

Chapter 5

Collaboration between law enforcement and the private sector

5.1 This chapter examines the relationships between law enforcement agencies and the private sector, specifically their efforts to collaborate and share information effectively.

5.2 While this chapter examines instances of effective collaboration, there are other examples where greater cooperation between the private sector and law enforcement would have been beneficial.

Law enforcement and private sector collaboration

5.3 Numerous submitters, including the ACC, discussed the importance of the relationship between law enforcement agencies and the private sector, specifically financial institutions' role in fighting financial related crime.¹

5.4 The ACC's traditional relationship with the private sector (including banks) has been largely legislative and transactional to date. The evolution of serious and organised crime has required law enforcement agencies, like the ACC, to work more closely with banks in a 'trusting and mutually beneficial way'.²

5.5 The ATO submitted that proactive engagement with industry is a critical component of its efforts in addressing the risks of taxation crime. Its submission also details the ways in which the ATO provides information to promote awareness of the risks and consequences of tax crime to the community and industry:

A community that understands the potential damage caused by tax crime can work together to strengthen and protect the tax and superannuation systems which are important community assets.³

5.6 The ACC suggested that its coercive powers are immeasurably valuable in investigations, and that its intelligence products are particularly useful in collaboration with the banking sector:

...we are working closely with the banks in order that we can provide as much information and assistance to them without transgressing what the [Australian Crime Commission Act] provides. So in a way, because of the intelligence collection powers, the commission has to necessarily adopt a more measured, careful approach to make sure that we do not and should

1 ACC, *Submission 5*, p. 19.

2 Mr John Moss, Acting Executive Director, Operations, Australian Crime Commission, *Committee Hansard*, 10 September 2014, p. 1.

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

not abuse the powers that the commission enjoys. It is different to the traditional policing relationship because of the exceptional powers that the commission has. But having said that, we are openly engaging with the banks. I would be further seeking to broaden the flow [of information] back to the banking sector.⁴

5.7 Victoria Police used the example of *Strike Force Piccadilly* to demonstrate effective collaboration between law enforcement agencies and the private sector. This initiative is a partnership of Victoria Police and key private sector stakeholders, for example the Shopping Centre Council of Australia, the ABA, cash-in-transit firms and the ATM industry association. Victoria Police noted that the task force has resulted in a significant reduction in 'ram' raids [on ATMs] sustained over several years, with explosive gas attacks eliminated in the first year.⁵

5.8 Despite these positive examples of public-private collaborations, South Australia Police (SAPOL) raised concerns relating to the ability of banks and law enforcement agencies to share information. SAPOL's submission notes that there were substantial delays when law enforcement agencies requested information 'from financial institutions served with banker's orders—including follow up requests for additional information and supporting affidavits.'⁶ SAPOL further argued that law enforcement agencies should be allowed to set time limits for the production of information by financial institutions.

5.9 SAPOL also questioned, under the general guise of potential legislative reform, whether banking information provided pursuant to search warrants could be received electronically.⁷

5.10 Private sector submitters also raised some concerns about the degree of collaboration with law enforcement agencies. The ABA for example submitted that collaboration between banks and law enforcement was not operating as efficiently as possible, due to the inability of banks to 'contextualise' the information they pass on to law enforcement agencies. The ABA noted:

Trusted information sharing is absolutely essential to our line of work. It is not an instinct in the Australian system, I think, because of the separation of agencies from corporate life. Corporations do employ people like us [with a law enforcement or security background] to make sure we manage it on our side, but the instinct is not sharing. It has developed. If you look at the [remittance] sector, for example, the Commonwealth has recognised that the private sector owns and operates 94 per cent or 97 per cent of Australian

4 Mr Chris Dawson, Chief Executive Officer, Australian Crime Commission, *Committee Hansard*, 10 September 2014, p. 2.

5 Victoria Police, *Submission 13*, p. 5.

6 South Australia Police, *Submission 12*, p. 4.

7 South Australia Police, *Submission 12*, p. 4.

critical infrastructure and it has started to react accordingly; to understand and to share. But the instincts still are not there.⁸

5.11 The ABA told the committee that many banks regularly receive requests from law enforcement agencies, in addition to requests from courts and other parts of government. While willing to comply with these requests, the ABA suggested that the relationship between banks and law enforcement agencies would be enhanced if banks were able to refine the request for information contained in warrants:

I think that sort of reform has to go through which makes it easier for us to have a discussion with law enforcement about what they need rather than having a warrant that says, 'we want everything'. That costs both parties time. But again you run into this part about: what can they share? And, if you have a prudent law enforcement officer, they are more likely not to share as much as they probably could share, and that increases our time. But, if there is a quicker way, we are interested to look at it, because it is dead money for us. You look at our work—for our shareholders, it is dead money.⁹

5.12 Representatives from the ABA argued that the best examples of information sharing occurs where there is effective collaboration between banks and law enforcement, and a clear understanding by banks as to what exactly the law enforcement agency is looking for:

...the best exchanges occur when there is the ability to exchange information around what law enforcement are actually after. The worst scenario is when you get broad warrants and notices because either law enforcement either do not know what they are after or do not know what might be available. If the notices are tailored to the particular evidentiary or investigation needs, the response time can be much quicker because we can target the search of our records. Also, with law enforcement we have worked on real-time information sharing under particular notices as well.¹⁰

5.13 The AGD rejected the ABA's view arguing that it would create different classes of organisations with different search warrant compliance arrangements in criminal investigations:

Any person or organisation that is party to a police investigation is required to comply with relevant laws. The Department does not support creating specific arrangements for banking institutions, as distinct from other organisations or individuals, during investigations of criminal matters. In order to effectively investigate suspected criminal behaviour, it is important that law enforcement should have timely access to all relevant information,

8 Mr Damian McMeekin, Head of Group Security, ANZ, *Committee Hansard*, 9 September 2014, p. 4.

9 Mr Steven York, Head of Groups Security and Business Reliance, Bank of Queensland, *Committee Hansard*, 9 September 2014, p. 5.

10 Mr Guy Boyd, Global Head of Financial Crime, Australian and New Zealand Banking Group Ltd, *Committee Hansard*, 9 September 2014, p. 4.

irrespective of the nature of the organisation that is in control or possession of that information.¹¹

Committee view

5.14 The committee notes instances, like *Strike Force Piccadilly* in Victoria that demonstrate the enormous benefits of co-operation between law enforcement and private sector financial service providers. The committee strongly encourages law enforcement and financial service providers to continue to collaborate in areas of mutual benefit.

5.15 The committee is not persuaded that law enforcement agencies should share contextual information from search warrants with financial service providers, nor 'tailor' warrants as suggested by the ABA.

5.16 The committee agrees with the points made by the AGD that implementation of such an arrangement would create different classes of organisations providing information to law enforcement. Such an approach may increase barriers to information for law enforcement agencies, increase the complexity around obtaining information between law enforcement and the private sector.

5.17 The committee does believe however, that information sharing can be enhanced through other means, including through the provision of access to the Document Verification System (DVS) that is discussed in Chapter 6.

11 Attorney-General's Department, *Answers to Questions on Notice*, p. 3.