Crime and Corruption Commission
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Taskforce into organised crime legislation 2015

Submission by the
Crime and Corruption Commission

IN-CONFIDENCE

Contents

Submission to the Taskforce into organised crime legislation 2015

This submission responds to Inquiry area six and in particular to paragraphs one and two of the Terms of Reference, which for ease of reference are extracted below.

Inquiry area six

All amendments in the 2013 legislation made to the then *Crime and Misconduct Act 2001* (since renamed the *Crime and Corruption Act 2001*). Persons wishing to make a submission are referred to paragraphs one and two of the Terms of Reference.

Terms of Reference

1. review the provisions in the following legislation:
   - *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013*;
   - *Tattoo Parlours Act 2013*;
   - *Vicious Lawless Association Disestablishment Act 2013*;
   - *Criminal Law (Criminal Organisations Disruption) and Other Legislation Act 2013*; and
   - *Criminal Code (Criminal Organisations) Regulation 2013*.
2. consider the prosecution of persons charged with committing a criminal offence/s or an aggravated offence/s created by the 2013 legislation by:
   - noting the results of bail applications and the reasons given for the bail determinations (where reasons are available);
   - noting the details of time served in prison on remand by defendants and for what charges; noting the outcomes of relevant prosecutions including any sentence imposed;
   - noting the delay of prosecutions pending the outcome in *Kuczborski v The State of Queensland* [2014] HCA 46; and
   - noting the reasons why some prosecutions did not result in a conviction.

Introduction

1. On 27 September 2013, an incident occurred in the Broadbeach CBD, involving several members of the Bandidos outlaw motor cycle gang (OMCG). This incident was the catalyst for the introduction of a range of legislative responses, including amendments to the then CMC's governing legislation, the *Crime and Misconduct Act 2001* (now the *Crime and Corruption Act 2001*) (the Act).

2. The key amendments introduced to the Act and the CCC's position on the value of those amendments are as follows:

   a. Introduction of 'specific intelligence operations', pursuant to which the CCC could investigate activities of criminal organisations, or corruption connected to criminal organisations (ss. 55A-C), including through the use of coercive hearings for intelligence purposes — **Supported**.

   b. Introduction of an 'immediate response function' to allow the CCC to undertake a crime investigation or hold an intelligence function hearing in relation to an actual or potential threat to public safety (ss. 55D-F) — **Supported in principle but note that the section has not been used**.

   c. Amendment to sections which incorporate a 'reasonable excuse' for non-compliance (ss. 185, 190) to remove the availability of a reasonable excuse based on fear of reprisal for matters involving criminal organisations — **Supported**.

   d. Allowing the CCC to seek a warrant for a witness who fails to attend a hearing from a magistrate rather than a Supreme Court judge (ss. 167–8) — **Supported**.

   e. Allowing for witnesses who are to be certified as being in contempt of the CCC to be immediately arrested (s. 198A) — **Supported**.

   f. Increasing the maximum penalties available for statutory offences of non-compliance such as failure to answer a question or refusal to produce a document to 200 penalty units or 5 years' imprisonment — **Supported**.

   g. Amending s. 197 to allow evidence given by a witness to be used against them in proceedings for the confiscation of proceeds of crime — **Supported**.

   h. Introduction of a mandatory and graduated sentencing regime for contempts committed in CCC hearings (s. 199(8A-F)) — **Supported**.

   i. Making certain proceedings arising out of CCC functions confidential in the Supreme Court (s. 200A) — **Supported**.

   j. Clarification of s. 331 to address concerns raised by the High Court's decision in *X7*[1] — **Supported**.

1 *X7 v Australian Crime Commission* (2013) 248 CLR 92.

Purpose of this submission

3. The CCC submits that some of these amendments have effected significant (and positive) change to the way in which the CCC performs its functions, in particular in respect of its crime jurisdiction.

4. This submission focuses on the following areas of legislative changes in particular:

   a. Crime intelligence function hearings

   b. Contempt regime

   c. Capacity for immediate arrest of a person in contempt

   d. Use of hearings evidence in criminal proceeds confiscation matters.

5. This submission also makes the case for legislative reform in relation to crime intelligence hearings. In practice, the CCC has found that the current definition of 'criminal organisations' makes it difficult to address criminal organisations other than OMCGs and does not allow a more thematic approach to understanding organised crime and its impacts on Queensland.

Crime intelligence function hearings

6. In support of the intelligence function, the CCC established a Criminal Organisations Hearings Team (COHT) as an additional team dedicated to the conduct of high-volume hearings in relation to criminal organisations such as OMCGs. The team undertakes coercive hearings to support both the CCC's intelligence function and major crime investigations that are undertaken in relation to the activities of a criminal organisation.

7. Since the commencement of the COHT and up to 15 July 2015, 156 witnesses have been examined over 172 days under the CCC's various specific intelligence authorisations. This is in addition to the various major crime investigative hearings that have been undertaken by the COHT. OMCG-related major crime investigations have been conducted by the COHT to take advantage of the specialised knowledge of OMCG culture, dynamics, hierarchy and personnel acquired through intelligence hearings.

8. Those hearings have gathered information which has been of intelligence, tactical and strategic value.

Intelligence value

9. Information of significant tactical intelligence value has been obtained in relation to the operation of OMCGs in Queensland as follows:

   a. Current club membership, status, and activities

   b. Movement of members since the introduction of the new laws (some interstate, some overseas)

   c. Identification of the history of clubs and the interactions between them, including historical conflicts and alliances

   d. Identification of hierarchy and office bearers at chapter, state and national level, including changes in these positions and the politics which underpin such changes

   e. Identification of rules within different clubs at chapter, state, national and global level

   f. Identification of internal processes such as discipline, voting and expulsion

   g. Exploration of historical and current criminal activities by clubs and their members, including the extent of any control of such activity by the clubs

   h. Responses by clubs to the new legislative regime, including attempts to avoid legislative restrictions

i. Location of new clubhouses, de facto clubhouses or other meeting locations since the introduction of legislation

j. The relationships between Queensland and interstate chapters, and power struggles as interstate chapters sought to exert influence over Queensland chapters

k. Evidence about impending national runs

l. Exploration of OMCG involvement in the tattoo industry including extortion, assaults and arson

m. The different ways in which 'feeder clubs' were used by OMCG

n. Evidence of OMCG involvement in the performance and other image enhancing drugs (PIEDs) market.

10. Since the inception of the intelligence hearings program and up to 21 July 2015, the CCC has produced a total of 412 intelligence reports. These reports deal with aspects of information derived through the hearings and when appropriately anonymised are generally uploaded to state and federal law enforcement intelligence databases.[2]

11. QPS also prepared a number of intelligence reports in relation to information derived from hearings. These reports assist in the general intelligence picture in relation to OMCGs.

12. Intelligence is obtained by law enforcement agencies from a variety of sources. For example, QPS (which has the largest intelligence holdings in Queensland) obtains its intelligence through a variety of means, such as human sources, reports from police officers, and calls to CrimeStoppers. Although there is a system in place, accepted within the law enforcement community, for assessing the value of this intelligence, the practical reality is that there is limited capacity to test the information provided.

13. Intelligence hearings provide the capacity to forensically test and evaluate intelligence provided by witnesses.

14. Hearings evidence has been used by the CCC and the QPS to confirm or identify specific information gaps in relation to OMCGs. It has been observed that evidence derived through hearings has provided direct evidence of matters which were previously thought to be the case. For example, some members provided sworn evidence about a process of 'tithing' members of drug profits within certain chapters, which had long been suspected. There was also confirmation of other such matters such as the individual hierarchy of different clubs and chapters, and nuances in process and terminology between different clubs.[3]

Tactical value

15. A number of crime investigations were commenced, progressed or assisted by information derived through intelligence hearings. These included:

a. A protracted drug trafficking investigation conducted in central Queensland focusing on the activities of the two OMCGs. This investigation commenced from leads generated through intelligence hearings. The investigation has resulted in approximately 20 people having been charged with serious drug and related offences.

b. A protracted drug trafficking investigation in relation to the activities of members and associates of two OMCGs in south-east Queensland. The investigation is substantial. To date, many people, including members and former members, have been charged with a number of offences, including several charged with drug trafficking. Arrests are ongoing. Intelligence hearings contributed to the investigation as it progressed.

2 A total of 390 of the 412 intelligence reports have been disseminated to law enforcement partner agencies.

3 For example, clubs which have an American origin refer to 'prospects' as opposed to 'nominees', used in clubs that originate in Australia. 'Vests' (Australian clubs) are known as 'cut-offs' in clubs with American origin.

c. A protracted drug trafficking investigation in relation to the activities of an OMCG in south-east Queensland. Intelligence hearings contributed to the body of knowledge in relation to the activities and membership of the club, and the involvement of their associates (including professional facilitators) in trafficking and related activities.

d. An investigation into drug-related extortion by members of an OMCG. Hearings explored extortion-related matters involving the club which obtained significant information beyond that obtained during the investigation.

e. Law enforcement understanding of the events leading up to the Broadbeach riot, including a tit-for-tat exchange between the Bandidos and Hells Angels 18 months prior. The intelligence hearings allowed for a full and detailed exploration of the circumstances of the conflict between the two clubs, which ultimately related to a dispute over territory.

Strategic value

16. During the last three years, a substantial number of the strategic intelligence products produced by the CCC have incorporated information derived through the OMCG (and particularly intelligence) hearings.

17. Since January 2013, 17 products have been produced by the CCC (12 since the introduction of the OMCG amendments in October 2013). Of those, 8 have included information obtained or derived through the COHT's work, including intelligence hearings. These products have included reports in relation to matters such as cultural changes within OMCGs, the tattoo industry and the use of violence and extortion by OMCGs.

18. The intelligence hearings process also allows the CCC to actively seek intelligence in areas of interest. By comparison, most means of gathering intelligence are passive, and rely on information being passed to law.

19. The intelligence hearings process allows intelligence to be gathered on a strategic basis to understand organised crime threats as they emerge with a view to ensuring appropriate responses.

20. Strategic intelligence gathering, such as through the hearings program, informs policy development for law enforcement agencies to enable them to better target their responses to organised crime. It allows for evidence-based policy-making by government by obtaining an accurate picture of threats, markets, culture and trends within organised crime groups.

21. The intelligence products produced by the CCC through its intelligence hearings have contributed to an improved understanding of OMCG activity and methodology and assisted in the formation of strategies to mitigate, disrupt and dismantle their activities.

Immediate response function

22. Sections 55D-F were introduced to allow the CCC to respond rapidly to an actual or threatened 'public safety' incident.

23. These provisions were introduced in the wake of the Broadbeach riot and, while not specifically referred to in the explanatory notes, it may be inferred that such an occurrence was contemplated in this provision. This provision is supported by the CCC in principle but it is noted that this section has not been used.

Contempt regime

24. The other significant legislative change which has had a noticeable impact on how hearings are conducted (both intelligence function hearings and major crime hearings) is the amendment of the sentencing regime for contempt.

25. Prior to the legislative amendments at the end of 2013, the sentence provisions for offences such as failing to answer questions in hearings were lower than in comparable jurisdictions. Further, witnesses sentenced in Queensland for contempt of the CCC received lower sentences than in other jurisdictions.[4] The prospect of contempt before the CCC, then, did not carry the same deterrent impact as in other states.

26. Experience suggested that witnesses, particularly those associated with OMCGs, may have been more likely to commit contempt rather than give evidence. The 'code of silence' (that members do not cooperate with law enforcement) was a recurring feature of OMCGs. Different clubs took this to different lengths.[5]

27. In the wake of the Broadbeach riot, it was expected that a high volume of OMCG members would be called to hearings. Based on past experience it was considered that the penalties for failure to cooperate would need to be increased to have a sufficiently deterrent effect.

28. In response to the CCC's request, the maximum penalties for refusal to be sworn and refusal to answer questions were increased from 1 year's imprisonment to 5 years' imprisonment. Further, a new sentencing regime was introduced where a witness was proceeded against for contempt of the CCC (s. 199(8A-F)).

Case study

A particular OMCG strictly enforced its rule that club members were not to cooperate with law enforcement under any circumstances. This extended to the threat of physical violence to members who gave evidence in coercive hearings rather than be imprisoned for contempt.

Several members of this club were called to intelligence function hearings. Several of these members committed contempt and were imprisoned. This reflected the CCC's parallel experience in several crime investigations dealing with members of that club. Some members of the club did give evidence but many did not. It appeared the more senior members of the club were less likely to commit contempt.[6]

After a time, several of those members who had been imprisoned for contempt were recalled to give evidence. Rather than commit a second contempt, they did, in fact, give evidence. Other witnesses from the club were called to hearings. Rather than commit contempt they too gave evidence.

Evidence was given that the club had previously had a rule prohibiting members from giving evidence. In the wake of the experience of several witnesses being imprisoned for contempt, and the prospect of increasing mandatory terms of imprisonment, the club had revised its ruling. It allowed members to give evidence, recognising that if they did not, the bulk of its membership would be in prison. For this reason, members were told that they could give evidence, but were not to say anything incriminating.

The capitulation of the club represents significant disruption to the club and undermining of its influence over its membership.

4 The 'range', such as it was, was generally in the order of 6–12 months' imprisonment, whereas in other jurisdictions it was accepted that it was between 1–2 years, but could be higher (*Wood v Galea*).

5 Most clubs have an unwritten rule that no-one is to talk to law enforcement. Some clubs put this rule in writing. In some clubs the written rule is implicit and warns members against talking to any 'outsiders' about club business.

6 It should be understood that rules in motorcycle clubs appear to operate very much like the 'Pirate Code'. While junior members may consider themselves bound to follow the rules (and rules may be strictly enforced for junior members), the senior members, or those with more power, may regard the same rules more as 'guidelines'. Senior members gave consistent evidence to this effect: 'What are they going to do to me? If someone has a problem with it they can try and take it up with me and see how they go.'

29. Since the introduction of the new sentencing regime, there have been fewer contempts than were otherwise expected. Several witnesses who were imprisoned for contempt since the introduction of the regime (five witnesses from intelligence hearings and two from major crime hearings) were recalled after being sentenced for contempt and gave evidence. A further two witnesses in intelligence hearings were initially detained for contempt and then, after receiving legal advice and prior to being sentenced for the contempt, agreed to purge their contempt.

30. Only one witness has committed a 'second contempt' under the Act. This is currently the subject of an appeal to the Court of Appeal.[7]

31. The cases recognise that the object of imprisoning a person for contempt is (at least initially) to coerce the person to purge their contempt. There are other objectives that may be achieved by a person being imprisoned for contempt. These can include deterrence to other witnesses who may be called before the CCC and denunciation of an offence which interferes substantially with the justice system.

32. The two critical features of the new sentencing regime for contempt committed in a CCC hearing are the graduated minimum sentencing regime set out at s. 199(8B), and the opportunity for a witness to avoid the consequences (or further consequences) of the sentence by purging the contempt (ss. 199(8D-F)).

33. By making these features known to a witness, the current contempt regime is intended to have a strong coercive effect. In particular the prospect of further escalating terms of imprisonment for repeated contempts make it clear that the matter is not resolved simply by the witness declining to answer questions once, and serving a short term of imprisonment. This has been borne out by experience since the introduction of the new regime.

34. It must be said that witnesses, when faced with the prospect of further prosecution for contempt, have given evidence which has varied widely in terms of quality. Of the witnesses who have been recalled, it is believed that two were significantly untruthful in their evidence. Consideration is presently being given to perjury prosecutions against them.

35. It appears that some witnesses, faced with the prospect of a further mandatory term of imprisonment of 2 years and 6 months, decide to attempt perjury instead. This represents a challenge for investigators and Counsel Assisting to ensure that sufficient evidence is available to disprove false testimony, but does not discount the coercive value of the new regime.

36. As set out above, the new regime has proven beneficial not just in intelligence hearings, but also in major crime hearings.[8]

7 The decision at first instance is *Scott v Witness JA* [2015] QSC 048.

8 There has historically been a much lower rate of contempts in corruption investigations, in addition to the fact that the CCC has historically undertaken far fewer hearings in pursuit of its corruption function.

Increased penalties for statutory offences

37. Related to the alteration to the sentencing regime for witnesses in contempt of a CCC hearing is an increase in the maximum penalties for certain offences connected with hearings.

38. Witnesses who fail to do certain things when required by the CCC may be prosecuted for a criminal offence. By the amendments the maximum penalties for these offences were increased from 85 penalty units or 1 year's imprisonment to 200 penalty units or 5 years' imprisonment.[9] These offences operate independently of contempt proceedings.[10]

39. These changes brought the CCC in line with similar provisions in the *Australian Crime Commission Act 2002*.

40. Since the amendments, there have been no witnesses proceeded against for the statutory offence. For this reason, it is difficult to say whether the increased penalties for statutory offences have had an impact. However, the possibility must be acknowledged that the prospect of harsher sentences may have contributed to the reduction in witnesses failing to cooperate since the amendments were made.

41. The CCC advocates the retention of the increased penalties for witnesses who commit offences against the Act.

Immediate arrest of a person in contempt

42. Section 198A was introduced to allow for the immediate detention of a person who was to be proceeded against for contempt in a hearing. The previous position in respect of a witness who was to be certified for contempt was that the presiding officer could issue a warrant directed to police officers for the apprehension of a person in contempt to be brought before the court.[11] This provision was considered by the CCC to be only available once the contempt had been certified to the Supreme Court.

43. The process of certifying a witness to be in contempt required an amount of paperwork to be prepared. Proceeding on the understanding that a warrant could only issue once the contempt had been certified meant that persons in contempt had a 'window' in which they could not lawfully be arrested. The inevitability of imprisonment once contempt proceedings had commenced meant that some witnesses used this opportunity to leave the CCC's premises. In one case a witness left the premises and immediately boarded a train to the Gold Coast in an attempt to avoid arrest.[12]

44. The introduction of a power to direct police officers to arrest a person where the presiding officer had indicated their intention to certify the contempt to the Supreme Court has meant that this issue has not arisen since.

45. In most circumstances (save, for example, where a witness is already in custody, or there is some other reason to believe the witness will not attempt to flee) a witness in contempt is now arrested under s. 198A to be brought before the Supreme Court as soon as practicable. This has avoided any further instances of flight.

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9 Sections 82, 183, 185, 188, 190, 192.

10 Section 198(4) provides that certain conduct which is an offence against the Act may also be certified as contempt. By operation of s. 200, a person may either be prosecuted for the statutory offence or proceeded against for contempt, but not both.

In the context of a hearing, where a person has contravened one of those provisions, submissions are heard from Counsel Assisting and the witness or their legal representative regarding whether proceedings should be commenced for contempt, or a prosecution for the statutory offence. Contempt proceedings are usually preferred because of the intended coercive effect. This was the case prior to the amendments.

11 Section 199(4).

12 A warrant had issued by the conclusion of the witness's journey and he was arrested at the other end to be brought before the court.

Use of hearings evidence in criminal proceeds confiscation matters

46. The other change which has had a direct impact since the introduction of the legislation is the amendment of the protection afforded in s. 197. By the amendments introduced at the end of 2013, a witness was no longer protected from the evidence which they gave in a hearing being admissible against them in civil confiscation proceedings.

47. By the amendments to s. 197, the evidence could be admissible in confiscation proceedings. There was also introduced a concomitant safeguard provision in s. 265 of the *Criminal Proceeds Confiscation Act 2002* which then gave the court discretion as to whether to give leave to admit the evidence, having regard to a number of factors.

48. This situation has arisen once since the legislation was introduced. A witness had given evidence in a hearing in relation to a vehicle which was used by a witness, and for which the witness paid operating costs, and loan repayments, to his brother. The evidence given by the witness in a hearing was used to support an argument that the witness/respondent exercised effective control over the vehicle, and a restraining order was granted.

49. It is expected that this provision will have further application into the future, and the CCC supports its retention.

Arrest warrant provisions

50. Sections 167 and 168 were amended to allow an application for a warrant to be made to a magistrate, rather than a judge of the Supreme Court.

51. Since this amendment three warrants have been sought for witnesses who failed to attend major crime hearings. The CCC's experience has been that this amendment has assisted the CCC's performance of its investigative functions by expediting the process for obtaining an arrest warrant.

52. Necessarily, the amendment has also reduced (albeit slightly) the imposition on the Supreme Court's resources.

Reasonable excuse provisions

53. Amendments were made to various sections which enabled witnesses who had a 'reasonable excuse' to be relieved of their obligation to comply with those sections.[13]

54. The amendments meant that a witness could not claim a reasonable excuse founded on fear of retribution to person or property where the person making the claim is a participant in a criminal organisation[14] and the investigation or intelligence hearing relates to a criminal organisation or participant therein.[15]

55. Since the introduction of this provision, no claims of reasonable excuse founded in a fear of reprisal have been made by participants in a criminal organisation.[16] The amendments have been effective in addressing the issue to which they are targeted, and the CCC supports their retention.

13 For example, under s. 190, the obligation to answer a question.

14 As defined in section 12.

15 The provision was introduced in response to claims by members of criminal organisations who claimed to have a reasonable excuse founded on fear of retribution. The argument was made that, as the club prohibited disclosure of information, if they disclosed information they would be the subject of retribution. An example of this was *Crime and Corruption Commission v WSX & EDC* [2013] QCA 152.

16 While such applications have been foreshadowed in hearings by legal representatives, these applications have not proceeded when this provision has been drawn to their attention.

Confidential proceedings

56. Section 200A was introduced to make certain proceedings before the Supreme Court confidential.

57. This provision adopted and clarified the practice under Practice Direction 33 of 2012 regarding certain provisions under the Act.

58. The provision is consistent with the general legislative presumption of confidentiality in relation to CCC hearings. The CCC supports its retention.

Clarification of s. 331

59. Section 331 was amended to clarify the powers of the CCC in respect of a witness who was facing charges.

60. This amendment was not directed specifically at addressing OMCG issues, but was in response to the High Court's decision in *X7*, delivered earlier that year.

61. The amendment clarified the CCC's powers in light of the High Court's decision,[17] and the CCC supports retention of the amendment.

Potential future use of crime intelligence hearings

62. OMCGs represent only a small fraction of the organised crime landscape in Queensland. The dynamic nature of organised crime, and the contemporary shift away from ethnic or cultural groupings and organisations which have a hierarchy, have meant that the definition of criminal organisations in relation to which the CCC's intelligence functions are available, has posed challenges for the CCC's expansion of its intelligence function hearings beyond OMCGs.

63. Further, the clear hierarchical structure, identifiable processes for entry and exit, self-identification of membership and group 'branding' of OMCGs are not apparent in most other organised crime entities or networks.

64. The key difficulties for the CCC in targeting criminal organisations for intelligence hearings are firstly in identifying and defining the criminal organisation involved in the activity and, secondly, in establishing that these organisations represent an unacceptable risk to the safety, welfare or order of the community.

65. The existence of a criminal organisation is a jurisdictional requirement to found the CCC's power to authorise a specific intelligence operation. The only operations authorised to date relate to declared entities. It does not appear that any consideration is being given to declaring other or further entities 'criminal organisations' under regulations. Nor are there any applications on foot under the *Criminal Organisation Act 2009*.

66. Thus, as the legislation presently stands, it is necessary to identify further criminal organisations to found the jurisdiction of further intelligence operations.

67. The CCC is currently developing a strategy for the identification of further criminal organisations (beyond OMCGs) which may in future be the subject of specific intelligence operations.

17 Although the iteration of s. 331 in effect prior to the amendment was held effective to address the issue raised in *X7* (per Dalton J in *Younan v Crime Reference Committee & Anor; Hamdan v Crime Reference Committee & Anor* [2014] QSC 024 at [47] to [51].

68. It is expected that this will substantially assist the CCC and its law enforcement partners in Queensland in improving law enforcement intelligence holdings in respect of broader organised crime in Queensland. The current definition of criminal organisations however will limit such intelligence collection to organised crime groups who are already well known in law enforcement and will require significant intelligence work-up and resources to attempt to meet the definition of a criminal organisation in respect of each identified organised crime syndicate. For this reason the CCC seeks amendments to the current definition of a criminal organisation.

Legislative reform in relation to crime intelligence hearings

Background

69. The CCC's Crime Reference Committee (CRC) may authorise a specific intelligence operation if certain conditions are met. In essence, the CCC must be satisfied that a criminal organisation, or a participant, engages in criminal activity, or that a person has engaged in corrupt conduct to help a criminal organisation.

70. The existence of a criminal organisation is a jurisdictional fact required for the authorisation of a specific intelligence operation. Thus, the CCC's intelligence function jurisdiction is tied (both for crime and corruption purposes) to the existence of an identified (or identifiable) criminal organisation.

71. Section 12 of the Act defines a 'criminal organisation' as:

    (a) an organisation of 3 or more persons –

        (i) who have as their purpose, or 1 of their purposes, engaging in, organising, planning, facilitating, supporting, or otherwise conspiring to engage in, serious criminal activity as defined under the *Criminal Organisation Act 2009*; and

        (ii) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community; or

    (b) a criminal organisation under the *Criminal Organisation Act 2009*; or

    (c) an entity declared under a regulation to be a criminal organisation.

72. The need for identification of a criminal organisation has posed practical problems for the CCC in targeting its intelligence function hearings beyond OMCG activity.

73. Hearings were, for example, undertaken in relation to OMCG involvement in the performance and image enhancing drugs (PIEDs) market. This was in aid of an intelligence project undertaken by the CCC exploring the emerging PIEDs market.

74. The utility of these hearings was limited by the need for a connection to OMCGs to fall within the CCC's intelligence reference. It is tolerably clear that OMCG use of PIEDs, and involvement in the PIEDs market, was increasing. Club members have also been identified as 'standing over' or extorting persons within the fitness industry involved in the distribution of PIEDs. However, for a variety of reasons OMCG influence in this marketplace is not as dominant as it is in the tattoo industry. Thus there were jurisdictional limitations which prevented widespread examination of the marketplace.

75. The CCC submits that the Australian Crime Commission (ACC) model may be of assistance in identifying opportunities for law reform.

76. The ACC is empowered under its Act[18] to undertake Special Investigations and Special (Intelligence) Operations in relation to federally relevant criminal activity. These must be approved by the board of the ACC. Parallels may be observed between the board of the ACC and the CCC's CRC, which is empowered to approve or ratify CCC investigations.

77. Special operations under the ACC Act are analogous to the CCC's specific intelligence operations.

78. The ACC may conduct intelligence operations in relation to federally relevant criminal activity. An intelligence operation is an operation that is primarily directed towards the collection, correlation, analysis or dissemination of criminal information and intelligence relating to federally relevant criminal activity, but that may involve the investigation of matters relating to federally relevant criminal activity.[19]

79. The board of the ACC may determine an intelligence operation is a special operation,[20] which then allows for the ACC to exercise its coercive powers in performance of that operation.[21]

80. The jurisdiction for intelligence operations that may be conducted by the ACC is therefore much broader than the CCC's, and is not tied to the requirement for an identified 'criminal organisation'.

81. It is submitted that the ACC model may provide useful guidance for any alteration to the CCC's intelligence operations jurisdiction.

Scope of suggested form

82. It is submitted that an alternative basis on which a specific intelligence operation may be approved should be available. In this case, it is proposed that the CRC could approve the commencement of a specific intelligence operation in relation to a defined topic or theme. This could focus on a type of offending, or individuals involved in organised crime with certain characteristics.

83. In this regard, the ACC's special operations provide some guidance as to how this could operate. There are currently numerous determinations, including in relation to:
    a. Child sex offending
    b. High risk and emerging drug threats
    c. National security impacts of serious organised crime
    d. Outlaw motorcycle gangs.

84. Equally, the existing demarcation in the *Crime and Corruption Act 2001* for crime references between general referrals and specific referrals may give some guidance as to how a specific intelligence operation could be framed without reference to a criminal organisation.

85. Currently, there are general referrals in relation to:
    a. Organised crime
    b. Professional facilitators
    c. Terrorism
    d. Serious crimes against vulnerable victims
    e. Criminal paedophilia
    f. Serious crime in relation to sexual offences.

18 *Australian Crime Commission Act 2002* (Cwlth) (ACC Act).

19 ACC Act, s. 4

20 ACC Act, s. 7C(2).

21 ACC Act, Div 2.

86. Section 27(5) of the Act sets out the requirements for a general referral. It must identify the major crime to be investigated by the CCC, and then may identify either or both of the persons suspected of being involved and/or the activities constituting the major crime.

87. An intelligence authorisation could operate on a similar basis if tied to 'organised crime', as defined in the Act. This could be achieved by introducing an alternative to s. 55A(1), allowing for an authorisation to be granted if the committee were satisfied that it is in the public interest for an intelligence operation to be authorised in relation to an aspect of 'organised crime'.

88. The authorisation could identify the 'organised crime' by reference to the persons involved, or suspected of being involved, in the organised crime, including by reference to classes of persons, an identified 'market' in which organised crime entities are active, activities or offences suspected of constituting the organised crime, or nominated criminal activity within a geographical area, or industry sector.

89. For example, an intelligence operation could be authorised in relation to the methylamphetamine market in south-east Queensland. This is the market assessed by the CCC as representing the greatest threat to Queensland based on the prevalence of the commodity, the strong presence of organised crime in the market and the social harms caused by the commodity. The major crime would be defined by reference to the organised crime jurisdiction as offences of trafficking, producing, supplying and possessing methylamphetamine (a schedule 1 drug), involving two or more persons, with substantial planning and organisation or systematic and continuing activity, and a purpose to profit.

90. This would allow the CCC to explore the activity on a market-wide basis, rather than by reference to particular or individual networks which operate within it. Such an approach would still allow for oversight by the Crime Reference Committee, which would have to be satisfied that such an operation was in the public interest, having regard to the factors set out in s. 55B.

91. Allowing for alternative bases for authorisation, either by reference to a criminal organisation, or by reference to organised crime, would allow for the CCC to address intelligence issues in a more flexible and responsive manner.

92. Intelligence is of most value when it can be gathered as issues emerge. In particular, coercive intelligence hearings can be of great benefit if employed for the timely examination of themes or trends rather than the activities of particular individuals. In such circumstances, the need to articulate an identified criminal organisation can impede the gathering of the best intelligence.

Recommendation

The CCC recommends that intelligence collection capability should be broad enough to allow intelligence to be collected on:

1. A specified network/type of organised crime (inclusive of but extending beyond OMCGs)
2. A commodity-based approach to intelligence collection (e.g. a priority drug market)
3. An offence-based approach (e.g. intelligence collection into a high-risk type of fraud activity)
4. An industry-based based approach (e.g. organised crime infiltration of the transport sector)

Conclusion

93. The CCC considers that amendments introduced into the Act have assisted it to achieve its statutory objective of reducing and combating organised crime.

94. In respect of the CCC's intelligence authorisations, the CCC submits that the requirement for an identified 'criminal organisation' be amended to allow the CCC to explore areas or themes of organised in a timely way. This would further assist the CCC to continue to combat organised crime in Queensland, and expand beyond the currently narrow focus on OMCGs.

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