



CABINET NOTE

CN MPOL 07/003

TO: THE PREMIER FOR CABINET TO NOTE

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RE: INQUIRY INTO THE FUTURE IMPACT OF ORGANISED CRIME ON AUSTRALIAN SOCIETY

1. PROPOSAL

For Cabinet to note the submission made by the South Australia Police to the Federal Parliamentary Joint Committee on the Australian Crime Commission.

2. BACKGROUND

In December 2006, the South Australia Police received correspondence from the Committee Secretary to the Parliamentary Joint Committee on the Australian Crime Commission inviting a submission to the "Inquiry into the Future Impact of Organised Crime on Australian Society". The attached submission was provided to the Inquiry on 5 March 2007.

3. DISCUSSION

3.1 The Terms of Reference relating to the Inquiry are:

3.1.1 Future trends in serious and organised crime activities, practices and methods and their impact on Australian society;

3.1.2 Strategies for countering future serious and organised crime;

3.1.3 The economic cost of countering future organised crime at a national and state and territory level; and

3.1.4 The adequacy of legislative and administrative arrangements, including the adequacy of cross-jurisdictional databases, to meet future needs.

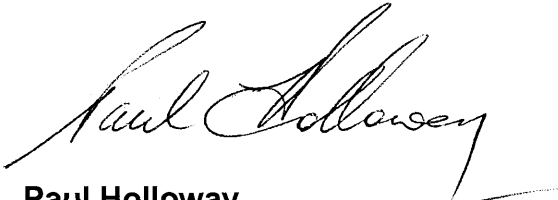
3.2 The majority of the Australian Crime Commission's work is about profit motivated serious and organised crime. The submission does not address serious crimes of violence against the person or property that are not primarily and intentionally conducted in the furtherance of illegitimate profits. Future trends in serious crime that is not committed in furtherance of business interests will largely be dictated by the attitude of society and the level of order within the community.

- 3.3 For the purpose of the submission, 'serious' crime is identified as a profit motivated crime or a series of similar crimes targeting a particular commodity such as drugs for supply to the market place, or cash through fraud and deception. 'Organised crime' can best be described as a range of profit motivated serious criminal activities, including serious crimes against the person committed in the furtherance of profit, such as extortion and people trafficking, or the protection of business interests including serious assaults and murder. With the exception of the third Term of Reference, 'serious' and 'organised' crime have been addressed as a collective in the submission.
- 3.4 Strategies for countering future serious and organised crime are listed in paragraph 2.6 of the SAPOL submission. They are a set of basic philosophies which should guide and underpin organised crime interventions within and across jurisdictions before any clear and unified direction can be taken. Key elements are:
- 3.4.1 Recognition by governments and law enforcement that effective intervention is not necessarily confined to apprehension and imprisonment;
  - 3.4.2 Understanding the business of organised crime and recognition of intervention opportunities;
  - 3.4.3 Intervention at the earliest opportunity in enterprises such as drug manufacture;
  - 3.4.4 Recognition that deployment of finite law enforcement resources must be to those interventions that have the most disruptive effect on organised crime;
  - 3.4.5 Recognition by regulatory agencies, including those that issue forms of identity, that they are part of the solution;
  - 3.4.6 Proof of identity documents must incorporate biometrics and other emerging technologies;
  - 3.4.7 A 'joined up' approach between State and Commonwealth law enforcement and regulatory agencies within and across jurisdictions;
  - 3.4.8 Coordination of intervention activities between agencies to optimise outcomes;
  - 3.4.9 A 'joined up' approach between Ministerial bodies such as the Ministerial Council for Police and Emergency Management – Police (MCPEMP), the Standing Committee of Attorneys General and the Ministerial Council on Drug Strategy;
  - 3.4.10 Removing the incentive to engage in profit motivated serious and organised crime by the confiscation of unexplained wealth;
  - 3.4.11 Ensuring that organised crime can not engage in legitimate business structures and practices that facilitate crime;

- 3.4.12 Protecting proceeds and intervening at the earliest opportunity in attempts by crime entities to establish such structures;
  - 3.4.12 Recognition that organised crime depends on professional service providers in the business and legal environments;
  - 3.4.13 Acceptance by professional bodies that there are ethical and professional boundaries within which their members should extend assistance to clients;
  - 3.4.14 The need for effective and uninhibited exchange, access to and collation of information about criminal activity, associated money movement and those who engage in it;
  - 3.4.15 A legislative environment in which the inhibitions created State and Territory boundaries are minimised;
  - 3.4.16 A legislative environment that accepts that some intrusion into privacy is part of the price paid for safer communities; and
  - 3.4.17 Engagement of law enforcement practitioners in the development of legislation intended to intervene in organised crime.
- 3.5 Linkages between these key elements and the South Australian Strategic Plan are:
- 3.5.12 Target 1.5 of the South Australian Strategic Plan is aimed at business investment in this State. Reducing the capacity for organised crime to target and take over legitimate businesses by extortion or fraud, or for organised crime to engage in legitimate business to further its criminal pursuits increases the confidence of the business sector to make such investments;
  - 3.5.2 Target 1.16 of the Plan aims to increase the State's share of overseas students. Minimising the incidence of extortion of these visitors will contribute to this objective;
  - 3.5.3 Target 2.8, *reducing crime rates*, in the South Australian Strategic Plan and *'strategies to prevent drug issues and harm'* in the South Australian Drug Strategy. The manufacture and trafficking of illicit drugs is a primary income source for organised crime and there is an undeniable link between drug use and crime.
- 3.6 There are also linkages to existing work being undertaken in the area of identity crime by the Australasian Identity Crime Policing Strategy 2006 – 2008; the State Government commitment to the COAG National Identity Security Strategy; and the South Australia Identity Security and Management Group, led by the Department of Premier and Cabinet.

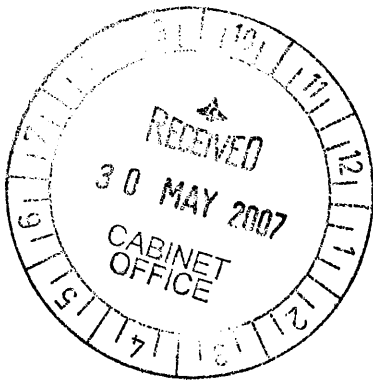
4. **RECOMMENDATIONS**

It is recommended that Cabinet Note the submission made by the South Australia Police to the Federal Parliamentary Joint Committee on the Australian Crime Commission.



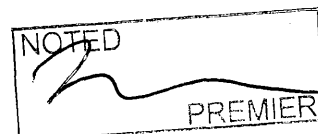
**Paul Holloway**  
Leader of the Government in the Legislative Council  
Minister for Police  
Minister for Mineral Resources Development  
Minister for Urban Development and Planning

Date: 28/5/2007



***In Cabinet***

- 4 JUN 2007



**Australian Crime Commission  
Parliamentary Joint Committee**

**Inquiry into the future impact of  
serious and organised crime on  
Australian society.**

**Submission of the South Australia  
Police**

**February 2007**

## **Terms of Reference**

1. Future trends in serious and organised crime activities, practices and methods and their impact on Australian society;
2. Strategies for countering future serious and organised crime;
3. The economic cost of countering future organised crime at a national and state and territory level; and
4. The adequacy of legislative and administrative arrangements, including the adequacy of cross-jurisdictional databases, to meet future needs.

## **1 INTRODUCTION**

Given that the vast majority of the work of the ACC is about profit motivated serious and organised crime, this submission does not address serious crimes of violence against the person or property that are not primarily and intentionally conducted in the furtherance of illegitimate profits.

Future trends in serious crime that is not committed in furtherance of business interests will largely be dictated by the attitude of society and the level of order within the community.

For the purpose of this submission, 'serious' crime is identified as a profit motivated crime or a series of similar crimes targeting a particular commodity such as drugs for on supply to the market place, or cash through fraud and deception.

'Organised crime' can best be described as a range of profit motivated serious criminal activities, including serious crimes against the person committed in the furtherance of profit, such as extortion and people trafficking, or the protection of business interests including serious assaults and murder.

The Terms of Reference refer to serious and organised crime as a collective, except in Term 3, and will be addressed as such in this paper.

## **2 DISCUSSION**

### **2.1 Organised crime is a business enterprise**

From the outset it needs to be appreciated that organised crime is a business and those that are in the business of organised crime are in it for the money.

Organised crime operates as any business providing goods and services to its client base, using raw materials (such as in drug manufacture) and drawing on the expertise of its own ranks or others to provide services, deliver products and manage business practices.

Unlike legitimate business it is not regulated, competition is not fair, its products are not subject to quality control and there is no legislated protection for the consumers of its products.

Organised crime capitalises on demand for black market commodities no matter what they are, targets vulnerable people and assets, takes advantage of inhibitions or weaknesses in legislation, regulatory environments or business practices, and uses professional service providers to achieve its objectives of making money and insulating itself against lawful intervention.

The business of organised crime typically involves drug manufacture and trafficking, extortion and related violence, corruption, organised theft, illegal firearms trafficking and use, organised paedophilia, the sex industry, a wide range of fraud activities including dishonestly dealing in documents, breaches of company law, identity fraud and investment scams. Having committed such offending in the pursuit of profits, organised crime then engages in further offending such as money laundering and tax evasion to maximise returns and keep profits secure.

It also needs to be appreciated that serious and organised crime entities are in the business of risk assessment and risk avoidance. The fact that particular activity is against the law, and has significant penalties associated with it, is little deterrence to organised crime. Risks are minimised or avoided through having others undertake the risky activities, and engaging professional people to defend their interests if exposed to risk.

Organised crime not only works hard at making money, but also works equally as hard in ensuring that business profits are well protected and further invested in both illegitimate and legitimate ventures.

It continues in business because profits are high and risks are manageable.

## **2.2 The nature of the business**

Organised crime commits substantive offences in and across jurisdictions in pursuit of profits and the protection of business interests.

Organised crime also engages in legitimate industry to further its criminal pursuits, or to protect and reinvest income including the establishment of registered companies and directorships within those companies.

The industries in which they engage include the management of money, provision of loans, import and export, transport, private security, liquor retailing, fishing, internet and telecommunications providers.

From an examination of the industries in which they engage, it becomes apparent that they are selective in what legitimate enterprises they become involved in. The industries cited provide legitimate and safe enablers for them to import, manufacture and distribute contraband, launder and protect profits, conduct illegitimate money transactions and use their own secure networks for communications about 'core business'.

Many of these legitimate business enablers are barriers to effective investigation into substantive offences as they distort the evidence available to support prosecutions, disguise unlawful transactions as legitimate business and record illegitimate income as legitimate profit.

## **2.3 *Future trends in serious and organised crime activities, practices and methods and their impact on Australian society.***

In February 1998, the CIA assessment of *Transnational Threats to NATO in 2010* included the following prediction:

*'The proliferation of links among international criminal organizations, coupled with the globalization of business, will provide expanded opportunities for the movement of illicit drugs, weapons and money.'*

*The sheer volume - trillions of dollars annually - of illicit proceeds from these global criminal organizations could present a threat to national economies.*

*These groups may also use their massive wealth to gain controlling interests in strategic economic sectors and buy high-level political influence.*<sup>1</sup>

The Australian Crime Commission will no doubt provide an extensive assessment of future trends based on its knowledge drawn from jurisdictions within and external to Australia, and it is likely to support the 1998 assessment of where organised crime will be in the year 2010.

SAPOL is of the view that organised crime will continue to go about its business of making money, and will look for new business opportunities and new ways of doing business as summarised in the following points.

### **2.3.1 Crime groups**

Individual groups will remain resilient, using corruption, counter surveillance and their own intelligence networks, as well as the continuing use of violence and intimidation.

Ethnic based crime groups not currently recognised as high threat are beginning to emerge and will continue to evolve. This may cause some conflict with crime groups that currently exist. The Australian Crime Commission (ACC) recently identified these ethnic crime groups as an intelligence gap.

These emerging groups bring with them their expertise associated with particular criminal commodities and it is likely that they will expand their interests once they are familiar with the Australian legislative and criminal environments.

In time individuals will break away from these ethnic based groups and become significant entities in their own right.

There is a current trend of evolution from traditional groups (hierarchical, ethnic and ethos based) towards more fluid, flexible and diverse entrepreneurial networks that come together for particular activities and then go about their own business until it is in their interests to come together again.

As law enforcement intelligence continues to evolve, previously undetected crime groups will be identified.

### **2.3.2 Violence**

The most under reported serious crime associated with organised crime is extortion and this is likely to continue. Victims and witnesses are intimidated and extremely reluctant to report the crime and/or give evidence.

It is a very profitable form of crime and in the absence of complaint, there is no evidence to substantiate related charges. Assets derived from the extortion are legitimised using the business structures available to crime groups.

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<sup>1</sup> Wiley, W. Associate Deputy Director for Intelligence (CIA), 1998 European Symposium, National Defence University, 10 February 1998.

### 2.3.3 Use of professional service providers

Organised crime will continue to use the services of the accounting and legal professions to facilitate business. Law enforcement intelligence indicates that crime groups favour particular providers and these providers service a number of criminal entities or groups, rather than remaining exclusive to one entity.

### 2.3.4 Australia's geographic location

Australia holds a unique position in transnational crime as it is geographically isolated and has a sparse population compared with other industrialised countries.

These factors however have not completely insulated the country from international drug markets, immigration fraud, high-tech crime or money laundering activities and this position will not change.

There is likely to be a continuation of illegal immigration, noting that Australia is the 8<sup>th</sup> most favoured destination for illegal immigrants from mainland China. There may be some change to this trend given the rising economic status of China.

### 2.3.5 Money movement

In June 1996 the Financial Action Task Force on Money Laundering (FATF) in which Australia is represented, identified that *"the laundering process allows narcotics traffickers, terrorists, perpetrators of financial fraud, and every other criminal enterprise to perpetuate, and live lavishly from, their illegal activity."*<sup>2</sup>

*"The lack of preventive measures in a particular sector or region will inevitably attract money laundering activity"*<sup>3</sup>

In February 1997, the current Director of Central Intelligence in the United States reported that:

*'The multi-billion dollar scope of worldwide money laundering poses a significant threat to countries on both a micro- and macro-economic level.*

*The tremendous wealth being legitimised by laundering allows criminal organisations to gain a large amount of economic power quickly.*

*Front companies, legitimate businesses through which illicit profits are funnelled, are the predominant means of laundering funds used by all criminal groups.*

*As drug trafficking and other criminal organisations invest more in these businesses, their toehold in the legitimate economy of a country grows, as does the economic, social and political influence of the criminal kingpins.*<sup>4</sup>

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<sup>2</sup> FATF Report on Money Laundering Typologies (June 1996)

<sup>3</sup> FATF Report on Money Laundering Typologies (February 1999)

<sup>4</sup> Tenet, G.T. Statement to the Senate Select Committee on Intelligence Hearing on Current and Projected National Security Threats to the United States, 5 February 1997.

These statements and predictions from 10 years ago are still true today. In some jurisdictions money laundering has been captured in legislation and there have been recent changes to legislation in tracing money movement, such as amendments to the Financial Transactions Reports Act, *Cwith* and associated activities of AUSTRAC

However, the movement of money is still a priority for organised crime and arising from this legislative approach there is likely to be an increase the use of alternative remittance services and underground banking, or a move to other forms of currency such as gemstones.

Australian dollars will continue to move offshore through both the transfer of illegal profits, and an increasing trend in overseas illegal internet gambling and bookmaking activities.

### **2.3.6 Engagement in legitimate industry**

Organised crime will continue to seek out and engage in legitimate industries it sees as beneficial to the conduct of criminal business and the management of profit.

It is not unrealistic to expect that crime groups will establish a network of inter-linked legitimate companies in which they will facilitate criminal business without the necessity to engage other providers, thus insulating those activities from outside scrutiny.

### **2.3.7 Competition between crime groups and financiers of terrorism**

If the assumption is made that terrorist groups engage in organised crime to finance their end objectives then there will be competition over the illicit commodities market place and potential extortion victims between these people and organised crime. They will also compete for commodity trafficking routes, service providers and banking facilities. Those on the periphery that provide such services will prosper from the competition.

### **2.3.8 Technology and identity crime**

Organised crime will capitalise on technology and all the business benefits it brings with it, such as the ease of making false identification and false documents purporting to be authentic in both Australia and overseas, moving money electronically, and committing crime in one country while based in another.

Identity fraud will continue to be used to facilitate other crime. Technological improvements will increase the apparent authenticity of identity documents and make them more accessible to criminal networks, which may result in an increase in the both the creation and use of false identification.

Currently, once a suspected forgery of an overseas document is detected, usually in the investigation of a related fraud, it is often difficult to get cooperation from suspected originating country. This trend is likely to continue.

Communications technology such as encrypted email, Voice over Internet Protocol, and mobile phone enhancements will increasingly be used to advantage by criminal groups.

There are indications that organised crime groups will try to become telecommunications carriers. This has significant advantages to the groups and will be a significant impediment to law enforcement in the application of lawful telephone interceptions.

### **2.3.9 The illicit drug market**

New synthetic drug varieties may emerge as a result of market place demand or changes to the availability of precursor chemicals, such as the present situation concerning pseudo-ephedrine. Conversely, or perhaps additionally, the importation of certain precursors may increase and this will bring with it added pressures on the Australian Customs Service (ACS) and the ongoing need for joint agency intervention by the ACS and local law enforcement.

Those people with specialist skills in the manufacture of illicit drugs will continue to be in demand. This demand however, provides a focus for intervention by law enforcement in the targeting and removal of these people from the drug manufacturing environment.

The ongoing use of illicit drugs within the community will continue to drive 'volume crime' such as offences against property, minor frauds and various forms of robbery.

## **2.4 *The economic cost of countering future organised crime at a national and state and territory level***

SAPOL is not in a position to provide information on this Term of Reference regarding national interventions, but can advise that SAPOL expenditure on direct and indirect interventions in organised crime is in the order of \$15.6m annually<sup>5</sup>.

This estimate is based on the maintenance of the Drug Investigation Branch, Organised Crime Investigation Branch, State Intelligence Branch and Licensing Enforcement Branch, and does not take into account the broader cost of maintaining a safe community by reducing property crime, assaults and behavioural offences, often caused by the use of drugs sourced from organised crime.

It does not include police, Director of Public Prosecutions and Crown Solicitor costs associated with trials, which, given the nature of the offending and the offenders involved, are usually fiercely defended and run for an extended period of time.

While other agencies such as the Australian Crime Commission, Australian Federal Police, Australian Customs Service, Australian Securities and Investment Commission and the Australian Taxation Office have offices in South Australia, costs associated with intervention in this State are most likely to be reflected in their national expenditure estimates.

## **2.5 *The adequacy of legislative and administrative arrangements, including the adequacy of cross-jurisdictional databases, to meet future needs***

In any discussion on intervention in organised crime there are significant factors that must be appreciated.

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<sup>5</sup> Sourced from SAPOL Business Service

Criminals do not respect the law and see it as a risk to be managed. Law enforcement must operate within it, and in some circumstances, the law makes effective policing difficult.

When law enforcement does pursue criminal charges against an organised crime entity, it must prove its case beyond reasonable doubt. Such investigations are resource intensive and there is a risk of failure given the quantum of proof required and the complex trail of criminality that is often absorbed into apparently legitimate business process, or the reluctance of witnesses to come forward.

### **2.5.1 The capacity for law enforcement to be effective within its legislative environment**

State/Territory police are required to investigate substantive offences as prescribed in the jurisdiction's criminal code. Most of these offences are historically based and relate to crimes against people or property, with offences regarding identity crime and money laundering, and the seizure of proceeds of crime being relatively recent additions, in an attempt to keep up with the criminal environment of the day.

Effective intervention in organised crime equates to disruption and permanent dismantling of crime groups. Any lesser intervention such as a significant drug seizure or the arrest of a key functionary is a temporary disruption from which organised crime will recover.

Both the business of making money and the business of protecting profits by organised crime extends across a number of jurisdictions, and either breaches or uses a range of State and Commonwealth legislation to facilitate these enterprises.

However, State/Territory police are not well positioned to investigate and prosecute all aspects of organised crime activity, such as taxation fraud or evasion, breaches of Commonwealth company or corporate law, illegal importations or offending in other jurisdictions.

It therefore stands to reason that intervention by State/Territory based law enforcement can be significantly enhanced through local partnerships with Commonwealth agencies. However, Commonwealth agencies domiciled within a particular State or Territory have their priorities established at the national level, and these are not always consistent with those of the jurisdictional police.

The reality of this position is that organised crime entities have a 'home base' in particular State or Territory, and while the jurisdictional police are aware of the nature and extent of the business of the crime group, they do not necessarily have the capacity for total intervention without assistance from Commonwealth agencies, whose priorities may be elsewhere.

Similarly, within jurisdictions, State/Territory based regulatory agencies that are in a position to provide support for police led interventions do not necessarily see law enforcement included in their core business, but rather as providing services to the community.

## 2.5.2 Administrative arrangements

As crime groups go about their business as a single entity and come together for specific business enterprises, so must law enforcement, including regulatory agencies.

In March 2005 all Australian Police Commissioners entered into the most recent iteration of a Memorandum of Understanding for the investigation of multi jurisdictional major crime and terrorism.

Some jurisdictions have taken that model and entered into specific agreements between State and Commonwealth agencies within that jurisdiction for the investigation of serious and organised crime.

The 'Heads of Commonwealth Law Enforcement Agencies' (HOCLEA) is a formal collective of Commonwealth agencies that have entered into a co-operative agreement about working together towards intervention in crime.

However, at this point in time there is no over-arching agreement between the collective of Commonwealth agencies and all Commissioners of Police that clearly articulates a commitment to a joined up approach to intervention in organised crime. Such a formal agreement may not be achievable or lead to any tangible impact on organised crime, but it would indicate a breaking down of the barriers created by jurisdictional boundaries.

The need for administrative arrangements that facilitate effective intervention is perhaps best articulated in a 2001 address to the Law Council of Australia, when the then Federal Attorney General provided the following comments regarding the legal fraternity:

*"Until we remove the barriers that prevent lawyers in different States and Territories from practising on an equal footing, we run the risk of impeding the growth of the Australian legal profession both domestically and internationally.*

*In my view the greatest challenge facing the Australian legal profession is the need to remain relevant, flexible and competitive in an increasingly borderless world.*

*To allow the profession to embrace change we must deliver a foundation on which it can do so unimpeded by jurisdictional barriers."*

He further remarked,

*"For the profession to continue to grow and position itself to meet the needs of the community in this environment, it must respond to those challenges.*

*The way to achieve this is through the development of a truly national profession supported by a uniform regulatory framework."<sup>6</sup>*

Is there not the same sense of urgency and consistency for law enforcement?

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<sup>6</sup> Law Council of Australia, 32<sup>nd</sup> Australian Legal Convention, Old Parliament House Canberra, 14<sup>th</sup> October 2001.

### 2.5.3 The Joint Working Group on law reform

In 1999 a Joint Working Group on National Investigation Powers was created as a result of meetings in that year of the Intergovernmental Committee-National Crime Authority (now the IGC-ACC) and the Standing Committee of Attorneys General.

As a result of resolution 15 of the April 2002 Leaders Summit on Terrorism and Multi-jurisdiction Crime, the Group was expanded and instructed to develop model legislation on controlled operations, assumed identities, electronic surveillance devices and witness anonymity. This was in an attempt to provide consistency of legislation across jurisdictions and recognition of corresponding legislation regarding these issues between jurisdictions.

That Working Group, comprising police and policy makers from all jurisdictions developed the required models, much of which has been adopted in a number of jurisdictions. This now has the effect of breaking down the cross border barriers created by jurisdictional legislation in the investigation of serious crime, including terrorism.

While it took some 4 years for the final outcome, the initiative did demonstrate that such an approach can be successful, and it has set a precedent for future development of cross jurisdiction legislative reform aimed at organised crime intervention.

### 2.5.4 Examples of legislative inhibitors

- *Inability to use taxation material to prove fraudulent behaviour*

Section 3 of the Taxation Administration Act allows for Police to obtain information from the ATO to aid an investigation but restricts what use can be made of the information.

The Section states that where information is communicated to a person under subsection (1), (2A) or (2C) of the section or paragraph 3EA(3)(e), the person *shall not* voluntarily give the information in evidence in a proceeding before a court and *shall not* be required to divulge or communicate the information to a court.

Professional criminals submit taxation returns that substantially under-estimate their income and this is understandable given the illegitimate source of that income.

While this serious non compliance has benefits for them in paying less tax and not providing an indicator of criminal activity, it is an inhibitor when they want to demonstrate substantial income to gain substantial legitimate loans to invest in legitimate business. When such loans are required, these people resort to providing evidence of income to the financiers by way of a fraudulent taxation return that identifies an income commensurate with that required to indicate an ability to repay the loan.

The reality is that they are able to repay the loan, but it is with illegitimate income.

Finance companies are loathe to provide loans under these circumstances but in most instances they are unaware that the tax return they rely on as evidence is fraudulent.

Whilst police can obtain a copy of the original and authentic ATO Return that indicates the lesser income from the ATO for intelligence purposes, that Return cannot be used in evidence to prove that the Return provided to the financier is false, and in that process, prove that the person received the loan, or the benefit of the loan, by fraud.

- *False identification documents*

Organised crime groups place significant reliance on the acquisition and use of false identity documents.

The false identities themselves can be used for identity based crime such as deception, or can be used to ensure that the person is not readily identified and connected with criminal activity they undertake.

False identities enable such things as travel in assumed names, which is particularly useful for people who expect that they will be on 'pass alert' or using 'mules' for the importation of contraband.

These identities also facilitate acquisition of telephones, communication equipment, and permanent or temporary accommodation, which can all be used as part of "tools of trade" for professional criminals.

While South Australia does have specific offences involving assuming and using other people's identity, the assumption or use must be linked to an intent to commit a serious criminal offence. The legislation was prescribed in this way to prevent errant children from being charged with a serious offence when attempting to use false or other people's driving licences as proof of age for entry to licensed premises or purchase of tobacco products.

Many other jurisdictions do not have such offences.

Even taking into account the South Australian legislation, the reality in most jurisdictions is that people found unlawfully in possession of one or several sets of identity documents can often only be charged with the unlawful possession of or dishonestly dealing in the documents. These charges do not reflect the nature of the criminality involved.

As the legislative environment currently stands, false identity documents are very valuable and low risk commodities for professional criminals including those engaged in subversive activities.

- *Commonwealth corporations law*

As the Commonwealth corporations law currently stands, a person with a history of recognised dishonesty offences can not become a company director. There is no such barrier to a person with significant drug convictions, including major importations. As illicit drugs are central to most crime groups, and the establishment of companies to move and manage profits are business objectives of these groups, this is an untenable situation and needs urgent review.

## 2.5.5. Examples of legislative enablers

- *Licensing interventions*

Changes to legislation in South Australia in December 2005 now empower the Commissioner of Public and Consumer Affairs to revoke licenses for security guards, private investigators and debt collection agents based on intelligence provided by police. This has had a positive impact on removing suspected organised crime groups from the security industry in this State, particularly security linked to licensed premises.

Negative police intelligence regarding a particular entity can also lead to the removal of that person's firearms licence.

Also in South Australia, using negative intelligence, there have been successful interventions in liquor licensing, removing suspected organised crime entities as proprietors of licensed premises and entertainment venues, leading to the closure of those venues.

- *Seizure of criminal proceeds - Removing the incentive for crime*

Royal Commissioners as far back as the 1970's and 80's recognised that *"the goal of organised crime is money.....money generates power .....it provides the motive for the engagement in such crime."*<sup>7</sup>

Removing the money from these people removes the power and capacity to continue and expand criminal enterprises.

Given the difficulties and limitations associated with intervention through investigation and prosecution, legislators must appreciate that increasing the substantive offence regime, and increasing penalties may not be the optimum solution.

As organised crime considers the criminal code a risk it has to manage, it will find ways to manage increased risk associated with more substantive offences and increased penalties.

Legislators must appreciate that an effective legislative regime will be one that makes it difficult for organised crime to go about its business, legitimise it, and more particularly, to retain what they are in business for, being the substantial wealth created by their offending.

Australia ratified the UN Vienna Convention<sup>8</sup> in 1988 and the European Money Laundering Convention<sup>9</sup> in 1990.

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<sup>7</sup> Moffatt A A - A Quarter to Midnight (1985)

<sup>8</sup> UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. Copy available on the internet at [www.incb.org/e/conv/1988](http://www.incb.org/e/conv/1988).

<sup>9</sup> European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990. Copy available on the internet at [www.coe.fr/eng/legaltxt/141e.htm](http://www.coe.fr/eng/legaltxt/141e.htm).

These two treaties require Australia to adopt such measures 'as may be necessary' to enable the confiscation of proceeds of crime.<sup>10</sup>

In 1999 the Australian Law Reform Commission concluded that conviction based forfeiture had "failed to achieve its objectives", had "*fallen well short of depriving wrongdoers of their ill gotten gains*" and did not offer the prospect "*of meeting reasonable public expectations regarding the recovery of proceeds from unlawful activity from persons who would otherwise be unjustly enriched thereby*".

In December 2000 Australia joined 117 other countries in signing the *UN Convention against Transnational Organised Crime* ("TOC Convention").

Article 12(1) obliges each Party to adopt, 'to the greatest extent possible within their domestic legal systems', such measures 'as may be necessary' to enable confiscation of the proceeds of offences covered by the Convention.

Both Article 5(7) of the Vienna Convention and Article 12(7) of the TOC Convention expressly encourage States to adopt provisions reversing the onus of proof in relation to the provenance of alleged proceeds or other property liable to confiscation.

Most jurisdictions in Australia have moved to the 'civil forfeiture' provisions for asset confiscation, which has had some success. Western Australia and the Northern Territory have progressed further to the seizure of unexplained wealth and report that it is a highly effective tool in the task of disrupting and dismantling crime groups and seizing the very thing that they work so hard for.

However, for asset seizure to be fully effective it needs to be an integral part of a larger 'tool kit' of co-ordinated intervention strategies that also include deterrence, prevention, disruption, investigation, and prosecution.

Those jurisdictions that invest equally in asset seizure and other interventions should not only reap the benefit of the seized wealth, but also a reduction in the capacity for crime groups to traffic drugs to those in the community who commit crime either to fund their drug use, or as a result of their drug use.

Given the significant impact of the seizure of unexplained wealth, it is reasonable to suggest that a further review of Australia's approach to the confiscation of criminal proceeds and unexplained wealth is warranted.

#### **2.5.6 Data bases**

Law enforcement intervention, whether it be in the investigation of traditional criminal activity, money laundering, taxation non-compliance or crimes of facilitation such as identity crime are only effective when driven by intelligence.

While intelligence itself will not deliver outcomes, as it requires people to convert intelligence into investigations, it is the foundations on which comprehensive and coordinated interventions are built.

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<sup>10</sup> See Article 5 of the UN Convention and Article 2 of the European Convention.

- *The Australian Crime Commission*

In 2002 the Australian Crime Commission was created and absorbed the Australian Bureau of Criminal Intelligence, the National Crime Authority and the Office of Strategic Criminal Assessment.

This was a significant step towards the amalgamation of historic, contemporary and predictive criminal intelligence on which effective interventions can be based.

The Australian Crime Commission will no doubt expand on the need to have intelligence data bases that 'talk' to each other, are 'user friendly', accessible by those who need to know and also link to other information holdings such as the indices in CrimTrac including the MNPP (Minimum Nationwide Person Profile) Project.

The Commission is also likely to comment on existing privacy legislation within and across jurisdictions, including the sharing of information between State/Territory and Commonwealth agencies that either enables or inhibits effective exchange of information.

One of the inhibitors to effective intelligence sharing between law enforcement agencies may be a lack of understanding of the capacity of current data bases, such participation within the ALIEN Office system which provides a secure environment with the provision of:

- Secure Information Desks,
- Secure Messaging system, (to the level of Highly Protected),
- Australian Criminal Intelligence Database, (ACID).

- *Registrars of Births Deaths and Marriages*

While law enforcement and policy makers are being strategic in the development, enhancement and linking of national intelligence data bases, with significant costs attached, there are opportunities to invest relatively small dollars into significant returns.

As an example SAPOL notes that there is no national data base of registrations regarding Births, Deaths and Marriages (BDM), and observes that the benefits of such a data base has been discussed by the collective of Registrars. Apparently the cost is not significant, but Registrars would be better informed in this regard than SAPOL.

The ability to assume or change identities within the disparate legal and administrative frameworks of BDM Registers across jurisdictions is significant for the professional criminal element.

An apparently legitimate identity document sourced from a BDM Register provides the capacity to gain further identifiers such as driving licences, utility accounts, Centrelink accounts, tax file numbers and passports. These identities are a valuable commodity and tool of trade for people engaged in deception, drug trafficking and subversive activities.

While law enforcement agencies can establish agreements with individual BDM Registrars regarding access to suspect transactions, this only creates an enhanced capacity to be reactive to crime.

A single national holding of all transactions that, within legislative constraints, can be interrogated and linked to other intelligence holdings should have the capacity to reduce crime by preventing suspect transactions.

## **2.6 Strategies for countering future serious and organised crime**

While much has been and will continue to be written on strategies for countering serious and organised crime in the future, before any clear and unified direction can be taken a set of simple and basic philosophies need to be established that guide and underpin interventions.

It is suggested that these include the following:

- Recognition by governments and law enforcement that effective intervention is not necessarily confined to apprehension and imprisonment
- Understand the business that organised crime is in, recognise opportunities for intervention and task those with the necessary skills and legislative support to undertake the activity
- Intervention at the earliest opportunity in enterprises such as drug manufacture
- Deployment of finite law enforcement resources must be to those interventions that have the most disruptive effect on organised crime
- Recognition by regulatory agencies including those that issue forms of identity that they are part of the solution
- Proof of identity documents must incorporate biometrics and other emerging technologies
- A 'joined up' approach between State and Commonwealth law enforcement and regulatory agencies within and across jurisdictions
- Coordination of intervention activities between agencies to optimise outcomes
- A 'joined up' approach between Ministerial bodies such as the Australian Police Ministers Council, the Standing Committee of Attorneys General and the Ministerial Council on Drug Strategy
- Remove the incentive to engage in profit motivated serious and organised crime by the confiscation of unexplained wealth
- Ensure that organised crime can not engage in legitimate business structures and practices that facilitate crime and the protection of proceeds and intervene at the earliest opportunity in attempts by crime entities to establish such structures
- Organised crime depends on professional service providers in the business and legal environments

- Acceptance by professional bodies that there are ethical and professional boundaries in which their members can extend assistance to clients
- Effective and uninhibited exchange, access to, and collation of information about criminal activity, associated money movement and those that engage in it
- A legislative environment in which the inhibitions created State and Territory boundaries are minimised
- A legislative environment that accepts that some intrusions into privacy is part of the price paid for safer communities
- The engagement of law enforcement practitioners in the development of legislation intended to intervene in organised crime

### 3 SUMMARY

It is likely that police in other jurisdictions will have a similar view to that of SAPOL, while the Australian Crime Commission (ACC), the Australian Customs Service (ACS), the Australian Federal Police (AFP), the Australian Taxation Office (ATO) and the Australian Securities and Investments Commission (ASIC) may have a more strategic view incorporating off shore interventions.

Crime groups have their centres of operations established in a State or Territory. Those States or Territories 'own' the problem, have a sound appreciation of the level and type of criminality engaged in by the group, but are not necessarily well positioned to totally intervene as the criminal conduct extends across borders and across State and Commonwealth jurisdiction.

This situation effectively translates into State/Territory based law enforcement agencies taking the lead on intervention, supported by relevant Federal law enforcement and jurisdictional based regulatory agencies.

### 4 CONCLUSION

In October 2000 the PJC-NCA enquired into the law enforcement implications of new technology and on 27 August 2001 tabled its report entitled *The Law Enforcement Implications of New Technology*.

The Committee's Chairman, Mr Baird said:

*"It was with some disappointment that the Committee found that Australian policing, and the NCA in particular, is hamstrung by an inability by Australian governments to agree to a nationally consistent approach to multi-jurisdictional investigations. The criminals will, of course, exploit any such loopholes to their advantage."<sup>11</sup>*

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<sup>11</sup> Hansard, House of Representatives, Monday 27 August 2001, P300059.

While there has been some progress towards national consistency, this IGC-ACC review provides a further opportunity for the ACC, law enforcement and regulatory agencies across Australia to again contribute to the debate on and reform of our approach to the intervention and disruption of organised crime.

In the reform process it needs to be remembered that effective intervention is only as good as what works, what is achievable and the time frame in which it can be achieved.

While there is a need to develop strategies for the future, there is also a need to focus on what can be done now, and invest in activities and achievable reforms based on preventing crime and the capability to establish crime cartels through intervention at the earliest opportunity.