



Chair, Sen the Hon Ian Macdonald
Senate Legal & Constitutional Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

Dear Senator McDonald

Australian Crime Commission Amendment (Criminology Research) Bill 2015

Civil Liberties Australia believes that merging the AIC and the ACC will be counter-productive to national security, in that the qualitative and quantitative basis on which we make future decisions about policing, guns/weapons, terrorists, jails, immigration detention and a range of associated matters will be much the poorer if such research is under the control of the ACC.

If the basis of our national decision-making on security and policing matters is flawed, as it will be, the decisions and the actions flowing from them will be sub-optimal to a significant degree.

Whatever issues we raise in relation to this Bill, and the proposed merger, we are concerned our extreme disquiet will be fobbed off. The government has made a decision, a very poor decision. However, there is still time, and one fleeting opportunity for a common sense re-think of what Australia is abandoning: your Committee provides that final chance.

The first issue we have with the merger is that it will lead to an enormous dumbing down of research capability in Australia on criminology issues. We would be surprised if the Australian Crime Commission had not itself forcibly pointed out this fact to the government: whenever the ACC has required accurate, reliable statistics, it has depended on the AIC. The ACC policing-based researchers, methodologies and quality processes were never, and will never be, the equal of the AIC. The ACC does not, and will not ever, understand research ethics, for example: we expect there will soon be no research ethics process left in the ACC (if ethics have not disappeared already).

The government itself should be extremely concerned about narrowing the range of evidence-based data available to it. The government will become dependent on sources of data and reports filtered by a single agency¹. Given the inherent – indeed, legislated – secrecy of the ACC and the reluctance to subject their reports to peer

¹ As a researcher put it: "Would you trust a weather report produced by an umbrella manufacturer".

review or external scrutiny, there will certainly be a rapid loss in public confidence in the data/reports produced.

We have learned slowly over the years that independent collection of criminological data including victims, arrests, etc is the best way to ensure that the political temptation to "play" with the crime trends can be minimised. No police agency in Australia, and the ACC is no different, has yet resisted the opportunity to "spin" data to suit its own purposes, frequently by highlighting relatively unimportant matters and commonly by omission of any which do not suit the agency's purpose or future funding aims.

Respected sources such as the NSW Bureau of Crime Statistics and Research are good examples of what can be achieved to assist government decision-making and a better society. The problem is that Australia needs a reputable national criminology agency collecting from all states and territories, and federally.

The ACC is an intelligence agency that has little experience in independent ethical research. Data collected by the AIC such as DUMA² – which interviews those in police lock-ups about drug use – is possible because the 70%-plus of those asked to undertake the survey who do so, do so knowing that the data is entirely confidential. There must be a genuine concern that the ACC's reputation will have a chilling effect on the capacity to research certain populations of offenders, and even victims.

Another concern is that the priorities of the ACC are distinctly national and many "domestic" crime issues may be neglected. One in particular of concern to senior Australian researchers is the low attention given to the question of recidivism and adequate means to assess the risk of re-offending for further grave offences. This was an issue addressed by Justice Callinan in 2013 when reviewing the poor assessment methods then available to the Victorian Parole Authority.

In general the merger has also diminished the funds available to criminological research, which were already very limited. It does not appear to be clearly understood that the university community cannot be expected to pick up the data collections such as Deaths in Custody, homicide monitoring, crime victim surveys and so on because the Australian Research Council does not support serial collections of this kind, and researchers must compete for Discovery grants which are not designed to track changes over time.

The first apparent impact of the merger, already observable from the outside, will be the loss of quality people. That has already started to happen. Despite the positive rhetoric/spin over the past 18 months of this proposed merger being 'floated' behind the scenes, AIC staff are moving on at a rate that will only increase, and the AIC's

² Drug Use Monitoring in Australia (DUMA) is a project which seeks to measure drug use among those people who have been recently apprehended by police. Data from DUMA is used to examine issues such as the relationship between drugs and property and violent crime, monitor patterns of drug use across time, and help assess the need for drug treatment amongst the offender population. The DUMA program is a partnership between the AIC, State Police Services and local researchers.

traditional role as the quality national research centre for crime and justice is rapidly disappearing.

Does this matter? Very much so. Australia, internally, needs such a centre; internationally, we need to be able to provide accurate and reliable statistics as part of our reporting to UN, OECD and like bodies.

Internally within Australia, the very strong likelihood is that states and territories will withdraw their support over time for what will be left of the criminology research entity within ACC as they see how little their interests are covered.

It is sometimes hard to prove what would be lost if a government body closes down. In the case of the AIC – and in direct relation to the ACC – it is not. One only needs to compare the reports over the past few years produced by the AIC and the ACC over firearms/gun ownership and use in Australia to see the vast quality difference.

There is no way, for the reasons given above, among others, that the quality of ACC research will rise with the merger: the only path for research within the ACC in future will be a spiral, downwards.

In particular, and before this Bill is finalised, we ask the Committee to require the government to answer to the following questions:

1. Will the statistical data collected (at taxpayers' expense) over the past four decades be made available to researchers for legitimate research purposes, and will the series continue with the quality and robustness of the past? Will it be possible to answer simple questions such as the following:

- Are domestic homicides increasing?
- Are firearms homicides increasing?
- Are inter-racial homicides increasing?

2. Will important databases be maintained to permit the continuing publication of data of deaths in custody, or custody-related operations, and expanded to include immigration and border control activities, in order to allow Australia to respond in a timely, authoritative, and comprehensive manner to those who would question our human rights record? Regular, quality research providing answers to these questions is required for:

- Aboriginal deaths in custody follow-up;
- performance of an entirely new armed and uniformed body, Australian Border Force, and its behaviours by comparison with equivalent entities and systems in the past; and
- mandatory reporting under OPCAT³.

³ Optional Protocol for the Convention Against Torture: Australia has signed OPCAT, and ratification is in progress through the States and Territories. Once ratified, Australia will be required to report regularly.

3. Will materials previously published on the AIC website and held in the AIC Library be made readily accessible to the general public, at no cost as they have been collected and collated using public funds?

We propose the Committee refrains from endorsing the Bill until it receives positive answers to the above questions.

We fear that the answer might be that neither side of politics cares enough about the importance of independent research bodies in the field of civil liberties and human rights, and any response will be framed in terms of 'improving national security'.

But to do so would be a grave error. It is precisely national security that depends on excellent data, quality research, and independent analysis by people outside the contained and closeted police, security operatives and allied 'insiders'. The Paris attacks, the Lindt siege, are demonstrating that police and security agencies may have masses of data in their possession, but it is the quality of interpretation and analysis that matters.

In terms of data and research to assist national security, it would have been far preferable for quality analysis and interpretation if the research and data capacity within the ACC had been absorbed into the AIC, not the other way around. We are surprised that any MPs would be sanguine about such a major and serious loss of potential quality analysis of data and intelligence being cast away "on their watch".

We ask the Committee to recommend that the Bill be not passed until the government has had a chance to re-assess its security position, and its need for independent quality research and analysis, in light of developments in very recent times.

Yours truly,

Dr Kristine Klugman OAM
President

19 November 2015

NOTE: The government has also flagged its intention to merge Crimtrac into the ACC and with that absorb some \$100 million in funds that organisation earns for criminal record checks and the like. There has been no indication that the ACC has plans that might enable this data to be used for research or indeed has the capacity to undertake analysis using "big data". The dangers posed to the state by one big "secret data" organisation are well document from experiences in America with the FBI and the CIA.