

Chapter 1

Introduction

Referral

1.1 On 3 December 2015 the Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister on Counter-Terrorism, introduced the Australian Crime Commission Amendment (National Policing Information) Bill 2015 (the merger bill) and the Australian Crime Commission (National Policing Information Charges) Bill 2015 (the charges bill) into the House of Representatives.¹

1.2 On 4 February 2016, pursuant to a report of the Senate Standing Committee for Selection of Bills, the Senate referred the provisions of the two bills to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 10 March 2016.²

Conduct of the inquiry

1.3 In accordance with usual practice the committee wrote to a number of persons and organisations, inviting submissions to the inquiry by 18 February 2016. Details of the inquiry were also made available through the committee's website at <http://www.aph.gov.au/senate/legalcon>.

1.4 The committee received five submissions in response to this inquiry. The submissions are listed at Appendix 1 to this report and are available on the committee's webpage. The committee would like to thank all those who submitted to the inquiry.

Background to the bills

1.5 CrimTrac was established in 2000, pursuant to an intergovernmental agreement (IGA) between the Commonwealth and state and territory governments, to enhance Australian law enforcement with an emphasis on information-based policing facilitated through rapid access to detailed, current and accurate police information.³ The services currently provided by CrimTrac include:

- the National Police Checking Service (NPCS) (criminal history checking);
- the National Child Offender System (comprising the Australian National Child Offender Register and the Managed Person System);
- the National Police Reference System; and

1 House of Representatives, *Votes and Proceedings*, No. 166, 3 December 2015, pp 1805–1806.

2 *Journals of the Senate*, No. 137, 4 February 2016, p. 3710.

3 Parliamentary Library, *Bills Digest—Australian Crime Commission Amendment (National Policing Information) Bill 2015 and the Australian Crime Commission (National Policing Information Charges) Bill 2015*, No. 73, 2015–16, p. 3.

- the National Firearms Identification Database.⁴

1.6 The NPCS is used for the purposes of employment (including volunteer) screening to provide a complete national view of a person's previous convictions for criminal offences. NPCS is provided to the Australian police services and to certain accredited Commonwealth, state and territory government agencies and commercial bodies. The service is not currently provided directly to members of the public.⁵

1.7 CrimTrac handles a wide range of information received from police and other sources, including personal and sensitive information such as individuals' criminal records, DNA profiles of offenders, details about missing persons, and fingerprint and palm images.⁶

1.8 In accordance with the IGA, CrimTrac is an executive agency within the Attorney-General's portfolio. It is headed by a Chief Executive Officer (CEO) and a Board of Management comprising the Police Commissioner from each state and the NT, the Chief Police Officer of the ACT, the Commissioner of the Australian Federal Police (AFP), and a nominated representative of the Attorney-General's Department (the department).⁷

1.9 The Australian Crime Commission (ACC) is Australia's national criminal intelligence agency with specialist investigative capabilities, including coercive powers. The ACC's main functions are to:

- collect, correlate, analyse and share criminal information and intelligence;
- maintain a national database of criminal information and intelligence;
- undertake intelligence operations;
- investigate matters relating to federally relevant criminal activity;
- provide strategic criminal assessments; and
- provide advice on national criminal intelligence priorities.⁸

1.10 The ACC is a statutory agency within the Attorney-General's portfolio. ACC is also headed by a CEO and a board, with representatives from Commonwealth, state and territory law enforcement and key national security and regulatory agencies.⁹

4 Parliamentary Library, *Bills Digest—Australian Crime Commission Amendment (National Policing Information) Bill 2015 and the Australian Crime Commission (National Policing Information Charges) Bill 2015*, No. 73, 2015–16, p. 3.

5 The charges bill, Explanatory Memorandum, p. 2.

6 Office of the Australian Information Commissioner, *Submission 2*, p. 1.

7 Explanatory Memorandum (merger bill), p. 12; <https://www.crimtrac.gov.au/commissioners> (accessed 7 March 2016).

8 Australian Crime Commission, *Annual Report 2014-15*, pp 8-9.

9 Australian Crime Commission, *Australian Crime Commission Board*, <https://crimecommission.gov.au/about-us/australian-crime-commission-board> (accessed 19 February 2016)

1.11 In 2014 the National Commission of Audit considered the consolidation of crime intelligence capabilities. The Commission recommended that, as criminal law enforcement is increasingly dependent on strong intelligence collection and analysis, CrimTrac be merged with the ACC to better harness the organisations' collective resources.¹⁰ The Commission concluded that while the agencies were working effectively together, a consolidated crime intelligence capability would better support law enforcement operations by the AFP and other Commonwealth and state agencies.¹¹

1.12 The Commission of Audit report noted that the recommendation to merge CrimTrac with the ACC would require consultation with the states and that, '[i]t is critical their interests are reflected, including through the continued representation of the state police commissioners on the Australian Crime Commission board'.¹²

1.13 Through the ACC and CrimTrac Boards, the Commonwealth consulted with the states and territories to develop recommended options to improve collaboration between the two agencies.¹³ On 5 November 2015 the Law, Crime and Community Safety Council (LCCSC), comprising the justice ministers of all Australian jurisdictions, agreed to the Commonwealth taking the necessary steps to merge CrimTrac and the ACC.¹⁴

Purpose of the bills

1.14 The purpose of the merger bill is to amend the *Australian Crime Commission Act 2002* (ACC Act) in order to merge the CrimTrac agency into the ACC.¹⁵ The purpose of the charges bill is to create a legislative basis for the ACC to be able to impose charges, as taxes, for applications for, and the provision of, national policing information services currently provided by CrimTrac.¹⁶

1.15 The bills would bring together Australia's national criminal intelligence and information capabilities under one banner, providing the ACC with direct access to CrimTrac's national police information holdings and sophisticated information

10 National Commission of Audit, *Towards Responsible Government: the report of the National Commission of Audit: Phase 1*, Canberra, February 2014, p. 209.

11 National Commission of Audit, *Towards Responsible Government: the report of the National Commission of Audit: Phase 1*, Canberra, February 2014, p. 208.

12 National Commission of Audit, *Towards Responsible Government: the report of the National Commission of Audit: Phase 1*, Canberra, February 2014, p. 209.

13 Law, Crime and Community Safety Council (LCCSC), *LCCSC Communiqué*, Canberra, 22 May 2015, p. 4.

14 Law, Crime and Community Safety Council (LCCSC), *LCCSC Communiqué*, Canberra, 5 November 2015, p. [2].

15 Explanatory Memorandum (merger bill), p. 2.

16 Explanatory Memorandum (charges bill), p. 2.

capabilities. Together, the bills would allow the merged agency to continue the self-funded model that has supported CrimTrac's services at no cost to the budget.¹⁷

1.16 According to the explanatory memorandum, having a unified resource would enrich the national understanding of criminal activity, including volume crimes (such as domestic violence) and serious and organised crime and terrorism. The merger of the agencies would improve the quality, access and timeliness of intelligence provided to law enforcement and intelligence agencies and would allow police, justice agencies and policy makers at all levels of government to adopt a more effective, efficient and evidence-based response to crime.¹⁸

Key provisions of the bills

The merger bill

1.17 The merger bill amends the ACC Act to enable the merged agency to carry out all of CrimTrac's functions. These are referred to as 'national policing information' functions under the merged agency structure.¹⁹ Under Item 1 of Schedule 1 in the merger bill, national policing information is defined as information that is collected by the AFP, the police force of a state or territory, or a body prescribed by the regulations.²⁰

1.18 National policing information does not include any further information, opinion, interpretation or conclusions derived by the ACC from collected information, or any collected information included in an analysis, report or other presentation by the ACC.²¹ The definition would ensure that information collected by the ACC through its existing investigatory and intelligence functions is separate and distinct from national policing information of the type currently dealt with by CrimTrac.²²

1.19 Item 3 of schedule 1 would insert a new paragraph (fa) into section 7A of the ACC Act to enable the ACC to perform all of the functions currently carried out by CrimTrac.²³ The ACC would exercise the following functions:

- (fa) to provide systems and services relating to national policing information, including the following:
 - (i) collecting, correlating and organising national policing information;
 - (ii) providing access to national policing information;

17 The Hon Michael Keenan MP, *House of Representatives Hansard*, 3 December 2015, p. 14626.

18 Explanatory Memorandum (merger bill), p. 2.

19 The Hon Michael Keenan MP, *House of Representatives Hansard*, 3 December 2015, p. 14626.

20 Explanatory Memorandum (merger bill), p. 9.

21 Explanatory Memorandum (merger bill), p. 9.

22 Parliamentary Library, *Bills Digest—Australian Crime Commission Amendment (National Policing Information) Bill 2015 and the Australian Crime Commission (National Policing Information Charges) Bill 2015*, No. 73, 2015–16, p. 6.

23 Explanatory Memorandum (merger bill), p. 9.

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- (iii) supporting and facilitating the exchange of national policing information;
 - (iv) providing nationally coordinated criminal history checks on payment of a charge imposed by the Charges Act.²⁴

1.20 The merger bill would result in the CrimTrac Board of Management and the position of CrimTrac CEO being abolished, and a single board overseeing the merged agency, which would fall to the ACC Board under the ACC Act.²⁵

1.21 All agencies represented on the current CrimTrac Board are represented on the ACC Board, along with heads of other Commonwealth agencies including the Australian Border Force, Australian Securities and Investments Commission, Australian Security Intelligence Organisation, Australian Taxation Office, and AUSTRAC.²⁶ The bill proposes to increase the quorum requirement for the ACC Board from seven to nine of its fourteen (voting) members, to ensure that police retain influence over decisions relating to national policing information functions.²⁷

1.22 The amendments to the ACC Act would provide the ACC Board with additional, specific functions currently exercised by the CrimTrac Board.²⁸ This would include making recommendations to the minister about expenditure from the National Policing Information Systems and Services Special Account. The Special Account's primary purpose is to support the development and maintenance of new and existing information sharing systems for Australia's police services.²⁹

1.23 The revenue that CrimTrac currently generates accrues into the Special Account. This allows the revenue generated by CrimTrac to be kept separate from other Commonwealth funds and invested in national policing information services. The merger bill would continue the Special Account, set out the funds that must be credited to the account, and the purposes for which the account may be debited.³⁰

1.24 Sections 59AA-59AD of the ACC Act govern the ACC's disclosure of information to government and private sector organisations, and the purposes for which information may be shared and with whom. Items 29, 30 and 31 of Schedule 1 of the merger bill would amend the disclosure regime under the ACC Act to take into account the ACC's new national policing information functions. The amendments

24 Schedule 1, Item 3.

25 Explanatory Memorandum (merger bill), p. 11.

26 Explanatory Memorandum (merger bill), p. 11; Australian Crime Commission, *Australian Crime Commission Board*, <https://crimecommission.gov.au/about-us/australian-crime-commission-board> (accessed 3 March 2016)

27 Explanatory Memorandum (merger bill), pp 12, 15.

28 The Hon Michael Keenan MP, *House of Representatives Hansard*, 3 December 2015, p. 14627.

29 Explanatory Memorandum (merger bill), p. 12.

30 The Hon Michael Keenan MP, *House of Representatives Hansard*, 3 December 2015, p. 14627.

would distinguish between disclosure of national policing information and other information held by the ACC.³¹

1.25 Currently, the CrimTrac CEO, within parameters set by the CrimTrac Board, is responsible for determining which organisations can access criminal history checks through CrimTrac.³² Item 17 of Schedule 1 of the merger bill would provide the ACC CEO with the function of approving bodies that may access nationally coordinated criminal history checks through the ACC. The CEO would be able to approve, in writing, a body of the Commonwealth, a state or territory, or any other body or organisation however described (including organisations outside Australia) as an accredited body for the purposes of receiving nationally coordinated criminal history checks.³³ In deciding whether to approve a body or organisation, the CEO must act in accordance with any policy determined, or any direction given, by the ACC Board.³⁴

1.26 The bill would then allow the ACC CEO to disclose nationally coordinated criminal history checks to an accredited body, or to the person to whom the check relates, if disclosing the information would not be contrary to a Commonwealth, state or territory law that would otherwise apply, and if it was not contrary to any relevant conditions determined by the board. This would enable the ACC Board to set limits or conditions on the level of access an accredited body could have to criminal history checks, mirroring the current involvement of the CrimTrac Board in these types of decisions.³⁵

1.27 In relation to the onward disclosure of national policing information to another government body, new subsection 59AA(1B) would provide that the ACC CEO must obtain the ACC's Board's approval before disclosing national policing information to an agency that is not one of the following:

- (a) the Australian Federal Police
- (b) a Police Force of a 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, or

31 Parliamentary Library, *Bills Digest—Australian Crime Commission Amendment (National Policing Information) Bill 2015 and the Australian Crime Commission (National Policing Information Charges) Bill 2015*, No. 73, 2015–16, p. 8.

32 Parliamentary Library, *Bills Digest—Australian Crime Commission Amendment (National Policing Information) Bill 2015 and the Australian Crime Commission (National Policing Information Charges) Bill 2015*, No. 73, 2015–16, p. 8.

33 Explanatory Memorandum (merger bill), p. 19.

34 Explanatory Memorandum (merger bill), p. 20.

35 Explanatory Memorandum (merger bill), p. 6.

(g) a body prescribed by the regulations.

1.28 The bill further provides that the ACC CEO must act in accordance with any policy determined, and any directions given, in writing by the Board. This would allow the ACC Board to set limits or conditions on the level of access a government agency may have to national policing information, as the CrimTrac Board currently does.³⁶

1.29 Schedule 2 of the merger bill amends the *Crimes Act 1947*, the *Law Enforcement Integrity Commissioner Act 2006* and the *Privacy Act 1988* (Privacy Act) to make consequential amendments, and makes transitional arrangements.³⁷

The charges bill

1.30 The charges bill contains provisions to allow the ACC Act to provide national policing information services according to the same federal funding model that currently applies to CrimTrac: a self-funded federal scheme established under an IGA with the states and territories.³⁸ The charges bill would enable the merged agency to impose charges for certain services in order to fund or subsidise the provision of other services to police and the community, and also to charge fees on a cost recovery basis for discrete services.³⁹ The bill aims to allow the business model to adapt to meet emerging information technology needs of police as national policing information services evolve.⁴⁰

1.31 The charges bill would allow the minister to specify in a legislative instrument the services that the merged agency would charge for, who has to pay the charges and the amount of each charge.⁴¹

Human rights implications

1.32 The merger bill engages the right to freedom from unlawful or arbitrary interferences with a person's privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR), because the national policing information covered by the new and amended disclosure provisions in the bill could include personal information.⁴²

1.33 The explanatory memorandum for the merger bill noted that the new regime for the disclosure of nationally coordinated history checks would enable the continuation of CrimTrac's current business model, with criminal history checks only disclosed to an accredited agency on behalf of an individual.⁴³ Should the business

36 Explanatory Memorandum (merger bill), p. 5.

37 Explanatory Memorandum (merger bill), p. 3, pp 30–31.

38 Explanatory Memorandum (charges bill), p. 2.

39 The Hon Michael Keenan MP, *House of Representatives Hansard*, 3 December 2015, p. 14628.

40 Explanatory Memorandum (charges bill), p. 2.

41 Explanatory Memorandum (charges bill), p. 6.

42 Explanatory Memorandum (merger bill), p. 4.

43 Explanatory Memorandum (merger bill), p. 7.

model evolve, the merger bill would ensure an individual's right to privacy would remain protected with the merged agency able to provide a criminal history check directly to an individual who is the subject of the check. Information could only be disclosed where a disclosure was not contrary to a Commonwealth, state or territory law.⁴⁴

1.34 In relation to disclosure to other government agencies, the regime would ensure that the ACC may only disclose national policing information in similar circumstances to those currently accepted by CrimTrac. In requiring that the ACC CEO obtain the approval of the ACC Board for disclosure to a non-law enforcement agency, the amendments would impose additional requirements to the strict regime that already applies to other ACC information.⁴⁵

1.35 The explanatory memorandum stated that in these circumstances the bill created permissible limitations on the right to privacy which were reasonable, necessary and proportionate, and therefore compatible with human rights and freedoms under Australian law.⁴⁶

1.36 The department, the ACC and CrimTrac prepared a Privacy Impact Assessment (PIA) to assess the impact the merger would have on the protection of personal information, and provided the PIA to the committee.⁴⁷ The PIA assessed that, while merging CrimTrac into the ACC would mean that it would no longer be subject to the *Privacy Act 1988* (Privacy Act), this would not diminish the protection of the personal information currently held by CrimTrac. This issue is discussed further in chapter two.

1.37 According to the charges bill explanatory memorandum, that bill does not raise any human rights issues.⁴⁸

Consideration by other committees

1.38 The Senate Standing Committee for the Scrutiny of Bills sought advice from the minister in regard to:

- whether the legislation could contain more guidance in relation to the types of bodies that may access nationally coordinated criminal history checks. The committee regarded the amendments as very broad with the CEO able to approve the accreditation of a body of the Commonwealth, a state or a territory, including organisations outside Australia; and
- whether policy and directions issued by the ACC Board regarding accreditation should be subject to Parliamentary oversight and disallowance.⁴⁹

44 Explanatory Memorandum (merger bill), p. 7.

45 Explanatory Memorandum (merger bill), p. 7.

46 Explanatory Memorandum (merger bill), p. 7.

47 Attorney-General's Department, Australian Crime Commission and CrimTrac, *Submission 3, Attachment 1*.

48 Explanatory Memorandum (charges bill), p. 4.

1.39 Further, in regard to amendments allowing the ACC Board to set limits or conditions on the level of access an accredited body or an individual could have to nationally coordinated criminal history checks, the Scrutiny of Bills Committee:

seeks the Minister's advice as to whether guidance concerning the setting of such limits and conditions could be contained in the primary legislation and, if not, whether it is appropriate for the setting of such limits and controls to at least be subject to disallowance.⁵⁰

49 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No.1 of 2016*, 3 February 2016, p. 4.

50 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No.1 of 2016*, 3 February 2016, p. 4.

