



Australian Government

Australian Institute of Criminology

The Worldwide Fight against Transnational Organised Crime: Australia

Technical and Background Paper

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Disclaimer

This research report does not necessarily reflect the policy position of the Australian government.

1 Introduction

This report describes how Australia deals with the problem of organised crime. Most law enforcement activity is focused at the national (federal) level, but each of the six states and two principal territories also have jurisdiction to deal with crime at a local level, even when it involves some cross-border or organised component. This report identifies the principal agencies and organisations in each jurisdiction that are involved in combating organised crime. The information contained in the report is derived from official open sources, usually government agency web sites (links are correct as at January 2004).

For the purposes of this report, 'organised crime' is defined in the same terms as the United Nations Convention against Transnational Organised Crime, Article 2. This provides, *inter alia*:

- (a) 'Organised criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) 'Serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) 'Structured group' shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

The nature of organised crime in Australia

Awareness of the organised crime problem in Australia dates from the early 1970s when the growth of such activity became an important political issue and the subject of a number of Royal Commissions.¹ Government concern increased during the late 1970s and early 1980s, especially in relation to the burgeoning trade in illicit drugs. This increasing attention occurred around the same time that new criminal milieux began to emerge in some of the smaller capital cities in Australia. These groups remain smaller than the well established criminal networks in the major cities of Sydney and Melbourne, which have been present since last century.

Organised crime in Australia is now characterised by a combination of:

- local criminal milieux which are typically loosely structured groups involved in a variety of illicit enterprises;
- networks or 'secret societies' based in other countries which have local networks in Australia, and are characterised by shared ethnic backgrounds; and
- other criminal groups, such as paedophile networks and outlaw motorcycle gangs.

The changing trends in organised criminal activity in Australia during the past two decades have typically mirrored the patterns of development seen in Europe and North America. The Australian Federal Police has asserted² that the transnational crimes currently posing the greatest threat to Australia are people smuggling, human trafficking (especially the exploitation of women and children for the sex industry), illicit drug trafficking (especially amphetamine-type substances) and high tech crime.

¹ See, for example, Moffitt, Royal Commission of Inquiry in respect of certain matters relating to allegations of organised crime in clubs, 15 August 1974, cited in Criminal Justice Commission, *Issues paper series* 3(1), July 1996.

² *Annual report 2002–2003*, http://www.afp.gov.au/raw/Publications/AnnualReports/anrep03/chapter_1.pdf

In terms of economic cost to the community, the most damaging organised criminal activity is serious economic crime. PricewaterhouseCoopers' *Global economic crime survey 2003*³ notes that 47 per cent of surveyed companies in Australia have experienced economic crime. The Australian government has confirmed that fraud involving identity theft is reputed to cost \$1.1 billion per year.⁴ However, as in many countries, the illicit drugs trade remains the foremost priority in terms of political and law enforcement attention.

The latest *International narcotics control strategy report*⁵ notes that Australia continues to be a target for South East Asian heroin trafficking organisations and South American cocaine traffickers. Laos, Burma and Thailand are the principal sources of heroin trafficked into Australia. Ecstasy continues to be imported from Europe. The Australian Customs Service annual report for 2002–03⁶ indicated that drug seizures of amounts over two kilograms in weight decreased over all drug categories compared with 2001–02, but that drug seizures of amounts between two grams and two kilograms increased over all drug categories compared with 2001–02. The vulnerability of Australia to illicit drugs produced abroad is associated with the increasing volume of commercial exchange and with the fact that many Asian countries are now important trade partners with Australia.

One area of particular concern is trafficking of human beings, particularly women destined for the sex industry. Australia has allocated \$20 million over the next four years (under the auspices of a Commonwealth *Action plan to eradicate trafficking in persons*⁷) to support a number of initiatives including:

- a new transnational sexual exploitation and trafficking team within the Australian Federal Police;
- new visa arrangements;
- comprehensive victim support;
- a community awareness campaign;
- an AusAID-managed reintegration program; and
- a range of international activities.

Other initiatives announced by the government include the Asia Regional Cooperation to Prevent People Trafficking program, which has been allocated \$8.4 million in addition to the \$20 million anti-trafficking package. The Australian Crime Commission is also mounting a special intelligence operation to gather pertinent data from all relevant sources on people trafficking.

Investigation of organised crime in Australia is affected by this country's structure of law enforcement. Each state or territory has its own criminal justice system. Currently, there is no real provision for recognising warrants issued in separate jurisdictions in Australia. To enhance this capability, in April 2002 a joint working group established by the Standing Committee of Attorneys-General and the Australasian Police Ministers Council was given the task of developing model laws for a national approach to cross-border

3 http://www.pwcglobal.com/gx/eng/cfr/gecs/PwC_GECS03_Australia.pdf

4 *Identity fraud: an evaluation of its nature, cost and extent*, September 2003, Sydney: Securities Industry Research Centre of the Asia Pacific

5 www.state.gov/g/inl/nrcrpt/2002/

6 <http://www.customs.gov.au/resources/Files/Annual%20report%2002-03.pdf>

7 2004, Canberra: Attorney-General's Department

investigation. The committee published its findings in November 2003.⁸ The Australian Federal Police has also negotiated cross-jurisdictional cooperation. In May 2003 it announced an agreement reached between it and seven other international law enforcement agencies⁹ to focus on a multilateral basis transnational crimes such as drug trafficking, human exploitation, money laundering and terrorism.

8 [http://www.ag.gov.au/www/rwpattach.nsf/viewasattachmentPersonal/F9182AB917673CF2CA256DE5000D1D43/\\$file/0%20Cross%20Border%20Report2read.pdf](http://www.ag.gov.au/www/rwpattach.nsf/viewasattachmentPersonal/F9182AB917673CF2CA256DE5000D1D43/$file/0%20Cross%20Border%20Report2read.pdf)

9 United States Drug Enforcement Administration, Royal Canadian Mounted Police, New Zealand Police, HM Customs and Excise, Metropolitan Police, National Criminal Intelligence Service and the National Crime Squad

2 Law enforcement structure

The law in Australia

Australian law comprises:

- Acts passed by the federal parliament acting within the scope of its powers under the Australian constitution, together with delegated or subordinate legislation made under such Acts;
- ordinances made in respect of the territories, together with delegated or subordinate legislation made under such ordinances;
- Acts passed by state parliaments and the legislative assemblies of the Northern Territory, the Australian Capital Territory and Norfolk Island, together with delegated or subordinate legislation made under such Acts;
- the Australian common law, which developed from the English common law and is interpreted and modified by the courts; and
- any remaining parts of the common law or statute law of England that was received and still applies to Australia.

The parliamentary system

Australia has a federal system of government. Powers are distributed between a federal government (the Commonwealth) and state and territory governments. There are six states—New South Wales, South Australia, Queensland, Tasmania, Victoria and Western Australia. There are also 10 territories, which are directly subject to Commonwealth law-making powers (although the Australian Capital Territory, the Northern Territory and Norfolk Island have a large degree of autonomy under self-government arrangements). The Commonwealth and each state are governed by elected parliaments. In all except Queensland, the parliaments have two houses, the upper house being intended essentially as a house of review. A state parliament may make laws on any subject of relevance to that state. However, valid Commonwealth law may override state law (within the powers defined by the Constitution).

The Australian parliament consists of the Queen (who is represented in Australia by the Governor-General), the Senate and the House of Representatives. The people of each state elect the same number of senators, while in the House of Representatives the number of members depends on the size of the state's population. By convention, the leader of the party commanding a majority in the House of Representatives becomes the Prime Minister.

Commonwealth legislative powers

The federal parliament cannot make laws on any subject it chooses. The constitution lists (in sections 51 and 52) the subjects to which parliament is limited. They include, *inter alia*, taxation, defence, external affairs, interstate and international trade, marriage and divorce, immigration, bankruptcy and interstate industrial arbitration. This list of powers given to the Commonwealth parliament does not expressly refer to a number of important subjects including education, the environment, criminal law, and roads—but this does not mean those subjects are outside the parliament's powers in so far as they relate to the subjects that are listed. For example, even though the parliament has no specific power in relation to the environment, it can, under its external affairs power, prohibit the construction of a dam by a state if that is necessary to give effect to an international agreement on the environment.

The states and their legislative powers

Under the federal system created by the Australian constitution, the six former colonies became the six states of Australia in 1901. Before federation, each of the six colonies had its own constitution. These constitutions regulated, among other things, the legislature, the executive government, and the judiciary of the states. The Australian constitution expressly guarantees the continuing existence of the states and preserves each of their constitutions. However, the states are bound by the Australian constitution, and the constitutions of the states must be read subject to the Australian constitution (sections 106 and 107).

Under the constitutions of each of the states, a state parliament can make laws on any subject of relevance to that particular state. Subject to a few exceptions, the Australian constitution does not confine the matters about which the states may make laws. (The most important exceptions are that the states cannot impose duties of customs and excise [section 90] and cannot raise defence forces without the consent of the federal parliament [section 114]). Accordingly, state parliaments can pass laws on a wider range of subjects than the federal parliament, and for this reason important areas such as education, criminal law and roads are regulated primarily by laws of the states.

The relationship between Commonwealth and state powers

Although the state parliaments can pass laws on a wider range of subjects than the federal parliament, the Commonwealth is generally regarded as the more powerful partner in the federation. One of the principal reasons for this is section 109 of the constitution, which provides that if a valid Commonwealth law is inconsistent with a law of a state parliament, the Commonwealth law prevails and the state law is invalid to the extent of the inconsistency.

Accordingly, the Commonwealth can, within the subject matter conferred on it by the constitution, override state laws. As a result, many subjects of Commonwealth power are regulated almost entirely by Commonwealth law (for example, bankruptcy, marriage and divorce, and immigration).

Federal judicature

Chapter III of the constitution (sections 71–80) provides for the establishment of the High Court of Australia. One of the High Court's principal functions is to decide disputes about the meaning of the constitution. For example, it is the High Court which ultimately determines whether an Act passed by the federal parliament is within the legislative powers of the Commonwealth. The power which the High Court has to interpret the constitution means it is a very important body. The High Court is also the final court of appeal within Australia in all other types of cases, even those dealing with purely state matters, such as the interpretation of state criminal laws.

Chapter III also gives the federal parliament power to create other federal courts (for example, the Federal Court and the Family Court), and to vest federal judicial power in such courts and in courts of the states. 'Federal judicial power' is judicial power relating to one or more of the classes of dispute set out in sections 75 and 76 of the constitution.

The court system

In Australia each of the federal and state systems incorporates the three arms of government: legislative, executive and judicial. The High Court of Australia, however, is the final court of appeal in respect of all

matters, whether decided in federal or state jurisdictions, and the federal parliament is empowered under the constitution to invest state courts with federal jurisdiction.

The judiciary

The independence of the judiciary and its separation from the legislative and executive arms of government is regarded as of great importance in Australia and it is taken for granted that judges, in interpreting and applying the law, act independently of the government. In the case of federal judges, their security of tenure is guaranteed by the constitution. In the states and territories, legislation provides security of tenure for judges.

Commonwealth courts

High Court of Australia

The Australian constitution provides that the judicial power of the Commonwealth of Australia is to be vested in a 'Federal Supreme Court, to be called the High Court of Australia' (section 71). The Australian constitution vests two types of jurisdiction in the High Court: original and appellate. Original jurisdiction is conferred in respect of:

- matters arising directly under any treaty;
- suits between states, or between persons suing or being sued on behalf of different states, or between a state and a person suing or being sued on behalf of another state;
- matters in which the Commonwealth of Australia, or a person suing or being sued on behalf of the Commonwealth of Australia, is a party;
- matters between states, or between residents of different states, or between a state and a resident of another state; and
- matters in which a writ of mandamus or prohibition—which concern judicial review of administrative action—is sought against an officer of the federal government or of a federal court. The High Court shares some of its jurisdiction under this section with the Federal Court of Australia.

Section 73 of the constitution confers appellate jurisdiction on the High Court to hear appeals from decisions of the High Court in its original jurisdiction, federal courts, courts exercising federal jurisdiction, and state supreme courts. In considering whether to grant an application for leave to appeal from a judgment, the High Court may have regard to any matters that it considers relevant, but it is required to have regard to whether the application before it:

- involves a question of law that is of public importance, or upon which there are differences of opinion within, or among, different courts; or
- should be considered by the High Court in the interests of the administration of justice.

The High Court is the final court of appeal in Australia.

Federal Court of Australia

The Federal Court of Australia was created by the *Federal Court of Australia Act 1976* (Cth) and began to exercise its jurisdiction on 1 February 1977. The Federal Court sits as required in each state, in the Australian Capital Territory and the Northern Territory. The court has such original jurisdiction as is vested

in it by laws made by the federal parliament including, for example, in relation to matters in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth, in bankruptcy, corporations law, industrial relations, taxation and trade practices law.

The Federal Court of Australia has appellate jurisdiction in relation to the decisions of single judges of the court, decisions of the respective supreme courts of the Australian territories, except the Northern Territory, and certain decisions of state supreme courts when exercising federal jurisdiction.

State and territory courts

Australian state and territory courts have original jurisdiction in all matters brought under state or territory laws, and in matters arising under federal laws, where jurisdiction has been conferred on the courts by the federal parliament. Most criminal matters, whether arising under Commonwealth, state or territory law, are dealt with by state or territory courts.

Each state and inhabited territory, except the Australian Antarctic Territory and the Jervis Bay Territory, has its own independent system of courts consisting of:

- a supreme court:
The supreme courts are the highest state and territory courts and deal with the most important civil litigation and the most serious criminal cases. They also exercise appellate jurisdiction from the lower state courts. A full court of a supreme court can hear appeals from a decision of the supreme court when constituted by a single judge.
- an intermediate court (in most jurisdictions):
The intermediate courts, which are presided over by a single judge, decide the great majority of serious criminal offences where a jury is required to decide the facts of a case. The names given to these courts vary. For example, in Victoria they are known as county courts and in New South Wales they are called district courts.
- local courts of summary jurisdiction—generally known as magistrates' courts:
The courts of summary jurisdiction are presided over by a magistrate and deal with most of the ordinary (summary) offences, such as traffic infringements, minor assaults and street offences. Magistrates also conduct committal proceedings in respect of more serious offences to determine whether there is a *prima facie* case to be determined by a judge and jury, either in an intermediate court or a supreme court. Juries are not used in courts of summary jurisdiction.

Commonwealth criminal justice administration

The Criminal Justice Division of the Commonwealth Attorney-General's Department (<http://www.ag.gov.au>) is responsible for Commonwealth crime prevention initiatives, law enforcement policy, strategic crime assessments, the fraud policy of the Commonwealth, legal and policy advice relating to criminal law and the legal aspects of the Commonwealth criminal justice system, as well as international criminal law issues. In terms of areas of responsibility which relate to organised crime, the following are indicative:

- anti-money laundering;
- assets of crime;
- drug policy;
- e-crime/financial crime/future crime;

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- fraud control; and
 - transnational crime

The division comprises four branches:

- The Community Justice and Safety Branch administers the National Crime Prevention Program (NCP) which funds and promotes policies and projects to prevent and reduce violence and crime in Australian communities. It is also responsible for providing policy advice on the strategic development of Australian law enforcement structures and operations including identity fraud and the development of Commonwealth policy resources to emerging areas of crime.
- The National Law Enforcement Policy Branch is responsible for policy matters relating to the operational law enforcement agencies within the Attorney-General's portfolio and general law enforcement issues; policy advice relating to fraud, sentencing and administration of Commonwealth prisoners, firearms and illicit drugs; secretariat support to the Ministerial Council on the Administration of Justice; and support to Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA).
- The Criminal Law Branch assists ministers with their responsibilities for criminal law reform, including development of the Commonwealth Criminal Code, and review of laws relating to law enforcement powers and safeguards, penalty levels and proceeds of crime and other confiscation provisions. It also examines and advises on all draft legislation which impacts upon Commonwealth criminal law policy.
- The International Crime Branch administers and reviews the laws relating to extradition, mutual assistance in criminal matters; mutual assistance in business regulation; international criminal tribunals; the status of visiting forces; negotiation of bilateral and multilateral treaties on criminal justice issues; matters relating to international law enforcement; and technical assistance to Pacific Island countries.

Law enforcement in Australia

Australia is served by eight police forces: one in each state as well as the two main territories (the Northern Territory Police and the Australian Federal Police, which is responsible for policing the Australian Capital Territory). Various Commonwealth agencies also have a law enforcement function. In June 2002 the total police staffing in Australia was 57,830 (294 per 100,000). There were 45,395 sworn police officers and 12,435 civilian employees.

The principal duties of the police are the prevention and detection of crime, the protection of life and property, and the enforcement of law to maintain peace and good order. With the exception of the Australian Federal Police, police services in Australia are under the control of state/territory governments, but their members perform certain functions on behalf of the Commonwealth government. For example, state police may register aliens and, in conjunction with the Australian Federal Police and other Commonwealth officers, enforce various Commonwealth Acts and regulations.

Commonwealth law enforcement agencies

The law enforcement activities of the Commonwealth are carried out by numerous agencies that fall within two Commonwealth ministerial portfolios (under the Attorney-General and the Minister for Justice and Customs).

Agencies falling within the Attorney-General's portfolio that have particular relevance to organised crime control include:

- Australian Security Intelligence Organisation;
- Director of Public Prosecutions;
- Standing Committee of Attorneys-General;
- National Security Coordination Centre; and
- Emergency Management Australia;

Responsibilities falling within the Attorney-General's portfolio that have particular relevance to organised crime control include:

- international law (including the International Criminal Court);
- national security and counter-terrorism;
- protection of critical infrastructure; and
- telecommunications interception and tracking and listening devices.

Agencies falling within the portfolio of the Minister for Justice and Customs that have particular relevance to organised crime control include:

- Australasian Police Ministers' Council;
- Australian Bureau Of Criminal Intelligence;
- Australian Crime Commission;
- Australian Customs Service, including Coastwatch;
- Australian Federal Police;
- Australian Institute Of Criminology;
- Australian Protective Service, including air security officers;
- Australian Transaction Reports and Analysis Centre;
- Crimtrac;
- Intergovernmental Committee on the ACC; and
- Ministerial Council on Drugs Strategy;

Issues that have particular relevance to organised crime control which fall within the portfolio of the Minister for Justice and Customs include:

- money laundering;
- drugs;
- extradition;
- firearms;

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- fraud;
 - mutual assistance;
 - proceeds of crime;
 - protective security;
 - witness protection; and
 - development of the Model Criminal Code.

Many of the agencies listed above have units within them that have an interest in organised crime, although some (such as the Australian Crime Commission) have primary responsibility for dealing with organised criminal activity. Section 3 of this report describes the operation of the principal agencies, noting their activities in dealing with organised crime where appropriate.

Prosecution agencies in Australia

The prosecution of crime in Australia is undertaken by the Director of Public Prosecutions (DPP) in each state and territory and the Commonwealth, in addition to police prosecutors and private-sector lawyers. The DPP is a specialised statutory office. Prosecution of non-serious street crimes is generally conducted by prosecutors located within police services. More serious matters are dealt with by the DPPs who employ solicitors to prepare cases and barristers to present cases in court on behalf of the Crown. The majority of court work is conducted in-house by DPP lawyers or in-house counsel. However, the DPP briefs counsel from the private Bar if the case requires expertise or resources that are not available in-house. The DPP also often briefs local solicitors or police prosecutors to represent it on mentions and pleas of guilty in matters dealt with in country areas.

Each jurisdiction has a principal office located in capital cities and some large regional centres while the Commonwealth DPP has separate offices in Canberra and each state and territory. Although state and territory DPPs are able to deal with matters involving organised crime, most serious matters involving organised criminal activity (such as financial fraud, drug trafficking and people smuggling) are dealt with by the Commonwealth DPP.

Office of the Commonwealth Director of Public Prosecutions

The Commonwealth DPP was established under the *Director of Public Prosecutions Act 1983* (Cth). The office is headed by a director who is appointed for a term of up to seven years. The Commonwealth DPP is within the portfolio of the Attorney-General, but the office operates independently of the political process. Under section 8 of the DPP Act, the Attorney-General has power to issue guidelines and directions to the DPP.

The primary role of the DPP is to prosecute offences against Commonwealth law and to recover the proceeds of Commonwealth crime. The DPP does not generally prosecute street crimes or crimes against the person. Those matters are normally covered by the criminal laws of the states and the offences are prosecuted by state DPPs. The main cases prosecuted by the Commonwealth DPP involve drug importations and money laundering, offences against corporations law and fraud on the Commonwealth (including tax fraud, medifraud and social security fraud). The remaining element of the DPP's practice involves the prosecution of offences committed against Commonwealth schemes and covers a range of matters which cannot easily be categorised.

The majority of Commonwealth prosecutions, other than the occasional private prosecution, are conducted by the DPP. The remaining cases consist mainly of high-volume matters which, for reasons of convenience, are conducted by other agencies under arrangement with the DPP. State authorities also conduct some Commonwealth prosecutions, again for reasons of convenience. The DPP is also responsible for the conduct of prosecutions for offences against the laws of Jervis Bay and Australia's external territories, other than Norfolk Island.

The DPP is not an investigative agency. It can only prosecute when there has been an investigation by the Australian Federal Police or another agency. However, the DPP provides advice and other assistance during the investigative stage, particularly in large and complex matters. Under current administrative arrangements, a large number of Commonwealth agencies have an investigative role and the DPP receives briefs of evidence from, and provides legal advice to, a wide range of agencies.

All decisions made in the prosecution process are regulated by guidelines set out in the prosecution policy of the Commonwealth. The threshold issue in any criminal case is whether charges should be laid, or continued, against the alleged offender. Under the prosecution policy, there is a two-stage test that must be satisfied:

- there must be sufficient evidence to prosecute the case (which requires not just that there be a *prima facie* case but that there also be reasonable prospects of conviction); and
- it must be clear from the facts of the case, and all the surrounding circumstances, that prosecution would be in the public interest.

It is not the DPP's role to decide whether a person has committed a criminal offence or to press for conviction at all costs. The prosecutor's role is to present all relevant admissible evidence to the jury, or other tribunal of fact, so it can determine, after considering any additional evidence presented by the defence, whether it is satisfied beyond reasonable doubt that the defendant is guilty as charged.

The DPP's functions and powers are found in sections 6 and 9 of the DPP Act and in specific legislation like the *Proceeds of Crime Act 2002* (Cth). The main functions of the director are noted above. The director also has a number of miscellaneous functions including:

- prosecuting indictable offences against state law where, with the consent of the Attorney-General, the director holds an authority to do so under the laws of that state;
- conducting committal proceedings and summary prosecutions for offences against state law where a Commonwealth officer is the informant;
- appearing in extradition proceedings and proceedings under the *Mutual Assistance in Criminal Matters Act 1987* (Cth); and
- applying for superannuation forfeiture orders under Commonwealth law.

The director also has a function under section 6(1)(g) of the DPP Act to recover pecuniary penalties in matters specified in an instrument signed by the Attorney-General. On 3 July 1985 the then Attorney-General signed an instrument under section 6(1)(g) which has general application. The DPP does not normally conduct prosecutions under the *Customs Act 1901* (Cth), except in the case of narcotics offences. The responsibility for prosecuting non-narcotic matters, which are enforceable by quasi-criminal proceedings, rests with the Australian Government Solicitor.

3 Specialised Commonwealth agencies against organised crime

Australian Crime Commission

The Australian Crime Commission, or ACC (<http://www.crimecommission.gov.au>) began operations on 1 January 2003 and replaced three other organisations:

- The National Crime Authority (NCA), whose core functions had been to investigate complex organised crime on a national basis, to collect and analyse intelligence and to share that information among other law enforcement agencies, and to recommend law, policy and administrative reforms. The NCA did not have any prosecutorial function.
- The Australian Bureau of Criminal Intelligence (ABCI), which was one of five national common police services in Australia (the others, which still remain, being the Australian Institute of Police Management, the Australasian Centre for Policing Research, the National Crime Statistics Unit and the National Institute of Forensic Science). The ABCI's key function was to facilitate the exchange of criminal intelligence between Australian law enforcement agencies.
- The Office of Strategic Crime Assessments (OSCA), whose role was to provide the Commonwealth government with policy-relevant strategic assessment of significant emerging trends and threats to Commonwealth law enforcement interests, and to foster intelligence coordination in order to advance law enforcement interests.

The ACC's mission is to enhance Australian law enforcement's capacity to counter serious and organised criminal activity by:

- improving criminal intelligence collection and analysis;
- setting clear national criminal intelligence priorities; and
- conducting intelligence-led investigations of criminal activity of national significance including the conduct and/or coordination of investigative and intelligence task forces as approved by the ACC board.

The functions of the ACC are:

- to collect, correlate, analyse and disseminate information and intelligence on criminal activity and to maintain a national database of that information and intelligence;
- to undertake, when authorised by the board of the ACC, intelligence operations;
- to investigate, when authorised by the board of the ACC, matters relating to federally relevant criminal activity;
- to provide reports to the board of the ACC on the outcomes of those operations or investigations;
- to provide strategic criminal intelligence assessments, and any other criminal information and intelligence, to the board of the ACC; and
- to provide advice to the board of the ACC on national criminal intelligence priorities.

The board of the ACC comprises:

- the commissioner of the Australian Federal Police;
- the secretary of the Attorney General's Department;
- the chief executive officer of the Australian Customs Service;

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- the chairperson of the Australian Securities and Investments Commission;
 - the director-general of security holding office under the *Australian Security Intelligence Organisation Act 1979*;
 - the commissioner or head (however described) of the police force of each state and of the Northern Territory;
 - the chief police officer of the Australian Capital Territory; and
 - the CEO of the ACC.

In addition to its strategic intelligence functions, the ACC currently has nine 'determinations' (that is, responsibilities):

- South East Asian organised crime (special investigation);
- established criminal networks (special investigation);
- firearms trafficking (special investigation);
- money laundering and tax fraud (special investigation);
- Victorian established criminal networks (special investigation);
- amphetamines and other synthetic drugs (special intelligence operation);
- vehicle rebirthing (special intelligence operation);
- identity crime (special intelligence operation); and
- people trafficking for sexual exploitation (special intelligence operation).

Where traditional law enforcement methods are not sufficient to combat sophisticated criminal activity, the ACC has access to special coercive powers to assist in its intelligence operations and investigations. In January 2004, the Minister for Justice and Customs announced¹ some of the ACC's major successes, including the dismantling of well organised criminal syndicates in Australia, South East Asia and Europe and the seizure of 750 kilograms of the precursor drug pseudophedrine.

Australian Customs Service

The Australian Customs Service (<http://www.customs.gov.au>) is responsible for managing the integrity of Australia's borders. It works closely with other government and international agencies, in particular the Attorney-General's Department, Australian Federal Police, the Australian Fisheries Management Authority, the Australian Quarantine and Inspection Service, the Department of Defence, the Department of Immigration and Multicultural and Indigenous Affairs, the Department of Transport and Regional Services and other agencies responsible for Australia's security.

The agency is a national organisation employing 5,029 people in Australia with a central office in Canberra. It has a fleet of ocean-going patrol vessels and contracts two aerial surveillance providers for civil maritime surveillance and response. Interception of illegal drugs is a high priority and sophisticated techniques

¹ 'Crimefighting body reaps good results in first year of operation', 1 January 2004, <http://www.ag.gov.au/www/justiceministerHome.nsf/Web+Pages/CE4FDBC1FD52669DCA256E140005D47D?OpenDocument>

are used to target high-risk aircraft, vessels, cargo, postal items and travellers. This includes intelligence analysis, computer-based analysis and profiling, detector dogs and various other technologies such as container x-rays and ionscans.

During 2002–03, Customs cleared 4.45 million air cargo consignments and 1.58 million sea cargo consignments; processed nearly 17 million people through international airports and seaports; and conducted approximately 4,600 surveillance flights over coastal and offshore areas totalling about 146 million square nautical miles.

Customs is the largest collector of Commonwealth revenue after the Australian Taxation Office. Customs duties, indirect taxes and other revenue for which it is responsible amounted to over \$5 billion in the financial year 2002–03.

Australian Federal Police

The Australian Federal Police (<http://www.afp.gov.au>) was established in 1979 by the *Australian Federal Police Act 1979* (Cth). The AFP enforces Commonwealth criminal law, and protects Commonwealth and national interests from crime in Australia and overseas. The AFP is Australia's international law enforcement and policing representative, and the chief source of advice to the Australian government on policing issues. Law enforcement functions performed by the AFP include, but are not restricted to, enforcing laws relating to drug trafficking, fraud against government revenue and expenditure, other forms of organised crime such as money laundering and people smuggling, and politically sensitive matters including corruption. The provision of witness protection services and close personal protection to VIPs are also responsibilities of the AFP, as is the provision of community policing services to the Australian Capital Territory. In July 2002 the Australian Protective Service transferred from the Attorney-General's Department to the AFP, creating a new operating division (guarding and security services). In April 2003 a new portfolio of counter-terrorism was also created within the AFP.

Section 37(2) of the AFP Act empowers the Minister for Justice and Customs to direct policy within the AFP. Strategic priorities may arise, *inter alia*, under the Commonwealth fraud control guidelines which assign specific responsibilities to the AFP for the investigation of serious or complex fraud. The current ministerial direction focuses the AFP on:

- countering and otherwise investigating illicit drug trafficking, organised crime, serious fraud against the Commonwealth, money laundering and the interception of assets involved in or derived from these activities;
- investigating special references and performing special tasks from the government;
- providing an effective contribution to the implementation of the government's 'Tough on drugs' strategy; and
- continuing to develop a capacity to deal with new forms of criminal activity requiring special attention to be directed at the investigation of economic crime, in all its forms, transnational crime and crime involving information technology and communications (including electronic commerce).

A supplementary ministerial direction issued on 27 September 2000 requires the AFP to give special emphasis to:

- countering and otherwise investigating organised people smuggling; and
- providing an effective contribution to the whole-of-government approach to unauthorised arrivals.

In addition to the functions specified in those ministerial directions, the government also expects the AFP to:

- provide counter-terrorism capacity, including close personal protection and security intelligence;
- provide guarding and security services for some diplomatic and consular missions, parliamentary offices and some designated government establishments; and
- provide counter-terrorism first response capacity at Australian airports in relation to the aviation industry.

In its mission to provide dynamic and effective law enforcement to the people of Australia, the AFP today works in partnership with state and territory police services, government agencies and international law enforcement agencies. In particular, the AFP has a strategic alliance with the ACC and close links with AUSTRAC and Customs. The AFP also provides administrative support to the Australian Bureau of Criminal Intelligence, the Australasian Centre for Policing Research and the Australian Institute of Police Management. Further, the AFP provides the Australian bureau for Interpol. This bureau represents all Australian police services and provides a direct link with the 181 member countries of Interpol.

AFP's international services

The AFP supports the Australian government's international responsibilities through the provision of a range of law enforcement services, including:

- facilitation of an effective AFP contribution and response to international law enforcement efforts; and
- contribution to Australia's international peacekeeping/peace monitoring commitments.

The AFP has responded proactively to the changing global criminal environment, and has increased the number of AFP personnel deployed in response to terrorist and other transnational criminal activity, especially within the Asia Pacific region. To date, the AFP has deployed terrorist response teams to Bali, Indonesia, the Philippines and Saudi Arabia. Other AFP activities overseas have included:

- memoranda of understanding with Indonesian and Cambodian police for ongoing law enforcement against transnational criminal activity;
- involvement in the Pacific Transnational Crime Coordination Centre which was opened in Suva on 15 June 2004;
- establishment of an international deployment group² to strengthen Australia's ability to fight terrorism, transnational organised crime and to contribute to regional peacekeeping missions; and
- the signing of a protocol with Philippines law enforcement authorities to launch a \$3.65 million project to assist that country to build its counter-terrorism capacity.³

2 'Australia boosts regional law enforcement capacity', 2 February 2004, <http://www.ag.gov.au/www/justiceministerHome.nsf/Web+Pages/C0E1747CE186A483CA256E2E0015BBC1?OpenDocument>

3 'Australian Federal Police helping develop counter-terrorism capacity in the Philippines', Australian Federal Police media release, <http://www.afp.gov.au/page.asp?ref=/Media/2004/2004AFPCounterTerrorism.xml>

On 5 February 2004 the Australian government announced⁴ that it would contribute \$38.3 million over five years to the Indonesia Centre for Law Enforcement Cooperation. The centre is due to become operational by the end of 2004 and will provide training and advice on transnational crime matters in general and in counter-terrorism in particular. It will develop complementary relations with other regional bodies such as the South East Asian Regional Center for Counter-Terrorism in Kuala Lumpur and the International Law Enforcement Academy in Bangkok.

The Australian High Tech Crime Centre

Electronic crime is a particularly complex and challenging issue. The Australian police commissioners' conference identified in its 2001 electronic crime strategy the need to establish a national centre to coordinate the efforts of Australian law enforcement in combating serious crime involving technology. The Australasian police ministers endorsed this move in November 2002, and the Australian High Tech Crime Centre, or AHTCC (<http://www.ahtcc.gov.au>) was created. The centre includes representatives and funding from all Australian state and territory police forces.

The role of the AHTCC is to:

- provide a national coordinated approach to combating serious, complex and multi-jurisdictional high tech crimes;
- assist in improving the capacity of all jurisdictions to deal with high tech crime; and
- support efforts to protect the National Information Infrastructure. (The NII comprises the information networks of essential national services such as telecommunications, banking and finance, transport and distribution, energy and utilities, information services and others such as defence and emergency management.)

The AHTCC fulfils this role through the following functions:

- coordination of high tech crime matters between Australian law enforcement agencies, federal government agencies and international agencies;
- investigation of matters either by the AHTCC or through cooperation with, or referral to, another agency;
- intelligence services that contribute to a better understanding of the high tech crime environment for the AHTCC, partner agencies, and the wider community through alerts and advisories;
- liaison with government agencies, industry groups, businesses and other organisations on high tech crime matters, including technical, investigative, business and policy; and
- knowledge of high tech crime issues, such as preventative measures, best practice investigative tools and techniques, expert advice, training and education.

⁴ Indonesia Centre for Law Enforcement Cooperation, media release FA 17 by the hon. Alexander Downer MP, Minister for Foreign Affairs, 5 February 2004, http://www.foreignminister.gov.au/releases/2004/fa017_04.html

Australian Institute of Criminology

The Australian Institute of Criminology (<http://www.aic.gov.au>) is a Commonwealth statutory authority established in 1973 under the *Criminology Research Act 1971* (Cth). The director reports to the Minister for Justice and Customs and to a board of management comprising distinguished criminal justice practitioners from around Australia. Key stakeholders include Commonwealth government ministers and parliamentarians, and Commonwealth departments and agencies. Other stakeholders include state and territory governments and agencies, criminal justice practitioners, the criminological research community and community organisations.

The AIC is the national focus for the study of crime and criminal justice in Australia and for the dissemination of criminal justice information. It draws on information supplied to it by a wide variety of sources and its policy advice is objective and independent. The AIC's Global, Economic and Electronic Crime Program, one of four in the research division, provides information on and analysis of the causes, prevention and control of fraud, white-collar crime, organised crime, computer and telecommunications-related crime and other complex criminal activity, including emerging criminal threats, and transnational criminal activity.

Australian Security Intelligence Organisation

ASIO (<http://www.asio.gov.au>) is Australia's security service. Its functions are set out in the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act) (Cth). ASIO's main role is to gather information and produce intelligence that will enable it to warn the government about activities or situations that might endanger Australia's national security. The ASIO Act defines 'security' as the protection of Australia and its people from espionage, sabotage, politically motivated violence, the promotion of communal violence, attacks on Australia's defence system, and acts of foreign interference. The definition also extends to the carrying out of Australia's responsibilities to any foreign country in relation to such matters. ASIO focuses on terrorists, people who may act violently for political reasons, and people who may clandestinely obtain sensitive government information or otherwise harm Australia's interests in order to further their own causes or the interests of foreign governments. ASIO does not investigate lawful protest activity nor does it investigate purely criminal activities.

Other ASIO functions include providing security assessments, protective security advice and collecting foreign intelligence in Australia. In providing security assessments ASIO advises government agencies on the relevant backgrounds of people applying for national security clearances or visas to enter or stay in Australia. Protective security advice is given by ASIO to government agencies seeking cost-effective ways to protect their assets. Foreign intelligence is information on the capabilities, intentions and activities of foreign powers.

Australian Transaction Reports and Analysis Centre

AUSTRAC (<http://www.austrac.gov.au>) is Australia's anti-money laundering regulator and specialist financial intelligence unit. In its regulatory role, it oversees compliance with the reporting requirements of the *Financial Transaction Reports Act 1988* (FTR Act) (Cth) by a wide range of financial services providers, the gaming industry and others. In its intelligence role, it provides financial transaction reports information to Commonwealth, state and territory law enforcement and revenue agencies. AUSTRAC collects, retains, compiles, analyses and disseminates FTR information. It also issues guidelines and circulars to those entities required to report cash transactions, called 'cash dealers', about their obligations under the FTR Act and regulations.

AUSTRAC's mission is to make a valued contribution towards a financial environment hostile to money laundering, major crime and tax evasion. This is done by working to ensure that financial service providers and other specified groups (including cash dealers) identify their customers and so reduce the occurrence of false name bank and other accounts. Through its compilation and analysis functions, AUSTRAC monitors and identifies money laundering related to serious crime and major tax evasion. This financial intelligence is provided to the Australian Taxation Office (ATO) and Commonwealth, state and territory law enforcement, security and revenue agencies.

AUSTRAC provides the ATO and specified law enforcement, security and revenue agencies with both general and specific access to the FTR information it collects. The general access, governed by memoranda of understanding, is by way of controlled online access to the data and, where appropriate, by extracts of parts of the data holdings. This allows partner agencies to add AUSTRAC's financial intelligence on particular matters to their intelligence, so giving them a better understanding of the activities being examined. The specific access includes referrals of information initiated by AUSTRAC or by the cash dealers that suggest new instances of money laundering. AUSTRAC has powers to take court action for injunctive remedies to secure compliance with the requirements of the FTR Act. Criminal sanctions also apply for non-compliance.

CrimTrac

The CrimTrac agency (<http://www.crimtrac.gov.au>) was established on 1 July 2000 as a major national policing initiative for the 21st century. It allows Australian police services to take advantage of the dramatic opportunities opened up by recent advances in forensic science, information technology and communications. CrimTrac shares a vision of becoming a regional and world leader in the development, implementation and management of advanced information systems that assist police nationally in their law enforcement and crime prevention roles.

The mission of CrimTrac is to contribute to enhanced community safety by delivering and maintaining high quality, timely and cost-effective:

- national policing information services;
- advanced national police investigation tools; and
- national criminal history record checks for accredited agencies.

Together, these services, tools and checks assist police to identify and locate more suspects, offenders, objects and persons of interest more rapidly and reliably using biometrics and/or operational policing information. They also assist in clearing the innocent and in preventing undesirable persons from holding positions of trust, particularly within vulnerable sections of the Australian community.

To provide this leading edge technology in the fight against crime, the federal government has committed \$50 million over three years to CrimTrac. The agency also has funding support from all of Australia's police services.

Department of Foreign Affairs and Trade

The Department of Foreign Affairs and Trade (<http://www.dfat.gov.au>) is responsible for the protection and advancement of Australia's international interests through contributions to international security,

national economic and trade performance, and global cooperation. It also provides consular and passport services to Australian citizens. The department's goals are to:

- enhance Australia's security;
- contribute to growth in Australia's economy, employment and standard of living;
- assist Australian travellers and Australians overseas;
- strengthen global cooperation in ways that advance Australia's interests;
- foster public understanding of Australia's foreign and trade policy; and
- project a positive image of Australia internationally.

Its specific responsibilities of relevance to the control of organised crime relate to taking legal action against foreign criminals directing transnational activities which have an impact on Australia. The key initiative in this regard concerns Australia's involvement in the extradition of offenders from and to other countries.

Department of Immigration and Multicultural and Indigenous Affairs

DIMIA (<http://www.immi.gov.au/>) is responsible for preventing unlawful entry of persons into Australia and for implementing government immigration policy which aims to deter people smugglers from targeting Australia as a destination country. The responsibilities of the department of relevance to organised crime principally relate to border immigration control. It administers programs to combat and deter people smuggling activities, migration fraud (for example, contrived marriages and illegal workers/employment rackets), migration agent fraud, and citizenship offences. The department also conducts proactive negotiation with overseas governments, international organisations and other agencies to stem unauthorised entries to Australia.

The border control and compliance division (BCC) is responsible for maintaining the integrity of Australia's borders by ensuring that only those foreign nationals who have authority—a valid visa—are allowed to enter and stay in Australia. It is also responsible for action against people who try to enter Australia unlawfully, criminals who facilitate the unlawful entry of people into Australia and those persons who fail to comply with the terms and conditions of their visas. Action that DIMIA takes against such people ranges from prosecution in an Australian court to administrative outcomes such as the cancellation of a visa.

BCC works closely with law enforcement and other agencies with an interest in the illegal movement of people. In addition to a dedicated people smuggling investigation unit, the department forms part of a joint agency people smuggling investigations team with the Australian Federal Police. The team's objective is to disrupt and dismantle organised crime elements involved in illegal immigration through an intelligence-driven process with targets identified both in Australia and offshore.

The unauthorised arrivals and detention division was created to enhance the department's capacity to administer detention activities, to provide comprehensive responses to external scrutiny and to further develop relations with key stakeholders. Arrangements for the reception of unauthorised boat arrivals and organisation of the removal of individuals who have exhausted all avenues of appeal and have no entitlement to remain in Australia are other important activities of the division.

4 Specialised state and territory agencies against organised crime

New South Wales

New South Wales Independent Commission Against Corruption

The Independent Commission Against Corruption (<http://www.icac.nsw.gov.au>) was created by the *ICAC Act 1988* (NSW). Its role is to expose and minimise corruption in the NSW public sector. It does this by conducting investigations and hearings, providing corruption prevention advice and educating both the public and the private sector. Its aims are to protect the public interest, prevent breaches of public trust and guide the conduct of public officials in NSW. ICAC is independent of the government of the day, and is accountable to the people of New South Wales through the state parliament.

New South Wales Crime Commission

The New South Wales Crime Commission (<http://www.crimecommission.nsw.gov.au/>) was established under the *New South Wales Crime Commission Act 1985*. The commissioner is responsible for the management of the commission under the oversight of a management committee (comprising the minister for police, the commissioner for police, a member of the Australian Crime Commission, and the commissioner). The principal functions of the commission are set out in section 6(1) of its Act:

- to investigate matters relating to relevant criminal activity referred to the commission by the management committee for investigation;
- to assemble evidence that would be admissible in the prosecution of a person for a relevant offence arising out of any such matters and to furnish any such evidence to the Director of Public Prosecutions;
- to review a police inquiry into matters relating to any criminal activity (being an inquiry referred for review to the commission by the management committee) and to furnish its findings to the committee together with any recommendation as to action the commission considers should be taken in relation to those findings;
- to furnish in accordance with the Act reports relating to illegal drug trafficking and organised and other crime, which include, where appropriate, recommendations for changes in the laws of the state; and
- to disseminate investigatory, technological and analytical expertise to such persons or bodies as the commission thinks fit.

The commission also furnishes reports relating to crime and disseminates intelligence and investigatory, technological and analytical expertise. The commission has special investigative powers which allow it to summon a person to a hearing to answer questions, and/or to require the production of documents and things. Usual privileges, such as the privilege against self-incrimination, are not available to persons summoned to appear before the commission (s 18B(1)). During the financial year 2002–03, the Commission issued 185 summonses (under section 16 of its Act), 1,538 notices (section 17), 24 warrants, including renewals, under the *Listening Devices Act 1984* (NSW) and 803 warrants under the *Telecommunications (Interception) Act 1979* (Cth). Twenty-four controlled operations were also approved under the *Law Enforcement (Controlled Operations) Act 1987* (Cth).

The commission has a range of longstanding ‘references’ to investigate drug trafficking and organised crime. During 2002–03, the commission received nine new references, while four existing references

were revised and reissued. Much of the work of the commission is done in conjunction with other agencies such as state and federal police. During 2002–03, police acting on commission references arrested 435 persons and laid 1,815 charges.

The commission also confiscates the assets of people involved in serious criminal activity under the *Criminal Assets Recovery Act 1990* (NSW). It does this by targeting persons suspected of being involved in criminal activities and obtaining evidence for prosecution of these persons and/or for civil forfeiture of their assets. The commission is able to obtain civil-based confiscation orders and proceeds assessment orders, even where a criminal conviction has not been obtained. This distinguishes the commission from a number of other agencies with confiscation powers in Australia. In 2002–03, the commission undertook the following confiscation activities:

- 105 restraining orders involving \$26,296,087;
- 80 assets forfeiture orders involving \$12,961,349; and
- 44 proceeds assessment orders involving \$3,730,787.

Since 1 July 1990, 1,302 confiscation orders have been made.

New South Wales Police

New South Wales Police (<http://www.police.nsw.gov.au/main/default.cfm>) is the oldest and largest police organisation in Australia and one of the largest in the English-speaking world. As at December 2003, it had a total strength of 15,168 employees including 13,307 sworn police officers serving a population of seven million in the 801,600 square kilometres of the state of New South Wales.

Following a degree of restructuring in 2002, NSW Police reduced the number of region commands from 11 to five. The criminal investigators, represented by crime agencies and the information and intelligence centre, were amalgamated to form the state crime command. The primary purpose of this regrouping was to take advantage of the benefits present in having criminal intelligence and major investigations more directly linked and in having a single line of responsibility.

The state crime command comprises nine squads:

- the robbery and serious crime squad investigates armed hold-up offences, bombing, extortion, kidnapping, product contamination and politically motivated violence;
- the drug squad investigates the major production and distribution of illegal and illicit drugs;
- the gangs squad focus is on gangs and organised crime networks, including outlaw motorcycle gangs;
- the motor vehicle theft/rebirthing and property crime squad concentrates on organised motor vehicle theft, rebirthing, property crime and arson;
- the child protection crime squad is structured to support local area commands by investigating and providing specialist advice relating to child sexual assault and child abuse. It works in close partnership with the Department of Community Services and the Department of Health. It also looks after the Child Protection Register, which is a database of known paedophiles. It investigates serial sexual assaults;

- the homicide crime squad has the primary responsibility for homicide investigations, and also incorporates the coroners' support unit, which investigates coronial matters on behalf of the state coroner;
- the fraud crime squad provides expert advice and investigates complex fraud-related matters and 'e-crime'; assets confiscation is also coordinated through this squad;
- the firearms and regulated industries crime squad investigates firearms trafficking and organised crime in the gaming, liquor, registered club, security and casino industries; and
- the South East Asian crime squad investigates South East Asian organised crime and will continue to work closely with other agencies including the joint Asian crime group, Australian Federal Police, Australian Customs Services and other state police forces.

These squads in turn are overseen, advised and assisted by the operations coordination, investigations support, intelligence coordination and business management units.

When a case merits full State Crime Command investigation a dedicated strike force is convened and allocated to one of four programs.

- Organised crime (South East Asian)—this program covers a range of criminal activities including the traffic in narcotics (principally heroin) imported from South East Asia and associated gang activities. It also covers extortion for protection and Asian gang activities. South East Asia covers China (including Hong Kong), Singapore, Indonesia, Cambodia, Laos, Malaysia, Thailand and Vietnam.
- Organised crime (east coast)—this program covers established criminal networks concentrated in Sydney. These networks are loosely structured and their activities range from murder and armed robbery to money laundering and protection rackets.
- Organised crime (violence and major offenders)—this program covers a range of criminal activities including extortion, kidnapping, terrorist offences, bombings, serial armed hold-ups, large property robberies, recidivist and violent offenders.
- Organised crime (drugs trafficking)—this program covers the organised cultivation of and traffic in marijuana, the manufacture of and traffic in amphetamines and the traffic in cocaine and designer drugs. It also deals with activities such as chemical diversion of illicit drug manufacture, cannabis plantation eradication and the detection of hydroponic crops. The program is designed to provide intelligence assessments, identification of appropriate strike force operations, liaison, support, education and training. It is NSW Police's primary response to chemical seizures and clandestine laboratories, providing specialist equipment and services relating to personal safety.

NSW Police Integrity Commission

The New South Wales Police Integrity Commission (<http://www.pic.nsw.gov.au/>) is an independent authority established by the *Police Integrity Commission Act 1996* (NSW) on the recommendation of the Royal Commission into the New South Wales Police Service. Its principal functions are to prevent, detect and investigate police misconduct, and as far as practicable it is required by law to turn its attention to serious police misconduct. Where organised criminal activity involves police corruption or criminal activity involving police officers, the Police Integrity Commission may have jurisdiction to act.

Queensland

Crime and Misconduct Commission

The Crime and Misconduct Commission (<http://www.cmc.qld.gov.au/>) was formed on 1 January 2002 with the merger of the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC). The Crime and Misconduct Commission is established under the *Crime and Misconduct Act 2001* (Qld) and works to:

- reduce the incidence of major crime, including organised crime and paedophilia; and
- reduce misconduct and promote high standards of integrity in the Queensland public sector.

In its fight against major crime, including organised crime and criminal paedophilia, the CMC conducts specialist, proactive investigations, projects and other law enforcement tasks. These include target identification and development, intelligence analysis, investigative hearings, research activities, the gathering of evidence for prosecution action and the confiscation of proceeds of organised criminal activity.

The CMC's crime function operates by way of references given to it by the Crime Reference Committee. This committee comprises the CMC chairperson and the assistant commissioner (crime), the commissioner of the Queensland Police Service, chairperson of the Australian Crime Commission, commissioner for children and young people and two community representatives.

These references allow the CMC to investigate unsolved serious crimes using special investigative powers where conventional police methods have been ineffective. This is achieved through the use of task forces of officers from the Queensland Police Service.

The CMC has a range of special powers to enable it to perform its statutory investigative function effectively and to efficiently enhance law enforcement outcomes in Queensland. The use of such special powers is integral to its ability to penetrate intractable organised crime groups and paedophile networks and is vital to enabling the CMC to progress investigations into serious major crime. The power to conduct hearings, for example, enables the CMC to gather evidence of offences, which may not otherwise be obtained using powers ordinarily available to police officers. Apart from its major partner, the Queensland Police Service, the CMC works cooperatively with the Australian Crime Commission, the Australian Federal Police, the Australian Customs Service and other agencies at both the state and Commonwealth level.

Queensland Police Service

Queensland has an area of 1,732,700 square kilometres (including islands), equivalent to more than seven times the area of the United Kingdom, three times the area of France or one-fifth of the area the USA. There are 9,800 kilometres of coastline (including islands) or 7,400 kilometres of coastline (excluding islands), representing 25 per cent of Australia's land mass. The state is divided into eight police regions and 29 districts, with 438 police stations serving Queensland's population of almost four million. The Queensland Police Service (<http://www.police.qld.gov.au>) was established in 1864 pursuant to the *Police Act 1863* (Qld).

The service now consists of some 8,434 police officers and 3,257 staff members operating under the legislative framework established by the *Police Service Administration Act 1990* (Qld) and the *Police Powers and Responsibilities Act 2000* (Qld). The functions of the service, outlined in section 2.3 of the *Police Service Administration Act 1990*, are to preserve peace and good order, protect the community,

prevent crime, detect offenders, uphold the law, ensure the fair and efficient administration of law and provide services in emergency situations.

While officers performing general duties provide the service's initial response to incidents of crime, more detailed investigations of offences, or groups of offences are referred to specialists in criminal investigation. The types of criminal offences that are investigated include murder, extortion, rape, drug trafficking, large-scale fraud, money laundering, armed robbery and paedophilia. During the financial year 2002–03, 24 per cent (\$226 million) of Queensland Police Service's resources were devoted to combating organised and major crime.

As organised/major crime frequently crosses jurisdictional boundaries, it is essential that the service work with local, national and international agencies to ensure a coordinated response to such activities. Consequently, investigations are often undertaken in conjunction with other law enforcement agencies such as the Australian Crime Commission, Queensland Crime and Misconduct Commission and the Australian Federal Police.

State crime operations command

State crime operations command comprises the crime operations branch and the Bureau of Criminal Intelligence Queensland. The crime operations branch conducts investigations which cross regional, interstate or international boundaries into major and organised crime, which is beyond the capacity of the regions, and crimes which are serial or notable in nature. The crime operations branch supports regional police in identifying, investigating and suppressing criminal activity and criminal networks. The Bureau of Criminal Intelligence Queensland coordinates the intelligence function through, *inter alia*, identification of emerging crime trends and the formulation of appropriate responses.

- The state drug investigative group adopts a multi-agency approach to the targeting of drug trafficking. The group is also involved in the reduction of the availability of precursor chemicals used in the manufacture of amphetamines.
- The major fraud investigation group conducts and assists investigations into major and serious fraud, arson, the forfeiture of assets under the *Criminal Proceeds Confiscation Act 2002* (Qld), proceeds of crime and computer-related crime. It initiated the launch of the Queensland Charter of the International Association of Financial Crime Investigators. The formation of this group has resulted in enhanced information-sharing with government, financial, retail and commercial sectors on current fraud trends and prevention strategies.
- The property crime investigation group investigates major and organised property-related crime. The service retains a computer database (stolen property investigation and recovery system, or SPIRS) which contains details of property reported stolen throughout Queensland and pawnbroker and second-hand dealer transactions.
- The prostitution enforcement task force has been created to police issues associated with recent legislative changes in the area of prostitution. The task force is part of a network established with a number of agencies including the Prostitution Licensing Authority. It conducts probity investigations on brothel applicants and assists the authority with compliance checks of the state's 10 licensed brothels.
- The sexual crimes investigation unit operates in partnership with child health and welfare professionals from other government agencies to address offences relating to child abuse, serial sex offences and offenders, organised paedophilia, institutionalised abuse and child exploitation. It also targets internet child pornography.

- The state drug investigation group investigates major and organised drug-related offences through covert and overt means. Investigative teams within the group focus on specific types of drug-related crime including large-scale illicit cannabis production and synthetic drug manufacture. Recently, the group has worked with the Queensland amphetamine strategy committee and prescription drug abuse and fraud working group to assist in reducing the availability of precursor chemicals used in the manufacture of amphetamines.
- The organised crime investigation group was restructured in February 2001 to include three units: armed robbery, auto theft and major crime. The group has also developed a problem-oriented and partnership policing strategy to address product contamination and extortion issues in conjunction with external stakeholders.

Bureau of Criminal Intelligence Queensland

The Bureau of Criminal Intelligence undertakes strategic, tactical and operational functions in support of proactive and reactive police investigations and operations. Strategic intelligence assessments, crime trend analyses and mapping to identify issues of strategic significance aid in the investigation of crime and the prioritisation of operational resources. The bureau also provides expert support in establishing, coordinating and directing intelligence operations in relation to major incident investigations and major event operations throughout the state. The bureau's violent crime analysis unit has completed a 'roll-out' of the 'ViCLAS' database across the state. This computer-based system can assist investigators in tracking violent criminals within and across jurisdictional boundaries. In addition, it facilitates the exchange of information between jurisdictions about serious and/or violent offenders. Recently, it has developed a comprehensive crime trend analysis capability in respect of a number of illicit activities including organised crime property theft, and drugs and arms trafficking.

- The security intelligence branch is responsible for the coordination of intelligence about politically motivated violence, and the coordination and provision of protective security for dignitaries and major events. The branch is also responsible for the coordination of the state's protective security responsibilities under national and state anti-terrorism plans.
- The strategic intelligence development board sets the direction for the development and maintenance of intelligence services and capabilities within the Queensland Police Service. The Australian Bureau of Criminal Intelligence participates on the board, providing advice on national intelligence directions and priorities.
- The computer crime investigation unit is responsible for investigating offences such as fraud and hacking using computers.

Regional organised and major crime activities

Each of the eight police regions has dedicated specialist investigators deployed to respond to major and organised crime. These officers are supported by local intelligence officers, scenes of crime officers and general duty and traffic officers as required. Additionally, the northern and far northern regions have dedicated drug investigation squads. The far northern region conducted an operation that located 20kg of cannabis sativa, proceeds of crime valued at \$450,000 at the residence of one offender and led to the charging of a further 10 offenders with over 100 offences involving the trafficking and possession of cannabis sativa. At Gympie in the north coast region, detectives (in conjunction with state crime operations command) seized 1,600 cannabis sativa plants with a street value of \$38 million.

Victoria

Victoria Police

Victoria Police (<http://www.police.vic.gov.au>) was formally established on 3 January 1853. At present, only about 20 per cent of police work is directly related to fighting crime. The larger part of its work relates to general policing and assisting the community. Victoria Police is a large organisation employing over 12,800 people, including police officers, public servants and protective security officers, serving a population in excess of 4.6 million. With 328 police stations and other facilities, Victoria Police provides support to the community 24 hours a day, 365 days of the year. Of relevance to the control of organised crime is the crime department which employs specialist investigative skills to undertake major proactive and reactive inquiries into serious crimes and criminal activity, supported by technical, intelligence and forensic services. The Crime Department is organised into five divisions:

1. Organised crime investigation division

The organised crime investigation division comprises:

- **Tactical response squad**
The tactical response squad investigates offences of kidnapping, blackmail, extortion, product contamination and major commercial burglaries which exceed \$100,000. It can also investigate other offences that are beyond the resources of other criminal investigation units within the force.
- **Organised crime squad**
This squad focuses on the criminal activities of individuals and significant organised groups involved in crime. The squad is responsible for major organised auto thefts, gaming, casino, racing and vice policing. In April 2003, organised crime squad members (assisted by asset recovery squad members) recovered vehicles worth \$100,000 and several thousand dollars in cash.
- **Organised motor vehicle theft squad**
The organised motor vehicle theft squad, complemented by vehicle theft task groups in the state's five police regions, targets organised and opportunistic car theft.

2. Violent crime investigation division

The violent crime investigation division investigates homicides, missing persons, sexual crimes and arson:

- The homicide squad responds to all suspicious deaths, including deaths in police custody and fatal incidents resulting from police and public contact. The squad is also responsible for missing persons where there are suspicious circumstances.
- The sexual crimes squad is responsible for monitoring the investigation of all reported sexual offences within Victoria and, where appropriate, accepting responsibility for investigation. It investigates networked groups or serial offenders responsible for the sexual assault of children while proactively investigating and prosecuting identified recidivist sex offenders. It also provides specialist advice and assistance to external agencies and maintains an intelligence database of individuals or organised groups involved in child pornography, prostitution and sexual assault.
- The arson squad specialises in the investigation of serious fires and bombings or where serious injury is likely to, or does, cause death. The squad also conducts investigations on the request of the state coroner.

3. *Serious crime investigation division*

The serious crime investigation division investigates four main areas.

- The armed offenders squad is responsible for specialist investigations into armed offences that have a high public interest. The squad liaises closely with a number of industry groups and specialised task forces.
- The casino squad is responsible for offences committed on the gaming floor, such as international cheating, corruption by staff, attempted money laundering and using counterfeit gambling chips.
- The Asian squad assists in the investigations of organised crime in the Asian community and provides operational support and assistance to the crime squads and local police where Asian persons are involved as victims, offenders or witnesses. A focal point of the squad's work is currently upon armed robberies, shootings and affrays involving Asian groups.
- The prison squad was reformed in January 2003 and is concerned with offences committed within the corrections system, for example, escapes and corruption. As well as prisons the squad is responsible for custody centres, and cells with county and supreme courts.

4. *Major drug investigation division*

The major drug investigation division investigates the manufacture, cultivation, trafficking and distribution of illicit drugs such as heroin, cocaine, amphetamines, ecstasy, LSD and cannabis. It comprises two investigation squads and a compliance procedures and administration unit.

5. *Major fraud investigation division*

The major fraud investigation division includes an initial action squad, three investigation squads, a computer crime squad and a criminal proceeds squad.

- The initial action squad is responsible for assessing fraud cases for their seriousness and complexity and either allocating the investigation to one of the three investigation squads or passing the matter to other organisations where the nature of the fraud makes it appropriate to do so. The three investigation squads do not have respective responsibility for specific types or volume of fraud but are interdependent.
- The computer crime squad is concerned with those crimes that utilise computer technology. Following the passage of the *Crimes (Property Damage and Computer Crimes) Act 2003*, the squad will also become responsible for offences relating to the hacking of computer systems and the damaging of data.
- The criminal proceeds squad is responsible for tracing and seizing criminal assets.

The five divisions in Victoria Police's crime department are supported by the strategic directions unit which covers crime audit and professional standards, continuous improvement, exhibit management and training and development.

Western Australia

Western Australia Police Service

The Western Australia Police Service (<http://www.police.wa.gov.au>) is responsible for policing the largest single police jurisdiction in the world, an area covering 2.5 million square kilometres. Its 5,623 employees include 3,889 sworn police officers providing services to a population of 1.9 million, through a structure comprising three regions, 14 districts and 157 police stations. The service is funded by the state government. The crime investigation and intelligence services portfolio is responsible for investigating commercial crime, e-crime, forensics, major crime and organised crime.

1. Commercial crime division

The commercial crime division seeks to provide a quality service in the investigation and prevention of major fraud, stock theft, gold theft, diamond and pearl theft, and computer crime. It investigates serious allegations of criminal activity in business related transactions.

- The computer crime unit provides specialist services in the analysis and reporting of the use of computers to commit criminal offences. Investigators are specially trained to identify, analyse and capture information stored on computers which may indicate criminal activity and provide expert testimony in court.
- The gold stealing detection unit is located in Kalgoorlie, and situated close to one of the largest gold ore producing sites in Western Australia. The unit investigates criminal activity and allegations at all stages of the gold production process. Investigators work closely with and are supported by industry partners. The unit investigates all gold production sites and related industries within Western Australia and closely monitors the movement of gold from industry to point of sale.
- Major fraud investigation is one of the largest specialised investigation units within the crime investigation support portfolio. There is a mixture of specially trained detectives, solicitors, accountants and crime analysts on staff. The operational objective of this unit is to investigate and prevent white-collar crime.
- The public sector investigation unit investigates allegations of criminal conduct by public officers in connection with their work or workplace. The main types of criminal activity investigated are bribery, corruption, theft by public officers, fraud, disclosing official secrets and unlawful operation of computer systems. The unit provides investigation outcome reports to the Anti-Corruption Commission to comply with the *Anti-Corruption Commission Act 1988*.
- The special commodity investigation unit replaces the former diamond and pearl investigation unit and focuses largely upon the growing diamond-producing industry in Western Australia but also monitors activities associated with other precious materials and artifacts. The unit investigates criminal activity and allegations at all stages of the diamond recovery and trade process and works closely with the diamond industry.
- The stock investigation unit investigates all offences relating to the meat, livestock and agricultural industries throughout Western Australia, and enforces the *Stock (Identification and Movement) Act 1970* (WA). The unit provides support to police statewide to investigate relevant offences.

2. E-crime division

WA Police recognise that e-crime facilitates the commission of many anonymous crimes. The e-crime division is responsible for investigating a range of computer-related crimes including theft of telecommunications services, the use of communications to further criminal conspiracies, telecommunications piracy, dissemination of offensive material, electronic money laundering and tax evasion, electronic vandalism and terrorism, sales investment and fraud, illegal interception of communications and, finally, interception and diversion of transactions via electronic funds transfer systems.

3. Forensics division

The forensic division incorporates the functions of six primary units. It provides services relating to ballistics, crime scenes, document examination, fingerprinting, forensic surveying and imaging (includes police artists).

4. Major crime division

The major crime division provides expert service and support in the resolution of major crime in Western Australia. Among other internal and district support services, the division incorporates the functions of six primary investigation units covering arson, child abuse, major crimes, major incidents, missing persons and prisons.

- The child abuse investigation unit has a major role in investigation of organised paedophilia and transnational crime groups involved in the organised manufacture and distribution of child pornography. It investigates, *inter alia*, paedophile offenders (including multiple offender situations, unknown offenders, paedophile networks, and organised crime groups involved in the manufacture and distribution of child pornography) and offences pursuant to the *Crimes (Child Sex Tourism) Amendment Act 1994* (Cth) in conjunction with other agencies. The unit incorporates a tactical intelligence unit, which focuses on the proactive investigation of organised crime groups involved in paedophilia, and the manufacturing and distribution of child pornography. It also operates a covert facility to identify child pornography and paedophilia on a national and transnational level.
- The major crime investigation unit conducts, manages and coordinates the investigation and resolution of all major crime statewide, including providing consultation and support in the investigation of homicides and suspicious deaths, and coordinating and supporting investigations into extortion involving kidnapping/ransom or product contamination. The unit is able to attend and assist with major crime investigations outside Western Australia through a multi-jurisdictional major crime investigation plan.
- The major incident group provides a '24/7' investigative and management capability to serious crime and major incidents across metropolitan police districts.
- The missing person investigation unit provides an investigative service to locate and determine the safety and welfare of a person who is reported missing.
- In addition to investigating deaths and offences occurring in custody, the work of the prison unit of relevance to organised crime includes investigation of alleged organised drug supply within prisons and investigation into defined serious criminal activity/corruption by Ministry of Justice personnel, agents and contractors within prisons.

5. Organised crime division

The organised crime division seeks to provide quality services, assistance and support toward the resolution of organised crime in Western Australia and beyond. Among other internal support services, the organised crime division incorporates four primary investigation units.

- The asset investigation unit deals primarily with the seizure and control of assets connected with illegal activity. The unit provides specialist services and investigators are trained to incorporate and administer the provisions of the *Criminal Property Confiscation Act 2000* (WA), the *Misuse of Drugs Act 1981* (WA), and the *Criminal Investigation (Extra-Territorial Offences) Act 1987* (WA) as they relate to the seizure of assets.
- The gang response unit was formed in August 2003 with a mandate to disrupt the structure of identified outlaw motorcycle gangs and street gangs by targeting individual members involved in criminal activity and antisocial behaviour. Its responsibilities include deploying investigative and intelligence resources to offences involving outlaw motorcycle gang and street gang violence to ensure that offending gang members are brought before the justice system.
- The organised crime investigation unit actively incorporates, state, national and international plans when considering and implementing operational directives relating to the resolution of organised crime in Western Australia. Experienced officers are either involved in developing and implementing local operations or are providing assistance to joint operations with other law enforcement agencies. The type of criminal activities attributed to an organised structure that this unit encounters might include the manufacture of amphetamine-type stimulants, the sale and supply of illicit drugs such as heroin, cocaine and amphetamines, and the movement of drugs interstate and overseas.
- The vice investigation unit provides advice, guidance and assistance to the police regions on matters associated with the sex industry. Unit officers monitor prostitution activities in Western Australia and bring charges on persons of interest contravening prostitution legislation primarily found in the *Prostitution Act 2000* (WA) and the *Police Act 1892* (WA). The vice investigation unit also investigates the production, sale and supply of pornographic material. This includes such items as indecent publications, pornographic video tapes, CDs and DVDs. The unit also investigates the distribution of pornographic material through local internet web sites, and is particularly concerned about indecent images depicting children and animals.

South Australia

South Australian Police

South Australia Police, or SAPOL (<http://www.sapolice.sa.gov.au>), provides a specialist criminal investigation service (CIS). Among the CIS's responsibilities are supporting the investigation of criminal activity that is beyond the capability of local service areas because of its complexity, seriousness, level of organisation or degree of specialisation; providing timely, accurate and useful intelligence; providing forensic investigation services; developing, implementing and coordinating specific training; and developing, implementing and coordinating crime-reduction strategies. Branches within the crime service are as follows.

- The drug and organised crime investigation branch has a state-wide responsibility to provide specialist investigation services into serious drug and organised criminal enterprises that cannot be investigated by local service areas. The branch coordinates investigations and participates with other law enforcement agencies to target high-level criminal activity.

- The forensic services branch provides a specialist service in crime scene investigation and related functions to SAPOL. Services provided include the collection of physical evidence, photography, fingerprints and the supply and maintenance of SAPOL's firearms.
- The investigation support branch provides a support function to all investigation areas within SAPOL. This includes witness protection, confiscations and forensic accounting.
- The major crime investigation branch has three sections: major crime investigation, coronial investigation and missing persons. Members have a state-wide responsibility to provide a specialist investigation service to facilitate the detection of murder and other declared 'major crimes', to coordinate the investigation of missing person reports and to provide a specialist investigation service to the state coroner.
- The serious fraud investigation branch investigates serious, complex and pattern fraud offences which are beyond the resource capability or expertise of Local Service Area investigation sections. In August 2003, the branch recovered \$4 million as part of an investigation into the theft of \$6.3 million in 2000.
- The state intelligence branch has units involved in intelligence analysis, visual intelligence and publications, and licensing and gaming advice. The branch provides specialist criminal intelligence services to the organisation.
- Strategic guidance is provided by this branch regarding drug and alcohol policy and crime reduction programs. It also provides crime-specific training.
- The commercial and electronic crime branch investigates 'serious' state, national and international fraud matters. The branch is responsible for monitoring and providing training to SAPOL members with regard to this specialist area of investigation. A financial investigations course, which is available to members within SAPOL as well as officers from other Australian police departments, examines trends in complex fraud and computer-related crime.

Tasmania

Tasmania Police

Tasmania Police (<http://www.police.tas.gov.au>) has an operational strength of around 1,100 officers serving a population nearing half a million within four geographical districts (southern, northern, eastern and western). In addition, around 350 personnel provide support services. Each district is managed by a commander who also has responsibility for budgetary control of the resources that have been allocated to the district. Answering to the commanders are inspectors, who in turn have sergeants supervising the constables that make up the majority of police personnel.

Each district is divided into divisions with superintendents in each district having the responsibility for the delivery of policing services to their respective communities. As part of the department's requirement for increased accountability, these senior officers have been assigned greater control over a range of financial management, human resource and administrative areas. The state administrative headquarters is located in Hobart. In addition to the geographical districts there are four support commands responsible for operations support, executive support, human resources and internal investigations. In February 2003 a new fraud unit was established to handle major fraud, e-crime and proceeds of crime investigations. There is also a task force that continues to investigate organised crime involvement in the systematic theft of abalone from Tasmanian state waters.

Northern Territory

Northern Territory Police

Policing in the Northern Territory is carried out by the Northern Territory Police, Fire and Emergency Services (<http://www.nt.gov.au/pfes/index.html>). With less than one per cent of Australia's population, but with one-sixth of the country's land mass to patrol, the NT police service's 'beat' extends from the sophisticated capital of Darwin in the tropical Top End to the arid central Australian desert. Many of the 968 staff work in isolated bush areas hundreds of kilometres from any back-up. Two police officers may patrol an area the size of Victoria (or the UK), so they have to be resourceful, community-minded and dedicated. By Australian standards, it is a small police force. As at May 2003 there were 793 sworn police, 122 auxiliaries and 43 Aboriginal community police officers.

Policing in the territory is unique. Despite its size (1,346,200 square kilometres) the Territory has only 190,000 residents, nearly 100,000 of whom live in the Darwin region. The territory is closer to Asia than most other parts of Australia, and is a truly multicultural place, with a proud heritage of Chinese settlement and a strong Asian community. One-quarter of the territory's population is Aboriginal, most of them living a tribal lifestyle. This means police have to be prepared to work closely with Aboriginal people. The main policing problems in the territory relate to alcohol, which features prominently in the territory's road toll, domestic violence and assault incidents. Police work with a range of agencies and organisations to address alcohol abuse.

Specialist units of relevance to the control of organised crime include the drug squad, the bureau of criminal intelligence, the gold squad (one of only three in the world), the fraud squad, the stolen motor vehicle squad and the computer crime unit.

Non-governmental organisations

Non-governmental institutions may also contribute to the prevention and detection of organised criminal activities. The Council on Security Cooperation in the Asia Pacific, for example, was established in 1993 to provide a structured process for regional confidence-building and security cooperation among countries and territories in the Asia Pacific region. Among its goals is to better understand and articulate the security implications for the region posed by transnational crime. Transparency International, the multinational anti-corruption group, has been instrumental in promoting uniform legislation which would proscribe the offering of bribes in international business.

It has become increasingly apparent that law enforcement agencies, singly or in combination, are not omnipotent. Some forms of organised and transnational crime, particularly those involving complex commercial fraud, would appear appropriate for a degree of response by the private sector. Indeed, an entire industry has begun to emerge in which multinational companies provide loss prevention and security services to private clients. Public-sector agencies in many countries would be hard pressed in the current fiscal climate to provide such services.

5 Institutional cooperation

There are a number of levels of institutional cooperation between the Australian Commonwealth, states and territories.

Ministerial Council on the Administration of Justice¹

The Ministerial Council on the Administration of Justice comprises three ministerial councils:

- the Australian Police Ministers' Council (APMC);
- the Inter-Governmental Committee of the Australian Crime Commission (IGC-ACC); and
- the Corrective Services Ministers' Conference (CSMC).

The APMC, the IGC-ACC and their related senior officials' groups meet twice each year and the CSMC meets annually. The secretariat is located in the criminal justice division of the Attorney-General's Department.

Other cooperative ventures

Further cooperation between the Australian Commonwealth, states and territories is achieved through consultative groups such as the Standing Committee of Attorneys-General and the Standing Advisory Committee on Commonwealth/State Cooperation for Protection Against Violence.

¹ <http://www.ag.gov.au/www/criminaljusticeHome.nsf/HeadingPagesDisplay/Ministerial+Council+on+Administration+of+Justice?OpenDocument>

6 Judges and the criminal justice system

There are no specialised courts or judicial officers in the Australian judicial system with particular responsibilities in relation to organised crime. Matters arising from National Crime Authority investigations or involving orders under Commonwealth proceeds of crime legislation can be heard in any court exercising federal jurisdiction. This includes the Federal Court of Australia, the High Court of Australia, or any of the state and territory supreme courts exercising federal jurisdiction under cross-vesting arrangements.

However, there is judicial and quasi-judicial control over certain forms of investigation which are of particular relevance to organised crime. In particular, judges and specified members of the Administrative Appeals Tribunal (AAT) may be authorised under sections 6D and 6DA of the *Telecommunications (Interception) Act 1979* (Cth) to issue warrants for the use of listening devices. Similar legislation exists in relation to the use of listening devices for law enforcement purposes in each of the Australian states and territories. Ordinary search warrants may normally be issued by both magistrates and senior police.

The Australian Institute of Judicial Administration provides training for judicial officers that includes specialist seminars on matters of relevance to organised criminal activity and the processing of organised crimes in the courts.

7 Special methodology of investigation

Before the establishment of the Australian Crime Commission, there were five multi-agency national task forces coordinated by the former National Crime Authority (NCA).

- Blade—concentrated upon South East Asian organised crime. Its primary focus was the strategic targeting of heroin trafficking (enhanced border interdiction, domestic distribution as well as proceeds of heroin trafficking); its secondary focus was trafficking in amphetamine-type substances from South East Asia, people smuggling and migration malpractice, violence and extortion.
- Swordfish—targeted money laundering and predicate offences, particularly high level illegal drug trafficking and organised revenue fraud.
- Freshnet—focused on established criminal networks that had endured and avoided prosecution because of ‘inside’ knowledge, corruption or intimidation, with a primary focus on the most significant resilient networks, on a national, inter-jurisdictional and regional basis.
- Panzer—targeted the organised criminal activities of outlaw motorcycle gangs, especially those relating to drug supply and organised violence.
- Cerberus—monitored national and international activity relating to Italian-influenced organised crime in Australia.

Since the establishment of the ACC, these task forces have been disbanded, but the ACC board is charged with establishing new task forces. Details of the nature and scope of these are not yet publicly available.

Section 8: Advantages of the system

The principal advantage of the Australian approach to organised crime is arguably its flexibility and adaptability. No particular legislative definition of ‘organised crime’ underlies the investigative approach taken by law enforcement authorities. Therefore, there is no requirement for a particular organised crime group to be identified and named before a law enforcement response can commence.

From the prosecution point of view the emphasis has, until recently, been mainly on prosecuting individuals and disrupting organised crime activities. In recent times far greater emphasis has been placed on tackling the profit motive for organised crime, seeking to target and recover the proceeds of crime. Such initiatives reflect state-based civil forfeiture regimes. There has been a change in policy direction in recent times, with attention in parliaments around Australia to legislation prohibiting certain forms of unlawful association such as politically motivated terrorist groups or outlaw motorcycle gangs.

Australia’s response to organised crime could also be characterised as one involving a whole-of-government approach. This approach has been followed successfully in the case of Australia’s efforts to deal with the problem of people smuggling. A highly successful people smuggling team has been established comprising investigation and intelligence from the AFP, DIMIA and the Coastwatch division of Customs. A number of other government agencies are also involved in supporting the work of this team. In support of the whole-of-government approach, the Department of Foreign Affairs and Trade has played a key role in providing its services and liaison capability throughout the region. The whole-of-government approach is an excellent model to use in attacking a range of organised crime types.

Section 9: Legal measures

Organised crime

Australia has few statutes explicitly defining and directed against organised crime. Two exceptions are the *Crime and Misconduct Act 2001* (Qld) and the *Australian Crime Commission Act 2002* (Cth).

The *Crime and Misconduct Act 2001*, Schedule 2, defines 'organised crime' as criminal activity that involves:

- (a) indictable offences punishable on conviction by a term of imprisonment not less than 7 years; and
- (b) 2 or more persons; and
- (c) substantial planning and organisation or systematic and continuing activity; and
- (d) a purpose to obtain profit, gain, power or influence.

The *Australian Crime Commission Act 2002* defines (in Part I, s 4(1)) 'serious and organised crime' as an offence:

- (a) that involves 2 or more offenders and substantial planning and organisation; and
- (b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques; and
- (c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences or a like kind; and
- (d) that is a serious offence within the *Proceeds of Crime Act 2002*, an offence of a kind prescribed by the regulations or an offence that involves any of the following:
 - i. theft;
 - ii. fraud;
 - iii. tax evasion;
 - iv. money laundering;
 - v. currency violations;
 - vi. illegal drug dealings;
 - vii. illegal gambling;
 - viii. obtaining financial benefit by vice engaged in others;
 - ix. extortion;
 - x. violence;
 - xi. bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory;
 - xii. perverting the course of justice;
 - xiii. bankruptcy and company violations;
 - xiv. harbouring of criminals;
 - xv. forging of passports;
 - xvi. firearms;
 - xvii. armament dealings;
 - xviii. illegal importation or exportation of fauna into or out of Australia;
 - xix. cybercrime

Furthermore, s 4(2) of the Act provides that:

If the head of an ACC operation/investigation suspects that an offence (the incidental offence) that is not a serious and organised crime may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a serious and organised crime (whether or not the head has identified the nature of that serious and organised crime), then the incidental offence is, for so long as the head so suspects, taken, for the purposes of this Act, to be a serious and organised crime.

Commonwealth laws

While not explicitly incorporating a definition of 'organised crime', the following Commonwealth Acts are also clearly intended to apply to organised criminal activity:

- *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002*;
- *Measures to Combat Serious and Organised Crime Act 2001*; and
- *Proceeds of Crime Act 2002*.

In addition, an Exposure Draft Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 has recently been introduced.

Money laundering

Australia was among the first countries in the world to develop and enact legislation which made money laundering a criminal offence and allowed for mutual legal assistance with other countries. Australian legislation also established a system to trace cash, identify suspicious transactions and require the identification of account holders and monitor international funds transfer instructions.

As a founding member of the OECD's Financial Action Task Force on Money Laundering (FATF), the leading international body against money laundering, Australia played a role in drafting the original and revised '40 recommendations', which have been widely accepted internationally as the global standard. The Australian government is currently considering how best to implement the FATF's revised 40 recommendations.

Australia co-chairs and provides additional financial support to the Asia Pacific Group on Money Laundering, the main purpose of which is to facilitate the adoption and implementation of the international standards in the region.

Corruption

Australia currently has no national body dealing with corruption but the Australian government recently announced¹ plans to establish an independent national anti-corruption body. A number of national agencies work to prevent various forms of corruption, including the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, AUSTRAC, the Australian Taxation

¹ 'Commonwealth to set up independent national anti-corruption body', joint media release E73/03 by Attorney-General, the hon. Phillip Ruddock MP and Minister for Justice and Customs, Senator the hon. Chris Ellison, 16 June 2004, <http://www.ag.gov.au/www/MinisterRuddockHome.nsf/AllDocs/RWPB2B376689976C170CA256EB40080CE6F?OpenDocument&highlight=corruption%20body>

Office and the AFP. Several states have established corruption bodies after judicial investigations uncovered corruption within law enforcement agencies. These are the Independent Commission Against Corruption in New South Wales and the Crime and Misconduct Commission in Queensland (see section 4).

Australia is a party to the OECD Convention Against the Bribery of Foreign Public Officials in International Business Transactions, and actively participates in the convention's phase I and phase II review framework. Further, Australia has endorsed the Asian Development Bank (OECD) Anti-Corruption Plan for Asia and the Pacific, and has signed the United Nations Convention Against Corruption.² Australia also has a chapter of Transparency International with state and territory representatives.

Obstruction to justice

Obstructing the course of justice, or conspiring or attempting to obstruct the course of justice, are crimes under Australian common law and in specific legislation. Bribery, or otherwise attempting to interfere with public functions, is also a serious offence. For example, in Division 141 of the *Criminal Code Act 1995*:

Giving a bribe

- (1) A person is guilty of an offence if:
 - (a) the person dishonestly:
 - (i) provides a benefit to another person; or
 - (ii) causes a benefit to be provided to another person; or
 - (iii) offers to provide, or promises to provide, a benefit to another person; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
 - (b) the person does so with the intention of influencing a public official (who may be the other person) in the exercise of the official's duties as a public official; and
 - (c) the public official is a Commonwealth public official; and
 - (d) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 10 years.
- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:
 - (a) that the official was a Commonwealth public official; or
 - (b) that the duties were duties as a Commonwealth public official.

Receiving a bribe

- (3) A Commonwealth public official is guilty of an offence if:
 - (a) the official dishonestly:
 - (i) asks for a benefit for himself, herself or another person; or
 - (ii) receives or obtains a benefit for himself, herself or another person; or
 - (iii) agrees to receive or obtain a benefit for himself, herself or another person; and

2 http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf

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- (b) the official does so with the intention:
 - (i) that the exercise of the official's duties as a Commonwealth public official will be influenced; or
 - (ii) of inducing, fostering or sustaining a belief that the exercise of the official's duties as a Commonwealth public official will be influenced.

Penalty: Imprisonment for 10 years.

Influencing a Commonwealth public official

- (7) A person is guilty of an offence if:
 - (a) the person conspires with another person with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official; and
 - (b) the public official is a Commonwealth public official; and
 - (c) the duties are duties as a Commonwealth public official.

Penalty: Imprisonment for 10 years.

Mutual legal assistance

Mutual legal assistance in criminal matters is a Commonwealth responsibility. Under the *Mutual Assistance in Criminal Matters Act 1987* (Cth), Australia may request and provide assistance to any overseas authorities in criminal investigations and prosecutions, subject to the provisions of the Act. This process is assisted by over 22 bilateral mutual assistance treaties and a number of multilateral conventions.

The Mutual Assistance Act states as its objects (s 5):

- (a) to regulate the provision by Australia of international assistance in criminal matters when a request is made by a foreign country for any of the following:
 - (i) the taking of evidence, or the production of any document or other article, for the purposes of a proceeding in the foreign country;
 - (ii) the issue of a search warrant and the seizure of any thing relevant to a proceeding or investigation in the foreign country;
 - (iii) the forfeiture or confiscation of property in respect of a foreign serious offence;
 - (iv) the recovery of pecuniary penalties in respect of a foreign serious offence;
 - (v) the restraining of dealings in property that may be forfeited or confiscated, or that may be needed to satisfy pecuniary penalties imposed, because of the commission of a foreign serious offence; and
- (b) to facilitate the provision by Australia of international assistance in criminal matters when a request is made by a foreign country for the making of arrangements for a person who is in Australia to travel to the foreign country to give evidence in a proceeding or to give assistance in relation to an investigation; and
- (c) to facilitate the obtaining by Australia of international assistance in criminal matters.

The Act contains numerous provisions about requests from overseas countries and by Australia in relation to mutual assistance and the enforcement of orders, in certain circumstances, for the proceeds of crime. In addition, the *International Criminal Court Act 2002* has been introduced which provides for international cooperation in areas such as the arrest of wanted persons and identification, tracing, freezing or seizure of the proceeds of crime.

Proceeds of crime

The Commonwealth *Proceeds of Crime Act 2002* provides a scheme to trace, restrain and confiscate the proceeds of crime against Commonwealth law. In some circumstances it can also be used to confiscate the proceeds of a crime against state and foreign laws. The Act provides for recovery on the basis that there has been a conviction (conviction-based forfeiture) or on the basis that a court is satisfied, on the balance of probabilities, that a crime has been committed (civil-based forfeiture). Table 1 describes the main features of proceeds of crime legislation in Australian jurisdictions.

Liability of legal persons

Under Australian law, legal persons such as corporations may be held liable for criminal acts. In cases where a penalty is prescribed for an offence, legislation may stipulate that a corporation found guilty of that offence is liable to a higher penalty. For example, under s 4B of the *Crimes Act 1914* (Cth), a corporation is in general liable to a penalty five times that applicable to an individual who commits an offence under Commonwealth law.

Pecuniary penalties—natural persons and bodies corporate

- (1) A provision of a law of the Commonwealth relating to indictable offences or summary offences shall, unless the contrary intention appears, be deemed to refer to bodies corporate as well as to natural persons.
- (2) Where a natural person is convicted of an offence against a law of the Commonwealth punishable by imprisonment only, the court may, if the contrary intention does not appear and the court thinks it appropriate in all the circumstances of the case, impose, instead of, or in addition to, a penalty of imprisonment, a pecuniary penalty not exceeding the number of penalty units calculated using the formula:
$$\text{Term of imprisonment} \times 5$$

where:

Term of imprisonment is the maximum term of imprisonment, expressed in months, by which the offence is punishable.
- (2A) Where a natural person is convicted of an offence against a law of the Commonwealth in respect of which a court may impose a penalty of imprisonment for life, the court may, if the contrary intention does not appear and the court thinks it appropriate in all the circumstances of the case, impose, instead of, or in addition to, a penalty of imprisonment, a pecuniary penalty not exceeding 2,000 penalty units.
- (3) Where a body corporate is convicted of an offence against a law of the Commonwealth, the court may, if the contrary intention does not appear and the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times the amount of the maximum pecuniary penalty that could be imposed by the court on a natural person convicted of the same offence.
- (3A) Where an Act (whether enacted before or after the commencement of this subsection) confers power to make an instrument (including rules, regulations or by-laws but not including a law of a territory) and specifies the maximum pecuniary penalty that can be imposed for offences created by such an instrument, then:
 - (a) unless the contrary intention appears, the specified penalty is taken to be the maximum penalty that the instrument can prescribe for such offences by natural persons; and

Table 1: Proceeds of crime legislation in Australia

Legislation	Date commenced	Criminal/civil forfeiture	Type of criminality	Orders available	Particular offences
Cth <i>Proceeds of Crime Act 2002</i>	1 January 2003	Both criminal and civil forfeiture (ss 47, 48, 49 and 92)	Serious offence (s 338)	Restraining orders (ss 17, 18, 19 and 20); forfeiture orders (ss 47, 48, 49 and 92); pecuniary penalty order (s 116); literary proceeds order (s 152); examination order (s 180); production order (s 202); monitoring order (s 146)	
ACT <i>Confiscation of Criminal Assets Act 2003</i>	19 December 2003	Both criminal and civil forfeiture (s 65)	Indictable offence (s 13) and serious offence (s 13)	Restraining order (s 19); conviction forfeiture order (s 52); civil forfeiture order (s 65); exclusion order (s 72); penalty order (s 82); return or compensation order (s 121); buyback order (s 124); monitoring order (s 148); transaction suspension order (s 152) production order (s 156); examination order (s 166); information order (s 186); non-disclosable information order (s 191)	
NSW <i>Confiscation of Proceeds of Crime Act 1989</i>	11 January 1991	Criminal forfeiture (s 18)	Serious offence (ss 5 and 7)	Restraining order (s 43); forfeiture order (ss 13, 18); pecuniary penalty order (ss 13, 24); drug proceeds order (s 29); production order (s 58); monitoring order (s 68)	Money laundering (s 73)
<i>Criminal Assets Recovery Act 1990</i>	3 August 1990	Civil forfeiture (s 5)	Serious crime-related activity (s 6)	Restraining order (s 10); assets forfeiture order (s 22); proceeds assessment order (s 27); production order (s 33); monitoring order (s 48)	
NT <i>Criminal Property Forfeiture Act 2002</i>	1 June 2003	Both criminal and civil forfeiture (ss 10(5) and 43)	Forfeiture offence (s 6) and criminal activities (s 10(4))	Order for examination (s 18); production order (s 23); monitoring and suspension order (s 29); restraining order (s 43); forfeiture order (Part 7, Division 3)	
SA <i>Criminal Assets Confiscation Act 1996</i>	7 July 1997	Criminal forfeiture (s 12)	Forfeiture offence or serious drug offence (s 3)	Forfeiture order (ss 8 and 9); restraining order (s 15); auxiliary order (s 21); monitoring order (s 35)	
Qld <i>Criminal Proceeds Confiscation Act 2002</i>	8 December 2003		Illegal activity (s 15); serious crime-related activity (s 16) and serious criminal offence (s 17)	Restraining order (s 28); forfeiture order (s 56); proceeds assessment order (s 77); pecuniary penalty order (s 178); special forfeiture order (s 200)	Money laundering (s 250)
Tas. <i>Crime (Confiscation of Profits) Act 1993</i>	3 June 1993	Criminal forfeiture only (s 11)	Serious offence (s 4)	Forfeiture order or pecuniary penalty order (s 11); restraining order (s 26); production order (s 49); monitoring order (s 56)	Money laundering (s 90)
Vic. <i>Confiscation Act 1997</i>	1 July 1998	Both criminal and civil forfeiture (s 37)	Forfeiture offence (s 3); civil forfeiture offence (s 3)	Restraining order (s 14); forfeiture order (s 32); civil forfeiture order (s 37); pecuniary penalty order (s 58); examination order (s 98); production order (s 100); monitoring order (s 115)	Money laundering (s 122); possess of suspect property (s 123)
WA <i>Criminal Property Confiscation Act 2000</i>	1 January 2001	Forfeiture on declaration of unexplained wealth, criminal benefits or substituted property (s 4)	Confiscation offence (s 141)	Freezing order (s 43); examination order (s 58); production order (s 63); monitoring order (s 68)	

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- (b) where a body corporate is convicted of such an offence, the specifying of that penalty is not to be treated as an indication of a contrary intention for the purposes of applying subsection (3).
- (4) Where under a law of the Commonwealth any forfeiture, penalty or reparation is paid to a person aggrieved, it is payable to a body corporate where the body corporate is the person aggrieved.

Special techniques of investigation

Apart from the special methodology of investigation discussed above, Australian law enforcement agencies employ a number of particular techniques in relation to serious and organised crime. These include:

- undercover policing (assumed identities);
- the use of informants;
- controlled operations.

In 2001, the Australian federal parliament reviewed all of these investigative techniques, and in particular, extended the use of controlled operations (formerly used only in relation to narcotics importation) to apply to the investigation of any serious offence under Commonwealth law: see the *Measures to Combat Serious and Organised Crime Act 2001* (Cth), which received royal assent on 1 October 2001). In particular, section 15H of the *Crimes Act 1914* (Cth) was amended to read:

15H What is a controlled operation?

A 'controlled operation' is an operation that:

- (a) involves the participation of law enforcement officers; and
- (b) is carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious Commonwealth offence; and
- (c) may involve a law enforcement officer or other person in acts, or omissions to act, that would, apart from subsection 15I(1) or (3), constitute a Commonwealth offence or an offence against a law of a state or territory.

It remains to be seen how this extended definition of 'controlled operation' will be used by law enforcement agencies.

Protected witnesses

The National Witness Protection Program (NWPP) operates under the *Witness Protection Act 1994* (Cth), allowing for the protection of witnesses in criminal prosecutions. However, the program is not meant as a means of encouraging persons to give evidence in exchange for protection (s 5):

Inclusion in NWPP not to be done as a reward for giving evidence etc.

The inclusion of a witness in the NWPP is not to be done as a reward or as a means of persuading or encouraging the witness to give evidence or to make a statement.

Protection under the NWPP may include a wide range of measures (s13):

Action where a witness is included in the NWPP

- (1) If a witness is included in the NWPP, or is being assessed for inclusion in the NWPP, the Commissioner is to take such action as the Commissioner considers necessary and reasonable to protect the witness's safety and welfare while also protecting the safety of the Commissioner, a Deputy Commissioner, AFP employees and special members of the Australian Federal Police.
- (2) That action may include:
 - (a) applying for any documents necessary:
 - (i) to allow the witness to establish a new identity; or
 - (ii) otherwise to protect the witness; and
 - (b) permitting persons who hold or occupy designated positions to use assumed names in carrying out their duties in relation to the NWPP and to carry documentation supporting those assumed names; and
 - (c) relocating the witness; and
 - (d) providing accommodation for the witness; and
 - (e) providing transport for the witness's property; and
 - (f) providing payments to the witness for the purpose of meeting the reasonable living expenses of the witness (including, where appropriate, living expenses of the witness's family) and providing, whether directly or indirectly, other reasonable financial assistance; and
 - (g) providing payments to the witness for the purpose of meeting costs associated with relocation; and
 - (h) providing assistance to the witness in obtaining employment or access to education; and
 - (i) providing other assistance to the witness with a view to ensuring that the witness becomes self-sustaining; and
 - (j) doing other things that the Commissioner considers to be necessary to ensure the safety of the witness.
- (3) The Commissioner must not obtain documentation for a witness that represents the witness:
 - (a) to have qualifications that the witness does not have; or
 - (b) to be entitled to benefits to which the witness would not be entitled if the witness were not included in the NWPP.
- (4) A Commonwealth officer must not prepare documentation relating to the establishment of a new identity for a participant unless the officer has a national security clearance at the level of 'secret' or 'top secret' or a position of trust clearance at the level of 'highly protected'.

State and territory law enforcement agencies operate similar programs.

Assistance to victims

Victims' assistance programs exist in most Australian jurisdictions, but there are no special programs in relation to victims of organised criminal activity, save for the temporary protection visa which permits non-visa holders to remain in Australia for up to three years.

Prevention of organised crime

There are no specialised programs in Australia dedicated to the prevention of organised crime, although state crime prevention agencies often encounter problems with organised crime groups, particularly relating to illicit drugs, outlaw motorcycle gangs, and juvenile gangs.

Trafficking in persons

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ('the trafficking protocol') was adopted by the UN General Assembly in November 2000 and signed by Australia in December 2002. Australia will ratify the trafficking protocol once all domestic requirements for ratification are in place. New offences are under development to complement existing offences.

In Australia, the offences relevant to trafficking in persons carry severe penalties. Australia has offences of slavery, sexual servitude and deceptive recruiting for sexual services. Slavery carries a maximum penalty of 25 years imprisonment, sexual servitude attracts a maximum penalty of up to 19 years imprisonment and deceptive recruiting for sexual services carries a maximum penalty of up to nine years imprisonment.

Division 270 of the Criminal Code ('Slavery, sexual servitude and deceptive recruiting') entered into force in 1999:

270.1 Definition of slavery

For the purposes of this Division, slavery is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

270.2 Slavery is unlawful

Slavery remains unlawful and its abolition is maintained, despite the repeal by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* of Imperial Acts relating to slavery.

270.3 Slavery offences

- (1) A person who, whether within or outside Australia, intentionally:
- (a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or
 - (b) engages in slave trading; or
 - (c) enters into any commercial transaction involving a slave; or
 - (d) exercises control or direction over, or provides finance for:
 - (i) any act of slave trading; or
 - (ii) any commercial transaction involving a slave;

is guilty of an offence.

Penalty: Imprisonment for 25 years.

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- (2) A person who:
- (a) whether within or outside Australia:
 - (i) enters into any commercial transaction involving a slave; or
 - (ii) exercises control or direction over, or provides finance for, any commercial transaction involving a slave; or
 - (iii) exercises control or direction over, or provides finance for, any act of slave trading; and
 - (b) is reckless as to whether the transaction or act involves a slave, slavery or slave trading;
- is guilty of an offence.
- Penalty: Imprisonment for 17 years.
- (3) In this section:
- slave trading includes:
- (a) the capture, transport or disposal of a person with the intention of reducing the person to slavery; or
 - (b) the purchase or sale of a slave.
- (4) A person who engages in any conduct with the intention of securing the release of a person from slavery is not guilty of an offence against this section.
- (5) The defendant bears a legal burden of proving the matter mentioned in subsection (4).

270.4 Definition of sexual servitude

- (1) For the purposes of this Division, sexual servitude is the condition of a person who provides sexual services and who, because of the use of force or threats:
- (a) is not free to cease providing sexual services; or
 - (b) is not free to leave the place or area where the person provides sexual services.
- (2) In this section:
- ‘sexual service’ means the commercial use or display of the body of the person providing the service for the sexual gratification of others.
- ‘threat’ means:
- (a) a threat of force; or
 - (b) a threat to cause a person’s deportation; or
 - (c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

270.5 Jurisdictional requirement

A person commits an offence against section 270.6 or 270.7 only if:

- (a) all of the following subparagraphs apply:
 - (i) the person is an Australian citizen, a resident of Australia, a body corporate incorporated by or under a law of the Commonwealth or of a state or territory or any other body corporate that carries on its activities principally in Australia; and
 - (ii) the conduct constituting the offence is engaged in outside Australia; and
 - (iii) the sexual services to which the alleged offence relates are provided, or to be provided, outside Australia; or

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- (b) both:
 - (i) the conduct constituting the alleged offence is to any extent engaged in outside Australia; and
 - (ii) the sexual services to which the alleged offence relates are to any extent provided, or to be provided, within Australia; or
 - (c) both:
 - (i) the conduct constituting the alleged offence is to any extent engaged in within Australia; and
 - (ii) the sexual services to which the alleged offence relates are to any extent provided, or to be provided, outside Australia.

270.6 Sexual servitude offences

- (1) A person:
 - (a) whose conduct causes another person to enter into or remain in sexual servitude; and
 - (b) who intends to cause, or is reckless as to causing, that sexual servitude;is guilty of an offence.
Penalty:
 - (c) in the case of an aggravated offence (see section 270.8)—imprisonment for 19 years; or
 - (d) in any other case—imprisonment for 15 years.
- (2) A person:
 - (a) who conducts any business that involves the sexual servitude of other persons; and
 - (b) who knows about, or is reckless as to, that sexual servitude;is guilty of an offence.
Penalty:
 - (c) in the case of an aggravated offence (see section 270.8)—imprisonment for 19 years; or
 - (d) in any other case—imprisonment for 15 years.
- (3) In this section:
'conducting a business' includes:
 - (a) taking any part in the management of the business; or
 - (b) exercising control or direction over the business; or
 - (c) providing finance for the business.

270.7 Deceptive recruiting for sexual services

- (1) A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about the fact that the engagement will involve the provision of sexual services is guilty of an offence.
Penalty:
 - (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 9 years; or
 - (b) in any other case—imprisonment for 7 years.

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- (2) In this section:
'sexual service' means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

270.8 Aggravated offences

- (1) For the purposes of this Division, an offence against section 270.6 or 270.7 is an aggravated offence if the offence was committed against a person who is under 18.
- (2) If the prosecution intends to prove an aggravated offence, the charge must allege that the offence was committed against a person under that age.
- (3) In order to prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.

270.9 Alternative verdict if aggravated offence not proven

If, on a trial for an aggravated offence against section 270.6 or 270.7, the jury is not satisfied that the defendant is guilty of an aggravated offence, but is otherwise satisfied that he or she is guilty of an offence against that section, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

270.10 No nationality requirement

In determining whether a person has committed an offence against this Division (other than an offence to which paragraph 270.5(a) applies), it does not matter whether the person is or is not an Australian citizen or a resident of Australia.

270.11 Attorney General's consent required

- (1) Proceedings for an offence against this Division must not be commenced without the Attorney General's written consent if:
- (a) the conduct constituting the alleged offence is to any extent engaged in outside Australia; and
 - (b) the person alleged to have committed the offence is not:
 - (i) an Australian citizen; or
 - (ii) a resident of Australia; or
 - (iii) a body corporate incorporated by or under a law of the Commonwealth or of a state or territory; or
 - (iv) any other body corporate that carries on its activities principally in Australia.
- (2) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence against this Division before the necessary consent has been given.

270.12 Other laws not excluded

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a state or territory.

270.13 Double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

270.14 External territories

In this Division:

‘Australia’, when used in a geographical sense, includes the external territories.

To date, no persons have been convicted in Australia under these provisions. Australia will introduce additional trafficking in persons offences to comprehensively criminalise all aspects of trafficking in persons and to fulfil Australia’s obligations under the trafficking protocol.

People smuggling

The UN Protocol Against the Smuggling of Migrants by Land, Sea and Air (‘the smuggling protocol’) was adopted by the UN General Assembly in November 2000 and signed by Australia in December 2001. Australia is in the process of ratifying the smuggling protocol.

Under the *Migration Act 1958* (Cth), people smuggling into Australia carries severe penalties.

232A Organising bringing groups of non-citizens into Australia

A person who:

- (a) organises or facilitates the bringing or coming to Australia, or the entry or proposed entry into Australia, of a group of 5 or more people to whom subsection 42(1) applies; and
- (b) does so reckless as to whether the people had, or have, a lawful right to come to Australia;

is guilty of an offence punishable, on conviction, by imprisonment for 20 years or 2,000 penalty units, or both.

Note: Sections 233B and 233C limit conviction and sentencing options for offences under this section.

233 Persons concerned in bringing non-citizens into Australia in contravention of this Act or harbouring illegal entrants

- (1) A person shall not take any part in:
 - (a) the bringing or coming to Australia of a non-citizen under circumstances from which it might reasonably have been inferred that the non-citizen intended to enter Australia in contravention of this Act;
 - (b) the concealing of a non-citizen with intent to enter Australia in contravention of this Act; or
 - (c) the concealing of an unlawful non-citizen or a deportee with intent to prevent discovery by an officer.
- (2) A person is guilty of an offence if:
 - (a) the person harbours another person; and
 - (b) the other person is an unlawful non-citizen, a removee or a deportee.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

233A Other offences relating to groups of non-citizens etc.

- (1) A person must not, in connection with:
 - (a) the entry or proposed entry into Australia, or the immigration clearance, of a group of 5 or more non-citizens (which may include that person), or of any member of such a group; or

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- (b) an application for a visa or a further visa permitting a group of 5 or more non-citizens (which may include that person), or any member of such a group, to remain in Australia; do any of the following:
 - (c) present, or cause to be presented, to an officer or a person exercising powers or performing functions under this Act a document that the person knows is forged or false;
 - (d) make, or cause to be made, to an officer or a person exercising powers or performing functions under this Act a statement that the person knows is false or misleading in a material particular;
 - (e) deliver, or cause to be delivered, to an officer or a person exercising powers or performing functions under this Act, or otherwise furnish, or cause to be furnished, for official purposes of the Commonwealth, a document containing a statement or information that the person knows is false or misleading in a material particular.
- (2) A person must not transfer or part with possession of a document or documents:
- (a) with the intention that the document or documents be used to help a group of 5 or more people, none of whom are entitled to use the document or documents, or any member of such a group, to gain entry into or remain in Australia, or to be immigration cleared; or
 - (b) if the person has reason to suspect that the document or documents may be so used.
- Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

Note: Sections 233B and 233C limit conviction and sentencing options for offences under this section.

233B No discharge of offenders without proceeding to conviction for certain offences

The court may not make an order under section 19B of the *Crimes Act 1914* in respect of a charge for an offence under section 232A or 233A, unless it is established on the balance of probabilities that the person charged was aged under 18 years at the time when the offence was alleged to have been committed.

233C Mandatory penalties for certain offences

- (1) This section applies if a person is convicted of an offence under section 232A or 233A, unless it is established on the balance of probabilities that the person was aged under 18 years when the offence was committed.
- (2) The court must impose a sentence of imprisonment of at least:
 - (a) 8 years, if the conviction is for a repeat offence; or
 - (b) 5 years, in any other case.
- (3) The court must also set a non-parole period of at least:
 - (a) 5 years, if the conviction is for a repeat offence; or
 - (b) 3 years, in any other case.
- (4) In this section:
 - (a) non-parole period has the same meaning as it has in Part 1B of the *Crimes Act 1914*; and

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- (b) a person's conviction for an offence is for a repeat offence if, on a previous occasion after the commencement of this section, a court:
 - (i) has convicted the person of another offence, being an offence against section 232A or 233A; or
 - (ii) has found, without recording a conviction, that the person had committed another such offence.'

Division 73 of the Criminal Code contains offences applying to extraterritorial people smuggling. These offences apply where the people smuggling occurs to a foreign country (whether or not via Australia). Where the conduct occurs wholly outside Australia, these offences apply only to Australian citizens and residents. These offences carry penalties of up to 20 years imprisonment.

On 15 January 2001, the Australian Federal Police hosted Australia's first transnational people smuggling conference in Canberra. Between 60 and 70 representatives from 23 nations attended the five-day conference that aimed to raise the profile of people smuggling as a law enforcement issue. The conference also focused on the importance of partnership arrangements in international law enforcement. Participant countries included Turkey, Indonesia, India, Iran, Japan, Malaysia, Pakistan, the Philippines, New Zealand and the People's Republic of China.

Participants at the conference shared information and discussed trends in people smuggling activities, examining the impact of people smuggling on regional countries, discussing investigation techniques and considering the need for a regional approach to people smuggling.

Conclusion

Organised crime is a feature of Australian life as it is of most other advanced industrial societies. Organised crime often transcends national boundaries and operates without financial, geographical, cultural or moral constraints. Australia remains aware of the actual and potential threats posed by organised crime networks. That awareness continues to inform its intelligence, law enforcement and political decision-making processes. Organised crime is not addressed systematically in all parts of the world for a number of political, financial and cultural reasons. Consequently, organised crime continues to have an impact upon those countries of the world, such as Australia, which do seek to identify and confront organised crime issues.

It is essential that the approach taken by government, law enforcement agencies and the criminal justice system remains united in a common stand against organised crime groups and their activities. Australia has shown that, through its knowledge of organised crime issues, its understanding of the regional threat posed by organised criminals and its willingness and capacity to respond with effective policy decisions, it is currently in as strong a position as necessary to mitigate the impact of organised crime groups. Its domestic legislation has, for example, incorporated the important UN Convention against Transnational Organised Crime and its related protocols. It has been at the forefront of regional cooperation against organised crime groups. It has provided Australian Federal Police assistance in relation to a joint people smuggling investigation team in Bangkok, a joint transnational crime investigation team in Phnom Penh and a transnational sexual exploitation and trafficking team. It has signed a memorandum of understanding with Thailand covering the Asia Regional Cooperation to Combat People Trafficking Project, formed an agreement with Cambodia to provide it with assistance in relation to people trafficking and helped to establish, fund and organise the Indonesia Centre for Law Enforcement Cooperation and the Pacific Transnational Crime Coordination Centre in Suva.

As this report indicates, Australia's law enforcement and legislative responses to organised crime extend to a wide range of public sector agencies. Although the main bodies with responsibility to deal with organised crime are at the Australian government level (for example, Australian Federal Police and the Australian Crime Commission), most of the state and territory police services have divisions with specific responsibilities to deal with organised criminal activities that affect state and territory interests. Australian government, state and territory agencies cooperate at various levels to set national priorities against organised crime and to coordinate activities to support those priorities. There is also a complex network of agencies that assist in the integration of intelligence and support for law enforcement agencies throughout the country.

Australia is not immune to transnational organised crime but it nevertheless remains fully aware of the multi-faceted threat that such activity presents and continues to possess the ability and willingness to respond proactively and reactively to transnational crime developments at a range of political, legal and cooperative levels.