

AN AGREEMENT

between

THE COMMONWEALTH OF AUSTRALIA

and

THE STATE OF NEW SOUTH WALES

and

THE STATE OF VICTORIA

and

THE STATE OF QUEENSLAND

and

THE STATE OF WESTERN AUSTRALIA

and

THE STATE OF SOUTH AUSTRALIA

and

THE STATE OF TASMANIA

and

THE AUSTRALIAN CAPITAL TERRITORY

and

THE NORTHERN TERRITORY OF AUSTRALIA

FOR THE ESTABLISHMENT AND OPERATION OF “CRIMTRAC”, A
NATIONAL LAW ENFORCEMENT INFORMATION SYSTEM FOR
AUSTRALIA'S POLICE SERVICES

THIS AGREEMENT is made on

2000

BETWEEN

The Commonwealth of Australia (“Commonwealth”); and

The State of New South Wales (“New South Wales”); and

The State of Victoria (“Victoria”); and

The State of Queensland (“Queensland”); and

The State of Western Australia (“Western Australia”); and

The State of South Australia (“South Australia”); and

The State of Tasmania (“Tasmania”); and

The Australian Capital Territory (“Australian Capital Territory”); and

The Northern Territory of Australia (“Northern Territory”).

RECITALS

- A.** CrimTrac is a major initiative being undertaken by the Commonwealth, State and Territory Governments.
- B.** The Commonwealth, State and Territory Governments now wish to enter into a formal agreement to establish the basis, including details of governance, for CrimTrac.
- C.** The aim of CrimTrac is to enhance Australian law enforcement with an emphasis on information-based policing facilitated through rapid access to detailed, current and accurate police information.
- D.** It is intended that CrimTrac will, in the coming years, include the following components:
 - (i)** a new National Automated Fingerprint Identification System (NAFIS);
 - (ii)** a National DNA Criminal Investigation System;
 - (iii)** a National Child Sex Offender System; and
 - (iv)** the provision of rapid access to national operational policing data.

- E.** The CrimTrac framework is intended to provide the means by which these components and other emerging policing requirements across jurisdictions can be considered and met as appropriate.
- F.** On 8 March 1990, the Commonwealth, the six States and the Northern Territory entered into an agreement concerning the National Exchange of Police Information as a National Common Police Service (the NEPI Agreement).
- G.** On 17 November 1998, the Australasian Police Ministers' Council met in New Zealand and resolved to support the Commonwealth's proposal to provide a central infrastructure for national law enforcement systems and to request the development of a mechanism for the future management of CrimTrac.
- H.** In December 1998, a Request for Information was issued as a mechanism of consultation with industry in relation to the envisaged components of CrimTrac.
- I.** This was followed in July 1999 by a Request for Tender, as a result of which a contract has been entered into to establish the new NAFIS.
- J.** In November 1999, the Australasian Police Ministers' Council resolved to note a proposed governance model for CrimTrac and to establish an inter-governmental agreement.

IT IS AGREED

1. INTERPRETATION

1.1 Definitions

In this Agreement, unless a contrary intention is apparent:

“Agency” and **“CrimTrac Agency”** mean that administrative unit or body however known or designated comprising those personnel engaged or appointed pursuant to clause 7.2;

“Agreement” means this document and includes all Schedules, Attachments and Appendices;

“APMC” means the Australasian Police Ministers’ Council;

“Appendix” means an appendix to this Agreement;

“Attachment” means an attachment to this Agreement;

“Australasian Police Ministers’ Council” means that body comprising the Ministers who have responsibility for police services in the Commonwealth and all States of the Commonwealth and the Australian Capital Territory and

the Northern Territory of Australia and which meets from time to time as a formal council of Ministers;

“Board” and **“Board of Management”** mean the body established pursuant to clause 5;

“Board Member” means a Board Member as provided by clause 5.2.1;

“CrimTrac” means the law enforcement information system known by that name and established on a national co-operative basis pursuant to this Agreement;

“Intellectual Property Rights” means copyright (including future copyright), trade mark, design, patent, circuit layout rights and all other intellectual property rights, whether registered or unregistered and whether registrable or not;

“Jurisdiction” means the policing jurisdiction of any of the Parties;

“Large Jurisdiction” means the police service of either New South Wales or Victoria or Queensland and **“Large Jurisdictions”** means any two (2) or three (3) of them;

“NEPI” means the National Exchange of Police Information as provided for in the NEPI Agreement;

“NEPI Agreement” means the agreement called the **“Agreement Between the Commonwealth, the States and the Northern Territory Concerning the National Exchange of Police Information as a National Common Police Service”** which was made on 8 March 1990 between the Commonwealth, of Australia, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania and the Northern Territory of Australia;

“Party” means any of the Commonwealth of Australia, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia;

“Small Jurisdiction” means the police service of either Western Australia or South Australia or Tasmania or the Northern Territory of Australia or the Australian Capital Territory and **“Small Jurisdictions”** means any two (2) or any three (3) or any four (4) or all five (5) of them;

“Schedule” means a schedule to this Agreement;

“Senior Officers’ Group” and **“SOG”** mean the Senior Officers’ Group of the Australasian Police Ministers’ Council (**“APMC”**);

1.2 Construction

In this Agreement, unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural and vice versa; and
 - (ii) any gender includes the other gender;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) a reference to a clause is a reference to a clause of this Agreement.

2. COMMENCEMENT

2.1 Commencement

This Agreement commences to operate with effect from and including 1 July 2000.

3. OBJECTIVES OF CRIMTRAC

3.1 Broad objectives

The broad objectives of CrimTrac are to enhance Australian policing through:

- (a) the provision of high quality information services that:
 - (i) meet the needs of the Australian policing community; and
 - (ii) establish best practice service models in relation to the provision of information to support policing; and
 - (iii) are project-oriented and cost-benefit driven to achieve outcomes;
- (b) support for the Jurisdictions in the implementation and use of CrimTrac services; and
- (c) providing controlled access to appropriate information by duly accredited third parties.

3.2 Jurisdictions to cooperate

The parties agree to cooperate fully with each other to develop and deliver the objectives of CrimTrac through the entities and processes set out in this Agreement so that:

- (a) CrimTrac is delivered in line with a long term strategic vision which is to be developed and updated through close consultation with all Jurisdictions;
- (b) the benefits, opportunities, costs, and risks of CrimTrac are transparent to each Jurisdiction;
- (c) Jurisdictions which choose to participate in a CrimTrac project meet the costs of that project in a manner which is equitable and agreed to by all participating Jurisdictions; and
- (d) CrimTrac is conducted in accordance with sound business principles and high standards of financial accountability.

4. ROLE OF APMC AND SOG

4.1 APMC

The Australasian Police Ministers' Council shall:

- (a) consider and approve the high level strategic policy directions for CrimTrac; and
- (b) approve the CrimTrac strategic plan; and

- (c) approve the development of new initiatives for CrimTrac which require legislation or special funding consideration; and
- (d) approve the policy on data control and release of information to third parties; and
- (e) consider and approve the appointment of members to the Board of Management in accordance with the provisions of clauses 5.2 and 5.3.

4.2 SOG

The Senior Officers' Group, as the recognised professional advisory body on policing issues, shall:

- (a) advise APMC in relation to CrimTrac including, in particular, all those matters specified in clause 4.1; and
- (b) perform such functions as shall be determined from time to time by resolution of APMC; and
- (c) appoint non-voting members of the Board in accordance with the provisions of clause 5.2.1(d).

5. ESTABLISHMENT OF CRIMTRAC BOARD OF MANAGEMENT

5.1 Board of Management established

There shall be a Board of Management of CrimTrac, which is responsible and accountable for the efficient and effective delivery of the CrimTrac initiative.

5.2 Composition of Board

5.2.1. The Board of Management of CrimTrac shall be constituted as follows:

- (a) One voting member who shall be nominated by the Commonwealth; and
- (b) Two voting members who shall be appointed from the Large Jurisdictions such that the nominees of two separate such Large Jurisdictions are appointed; and
- (c) Two voting members who shall be appointed from the Small Jurisdictions such that the nominees of two separate such Small Jurisdictions are appointed; and
- (d) Two non-voting members to be appointed by SOG to provide specialist advice in each of the following areas:
 - (i) information technology; and
 - (ii) finance.

5.2.2. The Board may call upon such other expert assistance including in the area of forensic science, as it considers necessary.

5.3 Rotation of Board members

Members will generally be appointed for a term of three years. There will be a rotation of members of the Board of Management to ensure that each jurisdiction is represented on an equitable basis in accordance with the requirements set out in clause 5.2.1. The rotation of Board members is to be determined by APMC with a view to ensuring a reasonable level of stability within the membership of the Board.

5.4 Election of the Chair

The inaugural Chairperson shall be the person appointed by the Commonwealth pursuant to clause 5.2.1 (a). This appointment shall be for a term of three years, after which the Chair shall be elected by the Board from among the voting Board members.

5.5 Proceedings of the Board of Management

- (a) Where the Chairperson is absent from a meeting, the Board shall elect another voting member of the Board who is present at that meeting to act temporarily as Chairperson; and
- (b) A quorum for a meeting of the Board shall be four voting members; and
- (c) A member of the Board may, at any time, appoint in writing a deputy to act in his absence and any deputy so appointed may, in the absence of the member, exercise all the powers and functions of the member and his presence shall be deemed to be the presence of the member; and
- (d) At a meeting of the Board each voting member shall have one vote and the Chairperson shall not have a casting vote; and
- (e) The decisions of the Board shall be by majority vote; and
- (f) The Board shall meet as necessary, but at least four times in each financial year; and
- (g) The Board shall develop protocols to ensure that the interests of all jurisdictions are considered in its deliberations; and
- (h) Any decision of the Board involving the expenditure of the initial Commonwealth funding of \$50 million will require the agreement of the Commonwealth member.

6. ROLE OF THE BOARD OF MANAGEMENT

6.1 Role of the Board

The responsibilities and functions of the Board of Management are:

- (a) to oversee the operation and financial management of CrimTrac; and

- (b) to recommend new initiatives for CrimTrac which require legislation or special funding consideration and oversee the implementation of agreed new initiatives; and
- (c) to monitor annual work plans of the CrimTrac Agency; and
- (d) to approve and monitor, in respect of each project, the evolving business case; and
- (e) to be satisfied as to the implementation and ongoing operation of appropriate data access controls, security and privacy regimes; and
- (f) to recommend to the relevant Commonwealth Minister the appointment of the Chief Executive Officer and to monitor the performance of the Chief Executive Officer.

6.2 Board to ensure appropriate standards in business

The Board of Management shall be responsible for the adoption within CrimTrac of business practices to ensure appropriate prudential standards are maintained, including:

- (a) ensuring that financial statements of the CrimTrac Agency are audited by the Commonwealth Auditor-General; and
- (b) ensuring accounts are available upon request to Jurisdictions; and
- (c) keeping accounting records that properly record and explain CrimTrac's transactions and financial position and which enable the preparation of financial statements and which allow the convenient and proper auditing of the financial statements.

6.3 Board Members to perform duties diligently

Members of the Board of Management shall perform their duties as Board members diligently and in good faith and, in particular, shall endeavour to attend Board meetings regularly.

7. CHIEF EXECUTIVE OFFICER AND THE CRIMTRAC AGENCY

7.1 The Chief Executive Officer

- (a) The Chief Executive Officer shall be responsible to the Board for the effective delivery of services in accordance with the Board's functions and responsibilities.
- (b) The Chief Executive Officer shall lead the CrimTrac Agency and ensure that all CrimTrac operations are compliant with relevant Commonwealth, State and Territory Acts, including the

Commonwealth *Privacy Act 1988* and the *Freedom of Information Act 1982*.

7.2 CrimTrac Agency

The CrimTrac Agency shall comprise personnel engaged or appointed to implement the CrimTrac initiative and to provide relevant services. The CrimTrac Agency will be a body established on behalf of all the parties which, for administrative purposes, will be established as an Executive Agency under the Commonwealth *Public Service Act 1999* within the Commonwealth Attorney-General's portfolio.

7.3 Chief Executive Officer to have power to delegate etc.

The Chief Executive Officer shall have the power to:

- (a) oversee the engagement, whether by way of employment pursuant under contracts for services or otherwise, of personnel to assist the Chief Executive Officer either within the CrimTrac Agency or otherwise; and
- (b) delegate appropriate duties and responsibilities to any of those personnel engaged pursuant to clause 7.3(a) to assist the Chief Executive Officer; and
- (c) authorise any of those personnel engaged pursuant to clause 7.3(a), to assist the Chief Executive Officer, to perform appropriate functions or duties.

8 INTELLECTUAL PROPERTY

8.1 Ownership of CrimTrac Intellectual Property

The Intellectual Property Rights in any and all items and things produced or created by any party (or on behalf of any party) under or in relation to CrimTrac (the "CrimTrac Intellectual Property") will vest in the Commonwealth.

8.2 All parties expressly licensed by the Commonwealth

For the purposes of sub-clause 8.1, the Commonwealth grants to each of the other parties a perpetual, non-revocable, non-exclusive licence to reproduce, modify, adapt, use and sub-license to third parties, the item or thing for any purpose directly or indirectly associated or connected with CrimTrac.

8.3 States' and Territories' prior intellectual property rights

- (a) Where a State or Territory owns the intellectual property in any item or thing and that item or thing is subsequently used as part of CrimTrac, the intellectual property continues to be owned by the State or

Territory but that State or Territory grants to the Commonwealth and every other party a perpetual, non-revocable, non-exclusive licence to reproduce, modify, adapt, use and sub-license to third parties, the item or thing for any purpose directly or indirectly associated or connected with CrimTrac.

- (b) Where a State or Territory develops any item or thing in which it owns the intellectual property, and that item or thing is used by the State or Territory as a means of communicating with, or as an interface with, the CrimTrac system, the intellectual property rights continue to be owned by the State or Territory.

8.4 Exploitation of CrimTrac Intellectual Property

Any and all proceeds derived from any commercial exploitation of the CrimTrac Intellectual Property will accrue to, and be held by, the Commonwealth, subject to the following:

- (a) the proceeds will be recorded and accounted for as part of the CrimTrac financial and accounting requirements, including those required by the *Financial Management and Accountability Act 1997* of the Commonwealth; and
- (b) the proceeds will be used only for CrimTrac purposes or such other purposes as APMC may, from time to time, determine.

8.5 Request by Board of Management

The Board of Management may, at its discretion, request the Commonwealth to enter into an arrangement, which may be contractual or otherwise, for the exploitation of any Intellectual Property vested in the Commonwealth on behalf of all parties pursuant to this clause.

8.6 All parties to co-operate in executing documents etc

Each party shall, at its cost, promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this document and any transaction contemplated by it.

9 FREEDOM OF INFORMATION

9.1 Consultation

- (a) Subject to 9.1(b), the parties agree that, in the event of a request for access to documents or information under a freedom of information law, however described or characterised, being received in any Jurisdiction, no access to information or documents of or relating to CrimTrac will be granted without prior consultation with all other

parties whose interest in the documents or information is either obvious or apparent.

- (b) This clause 9.1 does not prevent any Jurisdiction from giving access to documents without consultation in circumstances where there is clearly no basis to deny access to the documents to which access is sought under the relevant freedom of information law.

9.2 Contact officers to be known

Each party undertakes to provide, and update as necessary, to all other parties the name or names and contact details, including postal addresses, e-mail addresses, telephone and facsimile numbers, of the freedom of information officer or officers or contact personnel to whom freedom of information requests are to be referred in the first instance.

10. FINANCIAL COMMITMENT BY PARTIES

10.1 Agreement as to financial contribution

- (a) Each party agrees that, following any decision by APMC pursuant to 4.1(c), it will become bound to make the financial contribution strictly in accordance with the APMC decision; and
- (b) The parties acknowledge that other financial commitments may be made by, or jointly entered into, from time to time between any of the parties or jurisdictions as decided or agreed between them; and
- (c) Where jurisdictions are liable to make contributions or other payments to CrimTrac, these payments will be made in a timely fashion in accordance with agreed procedures.

10.2 Integrity of parties' finances and processes

For the removal of doubt:

- (a) The funds provided by the Commonwealth in establishing CrimTrac and including, but not limited to, the new National Automated Fingerprint Identification System, the National DNA Criminal Investigation System, National Child Sex Offender System and integrated police access to national operational policing data will be spent in accordance with Commonwealth budgetary appropriation of those funds; and
- (b) nothing in this Agreement is intended to qualify or affect in any way the rights of any of the parties to make decisions about the expenditure or commitment of their own funding; and
- (c) nothing in the administrative arrangements under this Agreement is intended to be inconsistent with the arrangements for the

administration of an Executive Agency under the *Public Service Act 1999*.

11 VARIATION OF AGREEMENT

- 11.1** This Agreement may be varied from time to time by the unanimous agreement of the parties.
- 11.2** A variation pursuant to this clause shall be in writing, signed by all parties to this Agreement, and notice thereof shall immediately following such signature be given to all the parties.

12. ADDITION OF PARTIES

- 12.1** Other parties may become signatories to this Agreement following the unanimous resolution of APMC, from time to time.

13. WITHDRAWAL FROM AGREEMENT

- 13.1** A party to this agreement may, by written notice to all other parties, withdraw from this Agreement and such notice shall take effect six months from the date of that notice, but shall not release that party from meeting its agreed funding commitments unless this is agreed by all the parties.
- 13.2** On withdrawal of a party, the party will have no right to claim compensation or payment in respect of any assets (including intellectual property rights) or monies which it has contributed to CrimTrac.

14. TERMINATION

14.1 Termination

This Agreement may be terminated at any time by agreement in writing by all the parties and under any terms and conditions as agreed by all the parties.

SIGNED AND WITNESSED BY

(names of Police Ministers signing on behalf of jurisdictions)