



Australian Government
Australian Customs Service

SUBMISSION TO THE
PARLIAMENTARY JOINT COMMITTEE
ON THE
AUSTRALIAN CRIME COMMISSION
INQUIRY INTO
THE FUTURE IMPACT OF
SERIOUS AND ORGANISED CRIME
ON AUSTRALIAN SOCIETY

March 2007

INTRODUCTION

This submission is to the Parliamentary Joint Committee on the Australian Crime Commission (“the Committee”) which pursuant to its duties under paragraph 55(1)(d) of the *Australian Crime Commission Act 2002* is seeking to:

“examine trends and changes in criminal activities, practices and methods and report to both Houses of the Parliament any change which the Committee thinks desirable to the functions, structure, powers and procedures of the ACC.”

The Committee will inquire into the future impact of serious and organised crime on Australian society with 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.

Following a request from the Committee, Customs is pleased to make this submission to the inquiry. Customs comments are directed at the broader relationship with the Australian Crime Commission and provide a response to two of the terms of reference of the Inquiry.

EXECUTIVE SUMMARY

The Australian Crime Commission (ACC) provides a unique national criminal intelligence, investigative and law enforcement policy perspective as a partner agency in facilitating cross-border inquiries. This is particularly so in relation to major fraud, serious narcotics offences, money laundering, vehicle re-birthing, identity fraud and technologically based criminal activity. Customs values the scope of its partnership with the ACC and recognises that the organisation presents real opportunities to combat organised crime in this country

Customs considers there is scope to further build on this close relationship through increasing co-operative arrangements such as:

- Further strengthening national intelligence sharing arrangements, amongst the ACC and other law enforcement agencies for mutual benefit, including the sharing of intelligence related to border security and counter-terrorism.
- Developing opportunities for sharing analytical resources and product to assist targeting of individuals or corporate entities suspected of organised criminal activity. The sharing of expertise, analytical tools and access to relevant databases could be enhanced, while adhering to the requirements of security and privacy.
- Contributing to the development of assessments of criminal trends made by the ACC and continuing with Customs in-house strategic and operational assessments. The trends of criminal activity at the border or otherwise are considered by both agencies when developing strategic or operational assessments or planning intelligence or investigative activity.
- Joint investigation activity into criminal activity of mutual interest and where appropriate assistance can be provided.

THE RELATIONSHIP BETWEEN CUSTOMS AND THE ACC

Law enforcement agencies are well aware of the possibilities involved in organised crime using international trade and the movement of people across borders in major fraud, drug trafficking, the movement of prohibited goods, people trafficking and other serious offences, at times seeking to bypass regulatory requirements through the use of false identities and documentation.

While individual agencies employ a range of measures to address these issues, effective cooperation and intelligence sharing between all law enforcement agencies is an important part of providing an effective response to organised crime. This must include strengthening the Australian border so as to anticipate, detect, assess and respond to unlawful activity and to ensure there exists an appropriate law enforcement and regulatory framework to do so.

Customs and the ACC enjoy a good relationship with regular contact at different levels:

- On a national level, this includes participation in the ACC hosted National Criminal Intelligence & Operations Forum which assists the ACC in defining its priorities

prior to providing advice to the ACC Board. Regular meetings also occur between intelligence heads of Customs, the Australian Federal Police (AFP) and ACC;

- A monthly meeting involving senior executive enforcement and intelligence officers at which Customs, AFP and the ACC exchange strategic and operational intelligence;
- In New South Wales (NSW), Customs is part of the Senior Intelligence Officers Group (SIOG) comprising senior intelligence managers in the AFP, NSW Police, Australian Taxation Office (ATO), Australian Transaction Reports & Analysis Centre (AUSTRAC), Department of Immigration and Citizenship, and the ACC. SIOG is a forum for information sharing, planning and networking at a tactical and operational level; to identify and promote joint opportunities across different agencies and to promote increased awareness and understanding of the intelligence capacity of each agency;
- In Victoria, Customs is part of a Joint Management Committee (JMC) comprising the AFP, Victoria Police, the ATO, AUSTRAC and the ACC. Senior officers of these agencies meet to build a shared understanding of operational activity. Similar arrangements also exist in the other States; and
- Customs has appointed liaison officers to facilitate the day-to-day working arrangements.
- The agencies also have a standing Memorandum of Understanding in place with each other.

Customs operational support to the ACC may, as necessary, involve the provision of analytical support, surveillance assets and technological support such as the use of ion scans and detector dogs. Depending on the nature of the operation Customs will also place sea and air cargo on alert, screen cargo entries and X-ray containers. In a practical situation, this activity could literally involve hundreds of containers.

ISSUES UNDER INQUIRY

The following observations are provided in response to two of the terms of reference of the inquiry.

Future trends in serious and organised crime activities, practices and methods and their impact on Australian society.

There are ongoing law enforcement issues that concern both the ACC and Customs.

Australia faces an ongoing significant threat from amphetamines and other synthetic drugs (AOSD) together with precursors as an integral part of that threat. Areas of concern include the extent of domestic manufacture of AOSD coupled with detections of imported synthetic drugs and precursors. In addition there are challenges implicit in restricting the diversion of precursors from legitimate products.

It is apparent that the nature of offenders in recent years has changed as traditional Customs offences are being committed by greater numbers of 'career criminals' and

organised crime syndicates involved in systematic and long-term criminal activity at the border.

Particular types of goods that are increasingly targeted by these groups include precursor chemicals (e.g. ephedrine, pseudoephedrine) and both tobacco and cigarettes for duty evasion.

Increased trafficking in performance and image enhancing drugs and more complex methods of smuggling child pornography and wildlife have been encountered.

From an intelligence perspective, assessments made by the ACC in its determinations and other activities are used to identify the impacts specific to Customs' operational outlook, that is, at the border. Examples include the Strategic Intelligence Report, Operational Intelligence Reports, National Threat Assessments and annual 'Picture of Criminality' assessments. Overall, this improves Customs intelligence capacity to appreciate the organised criminal environment when seeking to respond to emerging criminal threats to the border.

Customs has also made intelligence contributions to ACC assessments, the most substantial in recent times to the Crime in the Transport Sector Determination and its products. In this case alone Customs has five officers who are currently outposted to assist the ACC.

From a border targeting perspective, Customs receives and responds to operational information received from the ACC. This information, which could relate directly to the border or to domestic activities that have the potential to impact the border, is used by Customs to guide its operational activities.

Customs provides outposted analysts and liaison officers to the ACC to facilitate its intelligence and targeting relationship with the ACC. A total of 7 Customs officers are outposted across the ACC in Canberra, Brisbane, Sydney and Melbourne.

The adequacy of legislative and administrative arrangements, including the adequacy of cross-jurisdictional databases, to meet future needs.

ACC and Customs have, and continue to develop, a range of administrative strategies to ensure a co-ordinated approach to the response to crime

Customs and the ACC share intelligence data from their respective databases. Customs data is currently in the process of being transferred from the Customs 'National Intelligence System' (NIS) database to the ACC 'Australian Criminal Intelligence Database' (ACID). Authorised Customs officers are able to access ACID as a national intelligence tool.

The new Intelligence and Targeting Division structure within Customs is expected to streamline the relationship with ACC to allow a more focused activity by Intelligence and Border Targeting Branches. In particular, the Intelligence Branch will be able to strengthen its liaison and information sharing arrangements, passing the information where appropriate to the Border Targeting Branch.

Customs considers that there are refinements that can be made to improve intelligence sharing through amendments to the *Telecommunications (Interception and Access) Act 1979*. A more holistic approach is needed to ensure that law enforcement and regulatory agencies are able to share intelligence material that is relevant to their functions and activities when it becomes available.

A long-standing issue that affects Customs ability to access and use intelligence for investigation or regulatory purposes is its restricted access to telecommunications interception product. Customs is not empowered under the *Telecommunications (Interception and Access) Act 1979* (TI Act) to seek a warrant for the interception of telephone calls or other forms of transmission over a telecommunications system and is reliant on other agencies such as the Australian Federal Police (AFP), the ACC or State police and Crime Commissions to provide interception product.

Given the legislative restrictions, the current arrangements with ACC (and the AFP) mean that access to such product is effectively restricted to joint operations. Customs may therefore not gain access to that material if the other agency's investigative priorities are such as not to warrant an investigation by them. This may have a serious effect on Customs' ability to investigate serious criminal offences or to respond to a situation through its regulatory powers.

Outside of a joint operation interception product is not provided to Customs in its raw form but as an information report, which then depends on the source agency interpreting that material. Without experience in the Customs environment, these agencies can easily overlook or dismiss salient information, which could affect targeting and profiling. If sufficient detail is provided then cargo and passenger profiling, passenger alerts at entry points, cargo examinations or other action may follow.

Customs reliance on other agencies such as the ACC to provide interception product, also places significant burden on these agencies to provide resources for activities which could be more appropriately utilised for critical operations by that agency.

Customs has had exploratory discussions with the Attorney-General's Department on the complex policy and legislative issues involved in securing this facility as a tool for its law enforcement capabilities. Both parties recognised the necessary balance in meeting privacy concerns while also achieving operational effectiveness.

AUSTRALIAN CUSTOMS SERVICE