

# Chapter 2

## Evaluating and responding to the threat

### Introduction

2.1 Over the course of this inquiry, the committee has received significant evidence of infiltration of the aviation and maritime sectors by serious and organised criminal networks (SOCN). This is a natural consequence of the strong incentives that exist within those sectors for profit-seeking organised criminals.

2.2 The law enforcement response to this threat has become increasingly coordinated through a variety of mechanisms discussed in this report. As always, the response, including government policy, will need to adjust to an evolving threat.

2.3 In this chapter, the committee provides an overview of the threat posed by serious and organised crime in the aviation and maritime sectors, as well as the national response. In addition, the committee presents a number of observations that serve as principles to underpin an effective government response.

### **The threat of serious and organised crime in the aviation and maritime sectors**

2.4 Evidence provided to the committee by the Australian Crime Commission (ACC) and other law enforcement agencies and obtained during an extensive set of site visits around the country have led the committee to the view that serious and organised criminality in the aviation and maritime sectors poses a very real threat to Australia.

2.5 It is also important to note that while serious and organised criminal activity is taking place across Australian airports, seaports and beyond, the majority of individuals working within those environments are law-abiding employees engaged in legitimate activity. Nevertheless, a small minority of individuals within those sectors have been found to be involved in serious criminal activity (as has been the case in other sectors). Transportation networks are a valuable target for organised crime, given the potential use of those networks to facilitate lucrative illicit operations. Given the importance of transport sectors to facilitating both licit and illicit economic activity, that small minority of individuals can have a relatively high impact.

2.6 The following section outlines a selection of public evidence relating to the threat of serious and organised crime in the aviation and maritime sectors. Additionally, the committee has received evidence in-camera and in private discussions that further support these claims. However, the committee is of the view that the publication of such evidence would be against the public interest and has not included confidential evidence in this report.

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### *The evolving nature of organised criminal networks*

2.7 As noted in the Commonwealth Organised Crime Strategic Framework, criminal networks are driven by a profit motive, which generally differentiates them from politically motivated terrorist networks. Organised criminal networks are driven by a desire to make, and subsequently hide, illicit profits. Demand for illicit commodities, such as drugs, is likely to remain strong, driving the criminal economy by providing a strong profit incentive to engage in organised criminal activities. Organised criminal networks seek to balance profit opportunities with attendant risks of detection and prosecution.<sup>1</sup>

2.8 Increasingly, SOCNs operate across borders. Facilitated by advances in communication and travel, organised crime has become a globalised affair, with networks of immense size involved across markets and sectors.<sup>2</sup> As the ACC notes in the Organised Crime in Australia 2011 Report:

The power, networking ability and opportunism of sophisticated transnational criminal groups means they now operate at an unprecedented level around the world. Some groups wield immense power. The reach and influence of leading members of the larger transnational crime groups stretches far beyond their home country. For example, Mexican drug cartels now have a foothold on most continents and profits that rival the GDP of some of the world's smaller nations.<sup>3</sup>

2.9 In Australia, organised criminal activity is undertaken by a number of highly interconnected groups and individuals, working together in loose networks on an opportunistic basis.<sup>4</sup> The public perception of stereotypical organised crime groups is increasingly inaccurate. While outlaw motorcycle gangs, underworld figures and hierarchical and highly-controlled organised crime groups remain significant, there has been increasing cooperation between traditionally rival groups as opportunities arise.<sup>5</sup>

2.10 These loose networks are extremely flexible. The ACC notes that current patterns of organised crime are more complex than at any other time in history.<sup>6</sup> They are sensitive to the tactics employed by law enforcement and regulatory agencies and are able adjust their operations in response.<sup>7</sup> In part, the need for this flexibility has been behind a shift away from traditional, hierarchical organised crime models, as explained by the ACC:

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1 Australian Government, Commonwealth Organised Crime Strategic Framework, p. 9.

2 Australian Crime Commission, Organised Crime in Australia 2011 Report, March 2011, p. 3.

3 ACC, OCA 2011, pp 24–25.

4 ACC, OCA 2011, p. 25.

5 Commonwealth Framework, p. 8.

6 ACC, OCA 2011, p. 3.

7 ACC, OCA 2011, p. 3.

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Internationally, traditional hierarchies, typified by the Sicilian Mafia or the Yakuza in Japan, remain resilient and effective in their specific markets. However, other transnational criminal enterprises have varied traditional hierarchical command and control structures by moving to adaptable and more flexible structures, including in some cases franchise models.

Traditional hierarchical organised criminal groups are increasingly responding to changing market dynamics and law enforcement interdiction. They are offsetting the disadvantages inherent in rigid and sometimes brittle hierarchical command structures through networked or hybrid structures and innovative use of information and communications technologies.<sup>8</sup>

2.11 SOCNs infiltrate various sectors of the economy in order to facilitate illicit activity and profits. As a result, criminal activity is supported, knowingly or otherwise, by a range of people with access to information, infrastructure, government services, knowledge of institutional weaknesses or access to specialist skills.<sup>9</sup> The importance of these 'facilitators' or 'trusted insiders' is discussed below.

2.12 As a result of infiltration, networks have established a significant foothold in certain industry sectors. As noted in the Commonwealth Framework, once these footholds are established, organised crime can more easily profit from these sectors and become resistant to law enforcement interventions.<sup>10</sup>

2.13 SOCNs are knowledgeable of legitimate industry practices, demonstrating a high degree of resilience to traditional organised crime interventions.<sup>11</sup> They are able to operate within and alongside legitimate businesses and may work across industries in order to maximise return and minimise risk, in much the same way a legitimate business would.<sup>12</sup>

2.14 SOCNs can be expected to actively exploit current and emerging opportunities to generate funds or otherwise benefit from a broad range of activities of interest to the Commonwealth.<sup>13</sup> The importance of the aviation and maritime sectors in facilitating a number of lucrative criminal activities suggests that they are a prime target for infiltration.

2.15 The majority of serious and organised criminal activity in Australia is focused on illicit drug markets, although other activities include tax evasion, money laundering, fraud, identity crime and high tech crime.<sup>14</sup>

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8 ACC OCA 2011, p. 26.

9 Commonwealth Framework, p. 9.

10 Commonwealth Framework, p. 9.

11 Commonwealth Framework, p. 8.

12 ACC, OCA 2011, p. 3.

13 Commonwealth Framework, p. 9.

14 ACC OCA 2011, p. 4.

2.16 The impact of organised crime in Australia is serious and far exceeds the direct harm caused by the specific offences. As the ACC explains in the 2011 Organised Crime in Australia Report:

In fact, the activities of high threat serious and organised criminal enterprises result in significant harm to the Australian community. There are significant losses to the economy, including the redirection of resources that might otherwise be invested in legitimate business, reductions in tax revenue and increasing costs of law enforcement and regulation. The widespread impact extends to costs associated with longer-term health and social harm. The activities of organised criminal enterprises can also undermine public confidence in the integrity of key business sectors and government institutions.<sup>15</sup>

2.17 The ACC conservatively estimates the direct cost of serious and organised crime in Australia to be between \$10 and 15 billion every year. In addition, indirect costs such as those associated with illicit drug addiction, forced prostitution and community violence are also significant. Illicit drug abuse alone has an estimated social cost of over \$8 billion annually. There are also other serious impacts including the collateral damage to family relationships, community functions and social cohesion, and potentially the loss of public confidence in the rule of law and the administration of justice.<sup>16</sup>

### *The Australian Crime Commission special intelligence operations*

2.18 The terms of reference to this inquiry require it to examine the findings of the ACC's special intelligence operations into crime in the transport sector and illegal maritime importation and movement methodologies.

2.19 The *Crime in the Transport Sector Determination* was operational from November 2005 to June 2008, producing some 395 reports related to the maritime sector, including three strategic intelligence reports and five policy discussion papers. An additional 91 reports related to the aviation sector.<sup>17</sup>

2.20 The *Illegal Maritime Importation and Movement Methodologies Determination* was operational between November 2006 and December 2008 and produced 177 reports, including six strategic intelligence reports and three policy discussion papers on small craft and domestic fishing environments.<sup>18</sup>

2.21 In addition to those two determinations, the ACC's Aviation Criminal Assessment Team (ACAT) was established following a recommendation of the

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15 ACC OCA 2011, p. 4.

16 ACC OCA 2011, p. 4.

17 Mrs Karen Harfield, Acting Chief Executive Officer, ACC, *Committee Hansard*, 17 February 2011, pp 7–8.

18 Mrs Karen Harfield, Acting CEO, ACC, *Committee Hansard*, 17 February 2011, pp 7–8.

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Independent Review of Airport Security and Policing for the Government of Australia, conducted by the Rt Hon Sir John Wheeler in 2005 (the Wheeler Review).<sup>19</sup> Since then ACAT has produced and disseminated 69 intelligence products specific to the aviation environment.<sup>20</sup>

2.22 Through its special intelligence operations, the ACC found evidence of infiltration of the airport and port environments by serious and organised crime. The majority of identified organised criminality involved the larger metropolitan container ports and international airports, although criminal activity at smaller and regional ports and in general aviation was also observed. In particular, ACC findings revealed that because the ASIC and MSIC regime was never originally designed to harden the environment against serious organised crime, but rather focus on national security threats in those environments, criminal groups have exploited gaps, weaknesses and inconsistencies in the application of the regimes.<sup>21</sup>

### *The nature of organised crime in the aviation and maritime sectors*

2.23 The aviation and maritime sectors are highly desirable targets for serious and organised criminal networks. They are the key link to the international illicit economy, facilitating the importation of illicit goods (particularly drugs) and a range of other crimes detailed below.<sup>22</sup> As a result, criminal networks have an incentive to infiltrate these sectors in order to engage in a number of highly profitable criminal activities.

2.24 As noted above, as serious and organised crime infiltrates various sectors of the economy, its activities are often supported (knowingly or otherwise) by a range of people with access to information, infrastructure, government services, knowledge of institutional weaknesses or access to specialist skills.<sup>23</sup> These individuals or groups are referred to as facilitators or trusted insiders.

### *Facilitators*

2.25 As noted in the Commonwealth Framework, facilitators with specific skill sets play a vital role, sometimes unintentionally, in assisting criminal networks to operate undetected and seamlessly across both legitimate and illicit markets.<sup>24</sup> Internal

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19 The Rt Hon Sir John Wheeler, Australian Government, 'An Independent Review of Airport Security and Policing for the Government of Australia', September 2005; see Recommendation III.

20 Mrs Karen Harfield, Acting CEO, ACC, *Committee Hansard*, 17 February 2011, pp 7–8.

21 Mrs Karen Harfield, Acting CEO, ACC, *Committee Hansard*, 17 February 2011, p. 8.

22 ACC, *Submission 8*, p. 4.

23 Commonwealth Framework, p. 9.

24 Commonwealth Framework, p. 9.

facilitators collude to facilitate the exploitation of vulnerabilities within the sector and often commit criminal offences themselves.<sup>25</sup>

### *Trusted insiders*

2.26 The term 'trusted insider' refers to individuals working within a sector, who are able to act on behalf of criminal networks. These insiders occupy positions of trust, in that they have obtained the necessary security clearances to maintain access to sensitive areas. They are trusted by external criminal groups to conduct criminal activity but are rarely themselves the principal involved in criminal acts.<sup>26</sup> Trusted insiders will generally have no criminal record and may have worked in trusted positions within the sector for some time.

2.27 Trusted insiders and facilitators assist organised crime groups through enabling activities such as:

- deliberately ignoring criminality;
- influencing human resource processes to facilitate possible criminal activity;
- providing information or advice to criminal groups about vulnerabilities within the sector;
- allowing criminal associates access to uncleared goods; and
- actively participating in the commission of an offence.<sup>27</sup>

### *Features of crime in the maritime and aviation sectors*

2.28 The submission by the ACC to the committee's inquiry outlines the methods used by organised crime groups in conducting criminal activity using Australia's ports and airports. Most of the methods listed below require the use of facilitators or trusted insiders within the industry.

2.29 The focus of criminal activity is on the importation of illicit goods, with drugs being the most common commodity. However, the range of criminal activity also includes money laundering, firearms movement, smuggling of flora and fauna, theft, tariff and excise evasion and counterfeiting.<sup>28</sup>

### *Maritime sector*

2.30 Generally, the maritime sector has been more important to organised crime groups than aviation, mostly due to the greater volume of traded goods passing through ports. Methods used by criminal networks include:

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25 ACC, *Submission 8*, p. 6.

26 ACC, *Submission 8*, p. 6.

27 ACC, *Submission 8*, p. 9.

28 ACC, *Submission 8*, p. 11.

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- rip on/rip off—this method involves internal facilitators at the originating or transit port placing bags of illicit items into already packed shipping containers for retrieval before customs inspection. Neither the consignor or the consignee is aware that an illicit commodity has been transported within their consignment;
  - piggybacking—this involves the criminal importing syndicate using the identity and credentials of an unsuspecting legitimate importer to clear the shipment through customs without the knowledge of the listed consignee, thereby ‘riding on the back’ of the legitimate consignee’s reputation;
  - nominal consignee—in this methodology the 'nominal' consignee is aware the shipment is coming as the shipping documentation lists the 'nominal consignee' as the importer of the listed goods. However, they are only the interim consignee because they are concealing the identity of the true importer;
  - theft of containers—there have been cases where whole containers full of goods have been stolen from Australian ports and depots. While the majority of container theft is related to tobacco or other high value/high duty goods, this methodology may also facilitate a major importation of illicit commodities to Australia.<sup>29</sup>

2.31 These methods are significantly assisted by criminally complicit maritime workers acting as trusted insiders or facilitators within the Australian maritime sector.<sup>30</sup>

2.32 ACC intelligence has identified persons linked to nationally significant serious and organised crime groups as present within the maritime environment. This includes members, associates or affiliates of ethnically based organised crime groups, significant regional crime syndicates or persons and outlaw motorcycle gangs.<sup>31</sup>

2.33 Criminality within the port environment is spread across the various work and skill types, and involves a range of industry groups within or linked to the maritime sector.<sup>32</sup>

2.34 The ACC has assessed that there are higher levels of criminality present in New South Wales and Victorian container ports. It noted that this observation reflects vulnerabilities presented by the volume of cargo, workforce size, the local criminal environment and the proximity of these ports to the major illicit commodity markets.<sup>33</sup>

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

30 ACC, *Submission 8*, p. 6.

31 ACC, *Submission 8*, p. 7.

32 ACC, *Submission 8*, p. 7.

33 ACC, *Submission 8*, p. 7.

2.35 The Australian Customs and Border Protection Service (Customs) agreed with this assessment, noting the different risk profile associated with major and minor ports. As Mr Jeff Buckpitt, Customs, noted:

Sydney and Melbourne are the key ports of highest risk in terms of drugs entering by sea cargo. All ports are a risk, but historically if you look at where the detections have occurred the vast majority of them has been in Sydney followed then by the ports of Melbourne and Brisbane.<sup>34</sup>

2.36 The committee was able to visit a range of port facilities during the inquiry and observed that security arrangements varied depending on the size and profile of the port.

#### *Small boat importation*

2.37 Another method used by organised criminal networks in the importation of illicit substances is the use of small craft and fishing vessels.<sup>35</sup> This method has received exposure recently, with the seizure of 464 kilograms of cocaine from a yacht in Brisbane.<sup>36</sup>

2.38 The ACC described a number of criminal methodologies involving small craft, including the burying of illicit consignments at sea, meeting at sea or commercial drop offs, direct arrival by small craft, aerial drop offs and the use of semi-submersibles.<sup>37</sup>

2.39 The committee was informed that there has been a lack of detected small craft illicit drug importations into Australia, which is not consistent with global trends. It is likely that these activities are ongoing, as evidenced by the case above.<sup>38</sup>

#### *Aviation sector*

2.40 The aviation sector is also vulnerable to the type of infiltration described above. Facilitators or trusted insiders, either placed by criminal networks or recruited from the aviation workforce, assist the networks by ignoring criminality, recruiting associates, providing sensitive information about the sector's vulnerabilities and law enforcement arrangements or by actively participating in the commission of an offence.<sup>39</sup>

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34 Mr Jeff Buckpitt, Australian Customs and Border Protection Service, *Committee Hansard*, 17 February 2011, p. 5.

35 ACC, *Submission 8*, p. 7.

36 ABC News, '\$160m cocaine bust on Brisbane yacht', 14 October 2010, <http://www.abc.net.au/news/stories/2010/10/14/3037967.htm> (accessed 21 April 2011).

37 ACC, *Submission 8*, p. 8.

38 ACC, *Submission 8*, p. 8.

39 ACC, *Submission 8*, p. 9.



2.41 The ACC notes that there are criminal groups operating wholly within the aviation sector, with a focus on air cargo. These groups tend to commit ongoing offences such as tariff avoidance, excise fraud, theft of air freight, and narcotic distribution and importation. The international aviation sector has also been used to facilitate money laundering.<sup>40</sup>

Some of the more serious incidents of criminal infiltration of the sector involve specific occupational groups with positions providing access to airports or in some cases in associated external premises such as bond stores. Activities by these entities have included fraud in relation to duty free goods, money laundering, domestic drug supply and trafficking and narcotic importations. Many of these positions involve access to airside security areas or where individuals acting alone retain the capability to facilitate criminal activity.<sup>41</sup>

2.42 Outside of the major airports, there are approximately 2000 operational airports and airstrips with most having little to no screening. This provides an alternate method for those seeking to circumvent security screening processes.<sup>42</sup>

### ***The price of illicit drugs: a strong incentive***

2.43 Given that the importation and distribution of illicit drugs is the main type of serious and organised criminal activity undertaken in the aviation and maritime environment, the committee sought more detail on the degree of profit involved. Data provided by the ACC, including international data compiled by the United Nations Office on Drugs and Crime indicates the extreme difference between Australian and international drug prices (see Appendix 4). This difference is likely to make Australia an extremely lucrative target for drug smuggling syndicates.

2.44 For example, the wholesale price for a kilogram of cocaine in Colombia, a source country, is reported to be US\$2348.<sup>43</sup> By comparison, the same amount of cocaine had an Australian wholesale price (in United States Dollars) of between \$150 000 to \$250 000.<sup>44</sup> The retail prices could range between \$300 000 and \$1 million for a kilogram cut into 'street deal' packages. By comparison, wholesale prices in the United States, United Kingdom and Canada ranged between \$10 000 to approximately \$70 000 per kilogram.

2.45 As Mr Michael Phelan, Deputy Commissioner, Australian Federal Police (AFP), explained, drug prices respond to the same market forces affecting every other commodity:

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40 ACC, *Submission 8*, p. 10.

41 ACC, *Submission 8*, p. 10.

42 ACC, *Submission 8*, p. 10.

43 ACC, *International and Domestic Drug Prices, Tabled Document*, 17 February 2011.

44 ACC, *International and Domestic Drug Prices, Tabled Document*, 17 February 2011.

Drugs in particular [are] just like every other commodity in the world: whether we are talking about copper or gold, the price is driven by the standard economic equation of supply and demand. Demand in Australia is high. The price is not the driver; it is demand, which is high. For cocaine, for example, the reason the price is a lot lower in the United States is because supply is a lot easier in the United States than it is here. Those that are willing to pay for it at that particular price slide you up the demand curve and the price curve and you end up paying those terrible wholesale prices for it, which in turn see the profits and people willing to do it. It is a couple of years salary, the wholesale price for a kilo of cocaine.<sup>45</sup>

2.46 Mrs Karen Harfield, ACC, informed the committee that the high Australian price for drugs was likely to affect the decision-making of international criminal networks:

On the basis of our assessment, a well-described motive for serious and organised crime is profit. The reality is that they will attempt to infiltrate the markets that give them the biggest profit margin. Obviously drugs are available across the globe, so we are not the only target but the price will have some affect on the decision making.<sup>46</sup>

2.47 The committee acknowledges that the high prices of illicit drugs, no doubt driven by the high demand for such commodities by Australian citizens, means organised criminal networks are likely to go to great lengths to circumvent security measures designed to combat importation of such substances.

### *Other crime*

2.48 The committee also received evidence regarding a number of other types of crime, most notably including tobacco smuggling and money laundering.

### *Tobacco smuggling*

2.49 Mr Richard Janeczko informed the committee that organised, and some not so organised, criminal networks were targeting the importation of undeclared tobacco, seeking to profit from the high duties imposed on that product. As Mr Janeczko explained:

I believe that organised crime chases the money and I made a number of statements while I was still working in Customs and I have repeated them since that because of the huge amount of profits involved it attracts organised criminals. I was asked a number of times in public about whether there was a relationship between duty rates and tobacco smuggling and I said there was. If you walk along a footpath and found five cents, you might not pick it up but if it was a \$100 note, you would definitely pick it up. I

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45 Mr Michael Phelan, Deputy Commissioner, AFP, *Committee Hansard*, 17 February 2011, p. 45.

46 Mrs Karen Harfield, Acting CEO, ACC, *Committee Hansard*, 17 February 2011, p. 10.

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think smuggling is a bit like that. You mentioned drugs earlier. I think there is a huge level of organised crime involved in bringing tobacco into Australia.<sup>47</sup>

2.50 Mr Janeczko explained that the tobacco was sourced from a number of countries, observing:

China is a major manufacturer. Indonesia and the Philippines are also manufacturers. A lot of the tobacco, though, that comes into Australia is routed through other ports. But China is a huge source of tobacco that is smuggled in, as is Indonesia.<sup>48</sup>

2.51 Mr Janeczko elaborated that the illegal tobacco that is currently being seized and prosecuted by Customs ranges from a leaf that has been chopped up to counterfeit product and to legally imported tobacco that is redirected.<sup>49</sup>

### *Money laundering*

2.52 Money laundering is an essential activity for serious and organised criminal networks. Illicit profits require a mechanism by which the money can eventually be used in the legitimate economy. As a result, legitimising the proceeds of crime is a crucial process for organised criminal networks.<sup>50</sup>

2.53 The committee is aware that both aviation and maritime transport routes are used in the remittance of illicit profits both internationally and domestically. For example, the ACC submission to the inquiry includes a case study of money laundering using flight crew on international routes.<sup>51</sup>

### *Committee view*

2.54 After nearly two years of inquiry, the committee is of the opinion that serious and organised crime occurs within the aviation and maritime sectors, and that the level of activity demands a strengthened response by the Australian and state governments, working together with sector stakeholders. The current response is described in the next section.

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47 Mr Richard Janeczko, *Committee Hansard*, 17 February 2011, p. 14.

48 Mr Richard Janeczko, *Committee Hansard*, 17 February 2011, p. 15.

49 Mr Richard Janeczko, *Committee Hansard*, 17 February 2011, p. 15

50 ACC, OCA 2011, p. 46.

51 ACC, *Submission 8*, p. 10.

## **Responding to the threat**

### ***Law enforcement approach***

2.55 Law enforcement agencies continue to undertake the lead role in responding to the threat of organised crime. That response is not limited to certain areas, such as the aviation and maritime sectors, but necessarily adopts a comprehensive approach. As the evidence above suggests, organised criminal networks have footholds in many areas and only a combined whole-of-government response will be effective.

2.56 The law enforcement response to organised crime is therefore becoming increasingly sophisticated. Recent improvements include:

- the recognition of serious and organised crime as a threat to national security requiring the attention of both law enforcement and national security agencies;
- the creation of a Commonwealth Organised Crime Strategic Framework to coordinate the approach taken by various law enforcement agencies; and
- the establishment of the Criminal Intelligence Fusion Centre to allow faster and more accurate exchange of criminal intelligence between agencies.

2.57 The committee has found that the law enforcement approach within the aviation and maritime sectors could be improved in a number of specific ways. The majority of these findings appear in Chapter 3, which deals with information sharing and agency coordination. However, it is important to recognise that fighting organised crime in the aviation and maritime sectors cannot occur in isolation, but must fit within the national (and international) strategy.

### ***Regulation of the sector: development of domestic transport security policy***

2.58 Current aviation and maritime transport security policy within Australia has been developed in order to prevent a terrorist attack on aviation and maritime infrastructure. Following 11 September 2001, there has been an increasing international focus on the need for a system to secure the aviation and maritime transport sectors against the threat of terrorism.

2.59 Maritime security policy has been guided by the International Ship and Port Facility Security (ISPS) Code, developed by the International Maritime Organization (IMO) in December 2002.<sup>52</sup>

2.60 The Australian Government developed the *Maritime Transport Security Act 2003* to implement the ISPS Code in Australia. Both the ISPS Code and the Act came into effect on 1 July 2004. In 2005 the Act was extended to cover offshore oil and gas

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52 Department of Infrastructure and Transport, *Submission 18*, p. 3.

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facilities and renamed the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA).<sup>53</sup>

2.61 Aviation security policy has been informed by the 'Chicago' Convention on International Civil Aviation, to which Australia is a signatory, which is overseen by the International Civil Aviation Organisation (ICAO). The relevant annex to the convention sets out requirements pertaining to the safeguarding of passengers, crew, ground personnel and the general public in matters related to unlawful interference with civil aviation; establishing an organisation to develop and implement appropriate domestic regulations, practices and procedures; and ensuring that the principles applied to international civil aviation are applied to domestic aviation to the extent practicable.<sup>54</sup>

2.62 The Chicago Convention requirements were given domestic force through the *Aviation Transport Security Act 2004* (ATSA), backed by the Aviation Transport Security Regulations 2005. These establish the legal framework for a security regime under which aviation industry participants themselves are required to act to reduce security risks to their operations. The stated purpose of the ATSA is to establish a regulatory framework to safeguard against unlawful interference with aviation transport.<sup>55</sup>

2.63 The administration of both ATSA and MTOFSA was enhanced in December 2004 through the creation of the Office of Transport Security (OTS), a business division of what is now the Department of Infrastructure and Transport.<sup>56</sup> OTS was established as the primary advisor to the Australian Government on transport security policy. As the transport security regulator, OTS is responsible for bringing security responsibilities for the aviation and maritime sectors together in a single national regulatory approach.<sup>57</sup>

2.64 Key measures included in ATSA and the associated regulations, include:

- a requirement for industry participants to develop and comply with a transport security plan that sets out security measures and procedures based on a security risk assessment of their operation;
- the designation of secure areas (broadly divided into airside and landside zones, include 'sterile' landside zones) within all major metropolitan airports, larger metropolitan General Aviation airports and many regional airports;

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53 Department of Infrastructure and Transport, 'Maritime Security', <http://www.infrastructure.gov.au/transport/security/maritime/index.aspx> (accessed 21 April 2011).

54 Wheeler Review, p. 12.

55 Department of Infrastructure and Transport, *Submission 18*, p. 4.

56 Department of Infrastructure and Transport, *Submission 18*, p. 3.

57 Department of Infrastructure and Transport, *Submission 18*, pp 3–4.

- screening of people, goods and vehicles, to remove the likelihood of weapons and prohibited items being taken into secure areas or onboard aircraft;
- regulation of the air cargo sector, through the accreditation of Regulated Air Cargo Agents; and
- the provision of certain powers and exemptions to suitably trained screening officers, airport security guards, law enforcement officers, and aviation security inspectors.<sup>58</sup>

2.65 These mirror broadly similar measures provided through MTOFSA and its associated regulations, including:

- The establishment of three security levels of increasing risk, including appropriate security settings for each given security level;
- a requirement for industry participants to develop and comply with a maritime security plan that sets out security measures and procedures based on a security risk assessment of their operation;
- the establishment of maritime security zones (including land-side restricted zones, cleared zones and water-side restricted zones) to protect critical areas within security regulated ports, and on or around ships (in port or at sea) or offshore facilities;
- screening of people, goods and vehicles entering a 'cleared zone' to prevent anyone taking weapons and prohibited items on board passenger ships; and
- the provision of certain powers and responsibilities to suitably trained screening officers, maritime security guards, law enforcement officers, duly authorised officers and maritime security inspectors.

2.66 These measures are complemented by the Aviation Security Identity Card (ASIC) and Maritime Security Identity Card (MSIC) schemes, which seek to ensure that individuals employed in or regularly accessing secure areas in the aviation and maritime sector are subject to a certain level of background checking.

2.67 The ASIC scheme was introduced in 1998 but has been subject to a number of changes in subsequent years. Originally, applicants were subject to a criminal record check only. However, following the September 11 terrorist attacks, the scheme was expanded to cover a greater number of airports and strengthened through the introduction of tighter criminal history checks and an Australian Security Intelligence Organisation (ASIO) security assessment.<sup>59</sup>

2.68 The MSIC scheme was introduced in 2005, with full implementation in 2007, and was the first of its kind in the world to check the background of all people who have unmonitored access to sensitive areas of ports, port facilities, ships and offshore

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58 Department of Infrastructure and Transport, *Submission 18*, pp 4–8.

59 Department of Infrastructure and Transport, *Submission 18*, p. 9.

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facilities.<sup>60</sup> As with the ASIC scheme, applicants are subject to a criminal history check and an ASIO security assessment. Additionally, applicants for either an ASIC or an MSIC may be subject to an unlawful non-citizen check conducted by the Department of Immigration and Citizenship.<sup>61</sup> The ASIC and MSIC schemes are discussed in detail in Chapter 5.

***Extending aviation and maritime security measures to cover serious and organised crime***

2.69 As described above, the aviation and maritime security regimes, as enacted through ATSA and MTOFSA, have focused on reducing the risk of a terrorist attacks on aviation and maritime infrastructure. Mr Paul Retter, Department of Infrastructure and Transport, elaborated on the intent of the acts, stating:

Their purpose is primarily to ensure a more secure transport system for Australia. They are essentially focused on unlawful interference with vessels and aircraft and the range of activities that come under the definition of unlawful interference—taking control of an aircraft or vessel by force or threat of force or other forms of intimidation or trick or false pretence, destroying an aircraft or a vessel, causing damage to an aircraft or vessel that is in service and so on and so forth.

2.70 Mr Retter went on to explain that serious and organised crime was not currently included in the scope of the legislation, stating:

...the purpose of those two acts, when they were placed on the statutes and implemented, was primarily to deal with a terrorism threat, not a serious and organised crime issue. Our focus and the focus of the act and the associated regulations, including the various layers of security that we have in place as a preventive security regime in the aviation and maritime sectors, is about preventing unlawful interference in the context of terrorism. The issue that you raise, quite frankly, is an issue that I know has been debated—the policy position on whether or not the purpose of the acts should be changed.<sup>62</sup>

2.71 The committee has formed the view that the purpose of the act does need to expand to include the threat of serious and organised crime, for reasons outlined below.

2.72 Two recent high level reviews have spoken of the need to expand the Australian Government's national security focus to include the threat posed by serious and organised crime.

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60 Department of Infrastructure and Transport, *Submission 18*, p. 18.

61 Department of Infrastructure and Transport, *Submission 18*, pp 18–19.

62 Mr Paul Retter, Office of Transport Security, *Committee Hansard*, 18 February 2011, p. 40

2.73 In June 2005, the Australian Government invited the Rt Hon Sir John Wheeler to conduct a review into airport security and policing (the Wheeler Review). The report made a number of recommendations, particularly relating to information sharing, agency cooperation and airport policing models, which have informed the analysis in subsequent chapters. The review also made the point that the threat of terrorism and crime were not necessarily separate issues, stating:

Terrorism and crime are distinct, but potentially overlap. At its most basic, a culture of lax security or petty criminality can provide opportunities for terrorists to exploit weaknesses in airport security. Staff can be bribed to ignore criminality or paid large sums to assist in drug trafficking or theft. Once compromised, such employees may be unable to stand up to terrorists. Any airport staff who are not thoroughly background checked and routinely searched are potential weak links.<sup>63</sup>

2.74 The Wheeler Review argued that the terrorism, organised crime and opportunistic crime constitute the major security threats to Australia's airports.<sup>64</sup> Several recommendations in the report relating to airport policing models were adopted by the government and are discussed in more detail in Chapter 3.

2.75 In 2008, Mr Ric Smith, a former Secretary of Defence, was invited to conduct a review of homeland and border security (the Smith Review). Though the report was confidential, a summary document was publicly released. The summary report called for a greater coordination of agencies and departments in the national security field, including an enhanced leadership position in the form of a National Security Adviser, which was duly established in December 2008.<sup>65</sup>

2.76 In addition, the report also argued that while the national security agenda had emphasised counterterrorism arrangements in the post-September 11 environment, it was time to provide an additional focus on other threats and hazards, including emergency management, serious and organised crime and electronic attack.<sup>66</sup> On serious and organised crime in particular, the report summary stated:

Serious and organised crime, as an ever present threat to the safety and prosperity of Australians and a challenge to the integrity of our institutions, is as important as any other security threat, with an estimated cost in excess of \$10 billion per year. Crime is increasingly sophisticated and transnational. The states and territories have major roles and the Commonwealth needs to engage effectively with them in this area. The current arrangements for coordinating Commonwealth efforts and priorities are limited. There are some gaps in national efforts, such as limited sharing

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63 Wheeler Review, p. ix.

64 Wheeler Review, p. 7.

65 The Hon. Kevin Rudd MP, 'The First National Security Statement to the Parliament', Speech, 4 December 2008, <http://pmrudd.archive.dpmc.gov.au/node/5424> (accessed 8 April 2011).

66 Mr Ric Smith AO PSM, Report of the Review of Homeland and Border Security, Summary and Conclusions, p. 4



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of police capabilities and case management databases, and more attention could be given to criminal intelligence collection and analysis. A strategic framework for Commonwealth efforts in relation to serious and organised crime should be developed for consideration by government.<sup>67</sup>

2.77 Following on from the Smith Review and the then Prime Minister's inaugural National Security Statement to the Parliament, the Commonwealth Organised Crime Strategic Framework was established in November 2009.<sup>68</sup> The framework features three key elements, which are:

- an Organised Crime Threat Assessment to provide a shared picture among relevant stakeholders of the most significant threats and harms arising from organised criminal activity;
- an Organised Crime Response Plan to align Commonwealth efforts to both identified and emerging organised crime threats; and
- multi-agency responses to develop and deliver operational, policy, regulatory and legislative responses to organised crime.

2.78 The objectives of the framework are directly applicable to the committee's recommendations in Chapter 3, which deal with information sharing and agency collaboration.

2.79 Serious and organised crime cannot be divorced from national security considerations. The ACC notes that maritime and aviation security presents significant national security issues.<sup>69</sup> In its submission to the inquiry, the ACC stated:

The nexus between terrorism and criminality suggests that safeguarding the maritime port and aviation environments against terrorist attack, and the detection and prevention of sector based crime are closely interrelated objectives. Hence, the disruption of crime within the maritime and aviation sectors and the prevention of terrorism are not, and should not be considered, mutually exclusive objectives.<sup>70</sup>

2.80 While terrorist and criminal organisations have differing and often conflicting motives, the methodologies developed by organised criminal networks can also be used to facilitate acts of terror. Mrs Karen Harfield, ACC, remarked upon the importance of tackling terrorism and serious and organised crime, stating:

Both terrorist groups and criminal groups have consistently been noted as primary threats to Australia's transport sector. The Wheeler review noted that terrorism, organised crime and opportunistic crime present the three

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67 Mr Ric Smith AO PSM, Report of the Review of Homeland and Border Security, Summary and Conclusions, p. 4

68 The Hon Robert McClelland MP and the Hon Brendan O'Connor MP, 'Organised Crime Strategic Framework', Joint Media Release, 25 November 2009.

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

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

primary threats to aviation and airports. Recognition of the threat presented by terrorism also generated enhancements to the maritime environment security regime implemented under the maritime environment security regime implemented under the Maritime Transport and Offshore Facilities Security Act 2003.

Likewise, the Department of Infrastructure and Transport, in their 2009 Aviation Security Risk Context Statement, reported that criminal activity can expose aviation security vulnerabilities that might be exploited by terrorists. More recently, the foiled Yemeni bomb plots illustrate that terrorist organisations are mimicking drug importation methodologies that have been utilised by criminal groups for some time. Disruption of crime within the aviation and maritime sectors and the prevention of terrorism need not be considered mutually exclusive objectives.<sup>71</sup>

2.81 Detective Superintendent Charlie Carver, WA Police, was also of the view that terrorism and organised crime were increasingly linked, stating:

Principally, the actual driver of organised crime is wealth. However, there have been links to terrorism in the past. You only have to look at al-Qaeda. That was fuelled by organised crime funding through Afghanistan, through the heroin trade... You only have to look closer to our borders in relation to Indonesia. You had the Bali incidents and also at Jakarta they were using drugs and also armed robberies to fuel their activities—organised crime again. It is my view that the link between that and organised crime is closer than what a lot of people think. I know that a lot of the other things that have been put in place in relation to terrorism concentrate on terrorism, but I believe that there is a closer link even more today than there has been in relation to serious and organised crime. They are getting closer and closer every year that goes by.<sup>72</sup>

2.82 The ACC's 2011 Organised Crime in Australia Report noted that the increasingly globalised nature of organised crime meant that there was a growing risk of linkages with terrorist organisations occurring. As the report stated:

The activities of transnational organised crime groups and some terrorist groups converge where their illicit networks intersect. Failed, failing and rogue states provide safe havens for organised crime, impetus for the production and distribution of illicit commodities and an environment where organised criminal activity and the interests of extremist or terrorist groups can converge...

...The convergence is of most concern when it is married with the increasingly blurred distinction between the politically-motivated activity of some terrorist groups and the criminal activities that fund them. Elements within Hizballah, Al-Qa'ida/the Taliban, Hamas, the former Liberation Tigers of Tamil Eelam and the Kurdistan Workers' Party operate or have operated criminal enterprises for profit or to advance their terrorist agenda.

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71 Mrs Karen Harfield, Acting CEO, ACC, *Committee Hansard*, 17 February 2011, p. 8.

72 Det. Supt Charlie Carver, WA Police, *Committee Hansard*, 10 November 2010, p. 13.

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Other examples of such convergence have been noted by the UN Office on Drugs and Crime in Europe, South America and South-East Asia.<sup>73</sup>

2.83 However, the ACC has found little evidence of a convergence between terrorist groups and organised crime groups within Australia.<sup>74</sup>

2.84 Mr Kim Langton, Chameleon Associates, remarked that a security policy aimed at countering terrorist activity should naturally act to combat criminality, given the similarity in methods used. As he explained:

The training that we give [clients] for counterterrorism picks up all the bits underneath, because you are going for the highest common denominator if you are looking for terrorists. If you are looking at that level you will pick up all the bits underneath and that includes criminal activities. The methodology that a criminal uses, whether it be in major crime or shop theft, is pretty well the same as what you would get from a terrorist. The method of operation, the way that they pre-plan, the way they do dummy runs, the way they actually do the act and the way they get away are all very similar. If you look at a military operation, it is very similar to the way that a terrorist operates. You are looking at one to five years to plan it and you are looking at the method that he uses and how he gets away. If you were to use a level of security that is up to catching terrorists, I believe you would be quite capable of picking up all the crime that goes on underneath.<sup>75</sup>

2.85 However, the Maritime Union of Australia (MUA) was concerned by the possible extension of MTOFSA beyond counterterrorism to a more general anti-crime stance, particularly in the context of the ASIC and MSIC schemes, discussed in Chapter 5. Mr Dean Summers, MUA, noted:

We want to stress the fact that the unions throughout the whole process of the development of the Maritime Transport and Offshore Facilities Security Act, MTOFSA, and regulations, and any debate or discussion about security on the wharves or in areas of maritime endeavour in Australia—and that is in the offshore oil and gas, the ports and the ferries. They are partners in maritime security, primarily because internationally we know, through out International Transport Workers' Federation experience, that every time in every incidence of a terrorist attack transport workers are killed and hurt. So we have a vested interest and a responsibility to make sure that we are involved in the development of those instruments that protect or workers from these heinous crimes... [W]e are concerned that the focus of the entire debate is now shifting away from counterterrorism—and that is the whole reason we signed up to be partners in this—to what now appears to be countercrime.<sup>76</sup>

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73 ACC, OCA 2011, pp 27–28.

74 ACC, OCA 2011, p. 29.

75 Mr Kim Langton, Chameleon Associates (Australia), *Committee Hansard*, 18 February 2011, p. 55.

76 Mr Dean Summers, Maritime Union of Australia, *Committee Hansard*, 18 February 2011, p. 1.

2.86 On balance, the committee is of the view that aviation and maritime security policy does need to be extended beyond what appears to be a current, narrow focus on counterterrorism. The committee does not mean to argue that the current energy devoted to counterterrorism should be lessened, given the dire consequences of a successful terrorist attack. However, after a decade of national security policy development that emphasised counterterrorism, it is clearly in the national interest to extend those efforts to enhance the nation's ability to tackle serious and organised crime.

2.87 Specifically, the committee feels that the inclusion of serious and organised crime within the scope of aviation and maritime security legislation would be of benefit for three main reasons.

2.88 Firstly, as noted by the ACC, there is an increased risk of interaction between international criminal and terrorist organisations. Though this has not been observed within Australia, the extension of security legislation to cover both terrorism and serious and organised crime would further enable both to be treated as national security matters.

2.89 Secondly, criminal and terrorist organisations are able to exploit the same vulnerabilities within the aviation and maritime sectors. Protecting against criminal techniques will assist in preventing both criminal and terrorist activities.

2.90 Current transport security legislation is focussed on preventing a terrorist attack on aviation and maritime infrastructure itself. As a result, it may not capture the use of aviation and maritime trade and passenger routes to facilitate terrorist attacks outside of those sectors. For example, increasing the level of screening of air cargo could combat illicit drug importation and may also prevent a terrorist organisation from importing weapons or other dangerous items. Reducing vulnerabilities would eliminate opportunities for criminals and terrorists alike.

2.91 Finally, the threat of serious and organised crime alone warrants the enhancement of transport security legislation. For this and the above reasons, the committee recommends that the scope of key transport security legislation is widened to include serious and organised crime.

### **Recommendation 1**

**2.92 The committee recommends that the scope of the *Aviation Transport Security Act 2004* and the *Maritime Transport and Offshore Facilities Security Act 2003* be widened to include serious and organised crime in addition to terrorist activity and unlawful interference.**

2.93 Through this recommendation, the committee would specifically like to improve the security plans developed under ATSA and MTOFSA. Importantly, the risk assessment and security plan required of airport and port operators would be extended to include an assessment and response to the threat of serious and organised crime. The committee understands that this would require a different set of threat

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assessment skills compared to what is currently required. Nevertheless, the committee believes that this step alone would be extremely worthwhile and further involve the private sector in mitigating against the threat of serious and organised crime.

2.94 In Chapter 5, the committee recommends a number of changes to the ASIC and MSIC schemes that would complement the extension of those schemes parent legislation. The extension of those schemes would assist in preserving the integrity of the aviation and maritime sectors from criminal infiltration.

2.95 Finally, airport and port security committees, discussed in Chapter 3, would begin to discuss and review criminal threats. This would further engage the private sector in fight against the organised crime.

### **Tackling the issue: considerations**

2.96 Over the course of this inquiry, the committee has visited ports and airports in most states and territories and spoken to a wide range of individuals and organisations operating in the aviation and maritime environment. This experience has led the committee to recommend a number of changes to security arrangements in those sectors, as described in the following chapters.

2.97 This inquiry has involved many of the same issues that occur in any law enforcement inquiry. Examples of perennial issues include the sharing of criminal intelligence, agency cooperation and the social and economic costs of increased security measures.

2.98 In addition, the committee has identified a number of issues particularly relevant to the aviation and maritime sectors, including the tension between commercial and security interests and the ease with which security measures could be circumvented through substitution of criminal methodologies.

### ***The trade-off between security and commercial interests***

2.99 A major theme of the inquiry is the inherent tension between commercial and security interests. Airports and ports are fundamentally areas of legitimate commerce. At the same time, their centrality to the movement of people and goods also make them areas of concern for national security and valuable targets for serious and organised criminal networks.

2.100 The sheer scale of trade, particularly through maritime ports provides some context to the complexity of tackling the subversion of legitimate trading routes for illicit purposes. Mr David Anderson, Ports Australia, observed that maritime trade was expected to double in the next decade, stating:

Ports are often viewed, at least at community level, as a convening place for ships and seafarers, but of course they are in reality the largest freight hubs in the country. They are particularly significant in this country, of course, because we all depend on our trade-exposed economy. The growth in our container trades and our bulk trades, if our forecasting is right—and we

believe it is probably understated rather than overstated—has our container throughput going up by about double GDP every year into the foreseeable future, which means, roughly speaking, a doubling of throughput in 10 years. We have some very big numbers in prospect in the bulk trades—our coal and iron ore trades, for example. Again roughly speaking, the throughputs will double in the next 10 years.<sup>77</sup>

2.101 To the extent that security measures inhibit the commercial viability of the sites, a trade-off exists between commercial and security concerns. Measures that reduce the productivity or commercial potential of the sectors may affect private companies and possibly the national economy.

2.102 One example that illustrates this point is the inspection of containers by Customs officials. The removal of containers for screening disrupts port operations to a certain extent. In addition to the direct cost of the screening operation, there is also an efficiency cost affecting the movement of containers. Increasing inspection rates beyond the current level of approximately 5 per cent<sup>78</sup> could serve to further deter the use of containers in illicit shipments, however it may also reduce the productivity of the port environment, with ramifications for the economy overall.

2.103 Another example, raised with the committee on a number of occasions during this inquiry, is the provision of commercial shopping outlets in airport security zones. While providing a service to customers and a commercial gain to operators, this practice also increases the number of people moving through secure areas, to the detriment of security. This was noted by Mrs Kathleen Florian, ACC, who stated:

With both aviation and maritime, we are talking about streams that are absolutely critical to this nation's ongoing economy. We need to have passengers moving quickly and freely through airports. We need to be able to get our containers through [ports] quickly. There are very strong commercial interests that are absolutely critical for the nation. The balance between the passage of trade and people and the vulnerabilities is always a difficult balance to measure.<sup>79</sup>

2.104 In determining the correct mix of security measures in the aviation and maritime sectors, the committee has therefore had to balance legitimate commercial and economic interests with the committee's desire to combat serious and organised crime.

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77 Mr David Anderson, Ports Australia, *Committee Hansard*, 18 February 2010, p. 48.

78 Customs, Annual Report 2007–08, p. 38.

79 Mrs Kathleen Florian, ACC, *Committee Hansard*, 17 February 2011, p. 13.

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### *The potential for easy substitution*

2.105 Another important issue affecting the committee's decision making was the degree to which a security measure could easily be circumvented by a change in criminal methods.

2.106 Security measures may be effective at addressing a particular vulnerability or known criminal method for which they were designed. However, the overall effectiveness of such a measure in disrupting serious or organised crime depends on how easily a criminal network can turn to an alternate method of achieving their aim.

2.107 For example, if security was improved at one airport or port in isolation, it may be a simple matter for a criminal network to reorient its distribution or importation network to use a different airport or port. Another example provided to the committee was the use of general aviation airports for the distribution of illicit drugs. If security was improved at such airports to the extent that it was no longer practical to use the facilities for criminal activity, criminal organisations could potentially use nearby unregulated landing strips. Alternately, other methods of transport including cars, trucks and trains could be adopted.

2.108 Mr Michael Phelan, Deputy Commissioner of the AFP elaborated on the potential for method substitution, stating:

[O]rganised crime groups are dynamic, flexible and risk averse and will seek alternate methods of transporting illegal goods in and out of Australia. With its large coastline and vibrant mining industry, Australia's remote industrial ports remain vulnerable to exploitation by organised crime groups. Similarly, the use of small rendezvous type craft to convey illegal goods from offshore mother ships to non-commercial ports is a known methodology for avoiding law enforcement interest. The recreational cruise ship industry also represents some additional opportunities for infiltration by organised crime. These examples clearly illustrate that the focus of law enforcement must remain on serious and organised crime in its broadest sense. If attention is directed at one environment to the detriment of the bigger picture, organised crime groups will quickly circumvent law enforcement detection. This will result in the problem being displaced and not necessarily defeated.<sup>80</sup>

2.109 This is not to argue that a security measure is not worthwhile simply by virtue of another potential criminal method. Targeting the most lucrative methods may force criminal organisations to use more costly or less efficient methods, undermining the viability of criminal activity, reducing profit and commensurate incentive. Furthermore, criminal organisations may be forced to use riskier methods that are more amenable to discovery by law enforcement agencies.

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80 Mr Michael Phelan, Deputy Commissioner, AFP, *Committee Hansard*, 17 February 2011, p. 39.

2.110 At the same time, the committee is also of the view that certain, minimum security requirements are desirable, even if they can be circumvented by serious and organised criminal networks. The ACC investigations into the aviation and maritime sector also identify the existence of low-level, opportunistic crime, which does stand to be significantly disrupted by minor security improvements. This was a view shared by Mr Richard Janeczko, who argued:

I think the other thing is that a lot of major crimes are committed by disorganised criminals, not only organised crime. Some of these people who are making millions and billions out of the Commonwealth are not that well organised. Sure, you will not get some of the so-called Mr Bigs, but I do not think that is a reason not to make the border as secure as it can be.<sup>81</sup>

2.111 The committee has sought to be mindful of this 'substitution issue' in coming to conclusions of this report.

### *Capturing the entire supply chain*

2.112 The majority of significant organised crime at airports and seaports involves the trafficking of illicit goods, most commonly, drugs. The importation and distribution of such illicit commodities involves a logistical chain just like any licit importation. It is therefore essential that measures to combat serious and organised crime target the supply chain as a whole, and not just the airport or seaport.

Our focus, and it flows from the purpose of the act, is on the ship to shore interface. At a port we focus on the actions of port facility operators, stevedores and port service providers. We do not have a focus on whole of supply chain in the maritime sector, which is where you are going, as I understand it.<sup>82</sup>

2.113 The ACC observed a discrepancy in the treatment of various aspects of the overall supply chain, writing in its submission to the inquiry:

Although interlinked with issues relating to broader inter-modal transportation, maritime and air cargo is subject to a security regime that weakens as the goods move further down the cargo movement chain. Theft from bonded or packing/unpacking warehouses is not uncommon and was often not reported to law enforcement agencies, even when losses were apparent or persons of interest started to emerge. Often it is unclear where and when in the supply chain that theft has occurred.<sup>83</sup>

2.114 As Mr Michael Phelan, Deputy Commissioner, AFP, noted:

...[W]hen we are talking about serious and organised crime at the ports and the investigation of that crime, the ports are but a small component of that. If we are talking about a container or any sort of commodity, it is where it

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81 Mr Richard Janeczko, *Committee Hansard*, 17 February 2011, p. 16.

82 Mr Paul Retter, OTS, *Committee Hansard*, 18 February 2011, p. 42

83 ACC, *Submission 8*, p. 12.



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passes through. It is not necessarily organised or facilitated there; it is one of the points in the supply chain to get drugs from the Golden Triangle all the way to the streets of Sydney or somewhere like that. It is one of the many components that are worked through. That is what the Australian Federal Police and our law enforcement partners are working on—not just that one particular point in the supply chain, but everything else. The vast majority of activity that comes through the ports actually operates outside of the ports.<sup>84</sup>

2.115 This point was also made by various witness groups in the context of the ASIC and MSIC schemes, with arguments made to extend that measure, which aims to safeguard the integrity of workforces, to other equally key areas of the supply chain.

2.116 The committee notes the importance of a 'whole of supply chain' approach that focuses on the broader aviation and maritime sectors.

2.117 More broadly again, security measures enacted at airports and ports must match broader law enforcement efforts to tackle organised crime. For example, officers and teams working at airports and ports need to liaise regularly with police organised crime units. Airports and ports are simply one part of a complex supply chain, and it is the supply chain itself that is of value to SOCNs.

### ***Two approaches to combating serious and organised crime***

2.118 The committee has identified two main approaches to combating serious and organised crime in the aviation and maritime sectors. The first is referred to by law enforcement agencies as 'hardening' the environment. This involves instituting measures that make it harder for SOCNs to use those sectors for criminal purposes. Measures discussed in other chapters include ensuring the integrity of workforces, physical security and screening and detection regimes.

2.119 The second is active disruption of SOCNs by law enforcement agencies. In particular, this requires the use of information, including criminal intelligence, to guide investigations and tactical operations as well as strategic policy responses. Accurate and regular intelligence analysis is essential to combating serious and organised crime as it enables the targeting of scarce policing resources to the area of highest risk. This can include successful operations to seize illicit shipments and dismantle networks. It can also involve the development of understanding of how criminal activity is occurring, guiding effective policy responses. The use of criminal intelligence is central to the concept of 'intelligence-led' policing.

2.120 The committee considers that both of these approaches are important, but particularly emphasises the second. The use of intelligence and the facilitation of

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84 Mr Michael Phelan, Deputy Commissioner, AFP, *Committee Hansard*, 17 February 2011, p. 39.

cooperation and information sharing is vitally important in strengthening the law enforcement response to organised crime, regardless of the methodology adopted by criminal networks. This approach is discussed in the next chapter.

2.121 By contrast, 'target-hardening' measures suffer from the substitution effect identified above. As a result, these measures need to be closely examined to ensure that the disruptive effect is substantial enough to warrant the expenditure required as well as economic and social costs required. These approaches are discussed in Chapter 4.

2.122 The report concludes with an examination of the ASIC and MSIC schemes in Chapter 5.