

Chapter 6

A holistic and harmonised approach to serious and organised crime

6.1 Throughout the inquiry the committee heard that there is no single solution to the problem of organised crime. A number of experts highlighted that strong and targeted legislation needs to be supported by a range of broader law enforcement strategies. The Attorney-General's Department's submission noted that:

...legislation specifically targeting serious and organised crime groups is only one of the possible approaches to combating such groups...it is noted that intelligence, investigative and operational capabilities and collaboration, both nationally and internationally, remain vital to addressing criminal networks.¹

6.2 Similarly, the Australian Crime Commission (ACC) noted in its submission:

Legislation alone may not effectively deal with the ongoing threat posed by serious and organised crime. It is only one aspect of the law enforcement approach to organised crime groups. It is vital to also retain a focus on ongoing development of responses to the actual crimes, and to ensure that any legislative response is consistent with structures, focuses and responsibilities of law enforcement agencies. Intelligence collection, information sharing and development of knowledge is fundamental to combating serious and organised crime.²

6.3 In particular, the committee heard that the development and implementation of association offences should be considered as part of a suite of tools available to law enforcement agencies. Deputy Commissioner Ian Stewart, from the Queensland Police Service told the committee:

I would like to stress that the development and introduction of anti-gang legislation is only one part of the law enforcement response to targeting serious and organised crime groups. We must strive for continuous improvement in investigations, using forensic evidence gathering and analysis, intelligence, collections and information exchange within law enforcement agency and government networks. The effort to collect and further develop intelligence with respect to significant crime issues and criminal networks from the national perspective is strongly supported by the Queensland Police Service.³

1 Attorney-General's Department, *Submission 16*, p. 3.

2 ACC, *Submission 15*, p. 3.

3 Deputy Commissioner Stewart, QPS, *Committee Hansard*, 7 November 2008, p. 20.

6.4 Similarly, the Government of South Australia, in its submission also noted the need for a holistic approach to serious and organised crime:

The South Australia Government's current legislative reform program provides a holistic approach to serious and organised crime by targeting the associations of and between members of criminal organisations, enhancing criminal laws relating to organised crime activity including public violence, drugs and firearms as well as targeting unexplained wealth and assets of these members.⁴

6.5 While the previous chapters of this report have canvassed the key issues set out in the inquiry's terms of reference, the inquiry also identified further administrative, policy and legislative approaches critical to supporting Australia's response to serious and organised crime. These include:

- a coordinated law enforcement approach through:
 - the development of national priorities;
 - the harmonisation of legislation; and
 - political will;
- improved information and intelligence sharing arrangements;
- improved international partnerships;
- a supportive suite of law enforcement capabilities; and
- adequate levels of resourcing.

6.6 In developing effective strategies for combating serious and organised crime, Australia must take a holistic and coordinated approach. This chapter highlights the issues which the committee believes should be considered in conjunction with any legislative developments in the areas of association and unexplained wealth.

A coordinated approach to serious and organised crime

6.7 Chapter 2 discussed in detail the nature of serious and organised crime in Australia, and identified that crime does not respect domestic or international borders. As the ACC noted in its submission, serious and organised crime is increasingly sophisticated and is beyond the capacity of a single jurisdiction to disrupt and dismantle:

Reducing the harm caused by serious and organised crime is a complex composite of policy and intelligence issues that are beyond the capacity of any one jurisdiction or agency.⁵

4 Government of South Australia, *Submission 13*, p. 46.

5 ACC, *Submission 15*, p. 8.

6.8 The Attorney-General's Department also argued that, as law enforcement responsibilities are divided between the Commonwealth and the states, there is a need for coordination and cooperation in order to develop an effective national approach:

In our federal system of government, law enforcement responsibilities and interests overlap, so national coordination and cooperation between the Commonwealth and the states and territories is vital. In considering the possible legislative approaches to serious and organised crime groups in Australia, we also need to be mindful that this is a complex problem that requires a multifaceted approach.⁶

6.9 A national coordinated approach to serious and organised crime was widely supported by all the law enforcement agencies. In his submission, the Hon Jim Cox, Minister for Police and Emergency Management, Tasmania, noted that:

Due to the ease in which serious and organised criminal groups operate across borders, it is advocated that a co-ordinated national approach will be the only effective strategy. Consequently, my department supports the development of a national response following appropriate discussions which strengthens the ability of all Australian law enforcement agencies, including the Australian Crime Commission (ACC) and other Commonwealth agencies to respond to serious and organised crime groups.⁷

6.10 Mr Christopher Keen, the Director of Intelligence of the Queensland Crime and Misconduct Commission (CMC), told the committee about the multi-jurisdictional nature of serious and organised crime in Queensland. He also noted the importance of taking a coordinated law enforcement approach to combating organised crime, and of the crucial role of the ACC in that approach:

The other aspect that is generally well accepted is that Queensland crime is not just Queensland crime. It transcends borders, you move between states and also overseas. When you start looking at those sorts of aspects, it is one of the reasons why law enforcement needs to be very much coordinated and linked into both interstate and overseas agencies and federal agencies. That is where the Australian Crime Commission plays a major role because we need to be able to have that coordination and those links with other investigative agencies.⁸

6.11 Similarly, Mr Neil Jensen from AUSTRAC noted the importance of the ACC in coordinating the efforts of a range of agencies in regard to serious and organised crime:

Joint task forces that are set up under the ACC are significant. Certainly the use of the powers that they have available to them can assist us, even

6 Dr Heriot, Attorney-General's Department, *Committee Hansard*, 6 November 2008, p. 35.

7 The Hon Jim Cox, Minister for Police and Emergency Management, Tasmania, *Submission 5*, p. 1.

8 Mr Keen, CMC, *Committee Hansard*, 7 November 2008, p. 29.

though they may not be directly related to us. Those powers might enable them to find further information, associates, what is happening with transactional activity, and what is happening with drug activity. We can then go back to our database and provide them with further information. I think the importance of the ACC is linking together a number of agencies, including us, but also understanding what we are doing and where we are going.⁹

6.12 The committee notes that the ACC was established to bring together and support all Australian law enforcement agencies and develop a coordinated focus on nationally significant crime. It does this via its statutory criminal intelligence and investigation functions. The ACC notes:

Our purpose is to unite the fight against nationally significant crime.

As an agency we provide intelligence, investigation and criminal database services. We are a flexible and dynamic organisation and change our work priorities to adjust to the ever changing criminal environment.¹⁰

National priorities

6.13 The significance of lead agencies such as the ACC in Australia, the Criminal Intelligence Service Canada, and the Serious and Organised Crime Agency (SOCA) in the United Kingdom,¹¹ is that these organisations can collate intelligence to produce a national picture of the nature and threat of serious and organised crime. In Australia, the ACC produces both the National Criminal Threat Assessment and the Picture of Criminality. This national picture informs law enforcement priorities and assists in the development of appropriate responses to serious and organised crime. The committee was told that:

Both the National Criminal Threat Assessment and Picture of Criminality in Australia, undertaken by the ACC, assist to develop a better national understanding of the significant crime issues as well as improving the ability to undertake coordinated law enforcement action against identified high-threat crime networks possessing transnational and cross-jurisdictional capabilities.¹²

6.14 Mr Kevin Kitson from the ACC noted that the production of national intelligence on serious and organised crime is an evolving process, which over time is becoming more comprehensive and therefore more useful:

9 Mr Jensen, AUSTRAC, *Committee Hansard*, 28 October 2008, pp. 29-30.

10 ACC website, www.crimecommission.gov.au/our_work/index.htm (accessed 30 June 2009).

11 See: *The Parliament Of the Commonwealth of Australia, Report of the Australian Parliamentary Delegation to Canada, the United States, Italy, Austria, the United Kingdom and the Netherlands, June 2009*, http://www.aph.gov.au/Senate/committee/acc_ctte/laoscg/delegation_report/delegationfinal.pdf

12 Deputy Commissioner Stewart, QPS, *Committee Hansard*, 7 November 2008, p. 20.

I referred earlier on to a maturing process of understanding and working with our partner agencies. What we have seen, particularly over the last three to four years, is a much greater understanding of what it is that we are looking at...I think that we as a community are now getting better generally at understanding the nature of the problem and in dealing with some of its more serious manifestations.¹³

6.15 Mr Michael Outram from the ACC highlighted the value of nationally targeted priorities based on risk assessments in assisting law enforcement agencies to target serious and organised crime in a coordinated and prioritised manner:

I should say also that there is a coordination occurring across the states under the Australia and New Zealand Police Advisory Agency that was recently established by the state police... The police commissioners have asked for ... a national triaging system, if you like, to determine which groups and individuals represent the highest threat nationally so that we can agree between the states and the Commonwealth on the targets we should take on, based on an agreed risk-threat assessment methodology, so that everyone is actually on the same page.¹⁴

6.16 The committee commends this approach and was concerned to hear that, at times, jurisdictional particularities can take precedence over the implementation of the national priorities identified by the ACC Board.¹⁵ Mr Kitson explained that:

The ACC's mandate includes the responsibility for developing a set of national criminal intelligence priorities, which we recommend to the board each year and which the board makes its own commentary and adjustments on. That has some impact over the menu of work for the ACC but, arguably, it does not have particularly significant influence over the work of the jurisdictions and the level of resources that are focused nationally towards those nationally identified criminal intelligence priorities.

We would recognise that in each state and territory there are peculiar challenges to law enforcement, there are different political pressures and there are different natures of criminality. But I think we would be more effective dealing with some of the national challenges that are before us if there was a flow-down effect, a cascading effect, from those national criminal intelligence priorities across the resourcing commitments of the state and territory jurisdictions, particularly in terms of gathering information and intelligence to fill those gaps in our knowledge.¹⁶

6.17 The committee recognises that, as with all government agencies, law enforcement agencies operate in a political environment with finite resources.

13 Mr Kitson, ACC, *Committee Hansard*, 6 November 2008, p. 12.

14 Mr Outram, ACC, *Committee Hansard*, 6 November 2008, pp 13-14.

15 The ACC Board is comprised of representatives from law enforcement and other agencies from the Commonwealth and from each of the states and territories.

16 Mr Kitson, ACC, *Committee Hansard*, 6 November 2008, pp 6-7.

However, direct political involvement in the redirection of national priorities diminishes and undermines the value of an intelligence lead agency, such as the ACC, to set national priorities on serious and organised crime. The committee is concerned that the value of the national threat assessment and picture of criminality will be diluted by increasing political involvement, at all levels of government, which redirect both law enforcement priorities and resources to areas outside of the national priorities.¹⁷

6.18 The continued ability of the ACC to be a truly national agency to unite the fight against nationally significant crime requires that the ACC Board set the national criminal priorities, and that those priorities be accepted nationally.¹⁸ In addition, the committee strongly believes that the ACC needs to be adequately resourced to ensure that it can continue to support its partners in their execution of the national priorities, and that the ACC's jurisdictional partners must continue to give due support to the national criminal priorities. The committee is concerned that there is a perception that this may not be the case:

...it is reasonable to anticipate a diminished or diminishing capacity of the Australian Crime Commission to deliver support to Western Australian police in light of competing national priorities and budget pressures. The proposed state based legislation will ensure that the Corruption and Crime Commission of Western Australia will be able to support Western Australian police in meeting the serious and organised crime challenges specific to Western Australia.¹⁹

6.19 The committee urges Commonwealth, state and territory governments and law enforcement agencies to continue to work together to ensure that the ACC has the necessary information, resources and support to develop a national approach to serious and organised crime.

Harmonisation of legislation to tackle serious and organised crime

6.20 The value of harmonising legislation to more effectively tackle serious and organised crime was raised throughout this inquiry. Commissioner Andrew Scipione, from the NSW Police Force, told the committee that:

It would be difficult to mount an argument to suggest that we would not look at trying to harmonise on the basis of getting maximum effectiveness, and that is what it is all about at the end of the day. It is trying to put a

17 PJC-ACC, *Examination of the Australian Crime Commission Annual Report 2007-08*, June 2009, see discussion on the National Indigenous Violence and Child Abuse Intelligence Task Force, paragraph 2.69.

18 Also see: 'The commissioner proceeds in an orderly direction,' *The Age*, April 23, 2009.

19 The Hon Leonard Roberts-Smith QC, Commissioner, CCC, *Committee Hansard*, 4 July 2008, p. 4.

regime into place backed by legislation that allows us to best control and minimise the effect of serious and organised crime across the nation.²⁰

The need for harmonisation

6.21 The committee heard that the lack of legislative coordination and harmonisation undermines law enforcement strategies and causes displacement of criminal activity to the jurisdiction with the weakest legislation and law enforcement tools.²¹

I guess it is a ‘weak link in the chain’ type philosophy, where people will look for the easiest opportunity to exploit the laws of the state or the land to go about their criminal enterprises and activities.²²

6.22 A significant amount of evidence was taken on the potential for displacement of serious and organised crime groups from one state to another when legislation and law enforcement approaches are not harmonised across jurisdictions. It was argued that criminal activity will more readily occur in, or that individuals involved in criminal activity will locate themselves in, those states which are considered to be less hostile to serious and organised crime. Chapter 4 discussed this issue as a possible consequence of the South Australian anti-association laws. The South Australian Government told the committee that as a result of South Australia's strong law enforcement reform process, displacement of organised crime was viewed as a legitimate outcome.²³

6.23 The ACC highlighted the potential for the displacement of organised criminal groups across jurisdictions as a result of fragmented legislative reform, and the possibility of intelligence gaps resulting from this displacement:

Displacement of criminal activity is a potential consequence of legislation to outlaw serious and organised crime groups. Legislative reforms targeting criminal groups may lead to shifts in the dispositions and activities of some criminal groups or the displacement of criminal activities to new locations, new targets or other crime types. Displacement of criminal activity generally creates new intelligence gaps for national law enforcement, albeit sometimes for a relatively short period. Anticipating legislation that will effectively outlaw OMCGs in South Australia, there are indications that some outlaw groups have already relocated to other jurisdictions.²⁴

6.24 AUSTRAC, in its submission, also raised the potential for displacement of criminal activity as an unintended consequence of any legislative reform:

20 Commissioner Scipione, NSW Police Force, *Committee Hansard*, 29 September 2008, p. 26.

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

22 Assistant Commissioner Harrison, SA Police, *Committee Hansard*, 3 July 2008, p. 8.

23 Government of South Australia, *Submission* 13, p. 46.

24 ACC, *Submission* 15, p. 10.

The ACC note in their submission to the Committee that there is a risk of displacing criminal activity and driving crime syndicates underground as an unintended consequence of legislation to outlaw serious and organised crime groups. From our perspective as Australia's FIU, we agree with this assessment. This risk and the associated repercussions for law enforcement and intelligence need to be weighed carefully when considering the overall impact of legislative solutions of this nature.²⁵

6.25 The committee also heard that the lack of consistency in legislation between jurisdictions has administrative implications for law enforcement. As Detective Superintendent Paul Hollowood from Victoria Police highlighted for the committee:

Probably the biggest challenge we face in tackling organised crime across the board is interoperability between the jurisdictions.²⁶

6.26 The Australian Federal Police Association's submission highlights some of the administrative challenges arising from this lack of legislative consistency. These include barriers to information-sharing and extradition, when different rules apply in different jurisdictions regarding obtaining evidence.²⁷ The lack of legislative consistency creates problems for cross-border investigations. The Commonwealth has recently introduced a Bill which, if emulated by other jurisdictions, would resolve many of these difficulties. That Bill, and the harmonisation process, is discussed at paragraph 6.33 below.

Challenges in achieving harmonisation

6.27 Despite the identified concerns, harmonisation of legislation in the area of serious and organised crime appears to be difficult to achieve. The inquiry identified a number of reasons for this, such as: the federated nature of law enforcement in Australia; the different law enforcement, cultural, and social issues of each state and territory; and the different political priorities of individual governments.

6.28 The Commonwealth's constitutional framework also presents difficulties for the development of nationally consistent legislation, as officers from the Attorney-General's Department identified:

However, clearly it was difficult enough with terrorism to put a constitutional framework under it, and to actually have a general law like you have in the South Australian law would, of course, be much more difficult constitutionally. No doubt it would be a patchwork type outcome, which is not always good for law enforcement if there is uncertainty about what the coverage is.²⁸

25 AUSTRAC, *Submission 17*, p. 4.

26 Detective Superintendent Hollowood, Victoria Police, Committee Hansard, 28 October 2008, p. 11.

27 Australian Federal Police Association, *Submission 3B*.

28 Mr McDonald, Attorney-General's Department, *Committee Hansard*, 6 November 2008, p. 40.

6.29 A number of witnesses identified different jurisdictional law enforcement issues and priorities as a barrier to standardising legislation, despite the potential benefits for law enforcement:

Standardising any law makes it easier to police and makes it easier for the public to understand what the law is. But, whilst standardising law is a great concept, it is not easy for each state to adopt standardised laws. We have a number of standardised laws anyway. Whether they are for road rules or crimes, they were all based on the Westminster system anyway. It is just different laws for different states dealing with different problems.²⁹

6.30 The differing politics and priorities of federal, state and territory governments was identified as contributing to the development of a fragmented approach nationally to serious and organised crime. The establishment of the national DNA laws was frequently cited as an example of the complexity of achieving legislative harmonisation in Australia's federated system:

I was involved in a project to develop uniform DNA laws. Even though people were trying, it took a long time for the states and territories to get to a point where we had some consistency between them... One of the reasons it takes a long time—we certainly found it with DNA and we will probably find it with this too—is that the individual parliaments themselves have a different tolerance of how far the laws should go... That was quite a good example of how it takes some time to get consistency and how it is a very difficult process.³⁰

6.31 As noted earlier, the committee acknowledges that each state and territory has different law enforcement issues and priorities. As Acting Commissioner Hine told the committee:

It is one of those things where you would do a risk based assessment or an assessment of what is going to suit your community and what issues you are actually dealing with in your state or jurisdiction. We are not facing the same issues that South Australia are obviously facing; therefore, they saw the need to enact different legislation... We obviously do not have the same problems that they do. It is a matter, again, of what your community expects, what risks you are facing and what problems you are facing.³¹

6.32 However, considerable resources have been spent over an extensive period of time to harmonise the law enforcement landscape in Australia, yet progress in this area appears slow and piecemeal.

A huge amount of resources has been put into harmonising laws. The federal government has pretty well implemented a model criminal code. That has been implemented by the ACT, and other states have implemented bits and pieces of it. It is quite a good example of how governments can

29 Acting Commissioner Hine, Tasmania Police, *Committee Hansard*, 27 October 2008, p. 14.

30 Mr McDonald, Attorney-General's Department, *Committee Hansard*, 6 November 2008, p. 42.

31 Acting Commissioner Hine, Tasmania Police, *Committee Hansard*, 27 October 2008, p. 11.

work cooperatively to put together good laws. At the same time, it is also an example of how independent each of the parliaments is. I am not saying that the area of serious and organised crime is not an area where we can work together in the way we have with proceeds of crime and other stuff like that, but it is likely to be an area where different jurisdictions will have different views and it is not something that would be achieved quickly.³²

Attempts to harmonise police investigation laws

6.33 In response to the significant problems that police face in conducting cross-border investigations, in 2002, Commonwealth, state and territory leaders agreed to adopt harmonised, national laws dealing with cross-border investigations covering controlled operations, electronic surveillance devices and witness anonymity.³³

6.34 The Standing Committee of Attorneys-General agreed to a set of model laws on these issues in 2004. The model laws have currently been adopted to varying degrees by the states and territories.

6.35 The adoption of the model laws by all jurisdictions would result in:

- an authority for a law enforcement agency to conduct a controlled operation to be recognised in other jurisdictions, making cross-border controlled operations much simpler;
- assumed identities acquired in one jurisdiction to be recognised in other jurisdictions; and
- a witness identity protection certificate issued in one jurisdiction to be recognised in other jurisdictions.

6.36 The committee notes that the Commonwealth government recently introduced the *Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009*, discussed in chapter 5, which seeks to implement model laws at the federal level relating to controlled operations, assumed identities and witness identity protection.

The intent of the model legislation is to harmonise, as closely as possible, the controlled operations, assumed identities and protection of witness identity regimes across Australia and enable authorisations issued under a regime in one jurisdiction to be recognised in other jurisdictions.³⁴

6.37 Key aspects include:

32 Mr McDonald, Attorney-General's Department, *Committee Hansard*, 6 November 2008, p. 43.

33 Standing Committee of Attorneys-General and Australasian Police Ministers Council Joint Working Group on National Investigation Powers, Leaders Summit on Terrorism and Multijurisdictional crime, *Report on cross-border investigative powers for law enforcement*, November 2003.

34 Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009, Explanatory Memorandum, p. 46.

- Providing for protection from liability to informants who participate in a controlled operation;
- providing for recognition of state and territory controlled operation laws;
- extending the timeframes for controlled operations (although to a lesser extent than under the model laws);
- streamlining reporting requirements;
- increasing the Ombudsman's inspection powers;
- prescribing offences for the unauthorised disclosure of information;
- introducing a new assumed identities regime, which recognises state and territory assumed identities;
- expanding the class of people who may be authorised to assume identities to intelligence officers and foreign law enforcement officers;
- introducing a new witness identity protection regime which recognises state and territory witness protection laws; and
- introducing offences for the unauthorised disclosure of protected witness' identities.³⁵

6.38 The committee commends the Commonwealth for its work to implement the model laws and encourages all state and territory governments to give proper consideration to the implementation of the model laws.

The importance of political will

6.39 A national approach to serious and organised crime based upon national priorities and legislative harmonisation is dependent upon political will.³⁶ The committee notes that the senior law enforcement officers with whom it met were all cognisant, if not vocal, about the importance of political will to remove or minimise identified legislative and administrative barriers.

Having nationally consistent laws in relation to anything is obviously going to be an advantage, again, to the public and to law enforcement, but again it comes down to the level of risk that you have within your community, the level of laws governing your community and what your community is going to accept... I hear your question. It is probably more a question for your side of the table than for this side of the table...³⁷

35 Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009, Explanatory Memorandum, pp. 46-50.

36 The importance of political will is also canvassed at length in The Parliament of the Commonwealth of Australia, *Report of the Australian Parliamentary Delegation to Canada, the United States, Italy, Austria, the United Kingdom and the Netherlands, June 2009*, http://www.apf.gov.au/Senate/committee/acc_cte/laoscg/delegation_report/delegationfinal.pdf

37 Acting Commissioner Hine, Tasmania Police, *Committee Hansard*, 27 October 2008, p. 15.

6.40 The committee notes consideration is being given to the development of model legislation to provide a nationally consistent approach to addressing serious and organised crime through the Standing Committee of Attorneys-General (SCAG) and the Ministerial Council for Police and Emergency Management – Police (MCPEMP).

6.41 SCAG is comprised of the Attorneys-General of each state and territory, the Attorney-General of the Commonwealth and the Attorney-General of New Zealand. It provides a forum for Attorneys-General to discuss and progress matters of mutual interest. SCAG seeks to achieve uniform or harmonised action within the portfolio responsibilities of its members. SCAG meets three times per year.

6.42 The committee notes that at the SCAG meeting in April 2009, Ministers agreed to develop a national response to combat organised crime. In summary, they:

- noted that the Commonwealth should develop an Organised Crime Strategic Framework;
- noted the Commonwealth's intention to consider the introduction of a range of reforms including:
 - strengthened assets confiscation provisions, including unexplained wealth;
 - consorting laws;
 - police powers;
 - telecommunications interception; and
 - addressing the joint commission of criminal offences;
- agreed that states and territories would consider these legislative issues if they had not already done so, and develop model provisions;
- agreed to arrangements to ensure cooperation between jurisdictions in relation to organised crime, including coordinated law enforcement priorities; and
- agreed to establish a SCAG officers' group to undertake work on interoperability and information-sharing measures.³⁸

6.43 The Ministerial Council for Police and Emergency Management – Police (MCPEMP) (formerly known as the Australasian Police Ministers' Council) promotes a coordinated national response to law enforcement issues to maximise the efficient use of police resources. Since 1986, MCPEMP has been involved in efforts to coordinate the national approach to organised crime.

6.44 MCPEMP is comprised of the Ministers responsible for policing from the Commonwealth, each of the states and territories and New Zealand. The chairmanship of MCPEMP rotates annually. MCPEMP meets twice per year (with associated officers meetings).

38 See Appendix 8 for the SCAG 'Resolutions for a national response to combat organised crime'.

6.45 Commissioner Scipione informed the committee that MCPEMP sought to consider and enact complementary and harmonised legislation targeting serious and organised crime:

In June 2007 the Ministerial Council for Police and Emergency Management—Police, commonly known as MCPEMP, established a working group to develop a national approach to gangs. At the November 2007 MCPEMP meeting, each of the jurisdictions agreed to review its legislation pertaining to the disruption and dismantling of serious and organised crime and to consider enacting complementary and harmonised legislation to achieve this outcome.³⁹

6.46 Similarly, the Government of South Australia also noted in its submission that governments through the MCPEMP are seeking to progress a nationally consistent approach to serious and organised crime.⁴⁰

6.47 The committee commends the Commonwealth, state, and territory governments for taking a coordinated approach to the issue of serious and organised crime but urges that the issue of serious and organised crime continue to be viewed as an area of national importance requiring both continued political focus and resource allocation.⁴¹

Information and intelligence sharing

6.48 The increasingly multi-jurisdictional and transnational nature of serious and organised crime was a significant theme to emerge during the inquiry, as was the need for law enforcement agencies to share both information and intelligence to deal with this aspect of criminal activity. Mr Jeffery Buckpitt, from the Australian Customs Service, told the committee:

The timely exchange of information and intelligence amongst law enforcement agencies is crucial to counteracting the increasingly transnational and multi-jurisdictional nature of serious and organised crime activity. Over the coming years, Customs anticipates an increase in the volume of trade and passenger movements across the Australian border in concert with growth in the sophistication and complexity of the serious and organised crime environment. In this context the importance of timely, coordinated and appropriate responses by Australian policy, regulatory and

39 Commissioner Scipione, New South Wales Police Force, *Committee Hansard*, 29 September 2008, p. 23.

40 Government of South Australia, *Submission* 13, p. 48.

41 The committee also acknowledges the role played by the Criminal Law Branch of the Attorney-General's Department which is coordinating the Commonwealth's involvement in the national response to combat organised crime, including acting as the Secretariat for the Senior Officers' Group on Organised Crime. In particular, the Organised Crime Task Force, established within the Criminal Justice Division, will develop a Commonwealth Organised Crime Strategic Framework in partnership with relevant agencies.

law enforcement agencies to serious and organised crime cannot be underestimated.⁴²

6.49 While a number of witnesses identified the importance of information and intelligence sharing, information exchange appears to be problematic. When asked what mechanisms would assist law enforcement agencies in tackling serious and organised crime, Assistant Commissioner Tim Morris, from the AFP, told the committee:

...anything that would assist in harmonising the transfer of information across jurisdictions in Australia.⁴³

6.50 During the committee's previous inquiry into *the future impact of serious and organised crime on Australian society*,⁴⁴ the committee examined at length, issues around information and intelligence sharing and databases. It is not the intention of the committee to revisit in any detail the issues canvassed in that report. However, it is apparent that law enforcement agencies are still hampered by many of the same issues in regard to information and intelligence sharing between agencies, across jurisdictions and with international partners.

The Australian Criminal Intelligence Database

6.51 Evidence to this inquiry focused on the Australian Criminal Intelligence Database (ACID). As required by the *Australian Crime Commission Act 2002*, the ACC provides this national criminal intelligence database. ACID is a 'secure, centralised, national repository for criminal intelligence',⁴⁵ which enables the sharing of intelligence between Commonwealth, state and territory law enforcement agencies. Mr Kitson from the ACC characterised ACID as follows:

ACID sits as the sole national criminal intelligence repository...It is perhaps best described as a place where law enforcement agencies and a relatively select number of other agencies can go to search nationally held information about a particular crime type. Some jurisdictions use ACID as their sole intelligence database, so it will include all of their intelligence from street-level crimes to relatively—if I can take the risk of describing it thus—insignificant crimes compared with, say, nationally significant crimes. But it also contains information about things like clandestine laboratories, and we will include information about some of the major crime figures.⁴⁶

42 Mr Buckpitt, Australian Customs Service, *Committee Hansard*, 29 September 2008, p. 15.

43 Assistant Commissioner Morris, AFP, *Committee Hansard*, 6 November 2008, p. 29.

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

45 ACC, *Australian Crime Commission Annual Report 2007-08*, p. 19.

46 Mr Kitson, ACC, *Committee Hansard*, 6 November 2008, p. 21.

6.52 The ACC has made a number of enhancements to the database over time such as the addition of new analysis tools and improved search functionality.⁴⁷ This was noted by witnesses to the inquiry. Mr Keen, Director of Intelligence with the CMC in Queensland, noted that there had been a number of improvements with respect to the usefulness to ACID in the past few years and that the ACC had encouraged greater participation across the states in uploading information to ACID.

6.53 The value of law enforcement information or intelligence depends upon the quality and completeness of the information being placed in to the system. Mr Keen told the committee:

It still comes down to the fact that it is only as good as the input. You need to have the different agencies responding and putting it in in a very comprehensive manner.⁴⁸

6.54 Mr Keen went on the note:

You would probably need to check with the Australian Crime Commission, but I suspect they would say that some agencies are better than others and that can come down to simply our workload. A lot of police services, in particular, have such high volumes that it is very hard for them to always put that intelligence onto the database in a timely manner.⁴⁹

6.55 The unevenness in intelligence exchange presents limits to how comprehensive a picture of organised crime can be elicited. Mr Kitson, from the ACC, emphasised the need for ongoing investment in information and intelligence technologies and their use. He stated:

The challenges of maintaining a modern comprehensive and cutting-edge information technology system are huge. There is no doubt that we will face challenges as we step into the future about the funding of the existing ACID and ALEIN arrangements. At the moment I believe they represent a good range of tools for us and for our partner agencies, but they will continue to require investment into the future.⁵⁰

The need for a consistent and standardised approach

6.56 A number of witnesses raised the need for a nationally consistent and standardised approach to the collection and storage of information, with the current fragmented systems identified as a challenge for law enforcement:

To make use of intelligence and information you have to disseminate it to someone for action... In terms of the quality of information that comes to the ACC, we are always dependent on how the other agencies compile their

47 ACC, *Australian Crime Commission Annual Report 2007-08*, p. 20.

48 Mr Keen, CMC, *Committee Hansard*, 7 November 2008, p. 30.

49 Mr Keen, CMC, *Committee Hansard*, 7 November 2008, p. 30.

50 Mr Kitson, ACC, *Committee Hansard*, 6 November 2008, p. 4.

information, how they express their information. There are constant challenges for all of law enforcement, particularly when we come to share information nationally, about the standardisation of terms. I think we said to this committee in a different context that different jurisdictions might record methylamphetamine differently; they might record something as ice or as crystal methylamphetamine. That presents some challenges in validating the quality of information that we get.⁵¹

6.57 The committee was told that several Commonwealth law enforcement agencies were considering a greater level of collaboration in the area of information and communications technology (ICT). The committee commends this approach and views this collaboration as a means to standardise some aspects of information collection and storage:

If we take the specific area of ICT, yes, I think there are some compelling arguments for greater collaboration, particularly when we are all investing in major new systems as well, which we all inevitably need to do to keep pace with technology and with the demands of acquiring, holding, using and appropriately managing increased volumes of datasets. The ACC has worked with some of its Commonwealth partners to examine systems that might apply across Commonwealth law enforcement agencies. We have talked to Customs and to the AFP about investing jointly in new systems.⁵²

Enhanced interoperability

6.58 A previous committee inquiry⁵³ noted that multiple information and intelligence databases and case management systems exist across Australia as a result of each jurisdiction establishing and maintaining its own systems and technologies. The inquiry also identified that the interoperability of these systems did not allow for the smooth transfer of information and created vulnerabilities for law enforcement agencies and opportunities for organised crime to escape detection. While it was acknowledged that a single national system for intelligence, information or case-management was not feasible, it was recommended that steps be taken to enhance the interoperability of the existing systems.

6.59 As noted above, the ACC has improved the connectivity of its databases, however the ACC again confirmed the need to pursue greater interoperability of systems to assist information and intelligence sharing across jurisdictions:

In terms of national approaches, we have used a lot of the funding that we had arising out of the review of aviation security and policing, otherwise known as the Wheeler review, to help jurisdictions to contribute to ACID to improve connectivity so that we would overcome some of the obstacles of

51 Mr Kitson, ACC, *Committee Hansard*, 6 November 2008, p. 5.

52 Mr Kitson, ACC, *Committee Hansard*, 6 November 2008, p. 21.

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

incompatibility of technology and language used in the databases so that there is a seamless transition between the databases. As long as we have our current system of government, one of the most efficient ways of doing things is to make the existing systems talk to each other more effectively. The scale of enterprise that would be required to dispense with the existing systems and replace them with a whole national framework would be beyond measure, I think.⁵⁴

Legislative restrictions

6.60 The committee was informed of legislative barriers to the exchange of information between agencies and organisations. However, it was noted that information sharing between jurisdictions and between agencies is an evolving process:

Indeed that scope as to partner agencies is constantly evolving so there is probably no point in time when it is a static picture. I think we will always need to continue to strive to share information and we could never be satisfied that we have a comprehensive set of arrangements. I am confident that it is as good as it could be for the most part. There are areas where we need to work harder and areas where we would welcome greater assistance from some of our partner agencies and areas where perhaps our own legislation might enable us to share information better, particularly with the private sector.⁵⁵

6.61 During discussions with a number of international law enforcement agencies legislative barriers to sharing information both domestically and internationally was raised as an issue. Assistant Commissioner Mike Cabana, from the Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police, told a Canadian Parliamentary Committee:

I was talking about the multi-faceted approach, is to deal with the importance for us of ensuring the enforcement community's ability to share information and intelligence between agencies, both domestically and internationally...

In the legislative reviews, aside from lawful access there's also a need to look at some of the legislation put in place, sometimes several decades ago, governing the exchange of information—including the Privacy Act—to make sure that federal agencies can share the intelligence, among themselves and with the provincial and municipal agencies and vice versa. A gap exists now that is actually putting Canadians at risk.⁵⁶

54 Mr Kitson, ACC, *Committee Hansard*, 6 November 2008, p. 21

55 Mr Kitson, ACC, *Committee Hansard*, 6 November 2008, p. 4.

56 Standing Committee on Justice and Human Rights, *Committee Hearing 25 March 2009*, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

6.62 One of the specific problems that the committee heard about was that created by differences in privacy legislation. Some international privacy regimes, such as the EU model, require that agencies cannot share personal information with their counterparts in another jurisdiction unless that jurisdiction has equivalent privacy protections. The committee heard that this has resulted in delays and barriers to information sharing between law enforcement agencies.

6.63 In Australia, while legislative barriers currently exist with regard to some aspects of information exchange, the committee notes that these matters are being progressed. Mr Cranston from the Australian Taxation Office, told the committee:

The tax office has a suite of powers at its disposal under the various acts we administer. This was enhanced with a relatively newly acquired power in April 2007 to enhance information sharing—section 3G in connection with the Wickenby task force. In the year ending 30 June 2008 the tax office made 133 disclosures of information acquired under taxation law to Wickenby agencies for the purpose of this task force.⁵⁷

Multi-agency taskforces

6.64 During the inquiry the committee formed the view that multi-agency taskforces greatly enhance information and intelligence sharing and allow a range of specific expertises to be brought to investigating a criminal issue. The committee heard that Project Wickenby was an example of this approach:

I believe Project Wickenby has brought together five agencies with one outcome. I think it has been successful.⁵⁸

6.65 Mr Neil Jensen, from AUSTRAC, highlighted the effectiveness of regulatory approaches and law enforcement processes being brought together in multi-agency taskforces to investigate potential criminal activity:

It is important for each agency to have a specific expertise... Each agency brings to the table, if you like, the expertise that it has available.... We have financial transaction analysis expertise and we provide that to the ACC and also to other agencies. But it is important that that is identified and that any changes do not diminish the skills set that we have, or that each of the other agencies has available to them. We do [not] want duplication; we just need it to be complementary.⁵⁹

6.66 Similarly, Mr Michael Cranston, Australian Taxation Office, told the committee that a taskforce approach better allows for complex and multi-jurisdictional issues to be investigated:

57 Mr Cranston, Australian Taxation Office, *Committee Hansard*, 6 November 2008, pp 68-69.

58 Mr Cranston, Australian Taxation Office, *Committee Hansard*, 6 November 2008, p. 75.

59 Mr Jensen, AUSTRAC, *Committee Hansard*, 28 October 2008, pp. 29-30.

The Project Wickenby task force has enabled the agencies involved to deal with very complex structures and arrangements across borders. The Wickenby task force approach is proving effective in tackling abusive use of tax havens. This approach is equally effective in dealing with organised crime groups that have similar complex business models and arrangements.⁶⁰

6.67 The committee notes that at a Commonwealth level, agencies and organisations appear to be moving towards greater engagement with partners. Any attempt to breakdown organisational silos is to be commended. Mr Neil Jensen from AUSTRAC outlined that agency's approach:

We play an integral part in the whole-of-government task force operations and continue to work closely with the Australian Crime Commission and other agencies. We have in place memorandums of understanding with 34 domestic partner agencies. Our network of outposted liaison officers means that we are able to provide direct on-site support to a number of partner agencies. In addition to operational intelligence support we also have a research and analysis program which produces strategic assessments, analyses feedback from our partner agencies, and disseminates information on money laundering risks and typologies.⁶¹

6.68 The committee notes that law enforcement agencies and officers continue to work together to minimise operational and legislative gaps. The committee commends them for their professionalism in this regard:

...coordination across the federation will always remain a challenge that we have to keep working on...⁶²

Secondments to other agencies

6.69 The secondment of law enforcement and departmental officers to other agencies was also identified as an effective mechanism to enhance information sharing.

We are again probably unique being a smaller jurisdiction. We work very closely with the Australian Crime Commission, the Australian Federal Police, Customs and the Attorney-General's Department, so we have representatives of this state in all those organisation, so we work very closely with them. We have a good intelligence-sharing network with those organisations, and we often share resources across the various organisations.⁶³

60 Mr Cranston, Australian Taxation Office, *Committee Hansard*, 6 November 2008, pp 68-69.

61 Mr Jensen, AUSTRAC, *Committee Hansard*, 28 October 2008, p. 20.

62 Assistant Commissioner Morris, AFP, *Committee Hansard*, 6 November 2008, p. 32.

63 Acting Commissioner Hine, Tasmania Police, *Committee Hansard*, 27 October 2008, p. 8.

6.70 The committee was able to see first hand the value of placing law enforcement officers with international law enforcement agencies. The committee was particularly impressed with the effectiveness of AFP officers working with international partners. Assistant Commissioner Mandy Newton, from the AFP, told the committee:

[W]e have a person placed at SOCA and a member of SOCA placed in the Australian Federal Police as well. We work very closely together and have joint groups that come together on a regular basis across the world to discuss new technologies, new crimes and internet related or non-financial-transaction types of crimes and how we counter those, including legislation across countries, and we monitor each other's successes in those areas.⁶⁴

Integrated justice units

6.71 In their submission, the Police Federation of Australia quoted Justice Moffitt, former President of the NSW Court of Appeal, who stated:

Most Australians have come to realise that, despite the many inquiries, convictions, particularly of leading criminals, are few and that organised crime and corruption still flourish. The path to conviction is slow, tortuous and expensive. ... The criminal justice system is not adequate to secure the conviction of many organised crime figures. ...

Those participating in organised crime or white-collar crime, often part of organised crime, are usually highly intelligent and often more intelligent than the police who deal with them. They have the best advice. They exploit every weakness and technicality of the law. When they plan their crimes they do so in a way that will prevent their guilt being proved in a court of law. They exploit the freedoms of the law, which most often are not known and availed of by poorer and less intelligent members of the community.

Crimes are planned so there will be no evidence against those who plan and, if by accident there is, it is often suppressed by murder or intimidation.⁶⁵

6.72 During discussions with both the Royal Canadian Mounted Police and Senior Counsel from the Department of Justice and the Public Prosecution Service of Canada, the complexity of the Canadian criminal justice system was raised as a significant challenge facing both the judiciary and law enforcement. The increasing sophistication of organised criminal enterprises and their activities requires the judiciary and law enforcement officers to have greater specialised knowledge. Of concern, was the practice of specialised defence counsel who used the complexity of the case to considerably slow the judicial process.

6.73 Department of Justice officers highlighted a range of reforms currently being implemented in Canada to address the challenges that complex criminal cases present

64 Assistant Commissioner Newton, AFP, *Committee Hansard*, 6 November 2008, p. 30.

65 Police Federation of Australian, *Submission 3C*, p. 12.

to law enforcement and prosecutors. As discussed in chapter 5, Integrated Justice Units were flagged as a significant new approach. The units integrate the investigation and prosecution of criminal cases by having both police and prosecutors involved in cases from the outset. This approach moves away from the more traditional silo approach in which police are responsible for the investigation of a case and then hand it over to the Public Prosecution Service of Canada to prosecute. Integrated Justice Units allow prosecutors to be involved with police to ensure that the case and brief of evidence are collected and prepared in a manner which is compatible with the prosecution process. It was noted that while this approach has little public or political appeal, it has significant benefits for law enforcement.

6.74 This integrated approach was raised during the inquiry by the South Australian Government who argued:

Law enforcement training of investigators, intelligence practitioners and prosecutors has traditionally focused on the criminal justice system and its corresponding rules of evidence. A multi-faceted investigation approach combining civil administrative procedures with the criminal law has generally been limited and dealt with by a select group of employees. Enhanced knowledge, skills and aptitude across broader investigation, intelligence and prosecutorial disciplines will be required to ensure effective application for this 21st Century investigation approach.⁶⁶

6.75 The committee sees great merit in such an approach. By involving both law enforcement officers and judicial officers, the process is more targeted and can be developed in such a manner as to more readily satisfy the requirements of a successful prosecution. As noted earlier in this report, individuals involved in criminal activities are increasingly able to hide their illegal activities through the use of professionals and complex business structures. Within this context integrated justice units are a fitting response.

6.76 The committee acknowledges that while the issue of information and intelligence sharing remains a major impediment for law enforcement agencies, law enforcement officers do work together to enhance information sharing and operating procedures.

...we work very closely with each commissioner to make sure that we share information and have a common set of operating procedures or approaches to various threats.⁶⁷

6.77 The committee urges all jurisdictions to work collaboratively to resolve key issues around information and intelligence sharing.

66 Government of South Australia, *Submission 13*, p. 49.

67 Acting Commissioner Hine, Tasmania Police, *Committee Hansard*, 27 October 2008, p. 15.

International partnerships

6.78 In the committee's report on the delegation to North America, Europe and the United Kingdom,⁶⁸ the committee clearly identified the global and transnational nature of serious and organised crime. The submission from the Australian Crime Commission noted:

The threat from organised crime demands the pursuit of constant innovation in law enforcement capabilities and adaptation to the changing threat environment. The ACC is developing advanced capability to generate, prioritise and proactively monitor groups and individuals that represent the highest threat to the Australian community and economy and to attack criminal enterprise structures that are highly successful at generating wealth. Of particular concern is the extent that offshore connections can manipulate, influence and assist the flight of capital from the Australian economy.⁶⁹

6.79 Serious and organised crime is a global problem which increasingly requires global solutions. As Dr Dianne Heriot from the Attorney-General's Department told the committee:

To combat organised crime effectively, there needs to be a global approach as well as an effective regional and national approach.⁷⁰

6.80 Countries increasingly have to engage with international partners, and while Australia faces a range of domestic hurdles regarding the need to harmonise and coordinate law enforcement approaches to serious and organised crime, increasing challenges are also emerging in regard to engagement and coordination globally:

It is not just a matter of getting our laws right with regard to operating across the nation; it is what is occurring now overseas that is starting to become a bigger challenge for us.⁷¹

6.81 A key issue to emerge in the inquiry was the ability to share information and to share it in a timely manner with international law enforcement partners:

...getting information from offshore jurisdictions. That is a particular concern for us—not only the process, but the timing of that and the extended time that it takes.⁷²

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

69 ACC, *Submission 15*, p. 2.

70 Dr Heriot, Attorney-General's Department, *Committee Hansard*, 6 November 2008, p. 35.

71 Detective Superintendent Hollowood, Victoria Police, *Committee Hansard*, 28 October 2008, p. 11.

72 Mr Barlow, Australian Taxation Office, *Committee Hansard*, 6 November 2008, p. 69.

6.82 The committee heard from several commonwealth departments about Australia's need to engage with international partners and about the strategies employed to facilitate productive bilateral relationship. Mr Michael Cranston, from the Australian Taxation Office told the committee:

The first answer to that is that it is not just an Australian problem; this is a global problem with tax havens, and we are working closely with the OECD to get information exchange agreements in place, which will enable us to have this particular information that we find necessary disclosed to us. We have negotiated four taxation information exchange agreements, and there is global pressure for other tax haven jurisdictions to also go down that path and enter agreements with countries. We are very proactive in that area.⁷³

6.83 Similarly, in its submission, AUSTRAC told the committee that its international network is both effective and vital in the exchange of information, and that the agency has been successful in establishing exchange instruments with 53 international financial intelligence units (FIUs):

AUSTRAC also has exchange instruments in place with 53 international FIUs. Through AUSTRAC, partner agencies are able to share information on operational cases with international counterparts. AUSTRAC's exchange instruments provide access to an international network of financial intelligence and enables Australia to trace transactions as funds flow across borders... these ties are vital to the early detection of and response to emerging money laundering and terrorism financing threats and trends in the region.⁷⁴

6.84 Mr Jeffery Buckpitt from the Australian Customs Service spoke of the importance of Customs' domestic and international partnerships to successfully tackle serious and organised crime:

Customs's engagement in cooperative and collaborative partnerships with domestic and international law enforcement and regulatory agencies greatly enhances our role in disrupting and dismantling serious and organised criminal activity.⁷⁵

6.85 The committee heard that effective information sharing needs to occur through both formal and informal networks. One informal model that the committee heard has been particularly successful is the Camden Assets Recovery Inter-agency Network (CARIN), of which Australia is a member. CARIN provides an informal network of contacts between law enforcement officers working in assets recovery. The committee did not look at the model in depth, however, further information about it can be found at Appendix 9.

73 Mr Cranston, Australian Taxation Office, *Committee Hansard*, 6 November 2008, p. 70.

74 AUSTRAC, *Submission 17*, p. 4.

75 Mr Buckpitt, Australian Customs Service, *Committee Hansard*, 29 September 2008, p. 15.

6.86 The committee also heard about 'Intelligence Fusion Centres' (IFC) in a range of international locations, which provide a forum for international sharing of intelligence and resources, as well as a mechanism for providing technical training and assistance. The committee was told of the following Fusion Centres:

- Spain is the lead nation for the Marine Operations Analysis Centre which brings together seven nations to share intelligence on Class A drug shipments.
- France is the lead nation for an IFC in the Mediterranean with a focus on human smuggling.
- UK is the lead nation for an IFC in West Africa.
- USA has an IFC in Miami with a focus on drug trafficking.⁷⁶

6.87 The committee was told that currently no IFC is located in the Oceania region. It was suggested that there is a case for one to be established in this region and that Australia is well placed to progress this issue.

Recommendation 7

6.88 The committee recommends that the Australian Government, in consultation with regional partners, give consideration to establishing an intelligence fusion centre in the Oceania region.

6.89 A second issue identified in relation to international partnerships, and related very much to the first issue, is the capacity of partner law enforcement agencies to engage in collaborative law enforcement strategies.

6.90 Australia has a range of programs which assist countries in the Asia-Pacific region to develop strong legislation and enhance their capacity to combat serious and organised crime.

6.91 The committee notes that the AFP has a number of highly effective programs whereby it assists its counterparts in the region with capacity building in law enforcement.

6.92 The Attorney-General's Department has a range of teams that assist other countries in the region with capacity building. This includes:

- The Regional Legal Assistance Unit, which assists South-East Asian countries in the development of effective terrorism and transnational crime legislation

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

and advises and conducts training on the 'practical implementation of legislation'.⁷⁷

- The Anti-Money Laundering Assistance Team (AMLAT), which assists Pacific Island countries with the implementation of anti-money laundering and counter-financing of terrorism arrangements.⁷⁸
- The Pacific Police Development Program (PDPP), which is delivered jointly by the Attorney-General's Department and the AFP and 'provides legal policy and legislative assistance to Pacific island countries on police and criminal justice issues'.⁷⁹

6.93 The committee was informed of a range of international partnership across Commonwealth agencies which assist law enforcement in the Asia-Pacific region.⁸⁰ The committee views these programs as a key element in addressing serious and organised crime in our region. It is through the development of strong international partnerships and capacity building, that law enforcement, is better equipped to ensure that Australia is not an attractive destination for transnational crime. As Assistant Commissioner Tim Morris from the AFP told the committee:

...the profits are so huge and so lucrative that people will take the risk continually. They are too big to ignore, so we are always going to have players willing to inject themselves into the market no matter what the risk. So I think the ultimate, if you like, endgame for us is to make the Australian market one of the more risky in the world to deal in, so that people will perhaps look at other markets than Australia—this is from an international perspective—to do their business and make their money in.⁸¹

A supportive suite of law enforcement capabilities

6.94 In addition to appropriate laws targeting organised crime groups, and strong mechanisms by which criminal assets can be confiscated, law enforcement agencies need a range of capabilities to support their efforts to dismantle and disrupt serious and organised crime. The Attorney-General's Department's submission sets out some of the key policing tools:

Controlled operations are undercover operations where law enforcement officers conceal their identities to associate with people suspected of being

77 Attorney-General's Department, answer to question on notice, 6 November 2008 (received 23 January 2009), p. 1.

78 Attorney-General's Department, answer to question on notice, 6 November 2008 (received 23 January 2009), p. 2.

79 Attorney-General's Department, answer to question on notice, 6 November 2008 (received 23 January 2009), p. 2.

80 Attorney-General's Department, answer to question on notice, 6 November 2008 (received 23 January 2009), p. 4.

81 Assistant Commissioner Tim Morris, AFP, *Committee Hansard*, 6 November 2008, p. 32.

involved in criminal activity and to gather evidence or intelligence about them. During a controlled operation, it will often be necessary for law enforcement officers to commit offences to obtain evidence and to conceal their law enforcement role.

Assumed identities are false identities used by undercover operatives to investigate an offence or gather intelligence. Assumed identities protect undercover operatives engaged in investigating crimes and infiltrating organised crime groups. To substantiate their assumed identities, undercover operatives need proper identification documents, such as birth certificates, drivers' licences, passports and credit cards. In the absence of a verifiable identity, the safety of undercover operatives can be jeopardised.

Witness identity protection in some circumstances, it is necessary to allow an undercover operative to give evidence in court proceedings without disclosing his or her true identity. This is to ensure the personal safety of the operative or his or her family. Certain measures are provided by Australian jurisdictions to protect the identity of an operative; including holding court proceedings in private, excusing the operative from disclosing identifying details, and enabling an operative to use a false name or code name during court proceedings.

Coercive powers enable a person to be compelled to give oral evidence and/or produce documents or things.⁸²

6.95 Regarding the importance of witness protection laws, the Queensland Crime and Misconduct Commission (CMC) explained:

Witness protection is seen worldwide as an increasingly valuable asset in the suppression and prosecution of organised crime. Organised crime flourishes in an environment where threats encourage silence, and the witness protection program supports witnesses through allowing them to safely provide crucial evidence in relation to serious offences; evidence that, due to fear and intimidation, may have otherwise gone unheard... The role of witness protection in investigating organised crime is instanced by the success of a witness protection operation conducted by the CMC.⁸³

6.96 The South Australian police agreed with these sentiments, and discussed the special challenges that organised crime groups present to the ability of law enforcement to gain evidence.

...we have had many victims that, because of the very real threats they perceive, do not want to proceed or give evidence because they feel that they may not be protected. Some victims feel that the criminal justice system may not support them, and the likelihood of getting a successful prosecution for witness intimidation is extremely low because those witnesses for the most part will not give evidence.⁸⁴

82 Attorney-General's Department, *Submission 16*.

83 CMC, *Submission 6*, p. 9.

84 Superintendent Bray, SA Police, *Committee Hansard*, 3 July 2008, p. 7.

6.97 The committee also received evidence during this inquiry about the importance of telecommunication interception and other surveillance devices to law enforcement. The committee also heard about the challenges that the dynamic and fast-paced developments in technology present to law enforcement in this area. In its discussions with law enforcement agencies in Canada, the committee was told that developments in telecommunications often occur without the provision of 'backdoor access' for law enforcement, so that law enforcement agencies are unable to intercept some of the newer telecommunications technologies.

6.98 Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police told the Canadian Standing Committee on Justice and Human Rights, that:

[An area] we need to progress is the area of lawful access. While communications technology has evolved considerably and criminals are embracing and taking advantage of it, Canadian law has not kept pace with the rapid changes. Increasingly, complex technologies are challenging conventional lawful access methods. Communication carriers are not required to provide access technology. Law enforcement agencies are simply asking that telecommunication carriers build interception capability into existing or new networks and provide access to important customer name and address information.⁸⁵

6.99 Consequently, Canadian law enforcement agencies are required to develop their own post-implementation solutions, which can be both complex and costly.

6.100 In contrast, in the United States (US), the committee heard that it is a requirement under the *Communications Assistance for Law Enforcement Act 1994* (CALEA) that before any telecommunications provider can roll-out services they must provide 'backdoor' access for law enforcement.

6.101 CALEA enhances the ability of law enforcement and intelligence agencies to conduct electronic surveillance by requiring that telecommunications carriers and manufacturers of telecommunications equipment, modify and design their equipment, facilities, and services to ensure that they have built-in surveillance capabilities. A paper from the Congress Research Service notes:

The Communications Assistance for Law Enforcement Act (CALEA, P.L. 103-414, 47 U.S.C. 1001-1010), enacted October 25, 1994, is intended to preserve the ability of law enforcement officials to conduct electronic surveillance effectively and efficiently despite the deployment of new digital technologies and wireless services that have altered the character of electronic surveillance. CALEA requires telecommunications carriers to modify their equipment, facilities, and services, wherever reasonably

85 Standing Committee on Justice and Human Rights, Committee Hearing 25 March 2009, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

achievable, to ensure that they are able to comply with authorized electronic surveillance actions.⁸⁶

6.102 In the years since CALEA was passed it has been modified to include all VoIP (Voice over Internet Protocol) and broadband internet traffic. However, the committee was told that criminal organisations have sought to evade surveillance of their telecommunications by developing their own broadband internet system using wireless servers.

6.103 During this inquiry the issue of telecommunications access was not specifically discussed with Australian law enforcement agencies. However, this matter was discussed at length in the committee's previous inquiry and a number of concerns were identified. The committee considers it is imperative that legislation allows law enforcement to keep pace with developments in technology, at a reasonable cost.

Resources

6.104 While this inquiry predominantly considered legislative arrangements to outlaw serious and organised crime groups, paramount to any attempts to tackle serious and organised crime is the operational response. The success or otherwise of legislative tools is dependant upon the existence of appropriate law enforcement resources to monitor, police and prosecute any legislative arrangements. The Hon. Leonard Roberts-Smith QC, Commissioner for the Corruption and Crime Commission of Western Australia, informed the committee that:

Legislative solutions need to be appropriately framed to strike cleanly, even surgically, at the criminal conduct, individuals or organisations which they are intended to affect whilst minimising the collateral effects on others. They must be crafted to produce an effective, practical result... But even if the legislation meets these criteria it will not work. That is to say, it will not produce the desired practical social result unless the law enforcement agency which is responsible for administering it is given the financial and other resources to do so.⁸⁷

6.105 He went on to argue:

The relative success of these initiatives can be put down to a focus of resources sustained over a significant period of time... A direct consequence of this intense law enforcement activity was the collection of intelligence on, and an understanding of, their criminal activities and their method of operation. This has better informed both tactical and strategic decisions. Unfortunately, the inability to sustain this focus has enabled the gangs to rejuvenate and re-establish their presence within the criminal

86 Patricia Moloney Figliola, Congressional Research Service, *Digital Surveillance: The Communication Assistance for Law Enforcement Act*, <http://www.fas.org/sgp/crs/intel/RL30677.pdf> (accessed 2 June 2009).

87 The Hon Leonard Roberts-Smith QC, Corruption and Crime Commission of WA, *Committee Hansard*, 4 July 2008, p. 2.

landscape. The significance of persistent law enforcement attention, and the disruptive effect, cannot be understated and needs to be part of the broad strategy to deal with the problem... This confirms the belief that the sustained application of these resources to the problem is the most effective strategy in deterring, disrupting and discouraging organised and serious criminal activity.⁸⁸

6.106 In essence, the committee was told:

I think the police, properly resourced, do a terrific job.⁸⁹

6.107 The committee considers that while targeted legislative tools are critical, some of the measures being currently mooted, and which are canvassed in this report, will have significant resource implications for law enforcement agencies. The committee cautions that due consideration should be given to this aspect and that ultimately, legislative tools are only fully effective when law enforcement agencies have the human and technical resources to support them. The committee concurs with Assistant Commissioner Tim Morris:

...they are complex pieces of legislation. I sometimes wonder how much extra resource would need to go in to monitoring some of these pieces of legislation. We have a finite resource in the Australian Federal Police and in most law enforcement agencies. There would have to be a very careful calibration between the expected benefit and the resource that you would put into the back end to get the benefit.⁹⁰

Concluding remarks

6.108 This inquiry into legislative arrangements to outlaw serious and organised crime was established in part to consider the legislative developments in South Australia with the enactment of the *Serious and Organised Crime (Control) Act 2008*. This Act signalled a new approach on the part of law enforcement agencies in Australia to tackle the growing and complex issue of serious and organised crime.

6.109 This report has sought to present: a current snapshot of serious and organised crime in Australia; the increasing threat of transnational organised crime; and the current legislative developments to address this. Central to this inquiry was the examination of legislation which targets association offences, as this was the foundation of the *Serious and Organised Crime (Control) Act 2008 (SA)*.

6.110 During the course of this inquiry, political and public acceptance for association offences has changed. Initially all other states and territories adopted a 'wait-and-see' approach to the South Australian legislation. However, the events of

88 The Hon Leonard Roberts-Smith QC, Commissioner, CCC, *Committee Hansard*, 4 July 2008, p. 5.

89 Mr Ray, QC, Law Council of Australia, *Committee Hansard*, 6 November 2008, p. 57.

90 Assistant Commissioner Morris, AFP, *Committee Hansard*, 6 November 2008, p. 30.

March 2009 at Sydney airport, in which a confrontation between two OMCGs resulted in the murder of one man and later the attempted murder of another, produced a concerted political response to target 'gang' membership.

6.111 A number of jurisdictions already had a range of association offences, but in light of the Sydney airport murder, these were enhanced to mirror, to a large degree, the legislation in South Australia. While not all states and territories acted as swiftly as NSW, a number have publicly stated that they are considering enhancing or enacting association offences.

6.112 The committee acknowledges that OMCGs present a very public and threatening face of serious and organised crime. The committee has also heard that the structure of OMCGs, and indeed of many groups involved in serious and organised crime, is sophisticated and allows them to evade law enforcement. Accordingly, it seems to be a logical response for law enforcement to attempt to restrict the members of criminal groups from meeting to plan and execute their activities. The committee sees some value in this response.

6.113 However, during this inquiry, the committee heard of a number of alternative methods for both restricting association, and for preventing serious and organised crime. In the committee's view, some of these approaches share many of the benefits of South Australia's laws without some of its difficulties, complexities and costs.

6.114 The committee also became aware that the threat of serious and organised crime goes far beyond OMCGs, and that the groups committing some of the most serious and lucrative crimes, and driving the lower-level criminal groups, do not have such a public face. Moreover, witnesses emphasised the changing nature of organised crime groups from tightly structured and enduring groups to loosely affiliated and transitory networks. The committee heard time and time again that organised crime is fundamentally motivated by financial profit, and that those directing serious and organised crime will be those benefiting most financially from it. Consequently, the committee also considered criminal asset confiscation in this report as another means of preventing serious and organised crime.

6.115 Chapter 5 of this report discusses in detail, legislative approaches to target and confiscate the proceeds of crime. The committee heard that by confiscating criminal assets, law enforcement can deprive organised criminals of the motive for and benefits of their activities, and restrict their ability to finance further criminal activities. The committee is persuaded that the confiscation of criminal assets is an effective way of tackling serious and organised crime. The committee commends the Commonwealth government for pursuing this approach and those states and territories that have or are also enhancing legislation in this area.

6.116 Finally, the committee's inquiry highlighted that appropriate legislative tools are only part of the law enforcement equation. The operational capacity of law enforcement agencies is paramount to any attempts to tackling serious and organised crime. Clearly, operational capacity is dependant on appropriate numbers of skilled

law enforcement personnel, but it is also dependant upon greater coordination of law enforcement approaches across the country, improved information and intelligence sharing arrangements, improved international partnerships, a supportive suite of law enforcement capabilities and adequate levels of resourcing.

6.117 As a result of the federated system of government, Australia's approach to law enforcement is currently fragmented. This situation presents opportunities for serious and organised crime and great challenges for law enforcement agencies. It is these vulnerabilities that criminal groups exploit. The committee recognises the significant challenges that Australian law enforcement faces in tackling serious and organised crime. In order to do this effectively, law enforcement agencies must be well supported with resources, law enforcement tools and administrative and policy arrangements. However, the committee urges that any legislative developments be considered and evidence-based rather than politically driven. Ill-considered legislation risks increasing the problems of Australia's already piecemeal legislative framework.

Senator Stephen Hutchins

Chair