

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Australian Crime Commission Amendment  
(National Policing Information) Bill 2015  
[Provisions]

Australian Crime Commission (National  
Policing Information Charges) Bill 2015  
[Provisions]

March 2016

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# **Recommendation**

## **Recommendation 1**

**2.43 The committee recommends that the bills be passed.**



# 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.<sup>1</sup>

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.<sup>2</sup>

### 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](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.<sup>3</sup> 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

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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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup>

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).<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

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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.<sup>10</sup> 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.<sup>11</sup>

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'.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

### **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.<sup>15</sup> 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.<sup>16</sup>

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

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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.<sup>17</sup>

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.<sup>18</sup>

## **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.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup> 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;

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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.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

1.22 The amendments to the ACC Act would provide the ACC Board with additional, specific functions currently exercised by the CrimTrac Board.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

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

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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.<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup>

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

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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.<sup>36</sup>

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.<sup>37</sup>

### ***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.<sup>38</sup> 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.<sup>39</sup> The bill aims to allow the business model to adapt to meet emerging information technology needs of police as national policing information services evolve.<sup>40</sup>

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.<sup>41</sup>

### **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.<sup>42</sup>

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.<sup>43</sup> Should the business

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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.<sup>44</sup>

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.<sup>45</sup>

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.<sup>46</sup>

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.<sup>47</sup> 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.<sup>48</sup>

### **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.<sup>49</sup>

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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.

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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.<sup>50</sup>

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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.



# Chapter 2

## Key issues

2.1 Submissions received by the committee supported the bills' objective of providing Australian law enforcement agencies with centralised access to comprehensive criminal information and intelligence resources. However, some submitters expressed concern about two aspects of the merger bill:

- the impacts on individual privacy; and
- access of state crime and corruption commissions to national policing information.

2.2 No issues were raised with the committee in regard to the charges bill. As such, references in this chapter to 'the bill' are to the merger bill, unless otherwise specified.

### Privacy impacts of the merger bill

2.3 The submission from the Office of the Australian Information Commissioner (OAIC) raised concerns about the potential privacy implications of the merger bill. CrimTrac's information and activities are currently subject to the Privacy Act, but under Section 7 of the Privacy Act, the ACC is exempt from its obligations, including from compliance with the Australian Privacy Principles (APPs).<sup>1</sup>

2.4 The OAIC pointed out that while the explanatory memorandum to the merger bill acknowledged that the bill engaged the right to privacy, it did not make all of the privacy impacts of the bill explicit. In particular, the explanatory memorandum did not explain that by merging the two agencies, the bill would remove national policing information from the coverage of the Privacy Act.<sup>2</sup> The Acting Information Commissioner suggested that consideration should be given to further explaining in the explanatory memorandum how the provisions in the merger bill were compatible with Article 17 of the International Covenant on Civil and Political Rights (ICCPR), and how its specific privacy impacts would be addressed.<sup>3</sup>

2.5 The OAIC pointed out that merging CrimTrac into the ACC under the terms of the bill would mean that the Australian Information Commissioner no longer had oversight or enforcement powers in relation to national policing information functions. While a level of supervision would remain in place through other agencies with jurisdiction in relation to the ACC, such as the Commonwealth Ombudsman, the Australian Commission for Law Enforcement Integrity and the Parliamentary Joint Committee on Law Enforcement, the submission advised that the scope of their

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1 *Privacy Act 1988*, Section 7; Office of the Australian Information Commissioner (OAIC), *Submission 2*, p. 2.

2 OAIC, *Submission 2*, p. 5.

3 OAIC, *Submission 2*, p. 5.

oversight differed from that provided by the OAIC.<sup>4</sup> Under the Privacy Act the Information Commissioner can:

- make court-enforceable determinations;
- award compensation and other remedies;
- seek court-enforceable undertakings; and
- apply for civil penalty orders, where appropriate.

2.6 Should the merger bill be passed in its current form, these powers would no longer apply in respect of information handled by the merged agency.<sup>5</sup>

2.7 The OAIC acknowledged that it was possible for the ACC to use non-legislative means, such as technical and administrative arrangements, to protect the quality and security of national policing information. However, the OAIC advised that the ACC would not have obligations under APPs 10 and 11 to ensure the quality and security of the personal information, as CrimTrac currently does.<sup>6</sup>

2.8 The OAIC noted that, while individuals may be able to access and correct their personal information by applying to the state or territory agency from which it originated, not all state and territory jurisdictions had privacy or other legislation giving individuals equivalent rights and protections for their personal information to those in the Commonwealth Privacy Act. The ACC would also not be obliged under APPs 12 and 13 to provide access to, or correct, any personal information for which it was the sole holder, as CrimTrac was currently required to do.<sup>7</sup>

2.9 The OAIC added that the *Privacy (Persons Reported as Missing) Rule 2014*, under the Privacy Act, would no longer apply to personal information currently held by CrimTrac. The Rule acknowledges that a person reported as missing may have exercised their free choice to disassociate themselves from friends and family for legitimate reasons. The ACC would not be subject to the obligation in the Rule to respect any known wishes of persons reported as missing when using or disclosing information about them.<sup>8</sup>

2.10 The OAIC argued that while some measures for the protection of national policing information were included in the bill, including strengthened non-disclosure provisions and mechanisms for oversight by the ACC Board, these would not provide protections equivalent to those contained in the APPs. The Acting Information Commissioner stated that:

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4 OAIC, *Submission 2*, p. 2.

5 OAIC, *Submission 2*, p. 3.

6 OAIC, *Submission 2*, p. 3.

7 OAIC, *Submission 2*, p. 3.

8 OAIC, *Submission 2*, p. 4.

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It is not apparent to me why it is necessary to remove the information currently held by CrimTrac from the protections, oversight and enforcement arrangements in the Privacy Act...

Given the volume and sensitivity of the information currently held by CrimTrac, I am of the view that there would need to be cogent reasons for exempting that information, and the activities associated with it, from the Privacy Act entirely. I consider that the objectives of the regime could be met, while at the same time retaining the protections and oversight offered by the Privacy Act.<sup>9</sup>

2.11 The Acting Information Commissioner recommended 'that the Committee consider whether the obligations and oversight mechanisms in the Privacy Act could continue to apply to national policing information following CrimTrac's merger with the ACC'.<sup>10</sup>

2.12 The OAIC advised the committee that coverage of the Privacy Act over national policing information could be retained by:

including in the [merger] Bill an amendment to s 7(1) of the Privacy Act (which exempts acts and practices of the ACC from the application of the Privacy Act), providing that ACC acts or practices in relation to the handling of national policing information are not exempt.<sup>11</sup>

2.13 The OAIC stated that it was not uncommon for agencies to be subject to the Privacy Act in relation to the performance of certain functions, or in handling certain information, and exempt from other functions. This situation existed in a number of other agencies including federal courts and tribunals, the Department of Defence, the Attorney-General's Department, and AUSTRAC.<sup>12</sup>

2.14 The department, the ACC and CrimTrac argued in their joint submission that while CrimTrac would no longer be subject to the Privacy Act under the merger, this would not result in a diminution of protection of the personal information currently held by CrimTrac. The submission stated that '[t]he information held by CrimTrac will become subject to the same robust accountability, oversight and information protection mechanisms that protect the sensitive information that the ACC currently handles'.<sup>13</sup>

2.15 The Privacy Impact Assessment (PIA) prepared by the three agencies outlined that one of the key issues state and territories raised during consultation on the merger was that they must retain 'ownership' of the information they provided through CrimTrac's systems, and the integrity of that information must be preserved. For that

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9 OAIC, *Submission 2*, pp 4–5.

10 OAIC, *Submission 2*, p. 2.

11 Office of the Australian Information Commissioner (OAIC), responses to questions on notice, 29 February 2016 (received 3 March 2016), p. 2.

12 OAIC, responses to questions on notice, 29 February 2016 (received 3 March 2016), pp 3–4.

13 Attorney-General's Department (AGD), Australian Crime Commission (ACC) and CrimTrac, *Submission 3*, p. 3.

reason, 'the practices and procedures that underpin CrimTrac's handling of personal information will largely continue to apply within the merged agency'.<sup>14</sup>

2.16 The PIA stated that although national policing information would no longer be subject to the APPs, individuals would be able to access and correct records relevant to them under privacy mechanisms in their state or territory. While personal information may be used for ACC intelligence purposes, the underlying information would not be altered by the merged agency and it would continue to be subject to state and territory privacy regimes, which 'will continue to govern the management, collection, use, disclosure, quality, integrity, access and correction of this information'.<sup>15</sup>

2.17 The PIA pointed out that the ACC was subject to the *Freedom of Information Act 1982*, which enabled an individual to apply to the ACC to access or correct their personal information. Where appropriate, the merged agency would direct the individual back to the originating police jurisdiction.<sup>16</sup> The PIA conceded that the ACC may refuse access to personal records where FOI exemptions applied.<sup>17</sup>

2.18 Once CrimTrac was merged into the ACC, the information in its holdings would be subject to the information protection mechanisms that currently applied to the ACC under the ACC Act.<sup>18</sup> The PIA argued that the ACC Act contained strict limitations on the dissemination of any information in the ACC's possession, emphasising extant protections in the ACC Act as well as additional protections to be introduced by the bill, including that:

- the ACC Chief Executive Officer (CEO) can only disclose information to other government agencies if they consider it appropriate to do so and disclosure is not contrary to a Commonwealth, state or territory law;
- the ACC can only disclose information to bodies corporate that have been prescribed by the regulations, and that undertake in writing not to disclose information except for the purpose it was shared; and
- the ACC Board would need to approve disclosure to a body that is not an agency represented on the Board.<sup>19</sup>

2.19 The PIA argued that with the inclusion of criminal offences for unauthorised disclosure, the protections under the ACC Act 'arguably' provided greater protection to ACC information than that currently afforded to CrimTrac-held information under the Privacy Act.<sup>20</sup>

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14 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 7.

15 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 7.

16 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 11.

17 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 20.

18 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 7.

19 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 8.

20 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 8.

2.20 Noting that the ACC's conduct can be examined by the Commonwealth Ombudsman, the Integrity Commissioner, and the Parliamentary Joint Committee on Law Enforcement, the PIA argued that '[t]he ACC is already subject to a strict system of oversight and accountability that is specifically designed to ensure that the ACC exercises its powers appropriately while maintaining the appropriate balance between secrecy and accountability'.<sup>21</sup>

2.21 In regard to the possibility of national policing information and functions being carved out of the ACC's Privacy Act exemption, the government expressed the view that it was critical that the entire agency be subject to the same overarching information oversight regime.<sup>22</sup> The PIA stated that cultural and technical barriers had hitherto prevented and obstructed the capacity of ACC and CrimTrac to share important information quickly and easily.<sup>23</sup> The policy aims of the merger were to break down these barriers, and having exemptions on certain types of CrimTrac information could instead perpetuate the cultural issues that prevented CrimTrac from legitimately sharing information with the ACC in a timely manner.<sup>24</sup>

2.22 The PIA stated that:

While these disclosures would always be for law enforcement purposes (and would therefore fit within the APPs), having to demonstrate this each and every time the merged agency shares information between different functions would be time consuming, resource intensive and could prevent the merged agency from accessing the information it needs to provide time-critical intelligence to police. In essence, this approach would maintain the information silos that the merger seeks to break down by perpetuating the existing connectivity and information sharing issues currently faced by the agency and preventing front line officers from having the most up-to-date and comprehensive information and intelligence. Removing these barriers is not expected to have an adverse impact on individual privacy.<sup>25</sup>

2.23 The OAIC did not agree with this rationale, advising that the application of the Privacy Act to national policing information would not prevent the ACC from sharing and using that information internally. Information currently held by CrimTrac is permitted to be shared with the ACC under the exception in APP 6.2(e), which allows the sharing of information for enforcement-related activities. In addition, information once subject to analysis by the ACC would no longer fall under the definition of national policing information.<sup>26</sup>

2.24 The Acting Information Commissioner considered that:

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21 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 9.

22 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 10.

23 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 9.

24 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 10.

25 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 10.

26 OAIC, responses to questions on notice, 29 February 2016 (received 3 March 2016), p. 3.

any cultural changes that are required to ensure appropriate sharing of information within the ACC following its merger with CrimTrac would be better addressed and managed through clear policies, training and guidance to staff, rather than diminishing the protections that apply to the personal information that is currently handled by CrimTrac.<sup>27</sup>

2.25 The PIA recommended that the merged agency develop an information handling protocol that addressed the way in which the agency would treat personal information.<sup>28</sup> This would include the collection of personal information; the storage, security and use or disclosure of the information; and access to and correction of it.<sup>29</sup> The PIA also recommended that ACC staff be appropriately trained to ensure they complied with the information handling protocol.<sup>30</sup>

2.26 The PIA stated that the protocol should reflect the standards set out in the APPs and be developed in consultation with the OAIC.<sup>31</sup> The submission stated that the agencies were in the process of developing the information handling protocol in consultation with the OAIC and that the protocol would be published.<sup>32</sup>

### **Access to information by state crime and corruption commissions**

2.27 The Crime and Corruption Commission (CCC) Queensland, the Corruption and Crime Commission of Western Australia (CCC WA) and the Independent Broad-based Anti-corruption Commission Victoria (IBAC) all made submissions to the inquiry raising the issue of their access to national policing information.

2.28 The CCC Queensland noted that for the purpose of sharing information with the ACC, it was not expressly defined as a relevant 'information collecting entity' in the proposed amendments to the definitions in subsection 4(1) of the ACC Act, although it may be so prescribed by regulation. The CCC Queensland considered it 'both necessary and appropriate' upon enactment of the Bills that it be so prescribed, in order to allow intelligence obtained and given by the CCC in the performance of its functions to be managed under the national policing information legislative framework.<sup>33</sup>

2.29 All three commissions raised the matter of enabling disclosure of national policing information to them by the merged agency, under proposed new subsection 59AA(1B) of the ACC Act. Under the amendments proposed in the merger bill, the ACC CEO would not be required to obtain Board approval to disclose national

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27 OAIC, responses to questions on notice, 29 February 2016 (received 3 March 2016), p. 3.

28 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 16.

29 AGD, ACC and CrimTrac, *Submission 3*, p. 3.

30 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 16.

31 AGD, ACC and CrimTrac, *Submission 3, Attachment 1*, p. 16.

32 AGD, ACC and CrimTrac, *Submission 3*, p. 3.

33 Crime and Corruption Commission (CCC) Queensland, *Submission 1*, p. 2.

policing information to law enforcement agencies which are expressly referred to in subsection 59AA(1B) or which are prescribed by regulation.<sup>34</sup>

2.30 The CCC WA, CCC Queensland and IBAC all considered, as law enforcement agencies, that it was necessary and appropriate for the purposes of subsection 59AA(1B) for them to be either added to the list of named enforcement agencies, or else expressly prescribed by regulation, to allow the dissemination by the ACC of national policing information without case-by-case board approval.<sup>35</sup> The CCC WA stated that having access to national policing information would allow it to support investigations of serious misconduct and enforcement of the criminal law where reasonably necessary,<sup>36</sup> while IBAC added that prescription under the Act would 'negate the need for it to be subject to an often lengthy review procedure before disclosure of national policing information'.<sup>37</sup>

2.31 The CCC WA and IBAC advised that they had both been seeking access to the CrimTrac database for some time and their applications to become approved external agencies remained pending. Both were concerned about the lengthy approval process, during which their applications had not been accepted or refused.<sup>38</sup>

2.32 They advocated for a transitional provision to be incorporated into the merger bill to ensure the continuation after the merger of access approval processes already undertaken by CrimTrac, to avoid having to repeat or restart the application process.<sup>39</sup>

2.33 The department responded that since national policing information was provided by state and territory police forces, it was appropriate that the ACC Board, on which their representatives held a majority, should have the authority to approve the disclosure of national policing information to other bodies, including the states' crime and corruption commissions. The department advised that the government had not yet formed a view on which agencies may be prescribed by regulation under subsection 59AA(1B), but that existing information-sharing arrangements would be taken into account as part of that process.<sup>40</sup>

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34 CCC Queensland, *Submission 1*, p. 2.

35 CCC Queensland, *Submission 1*, p. 2; Corruption and Crime Commission Western Australia (CCC WA), *Submission 4*, p. 6; Independent Broad-based Anti-corruption Commission Victoria (IBAC), *Submission 5*, p. [5].

36 CCC WA, *Submission 4*, p. 4.

37 IBAC, *Submission 5*, p. [5].

38 CCC WA, *Submission 4*, p. 4; IBAC, *Submission 5*, p. [4].

39 CCC WA, *Submission 4*, p. 8; IBAC, *Submission 5*, p. [6].

40 Attorney-General's Department, response to questions on notice, 29 February 2016 (received 3 March 2016).

**Committee view**

2.34 The committee welcomes the merger of CrimTrac and the Australian Crime Commission (ACC). While submitters offered various proposals with a view to improving the legislation, all acknowledged the importance of ensuring that Australia is using its national law enforcement information and intelligence capabilities as effectively as possible to support police in protecting the community.

2.35 The committee has considered the matters raised by submitters, including those relating to the impacts on personal privacy. The committee notes the government's advice that while merging CrimTrac into the ACC would result in national policing information no longer being subject to the Privacy Act and Australian Privacy Principles (APP), it would not result in a diminution of protection for the personal information currently held by CrimTrac.

2.36 The committee is cognisant of the advice provided by the Office of the Australian Information Commissioner (OAIC), that elements of privacy protection afforded to personal information held by CrimTrac could be reduced or lost upon the merger. This includes the more robust oversight, enforcement and personal access obligations currently applied to that information under the Privacy Act.

2.37 The committee has noted that the department and relevant agencies intend to develop and publish an information handling protocol in consultation with the OAIC to address in more detail the information handling procedures and protections that would apply, and the assurance provided that the principles in this document would be consistent with the APP.

2.38 The committee believes that the government takes the protection of individuals' privacy seriously, and is convinced that the scheme contemplated by the bill provides for the protection of personal privacy. The committee is persuaded that the Privacy Impact Assessment conducted by the department adequately addresses any privacy concerns. The committee also notes that state and territory privacy mechanisms and Freedom of Information arrangements will augment these protections.

2.39 On the other key issue raised in submissions, the committee notes the concerns raised by the Queensland, WA and Victorian crime and corruption commissions about their continued interaction with the national policing information legislative regime.

2.40 The committee considers it appropriate that the state and territory police commissioners continue to play a key role in determining which bodies have access to national policing information, which would now occur through the decisions of the ACC Board. The committee notes that the government will consult with board agencies before prescribing any bodies by regulation under subsection 59AA(1B), and that existing arrangements would be taken into account as a part of that process.

2.41 The committee notes the transitional issues raised by CCC WA and IBAC in relation to their pending application processes with CrimTrac, and encourages the ACC Board to ensure that sensible measures are taken to ensure the transition of CrimTrac's work to the ACC in this regard.

2.42 With these matters in mind, and provided that the protection of personal privacy is adequately assured, the committee is of the view that the proposed merger of CrimTrac and the ACC should proceed.

**Recommendation 1**

**2.43 The committee recommends that the bills be passed.**

**Senator the Hon Ian Macdonald  
Chair**



## Dissenting report by the Australian Greens

1.1 The Australian Crime Commission Amendment (National Policing Information) Bill 2015 (the bill) seeks to amend the *Australian Crime Commission Act 2002* to merge CrimTrac and its functions into the Australian Crime Commission (ACC). The Australian Crime Commission (National Policing Information Charges) Bill 2015 provides the legislative basis for the ACC to charge for national policing information services.

1.2 This is the second bill introduced into Parliament recently that seeks to merge an entity into the ACC. The Australian Crime Commission Amendment (Criminology Research) Bill 2015 proposed to merge the functions of the Australian Institute of Criminology into the ACC.

1.3 The National Commission of Audit in 2014 recommended that CrimTrac be merged with the ACC 'to better harness their collective resources'.<sup>1</sup>

1.4 The Australian Greens have concerns with the bill's potential impact on personal privacy.

1.5 CrimTrac holds considerable personal information obtained from police and other sources.

1.6 Currently, the activities of CrimTrac are covered by the *Privacy Act 1988*. The Office of the Australian Information Commissioner (OAIC) submitted:

Under s7 of the *Privacy Act 1988* (Cth) (Privacy Act), the ACC is not required to comply with the obligations of the Privacy Act, including the Australian Privacy Principles (APPs), unlike CrimTrac (whose activities are covered by the Privacy Act). Therefore if the Bill is enacted as drafted, I understand that:

- the information currently held (and the functions currently exercised in relation to this information) by CrimTrac will no longer be subject to the protections in the Privacy Act, and
- the Australian Information Commissioner would no longer have oversight or enforcement powers in relation to that information or those functions.<sup>2</sup>

1.7 While it appears that states, as the primary collectors of CrimTrac information, will continue to be subject to privacy principles, the principles will not be binding on information actually stored in CrimTrac systems within the merged agency.<sup>3</sup>

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1 National Commission of Audit, *Towards responsible government: the report of the National Commission of Audit: Phase 1*, pp 208-09.

2 Office of the Australian Information Commissioner (OAIC), *Submission 2*, p. 2.

3 Attorney-General's Department, Australian Crime Commission and CrimTrac, *Submission 3, Attachment 1*, p.13.

1.8 In addition to general privacy issues, the Australian Greens have particular concerns relating to missing persons information. It is reasonable for adults to exercise their free choice to not associate with family and friends, particularly where an individual may have been subject to a violent or harmful environment. The OAIC submitted:

If the Bill is enacted, the *Privacy (Persons Reported as Missing) Rule 2014* would no longer apply to the personal information currently held by CrimTrac (ie national policing information), and the ACC would not be obliged by the Rule to respect any known wishes of persons reported as missing when using or disclosing information about them.<sup>4</sup>

## **Conclusion**

1.9 The ACC and CrimTrac already share information for enforcement-related activities including intelligence gathering.

1.10 Information sharing between the ACC and CrimTrac could be enhanced through other mechanisms such as Memoranda of Understanding.

## **Recommendation 1**

**1.11 The Australian Greens recommend that the bills not be passed.**

**Senator Nick McKim**  
**Senator for Tasmania**

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4 OAIC, *Submission 2*, p. 4.

# **Appendix 1**

## **Public submissions**

- 1 Crime and Corruption Commission Queensland
- 2 Office of the Australian Information Commissioner
- 3 Attorney-General's Department, Australian Crime Commission and CrimTrac
- 4 Corruption and Crime Commission of Western Australia
- 5 Independent Broad-based Anti-corruption Commission (IBAC) Victoria

## **Answers to written questions on notice**

- 1 Attorney-General's Department - answers to written questions on notice (received 3 March 2016)
- 2 Office of the Australian Information Commissioner - answers to written questions on notice (received 3 March 2016)

