



CORRUPTION AND CRIME COMMISSION

***INQUIRY INTO THE AUSTRALIAN CRIME
COMMISSION AMENDMENT (NATIONAL
POLICING INFORMATION) BILL 2015 AND
THE AUSTRALIAN CRIME COMMISSION
AMENDMENT (NATIONAL POLICING
INFORMATION CHARGES) BILL 2015***

**SUBMISSION TO THE SENATE LEGAL
AND CONSTITUTIONAL AFFAIRS
LEGISLATION COMMITTEE**

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INTRODUCTION

The Corruption and Crime Commission of Western Australia ("the Commission") was established on 1 January 2004 to combat and reduce the incidence of organised crime; and to reduce the incidence of misconduct in the public sector.

The Commission investigates cases of serious misconduct by public officers, and is responsible for oversight of all misconduct and reviewable police action allegations concerning Western Australian Police Officers. The Commission is empowered under the *Corruption, Crime and Misconduct Act 2003* ("CCM Act") to investigate suspected misconduct by public officers in Western Australia.

The Commission has the function of ensuring that serious misconduct is dealt with in an appropriate way. It performs this function by:

- Assessing allegations;
- Investigating cases of serious misconduct;
- Consulting, cooperating and exchanging information with the Australian Federal Police, State and Territory Police Forces and the Australian Crime Commission and others.

In order to perform these functions the Commission has full law enforcement agency capabilities. Significant powers have been afforded to the Commission, including:

- Coercive investigative powers including compulsory provision of documents, statements and examination under oath;
- Powers of arrest and the authority to issue arrest warrants;
- Covert law enforcement investigation powers including telecommunications interception, electronic and physical surveillance, controlled operations and assumed identities; and
- The power to conduct examinations in relation to investigations of serious misconduct and take evidence on oath or affirmation.

The Commission also has an organised crime function to deal with applications made by Western Australian Police for exceptional powers and fortification removal.

As an outcome of an investigation, the Commission may prosecute for criminal offences, form opinions as to the occurrence of misconduct or recommend the taking of disciplinary action against a public officer, pursuant to section 43(1) of the CCM Act.

Access to the National Policing Information would be extremely beneficial to the Commission in obtaining timely, high quality intelligence to inform its investigations into corruption in the public sector.

If access were granted, the Commission's use of national policing information would be to support investigations of serious misconduct and where it is reasonably necessary for the enforcement of the criminal law.

To this end, the Commission has been seeking access to the CrimTrac database since 2005. An application to become an Approved External Agency is currently being assessed by the CrimTrac Agency. The Commission's application has neither been accepted nor refused, but the process involved in obtaining approval is lengthy.

The Commission welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee ("the Committee") concerning its inquiry into the *Australian Crime Commission (National Policing Information) Bill 2015* and the *Australian Crime Commission (National Policing Information Charges) Bill 2015*.

Submissions in respect of the access arrangements are set out below for consideration by the Committee. The Commission supports the Bills and is looking forward to continuing its excellent working relationship with the Australian Crime Commission.

SUBMISSIONS

Clause 29 Australian Crime Commission (National Policing Information) Bill 2015

29 After subsection 59AA(1)

Insert:

(1A) In deciding whether to disclose national policing information under subsection (1), the CEO must act in accordance with any policy determined, and any direction given, in writing by the Board.

(1B) The CEO must obtain the approval before disclosing national policing information under subsection (1) to a body that is not one of the following:

- (a) the Australian Federal Police;**
- (b) a Police Force of the State;**
- (c) the Department administered by the Minister who administers the *Australian Border Force Act 2015*;**
- (d) the Australian Securities and Investments Commission;**
- (e) the Australian Security Intelligence Organisation;**
- (f) the Australian Taxation Office;**
- (g) a body prescribed by the regulations.**

The Commission's experience in seeking approval for access to the CrimTrac system using a process of application and approval by a Board has been frustrated by delays in the assessment process. Despite attempts to gain access since 2005, approval for access has not been granted to the Commission, nor has the application been rejected.

The Commission considers that as a law enforcement agency it is appropriate that it be incorporated expressly under proposed section 59(1B), or alternatively, that it be a body prescribed by the regulations.

This could be achieved by inserting a new paragraph naming the Commission or by incorporating a defined term which includes it. For example, a new paragraph could read "an enforcement agency as defined in section 5 of the *Telecommunications (Interception and Access) Act 1979*".

The Commission considers that this inclusion supports the overall objective of the legislation - to enable enhanced access to intelligence to combat crime nationally - and is consistent with the Commission's functions.

Part 2 -Transitional Provisions

Australian Crime Commission (National Policing Information) Bill 2015

The Commission notes that the transitional provisions are limited to arrangements under subsection 23YUD(1A) of the *Crimes Act 1914* which relate to DNA databases, and the continued application of the *Law Enforcement Integrity Commissioner Act 2006* in relation to conduct engaged in by staff members of the CrimTrac Agency.

The Commission has an application undergoing assessment with the CrimTrac Agency for access to its databases as an Approved External Agency. CrimTrac Agency staff have been unable to advise the Commission of the likely impact of the merger with the Australian Crime Commission on the application assessment process, which is presently very lengthy. It is not known whether the Commission will have its application granted prior to the legislation becoming operative.

The Commission considers, however, that it would be desirable for a further transitional provision to be included to ensure that any approvals for access granted to external agencies by the CrimTrac Agency be taken to be an approval by the Australian Crime Commission. This measure would promote efficiencies for both the Commission and the Australian Crime Commission by avoiding the need to repeat a lengthy application process.

CONCLUSION

For the reasons set out in this submission, the Commission seeks to be expressly included as a body which may access national policing information without having to obtain the prior written approval of the Board of the Australian Crime Commission under proposed paragraph 59(1)(B) of the *Australian Crime Commission (National Policing Information) Bill 2015*. Alternatively, the Commission seeks to be a body prescribed by the regulations for the purposes of proposed section 59(1B)(g). The Commission further considers that transitional provisions be incorporated to ensure continuance of access approvals to external agencies granted by CrimTrac following the merger with the Australian Crime Commission.

The Corruption and Crime Commission otherwise supports the *Australian Crime Commission (National Policing Information) Bill 2015* and the *Australian Crime Commission (National Policing Information Charges) Bill 2015* as proposed by the Government.