

6.60 The United States law prohibits any person, including any individual or entity capable of holding a legal or beneficial interest in property, from:

- using income received from a pattern of racketeering activity or from the collection of unlawful debt to acquire an interest in an enterprise affecting interstate commerce;
- acquiring or maintaining through a pattern of racketeering activity or through a collection of an unlawful debt an interest in an enterprise affecting interstate commerce;
- conducting or participating in the conduct of the affairs of an enterprise affecting interstate commerce through a pattern of racketeering activity or through collection of an unlawful debt; or
- conspiring to participate in any of these activities.<sup>49</sup>

6.61 While RICO laws were initially clearly targeted at the Mafia, they also allow civil claims to be brought by any person injured in their business or property by reason of a RICO violation. By the late 1980s, RICO laws were being routinely used to press civil claims, such as common law fraud, product defect, and breach of contract, as criminal wrongdoing, which in turn enabled the filing of a civil RICO action.<sup>50</sup> A US website on RICO states:

During the 1990's, the federal courts, guided by the United States Supreme Court, engaged in a concerted effort to limit the scope of RICO in the civil context. As a result of this effort, civil litigants must jump many hurdles and avoid many pitfalls before they can expect the financial windfall available under RICO, and RICO has become one of the most complicated and unpredictable areas of the law.<sup>51</sup>

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47 Mr Bob Bottom, Private Capacity, *Committee Hansard*, 7 June 2007, p. 36; Mr Christopher Keen, Director, Intelligence, Queensland Crime and Misconduct Commission, *Committee Hansard* 7 June 2007, p. 57; *Racketeer Influenced and Corrupt Organizations Act*, 18 USC § (1968).

48 *Racketeer Influenced and Corrupt Organizations Act*, 18 USC § (1968).

49 *Racketeer Influenced and Corrupt Organizations Act*, 18 USC § (1968).

50 Mr Jeffrey Grell, <http://www.ricoact.com/>, viewed 10 August 2007.

51 Mr Jeffrey Grell, <http://www.ricoact.com/>, viewed 10 August 2007.

6.62 Concerns about the evidential and procedural requirements of RICO style laws were canvassed in the course of the inquiry. The South Australia Police has advised its government that getting convictions under RICO legislation can be complex, protracted and resource intensive. Overseas experience has shown that it can take three or four years to secure a conviction and that such timeframes do not disrupt organised crime groups.<sup>52</sup>

6.63 The committee notes that, despite awareness about the potential shortcomings of RICO style laws and anti organised crime laws, police are generally positive about the need to consider introducing anti racketeering style laws as part of developing either staged or comprehensive regimes.<sup>53</sup>

### ***Consorting laws***

6.64 The committee received a number of submissions calling for consorting laws to be enacted or, where they exist, to be reinvigorated against organised crime groups. Consorting laws criminalise the act of keeping company with a known or listed person. The committee was told that these laws were used successfully against the drug trade in Australia in the fifties.<sup>54</sup> There was agreement that consorting laws would need to be updated to reflect modern realities and circumstances if they were to be effective. Mr Bottom observed that such laws have worked in the past and could do so again, as long as their design is based upon sufficient research.<sup>55</sup>

6.65 However, the committee was cautioned against transplanting legal strategies or laws from past eras or different countries without reference to the particular needs or characteristics of Australian conditions. Assistant Commissioner Graeme Morgan, Commander, State Crime Command, NSW Police Force, noted that a number of factors had contributed to the success of consorting laws in the past, such as the creation of a designated consorting squad, the relatively small number of targets and the likelihood of imprisonment for those convicted.<sup>56</sup>

6.66 Presently, for example, the NSW consorting laws require a person to be booked 'seven times in six months' to prove an 'habitual association' or consorting offence.<sup>57</sup> This might require a dozen police to attend court to prove the offence, which would be a tremendous drain on resources. Also, under today's sentencing practices, there would be no guarantee of a jail term and thus of preventing an offender from continuing to communicate and consort with his or her associates.

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52 Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, *Committee Hansard*, 6 July 2007, p. 22.

53 Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, *Committee Hansard*, 6 July 2007, p. 23.

54 Mr Bob Bottom, Private Capacity, *Committee Hansard*, 7 June 2007, p. 38.

55 *Committee Hansard*, 7 June 2007, p. 37.

56 *Committee Hansard*, 8 June 2007, p. 6.

57 Assistant Commissioner Graeme Morgan, Commander, State Crime Command, NSW Police Force, *Committee Hansard*, 8 June 2007, p. 7.

Assistant Commissioner Morgan's assessment revealed a gulf between the superficial appeal of such laws and their present suitability for addressing organised crime:

The two things that could assist in useful consorting legislation would be, firstly, reducing the burden on police in the court process, however that is achieved and, secondly, making the outcome meaningful, however that is achieved.<sup>58</sup>

6.67 Similarly, Deputy Commissioner Andrew Scipione,<sup>59</sup> NSW Police Force, pointed to the fact that to reflect current habits and technology adequately a modern consorting law would need to be able to take account of, and capture, electronic consorting:

Look seriously at the way people consort these days...[C]hildren consort primarily through a mobile phone, an SMS or an internet machine. If we are going to get serious about dealing with meetings, most of them happen in cyberspace.<sup>60</sup>

6.68 Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, advised the committee that consorting laws are attractive because of their focus on interrupting criminal associations, which in turn breaks down the infrastructure promoting illegal activities. Mindful of the potential problems of poorly designed RICO or consorting style laws, South Australia is updating its consorting laws to take into account the distinct characteristics of modern crime groups and the context in which they operate.<sup>61</sup>

6.69 Assistant Commissioner Harrison identified a number of imperatives for these streamlined laws. These are:

- to reduce the complexity of consorting laws;
- to break up the associations and prohibit re-association;
- to impose non-association control orders, a breach of which could prevent a person from getting bail; and
- to connect violent and/or drug related activity to criminal association offences.<sup>62</sup>

6.70 The introduction of relatively easy-to-administer laws would allow police to attack both the extended associations and the core membership of organised crime groups—an ability that has traditionally eluded police. Assistant Commissioner Harrison explained that non-association control orders would target the centre of the

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58 *Committee Hansard*, 8 June 2007, p. 7.

59 The committee notes that Mr Andrew Scipione is now Commissioner of the NSW Police Force.

60 *Committee Hansard*, 8 June 2007, p. 16.

61 *Committee Hansard*, 6 July 2007, p. 22.

62 *Committee Hansard*, 6 July 2007, p. 22.

organised crime networks—'the inner sanctum...which is the difficult area for law enforcement to infiltrate'. The new consorting regime would be used to attack:

...the hangers-on, the street gangs, the prospects and the nominees of outlaw motorcycle gangs, to preclude them from being able to associate continually with full members of outlaw motorcycle gangs or higher ranking people within serious organised crime groups'.<sup>63</sup>

6.71 The South Australian laws will also address modern systems and habits of communication, including mobile telephones, the internet, voice over internet and person-to-person communication. The South Australia Police advised:

...we will try to capture all those associations to make sure that it is contemporary with the way people communicate today.<sup>64</sup>

### *Anti-racketeering and consorting style laws: international observations*

6.72 The committee notes that internationally there is a range of anti-racketeering and consorting style laws.

### *Reputational violence: the Hong Kong experience*

6.73 The committee was made aware that Hong Kong has introduced laws that outlaw membership in a triad criminal group, as well as the claiming of membership in such a group and the wearing of related group paraphernalia. Critical to the legislative design is the prohibition on claiming to be a member of such a group; this aspect of the legislation seeks to undermine the 'reputational violence' that triad groups rely on to promote and achieve their ends.<sup>65</sup>

6.74 The importance of reputational violence to the triads in Hong Kong is comparable to certain crime groups in Australia:

These gangs, both in the Chinese context and also here, operate entirely on the intimidation of that reputational violence. That brand name—as we academics sometimes like to call it—the brand recognition of wearing a Hell's Angels jacket, a Coffin Cheaters jacket or whatever, has the same equivalent intimidatory effect as does the wearing of a triad tattoo and so on.<sup>66</sup>

6.75 Reputational violence allows organised crime groups to easily 'slip from protection to extortion, to infiltration of legal businesses'.<sup>67</sup> Gang or group membership goes to the heart of reputational violence and is therefore a potentially

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63 *Committee Hansard*, 6 July 2007, p. 23.

64 Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, *Committee Hansard*, 6 July 2007, p. 23.

65 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 59.

66 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 59.

67 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 59.

legitimate area for law and policy makers to address when designing responses to organised crime.<sup>68</sup>

### *Other jurisdictions*

6.76 In 1997, Canada amended its criminal code to include a number of consorting offences, designed to deprive criminals of their profits. The legislation also creates an offence of participation in a criminal organisation through the commission or furtherance of certain indictable offences for the benefit of that organisation.<sup>69</sup>

6.77 The Scandinavian countries, as well as Italy, France and Germany, have all enacted similar legislation. For example, section 129 of the German penal code, which is concerned with the formation of criminal associations, states:

Whoever forms an association the objectives or activities of which are directed toward the commission of criminal acts or whoever participates in such an association as a member, solicits for it or supports it, will be punished by imprisonment not exceeding 5 years or by a fine.<sup>70</sup>

### *Considerations for implementing RICO and consorting style laws*

6.78 Dr Arthur Venno, who has written on the activities and internal dynamics of OMCGs, does not consider that such legislation would work in Australia:

[Such laws would] [a]bsolutely not [work in Australia]...Canada, the RICO Act in America...[and] the Scandinavian countries have all tried similar kinds of legislation. It has not worked one iota. It simply draws the clubs underground, in a lot of cases weeds out the more moderate elements of the club, and the clubs do then become even more violent.<sup>71</sup>

6.79 The committee is concerned that such laws could create an incentive for secrecy, which could arguably make such groups more ruthless and ultimately harder to detect.

6.80 The committee notes that consorting laws by themselves have not achieved great successes; however, they could be used as a component of a coordinated strategy.

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68 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 64.

69 Bill C-95, 2<sup>nd</sup> session, 35<sup>th</sup> Parliament, Canada: Canadian Parliament, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2329667&Language=e&Mode=1&File=11>, viewed 10 August 2007.

70 Reproduced in Professor Hisao Katoh, 'Corruption in the Economic World in Japan', Keio University website, <http://www.law.keio.ac.jp/~hkatoh/CORRUPTIONINTHEECONOMICWORLDINJAPAN.htm>, viewed 10 August 2007.

71 ABC Radio, 'Father urges Melbourne shooter to come forward', *The World Today*, 27 June 2007, <http://www.abc.net.au/worldtoday/content/2007/s1956695.htm>, transcript, viewed 10 August 2007.

6.81 Using Canada as an example, Detective Superintendent Stephan Gollschewski, Queensland Police Service, observed that the success of proscription laws in Canada is in fact testament to a comprehensive approach to combating organised crime groups:

With outlaw motorcycle gangs...[the Canadians] have shown a reduction in crime associated with those particular types of groups, but they have a very holistic approach...They do not just look at the organised crime aspect; they look at the whole of the activities of the group and target even simple things like their traffic offending and that type of stuff, to put pressure on them.<sup>72</sup>

6.82 Professor Broadhurst noted that the success of RICO type legislation in New York is:

...because of the twinning of political will and dedicated law enforcement with RICO type statutes, and particularly those focusing on the money; where it comes from and how you got it.<sup>73</sup>

6.83 However, Detective Superintendent Gollschewski warned against succumbing to the appeal of proscribing antisocial and criminal groups without considering broadly the context in which they operate. Despite the criminal overtones and affiliations of such groups, a gang cannot, in many cases, be regarded as wholly or exclusively criminal.<sup>74</sup> A strategy based solely on outlawing a group and membership of that group could therefore risk leaving untouched those same criminal networks. As a result, a focus on membership of a certain group could be a distraction from the more important task of identifying particular participants in, and incidences of, criminal behaviour:

Law enforcement has to be very careful to identify...criminal networks...that pose the significant threat to the community. If we focus just on the outlaw motorcycle gangs, we are not getting the complete picture. So our targeting methodology and the way we are attacking them is to focus on the high-threat things to the community.<sup>75</sup>

6.84 The difficulty of accurately identifying an organised crime group or network is compounded by the ability of organised crime groups to frustrate proscription by reforming a previously proscribed group.<sup>76</sup>

6.85 Similarly, Mr Bottom, although having no objection to the proscription of groups per se, felt that criminals would frustrate the working of such laws almost as a

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72 *Committee Hansard*, 7 June 2007, p. 17.

73 *Committee Hansard*, 7 June 2007, p. 51.

74 *Committee Hansard*, 7 June 2007, p. 16.

75 *Committee Hansard*, 7 June 2007, p. 16.

76 Detective Superintendent Stephan Gollschewski, Queensland Police Service, *Committee Hansard*, 7 June 2007, p. 17.

matter of course, observing, 'you could wipe them out and they would re-emerge at another point'.<sup>77</sup>

6.86 The committee acknowledges the innovative legislative developments occurring at the state and Commonwealth levels for the disruption and dismantling of organised crime groups. The committee believes that Australia, in considering its own RICO or consorting legislation, has the benefit of international models and their varying degrees of success. During the course of the inquiry, the committee had anticipated that the Attorney-General's Department would be able to provide information on the current international landscape. However, the committee did not receive this information and was therefore unable to draw any conclusions in this area.

### **Recommendation 6**

**6.87 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.**

#### *Corporations Act 2001*

6.88 The committee received little evidence on the relationship of the Corporations Act 2001 to organised crime. However, Assistant Commissioner Harrison pointed out an apparent anomaly whereby dishonesty offences can prohibit a person from being a company director under the Corporations Act 2001, yet a serious drug offence does not necessarily incur such a prohibition:

...where serious organised crime identities may have serious drug and/or violence convictions, that does not necessarily preclude them—and it certainly does not preclude an immediate family member—from being a company director. It is certainly one of the areas...we strongly believe...needs...some tightening up in relation to a fit and proper person being a director of companies, particularly in the area...[of] telecommunications.<sup>78</sup>

6.89 In the absence of more evidence, the committee considers that this is a matter which should be further explored.

### **Recommendation 7**

**6.90 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.**

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77 *Committee Hansard*, 7 June 2007, p. 35.

78 *Committee Hansard*, 6 July 2007, p. 19.



## Design of legislative schemes

6.91 While a substantial part of the hearings focused on the benefits or otherwise of laws aimed at particular groups, such as OMCGs or those committed to politically motivated acts of violence, Deputy Commissioner Lawler emphasised that the proper and most worthwhile focus is on designing comprehensive suites of laws that allow all types of criminal behaviour to be addressed as they arise, with minimum need to amend existing laws or create new statutes:

...outlaw motorcycle gangs...commit criminal offences and breaches in Australia of Australian law. So the full array of tools available, in a generic sense, to law enforcement are very important to treat those particular problems...[T]he tools available for the investigation of any crime can be equally applied to organised crime, to the outlaw motorcycle groups, to groups that might target our tax system or our financial systems and to those involved in amphetamines or terrorism.<sup>79</sup>

### *Uniformity of laws*

6.92 In canvassing potential legislative measures to address organised crime, the committee understands that, beyond the question of design, the perennial issue of national uniformity must be addressed. Noting the lack of uniform laws directed at organised crime groups—and specifically laws dealing with membership of organised crime groups or serious criminal networks—Professor Broadhurst suggested:

...law enforcement agencies in Australia are, to a certain degree—the extent of which we could argue about—operating with legal restrictions which make it much more difficult to control these kinds of groups.<sup>80</sup>

6.93 The committee heard that, although there is limited evidence of jurisdiction-shopping by organised crime groups, such groups undoubtedly operate rationally in the pursuit of profit and in order to minimise their risks. Thus it is almost certain that they select their activities, and the jurisdictions in which they operate, based on assessments of profit, risk and potential cost—that is, penalty or loss of profit. The effect of disparate regimes across Australia would depend on the quality and extent of difference but, ideally, implementation of national laws would remove the potential for jurisdiction-shopping within Australia altogether. A 2005 report of the Corruption and Crime Commission of Western Australia explains:

Geography and traditional jurisdictions work in favour of organised crime and market forces influence greatly where and how it operates.<sup>81</sup>

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79 *Committee Hansard*, 5 July 2007, pp 64-65.

80 *Committee Hansard*, 7 June 2007, p. 59.

81 Corruption and Crime Commission of Western Australia, 'Organised crime report to the Joint Standing Committee on the Corruption and Crime Commission with regard to the commission's organised crime function and contempt powers', December 2005, p. 6.

6.94 In addition, the national nature of organised crime group structures contributes to their ability to resist policing efforts, which must be pursued mainly via the seven state and territory law enforcement structures. Detective Chief Superintendent Barnett provided an example to the committee of the way in which the existence of separate jurisdictions in Australia can beset even the simplest of transactions with jurisdictional and investigative hurdles:

...one feature of the drug market...[in Queensland] which is fairly consistent is that there is a significant transshipment of bulk MDMA from New South Wales in the Sydney area up to here...So the organised crime groups that are established in Sydney are having an impact here. They are not geographically located here but they are shipping a lot of product in here, so they are having an impact remotely.<sup>82</sup>

6.95 On the evidence received, the committee notes that national uniformity of laws is not of itself a guarantee that there can be no gaps between state and territory regimes that can be taken advantage of by organised crime groups.

6.96 While the inquiry did not attempt an exhaustive survey of legislative regimes, submissions from and discussions with police revealed that states and territories have different experiences of similar or even identical legal regimes.

6.97 The committee observed obvious differences in what state and territory LEAs see as the most effective legislative approach in their jurisdictions, based on present priorities, assessments of local conditions and the myriad considerations going to the dynamics of organised crime within a given jurisdiction. The committee is not able to gauge the extent to which differences in local conditions could undermine uniform approaches; however, it is clear that the desirability and practicality of uniform criminal laws addressing organised crime are questions that must be answered before such an approach can be endorsed:

...it is important to have...[a] national approach, particularly in giving powers to our colleagues in Queensland to allow them to fit into, if you like, the bigger jigsaw. It is about making sure that we are fully enabled and we do not have some potential deficit in one location as opposed to another. ...We need to realise that outlaw motorcycle gangs are now organised criminals in the highest sense. They are no longer motorcycle club members that are involved in crime. They are organised crime heads and they lead syndicates that are national and international. So I think it is about making sure that...we stay very connected when it comes to things like telephone interception and capabilities.<sup>83</sup>

6.98 The committee observes that uniformity is a potential avenue to achieve better-designed and more-effective laws against organised crime but acknowledges that these goals may well be achieved via better coordination of state regimes, based

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82 *Committee Hansard*, 7 June 2007, p. 24.

83 Assistant Commissioner Andrew Scipione, NSW Police Force, *Committee Hansard*, 8 June 2007, p. 16.

on national and international considerations or context. A report of the Corruption and Crime Commission of Western Australia frames the issue not as one of uniformity but as one of proper balance and design:

The best defence is to create an environment that is hostile and at the very least no less hostile than that of neighbouring jurisdictions. Organised crime will gravitate to those locations in which it can operate with fewer hindrances.<sup>84</sup>

6.99 Assistant Commissioner Harrison expressed a similar view:

Getting harmony and encouraging the states, territories and the Commonwealth to look at getting legislation that is complementary to each and every state and jurisdiction would really go a long way to ensure that we do not have serious organised crime figures exploiting not so much loopholes but a lack of harmony between jurisdictions and states.<sup>85</sup>

6.100 The committee notes that an example of the operational implications of the lack of harmony between jurisdictions is the flow-on effects on cost and resources of returning a serious offender to the state where an offence took place:

...we still send detectives interstate to bring back a person for committing a fraud, hold-up or rape. Two detectives on a plane travel interstate, appear before a magistrate, make an application and then bring them back across the border...<sup>86</sup>

6.101 The committee is extremely concerned that the current multi-jurisdictional approach to the development and enactment of legislation which deals with serious and organised crime is so fragmented that it works to the advantage of the criminals and to the disadvantage of LEAs. Governments must move beyond the rhetoric and remove the legislative impediments which restrict LEAs in undertaking the effective detection and prosecution of serious and organised crime.

## Recommendation 8

**6.102 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.**

## Conclusion

6.103 Evidence to the inquiry suggests that the legislative environment for serious and organised crime is developing and being refined to meet current and evolving

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84 Corruption and Crime Commission of Western Australia, 'Organised crime report to the Joint Standing Committee on the Corruption and Crime Commission with regard to the commission's organised crime function and contempt powers', December 2005, p. 6.

85 *Committee Hansard*, 6 July 2007, p. 21.

86 Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, *Committee Hansard*, 6 July 2007, p. 21.

challenges. As the committee has argued in this chapter, LEAs require legislation that is flexible enough to address the broad and evolving range of organised crime activities in Australia. The committee has some concerns about factors which it believes undermine the adequacy of the legislative environment.

6.104 While the committee heard a great deal about the collaborative arrangements that now exist between government departments and agencies, it is apparent that legislative gaps across a range of issues continue to exist.

6.105 Primarily, the committee is concerned about the lack of legislative coordination and harmonisation across jurisdictions in the area of serious and organised crime. As outlined in chapter 2, serious and organised crime does not respect Commonwealth and state boundaries, and the current federated system has produced an environment that restricts the policing of these activities nationally. The committee acknowledges the important role of the ACC in bringing a national approach to the area of serious and organised crime, but was consistently advised that the lack of legislative complementarity undermines the efforts of LEAs across Australia. It is the committee's view that this issue should be addressed as a national priority.

# Chapter 7

## The adequacy of administrative and regulatory arrangements

### Introduction

7.1 The inquiry revealed that certain administrative and regulatory arrangements hamper Australia's efforts to tackle serious and organised crime. One example is the inadequacy of the collection of prepaid mobile phone user information. The issue of staffing arrangements for law enforcement agencies was also investigated, as was the need for a comprehensive research effort to improve future policing strategies and the targeting of policy and resources to address serious and organised crime in Australia.

### Telecommunications

#### *SIM card user registration*<sup>1</sup>

7.2 During the inquiry, the committee's attention was drawn to failings in the current arrangements for registering user information for prepaid mobile phone SIM cards. These are governed by a telecommunications industry determination made under a model of self regulation.

7.3 The committee received significant evidence from several law enforcement agencies about the potential and actual use of SIM cards by organised crime groups to avoid detection, whereby criminal identities are purchasing SIM cards in stolen or false names. The Queensland Crime and Misconduct Commission submission notes:

Prepaid SIM cards are regularly purchased and used by target identities (including in bulk) in false names or in the names of real persons without the knowledge of the person in question. A number of proprietors of mobile telephone outlets, and some smaller service providers, have been implicated in activity of this type. Initiatives by the Commonwealth Government-sponsored Law Enforcement Advisory Committee (LEAC) have experienced difficulties keeping pace with criminal activity in this area. This has tangible and ongoing effects on the ability of agencies to target organised crime and other related activity.<sup>2</sup>

7.4 Detective Superintendent Kim Porter, Divisional Superintendent, Organised Crime Division, Western Australia Police, told the committee that where criminals are aware that the police are tracking them they will change their cards 'two, three, four

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1 SIM is an acronym for Subscriber Identity Module. A SIM is a small card to hold subscriber details and an electronic password: Australian Communications and Media Authority, <http://toolkit.acma.gov.au/mobile/glossary.htm>, viewed 5/09/2007.

2 *Submission 8*, p. 11.

times a day', and possibly 'every second conversation'. There will either be no name attached to the purchase, or the purchaser will have supplied a false one.<sup>3</sup>

7.5 Ms Elizabeth Foulger, Manager, Intelligence, Queensland Crime and Misconduct Commission, reported a similar experience, exacerbated for her agency by the fact that, in the absence of state telephone interception powers, the commission relies heavily on charge record analysis:

...you can clearly see phones that have been connected using false names... We see ridiculous names like Will Smith and Bob Marley—clearly names that have been plucked out of the air. There is no process in place at the moment to prevent that from happening.<sup>4</sup>

7.6 The Western Australia Police (WAPOL) estimated that 50 per cent of telephone numbers they investigate have false subscriber details, with the majority of these false accounts being drug related.<sup>5</sup>

7.7 Detective Superintendent Mark Porter, State Intelligence Division, Victoria Police, put the use of SIM cards in a commercial criminal context, telling the committee that the 'churning' of SIM cards emerged around a decade ago. While briefly restricted to 'top end' criminals, this is now a widespread practice among the criminal fraternity. Detective Superintendent Porter observed that the need to communicate is fundamental to any business—legitimate or not. Accordingly, criminals tend to treat the cost of obtaining secure communications as a 'business' cost:

So, if...[a criminal goes] in and buy[s] 100 SIM cards, that is a business cost, because...[their] riskiest point is...[the] point of communication'.<sup>6</sup>

7.8 Further, Ms Foulger told the committee that some organised crime figures have links to the providers of mobile phones, and are able to obtain phones using the legitimate details provided by unsuspecting third parties. For law enforcement, tracking down the actual user of a service becomes very difficult.<sup>7</sup> In some cases, organised crime groups are endeavouring to establish control over the commercial supply of SIM cards by establishing, purchasing or otherwise controlling their own telecommunications companies. Detective Superintendent Porter told the committee:

Another reason why you need to legislate is...they buy their own telephone suppliers so that they can get those cards without having to answer the questions. The situation is that we need to have legislation to make sure that the actual supplier is required to comply.<sup>8</sup>

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3 *Committee Hansard*, 30 April 2007, p. 17.

4 *Committee Hansard*, 7 June 2007, pp 47-48.

5 Western Australia Police, *Submission 15*, p. 5.

6 *Committee Hansard*, 1 May 2007, p.19.

7 *Committee Hansard*, 7 June 2007, pp 47-48.

8 *Committee Hansard*, 30 April 2007, p. 22.

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*100-point identity checks*

7.9 The accurate collecting of SIM user information is critical to law enforcement agencies' ability to investigate serious and organised crime. Detective Superintendent Porter observed that current arrangements are allowing criminals to obtain effectively anonymous means of communication:

When you can go into the supermarket and buy quite a number of...[prepaid mobile services] and you can just make a phone call and claim to be anybody, then you have anonymous identification that you can use for five minutes, five days or whatever.<sup>9</sup>

7.10 The Western Australia Police submission notes:

The fact that telecommunication service providers do not require or impose the 100 point identification check on the purchase of SIM cards makes identifying the actual user virtually impossible.<sup>10</sup>

7.11 The Australian Mobile Telecommunications Association (AMTA) responded to the evidence received regarding SIM cards and prepaid mobile service registration. Their submission outlines that the *Telecommunications (Service Provider—Identity Checks for Pre-Paid Mobile Telecommunications Services) Determination 2000* applies to the sale of prepaid mobile phones, and that there are established processes for collecting and verifying customer information.

7.12 Under the determination, purchasers of SIM cards are required to produce identity documents either when purchasing a prepaid mobile phone (option A) or when activating a prepaid mobile service (option B). The submission, acknowledging the shortcomings of the present approach, continues:

Industry's preference would be to use option B above, but transition to this process has been consistently thwarted by the lack of access to original sources for verification of customer provided information. As a result, option A is used, with suboptimal outcomes, including:

1. incomplete or no collection and verification of customer data at some retail outlets
2. differences between the information collected from the purchaser and the user (e.g. if the mobile is a gift)
3. incomplete and unverified data in the IPND,<sup>11</sup> as this data is collected from the user at service activation.<sup>12</sup>

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9 *Committee Hansard*, 1 May 2007, p.19.

10 *Submission 15*, p. 5.

7.13 The AMTA submission also explains proposed improvements to the collection of SIM purchaser information:

AMTA members are developing a standard form for pre-paid mobile phone services in order to seek more accurate and consistent data capture at point of sale. To complement the development of the new pre-paid mobile phone service form, AMTA is developing an overall continuous improvement process that consists of comprehensive guidelines for retailers and an education program upon roll out of the new form.<sup>13</sup>

7.14 AMTA suggests that the identity checks could be undertaken at the point of activation (option B above), and suggests that the government's proposed National Document Verification Service (NDVS) could be used to support such an approach.<sup>14</sup> The NDVS is a part of the National Identity Security Strategy developed by the Council of Australian Governments; a national prototype was tested in 2006. The NDVS:

...will be a secure, electronic, on-line system accessible by all key Australian Government, State and Territory agencies, and potentially by the private sector. Agencies authorised to use the DVS will be able to check in real time whether a document presented to them as a proof-of-identity by an individual applying for high value benefits and services was issued by the relevant agency, and that the details on the document are true and accurate.<sup>15</sup>

#### *Implications of a deregulated market*

7.15 While the committee notes AMTA's willingness to assist with the support of the NDVS, there is no indication of when the database will become operational. In AMTA's view, the 100-point check is an 'outdated' form of identification, specifically because the deregulated telecommunications market has resulted in there being less control over call records. This makes it difficult to ensure that complete and accurate records are created.

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11 The Integrated Public Number Database (IPND) is an industry-wide database that contains information on all listed and unlisted public telephone numbers in Australia, regardless of the service provider. The IPND came into operation on 1 July 1998 and is maintained by Telstra under the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*: Department of Communications, Information Technology and the Arts, [http://www.dcita.gov.au/communications\\_and\\_technology/policy\\_and\\_legislation/numbering/integrated\\_public\\_number\\_database\\_\(ipnd\)](http://www.dcita.gov.au/communications_and_technology/policy_and_legislation/numbering/integrated_public_number_database_(ipnd)), viewed 31 July 2007.

12 Australian Mobile Telecommunications Association, *Submission 22*, p. 2.

13 *Submission 22*, p. 2.

14 *Submission 22*, p. 3.

15 Attorney-General's Department, [http://www.ag.gov.au/www/agd/agd.nsf/page/Crimeprevention\\_Identitysecurity#q2](http://www.ag.gov.au/www/agd/agd.nsf/page/Crimeprevention_Identitysecurity#q2), viewed 31 July 2007.



7.16 This was also noted by Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch, Attorney-General's Department, who told the committee:

Because it is a deregulated telecommunications market, the obligation has been placed upon industry to come up with how that area is regulated.<sup>16</sup>

7.17 Ms Smith referred to the telecommunications determination of 2000, identified above, and continued:

The difficulty is that there is no regulation of who can sell those SIM cards. Even though an obligation may be placed on the main telecommunications providers who provide them, they are sold at the local garage, at Woolworths and so on, so the obligation might fall upon a checkout person, who is very busy, to take down certain details and that sort of thing...In the Law Enforcement Advisory Committee, which is chaired by ACMA, we have been working very hard for a number of years to come up with a better system. We expect that—I think in July this year—AMTA will be putting out a new draft way to deal with these prepaid SIMS. So something is being done.<sup>17</sup>

#### *Implications for commercial and consumer interests*

7.18 The committee considers that prompt and serious attention must be given to ensuring that reliable records of mobile phone users are created and kept. Apart from data and information acquired through telecommunications interception under warrant, law enforcement agencies rely heavily on this data from telecommunications companies. While the committee recognises the potential for greater regulation to be a considerable impost on telecommunications providers and consumers, the lack of access to reliable SIM user information is seriously undermining the ability of police to detect, investigate and prosecute organised crime groups. The advantages of a deregulated telecommunications market must therefore be tempered by a system of obtaining accurate SIM user information. The committee's support for stricter proof-of-identity requirements is given with recognition that, ultimately, the success of any system will be judged by how well commercial and consumer interests are preserved within a system that achieves comprehensive and accurate SIM card user registration.

7.19 The committee acknowledges that any changes to the current model for obtaining registration of SIM card users have the potential to affect the administrative and commercial performance of telecommunications providers. Stricter requirements around purchasing SIM cards could add to the length and cost of transactions and potentially affect sales.

7.20 Equally, additional inconvenience and expense could adversely affect individual consumers, and the committee notes the significant practical considerations

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16 *Committee Hansard*, 5 July 2007, pp 17-18.

17 *Committee Hansard*, 5 July 2007, pp 17-18.

that would arise with a requirement to provide 100 points of identity documentation for purchase or activation of SIM cards. Young people in particular might find tougher requirements difficult to satisfy, if not an outright barrier to ownership, and the effect on consumers of any proposed changes should be directly addressed in establishing a more effective system.

### **Recommendation 9**

**7.21 The committee recommends that the government seek 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.**

#### *Voice over Internet Protocol*

7.22 The committee heard that rapid technological change in the telecommunications industry is a continuing threat to the ability of law enforcement agencies (LEAs) to capture telecommunications information. In particular, Voice over Internet Protocol (VoIP) does not require billing records. Mr Christopher Keen, Director, Intelligence, Queensland Crime and Misconduct Commission, described the nature of the problem and how it impacts upon the usual lines of inquiry:

...through things like voice-over-internet protocol, we do not know where...[a call] went. You just pay your \$50 up front and, therefore, they no longer need billing records...[I]t is having an impact on us being able to salvage networks, links and then, from there, perhaps taking some other action.<sup>18</sup>

7.23 Ms Smith advised the committee that, because the relevant Acts in this area—the *Telecommunications (Interception and Access) Act 1979* and the *Telecommunications Act 1997*—are 'technology neutral', carriers have the same reporting obligations around VoIP as they do for fixed line services.<sup>19</sup> Nevertheless, Ms Smith acknowledged that there are 'challenges' to be addressed arising from the need to deal with and rely on the many players making up the telecommunications industry, such as smaller and overseas providers. These, as well as technological issues, are being examined.<sup>20</sup>

7.24 The committee is concerned that technological developments will make it more difficult for LEAs to identify and pursue criminal identities, and will monitor the department's initiatives for dealing with this area of concern.

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18 *Committee Hansard*, 7 June 2007, p. 51.

19 *Committee Hansard*, 5 July 2007, p. 20.

20 *Committee Hansard*, 5 July 2007, p. 20.

## Staffing of intelligence and law enforcement agencies

### *Targeting of human resources to organised crime*

7.25 The committee heard evidence that police efforts to combat organised crime are still vulnerable to compromise by traditional policing responsibilities. Investigation of organised crime is typically complex, labour intensive and long term, and it can be interrupted by the requirements of day-to-day policing—particularly when resources are urgently directed to ad hoc high-profile cases or investigations.

7.26 To an extent, Australia has taken the first important steps to separate these two areas of policing with the creation of specialist crime and corruption bodies such as the ACC. As the Corruption and Crime Commission of Western Australia (CCCWA) has observed:

Within Australia a number of Royal Commissions have been established to investigate and report on organised crime. Emerging from these commissions has been the recognition that traditional policing methods were inadequate and new arrangements for combating organised crime were needed.<sup>21</sup>

7.27 The CCCWA endorsed Australia's current model for dealing with organised crime, which enables resources and effort to be dedicated to long-term strategies:

Establishing alternative working arrangements offers government an opportunity to 'quarantine' resources for the long-term protracted investigations that are the trademark of effective organised crime investigations, rather than having these resources dispersed, responding to day-to-day policing issues.<sup>22</sup>

### *Staff retention, expertise and inter-jurisdictional mobility*

7.28 The inquiry identified a present tendency for law enforcement agencies to experience high staff turnover and lose valuable professional experience and corporate knowledge. This problem is particularly acute given the increase in technology enabled or facilitated crime, and the rapidity with which criminals are exploiting new technology. Professor Rod Broadhurst, appearing before the committee in a private capacity, explained:

We do have a terrible shortage of expertise. The kind of expertise that you are talking about is hard to keep. We have had entire forensic computing sections of police forces get up and resign and go and work in private

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21 Corruption and Crime Commission of Western Australia, 'Organised crime report to the Joint Standing Committee on the Corruption and Crime Commission with regard to the Commission's organised crime function and contempt powers', December 2005, p. 8.

22 Corruption and Crime Commission of Western Australia, 'Organised crime report to the Joint Standing Committee on the Corruption and Crime Commission with regard to the Commission's organised crime function and contempt powers', December 2005, p. 8.

enterprise. We have people who are trained poached by the big IT security firms.<sup>23</sup>

7.29 Commissioner Ken Moroney, NSW Police Force, described one of the factors behind staffing movements as competition for skills from certain industries or sectors:

Certainly in some of our highly specialised information technology areas we are losing police officers, ironically, to the Commonwealth, which perhaps is in a position to offer better salaries, better salary packages and a diversity of work away from strict law enforcement. One of our senior IT police officers has recently been employed by the Department of Defence. A range of issues were taken into account in that career path—different opportunities and salary were certainly key issues. Those are salaries that, in one sense, I cannot compete with. We are losing them also to the private sector.<sup>24</sup>

7.30 Mr Mark Burgess, Chief Executive Officer, Police Federation of Australia (PFA), indicated that police skills are a useful, marketable and valuable commodity in the current employment market.<sup>25</sup>

7.31 Mr Burgess advised that, while inter-jurisdictional mobility is desirable within an integrated and coordinated national approach to policing organised crime, there is a need for a more systematic approach to staff secondment and transfers. This would ensure that state agencies are not continually affected by shortages of labour and/or skill.

7.32 The PFA warned that Australia requires the recruitment of some 13,000 new officers to meet the existing commitments of state and territory police forces.<sup>26</sup> While the PFA did not endorse a central recruiting pool as the way to manage staffing nationally, it did support the funding of a 'national police workforce planning study' to ultimately form the basis of a national police workforce strategy.<sup>27</sup> The PFA believes that such a coordinated approach could secure effective national management and planning of police staffing levels, while maintaining the positive aspects of inter-jurisdictional mobility within the service, and respecting the self-determination of individual police agencies.

7.33 Commissioner Mick Keelty, Australian Federal Police (AFP), pointed to both individual factors and general international trends as causing staffing pressures on Australian police forces:<sup>28</sup>

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23 *Committee Hansard*, 7 June 2007, p. 68.

24 *Committee Hansard*, 8 June 2007, p. 13.

25 *Committee Hansard*, 5 July 2007, p. 48.

26 *Committee Hansard*, 5 July 2007, p. 46.

27 *Committee Hansard*, 5 July 2007, pp 41-46.

28 *Committee Hansard*, 5 July 2007, p. 60.

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In terms of...overall policing numbers...retaining staff is an issue at the national level. There are various reasons why police organisations do not retain staff. I have spoken to Commissioner Paul White in the Northern Territory and we have talked about the difficulties of policing in the Northern Territory—the remoteness of it and the lack of familial connections. I have talked to my counterpart in Queensland, Bob Atkinson. Bob unashamedly will tell you that a lot of police want to come and work in Queensland. Some of it is the social demographics of Australia. In Western Australia, despite the perception that the AFP has stolen their staff, a lot of the police staff have actually gone to the mining industry.<sup>29</sup>

7.34 Commissioner Keelty observed that, although staff movements occur in all directions between state and territory forces and the private sector, the AFP does not experience the staff retention problems of the state and territory police forces.<sup>30</sup> This is due to the diversity of work that the AFP undertakes, which offers greater professional choices to staff.<sup>31</sup> While the AFP does not actively recruit members of state and territory police forces, there is a natural gravitation toward its ranks.

7.35 Mr Tony Harrison, Assistant Commissioner, Crime Service, South Australia Police, while acknowledging the value of inter-agency mobility for skills development and cross-pollination of ideas, observed that the preponderance of such movements is from state or territory to Commonwealth agencies, notably the AFP and the ACC.<sup>32</sup>

7.36 The committee believes that, without adequate recognition, planning and effort, police can expect to continue to encounter shortages of skills and personnel.

### **Recommendation 10**

**7.37 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.**

#### *Numbers of sworn Australian Federal Police*

7.38 The PFA also raised concerns about the numbers of sworn police officers in the AFP, as only sworn officers can undertake the full range of policing activities. Mr Burgess considered that this could affect an agency's capacity to fulfil its responsibilities and that, despite recent increases in the AFP's staffing budget and overall numbers, the proportion of sworn AFP officers has declined. In light of the increases in AFP responsibilities, such as anti-terrorism activities and investigations,

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29 *Committee Hansard*, 5 July 2007, p. 59.

30 *Committee Hansard*, 5 July 2007, p. 62.

31 *Committee Hansard*, 5 July 2007, p. 60.

32 *Committee Hansard*, 6 July 2007, pp 24-25.

there is an expectation that fully sworn officers will attend to matters of serious and organised crime.

7.39 In reply to the PFA's suggestions, Commissioner Keelty advised the committee that the increase in unsworn staff recruited to the AFP is properly viewed as a reflection of the type of skills required by the organisation. In particular, the AFP has increased the size of its intelligence area, in which it is suitable for unsworn staff to be employed.<sup>33</sup>

7.40 Commissioner Keelty raised the related issue of police pursuing partnerships with community and private sector groups. This approach is in use or being considered by countries overseas, such as the US and UK. The use of 'enthusiastic' and properly skilled people to free-up sworn officers to undertake critical tasks could help with the management of staffing and skills pressures.<sup>34</sup>

## **Developing evaluation and research to inform policy and policing strategies**

### ***Evaluation***

7.41 Attempts to address the impact of serious and organised crime effectively are held back by reliance on an unstructured and almost reactive approach to considering policy design and funding choices for law and order regimes. Improved systems of measuring outcomes will allow Australia to bridge the chasm between the political concerns that so often shape policy development and the practical imperatives of a system of laws that is effective against organised crime.

7.42 Professor Adam Sutton, appearing in a private capacity, identified the Productivity Commission as the agency best placed to undertake such an inquiry:

...I would argue very strongly for the Productivity Commission. Most areas of government now, quite rightly, are tied to those kinds of [Productivity Commission] performance objectives. I do not think we are doing that in the law enforcement area...partly because of this idea of intelligence data being privileged, secretive et cetera.<sup>35</sup>

7.43 The Productivity Commission is an independent Commonwealth agency that acts as:

...the Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

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33 *Committee Hansard*, 5 July 2007, p. 59.

34 *Committee Hansard*, 5 July 2007, p. 65.

35 *Committee Hansard*, 1 May 2007, p. 11.

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The Commission's work covers all sectors of the economy. It extends to the public and private sectors and focuses on areas of Commonwealth as well as State and Territory responsibility.<sup>36</sup>

7.44 The committee considers that there is a need for evaluative research to quantify the effectiveness of current policy and legislative and administrative arrangements for serious and organised crime, as currently exists in other areas of large public investment.

7.45 The committee has also commented in previous inquiries on the difficulties of establishing performance objectives for law enforcement that adequately reflect its work and outcomes. Accordingly, the committee would support a Productivity Commission inquiry into the effectiveness of current arrangements to address serious and organised crime.

### **Recommendation 11**

**7.46 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.**

#### *The importance of research in fighting organised crime*

7.47 In bringing together policymakers and legislators, LEAs, academics and research bodies, the inquiry demonstrated the value of multidisciplinary or collective approaches to examining and assessing the character and activities of organised crime. Mr Alastair Milroy, Chief Executive Officer, Australian Crime Commission, observed:

The ACC values the important dialogue that has arisen through this inquiry. It is through this varied and informed debate involving law enforcement agencies, academia, politicians, the legal community and concerned citizens that Australia can better arm itself to combat the continuing scourge of serious and organised crime.<sup>37</sup>

7.48 Mr Milroy called for a greater involvement and contribution by academia to the body of research informing Australia's policy and operational choices in fighting organised crime:

...academia has done some work that looks at the characteristics of organised crime. But even our partners in the UK have acknowledged that a lot of that work needs to be done by others to give us better advice on what can be done from a government point of view in tackling organised crime.<sup>38</sup>

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36 Productivity Commission, <http://www.pc.gov.au/commission/charter.html>, viewed 21 August 2007.

37 *Committee Hansard*, 6 July 2007, p. 27.

38 *Committee Hansard*, 6 July 2007, p. 34.

7.49 Mr Milroy pointed to certain areas of potential research where better understanding is needed:

...a lot more work could be done to fill in some of the gaps...[such as] the value of organised crime markets, which is about the revenue derived by organised crime in pursuit of illegal activity...To deal with organised crime, to assist in forming policy and to have better operational responses, you have to look at the problem itself and understand organised crime markets.<sup>39</sup>

7.50 Experiences under the current national policing arrangements for organised crime have shown that the best strategic and tactical options can only be selected when police can accurately identify the groups and actors causing the greatest levels of threat and harm in the community, and the markets and activities in which they are involved. Given the acknowledged flexibility and opportunism of organised crime groups, research is also required to support analysis of successful policing strategies. This would allow police to better anticipate new markets or criminal strategies:

...with organised crime, once you are successful in targeting specific groups, they learn from it and change their methodology. It is an ongoing cycle of us trying to learn from their various operations, looking at the intelligence, identifying the methodology that they are using and looking at how their businesses are structured.<sup>40</sup>

7.51 Mr Frank Costigan QC, who appeared before the committee in a private capacity, emphasised that a research effort would need to be ongoing in order to inform and develop appropriate police responses to the opportunism and continuing evolution of organised crime:

There is no clear-cut answer to these things; it is a continuing fight. As new methods of attack are found, there will be new methods of getting around the system.<sup>41</sup>

7.52 Professor Margaret Mitchell, Director, Sellenger Centre for Research in Law, Justice and Policing, School of Law and Justice, Edith Cowan University, supported the analyses of Mr Milroy and Mr Costigan. So too, Dr Toni Makkai, Director, Australian Institute of Criminology, observed that 'one of the difficulties or challenges for...[the Australian Institute of Criminology] is getting our research to influence policy and practice'.<sup>42</sup> This has serious implications for the development of policy and effective practical and legislative strategies in Australia:

...if we do not have these linkages, if we are not able to get policymakers and practitioners to take notice of the research and the evidence base, we

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39 *Committee Hansard*, 6 July 2007, p. 33.

40 Mr Alastair Milroy, Chief Executive Officer, Australian Crime Commission, *Committee Hansard*, 6 July 2007, p. 34.

41 *Committee Hansard*, 1 May 2007, p. 38.

42 *Committee Hansard*, 5 July 2007, p. 86.



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will not be able to improve the efficiency and effectiveness in terms of our responses to serious and organised crime in Australia.<sup>43</sup>

7.53 Professor Mitchell identified this failure to incorporate research into policy and policing strategies as international in nature, and called for a 'careful and comprehensive overview, analysis and synthesis of the nature of the problem', observing:

Despite real concern over the increasing threat from organised crime, there is very little rigorous analysis of its nature, scale and impact.<sup>44</sup>

7.54 Professor Sutton noted the need for improved evaluation of organised crime, and for research to be informed by police operational information. This would allow research to inform and thereby improve the strategies and direction of police agencies:

I do not see that there is any reason that, if you could link police intelligence with research, you could not actually measure that and use that in a feedback loop in order to guide your operation.<sup>45</sup>

7.55 The committee endorses the argument that, without sound research on the precise nature and effects of organised crime, policymakers and practitioners will be hampered in producing efficient and effective responses to organised crime.

### ***Current research collaboration in Australia***

#### *The Australian Institute of Criminology*

7.56 The committee received evidence showing some important, if nascent, collaborative efforts between police and information and/or research agencies, such as the Australian Institute of Criminology (AIC) and CrimTrac.

7.57 Dr Makkai explained that the AIC has a 'close working relationship' with bodies such as the ACC and the Attorney-General's Department, whereby the AIC both informs and comments on intelligence matters from a research perspective. Notably, the AIC provides input, by way of confidential comment, to the ACC's *Picture of criminality in Australia* report.<sup>46</sup>

7.58 Putting this in context, Dr Makkai explained that much of the AIC's work is commissioned or contracted, with it having to carefully allocate its \$5.3 million budget to other projects.<sup>47</sup> The recent and current projects of the AIC show its work to be highly relevant to the matters central to the committee's inquiry. These include high-tech crime, implementation of the *Anti-Money Laundering and Counter-*

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43 Dr Toni Makkai, Director, Australian Institute of Criminology, *Committee Hansard*, 5 July 2007, p. 86.

44 *Committee Hansard*, 30 April 2007, p. 34.

45 *Committee Hansard*, 1 May 2007, p. 6.

46 *Committee Hansard*, 5 July 2007, p. 84.

47 The AIC contracted over \$2.5 million of work in 2006.

*Terrorism Financing Act 2006*, online child pornography, drug analysis of detainees and emerging illicit drug trends.<sup>48</sup>

7.59 Currently, links between research and police agencies are largely informal. However, the AIC is assiduous in the number and variety of methods it employs to promote closer links:

We have been trying to...[collaborate] through the informal exchange of information and knowledge...We have been locating our analysts in policy and in the operational environments so that they get better informed and they can then inform the people they are working with about the latest research and what it is showing.

We have run a series of closed roundtables so that law enforcement in particular can come together and talk about things in a confidential way, not in the public arena. We also run open public conferences on issues. We do the standard thing of publishing our material. We also have moved towards trying to do shorter facts sheets...which are much shorter, we hope, easier to read and more targeted on a specific issue and, therefore, they will be more likely to be picked up, particularly by practitioners but also by busy policymakers.<sup>49</sup>

7.60 In addition, the AIC has considerable professional affiliations with national and international bodies:

[The AIC sits] on a number of national boards and councils, such as the Australian National Council on Drugs and National Crime Stoppers. We participate internationally through the program network institutes of the UN and we attend the UN Crime Commission meetings as part of the delegation led by the Attorney-General's Department.<sup>50</sup>

7.61 Despite these efforts to establish more extensive and valuable collaboration, Dr Makkai stated that there is still the need for improved links between LEAs and the research sector:

...[The AIC does] not have routine access to either Commonwealth or state and territory criminal justice databases. To a certain extent, our capacity to produce new and innovative research is dependent on these agencies enabling access to the relevant materials.<sup>51</sup>

7.62 Mr Bob Bottom, appearing in a private capacity, identified the lack of a formally structured research program designed specifically to marry relevant research with policy and policing outcomes as a significant weakness in addressing organised

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48 Dr Toni Makkai, Director, Australian Institute of Criminology, *Committee Hansard*, 5 July 2007, pp 85-86.

49 Dr Toni Makkai, Director, Australian Institute of Criminology, *Committee Hansard*, 5 July 2007, p. 82.

50 Dr Toni Makkai, Director, Australian Institute of Criminology, *Committee Hansard*, 5 July 2007, p. 86.

51 *Committee Hansard*, 5 July 2007, p. 85.

crime in Australia. Mr Bottom pointed to the UK, where the Serious and Organised Crime Agency (SOCA) has developed an annual public document outlining the nature of organised crime in that country.<sup>52</sup> SOCA has also established a research program designed to provide objective support for the development and pursuit of SOCA's policing and policy strategies.<sup>53</sup>

7.63 Mr Bottom argued that Australia needs a similar program 'to provide research evidence to support the development of policy and practice relating to the [reduction] of organised crime'.<sup>54</sup> This need is heightened by the existence of the ACC, which, operating with a truly national structure and focus, requires a substantial foundation of information, knowledge and analysis from which to plan and coordinate its activities, and by which to assess and measure the success of its performance.

7.64 Throughout the hearings, the committee explored the notion of underpinning law enforcement efforts with complementary research projects. In general, witnesses supported such an approach. For example, Mr Keen advised:

[A targeted research effort]...certainly is conceptually a very good idea. Whichever agency or person comes up with it, there is going to be the need for a fair amount of academic rigour, so you are probably almost looking at a special project to do that.<sup>55</sup>

7.65 The committee supports the provision of comprehensive research to support law enforcement in the area of organised crime, and believes that the AIC is well placed as a Commonwealth statutory authority to undertake this role.

### **Recommendation 12**

**7.66 The committee recommends that the Commonwealth Government increase funding to the Australian Institute of Criminology.**

### **Recommendation 13**

**7.67 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.**

#### *Research and education*

7.68 The committee believes that the establishment and use of a research effort to complement and inform the priorities, strategies and outcomes of law enforcement

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52 *Committee Hansard*, 7 June 2007, p. 29.

53 *Committee Hansard*, 7 June 2007, p. 29.

54 *Committee Hansard*, 7 June 2007, p. 29.

55 *Committee Hansard*, 7 June 2007, p. 54.

efforts can provide a base from which to coordinate education activities around crime and organised crime, such as in the area of illicit drugs.

7.69 The committee heard evidence that there is still a gulf between social attitudes toward some drugs, nominally 'recreational', and the serious harms that can flow from even casual instances of illicit drug use.<sup>56</sup> As part of a future crime prevention strategy, Mr Keen identified the need for a coordinated research effort to provide targeted and well-designed educational programs:

...what we need...[is] a short, sharp, shiny description of what to look for and what the impacts are—and try to get some of those out [in education campaigns]...[T]here is an enormous part of the market that we are not even touching as far as education goes.<sup>57</sup>

7.70 Some witnesses saw education as an important tool in the area of high-tech crime. Where technology is employed or taken advantage of in furtherance of criminal activities, better education of technology users is needed to complement enforcement initiatives. In this respect, Mr Rob McCusker, a research analyst in transnational crime for the Australian Institute of Criminology, observed:

The difficulty...in all approaches to tackling technology involving crime is that we still have a massive gullible public who make the job extremely difficult. Until we can tackle that issue through education campaigns and so forth, law enforcement efforts in this area will be constantly scuppered.<sup>58</sup>

7.71 The committee notes that the Commonwealth Government has invested substantially in drug education.<sup>59</sup> However, in light of the detrimental effects of serious and organised crime in other sectors of society, it is the committee's view that investment in public education in areas related to high-tech crime is necessary.

#### **Recommendation 14**

**7.72 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.**

#### *Picture of criminality in Australia report*

7.73 Calls for 'a more coordinated approach to research on organised crime in Australia' were consistently made throughout the inquiry.<sup>60</sup> In particular, some

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56 *Committee Hansard*, 7 June 2007, p. 54.

57 *Committee Hansard*, 7 June 2007, p. 54.

58 *Committee Hansard*, 5 July 2007, p. 89.

59 See Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the manufacture, importation and use of amphetamines and other synthetic drugs (AOSD) in Australia*, February 2007.

60 Mr Bob Bottom, Private Capacity, *Committee Hansard*, 7 June 2007, p. 28.

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witnesses called for this to be established around the annual preparation and public release of a declassified version of the ACC's *Picture of criminality in Australia* (PoCA) report. The PoCA is 'a confidential high-level strategic intelligence report on the relative harms of each crime type, emerging issues in the criminal environment and strategic threats from various issues in the surrounding region', and is the ACC's central strategic document.<sup>61</sup> Mr Bottom expressed bemusement and some disappointment there had been no implementation of a recommendation on this issue in this committee's report on the ACC's 2004-05 annual report.<sup>62</sup> That recommendation was:

...that the Australian Crime Commission consider the release of public versions of key research, including a declassified version of the Picture of Criminality [in Australia report].<sup>63</sup>

7.74 Mr Bottom told the committee that release of a declassified version of PoCA is desirable because it would act as a focus and anchor for public information and debate about crime going into the future. Mr Bottom observed that the PoCA's substance goes to the very heart of the committee's current inquiry, and it could be an invaluable resource.<sup>64</sup>

7.75 Mr Bottom explained that a declassified version of PoCA could ensure that an appropriately Australian perspective was maintained when considering and designing responses to crime and the anticipated requirements of LEAs. There was, he said, an over-reliance on overseas data and European perspectives, both in Australia generally and, in particular, in much of the evidence that had been received by the inquiry:

...I refer to the submission from the Australian Institute of Criminology...[N]ot one of its 16 references credited...is from Australia; indeed, not even from the AIC itself, which in recent years, to its credit, has produced two of the best academic or research based assessments of organised crime within Australia. The tendency, therefore, of academics to ignore such local research and point you to Europe is, to put it mildly, an unfortunate example of academic naivety.<sup>65</sup>

7.76 Apart from the obvious benefits of basing Australian strategies on Australian experiences and data, Mr Bottom pointed to the fact that Australia has been a leader in the establishment of ACC type bodies, and has, for example, provided the model for the establishment of the Serious and Organised Crime Agency in the UK. To look to

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61 Parliamentary Joint Committee on the Australian Crime Commission, *Examination of the Australian Crime Commission Annual Report 2005-06*, June 2007, p. 16.

62 *Committee Hansard*, 7 June 2007, p. 26.

63 Parliamentary Joint Committee on the Australian Crime Commission, *Examination of the Annual Report 2004-2005 of the Australian Crime Commission*, p. vii.

64 *Committee Hansard*, 7 June 2007, pp 30-31.

65 *Committee Hansard*, 7 June 2007, p. 28.

overseas models therefore appeared to him retrograde and unlikely to provide many meaningful comparisons or insights.<sup>66</sup>

7.77 The committee notes that the previous recommendation for a declassified or public version of the PoCA is still awaiting a response by the government; this was also noted in the committee's June 2007 report on the ACC annual report for 2005-06. As stated there, the committee looks forward to receiving the government's response to this recommendation.

7.78 Mr Milroy took the opportunity of appearing before the committee to address the issue of the delayed release of a declassified version of the PoCA:

The ACC...wishes to respond to criticism concerning the release of the public version of the ACC's picture of criminality in Australia. We are in the final stages of developing a paper, which is termed *Organised crime in Australia*, following extensive consultation with our partners and this will be delivered to the ACC board this month for their consideration for release to the public.<sup>67</sup>

7.79 The committee commends the ACC on this development.

The Committee notes that the ACC has prepared a public version of its picture of criminality in Australia and recommends

### **Recommendation 15**

**7.80 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.**

### **Reporting online fraud**

7.81 A related issue to emerge from the committee's consideration of the question of establishing a complementary research effort for Australian police agencies was that of the reporting of online fraud in Australia. A number of witnesses saw the current approach to reporting online fraud as being inadequate.

7.82 Dr Makkai advised the committee that, in respect of technology-based or high-tech crimes, a lack of reliable data and 'data infrastructure' means that research in this area is not well developed, especially in comparison to traditional types of crime, such as property and violent crime:

Certainly from a research perspective we would like to know the data...[High-tech crime] is, for example, one of those crimes that we know is grossly underreported to police and, as a consequence, we do not have

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66 *Committee Hansard*, 7 June 2007, p. 29.

67 *Committee Hansard*, 6 July 2007, p. 29.

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any idea of the size of the problem. As researchers, we would welcome much better data.<sup>68</sup>

7.83 Mr Alexander Webling, Senior Adviser, E-Security Strategy, Critical Infrastructure Protection Branch, Attorney-General's Department, advised the committee that, although the Attorney-General's Department could not provide 'specific information' on the level and incidence of e-fraud against financial institutions, 'general threats to anybody on the internet, whether that is a user...or a company, are increasing.'<sup>69</sup>

7.84 Mr William Boulton, Examiner, Australian Crime Commission, explained that, despite online fraud being a fairly recent development, it is generally true that it is a 'very big growth area', and that the extent of this class of fraud is 'probably much greater than people realise'.<sup>70</sup>

7.85 Although banks and financial institutions have traditionally absorbed fraud-related losses, online vulnerabilities are generally ascribable to 'the interaction between the user and their computer and the bank'.<sup>71</sup> The committee is concerned that, if financial institutions decide in future to adopt a fault-based or stricter approach to apportioning liability for online losses, the cost to consumers will be significant.

7.86 The committee heard some evidence that banks are already passing online fraud related losses onto consumers.<sup>72</sup> Such claims raise important issues around accountability and the question of who is bearing, and who should bear, the burden of risk in cases of online fraud. This is particularly so if it is true that, as the submission from Mr Stephen Palleras QC, Director of Public Prosecutions for South Australia, asserts, most cases of online fraud are described as 'identity theft' or 'identity fraud' when in fact they are offences effected through entirely fictitious identities.<sup>73</sup> The lack of compulsory reporting of online crime means that banks could be passing on, or could in the future pass on, online crime costs to consumers based on a flawed description of an occurrence of fraud.

7.87 The committee was unable to secure the direct participation of the Australian High Tech Crime Centre (AHTCC), a body whose responsibility and expertise is directly related to such issues. Nevertheless, the committee was able to refer to the public comments of Mr Kevin Zuccato, the director of the AHTCC, on this subject.

7.88 On 24 June 2007, Mr Zuccato participated in ABC radio's *Background Briefing* story on the apparent vulnerability of the internet to high-tech crime and

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68 *Committee Hansard*, 5 July 2007, p. 90.

69 *Committee Hansard*, 5 July 2007, p. 21.

70 *Committee Hansard*, 6 July 2007, p. 47.

71 Mr Alexander Webling, Senior Adviser E-Security Strategy, Critical Infrastructure Protection Branch, Attorney-General's Department, *Committee Hansard*, 5 July 2007, p. 21.

72 Professor Rod Broadhurst, Private Capacity, *Committee Hansard*, 7 June 2007, p. 69.

73 *Submission 6*, p. 1.

fraud. A major theme of the story was the claim that the true level of internet crime is under-reported because banks fear the negative consequences of consumers knowing bank security has been compromised. The internet, it was reported, has delivered massive profits to banks through new business models; they therefore prefer to absorb losses from fraud rather than publicise their own failings and potentially damage their reputation.<sup>74</sup> Mr McCusker also suggested that financial institutions are sensitive about the reputational risks of publicising such data.<sup>75</sup>

7.89 Professor Broadhurst agreed that reporting of fraud is a 'sensitive area' and that banks are reluctant to report and thereby advertise instances of fraud perpetrated against them for fear it will damage their reputation.<sup>76</sup> However, he believed there is a danger that an approach premised on a false sense of security could ultimately see the problem worsen:

...if we let the mantra become, 'We need to look like everything is fine...we are running the risk of actually being run over.'<sup>77</sup>

7.90 However, Mr Zuccato told *Background Briefing* that, despite 'hundreds of millions of dollars being defrauded', systematic disclosure of incidents of fraud is not useful for the average consumer, because it does not enable or help people to understand that there are risks associated with the use of the online environment:

You and I don't really need to know the extent of the crimes, the hundreds of millions of dollars being defrauded, because it doesn't help...Speaking of how much is being lost doesn't really take us anywhere in relation to explaining to people that there is a risk.<sup>78</sup>

7.91 Further, Mr Zuccato considered that privacy issues prevent the publicising of data on the incidence of online fraud:

...it would be remiss of us to publicise victims' names. So we wouldn't do that. What we try and do is basically understand what's happening, work with people to try and understand the level of the problem and then send the right messages to people so that they can take the appropriate action.<sup>79</sup>

7.92 However, this position was not supported by Professor Broadhurst, who argued that the vulnerability of the internet to fraud requires a balance to be struck between allowing the productivity and commercial benefits of the internet and ensuring that the system is sufficiently protected against criminal misuse:

I think there is a balance. We do not want to overregulate the internet market. It is a hugely important market. It is growing so fast. It is going to

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74 ABC Radio, 'Your money dot con', *Background Briefing*, 24 June 2007, transcript, p. 2.

75 *Committee Hansard*, 5 July 2007, p. 90.

76 *Committee Hansard*, 7 June 2007, p. 69.

77 *Committee Hansard*, 7 June 2007, p. 69.

78 ABC Radio, 'Your money dot con', *Background Briefing*, 24 June 2007, transcript, p. 17.

79 ABC Radio, 'Your money dot con', *Background Briefing*, 24 June 2007, transcript, p. 17.



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provide huge energy for productivity et cetera. But, of course, it is a superhighway that does not have many patrol cars on it, and a lot of the vehicles—the PCs and so on—that we use to drive on it do not have the appropriate safety equipment, if I can use that analogy.<sup>80</sup>

7.93 Mr McCusker observed:

The corollary of [a reluctance to report online fraud]...of course, is that law enforcement cannot effectively fight this type of fraud and this kind of online activity unless they are made aware.<sup>81</sup>

*Initiatives for the reporting and prevention of online fraud*

7.94 The committee heard that, despite the apparent lack of compulsory reporting of online fraud, there are moves afoot to furnish relevant police agencies with data on the incidence of such offences. Mr Webling explained:

The government has taken a very holistic view...in that it is trying to work with both the banks, as the owners of large systems which are on the internet, and with the users, as in you and me on the internet, and also small and medium enterprises.<sup>82</sup>

7.95 Dr Dianne Heriot, Acting First Assistant Secretary, Criminal Justice Division, Attorney-General's Department, observed that the current approach to reporting online fraud offences is a collaborative one based on 'government-industry engagement at an operational and policy level around the range of the issues'.<sup>83</sup>

7.96 Dr Makkai described the AIC's plans, following a specific-purpose grant drawn from the proceeds of crime, for a survey that will rectify some of the present gaps in knowledge:

In order to improve our understanding of high-tech crime, the institute recently received funds from the proceeds of crime to examine the extent and impact of computer security incidents across all Australian industry sectors. This will be the first random survey of this scale and depth in Australia. We have completed our pilot and are now proceeding to conduct the main survey, which will be of approximately 20,000 businesses, but it will be another year before that is finalised and completed and ready for release.<sup>84</sup>

7.97 The committee notes that the ACC is collecting information on banking fraud, following the establishment of protocols or working arrangements that address the commercial concerns of banks. The ACC is able to compel the provision of such

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80 *Committee Hansard*, 7 June 2007, p. 69.

81 *Committee Hansard*, 5 July 2007, p. 90.

82 *Committee Hansard*, 5 July 2007, p. 21.

83 *Committee Hansard*, 5 July 2007, p. 21.

84 *Committee Hansard*, 5 July 2007, p. 85.

information, overcoming the lack of explicit reporting requirements on banks and financial institutions. Mr Boulton told the committee:

...in the last few months the examiners have issued a number of notices to banks, insurance companies and the like, seeking under compulsion...instances of fraud perpetrated against those bodies. We are getting a lot of information coming back. The banks and insurance companies like this method because, even though it is compulsory, it is also confidential. We see that as a very big growth area...The extent of it is probably much greater than people realise.<sup>85</sup>

7.98 Mr Jeff Pope, General Manager, Commodities, Methodologies and Activities, ACC, outlined the recent process of collecting data on online fraud, and its high value to the ACC's investigations into, and assessments of, organised crime:

...we have formed some very productive relationships with financial institution and...issued numerous notices in cooperation with these institutions. As a result...we have access...to over 200,000 [anonymous] data sets that are previously unreported incidents of fraud committed against those organisations. When added to our current intelligence holdings and systems this significantly enhances our ability to gain an understanding of individuals' criminal activities, serious and organised crime groups' presence in the financial sectors...and...diversification of their activities and, essentially, footprints of organised crime in areas that were previously either undetected or that we only had anecdotal evidence of. We are finding it to be a very powerful and successful way in which we can value-add to our intelligence holdings, but more importantly our understanding of organised crime in that area.<sup>86</sup>

7.99 The committee believes that the area of online banking fraud is expanding and will continue to at a significant rate. This growth will in part be due to the increasing numbers of consumers taking up and using this form of banking and the greater opportunities for criminal groups and individuals to engage in fraudulent activities in a relatively risk-free environment. While the committee appreciates that it is arguably not in the banks' best interests to publicly report online fraud, it is ultimately consumers who are required to pay for the rectification of this problem. Therefore banking consumers should be made fully aware of the potential associated risks.

## **Recommendation 16**

**7.100 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.**

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85 *Committee Hansard*, 6 July 2007, p. 47.

86 *Committee Hansard*, 6 July 2007, p. 48.

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## Conclusion

7.101 The inquiry has identified a range of administrative and regulatory practices that undermine current efforts to address serious and organised crime. Weaknesses were found in the area of telecommunications, particularly in the inaccurate registration of mobile phone SIM card users and the ability of VoIP to obscure the identity of its users.

7.102 The committee is concerned about the apparent instability of staffing in Australia's police forces and the loss of skilled sworn personnel to the private sector. There appears to be an opportunity for all jurisdictions to take a more coordinated and collaborative approach to the recruitment and retention of skilled personnel.

7.103 This chapter also highlighted the need for a sound research and evaluation base in addressing organised crime. The committee is concerned that online fraud is greatly under-reported, which appears to contradict principles of transparency and compulsory reporting of crime that are well accepted in other areas of the law and policing. If LEAs do not have a clear picture of the extent of online banking fraud then their task of policing such activities is rendered more difficult. Equally, if banking consumers are not advised as to the full extent of risk around online services they are unable to make adequately informed assessments and choices about which services and technologies to use. The committee notes that informed consumer choice is often a powerful driver for companies to improve or make more secure their products and services.

7.104 Ultimately, the committee is concerned to ensure that LEAs, regardless of jurisdiction, are well supported and equipped to tackle serious and organised crime. By addressing the administrative weaknesses identified, the committee hopes that LEAs will be assisted and made more effective in their fight against serious and organised crime.

7.105 The following chapter examines the adequacy of current databases and suggests potential areas of improvement.



# Chapter 8

## The adequacy of cross-jurisdictional databases

### Introduction

8.1 Law enforcement agencies (LEAs) in Australia and throughout the world are highly dependent upon their ability to store, access, share and manage information and intelligence, and much of the evidence received by the inquiry concerned the operability and effectiveness of the databases used by Australian LEAs.

8.2 Many agencies identified limitations in the operation of existing databases and called for improvements to arrangements for the sharing and management of information and intelligence by Australian LEAs. Improving the performance of cross-jurisdictional databases is widely regarded as critical in combating organised crime, and Chief Commissioner Christine Nixon, Victoria Police, provided a succinct expression of this view:

...serious organised crime is growing and moving far beyond our borders and even internationally. As we face this challenge, having better access to databases and information is important.<sup>1</sup>

### Databases in Australia

#### *The difference between information, intelligence and case management*

8.3 In order to understand the committee's consideration of the adequacy of Australian databases, it is critical to clearly distinguish between information databases, intelligence databases and case management systems. Each of these is an essential policing tool, and together they provide an operational capability that LEAs need to successfully fight organised crime in Australia.

8.4 Information databases are collections of a class or classes of information, which are sometimes referred to as 'involvements'. For example, DNA databases, fingerprint databases and child sex offender databases are all information databases. Information databases therefore provide police access to basic facts or data that relate to an aspect of operational policing.

8.5 Intelligence databases are more complex collections of data that may have had some value added by some type of analysis or treatment. Alternatively, they are systems that allow links to be drawn between pieces of information. For example, the Australian Criminal Intelligence Database (ACID), which allows linkages and associations to be drawn between disparate pieces of information, is an intelligence

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1 *Committee Hansard*, 1 May 2007, p. 16.

database. Intelligence databases therefore allow LEAs to manage and analyse information that relates to investigations and operational policing.

8.6 Case management systems are for bringing together offence related information and intelligence to assist with the investigation of a particular offence. For example, PROMIS, which is the AFP's case management system, allows a file to be created for the investigation of, say, a murder. This file allows investigating police to store and manage on PROMIS any information and intelligence from other systems related to that murder. Case management systems are therefore a key operational and investigative tool used by police to investigate a specific offence.

### **Adequacy of information and intelligence databases and case management systems**

8.7 Currently, Australia has many separate information and intelligence databases and case management systems, largely as a result of each Australian jurisdiction establishing and maintaining its own systems and technologies. This has led to a common deficiency in the ability of police to access and exchange data between different jurisdictions and/or technologies. Deputy Commissioner John Lawler, National Security, Australian Federal Police, noted that the vulnerability of present databases lies wherever two jurisdictions cannot easily retrieve relevant information from each other, and this is the central and most important issue identified concerning the question of the adequacy of Australia's law enforcement databases.<sup>2</sup>

8.8 The different legislative and technological frameworks of jurisdictions impact negatively upon what and how data can be shared by police. Assistant Commissioner Wayne Gregson, Portfolio Head, Specialist Crime Portfolio, Western Australia Police, highlighted the implications of this:

...different states have different databases designed around their different legislation, which means that law enforcement tends to be a secondary consideration of the information holdings...[consequently there] is a large number of disparate databases holding different tranches of information.<sup>3</sup>

8.9 In light of the national and transnational character of organised crime groups and their activities, it is self-evident that limitations in access to and exchange of data between databases will be exploited by organised crime, and will disadvantage multi-jurisdictional investigations. The Police Federation of Australia submission cites recent criticisms of Australia's 'jurisdictional differences', which continue to frustrate the goal of fully operational national databases.<sup>4</sup>

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2 *Committee Hansard*, 5 July 2007, p. 68.

3 *Committee Hansard*, 30 April 2007, p. 16.

4 *Submission 5*, p. 8.

## Information databases

8.10 Table 8.1 shows the major information databases in Australia, their type, accessibility, funding and operational status.

**Table 8.1: Information databases in Australia**

Database	Type of database	Agency	Accessible by	Funded by	Status
<b>National Automated Fingerprint Identification System (NAFIS)</b>	Information. NAFIS also has a data-matching capability	CrimTrac	AFP, state and territory police forces.  Host system for AFMA illegal fishers fingerprints	CrimTrac is largely self-funded through the National Criminal History Record Checking (NCHRC) Service	Operational
<b>National Criminal Investigation DNA Database (NCIDD)</b>	Information. The NCIDD contains DNA profile information and has a data-matching capability	CrimTrac	All jurisdictions' forensic laboratories	CrimTrac is largely self-funded through the NCHRC Service	Operational
<b>CrimTrac Police Reference System (CPRS): Person Index</b>  <b>(known as the Minimum Nation-wide Person Profile (MNPP) Project)</b>	Information. General identity information and specific involvement details relating to persons	CrimTrac	Accessible by AFP, state and territory police; currently rolled out to all Victoria Police	The MNPP Project is funded from a mix of monies from the federal, CrimTrac and police jurisdictions  Funding for ongoing support and enhancements to CPRS is yet to be determined	Currently being rolled out to all jurisdictions (to be completed by July 2008)

<b>Australian National Child Offender Register (ANCOR)</b>	Information; case management.  Supports registration, case-management and sharing of information about registrable child offenders	CrimTrac	AFP and state and territory police forces	CrimTrac is largely self-funded through the NCHRC Service	Operational
<b>National Names Index (NNI)</b>	Information.  Provides a national view of persons of interest	CrimTrac	AFP, state and territory police forces, ACC, ICAC, ACS, ASIC, NSWCC, and QCMC. Access to NNI is also provided from individual police jurisdictions to state-based justice and law enforcement authorities	CrimTrac is largely self-funded through the NCHRC Service	Operational.  To be replaced by the CPRS
<b>National Firearms Licensing and Registration System (NFLRS)</b>	Information.  Enables police to retrieve firearms related information about a person	CrimTrac	AFP, state and territory police forces, ACC, NSWCC, ICAC, ACS, and QCMC	CrimTrac is largely self-funded through the NCHRC Service	Operational.  To be replaced by the CPRS
<b>National Vehicles of Interest (NVOI)</b>	Information.  Records and tracks	CrimTrac	AFP, state and territory police forces	CrimTrac is largely self-funded through the	Operational.  To be replaced by



<b>System</b>	vehicles and driver licence information			NCHRC Service	the CPRS
<b>Telephone Directory Service (TDS)</b>	Information. Provides searching function by names, telephone numbers and addresses	CrimTrac	AFP, state and territory police forces, ACC, NSWCC, ICAC, ACS, QCMC, and ASIC	CrimTrac is largely self-funded through the NCHRC Service	Operational

### *Improving the adequacy of information databases*

#### *CrimTrac*

8.11 Australia has recognised the inadequate interoperability of police databases for some time. The central strategy to improve these databases is to seek improvements to the sharing of and access to data across the different systems, rather than to attempt to create a single, monolithic database covering all types of data across the whole of Australia.<sup>5</sup>

8.12 Accordingly, in 2000, CrimTrac was explicitly established 'to allow police forces across Australia to share information to solve crimes and catch criminals.'<sup>6</sup> CrimTrac is not a repository of information or a database per se, but works by facilitating the exchange of information across different jurisdictions and technologies. Mr Ben McDevitt, CEO of CrimTrac, told the committee:

CrimTrac is merely the conduit. We do not put any information onto the system. All we do is provide the connectivity so...[agencies] can share the information.<sup>7</sup>

8.13 CrimTrac's central aim is:

...to enhance Australian law enforcement with an emphasis on information based policing facilitated through rapid access to detailed current and accurate police information.<sup>8</sup>

8.14 CrimTrac's mandate has been recently expanded to encompass a national role in promoting and facilitating information sharing:

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5 Mr Keith Holland, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 5 July 2007, p. 5.

6 CrimTrac, *Submission 12*, p. 2.

7 *Committee Hansard*, 5 July 2007, p. 77.

8 Mr Ben McDevitt, Chief Executive Officer, CrimTrac, *Committee Hansard*, 5 July 2007, p. 70.

...under the CrimTrac strategic plan 2007-10, CrimTrac has been given a mandate by police ministers to take a leadership role in generating national approaches to information-sharing solutions for law enforcement agencies for a safer Australia. It is a fairly fundamental shift. The new vision takes CrimTrac from being purely an IT shop...to a broker for information-sharing solutions essentially for police jurisdictions but also increasingly for broader law enforcement.<sup>9</sup>

8.15 Given its genesis, expertise and charter, the committee considers CrimTrac to be the logical focus of any effort to improve the inadequacy of current information databases. Mr Mark Burgess, Chief Executive Officer, Police Federation of Australia, supported this view, saying:

...a real opportunity now exists for CrimTrac to play a more significant and meaningful role...providing information sharing solutions for law enforcement right across the country...CrimTrac should be fully developed to become the key hub for exchanges of law enforcement information between Australia's police jurisdictions and broader law enforcement.<sup>10</sup>

8.16 Chief Commissioner Nixon noted that CrimTrac has already contributed to the inter-jurisdictional capacity for information sharing:

What we have started to see...is the growth of a system to...help us share information...[CrimTrac] has gone some distance towards helping develop these national systems in...local police offices...<sup>11</sup>

#### *Minimum Nation-wide Person Profile*

8.17 One of the most important CrimTrac systems from an operational policing perspective is the Minimum Nation-wide Person Profile (MNPP). The MNPP is intended to allow the sharing of information about persons of interest between all Australian police jurisdictions. It is currently being rolled out nationally to replace the National Names Index.<sup>12</sup> Law enforcement personnel will access the MNPP via in-car or station based computers to:

- access information about a person of interest from another jurisdiction; and
- perform nation-wide searches using name and/or other identifying information.

8.18 As a collection of information related to persons of interest, the MNPP currently consists of 11 agreed datasets or 'involvements'. These are:

- persons on warrant;

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9 Mr Ben McDevitt, Chief Executive Officer, CrimTrac, *Committee Hansard*, 5 July 2007, p. 71.

10 *Committee Hansard*, 5 July 2007, p. 40.

11 *Committee Hansard*, 1 May 2007, p. 20.

12 Mr Ben McDevitt, Chief Executive Officer, CrimTrac, *Committee Hansard*, 5 July 2007, p. 79.

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- wanted persons;
  - persons subject of a warning;
  - persons on bail;
  - persons subject of an order;
  - escapees;
  - persons with an offence history;
  - persons linked to firearms;
  - unidentified persons/bodies;
  - missing persons; and
  - persons on the Australian National Child Offender Register.

8.19 The MNPP is to be accessible across all Australian jurisdictions by the end of July 2008, and will be the main information source around persons of interest for operational police.<sup>13</sup> Mr McDevitt stressed that the MNPP is a valuable tool and a significant improvement on current capabilities.<sup>14</sup>

#### *Expanding the Minimum Nation-wide Person Profile*

8.20 A number of witnesses suggested that, where gaps in access, sharing or interconnectivity between databases exist, these should be addressed by the addition of new datasets to the MNPP. In particular, the committee considered the possible addition of Aviation Security Identification Cards (ASICs), Maritime Security Identification Cards (MSICs), explosives licences and ammonium nitrate licences.

8.21 Mr McDevitt explained that there are no technical impediments to expanding the number of datasets in the MNPP:

...there would be no reason why technically the MNPP could not include someone as a person of interest because they were the owner of a pilot's licence or because they held an explosives licence or because they had an ASIC or so on.<sup>15</sup>

8.22 However, it was noted by several witnesses that privacy issues would need to be resolved before the MNPP is expanded by the addition of new datasets.<sup>16</sup> Chief Commissioner Nixon argued that, as with any new initiative, a business case would also need to be developed.<sup>17</sup> The Department of Transport and Regional Services also referred to this requirement:

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13 Mr Ben McDevitt, Chief Executive Officer, CrimTrac, *Committee Hansard*, 5 July 2007, p. 71.

14 *Committee Hansard*, 5 July 2007, p. 77.

15 *Committee Hansard*, 5 July 2007, p. 77.

16 Department of Transport and Regional Services, *Submission 24*, p. 4.

17 *Committee Hansard*, 1 May 2007, p. 28.

...for the information to be included in the MNPP a policy justification would be required for the...new elements of information...to be added. This would need to be approved by policing jurisdictions.<sup>18</sup>

8.23 The Victoria Police observed that cost would also be a factor in considering what new datasets to add to the MNPP:

...[it is possible to] think of regulated activity across Australia over all sorts of industries that could add value to a national information dataset...we could make a list of 100 things that would be of value to add to CrimTrac—but, at the end of the day, it is all about cost...<sup>19</sup>

8.24 The committee sees much value in continuing to improve the information available to LEAs to assist their operations in an increasingly complex crime environment, and considers the MNPP to be the most appropriate database on which new datasets could be held. The committee acknowledges that a number of policy, legislative, privacy and administrative issues will need to be addressed as part of any proposed expansion of the MNPP.

### **Recommendation 17**

**8.25 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.**

### ***Funding of CrimTrac***

8.26 CrimTrac was originally established by a \$50 million capital injection from the Commonwealth Government. This money has been fully expended and CrimTrac now relies on revenue from its National Criminal Record Checking (NCHRC) service and subscriptions from jurisdictions for funding.

8.27 A number of witnesses to the inquiry raised concerns over the sustainability of the current CrimTrac funding model:

...while there was initial funding from the federal government to establish CrimTrac...by and large, CrimTrac survives on income from criminal history checks. There is no further major influx of funds, which...we think...is required...<sup>20</sup>

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18 *Submission 24*, p. 4.

19 Detective Superintendent Mark Porter, State Intelligence Division, Victoria Police, *Committee Hansard*, 1 May 2007, p. 17.

20 Mr Mark Burgess, Chief Executive Officer, Police Federation of Australia, *Committee Hansard*, 5 July 2007, p. 42.

8.28 Commissioner Keelty noted that some of CrimTrac's work is, and should continue to be, supported from the proceeds of crime.<sup>21</sup> The rollout of the MNPP, for example, is one such case of funding.<sup>22</sup>

8.29 The CrimTrac submission notes that the organisation aims to be financially secure and not reliant on the vagaries of police service budgets. The CrimTrac board is currently considering a new model for delivery of its NCHRC service, which could have implications for CrimTrac's funding.<sup>23</sup>

8.30 The committee notes CrimTrac's critical role in improving Australia's police databases through 'generating national approaches to information-sharing solutions for law enforcement agencies'.<sup>24</sup> Given this, the committee is concerned at the potential for the agency's reliance on self-funding to significantly undermine its ability to deliver on its services and stated aims, and to undertake forward planning. Because the current self-funding model could create a range of vulnerabilities, the stable long-term financial sustainability of CrimTrac is an issue that should be considered and addressed.

## **Recommendation 18**

**8.31 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.**

### *National automatic number plate recognition system*

8.32 The committee heard calls for the establishment of a national automatic number plate recognition system. This would be a form of information database, with a data-matching facility to enable the system to 'recognise' plates of interest.<sup>25</sup> Mr Burgess advised the committee that such a system:

...has the potential to revolutionise policing across Australia, with huge benefits for crime prevention, reduction and investigation as well as for national security and border protection activities.<sup>26</sup>

8.33 The automatic number plate recognition system would be comprised of cameras monitoring movements on roads. Mr McDevitt explained:

[The system would use]...technology that is utilised at the moment by...safety cam where trucks move between point A and point B too quickly and then get identified through their number plates...[E]ach

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21 *Committee Hansard*, 5 July 2007, p. 63.

22 CrimTrac, *Submission 12A*, p. 1.

23 CrimTrac, *Submission 12*, p. 5.

24 CrimTrac, *Strategic Plan 2007-2010*, p. 5.

25 Police Federation of Australia, *Submission 5*, p. 9.

26 *Committee Hansard*, 5 July 2007, p. 41.

organisation would put up a list of vehicles of interest to them and...when a vehicle of interest to them crossed one of these sites it would raise a flag.<sup>27</sup>

8.34 Mr Milroy said the system would be a 'valuable' tool for police and that it would complement and enhance the operation of the ACC's current intelligence systems:

...intelligence can be drawn from the [automatic number plate recognition system]...into our database...on vehicle movements which would then link up with information that we hold on individuals or on vehicles being used in organised crime. So that connection and the transfer of the data is something that we will be working on together in relation to the development of their project.<sup>28</sup>

8.35 The committee notes the allocation of proceeds of crime funding for a scoping study into a national automatic number plate recognition system, and supports the development of such a capability. Such a system could provide significant benefits to all Australian police services and law enforcement related agencies for crime prevention, detection and reduction.

### Recommendation 19

**8.36 The committee recommends that the Commonwealth, state and territory governments implement a national number plate recognition system.**

### Intelligence databases

8.37 Table 8.2 shows the major intelligence databases in Australia, their type, accessibility, funding and operational status.

**Table 8.2: Intelligence databases in Australia**

Database	Type of database	Agency	Accessible by	Funded by	Status
<b>Australian Criminal Intelligence (ACID) database</b>	Intelligence. ACID allows information reports to be searched and analysed for links and associations	ACC	ACC, AFP, state and territory police forces and agencies	Commonwealth	Operational
<b>Australian Identity Fraud</b>	Intelligence. The AIFPR collects	ACC	ACC, AFP, state and territory	Commonwealth	Operational

27 *Committee Hansard*, 12 July 2007, p. 13.

28 *Committee Hansard*, 6 July 2007, p. 31.

<b>Protection Register (AIFPR)</b>	information on fraudulent identities and victims of identity theft		police forces and agencies		
<b>Violent Crime Linkage Analysis System (ViCLAS)</b>	Intelligence. ViCLAS allows the collection and analysis of information on violent crimes	ACC	ACC, AFP, state and territory police forces and agencies	Commonwealth	Operational

### *Improving the adequacy of information databases*

8.38 Table 8.2 shows that the ACC administers the Australian Criminal Intelligence Database, the Australian Identity Fraud Protection Register and the Violent Crime Linkage Analysis System.

8.39 The ACC stands as Australia's premier effort in recent times to improve the creation of, access to and exchange of intelligence data across all Australian jurisdictions. The ACC annual report for 2005-06 notes that the commission 'aims to bring together all facets of intelligence gathering' through its role in collecting, analysing and disseminating criminal intelligence.<sup>29</sup>

### *Contribution by state and territory jurisdictions to the Australian Criminal Intelligence Database*

8.40 The Australian Criminal Intelligence Database (ACID) is a 'secure, centralised, national repository for criminal intelligence',<sup>30</sup> and is the 'major system for sharing intelligence between Commonwealth, state and territory law enforcement agencies'.<sup>31</sup> The committee heard that, because contribution to ACID is inconsistent, it is not functioning at its optimum potential. The Australian Transaction Reports and Analysis Centre (AUSTRAC) submission notes:

The intelligence value of ACID is limited in that only a small number of law enforcement agencies within Australia place intelligence onto the system.<sup>32</sup>

29 Australian Crime Commission, *Annual Report 2005-06*, p. 10.

30 Australian Crime Commission, *Annual Report 2005-06*, p. 28.

31 Attorney-General's Department, *Submission 21A*, p. 5.

32 *Submission 10*, p. 5.

8.41 The input of some jurisdictions to ACID is high, and these jurisdictions have recognised the operational value of fully utilising and continuing to expand ACID's capacity. The NSW Police Commissioner, Mr Ken Moroney, told the committee:

...the NSW Police Force seeks to enhance its own capacity and the capacity of the ACC to improve the range and volume of data capable of being uploaded into...ACID.<sup>33</sup>

8.42 Similarly, Mr John Visser, General Manager, Intelligence, AUSTRAC, told the committee that AUSTRAC found ACID highly useful, and that it would be improved by increasing contributions to it:

...we find...[ACID] very useful in our analysis of our own data...[T]he more criminal intelligence that finds its way to [ACID]...would benefit us to discern the financial players we observe as leaning more towards the criminal...[W]e would find great value in more criminal intelligence being available to us.<sup>34</sup>

8.43 The Attorney-General's Department agreed that the 'utility of existing databases depends upon the extent to which participating agencies upload information', but advised the committee that the issue is currently being addressed:

...work is underway to improve the use of existing databases across the law enforcement community, most notably [ACID]...While the use of ACID is substantial and growing each year, it could be better utilised by some agencies, and work is underway to address this. Better utilisation of ACID will improve the sharing of intelligence with immediate effect...<sup>35</sup>

### *Cultural issues*

8.44 A number of witnesses identified 'cultural issues' as the reason for the under-utilisation of ACID. The committee was informed that the Wheeler review into aviation security recommended that a comprehensive examination of Commonwealth, state and territory law and practices be undertaken to ensure that there were no inhibitors to the exchange of information and intelligence between agencies. Mr Keith Holland, First Assistant Secretary, Security and Critical Infrastructure Division, Attorney-General's Department, told the committee:

[The review concluded]...that primarily the inhibitor to the exchange of information was a cultural one rather than a legislative one...[and] that there were cultural inhibitors...such as the reluctance of agencies to share information either because of a silo mentality or because of their concern about how the information that they exchanged would be dealt with...<sup>36</sup>

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33 *Committee Hansard*, 8 June 2007, p. 4.

34 *Committee Hansard*, 8 June 2007, pp 20-21.

35 *Submission 21A*, p. 5.

36 *Committee Hansard*, 5 July 2007, p. 2.



8.45 Mr McDevitt agreed that cultural inhibitors around information sharing reflected unresolved key issues, such as security and privacy concerns around how information is stored and shared:

The most onerous challenges are...cultural ones associated with individual and organisational stances on the sharing of information and on finding the balance between need-to-know and need-to-share principles...There is...a general recognition that the question is no longer whether to share or not to share; rather, it is what to share and how to share.<sup>37</sup>

8.46 Mr Milroy suggested that perceived cultural barriers might also be attributed to a lack of appropriate training and knowledge among the individuals who collect and input data into a given database:

[Cultural issues]...probably have more to do with that fact that...there are processes that have to be put in place, because the greatest failure is the human failure. It is the inability of individual intelligence collectors to understand what they are collecting, how it should be collected and how it should be then inputted into a database.<sup>38</sup>

8.47 Assistant Commissioner Tony Harrison, Crime Service, South Australia Police, acknowledged that 'territorialism' and a silo mentality within LEAs had contributed to under-utilisation of intelligence databases, but noted that such cultural barriers have diminished in recent years:

...I have also detected in the last two or three years far more cooperation, which is probably induced by the approach to terrorism. Agencies are working better together and more closely to exchange information.<sup>39</sup>

8.48 The committee notes the recent substantial changes to the law enforcement environment. The establishment of the ACC and CrimTrac has contributed not only to greater cooperation and sharing around intelligence but also to keener appreciation of the value and importance of intelligence to responding effectively to serious and organised crime. Legitimate operational and privacy concerns aside, the committee feels that the present inter-agency arrangements around intelligence sharing are adequate and improving. While the committee will continue to take a close interest in the cooperative aspects of police culture, present arrangements appear to be assisting with the removal of the adverse cultural factors identified.

#### *Privacy issues*

8.49 The committee received a submission from the Privacy Commissioner, Ms Karen Curtis, advising that the ACC's intelligence holdings are exempt from the provisions of the *Privacy Act 1988* (Cth). The submission notes:

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37 *Committee Hansard*, 5 July 2007, p. 72.

38 *Committee Hansard*, 6 July 2007, p. 32.

39 *Committee Hansard*, 6 July 2007, p. 20.

...the Privacy Act includes exceptions that allow for intelligence collection that recognises the appropriate balance between privacy and...the safety and security of the community.<sup>40</sup>

8.50 Ms Curtis suggested that the ACC should consider using the principles of the *Privacy Act 1988* to govern its handling of data. The Privacy Commissioner submitted that such an approach would strike an appropriate balance between the competing interests of law enforcement and privacy:

...consideration should be given to ensuring that an appropriate balance is struck between the need to collect personal information to facilitate security and safety and an individual's general right to control the collection and handling of their personal information.<sup>41</sup>

8.51 The committee observes that the adoption of the protocol suggested by the Privacy Commissioner is an appropriate means of ensuring that the ACC, although exempted from the *Privacy Act 1988*, ensures appropriate protection of intelligence data wherever possible.

### **Recommendation 20**

**8.52 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).**

### **Case management systems**

8.53 Table 8.3 shows the major case management systems in Australia, their type, accessibility, funding and operational status.

**Table 8.3: Police case management systems in Australia**

<b>System</b>	<b>Type of system</b>	<b>Agency</b>	<b>Accessible by</b>	<b>Funded by</b>	<b>Status</b>
<b>PROMIS</b>	Case management	AFP	AFP, ACT Police and Northern Territory Police	State	Operational
<b>LEAP</b>	Case management	Victoria Police	Victoria Police	State	Operational
<b>QPRIME</b>	Case	Queensland Police	Queensland	State	Operational

40 *Submission 23*, p. 1.

41 *Submission 23*, p. 1.

	management	Service	Police Service		
<b>COPS</b>	Case management	New South Wales Police Service	New South Wales Police Service	State	Operational
<b>IMS</b>	Case management	Western Australia Police	Western Australia Police	State	Operational
<b>ORS</b>	Case management	Tasmania Police	Tasmania Police	State	Operational
<b>PIMS</b>	Case management	South Australia	South Australia Police	State	Operational

### *Improving the adequacy of case management systems*

8.54 Case management systems are a critical investigative and operational tool for police. These systems allow the bringing together in a single file of separate pieces of information or intelligence related to an offence. Mr McDevitt stressed the critical role of these systems in day-to-day policing:

...case management systems...[are] the backbone [of policing]...It is about: 'I'm going to a burglary. This is so-and-so's house. There is a car outside. I want to know about the car. I want to know about the people and all sorts of things. I want to know about fingerprints and DNA.' So ultimately everything links into the case management system...<sup>42</sup>

8.55 Mr McDevitt told the committee that each Australian jurisdiction currently has its own case management system, and that these systems 'do not talk to each other in any sort of concerted way'.<sup>43</sup> Deputy Commissioner Lawler outlined the consequences of having separate case management systems:

Where we have...an active ongoing investigation...between two jurisdictions...[and] the jurisdictions put their information into...separate investigational databases, that is a potential vulnerability...<sup>44</sup>

8.56 A number of witnesses highlighted the need for a single or centralised national case management system to give police officers on the street access to nationally comprehensive information. Mr Burgess stressed the importance of national consistency:

...the constable on the street...in Canberra...[should be able to] access...information that is vital to them, in the same way as the constable

42 *Committee Hansard*, 5 July 2007, pp 82-83.

43 *Committee Hansard*, 5 July 2007, p. 73.

44 *Committee Hansard*, 5 July 2007, p. 68.

on the street in Perth, Adelaide, Melbourne or anywhere else around Australia.<sup>45</sup>

8.57 Mr Burgess offered an example of the consequences of national case management data not being readily available to law enforcement officers:

[One example is]...the shooting of offender William Watkins at Karratha in Western Australia in early 2005...Watkins had three days earlier murdered sisters Colleen and Laura Irwin in Melbourne. He had then driven 5½ thousand kilometres...to Western Australia, where he came under the notice of Senior Constable Shane Gray at Karratha for failing to pay for petrol. When Gray did a check on Watkins via the Western Australian police computer system he was not shown as wanted or a suspect on the system. Unfortunately, of course, he was on the Victorian police system, but that was not accessible through the Western Australian system. Watkins attacked Gray and tried to get hold of his firearm. Gray, the senior constable, was seriously injured in the incident, and Watkins was eventually shot and killed.<sup>46</sup>

8.58 The committee heard that the failings of having multiple case management systems are most pronounced at jurisdictional borders. Mr McDevitt provided the following example:

...if you have a single burglar who lives on a border—it could be Albury-Wodonga or somewhere up north, Tweed Heads-Coolangatta—they could be moving back and forth across the state border committing crimes. Despite the best efforts of police...there is not a single case management system nationally which automatically would ensure that that information was shared.<sup>47</sup>

8.59 The committee believes that the development of a single national case management system should be given the highest priority, and is particularly concerned by the suggestion that, even if a commitment by all jurisdictions to a national case management system were secured, its development and implementation could take as long as a decade.<sup>48</sup> The committee considers that the Commonwealth Government should provide funding to enable a comprehensive feasibility study to be conducted into the priority development of a single national case management system.

## **Recommendation 21**

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

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45 *Committee Hansard* 5 July 2007, p. 44.

46 *Committee Hansard*, 5 July 2007, p. 42.

47 *Committee Hansard*, 13 August 2007, p. 6.

48 Mr Ben McDevitt, Chief Executive Officer, CrimTrac, *Committee Hansard*, 5 July 2007, pp 82-83.

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## Recommendation 22

**8.61 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.**

### Conclusion

8.62 Information and intelligence databases and case management systems provide distinct capacities that are crucial for the ability of law enforcement to combat organised crime. Information systems allow police to store and search systematically particular classes of data to determine, for example, whether a suspect has prior offences. Intelligence systems allow data to be managed and analysed in order to increase its investigative or operational value, such as by identifying links between crime groups. Case management systems are the critical system for operational police, allowing information and intelligence relevant to individual offences to be brought together and managed on a single system. The committee concurs with Chief Commissioner Nixon as to the value and importance of national policing data information systems:

National policing data information systems...provide a wall of protection for the citizens, so if we have ways and means to share that data that are efficient then...that adds to our protection and to prevention of crime.<sup>49</sup>

8.63 Australia's federal system has given rise to jurisdictions employing different and/or incompatible databases and technologies. These incompatibilities between jurisdictions benefit organised crime and undermine the ability of police to store, share and manage data that is critical to investigating and prosecuting serious and organised crime in Australia.

8.64 The committee notes that LEAs are increasing efforts to share information and that this has been facilitated by the opportunities for collaboration and the culture of cooperation offered by the ACC and CrimTrac. Also notable are a number of technical and development initiatives to facilitate exchange of data across systems. Table 8.4 shows current information and intelligence related initiatives and/or projects that can be expected to promote national access to databases.

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49 *Committee Hansard*, 1 May 2007, p. 32.

**Table 8.4: Information and intelligence related initiatives and projects**

<b>Project or initiative</b>	<b>project or initiative type</b>	<b>Agency</b>	<b>Purpose</b>	<b>Funding</b>	<b>Status</b>
<b>CrimTrac Police Reference System (CPRS) Development Programme</b>	A broad project to improve national access to policing data. The CPRS at present encompasses the MNPP Project and ANCOR	CrimTrac	To enhance law enforcement by provision of rapid access to national operational policing data	CrimTrac is largely self-funded through the NCHRC	Ongoing
<b>Automated Number Plate Recognition Project (ANPR)</b>	ANPR project is a scoping study which aims to identify possible options for the technology to be given to law enforcement agencies	CrimTrac	National capability for detection of vehicles of interest to law enforcement agencies	ANPR has received proceeds of crime funding of \$2.2m to deliver scoping study	New initiative: scoping study to be delivered by end 2008
<b>Standard Intelligence Exchange Format</b>	Project to improve inter-connectivity of information, intelligence and case management systems	ACC	To establish a standard form for information and intelligence to facilitate their exchange between different jurisdictions and technologies	Commonwealth	Ongoing
<b>Australian Law Enforcement Referencing and Targeting</b>	Project for the enhancement of ACID	ACC	To improve ACID's intelligence handling	Commonwealth	Ongoing

<b>project (ALERT)</b>			capacities such as by adding geocoding of information and charting of criminal associations capabilities		
<b>Australian Law Enforcement Intelligence Network (ALEIN)</b>	ALEIN is a national intranet used by all police services, the New Zealand Police, state crime commissions and a number of government agencies	ACC	To provide intelligence dissemination and real-time exchange and cooperation capabilities	Commonwealth	Active

8.65 The committee recognises that these efforts are committed to improving databases in Australia, particularly the ability to locate and retrieve information, intelligence and case management data across multiple jurisdictions and systems. In coming to the recommendations contained in this chapter, the committee seeks improvements that will complement current initiatives, and provide practical benefits for police on the street—especially those with the difficult task of fighting organised crime.

8.66 The priority task in improving Australia's databases is the harmonisation of the many complex legal, technical and policy factors across different jurisdictions, because it is in this multiplicity of arrangements that vulnerabilities for police and opportunities for organised crime to escape detection exist. Following many years of slow progress, the establishment of the ACC and CrimTrac has seen a growing convergence of policy and some promising improvements to database performance and interoperability. However, the committee wishes to stress the importance of a committed national and cross-jurisdictional policy effort to hasten the continuing work on national databases. A shared and concerted policy approach by governments will enable remaining legal and technical impediments to be removed more swiftly than has been possible in the past. For example, coordinated purchasing decisions could negate the need for developing time-consuming and expensive technical solutions for harmonising disparate technologies:

...the technical challenges in integrating information from disparate systems developed at different times using different technologies can be quite complex...[T]he procurement of IT systems by the police should be

reviewed to ensure that, wherever possible, national solutions are delivered to national problems.<sup>50</sup>

8.67 Finally, the committee wishes to acknowledge the professionalism and dedication of Australia's police and LEAs, and the many people who work to combat serious and organised crime. The ongoing effort to coordinate and enhance Australia's information and intelligence databases and case management systems is fundamental to ensuring they provide comprehensive and, above all, effective assistance to police in their day-to-day as well as long-term policing responsibilities. The growing spirit and practical measures of cooperation in this area bode well for future efforts to combat organised crime in Australia.

Senator the Hon. Ian Macdonald  
Chair

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50 Mr Ben McDevitt, Chief Executive Officer, CrimTrac, *Committee Hansard*, 5 July 2007, p. 71.



## **Additional comments by Senator Mark Bishop**

1.1 The terms of reference for this inquiry into organised crime by the Committee highlight the committee's critical role in reviewing the performance of the commission as well as examining trends and changes in criminal activities.

1.2 As the Committee's report has noted briefly, this inquiry has canvassed its terms of reference broadly through public submissions and hearings in the normal parliamentary committee style. It has gained a considerable amount of evidence on organised crime, and I concur with the committee's concerns at the breadth and depth of the issues which face law enforcement agencies. Responsibility for addressing these issues rests with each state jurisdiction as well as the Commonwealth, in its own right and as national focal point for coordinated effort through the ACC, AFP, AIC and other Commonwealth agencies.

1.3 I note the generality of the inquiry's evidence has made it difficult for the Committee to remain within the inquiry's terms of reference. Essentially, the reference was to examine future trends of organised crime, recommend strategies for countering such crime and check the adequacy of legislative and administrative arrangements in meeting those strategies.

1.4 To that extent, I appreciate difficulties faced by the Committee to make anything other than general recommendations. For while it heard alarming evidence on the nature of the issues confronting the national fight against organised crime, there was insufficient detail to make anything other than general recommendations.

1.5 The ACC and this Committee have made positive and progressive steps in overcoming problems which beset its ancestor, the National Crime Authority. That body was a first attempt to bring a national focus to fighting national crime across all jurisdictions.

1.6 The ACC governance model, in terms of accountability, is primarily to its stakeholders viz, from the CEO to the Board, from the Board to the Intergovernmental Committee (IGC), and thence to ministers.

1.7 I note the Committee's role does not seem to be part of that hierarchy. I suggest a clarification of the Committee's role, which, in light of this current inquiry, may be far more limited than previously realised. Certainly that appeared evident from the manner in which this inquiry has been conducted, and the content of the report.

1.8 Considering the terms of reference set out in Section 55 of the Act it would seem that while the ACC is not accountable to the Committee, the Committee is accountable to the Parliament for assessment of the way in which the ACC operates and the function it performs nationally in accordance with its charter.

1.9 Hence in taking evidence during this inquiry, important questions are declined on the basis that this is a matter for government policy.

1.10 An example would be seeking a view as to whether Customs should have telephone interception powers or not. This is a standard and appropriate response to a parliamentary committee such as this, but it does not assist the Committee in its terms of reference where such questions can be important in assessing the adequacy or otherwise of the means by which organised crime is being addressed.

1.11 It may be prudent to re-examine the Committee's role as set out in its terms of reference, and then examine more discrete segments and the way they are being pursued within the ACC framework.

1.12 These subjects should in the first instance concern those parts of organised crime which fall more clearly within the Commonwealth's responsibilities, so avoiding intervention in matters of state responsibility. The Committee's recommendations in this report on further subjects for scrutiny (such as communication interception, money laundering, and internet crime) would be a good starting point.

1.13 Within this role as "systemic mentor" of the ACC model, it may be necessary for the Committee to approach its work with a modus operandi than might otherwise be the case with parliamentary committees. This will entail continuing development of the special relationship of trust with the ACC, and mutual respect for the complementary responsibilities. None of this, however, should preclude the Committee from operating as a watchdog of the parliament, including regular assessment of the operational performance of the ACC model within its legislative charter.

1.14 In light of the above, I suggest the following matters be addressed:

- The Government, when re-establishing this Committee, consider whether the task warrants parliamentary committee oversight, whether the function might be conducted instead by way of an annual review by a retired judge or eminent lawyer with relevant experience, or whether the Committee might be assisted from time to time by the latter;
- That the Committee on reappointment in the new parliament, be tasked with examining its own role, and consider a new modus operandi more consistent with its legislated purpose and function; and.
- That the Committee examine those matters identified in this report worthy of more detailed examination, particularly those entailing Commonwealth function.

# **Appendix 1**

## **Public submissions**

- 1 Corruption and Crime Commission of Western Australia
- 2 Mr David Lusty
- 3 Human Rights and Equal Opportunity Commission
- 4 Australian Institute of Criminology
- 5 Police Federation of Australia
- 6 Government of South Australia, Director of Public Prosecutions
- 7 South Australia Police
- 8 Queensland Crime and Misconduct Commission
- 9 Mr Alex Malik
- 10 Australian Transaction Reports and Analysis Centre (AUSTRAC)
- 11 Commonwealth Director of Public Prosecutions
- 12 CrimTrac
- 12A CrimTrac
- 13 Victoria Police
- 14 Australian Customs Service
- 15 Western Australia Police
- 15A Western Australia Police
- 16 Australian Federal Police
- 17 Australian Crime Commission
- 17A Australian Crime Commission
- 18 Advocates for Survivors of Child Abuse
- 19 Confidential

- 20 New South Wales Police Force
- 20A Confidential
- 21 Australian Government, Attorney-General's Department
- 21A Australian Government, Attorney-General's Department
- 22 Australian Mobile Telecommunications Association
- 23 The Office of the Privacy Commissioner
- 24 Australian Government, Department of Transport and Regional Security
- 25 Australian Taxation Office

## **Appendix 2**

### **Public hearings and witnesses**

*Perth, Monday 30 April 2007*

#### **Western Australia Police**

Assistant Commissioner Wayne Gregson, Portfolio Head, Specialist Crime Portfolio

Detective Superintendent Kim Porter, Divisional Superintendent, Organised Crime Division

#### **Corruption and Crime Commission of Western Australia**

Mr Mike Silverstone, Executive Director

#### **Sellenger Centre for Research in Law, Justice and Policing, School of Law and Justice, Edith Cowan University**

Associate Professor Margaret Campbell Mitchell, Director

*Melbourne, Tuesday 1 May 2007*

Professor Adam Crosbie Sutton (Private Capacity)

Mr Frank Costigan QC (Private Capacity)

#### **Victoria Police**

Detective Superintendent Richard Grant, Crime Strategy Group, Crime Department

Superintendent Frederick Johansen

Chief Commissioner Christine Nixon

Detective Superintendent Mark Porter, State Intelligence Division

#### **Contemporary Europe Research Centre, University of Melbourne**

Professor Leslie Templeman Holmes, Professor, Political Science; and Deputy Director

***Brisbane, Thursday 7 June 2007***

Mr Robert Bottom (Private Capacity)

Professor Roderic Broadhurst (Private Capacity)

**Queensland Police Service**

Detective Chief Superintendent Ross Barnett

Detective Inspector Peter Fleming

Detective Superintendent Stephan Gollschewski

Mr Brian Hay

**Queensland Crime and Misconduct Commission**

Mr Christopher Keen, Director, Intelligence

Ms Elizabeth Foulger, Manager, Intelligence

***Sydney, Friday 8 June 2007***

**New South Wales Police Force**

Commissioner Ken Moroney, Commissioner

Assistant Commissioner Graeme Morgan, Commander, State Crime Command

Deputy Commissioner Andrew Scipione, Deputy Commissioner

**Australian Transaction Reports and Analysis Centre (AUSTRAC)**

Ms Jane Atkins, General Manager, Regulatory Policy

Mr Thomas Story, Executive General Manager

Mr John Visser, General Manager, Intelligence

**Advocates for Survivors of Child Abuse (ASCA)**

Mr Michael Salter, Director

*Canberra, Thursday 5 July 2007*

**Attorney-General's Department**

Mr Keith Holland, First Assistant Secretary, Security and Critical Infrastructure Division

Dr Dianne Heriot, Acting First Assistant Secretary, Criminal Justice Division

Mr Craig Harris, Assistant Secretary, National Law Enforcement Policy Branch

Ms Jamie Lowe, Assistant Secretary, AusCheck

Mr Lionel Markey, Director, Telecommunications and Surveillance Law Branch

Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

Mr Andrew Walter, Acting Assistant Secretary, Criminal Law Branch

Mr Alexander Webling, Senior Adviser E-Security Strategy, Critical Infrastructure Protection Branch

**Australian Taxation Office**

Ms Jennie Granger, Second Commissioner of Taxation

Mr Michael Monaghan, Deputy Commissioner

Mr Christopher Barlow, Assistant Commissioner, Serious Non Compliance

**Police Federation of Australia**

Mr Mark Burgess, Chief Executive Officer

**Australian Federal Police**

Commissioner Mick Keelty, Commissioner

Deputy Commissioner John Lawler, Deputy Commissioner, National Security

**CrimTrac**

Mr Ben McDevitt, Chief Executive Officer

Mr Peter Bickerton, Deputy Chief Executive Officer, Operations

Mr Matthew Cahill, Deputy Chief Executive Officer, Support

Ms Nicole McLay, Chief Financial Officer

**Australian Institute of Criminology**

Dr Toni Makkai, Director

Mr Rob McCusker, Research Analyst, Transnational Crime

**Australian Customs Service**

Ms Marion Grant, Acting Deputy Chief Executive Officer, Border Enforcement

Mr Brian Hurrell, Acting National Director, Enforcement and Investigations Division

Mr Jeffrey Buckpitt, Acting National Director, Intelligence and Targeting Division

*Canberra, Friday 6 July 2007*

**Department of Transport and Regional Services**

Mr Paul Retter, Executive Director, Office of Transport Security

Mr Graham Hanna, Section Head, Identity Security Section, Supply Chain and Information Security Branch, Office of Transport Security

Mr Darren Crombie, General Manager, Aviation Security Operations

Mr Jeremy Parkinson, Director, Maritime Security Policy

Mr Jonathan Wraith, Section Head, Supply Chain Security

**South Australia Police**

Mr Tony Harrison, Assistant Commissioner, Crime Service

**Australian Crime Commission**

Mr Alastair Milroy, Chief Executive Officer

Mr Michael Outram, Executive Director, Operational Strategies

Mr William Boulton, Examiner

Mr Peter Brady, Senior Legal Advisor

Mr Jeff Pope, General Manager, Commodities Methodologies and Activities

Mr Edward Purrer, Acting Chief Information Officer



*Canberra, Monday 13 August 2007*

**CrimTrac**

Mr Ben McDevitt, Chief Executive Officer

Mr Peter Bickerton, Deputy Chief Executive Officer, Operations

Mr Matthew Cahill, Deputy Chief Executive Officer, Support

Ms Nicole McLay, Chief Financial Officer



# Appendix 3

## Tabled documents

*Melbourne, Tuesday 1 May 2007*

**University of Melbourne, Professor Leslie Holmes**

- 12<sup>th</sup> International Anti-Corruption Conference, Guatemala City, Guatemala, 15-18 November 2006. Workshop 4.2: Informal Practice and Corruption: How to Weaken the Link Coordinator: Åse Berit Grødeland. Networks and Linkages: Corruption, Organised Crime, Corporate Crime and Terrorism.

*Brisbane, Thursday 7 June 2007*

**Mr Bob Bottom**

- Opening Statement—Introduction
- Australian Institute of Criminology trends & Issues July 2002. No. 231 *Approaching Organised Crime: Where Are We Now and Where Are We Going?* Shona Morrison
- Crime Facts Info October 1, 2002. Number 34 From the Australian Institute of Criminology *Organised crime*
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*Canberra, Monday 13 August 2007*

**Crimtrac**

- Information package:
  - Overview
  - Strategic Plan; and
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## Appendix 4

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# Appendix 5

## *Australian Crime Commission Act 2002*

### **Definition of organised crime: section 4**

Section 4 of the *Australian Crime Commission Act 2002* defines 'serious and organised crime' as an offence:

- (a) that involves 2 or more offenders and substantial planning and organisation; and
- (b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques; and
- (c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and
- (d) that is a serious offence within the meaning of the *Proceeds of Crime Act 2002*, an offence of a kind prescribed by the regulations or an offence that involves any of the following:
  - (i) theft;
  - (ii) fraud;
  - (iii) tax evasion;
  - (iv) money laundering;
  - (v) currency violations;
  - (vi) illegal drug dealings;
  - (vii) illegal gambling;
  - viii) obtaining financial benefit by vice engaged in by others;
  - (ix) extortion;
  - (x) violence;
  - (xi) bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory;
  - (xii) perverting the course of justice;
  - (xiii) bankruptcy and company violations;
  - (xiv) harbouring of criminals;
  - (xv) forging of passports;
  - (xvi) firearms;
  - (xvii) armament dealings;
  - (xviii) illegal importation or exportation of fauna into or out of Australia;
  - (xix) cybercrime;

(xx) matters of the same general nature as one or more of the matters listed above; and

(da) that is:

(i) punishable by imprisonment for a period of 3 years or more;

or

(ii) a serious offence within the meaning of the *Proceeds of Crimes Act 2002*;

but:

(e) does not include an offence committed in the course of a genuine employers by a party to the dispute, unless the offence is committed in connection with, or as part of, a course of activity involving the commission of a serious and organised crime other than an offence so committed; and

(f) does not include an offence the time for the commencement of a prosecution for which has expired...