

Chapter 1

The conduct of the inquiry

Terms of Reference

1.1 On 17 March 2008, the Parliamentary Joint Committee on the Australian Crime Commission initiated an inquiry into legislative arrangements to outlaw serious and organised crime groups pursuant to paragraph 55(1)(b) of the Australian Crime Commission Act 2002:

To report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the ACC or connected with the performance of its functions to which, in the opinion of the Committee, the attention of the Parliament should be directed.

1.2 The Terms of Reference required the committee to examine the effectiveness of legislative efforts to disrupt and dismantle serious and organised crime groups and associations with these groups, with particular reference to:

- (a) international legislative arrangements developed to outlaw serious and organised crime groups and association to those groups, and the effectiveness of these arrangements;
- (b) the need in Australia to have legislation to outlaw specific groups known to undertake criminal activities, and membership of and association with those groups;
- (c) Australian legislative arrangements developed to target consorting for criminal activity and to outlaw serious and organised crime groups, and membership of and association with those groups, and the effectiveness of these arrangements;
- (d) the impact and consequences of legislative attempts to outlaw serious and organised crime groups, and membership of and association with these groups on:
 - (i) society
 - (ii) criminal groups and their networks
 - (iii) law enforcement agencies; and
 - (iv) the judicial/legal system
- (e) an assessment of how legislation which outlaws criminal groups and membership of and association with these groups might affect the functions and performance of the ACC.

Background to the inquiry

1.3 In September 2007, the committee tabled its report, *Inquiry into the future impact of serious and organised crime on Australian society*. The inquiry focused on future trends in serious and organised crime, strategies for countering future serious and organised crime and the economic cost of such strategies, and the adequacy of legislative and administrative arrangements to meet future needs.

1.4 That inquiry found that Australia faces an increased threat from serious and organised crime and from transnational crime, and that while a number of legislative and other arrangements are in place, these alone may not be wholly effective in addressing the threat.

International approaches to serious and organised crime

1.5 During the *Inquiry into the future impact of serious and organised crime on Australian society*, the then Minister for Justice, Senator the Hon. David Johnston, wrote to the committee asking that, as part of that inquiry, the committee examine the effectiveness of Australian legislative arrangements to curtail the activities of organised crime groups. Senator Johnston, also indicated that he sought to ensure that:

Australia's legislative framework for disrupting and dismantling serious and organised crime groups continues to be as up to date and effective as possible.¹

1.6 In particular, the Minister noted that there would be value in examining the effectiveness of approaches taken internationally.

1.7 The committee, at that time, was not able to discharge fully the Minister's request. The committee did however feel that the issue was significant enough to warrant further investigation and recommended in its report 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.²

1.8 In April 2009, a sub-committee of the Parliamentary Joint Committee on the Australian Crime Commission undertook a delegation to North America, Europe and the United Kingdom to examine international trends in serious and organised crime and the legislative and administrative approaches adopted in a number of jurisdictions to tackle both domestic and transnational crime.

1 Senator, the Hon David Johnston, Minister for Justice and Customs, Correspondence 07/5188.

2 PJC-ACC, *Inquiry into the future impact of serious and organised crime on Australian Society*, September 2007, p. 62.

1.9 The delegation report identified a number of areas of concern but also a range of approaches which had been effective in addressing serious and organised crime. The delegation report made no specific recommendations but many of its findings inform this current report and support its recommendations. The delegation report should be viewed as a supplementary report to this report.

1.10 The delegation report was tabled in the Senate on 24 June 2009 and in the House of Representatives on 25 June 2009.³

South Australian approaches to serious and organised crime

1.11 The South Australian Government's introduction of the Serious and Organised Crime (Control) Bill 2007 in February 2008 (discussed in chapter 3) provided further impetus for the establishment of this inquiry. The introduction of the Serious and Organised Crime (Control) Bill, signalled a new approach to tackling serious and organised crime in Australia, and while the Commonwealth has no jurisdiction over state and territory law enforcement, the committee felt that it would be useful to consider any potential implications of this new approach.

Conduct of the inquiry

1.12 The committee advertised the inquiry in *The Australian* newspaper and on the committee's website. In addition, the committee wrote to a range of organisations and individuals inviting submissions.

1.13 The committee received 24 submissions, which were published on the committee's website. A list of submissions is included at Appendix 1.

1.14 In addition, the committee held nine public hearings; these were in Adelaide; Perth; Sydney; Hobart; Melbourne; Canberra; Brisbane (two) and Darwin. The witnesses who appeared before the committee at these hearings are listed in Appendix 2.

1.15 The committee adopted the report at a private meeting on Monday 10 August 2009.

Structure of the report

1.16 The chapters of this report are organised around the key themes which emerged during this inquiry and therefore do not neatly mirror the terms of reference. This approach was adopted as it reduced the potential for repetition which would have resulted if each term of reference was considered sequentially.

3 Report of the Australian Parliamentary Delegation to Canada, the United States, Italy, Austria, the United Kingdom & the Netherlands, The Parliament of the Commonwealth of Australia, June 2009,
http://www.apd.gov.au/Senate/committee/acc_ctte/laoscg/delegation_report/delegationfinal.pdf

1.17 Chapter 2 provides an overview of serious and organised crime in Australia. The chapter argues that there is a need to be able to define and quantify serious and organised crime in order to develop appropriate responses to it, and canvasses the difficulties in such a task.

1.18 As a result of the South Australian *Serious and Organised Crime (Control) Act 2008* the involvement of outlaw motorcycle groups (OMCGs) in serious and organised crime became a significant issue during the early stages of this inquiry. Chapter 2 also discusses the issue of whether OMCGs are inherently criminal organisations or whether it is individual members within OMCGs who engage in criminal activities.

1.19 Chapter 3 provides an overview of existing legislative approaches to combat serious and organised crime in each Australian jurisdiction.

1.20 Chapter 4 considers in detail national and international association offences. The chapter identifies that there are various legislative models aimed at prohibiting organised criminals from associating with each other, considers the *Serious and Organised Crime (Control) Act 2008* (SA) and reports on national responses to the South Australian approach.

1.21 Chapter 5 evaluates existing legislation which provides for the confiscation of assets derived from criminal activity, and considers the benefits and disadvantages of different legislative models. The chapter also considers legislative and administrative arrangements required to support proceeds of crime laws.

1.22 Chapter 6 brings together the remaining themes of the inquiry to argue that Australia must take a coordinated and holistic approach to tackling serious and organised crime and that strong legislative arrangements in themselves are just one part of a suite of tools and approaches.

Terminology

1.23 It should be noted that some international jurisdictions employ the term 'serious organised crime' whereas the convention in Australia is to use the term 'serious and organised crime'. These terms are used interchangeably within this report. In some cases the abbreviated 'organised crime' is also used.

Acknowledgements

1.24 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 attendance at a hearing or, as in many cases, by making written and oral submissions.

1.25 As part of this inquiry the committee conducted a number of site visits, which enabled it to gain a more in-depth understanding of the issues and agencies involved in combating serious and organised crime in Australia. Accordingly, the committee would like to thank officers from the Australian Crime Commission (ACC); the

1.26 The committee would also like to acknowledge the assistance and expertise provided by those state and territory Commissioners of Police and senior police officers who meet with the committee during this inquiry.