



# Police Federation of Australia

The National Voice of Policing

ABN 31 384 184 778

Level 1, 21 Murray Crescent  
GRIFFITH ACT 2603

Tel: (02) 6239 8900

Fax: (02) 6239 8999

30 April 2009

Secretary  
Dr Jacqueline Dewar  
Parliamentary Joint Committee on the  
Australian Crime Commission  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Dr Dewar

## **RE: PJC INQUIRY INTO SERIOUS AND ORGANISED CRIME**

As you know, the Police Federation of Australia (PFA) made a submission dated 1 May 2008 to your inquiry into serious and organized crime and gave formal evidence to the Committee on 6 November 2008. The PFA Executive also met in an informal sense with the Committee on 23 February 2009 where it was agreed we would provide a supplementary submission to the Inquiry.

Since that time the Australian community has seen a most worrying escalation in incidents involving Outlaw Motor Cycle Gangs (OMCG) including a murder at Sydney Airport involving OMCG members and the arrest of numerous alleged OMCG members in New South Wales, the Australian Capital Territory, and elsewhere.

These cases of serious and organized crime reinforce the need for the most effective and consistent legislation and law enforcement nation-wide to protect the Australian community.

To that end we made a number of recommendations to the Committee in our presentation on 6 November 2008. We particularly draw your attention to recommendations 3 and 4 as follows:

3. That the Proceeds of Crime Act (Cwth) is immediately amended to include an Unexplained Wealth provision mirroring ss. 67-72 of the

Crimes (Forfeiture of Proceeds) Act 1988 (NT) consistent with Australia's obligation under 1997 Interpol General Assembly Resolution.

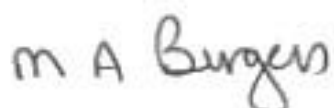
4. That Commonwealth legislation is enacted consistent with Australia's obligations under the Convention against Transnational Crime (CATC) ratified on 27 May 2004.

We, in conjunction with our colleagues of the Australian Federal Police Association (AFPA), a Branch of the PFA, wish now to provide the Committee with a supplementary submission which provides operational evidence in support of recommendations 3 and 4.

The supplementary submission is enclosed. Please note that the supplementary submission is accompanied by Attachments A and B which are provided to the Committee on a strictly confidential basis and are not for publication.

We would be happy to discuss this supplementary submission with the PJC on the ACC if that would assist the Committee.

Yours sincerely

A handwritten signature in black ink that reads "m A Burgess". The signature is written in a cursive, slightly slanted style.

Mark Burgess  
Chief Executive Officer

Enclosure



Police Federation  
of Australia



## AFPA BRANCH SUPPLEMENTARY SUBMISSION

Parliamentary Joint Committee on Australian Crime Commission  
30 April 2009

The AFPA Branch of the Police Federation of Australia (AFPA) wishes to present to the Committee operational evidence to support Recommendations 3 and 4 of the submission by the Police Federation of Australia (PFA).

Attachment A and Attachment B provide detailed operational information that is being provided strictly in confidence to the Committee. We request that the Attachments A & B are not published by the Committee.

Whilst harmonisation of organised crime legislation across jurisdictions is being considered as a broader issue by the Committee, the AFPA specifically recommends immediate amendment to Commonwealth legislation in order for the Australian Federal Police (AFP) to effectively fight transnational and multi-jurisdictional organised crime.

The AFPA believes that the below proposed package of legislative reform is essential in order for police to combat organised crime impacting on Australia.

### 1. Role of the AFP

The AFP prevents, detects and investigates a broad range of crime types including:

- preventing, countering and investigating transnational and multi-jurisdictional organised crime, illicit drug trafficking, organised people smuggling (including sexual servitude and human exploitation), serious fraud against the Commonwealth, corporate crime, 'high tech' crime (involving information technology and communications), money laundering; terrorism; and
- the identification, restraint, seizure and confiscation of assets involved in or derived from the above activities.<sup>1</sup>

It is fair to say that high level transnational and multi-jurisdictional organised and serious crime comes directly under the Commonwealth jurisdiction however current Commonwealth legislation is grossly inadequate compared to State and Territory jurisdictions. There is no specific legislation in relation to participation in an organised crime. Indeed, the current Commonwealth legislation does not even include the 'traditional' offences such as '*knowingly concerned*' or '*consorting*' and the offence of '*Conspiracy*' has limited application.

---

<sup>1</sup> AFP Assistant Commissioner Tim Morris evidence before the PJC ACC

## **2. Inadequacy of Commonwealth legislation**

### **a. Inadequacy of Commonwealth legislation re accessorial liability**

There is no specific offence of 'knowingly concerned' as it was not translated into the Criminal Code (Cth) from the Crimes Act 1914 (Cth). This offence was often utilized against those criminals not committing an overt criminal act but knowingly concerned in the criminal offence.

*As a minimum, the Criminal Code (Cth) s.11 should be immediately amended to include the offence of 'knowingly concerned'.*

### **b. Inadequacy of Commonwealth legislation re Consorting**

There is no specific offence of consorting within Commonwealth legislation. Consorting offences exist in NSW, Victoria, South Australia, Western Australia, Tasmania and Northern Territory. In Northern Territory and NSW the Court as part of sentencing can also make non-association orders or place-restriction orders on the offender. South Australia has recently contemporised their Consorting offences to include electronic communication.

It is essential that there is Commonwealth legislation that provides consorting or similar provision that prevents a person associating with another person who has been involved in organised criminal activity as an individual or as part of an organisation.

*As a minimum, the Criminal Code (Cth) should be immediately amended to include the offence of 'consorting' to ensure harmonisation of legislation between NSW, Victoria, South Australia, Western Australia, Tasmania, Northern Territory and the Commonwealth.*

### **c. Inadequacy of Commonwealth legislation re Conspiracy**

The offence of conspiracy ss11.5(2)(c) of the Criminal Code (Cth) is often used by the AFP but it has a low success rate as it requires that at least one of the parties to the agreement commit an overt criminal act. This is not the case in other jurisdictions.

*As a minimum, the Criminal Code (Cth) ss. 11.5(2) (c) Conspiracy, should be immediately amended to ensure harmonisation of legislation between Canada, New Zealand, Queensland, Victoria, Western Australia and the Commonwealth by removing the requirement for one of the parties to the agreement having to commit an overt act pursuant to the agreement.*

### **d. Inadequacy of Commonwealth legislation re recruiting persons to engage in criminal activity**

There is no specific higher level offence for recruiting people to engage in criminal activity such as the recruitment of the Bali 9 teenagers. Commonwealth legislation is grossly inadequate in addressing this insidious behaviour.

*As a minimum, the Criminal Code (Cth) should be immediately amended to include a provision for Recruiting persons to engage in criminal activity based on Section 351A of Crimes Act 1900 (NSW)<sup>2</sup>*

---

<sup>2</sup> Crimes Act 1900 (NSW) 351A Recruiting persons to engage in criminal activity

(1) A person (not being a child) who recruits another person to carry out or assist in carrying out a criminal activity is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(2) A person (not being a child) who recruits a child to carry out or assist in carrying out a criminal activity is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

### 3. Further information in relation to Police Federation of Australia Recommendation 3

**That the Proceeds of Crime Act (Cwth) is immediately amended to include an ‘Unexplained Wealth’ provision mirroring ss. 67-72 of the Crimes (Forfeiture of Proceeds) Act 1988 (NT) consistent with Australia’s obligation under 1997 Interpol General Assembly Resolution.**

In the July 2006 *Report on the independent review of the Operation of the Proceeds of Crime Act 2002 (Cth)*, Mr Tom Sherman AO recommended that ‘unexplained wealth’ should be kept under review<sup>3</sup> on the basis that:

*‘investigations can often be frustrated through lack of evidence against people with significant wealth and no apparent source of legitimate income. Particularly the bosses who are often far removed from the actual criminal activity’.*

The AFP Expert on Money Laundering Investigations<sup>4</sup> advises that:

*‘We have developed this fiction that following the money trail will directly lead police to the top echelons of crime in Australia. It is possible in many cases to identify persons of interest who have accumulated significant wealth which appears to be unexplained but any proof of their involvement in crime is totally absent. The money flows up but the evidence of criminality does not.’*

Money laundering by organised criminal organisations/groups involves three stages – **placement, layering** and **integration**.

The Commonwealths Anti Money Laundering legislation and Proceeds of Crime legislation are geared towards the **placement stage**.

Establishing that money or property is derived from criminal activity (though not necessarily to a particular offence or particular person) is still an essential element of the Commonwealth money laundering provisions and the Proceeds of Crime Act.

Money entering the **placement stage** is usually not far removed from the crime from which it was earned and at this stage it is most vulnerable to detection and forfeiture under current Commonwealth legislation.

Current AFP operations clearly indicate that the **layering stage** of money laundering frequently involves the use of offshore corporate structures usually located in tax havens or countries with bank secrecy laws, or occur within Australia utilising a combination of money laundering methods namely false identities, corporate structures, family, friends or nominees to conceal criminal assets.

Once funds have reached the **layering stage**, it is difficult, if not impossible to link them back to the predicate offence.

---

(3) In this section:  
child means a person under the age of 18 years.  
criminal activity means conduct that constitutes a serious indictable offence.  
recruit means counsel, procure, solicit, incite or induce.

<sup>3</sup> Attorney General’s Department Submission p. 15- ‘In his ‘Report of the Operation of the Proceeds of Crime Act 2002 (Cth)’, Mr Sherman said that the possibility of introducing unexplained wealth declarations to POCA should be kept under review. This matter is being considered, alongside a range of other issues, in the context of the Government’s response to the Sherman Report’

<sup>4</sup> Federal Agent Christopher Douglas, wrote and delivers the Money Laundering Investigation program for the AFP.

After the **layering stage** is completed criminals have concealed the origin of their substantial criminal assets and wealth. Criminal assets and wealth are integrated within legitimate businesses, business ventures and property acquisition.

Once the **integration stage** is reached it is impossible to link the criminally derived assets and wealth back to the predicate offence. The only potential vulnerability that exists is that it is also impossible for the criminal to establish lawful acquisition of his total assets and wealth as they include funds originating from illegal activity.

*Unexplained Wealth* provisions are effective in attacking the **layering** and **integration stage** of money laundering by organised criminal organisations/groups.

*Unexplained Wealth* provisions are effective against:

- higher echelon criminals
- criminals involved in management of organised crime organisations/groups
- criminals assisting transnational organised crime organisations/groups
- Persons or corporate structures or nominees assisting domestic criminals to conceal assets and wealth
- Corrupt public officials including police who have assets that exceed their known lawful income
- Foreign criminals who control assets in Australia acquired by funds that have originated from illegal activity committed offshore but laundered in Australia
- Persons or corporate structures or nominees assisting foreign criminals to conceal or 'park' assets and wealth in Australia.

Organised crime organisations/groups particularly use corporations as concealment of illegal profits; corporations as the legitimate supply chain for illegal products, corporations as the weapon to commit the criminal act itself.<sup>5</sup>

In understanding white collar organised crime, you have to picture the corporation as a vehicle for crime.

The AFP, ACC, ITSA, ASIC, AUSTRAC, CRIMTRAC and other Commonwealth agencies are all aware of those participating in organised crime or 'white collar' crime, often part of organised crime, within Australia. Employees within those agencies are also aware that the current Commonwealth legislation is inadequate to deal with organised 'white collar' crime, particularly when corporations are the weapon.

Unfortunately, there is no ability to disqualify company directors in relation to being involved in organised crime activity. For example known drug importers/traffickers are able to hold directorships under the Corporations Act 2001.

White collar organised crime bosses often use 'puppet' directors to manage their corporations on their behalf. For example 'puppet' directors are utilised by a known organised crime boss who is disqualified from being a director and is a declared bankrupt. Often the 'puppet' directors are lower echelon criminals beholden to the organised crime boss. The corporations are asset stripped with the lower echelon criminals willing to suffer the corporate penalties and subsequent disqualification. The organised crime boss then moves on to a new corporation with new 'puppet' directors and the corporate weapon continues.

---

<sup>5</sup> Supt Bray – 3 July 2008 ACC 20 – ' We certainly did see people associated with outlaw motorcycle groups operating high-risk finance companies, but where those loans were secured perhaps against an asset, traditionally at a very high interest rates and requiring very strict compliance with the terms of their agreement. I am aware that on occasions, when a person defaulted on those loans, members of those outlaw motorcycle groups or their associates were used in an extorting or threatening manner to have people sign over their assets or to pay or collect monies.. I emphasize that my evidence relates to the finance companies that exist outside banks that provide perhaps \$50, 000 to \$500, 000 short term – perhaps six months or 12 months – at very high interest rates, as opposed to the traditional payday lenders.'

During the economic downturn in the late 1980s and early 1990's, Christopher Skase, and Alan Bond were some of the high flying entrepreneurs that were exposed as stripping over a billion dollars worth of assets and wealth from their companies by utilising third parties. Unfortunately, *Unexplained Wealth* provisions were not available to the AFP investigators who were assisting ASIC and ITSA at the time.

In the case of Alan Bond, he was convicted of defrauding Bell Resources of \$1.2 Billion. The Judge accepted that at least \$55 million was channeled through Bond's private company Dalhold. Bond's personal debts were around \$600 million. Bond's family company Armo (run by his son John) had unexplained assets of more than \$30 million, including the family home, other properties and investments. No link could be established to Bond's bankruptcy in relation to these assets.

In the Christopher Skase case, he illegally transferred \$13.5 million to a private company from his Quintex Corporation. Quintex later collapsed with Skase owing \$700 million in personal debts. Skase even left Australia with more than \$900,000 worth of antiques and furniture as no link could be established to his bankruptcy in relation to those assets. *Unexplained Wealth* Provisions would have assisted AFP investigators in relation to both these cases.

Interestingly, the current world economic crisis is exposing corporation crime within USA, UK, Europe and Australia.<sup>6</sup>

In December 2008 US investigators arrested Bernard Madoff for allegedly masterminding a Ponzi fraudulent scheme. In March 2009 he pleaded guilty to a staggering fraud of almost \$100 billion dollars.

In February 2009 US investigators accused Allen Stanford of allegedly masterminding a \$9.2 billion dollar fraud upon investors.

Both cases have only been discovered because of increased scrutiny of financial markets since the current world economic crisis began.

Currently in Australia ASIC is investigating the collapse of companies including childcare provider ABC Learning, Allco Finance Group and investment firm Storm Financial.

---

<sup>6</sup> Professor Henry Pontel, University of California – speaking on the current world financial crisis:-  
'What I look at more specifically is within a specific industry, what's is going on in that industry, criminologists have done this in the past with different types of studies, what's going on in those industries that make them criminogenic that is that provide certain opportunities, certain structures, for certain types of crimes to take place.

There is an illusion that these things may not be as dramatic, not as predatory, they may not be as intentional, or direct, when in fact a lot of these complex frauds, that you are going to find in this debacle, as well as what we found in previous debacles, are intentionally complex. That is the reason for the complexity. It is not because someone simply had a brilliant idea that no one ever thought before so they could do this very complex thing to produce wealth, it's to cover up the fraudulent intent that underlies the actual financial transaction. So if you create layers and layers of complex paperwork over what is basically a fraudulent act you end up hiding it and making it very difficult for investigators to ferret it out

'It was the root cause of crime here, the blame had to be placed on the system not on the actual individuals who were carrying out these complex frauds. Which is exactly the opposite to what conservatives would argue in the case of common crime. It's never the system, you'd sound like a bleeding-heart liberal saying 'oh, It's the system that made that person go out and burglarise or rob the 7/11 store or whatever, it's always the individuals fault. So you have this kind of strange reverse when it came to corporate crime all of a sudden it wasn't the corporate violators themselves who were to blame, it was the system.'

'To steal from the company, to steal from investors, to steal from the public, that really goes back to the work of Stanton Wheeler, a very famous criminologist and sociologist who just passed away last year who coined this term 'the organisation as weapon'. So you look at Enron as a perfect example, of, you know, Ken Lay and Jeff Skilling using that organisation as a weapon, basically to make incredible amounts of money through stock investments and then, you know, while people are throwing money at that organisation, those two guys and a few others, are selling their free shares or discounted shares out the back door as they are taking the organisation down and so they're making money while everyone else is losing. That's using the organisation as a weapon.'

As the current economic crisis exposes Australian corporate criminals who have stolen from corporations, stolen from investors and stolen from the public, the Commonwealth needs to have in place '*unexplained wealth*' provisions in order to seize assets and wealth stripped from Australian corporations and concealed through **layering** and **integration**. It is interesting to compare asset confiscation legislation containing *Unexplained Wealth* provisions with the Proceeds of Crime Act (Cth).

Between 2003/4 through to 2007/8 Western Australian asset confiscation legislation and Northern Territory asset confiscation legislation combined, led to approximately \$40 million dollars worth of assets restrained or forfeited and yet for the whole of the Commonwealth, only approx \$60 million dollars worth of assets have been restrained or forfeited under the Proceeds of Crime legislation.<sup>7</sup>

It should be noted that Western Australian and Northern Territory DPPs have been reluctant to utilise *Unexplained Wealth* provisions, preferring the Drug Trafficking provisions of their respective legislation.

**Attachment A** sets out some actual AFP scenarios where *Unexplained Wealth* provisions would have assisted the AFP in seizing and confiscating multiple millions of dollars worth of assets suspected of being wholly or partly derived by funds originating from illegal activity.

---

<sup>7</sup> Total assets were worth \$36,974,262m under WA & NT legislation combined and \$63,500,000m under the Proceeds of Crime (Cth) for the same period of 2003/4 to 2007/8.



#### 4. Further information in relation to Police Federation of Australia Recommendation 4

**That Commonwealth Organised Crime legislation is enacted consistent with Australia's obligations under the Convention Against Transnational Crime (CATC) ratified on 27 May 2004.**

The Commonwealth is signatory to various international conventions relating to organised crime, including the Convention Against Transnational Crime (CATC) which was ratified on 27 May 2004.

The Parliament of Australia can legislate on any criminal law issue arising out of international treaties signed by the Commonwealth Government.<sup>8</sup>

Importantly, on 4 December 2008 in the First National Security Statement to the Parliament, the Prime Minister of Australia The Hon. Kevin Rudd MP stated:

*The list of non-traditional threats or new security challenges is also growing.*

*Transnational crime – such as trafficking in persons, drugs and arms; people smuggling and the illegal exploitation of resources – will remain a continuing challenge.*

*These activities can undermine political and social institutions, inflict economic and personal harm or contribute to other forms of violence...*

*The Government is committed to deploying all necessary resources to prosecute those criminals who seek to undermine Australia's border security...*

*Organised crime more broadly is a growing concern for Australia, one the Government is determined to combat. The Australian Crime Commission has estimated that organised crime costs Australia over \$10 billion every year.<sup>9</sup>*

In June 2007 the Ministerial Council for Police and Emergency Management – Police (MCPEM-P) National Senior Officers' Group (Law enforcement) reviewed the legislation proposed under the Serious and Organised Crime (control) Act 2008 (SA) for national application.

In November 2007 the MCPEM-P accepted the recommendation from the Working Group that each jurisdiction review the South Australian model of legislation and consider enacting (within their jurisdictional/constitutional responsibilities) harmonised legislative models, with mutual recognition provisions where appropriate.

Despite Treaty obligations, the First National Security Statement by Prime Minister Rudd, the acceptance of the recommendations from MCPEM-P National Senior Officers' Group (Law

---

<sup>8</sup> Submission by Dr Andreas Schloenhardt p80 – 'The Commonwealth Government, however, has the power to make criminal law in those areas that are assigned to the Federal Parliament. These include the subject matters enumerated by s 51 *Constitution* and the 'incidental power' as provided for in s 51(xxxix) *Constitution*, for example customs, trade, external affairs, fisheries, quarantine et cetera.<sup>427</sup> The Commonwealth's external affairs power authorises the Federal Government to enter into international treaties. Australia has signed the *Convention against Transnational Organised Crime*...

In the past, especially in *Commonwealth v Tasmania* (1983) 46 CLR 625, the High Court applied a very broad reading of the Commonwealth's external affairs powers, suggesting that the Federal Parliament can legislate on any criminal law issue arising out of international treaties signed by the Federal Government.<sup>428</sup> To date, federal criminal law, however, contains no specific offences relating to participation in criminal organisations'

<sup>9</sup> 04 December 2008 First National Security Statement address to the Parliament by the Prime Minister of Australia The Hon. Kevin Rudd MP

enforcement), the Commonwealth does not have in place specific legislation or effective legislation to deal with the transnational and organised crime operational environment.<sup>10</sup> Commonwealth legislation traditionally focuses on predicate offences and the involvement of the persons committing those offences. Commonwealth legislation does not adequately cover all levels of involvement in organised crime. Commonwealth conspiracy and other accessorial type of offences are difficult to prove. The AFP has to rely upon cobbling together various aspects of existing laws in an attempt to prosecute persons involved in this type of activity.

Although transnational organised crime is now considered a national security threat there is no definitive law to outlaw the activity.

Specific Commonwealth organised crime legislation is required to enable police to effectively prevent, disrupt, investigate and prosecute organised crime activities. The AFPA submits that there is an obligation on the Commonwealth to enact specific Organised Crime legislation.

It is important that Commonwealth organised crime legislation addresses foreign organised crime organisations as well as domestic organised criminal groups.

Federal investigations identify members of known transnational organised crime organisations operating within Australian borders. They include members from 14K, Wo Shing Wo and Sun Yee On and other Chinese triad societies, specific Columbian cartels, specific Russian Organised crime syndicates, the Japanese Yamaguchi-gumi, Italian Mafia, Middle East syndicates and Vietnamese organised crime, transnational Outlaw Motor Cycle Gangs (OMCGs) etc.

For example, a recent AFP investigation has identified a family that is believed to be the leaders of a known Colombian Drug cartel. The family is suspected to be involved in numerous drug importations, the last known importation being 300 kilos of cocaine. There is strong merit in Commonwealth legislation that can allow the Governor General, on advice from the Prime Minister, to 'declare a known transnational organised criminal organisation as a 'prohibited organisation' on the basis of Australian and International police intelligence.

Criticisms of the Serious and Organised Crime (control) Act 2008 (SA) relate to concerns about the concentration of power being with the SA Attorney General. Division 102 of the Criminal Code (Cth) addresses these concerns. The procedures for declaring a terrorist organisation has much greater safeguards built into it including Parliamentary Joint Committee oversight of the legislation and its application by the AFP. Also there is independent oversight of the AFP by the Commonwealth Ombudsman and the Australian Commission on Law Enforcement Integrity (ACLEI). Division 102 of the Criminal Code (Cth) could easily be replicated to achieve similar outcomes to the Serious and Organised Crime (control) Act 2008 (SA) but with additional safeguards.

***Recommendation:***

***Consistent with the First National Security Statement which identifies transnational and organised crime organisations, as a threat to national security, Division 102 of the Criminal Code (Cth) should be replicated for transnational and organised crime organisations thus ensuring harmonisation with the Serious and Organised Crime (control) Act 2008 (SA) and various international jurisdictions.***

---

<sup>10</sup> Submission by Dr Andreas Schloenhardt p74 – 'Organised crime poses significant challenges to the criminal justice system. The criminal law and law enforcement are traditionally designed to prosecute and punish isolated crimes committed by individuals. The structure and modi operandi of criminal associations, however, do not fit well into the usual concept of criminal liability. Moreover, it is difficult to hold directors and financiers of organised crime responsible if they have no physical involvement in the execution of the organisation's criminal activities. Equally, those who are only loosely associated with a criminal gang and provide support on an ad hoc basis often fall outside existing concepts of accessorial liability.'

There also needs to be Commonwealth legislation to address the organised crime groups that adapt, diversify, and have flexible non-hierarchical structures. These organised crime groups have 'sub contract' type arrangements.

These organised crime groups can be transient in nature with some members not even being aware of the existence of other persons. This allows the higher level members of the activity to distance themselves from the overt elements of the crime thus creating difficulties for investigating officers to charge the leaders of the crime groups.

Compartmentalisation remains one of the distinguishing characteristics of these organised crime groups. For example, several levels may be used during an importation of illegal drugs, with members sent from overseas to clear a shipment through Customs or to receive a courier parcel. The illegal drugs will sometimes be passed to another person who will store them before delivery to a further party responsible for distribution. Often, participants in the various levels are insulated from one another, making it difficult for law enforcement to gain meaningful assistance from those arrested. It could be controlled from Australia or overseas.

Known transnational and organised crime organisations utilise these less structured crime groups to expand their activities in a collaborative approach.

These organised crime groups can be addressed through legislation that mirrors ss 93S and 93T of the Crimes Act 1900 (NSW) in relation to Participation in criminal groups<sup>11</sup>.

A current example of a more common loosely knit organised crime group identified by the AFP within Australia involves an Australian based member of an ethnic organised crime group. The individual has been investigated by Australian law enforcement agencies on numerous occasions. Criminal Intelligence indicates this person is the 'principle' Australian element of the group with the criminal activity being 'approved' by him.

Members of the Organised Crime group visit/interact with Australia from South America, China and S/E Asia. They are responsible for organising the importation of the illicit drugs. They recruit persons in Australia to undertake high risk elements of the offence, including the facilitation of the importation (during and post importation).

The Australian based member is involved in facilitating meetings and provides infrastructure support (vehicles, organising accommodation etc). Financial benefits are provided to the Australian based member of the syndicate however he has no or limited connection to the substantive offence.

---

<sup>11</sup> **93S and 93T of crimes Act 1900 (NSW)**

**93S Definitions**

(1) In this Division:

"**criminal group**" means a group of 3 or more people who have as their objective or one of their objectives:

- (a) obtaining material benefits from conduct that constitutes a serious indictable offence, or
- (b) obtaining material benefits from conduct engaged in outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious indictable offence, or
- (c) committing serious violence offences, or
- (d) engaging in conduct outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious violence offence...

(2) A group of people is capable of being a criminal group for the purposes of this Division whether or not:

- (a) any of them are subordinates or employees of others, or
- (b) only some of the people involved in the group are involved in planning, organising or carrying out any particular activity, or
- (c) its membership changes from time to time.

**93T Participation in criminal groups**

(1) A person who participates in a criminal group:

- (a) knowing that it is a criminal group, and
- (b) knowing, or being reckless as to whether, his or her participation in that group contributes to the occurrence of any criminal activity,

is guilty of an offence. Maximum penalty: Imprisonment for 5 years...

This Australian based member could be prosecuted for Participation in criminal groups if the provision existed under Commonwealth legislation.

**Recommendation:**

**The Crimes Act 1914 (Cth) be immediately amended to create harmonisation of legislation between Canada, New Zealand, NSW and the Commonwealth by mirroring ss. 93S and 93T of the Crimes Act 1900 (NSW) in relation to Participation in criminal groups.**<sup>12</sup>

**Attachment B** sets out some actual AFP scenarios where specific Commonwealth Organised Crime legislation would have assisted the AFP in disrupting & dismantling transnational and Australian organised crime.

## 5. Conclusion

In 2009 the AFPA is again calling on the Australian Parliament to:

- introduce a package of Commonwealth legislative reform in order for police to combat organised crime impacting on Australia
- enact specific Commonwealth Organised Crime legislation; and
- to amend the Proceeds of Crime legislation (Cth) to include 'Unexplained Wealth' provisions.

The AFPA position has been echoed for many years by prominent persons and law enforcement organisations specifically established to fight organised and serious crime. To date, the experts and police practitioners have been unsuccessful in convincing Parliament. Inadequacies of Commonwealth legislation in the fight against organised crime can be best summed up by 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.*

*A primary target for attack, if syndicates and their power are to be destroyed, is the money and assets of organised crime. There are many reasons to support this view. The goal of organised crime is money. The financial rewards are very great, and they are the greater because the profits are tax-free. Money generates power; it allows expansion into new activities; it provides the motive for people to engage in such crime. It is used to put the leaders in positions, superior to that of others in the community, where they are able to exploit the law and its technicalities and so on. At the same time, it is the point at which organised crime is most vulnerable.*

---

<sup>12</sup> Dr Andreas Schloenhardt pg 7 of submission to Parliamentary Joint Committee on the Australian Crime Commission dated 4 April 2008

*It has long been accepted that tax authorities can call on taxpayers to account for assets which appear to exceed that which their income could be expected to produce. In the US this is a "net worth" investigation. It is difficult to see why in the face of serious organised crime a statute could not be drawn to provide that in prescribed circumstances the owner or custodian of money or assets may be called on to explain how he came by them..."*

The AFPA eagerly awaits the Parliamentary Joint Committee's recommendations in relation to our call for effective Commonwealth organised crime fighting legislation.

A handwritten signature in cursive script that reads "Jon Hunt-Sharman". The signature is written in black ink and is positioned above a horizontal line.

**Jon Hunt-Sharman**  
National President  
Australian Federal Police Association

30 April 2009