

## Chapter 2

### Powers and taskforces

2.1 Over the course of the inquiry the committee heard from numerous witnesses and submitters about the value of multi-agency taskforces in addressing certain jurisdictional issues.

2.2 This chapter examines the evidence relating to three specific areas, all of which engage different aspects of Commonwealth law enforcement agency relationships.

2.3 Firstly, the committee heard about the impressive results of multi-agency taskforces. Two taskforces, *Project Wickenby* and *Taskforce Eligo*, were cited by Commonwealth law enforcement agencies as examples of effective cross-agency collaboration, especially in instances where agencies have different information gathering and sharing powers.<sup>1</sup>

2.4 Secondly, this chapter addresses a specific example raised by Commonwealth law enforcement agencies of inefficiency within a multi-agency relationship. For example, officials from the Reserve Bank of Australia (RBA) suggested that their relationship with the AFP could be strengthened through administrative changes to processes for counterfeit note investigations.

2.5 Finally, this chapter examines the *Momcilovic*<sup>2</sup> decision that was queried by state and territory police as potentially raising procedural legal questions for state and territory police in Australia.

#### **Federal multi-agency taskforces**

2.6 The ACC and AFP argued that multi-agency taskforces had played an enormously beneficial role for Commonwealth and state and territory law enforcement agencies. Further, the ATO argued one of the benefits of multi-agency taskforces was the ability of agencies to share data under prescribed circumstances. Normally, agencies, like the ATO, are prevented from sharing certain information with other law enforcement agency partners for privacy and other legal reasons.

2.7 This section examines some of the significant benefits of multi-agency taskforces, while taking into account the announcement made in the 2015-16 Budget to establish a Serious Financial Crime Taskforce.

#### ***Benefits and effectiveness of taskforces***

2.8 One critical issue that emerged during the inquiry is whether the full benefits of the taskforces are exploited over the longer term. This was largely due to the

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1 ACC, *Submission 5*, p. 4.

2 *Momcilovic v the Queen & Ors* [2011] HCA 34.

limited duration of taskforces resulting in officers returning to their 'home' agencies at the taskforces' conclusion.<sup>3</sup>

2.9 One question often raised in evidence was whether taskforces should be made permanent so as to retain the skills and expertise developed in fighting financial related crime. This question is examined in detail below.

2.10 ASIC was supportive of multi-agency taskforces, noting they were an effective method of investigating financial crimes, when specifically funded. ASIC noted that under present arrangements, agencies are restrained in the information that they may share with each other, whereas the use of prescribed taskforces had allowed agencies to share information where authorised and appropriate:

At present, the general sharing of information between agencies, such as ASIC and the Australian Federal Police (AFP) or the ATO, are severely restricted by our respective obligations around the use and disclosure of confidential information. The ATO, in particular, has significant limitations in disseminating information to other agencies outside of matters that are being investigated by prescribed taskforces such as Project Wickenby.<sup>4</sup>

2.11 The ACC argued that the importance of cooperation in the fight against financial related crime, facilitated through partnerships and taskforces, cannot be underestimated. The ACC submitted that cross-agency collaboration through joint taskforces is effective in combatting financial related crime:

The fight against serious financial crime is dependent upon comprehensive partnerships between the law enforcement and regulatory community, industry, academia, the broader public and the international community. In the Australian context partnerships are often enhanced through the establishment of key [taskforces] aimed at responding to thematic or individual targeted serious financial crime threats. In recent years, numerous taskforces have focused on addressing aspects of financial crime including a key emphasis on the financial crime activities of organised crime groups operating in Australia, such as [Taskforce] Eligo, the Criminal Asset Confiscation Taskforce, Project Wickenby, and [Taskforce] Galilee.<sup>5</sup>

2.12 The ATO addressed potential concerns surrounding the use of private taxpayer information in joint taskforces. Under current arrangements, the ATO is not allowed to disclose taxpayer information with other agencies unless specific requirements are met:

Taxpayers entrust sensitive financial information to the ATO in order to allow it to administer the tax system. Accordingly, the law treats information about taxpayers in the ATO's possession as confidential ('protection information').

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3 ASIC, *Submission 21*, p. 6.

4 ASIC, *Submission 21*, p. 6.

5 ACC, *Submission 5*, p. 4.

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The legislative framework for this confidentiality, and the limited exceptions under which protected information can be disclosed, is found in...the *Taxation Administration Act 1953 (Cth)*.<sup>6</sup>

2.13 The ATO explained the restrictions around sharing of protected information with other Commonwealth agencies:

Tax law allows protected information to be disclosed for the investigation of an offence punishable by at least 12 months in prison. Commonwealth, state and territory law enforcement agencies thereby use protected information to investigate specific cases of financial crime such as fraud.

However, the use and on-disclosure of information disclosed under this exception can only be used for that specific purpose. The information cannot be obtained as part of criminal intelligence activities before a specific offence is identified, nor can the information be used for intelligence purposes.<sup>7</sup>

2.14 Further, the ATO submitted that protected information can also be shared with members of taskforces for any of the taskforces purposes. In these instances, criminal intelligence activities conducted as part of taskforce activities enable a more proactive and effective approach. The ATO argued:

The more streamlined information-sharing environment created by a prescribed taskforce offers a substantial advantage to the ATO in supporting law enforcement agencies to deal with priority threats.

The prescribed taskforce provisions were modelled on a specific legislative exception that exists for agencies involved in Project Wickenby.<sup>8</sup>

### *Information sharing*

2.15 The committee heard evidence from government agencies regarding information sharing between agencies for the purposes of taskforces.<sup>9</sup> This report particularly examines two multi-agency taskforces, Project Wickenby (*Wickenby*) and Taskforce Eligo (*Eligo*), both of which resulted in significant advances in the detection and prosecution of financial related crime.

2.16 Further details of the use and sharing of sensitive law enforcement information and intelligence in the contexts of *Wickenby* and *Eligo* are discussed below.

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6 ATO, *Submission 7*, p. 4.

7 ATO, *Submission 7*, p. 4.

8 ATO, *Submission 7*, p. 4.

9 For example: Mr Richard Grant, National Manager, Investigations, Australian Crime Commission, *Committee Hansard*, 10 September 2014, p. 6.

### *Project Wickenby*

2.17 As mentioned above, *Wickenby* was specifically raised by submitters as an example of an effective taskforce that drew together expertise and staff from different agencies, working collaboratively to achieve common goals.<sup>10</sup> For example, the ATO noted that *Wickenby* was successful insofar as it had:

- recouped tax that had been avoided or evaded;
- reduced funds flowing to secrecy jurisdictions; and
- successfully prosecuted promoters and facilitators of abusive use of overseas secrecy jurisdictions.<sup>11</sup>

### *Establishment of taskforce*

2.18 *Wickenby* was established in 2006 to 'protect the integrity of Australia's financial and regulatory systems by preventing people from promoting or participating in the abusive use of secrecy jurisdictions.'<sup>12</sup>

2.19 Operations and activities carried out in Australia as part of *Wickenby* included:

- civil audits and risk reviews undertaken by the ATO, and civil investigations conducted by the ASIC;
- criminal investigations conducted by the Australian Crime Commission (ACC), Australian Federal Police (AFP) and ASIC;
- prosecutions and other legal action undertaken by the Attorney-General's Department (AGD), the Commonwealth Director of Public Prosecutions (CDPP), and the Australian Government Solicitor (AGS)
- administrative actions, including audits, banning people from the financial services industry and using data from the Australian Transaction Reports and Analysis Centre (AUSTRAC) to track money moving in and out of Australia; and
- proceeds of crime action, including action to restrain property and seek its forfeiture.<sup>13</sup>

2.20 *Wickenby* was composed of 7 federal agencies together with the ATO as lead agency. The *Wickenby* partner agencies were AUSTRAC, ASIC, ACC, AFP, AGD, AGS and the CDPP.<sup>14</sup>

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10 ATO, *Submission 7*, p. 3.

11 ATO, *Submission 7*, p. 5.

12 ATO, *Project Wickenby*, [www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Tax-crime/Project-Wickenby/](http://www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Tax-crime/Project-Wickenby/) (accessed 4 June 2015).

13 ATO, *Project Wickenby*, [www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Tax-crime/Project-Wickenby/](http://www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Tax-crime/Project-Wickenby/) (accessed 23 June 2015).

2.21 Notably, *Wickenby* was the first time the full range of Australian Government resources were used to address illegal overseas schemes that posed threats to the integrity of Australia's financial and regulatory systems.<sup>15</sup>

#### *Results of Wickenby*

2.22 As at 31 January 2015, *Wickenby* had resulted in numerous successes, including having raised \$2.163 billion in liabilities, and completing 4848 audits. An additional 102 audits remain underway as at 4 June 2015.<sup>16</sup>

2.23 Further, *Wickenby* resulted in charges being laid against 76 people and 44 convictions.<sup>17</sup>

2.24 The total amount of money recouped by *Wickenby* to 31 January 2015 was \$920.68 million.<sup>18</sup>

2.25 The ATO's representatives spoke strongly in favour of the positive impact of *Wickenby*, arguing it had demonstrated its effectiveness as a template for Commonwealth agency responses to financial related crime. Mr Brett Martin, Assistant Commissioner, Indirect Tax, Compliance Strategy and Government Relations at the ATO, noted that as *Wickenby* was due to conclude in 2015, it is important to ensure that its work continues in some form:

With Project Wickenby coming to a close [in 2015], we need to work out how to keep the pressure on those who decide to engage in finance related crime behaviours. To that end, the ATO has worked with the ACC and the AFP to determine how best to use the existing resources and frameworks to respond to specific instances of high-priority, serious financial crime in a more coordinate and effective manner.<sup>19</sup>

2.26 While emphasising the effectiveness of taskforces more broadly, ATO officials also noted that it was necessary in certain circumstances to obtain exemptions from some tax secrecy provisions, often cited by other law enforcement agencies as problematic within their investigations:

Project Wickenby has a specific statutory authority exception in tax secrecy provisions, allowing us to share information for the purpose of that task

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14 ATO, Project Wickenby, [www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Tax-crime/Project-Wickenby/](http://www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Tax-crime/Project-Wickenby/) (accessed 4 June 2015).

15 ATO, Project Wickenby, [www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Tax-crime/Project-Wickenby/?page=1#Who\\_we\\_are](http://www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Tax-crime/Project-Wickenby/?page=1#Who_we_are) (accessed 4 June 2015).

16 ATO, Project Wickenby, [www.ato.gov.au/General/The-fight-against-tax-crime/News-and-results/Project-Wickenby---getting-results/](http://www.ato.gov.au/General/The-fight-against-tax-crime/News-and-results/Project-Wickenby---getting-results/) (accessed 4 June 2015).

17 ATO, Project Wickenby, [www.ato.gov.au/General/The-fight-against-tax-crime/News-and-results/Project-Wickenby---getting-results/](http://www.ato.gov.au/General/The-fight-against-tax-crime/News-and-results/Project-Wickenby---getting-results/) (accessed 4 June 2015).

18 ATO, Project Wickenby, [www.ato.gov.au/General/The-fight-against-tax-crime/News-and-results/Project-Wickenby---getting-results/](http://www.ato.gov.au/General/The-fight-against-tax-crime/News-and-results/Project-Wickenby---getting-results/) (accessed 4 June 2015).

19 Mr Brett Martin, Assistant Commissioner, Indirect Tax, Compliance Strategy and Government Relations, ATO, *Committee Hansard*, 10 September 2014, p. 21.

force. That specific exception will cease on 30 June 2015. The exceptions for disclosure to a prescribed taskforce will remain, but they will rely on the prescription of a taskforce by regulation.<sup>20</sup>

2.27 With law enforcement agencies, especially the ATO, arguing that access to confidential information of taskforces is critical to their success, agencies also reiterated that non-ATO agencies do not normally have exemptions from the legal requirement of taxpayer confidentiality.<sup>21</sup>

2.28 The ATO's submission provides an instance where the ATO was unable to assist a police investigation relating to credit card and identity fraud:

This restriction has prevented the ATO from assisting law enforcement on a number of occasions. In one example, state police were investigating credit card fraud involving identity fraud. Police obtained notices of assessment used as proof of identity to open bank accounts, which it suspected of being forged. The ATO was prohibited by law from confirming to the police whether the TFN actually belonged to the individual named on the forged notice.<sup>22</sup>

2.29 Law enforcement agencies argued that operating within a prescribed taskforces meant that information could be shared between the ATO and non-ATO agencies in a sensitive and appropriate way. Sharing information in this manner would not be in conflict with provisions in tax law that prohibit the disclosure of tax file numbers by the ATO to third parties.<sup>23</sup>

#### *Lessons from Wickenby*

2.30 The AFP submitted that it valued *Wickenby*-like methods to inter-agency cooperation to achieve 'whole of government' approaches to the detection, disruption and prosecution of financial related crime.<sup>24</sup>

2.31 The AFP noted that the original request to establish *Wickenby* by the Heads of Commonwealth Law Enforcement Agencies (HOCOLEA) had also required the development of comprehensive and effective multi-agency taskforces 'that can respond flexibly to threats from serious and organised crime impacting on the Commonwealth.'<sup>25</sup>

2.32 The AFP submission further strengthens the argument for the retention of the effective taskforce model established by *Wickenby*:

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20 Mr Brett Martin, Assistant Commissioner, Indirect Tax, Compliance Strategy and Government Relations, ATO, *Committee Hansard*, 10 September 2014, p. 21.

21 ATO, *Submission 7*, p. 5.

22 ATO, *Submission 7*, p. 5.

23 Mr John Ford, Assistant Commissioner, Private Groups and High Wealth Individuals, Tax Crime, ATO, *Committee Hansard*, 10 September 2014, p. 21.

24 AFP, *Submission 6*, p. 9.

25 AFP, *Submission 6*, p. 9.

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In accordance with the [Heads of Commonwealth Law Enforcement Agencies] task, and with the cessation of Project Wickenby funding in June 2015, the AFP, ATO and Australian Crime Commission (ACC) are working together to identify cooperative multi-agency approaches, within existing resources and frameworks, to enhance the Commonwealth's ability to respond to specific instances of high priority financial crime in a more coordinated and effective manner.<sup>26</sup>

2.33 *Wickenby* concluded on 1 July 2015.<sup>27</sup> The work of *Wickenby* will be continued through the establishment of the Serious Financial Crime Taskforce, which is discussed below.<sup>28</sup>

### ***Taskforce Eligo***

2.34 Another example of cross-agency collaboration is the Eligo National Taskforce (*Eligo*), which was established by the ACC Board in December 2012.

2.35 *Eligo* involved the ACC, AUSTRAC and the AFP working together to reduce risks inherent in the Alternative Remittance Sector (ARS) and other Informal Value Transfer Systems (IVTS). Those systems are further examined in chapter 4.

2.36 AUSTRAC published the *National Threat Assessment on Money Laundering* in 2011 that found the overall money laundering threat from the ARS was 'high'. A joint analysis produced by the ACC, AFP and AUSTRAC in June 2012 concluded that a nationally coordinated approach to identifying and responding to high risk remitters was required. The ACC Board subsequently established *Eligo*:

...to take a coordinated and collective approach against high-risk remitters and IVTS operating in Australia to reduce their adverse impact on Australia and its national economic wellbeing.<sup>29</sup>

2.37 *Eligo* was intended to disrupt remitters and IVTS operators who were assessed as posing a high money laundering risk, and 'to implement crime prevention strategies aimed at optimising the use of the current *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF) regime.'<sup>30</sup>

2.38 The ACC argued that *Eligo*, by focusing on instances where ARS and IVTS were being used to launder proceeds of crime, was able to identify criminal activities and criminal groups previously unknown to law enforcement agencies.<sup>31</sup>

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26 AFP, *Submission 6*, p. 9.

27 ATO, *Submission 7*, p. 5.

28 The Hon Joe Hockey MP, Media Release, *Serious Financial Crime Taskforce* (5 May 2015), [www.joehockey.com/media/media-releases/details.aspx?r=480](http://www.joehockey.com/media/media-releases/details.aspx?r=480) (accessed 4 June 2015).

29 ACC, *Submission 5*, p. 15.

30 ACC, *Submission 5*, p. 16.

31 ACC, *Submission 5*, p. 16.

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*Results of Eligo*

2.39 Since its establishment, *Eligo* has restrained more than \$580 million worth of drugs and assets, including \$26 million in cash. It has also disrupted 18 serious and organised crime groups, and identified 128 criminal targets previously unknown to law enforcement agencies.<sup>32</sup>

***Serious Financial Crime Taskforce***

2.40 On 5 May 2015, the Hon Joe Hockey MP, the Treasurer, announced that the Commonwealth Government would establish a new taskforce to fight serious and organised financial crime. The taskforce would include officers from the ATO, ACC, AFP, AGD, AUSTRAC, ASIC, CDDP and ACBPS. The Treasurer's media release notes:

The Taskforce will build on the good work already done by Project Wickenby which finishes in 2015. It will enable the best practice and experience gained to be continued, and for agencies to extend their cooperative work across the broader serious financial crime risk.

...

The Serious Financial Crime Taskforce will have an unquantifiable positive benefit on the financial wellbeing of members of the community who, without the Taskforce, may be victims of financial crime. It will also help ensure all taxpayers pay their fair share of tax.<sup>33</sup>

2.41 Budget Paper No. 2 outlines the financial allocation for the taskforce over four years will total \$127.6 million,<sup>34</sup> with an additional \$3.2 million GST component to be paid to State and Territory governments.<sup>35</sup> Further, the paper notes:

The measure is estimated to increase revenue by \$419.7 million and expenses by \$130.8 million with a net improvement to the Budget of \$288.9 million in fiscal terms over the forward estimates period.<sup>36</sup>

***Committee view***

2.42 The committee notes the clear advantages of multi-agencies taskforces, and believes that agencies have demonstrated the effectiveness of taskforce arrangements in appropriately sharing information and intelligence that may not be possible in non-taskforce settings.

2.43 The committee recognises the significant results from both *Project Wickenby* and *Taskforce Eligo*, and believes these multi-agency taskforces have clearly demonstrated the enormous benefit to the Australian community of law enforcement

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32 ACC, *Submission 5*, p. 16.

33 The Hon Joe Hockey MP, Media Release, *Serious Financial Crime Taskforce* (5 May 2015), [www.joehockey.com/media/media-releases/details.aspx?r=480](http://www.joehockey.com/media/media-releases/details.aspx?r=480) (accessed 4 June 2015).

34 Treasury, *Budget Paper No.2 2015-16*, p. 30.

35 Treasury, *Budget Paper No.2 2015-16*, p. 30.

36 Treasury, *Budget Paper No.2 2015-16*, p. 30.



agency collaboration. The committee agrees that the advantages of multi-agency taskforces are significant, and generally far outweigh the administrative costs associated with their establishment. Indeed, the projection that the establishment of the Serious Financial Crime Taskforce will yield the Australian tax payer nearly \$300 million over a four year period clearly demonstrates that this approach has multiple benefits for both the Australian Government and community.

2.44 The committee is however concerned that disbanding taskforces may not adequately build on the skills and benefits of such collaborative work. Therefore, the committee strongly supports the creation of the Serious Financial Crime Taskforce and believes it will build on the significant successes of *Wickenby*. Had the government not established the Serious Financial Crime Taskforce, given the outstanding achievements of *Wickenby*, the committee would have recommended that such a taskforce be formed.

2.45 Noting that this new taskforce will generate net revenue for the government of almost \$300 million over four years, the committee is of the view that the taskforce should continue for as long as it is detecting, disrupting and prosecuting financial related crime.

2.46 To fully capture the long-term benefits of multi-agency taskforces, the committee supports the introduction of a standardised review process for taskforces prior to their conclusion. This review process would involve an examination of the operations and outcomes of each law enforcement taskforce approximately 12 months prior to its conclusion in order to determine whether it should be made an ongoing arrangement.

### **Recommendation 1**

**2.47 The committee recommends that the government review the operations and outcomes of each law enforcement taskforce approximately 12 months prior to its conclusion in order to determine whether it should be made an ongoing taskforce.**

### **Counterfeit note double handling**

2.48 The committee heard evidence relating to the complex administrative arrangements in place for investigations of counterfeit bank notes by the Reserve Bank of Australia (RBA) and AFP. The RBA noted that it had raised this issue with the AGD in 2009 during the review into the *Crimes (Currency) Act 1981*. The RBA noted that while other reforms have taken precedence, it is committed to streamlining the investigation of counterfeit bank notes.<sup>37</sup>

2.49 The RBA explained that since 2009 it has undertaken much of the administrative work relating to counterfeit bank note investigations, whereas the AFP was originally responsible for administration and investigation. Mr Keith Drayton, Deputy Head of the Note Issue Department, RBA noted that:

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37 RBA, *Submission 17*, pp 3–4.

...we still have this situation where under the legislation all the counterfeits have to go to the AFP, which essentially means that the AFP has to act as a post box collector and emptier. The counterfeits go to a post box and the AFP has to empty it and deliver it to [the RBA], which detracts them from their investigative obligations.<sup>38</sup>

2.50 While current legislative arrangements require that an AFP officer is posted to the RBA, there would be significant efficiencies achieved if the relationship between the RBA and AFP was re-examined. Mrs Michelle Bullock, the Assistant Governor (Currency) at the RBA explained:

...[the AFP] are best at investigating and enforcing, and anything that takes their focus away from that—administrative, data entry and that sort of thing—is not good. It is better if we work as a team with them. We take on the administration and we take on all the boring bits and we feed them the information in a timely fashion, which they can then investigate.<sup>39</sup>

2.51 The AFP noted that the administrative arrangement was being examined by the AGD, and agreed that it did not support the current arrangement. The AFP's preference was for a streamlined approach that allowed the RBA to act as 'post box' for counterfeit note investigation processing.<sup>40</sup>

### *Committee view*

2.52 The committee agrees with the evidence presented by the RBA and AFP that the administrative arrangement should be re-worked. It seems illogical to continue to require 'double handling' of counterfeit notes when that has the potential to delay or frustrate law enforcement investigations or the collection of counterfeit currency.

2.53 The committee believes this would free up AFP resources to focus on investigative tasks, as opposed to administrative ones.

2.54 The committee agrees that the arrangement should be streamlined through legislative change to the *Crimes (Currency) Act 1981*.

### **Recommendation 2**

**2.55 The committee recommends that the government introduce amendments to the *Crimes (Currency) Act 1981* to give the RBA administrative responsibilities and the AFP law enforcement responsibilities with respect to counterfeit note collections and investigations.**

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38 Mr Keith Drayton, Deputy Head, Note Issue Department, Reserve Bank of Australia, *Committee Hansard*, 9 September 2014, p. 20.

39 Mrs Michelle Bullock, Assistant Governor (Currency), Reserve Bank of Australia, *Committee Hansard*, 9 September 2014, p. 21.

40 Mr Michael Phelan, Deputy Commissioner Operations, Australian Federal Police, *Committee Hansard*, 10 September 2014, p. 18.

## Jurisdictional issues (the *Momcilovic* case)

2.56 Several witnesses raised the complexity of jurisdictional issues of financial related crime, both domestically and internationally. One example raised by Northern Territory Police (NT Police) and the Victoria Police was the effect of the *Momcilovic*<sup>41</sup> case, in which the High Court was required to rule on whether there were inconsistencies between federal and state offences for drug trafficking.

2.57 The Victorian Government Solicitor's Office has stated:

A majority of the Court allowed the appeal brought by Ms Momcilovic, setting aside her conviction of drug trafficking and remitting the matter to the County Court of Victoria for a retrial. The decision has implications for the trial of drug trafficking and possession offences in Victoria, the operation and application of the Charter Act and the operation of s 109 of the Commonwealth Constitution where conduct is an offence under both State and Commonwealth laws.<sup>42</sup>

2.58 The NT Police submitted concerns with respect to the interplay of Commonwealth and territory law relating to drugs offences, arguing that there was uncertainty as to which legislation should ultimately be used to lay charges:

...we have some concerns around issues...legislative primacy, particularly with offences that are committed or potentially committed in the Territory but involving Commonwealth interests and then what legislation bears primacy.<sup>43</sup>

2.59 The NT Police specifically raised the *Momcilovic* matter in the committee's hearing, and outlined the issues the decision has raised:

What the *Momcilovic* case provided was that an offence can be committed. If we use the Territory as an example, because this case, I believe, was in Victoria. Should an offence be committed here in the Northern Territory and we use Territory powers to execute search warrants, we use Territory powers in order to interview offenders and to [proffer] charges, it may well be the case that, through the decision of *Momcilovic*, we should have used Commonwealth legislation, because of the way the monies may have been held in trust, because of who the true victim of the crime was and how the offence was perpetrated. We are still working through some of those issues, particularly when it comes to financial crime, and trying to make that determination about whose jurisdiction it really rests in, particularly when looking at this ruling of the High Court. As I say, we are currently in a state

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41 *Momcilovic v the Queen & Ors* [2011] HCA 34.

42 Victorian Government Solicitor's Office, Case Note, *Momcilovic v The Queen* [2011] HCA 34 (8 September 2011), <http://www.vgso.vic.gov.au/sites/default/files/Case%20Note%20-%20Momcilovic%20v%20The%20Queen.pdf> (accessed 29 June 2015).

43 Mr Mark Payne, Assistant Commissioner, Crime and Specialist Services, Northern Territory Police Force, *Committee Hansard*, 8 September 2014, p. 1.

of flux where we are examining how this affects us in the Northern Territory and what legislative provisions we need alter.<sup>44</sup>

2.60 Victoria Police expressed similar concerns with the *Momcilovic* decision.<sup>45</sup> While noting that Commonwealth legislation overrides state or territory legislation, Assistant Commissioner Fontana argued that Victoria Police were encouraged by the decision to charge persons under Commonwealth legislation:

...Commonwealth legislation does override. We do have the authority to use Commonwealth legislation, but it is an issue, particularly in the joined-up arrangements, when you are looking at the constitutional arrangements. It is quite important to get your head around that if you are looking at, say, introducing a national approach for dealing with unexplained wealth. You need to look at the implications of the Constitution and that needs to be tailored for any laws that you are drafting.<sup>46</sup>

2.61 The AGD did not agree with the evidence presented by some witnesses, that the *Momcilovic* decision encouraged state and territory police to use Commonwealth legislation to charge and prosecute for certain offences. In answers to *Questions on Notice*, the AGD noted that the *Momcilovic* decision:

...has been considered by the Standing Council of Attorneys-General (SCAG) and the Standing Council on Law and Justice (SCLJ), and by justice agency officials through the National Justice CEOs forum (NJCEOs) and the National Criminal Law Reform Commission (NCLRC).

At the meeting of the Standing Council on Law and Justice in April 2012, Ministers asked the NCLRC to undertake work to review existing means for avoiding constitutional inconsistency between Commonwealth, State and Territory criminal laws, and, if necessary, develop new proposals for avoiding such inconsistency.

In June 2013, following advice from the NCLRC, the NJCEOs agreed that this project required no further consideration on the basis that the risk of inconsistency was low.<sup>47</sup>

2.62 Accordingly, the AGD did not agree that *Momcilovic* requires a national policy response.<sup>48</sup>

### ***Committee view***

2.63 The committee notes that while NT Police and Victoria Police both raised concerns with respect to the findings in *Momcilovic*, the National Criminal Law

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44 Mr Mark Payne, Assistant Commissioner, Crime and Specialist Services, Northern Territory Police Force, *Committee Hansard*, 8 September 2014, p. 7.

45 Mr Stephen Fontana, Assistant Commissioner, Victoria Police, *Committee Hansard*, 9 September 2014, p. 56.

46 Mr Stephen Fontana, Assistant Commissioner, Victoria Police, *Committee Hansard*, 9 September 2014, p. 56.

47 Attorney-General's Department, *Answers to Questions on Notice*, p. 1.

48 Attorney-General's Department, *Answers to Questions on Notice*, p. 1.

Reform Commission, and the National Justice CEOs disagreed, finding the risk of inconsistency was low.

2.64 The committee agrees with the evidence presented by the AGD that *Momcilovic* does not require a national policy response.