Australian Government

Attorney-General's Department

Criminal Justice Division

Parliamentary Joint Committee on Law Enforcement

Inquiry into the gathering and use of criminal intelligence

Attorney-General's Department Submission

July 2012

Attorney-General's Department submission to the Parliamentary Joint Committee on Law Enforcement

Inquiry into the gathering and use of criminal intelligence

The Attorney-General's Department (AGD) is pleased to provide this submission to the Parliamentary Joint Committee on Law Enforcement (PJCLE) for the purposes of its Inquiry into the gathering and use of criminal intelligence.

AGD recognises the key role of intelligence in supporting effective law enforcement in Australia. We welcome the PJCLE's inquiry and efforts to enhance the gathering and use of criminal intelligence and promote efficiency in the use of intelligence resources. More effective gathering and use of criminal intelligence will support better intelligence-led outcomes in operational policing and law enforcement policy development, and presents an opportunity to enhance Australia's national response to combating serious and organised crime.

This submission focuses on the role of intelligence as a key capability under the Organised Crime Strategic Framework and activities AGD has recently undertaken or is currently undertaking to provide an effective legislative and policy basis for the use of criminal intelligence.

Organised Crime Strategic Framework

The Organised Crime Strategic Framework (OCSF) centres around three key components and five capabilities that seek to establish a coordinated and targeted whole-of-Government response to serious and organised crime. The implementation of the OCSF is coordinated by the AGD and overseen by the Heads of Commonwealth Operational Law Enforcement Agencies. It has resulted in a more informed, coordinated and prioritised approach within the Commonwealth Government.

The OCSF articulates the critical role of Australian Crime Commission (ACC) intelligence in supporting the Commonwealth's approach to combating serious and organised crime. A key element of the OCSF is the ACC's biennial Organised Crime Threat Assessment (OCTA). The OCTA details the highest priority risks from serious and organised crime to inform better targeting of policy and operational responses. The effectiveness of the OCTA rests on the ability of the ACC to effectively gather and synthesise criminal intelligence from a range of domestic and international sources.

Capability One of the OCSF– 'Intelligence, Information Sharing and Interoperability' encompasses activities that seek to improve information sharing between and among State, Territory and Commonwealth agencies, as well as industry and the private sector. The Commonwealth Organised Crime Response Plan 2010-11 and the National Organised Crime Response Plan 2010-13 also highlight intelligence-led responses and sharing of information and intelligence as essential elements in combating organised crime.

For example, initiatives in the Commonwealth Response Plan that support these elements include:

- enhancing understanding of the specific threats and risks posed by money laundering through the production of a national threat assessment, and
- strengthening analytical capabilities and improving information and intelligence sharing, particularly through use of the ACC's Criminal Intelligence Fusion Centre.

AGD is working with other Commonwealth agencies, State and Territory partners and private sector stakeholders on initiatives to support intelligence and information sharing, including the following activities:

National Criminal Intelligence Management Strategy

AGD is a participant in the Criminal Intelligence Working Group, led by the ACC. The Working Group is developing a National Criminal Intelligence Management Strategy (the Strategy) to respond to the growing complexity of organised crime. The Strategy will harness the collective intelligence capabilities available to law enforcement agencies to better target serious and organised crime. The Strategy will support the development of a richer intelligence picture by ensuring our law enforcement, intelligence, national security, policy and regulatory agencies are collaborating and sharing intelligence more effectively.

The Strategy includes the National Criminal Intelligence Model (NCIM), established in response to the OCSF capability 1.3, to "*provide clarity and consistency of standards, processes and protocols for intelligence-led policing and law enforcement work to enhance the national picture of organised crime.*" The NCIM incorporates the distinct phases of activity in the intelligence cycle to guide the development of strategy initiatives, plans and capabilities. The Strategy will enable a shared understanding and alignment of concepts under the intelligence cycle and will promote and increase interoperability of intelligence resources across jurisdictions, as well as the capacity to share intelligence outputs.

AGD supports the development of the Strategy and NCIM as part of more effective gathering, use and sharing of criminal intelligence. The success of the strategy and the NCIM will depend on the ongoing collaboration of relevant agencies and a continuing commitment to greater intelligence sharing.

Recent amendments to the ACC Act addressing the ability to share information

The *Australian Crime Commission Act 2002* (ACC Act) was recently amended by the *Crimes Legislation Amendment (Powers and Offences) Act 2012* to improve the ability of the ACC to share information with law enforcement and other government agencies and to allow the ACC to share information with the private sector, including criminal intelligence. These amendments follow a recommendation by the then Parliamentary Joint Committee on the Australian Crime Commission, in its 2005 *Review of the Australian Crime Commission Act*

2002, that AGD work with the ACC to identify barriers to information sharing and pursue legislative amendments to remedy them.

Prior to these amendments, the provisions governing how the ACC could share information with Commonwealth, State and Territory agencies were unnecessarily complex. A range of Government agencies, such as statutory offices and local government bodies, were excluded from receiving information. Other agencies were required to be prescribed by regulation, creating further administrative complexity. The Act also provided limited guidance as to the purposes for which information could be shared with government agencies. The recent amendments allow the ACC to share information with any government agency, where the sharing is for one of a list of defined permitted purposes. This will assist in ensuring the ACC is able to share its intelligence products with the right government agencies in a timely manner.

Further, the ACC Act previously did not permit any sharing of ACC information with the private sector other than through public bulletins or the ACC annual report, which limited the ACC's ability to work collaboratively with private sector stakeholders to combat serious and organised crime. This gap was identified in a number of independent reviews, including the 2011 PJCLE report on its *Inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime* (PJCLE Report). One of the report's recommendations was that current information sharing arrangements between law enforcement agencies and private organisations in the aviation and maritime sectors be reviewed, in order to enhance security in these sectors.

The recent amendments to the ACC Act now allow the ACC to share information, including criminal intelligence, with prescribed private sector bodies for a range of permitted purposes. This approach allows intelligence to be shared when required, but also provides significant safeguards around the use of this sensitive material. The *Australian Crime Commission Amendment Regulation 2012 (No. 1)* prescribes a number of private sector bodies and classes of bodies now able to receive ACC information, including those in the financial, aviation and maritime sectors.

There are a number of benefits to be gained through better sharing of information, including criminal intelligence, between government and the private sector. This includes better equipping industry to implement its own measures to prevent serious and organised crime infiltration and exploitation of their sectors. It will also facilitate a stronger two-way information exchange between government and industry, enhancing the intelligence picture available to law enforcement agencies.

Operation Polaris

Another key use of criminal intelligence is in mitigating vulnerabilities to serious and organised crime at the waterfront and supply chain, in response to a March 2012 report by the multi-agency taskforce Operation Polaris. Operation Polaris was established to investigate

serious and organised crime on the waterfront in Sydney and included both State and Australian law enforcement agencies.

Polaris confirmed that serious and organised criminals are targeting and exploiting workers on the waterfront in both the public and private elements of the supply chain. This has resulted in the subversion of employees in the sector, and the importation of drugs and other illicit substances into Australia.

One of the measures being progressed in response to the Polaris report is the development of a capacity to refuse to issue or to cancel Aviation and Maritime Security Identification Cards (ASICs and MSICs) and customs broker, depot and warehouse licences (customs licences), based on compelling criminal intelligence. The use of criminal intelligence in this context will help to prevent individuals of security concern from accessing secure aviation and maritime zones and customs facilities, and improve law enforcement agencies' ability to prevent and disrupt criminal activity in the maritime and aviation sectors. This measure was also proposed by the PJCLE Report (Recommendations 13 and 15).

The Government is considering, in consultation with aviation and maritime industry stakeholders, how a criminal intelligence assessment could be implemented, including a mechanism for appeal of adverse decisions.

While this measure specifically focuses on the aviation and maritime environments, the capability established to utilise criminal intelligence to inform administrative decision making could be expanded to address identified vulnerabilities in other environments as required.

Industry engagement

The OCSF, Polaris and the PJCLE report recognise that partnerships between the government and private industry are critical in combatting organised crime. To engage with industry stakeholders on the recent changes to the ACC Act and implementation of Polaris measures, in July and August 2012 representatives from AGD, the Australian Federal Police, ACC and the Australian Customs and Border Protection Service are attending a number of aviation and maritime industry forums. A central focus of the forums is discussing options to improve information sharing between government and industry in a criminal intelligence context.

AGD has also been working with the major banks to consider options for enhancing the exchange of fraud data within the financial sector and with law enforcement.