

## Tools for combating serious organised crime: Australian jurisdictions

	Search warrants	Telecommunications interception	Controlled operations	Assumed identities	Witness identity protection	Surveillance devices	Coercive powers <sup>1</sup>	Control orders	Anti-fortification	Proceeds of crime <sup>2</sup>	Unexplained wealth	Financial reporting orders
Cth	Y	Y	Y	Y	Y	Y	Y	Y <sup>3</sup>	N	Y	N	N
NSW	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N
Vic	Y	Y	Y	Y	Y	Y	Y	N	N	Y	N	N
Qld	Y	Proposed	Y	Y	Y	Y	Y	N	N	Y	N	N
WA	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N
SA	Y	Y	Y	Proposed	Proposed	Y	N	Y <sup>4</sup>	Y	Y	Proposed	N
Tas	Y	Y	Proposed	Proposed	Proposed	Proposed	N	N	Y	Y <sup>5</sup>	N	N
ACT	Y	N <sup>6</sup>	Y	N	N	Y <sup>7</sup>	N	N	N	Y	N	N
NT	Y	Y	Y	N	N	Y	N	N	N	Y	Y	N

<sup>1</sup> Coercive powers are contained in the *Australian Crime Commission Act 2002* and the mirror ACC legislation of the States and Territories. Additionally, legislation in New South Wales, Victoria, Queensland and Western Australia gives certain state agencies coercive powers in relation to serious organised crime.

<sup>2</sup> There are provisions in Western Australia and Northern Territory (and proposed in South Australia) allowing for more severe recovery action to be taken where a person has been declared a drug trafficker on the basis of certain conditions (eg a number of convictions for drug offences, or being convicted of a certain category of drug offence). For example, in Western Australia, all property of a declared drug trafficker may be forfeited regardless of whether it is proceeds of crime.

<sup>3</sup> A person can be subject to a control order if the order substantially assists in preventing a terrorist attack or if the person has trained with a listed terrorist organisation.

<sup>4</sup> Control orders can be issued against members of 'declared organisation', former members of such organisations and others who engage in serious criminal activity. The Attorney-General can make a declaration about an organisation if satisfied that the members of the organisation associate for the purpose of organising, planning, supporting, facilitating, or engaging in serious criminal activity and the organisation represents a risk to public safety and order in South Australia.

<sup>5</sup> There are no civil confiscation provisions in Tasmania.

<sup>6</sup> There is no ACT specific legislation. The Commonwealth legislation applies in the ACT to offences committed against the Commonwealth.

<sup>7</sup> Listening devices only. The Commonwealth legislation applies in the ACT to offences committed against the Commonwealth.

## Tools for combating serious organised crime: Canada, New Zealand and United Kingdom

	Search warrants	Telecommunications interception	Controlled operations	Assumed identities	Witness identity protection	Surveillance devices	Coercive powers	Control orders	Anti-fortification	Proceeds of crime	Unexplained wealth	Financial reporting orders
Canada	Y	Y	Y	Y	Y	Y	Y <sup>8</sup>	Y <sup>9</sup>	Y <sup>10</sup>	Y	N	N
NZ	Y	Y	Y	Y	Y	Y	Y <sup>11</sup>	N	Y <sup>12</sup>	Y <sup>13</sup>	N	N
UK	Y	Y	Y	Y	Y	Y	Y <sup>14</sup>	Y <sup>15</sup>	N	Y	N	Y

<sup>8</sup> A judge may order an investigative hearing in relation to terrorism offences and require a person to attend an examination before a judge to answer questions and to produce specified things. A judge may also order a person (other than the person under investigation) to produce documents or data to a specified public officer if the judge believes an offence has been committed against the Criminal Code or any other Act.

<sup>9</sup> A recognizance with conditions (in relation to terrorist activity) and a 'peace bond' (in relation to a criminal organization offence or a terrorism offence) are the closest things to control orders in Canada. See ss 83.3 and s 810.01 respectively of the *Criminal Code 1985*.

<sup>10</sup> Canada does not have federal legislation. However, some provinces have anti-fortification legislation.

<sup>11</sup> The Serious Fraud Office has the power to demand documents and information to be produced and questions to be answered in relation to serious or complex fraud offences. The *Search and Surveillance Powers Bill 2008* makes provision for the Police Commissioner to apply for an examination order in a business and non-business (serious or complex fraud and organised crime) context, and for police to apply for an order to produce documents (applies in relation to specified offences).

<sup>12</sup> New Zealand does not have federal legislation. However, some local councils have anti-fortification legislation.

<sup>13</sup> Amendments are proposed to allow for civil forfeiture in New Zealand.

<sup>14</sup> A disclosure notice may be issued in relation to specified offences (eg evasion of duty, drug trafficking, money laundering, directing terrorism, people trafficking, arms trafficking, intellectual property offences, counterfeiting, and blackmail). A disclosure notice can require a person to answer questions, provide information and produce documents. The Director of Public Prosecutions, Director of Revenue and Customs Prosecutions, or the Lord Advocate may issue a disclosure notice. Alternatively, these persons may authorise a constable, a member of staff of the Serious Organised Crime Agency, or an officer of the Revenue of Customs to issue a disclosure notice.

<sup>15</sup> Includes control orders and serious crime prevention orders. Control orders can be issued for the purpose of protecting the public from a terrorist act. Serious crime prevention orders can be used against those involved in serious crime and their purpose is to protect the public by preventing, restricting or disrupting involvement in serious crime.