

August 2014

Investing wisely Spending political capital on Australia's criminal intelligence capabilities



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Executive summary

This special report examines a recent proposal to merge the Australian Crime Commission (ACC) and the CrimTrac Agency.

There are two distinct—but not irreconcilable—views about this proposal. For one, there's a desire to better use criminal information across all jurisdictions. This view sees an opportunity to use CrimTrac's data more effectively and for more purposes by linking it with the national criminal intelligence agency. On the other hand, there's an equally strong desire to maintain CrimTrac's functionality and to focus its investment fund on the needs of all police stakeholders, and not just those engaged in countering serious and organised crime. Reconciling these views will require detailed research about how a merged organisation would benefit all stakeholders—especially the frontline police and criminal intelligence operators in all the jurisdictions.

But does the merger proposal actually address the right question?

This special report will argue that a better way to view this problem is to ask how the Commonwealth can play a role as a steward for national criminal intelligence. This perspective will show that the Australian Government has two options, other than to do nothing: to merge the two agencies as proposed, or to take a staged approach that focuses on fixing the information-sharing and investment impediments first—and then consider a merger if the desired results are not achieved.

How this matter is progressed depends largely on the attitude of the state and territory law enforcement ministers and police commissioners. If they support the principle,

a merger of the ACC and CrimTrac might proceed quickly if the new arrangements fix the information-sharing inconsistencies and provide some start-up investment. The Commonwealth should also offer some guarantees about the future of the national criminal information sharing enterprise to allay any concerns.

But if there's a hint that the merger proposal would create unnecessary friction, the Commonwealth's ministers and officials should spend their political capital on fixing impediments that make the current arrangements suboptimal. Putting CrimTrac on a legislative basis would be a good start if this course is chosen.

Importantly, this question presents an opportunity for the Australian Justice Minister to give the federal Cabinet a chance to consider the Commonwealth's role in law enforcement more holistically. This would be especially timely because the law enforcement sector is undergoing significant change and is facing real resource pressures.

The need for better intelligence capabilities

This special report examines the key needs of Australia's criminal intelligence system, before examining options to enhance the way essential data is provided for the system.

The Australian Government has a growing need—and real opportunities—to enhance criminal intelligence capabilities against serious and organised crime. This need was recognised by the National Commission of Audit, which recommended in its March 2014 report:

Criminal law enforcement is increasingly dependent on strong intelligence collection and analysis. The Commission recommends that CrimTrac be merged with the Australian Crime Commission to better harness their collective resources.

This is an important recommendation, but most of the focus so far has been on the action and not the reason for it. While merging the Australian Crime Commission (ACC) and the CrimTrac Agency would produce a good result over time if some key challenges are addressed, a merger alone isn't enough to ensure that Australia's future criminal intelligence system will be sufficiently robust to deal with increasing demands.

While a merger of the ACC and CrimTrac is the main matter being discussed right now, there's no escaping the fact that more resources and greater coordination will be needed to enhance Australia's criminal information system. More skilled analysts are needed to convert information into criminal intelligence. There's a need to change the way information's used and provided to others, and to ensure that the two main user groups—frontline police and intelligence analysts from all jurisdictions—are served with first-rate data.

There is a case for a cabinet-level consideration of the Commonwealth's future law enforcement role, because this is critical to understanding what's expected of the national criminal intelligence system.

Regardless of the path chosen from here, federal ministers will need to spend political capital to optimise the system. Acting as stewards of the system, the Attorney-General and the Justice Minister will need to decide on one of two broad options to ensure that the system is provided with the best possible information and meet the needs of 21st century users.

The first option is to push straight to a merger of the ACC and CrimTrac. This is a viable course, although it will need to be handled carefully to ensure that all stakeholders support it. It will also require new investment and legislative changes.

The second is to approach the goal in a more indirect way. This would include a number of steps: consensus building to fully implement the recently agreed Australian Criminal Intelligence Model; agreement on ways to optimise existing information holdings; investment to allow better use of

criminal information for frontline police and intelligence users in all jurisdictions; and agreement to make the most of the revenue-earning potential of information in an economy that is increasingly connected and looking for points of truth in online dealings. If this incremental approach is unsuccessful, the Commonwealth will have built an incontrovertible case for major structural changes in the national criminal intelligence system.

This report has been developed from interviews with participants involved in law enforcement at the federal and state levels and with experts outside government. It also draws upon recent government and parliamentary inquiries and reviews into criminal intelligence and organisational arrangements for law enforcement.

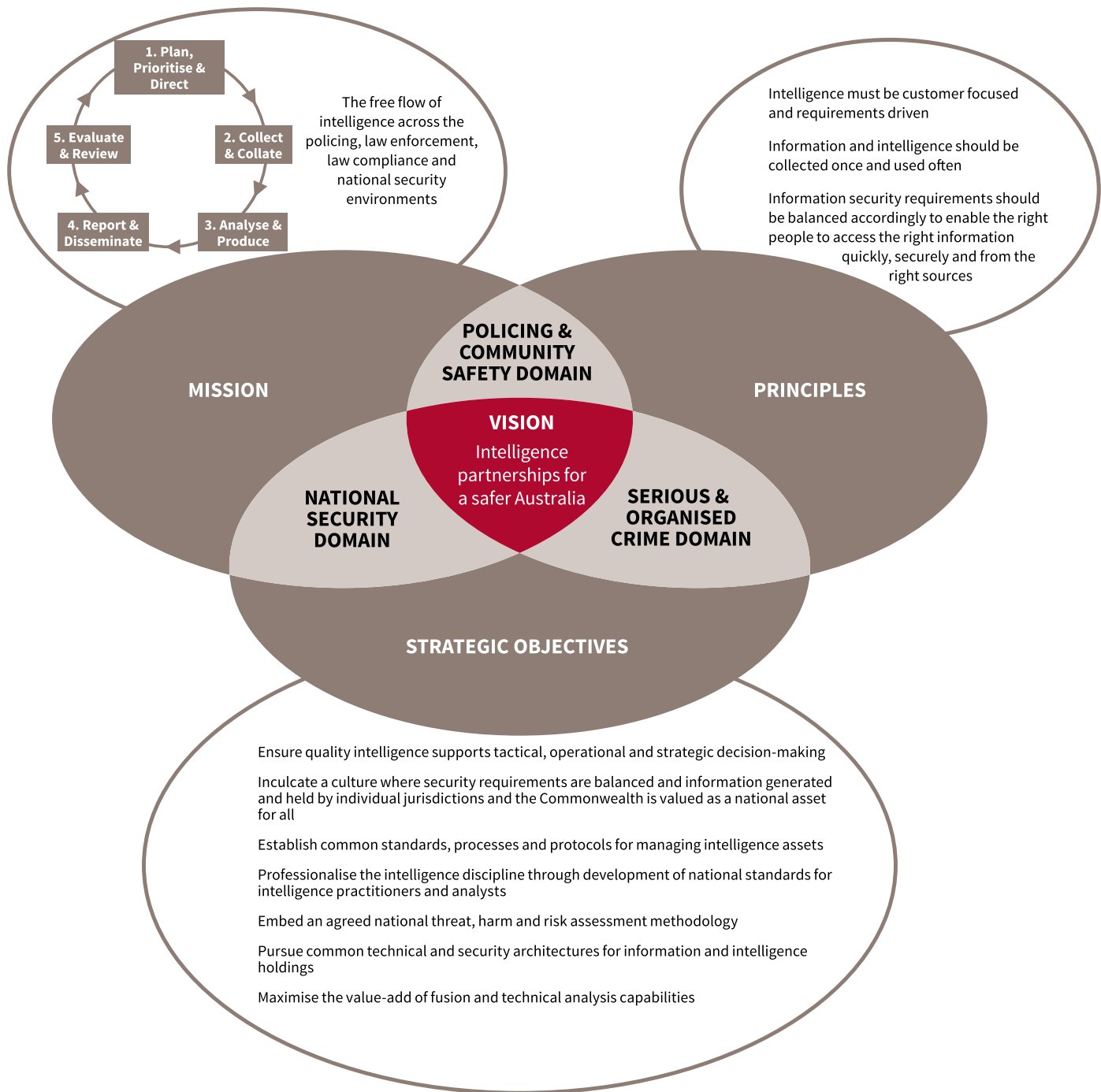
Four key challenges for national criminal information and intelligence capability

Australia's criminal intelligence system is the product of the legislation, needs, processes and preferences of eight sovereign jurisdictions. There's no clear and persistent authority. This means that changing it's a slow process involving negotiation and usually incremental change. It's also hampered by cultural factors based on the supply of and demand for information and by resourcing shortfalls (compared to the potential of the system and expectations of it).

In interviews conducted for this project, and in the more extensive inquiry into criminal intelligence by the Parliamentary Joint Committee on Law Enforcement in 2013, government, police and external experts and stakeholders identified four main challenges.

The first challenge is to identify what's expected of a 'national' criminal intelligence system. This includes not only establishing an agreed definition of 'criminal intelligence', but also the principles and processes that describe the system. The Australian Criminal Intelligence Model has made great strides towards defining the system (see figure 1). The model, which has been agreed by 16 national agencies and the police ministers of each jurisdiction, aims to enable the free flow of criminal intelligence across the policing, law enforcement, law compliance and national security domains.¹ The next task is to implement it.

Figure 1: Australian Criminal Intelligence Model



The second challenge concerns information sharing and, more specifically, inconsistencies in laws covering this activity across Australia. Different rules and expectations can apply to similar data held in information and intelligence systems², including those belonging to a national enterprise such as CrimTrac. These differences are accentuated by different rules for handling data from different departments. This creates a three-dimensional matrix of difference, including different types of laws (for example, involving financial data, personal information, DNA use and oversight), eight different jurisdictions, and many different departments within each jurisdiction.

The overarching information-sharing challenge appears to relate to data sovereignty. In general, the states and territories assert ownership of the data, but this is generally not reflected in their laws once the data passes to CrimTrac—a Commonwealth entity subject to Commonwealth laws on information, including privacy and freedom of information. In addition, some jurisdictions have very strict end-user identification requirements for data use and a requirement to audit that use—which can become a problem once information passes into the intelligence domain. So, while there's a high level of willingness to share data, differing legal requirements create some impediments for sharing in practice.

The third challenge is data interoperability, security and connectivity between agencies. The 2013 parliamentary inquiry into criminal intelligence identified a range of technological, legal, resource and cultural factors that inhibited sharing and reduced stakeholders' confidence.³

These factors mean that there's no way to search all the data holdings simultaneously, that legislation can be an impediment to using the product of such searches, and that there's still a mix of automated and manual searching. Differing levels of security classifications for information holdings (intelligence tends to have higher classifications than police data and be held on more secure systems) also make it harder to share intelligence based on data provided by the police users. These factors create impediments to real-time and research-style searches across the jurisdictions' criminal data holdings.

The fourth challenge is the increasing complexity of policy responses in this area. In particular, setting policies for data retention and standards for new sources of data

(including biometrics such as facial recognition and even naming conventions for individuals) will require the close involvement of many agencies—and political leadership. Policy questions about the potential duty of all jurisdictions to contribute information are also complex and go to the heart of the sovereignty of each. Opportunities to involve other policy areas in the intelligence system and responses to criminality are also becoming apparent, including the use of tools traditionally involved in education and social services. Making the best use of all of these policy instruments and technologies will require a minor reconceptualisation of Australia's law enforcement systems over the next decade or so.

The importance of overcoming these challenges has not been lost on stakeholders, including the Australian Parliament.

The proposal to merge CrimTrac and the Australian Crime Commission

The 52nd recommendation in the report of the National Commission of Audit (NCOA) identified a need to improve criminal intelligence capability in Australia, but the line that got the most attention was the advice to merge CrimTrac and the ACC. In the NCOA's view, the separation of these agencies creates inefficiencies that only a merger can solve.

This isn't the first time that a merger of the two agencies has been considered: Roger Beale's 2009 federal audit of police capabilities and Stephen Skehill's 2012 review of small and medium agencies within the Attorney-General's portfolio both considered the same question. Unlike the NCOA, neither recommended a merger.

Beale and Skehill had different reasons and approaches. Beale saw CrimTrac's ability to manage databases in real time as something the ACC and others could leverage, but a merger to achieve that wasn't considered. He also suggested removing some of the burden for non-serious crime work from the ACC.

In his review, Skehill explicitly rejected the idea of merging CrimTrac into another agency because its existence as an agency independent of both the Attorney-General's Department and other portfolio agencies was essential to ensuring stakeholder participation. He felt that there was a very real chance that the states and territories would withdraw their support from CrimTrac if the governing arrangements were changed.

While both Beale and Skehill—and the broader law enforcement community—rate CrimTrac highly, it's fair to assume that many others don't know much about this niche organisation or its role. Understanding its role and business model is essential to considering whether a merger would deliver the results envisaged by the NCOA.

What's CrimTrac?

CrimTrac can trace its genesis to information-sharing agreements between the states dating from the 1940s. By the 1990s, computerised information systems were used under the leadership and management of the New South Wales Police. Pressures on this system in the lead-up to the 2000 Olympic Games convinced ministers and police commissioners from all Australian jurisdictions that a new system was necessary. This led to an intergovernmental agreement in July 2000 that created CrimTrac as a national partnership between all jurisdictions under Commonwealth leadership.

The 2000 agreement established a mixed governing arrangement: the new agency head reported to a board of management consisting of state, territory and Commonwealth representatives and two non-voting expert members. The board reported to the national-level police senior officers group and, ultimately, the interjurisdictional ministerial police council. At the same time, CrimTrac was established as one of only six executive agencies under the Commonwealth *Public Service Act 1999* and *Financial Management and Accountability Act 1997*, which meant that it also reported directly to the Commonwealth's Home Affairs (now Justice) Minister.

CrimTrac provides a number of national information services to police and other authorised organisations, ranging from police history checks to biometric and ballistic data. This allows the agency to provide the National Police Reference Service back to the police forces, and to make money through the pre-employment reference checks that it sells to authorised organisations. This model has allowed CrimTrac to fund its operations and build a sizeable reserve—now around \$112 million held in a special account—for future technology upgrades. State and territory police provide the vast bulk of the data that CrimTrac uses to generate revenue, and they consume a very high proportion of its services. These factors, together with the partnership agreement, give the states and

territory police forces a very sizeable interest in CrimTrac's operations and future.

The implications of the NCOA's recommendation for the existing CrimTrac governance arrangements are clear. While the Commonwealth could merge CrimTrac with the ACC, it would need to substantially revise the 2000 intergovernmental agreement to do so. This would raise concerns about CrimTrac's investment account and the use of its future revenue stream. It might also generate concerns about maintaining CrimTrac's broadly focused law enforcement information activities.

Let's follow the money. Because CrimTrac was established as a partnership, the money earned from pre-employment checks conducted through the agency has always been used to enhance the agency's work. As one officer from a state police force said plainly, 'That money belongs to all the commissioners, not just Canberra.' This view was strongly held by a number of interviewees from state police forces and was understood by many in the Commonwealth. The amount of money raised also allowed the Australian Government, back in 2012–13, to remove the 'interest equivalency payment' and present a net saving for the federal budget.

Another important consideration is CrimTrac's purpose: sharing police information across state and territory borders. This information is provided by the jurisdictions (including the Australian Federal Police) and it has broad utility. While the original purpose of holding information about peoples' identities remains, that information can be used to address serious and organised crime and 'volume crime', such as theft. Indeed, the distinction between those types of crime is often moot when it comes to data holdings, as organised crime figures sit beside petty criminals in the data—and some petty crimes go on to bigger things.

In addition, CrimTrac hosts a number of national registration databases. Its utility in car registrations and ballistics is already recognised, and it's going to be used to report online crime soon. This last area is being developed in close cooperation with the ACC and all the police forces. Potentially, more revenue-raising activities could also be undertaken using CrimTrac's capabilities, including document certification and identity security. These changes show how the basic system and, importantly, the trust generated by success can be adapted to meet emerging needs.

This means that any merger proposal should be framed with these key factors in mind—the existing CrimTrac partnership, contributions to data on volume crime and real-time identity checking, and the agency’s current investment fund and future earnings. A failure to address these matters could affect the relationship between CrimTrac’s state, territory and national stakeholders as the new arrangements are considered.

That would be a bad outcome, because CrimTrac administers a number of real-time information databases relevant to a wide range of crimes. Still, the NCOA appears to think that the nation’s criminal intelligence system could get more from CrimTrac if the agency were merged with the ACC.

What does the Australian Crime Commission need?

The ACC was formed in 2003 as the nation’s leading agency in the fight against organised crime. It was the product of a merger of three Commonwealth law enforcement agencies, and it was given extraordinary powers to conduct special investigations and operations using coercive powers to gather information. Those powers allow the ACC to compel witnesses to attend hearings and give testimony, and to require agencies and individuals to provide documents to it. The ACC also has covert capabilities and access to telecommunications interception, human sources and physical and technical surveillance. That means that the ACC has special investigatory powers and capabilities in addition to powers like those of a standing royal commission. Importantly, the ACC was designed as a ‘national’ agency, with a board including Commonwealth, state and territory police commissioners and senior officials.

Some have long been concerned about the inability to use advanced analytical systems across CrimTrac’s data for intelligence gathering. This kind of activity—which is distinct from the well-used referencing-checking function—uses informed profiling to look for patterns of behaviour and criminal activity. This is seen as critical to understanding organised crime in the 21st century. But the speculative nature of this work makes it more difficult to use point-in-time downloads of material, which the ACC currently uses to obtain data from CrimTrac. Put simply, the ACC doesn’t necessarily have the background information it needs to make requests using the current system. It also

needs to keep going back to CrimTrac regularly because the data holdings keep changing and need updating.

Others stress the opportunity involved in the NCOA recommendation. A merger of the ACC, CrimTrac and perhaps the Australian Government’s financial intelligence unit, the Australian Transactions Reports and Analysis Centre (AUSTRAC), would create a truly federated law enforcement body that would specialise in gathering criminal data to produce intelligence for all the nation’s law enforcement agencies. This merger would promote national responses to organised crime, which is an attractive way to address the need identified by the NCOA. A merger would create an agency with the size to drive a coordinated national criminal intelligence effort, the benefits of which are hard to estimate fully right now. And the canny decision last April to appoint a very senior state police officer to head the ACC could allay some fears associated with this change. That would be good, because a Commonwealth–state partnership arrangement in an agency with resources, remit and direction could produce more than just the sum of its parts. Such an agency could produce a very good outcome.

However, the key immediate issue—based on responses from interviewees for this report and the testimony given to the 2013 parliamentary inquiry—is law enforcement information-sharing and the current view that these arrangements are not as effective as they could be. At present, all Australian law enforcement agencies (not just the ACC) can’t make the most of the nation’s criminal data holdings. The opportunity to change this has been recognised for some time and improvements have been made, according to officials interviewed for this report. But they’ve not been totally successful, and some technical and legal impediments to the desired ‘unfettered access’ to CrimTrac’s data remain. It’s clear that the NCOA was inspired, at least in part, by this problem. Fortunately, the Australian Government has some options.

Options to enhance the use of criminal data in the fight against crime

Perhaps the best way to come to a recommendation about the NCOA’s proposal is to ask how the data held by CrimTrac can be optimised in the fight against all crime (that is, volume crime and serious and organised crime). This focus on the desired outcome allows us to consider three broad

options for CrimTrac's future governance arrangements, and the broader need to enhance the nation's criminal intelligence system.

Option 1: Do nothing

The first option is to reject the NCOA recommendation and do nothing. Given other priorities in the law enforcement space, and the number of current issues involving state and federal government relationships, this may be attractive to some. However, it would mean that the opportunity to optimise information sharing isn't taken, so it's not a good option.

Option 2: A straight merger

A straight merger of CrimTrac with the ACC, as proposed by the NCOA, would transfer all CrimTrac functions to the ACC, including responsibility for its current operations, future investment strategy and new products. Changes to accommodate former CrimTrac functions could be made to the ACC's legislation.

To achieve the merger, the Australian Government would need to offer some guarantees to the states and territories, because the attitudes of their ministers and police commissioners are critical to this option.

The first guarantee would ensure that the state commissioners' voices are not diluted in this change. Currently, the ACC board includes all state and territory police commissioners as well as a similar number of Commonwealth representatives. In contrast, there's only two voting members representing the Commonwealth on the CrimTrac board—the Australian Federal Police Commissioner and a senior official from the Attorney-General's Department. While the current system provides a high level of certainty that the voices of all jurisdictions are heard, a 'non-dilution' guarantee would help smooth the way for further discussions about the merger.

The second guarantee would ensure that other priority needs, such as work on volume crime without strong links to organised crime, is incorporated in planning. It would also be important to pitch the change as a benefit to all jurisdictions—it's not an attempt to give the ACC exclusive use of the data, but to make the data more available to all agencies for more purposes.

Third, it might be necessary to maintain the separate fund to promote the former CrimTrac objectives within the ACC budget, and to have a new hook in the ACC's legislation that clearly sets out the agreed guarantees.

In turn, the Australian Government would probably ask that the future earnings from pre-employment identity checks and other possible future opportunities (such as a document verification service) be used to improve national criminal intelligence and information capability. Ensuring that frontline police, intelligence specialists and other law enforcement officers have access to the best information through the optimal use of data and checks will be critical to all police commissioners and so must be part of any merger. So, while there's a need to retain these basic checks, there's also an opportunity to add greater value to them through the fusion of intelligence and data.

The advantages of this option include adding to the ACC's ability to strongly influence national criminal information gathering priorities. It would also promote and perhaps facilitate a faster implementation of the Australian Criminal Intelligence Model because it could allow mutually beneficial investments in information connectivity and tools to be used for this purpose.

The change would also provide the ACC—and other interested agencies—with more opportunities to create new intelligence. This will extend intelligence far beyond the use of reporting to create analyses, because it will allow bulk data to be analysed to obtain new insights into criminal activity.

Given the desire to use more intelligence in some background checks—such as those in the maritime and aviation security sectors—adding intelligence to CrimTrac's fact-based data to create threat warnings to frontline police seems logical if problems such as those involving data and personnel security classifications can be overcome. This may require new databases and new search technologies that would help link any that are not already linked, which has the clear potential to provide real, new benefits.

Organisationally, some efficiencies could accrue to the merged organisation, perhaps most directly in information systems and facilities. It's clear that some strategic investments in IT systems would benefit both agencies and ensure connectivity and data compatibility. There are some potential opportunities to further leverage their

already close cooperation for mutual benefit. Already, the servers supporting CrimTrac and the ACC are co-located, and CrimTrac uses the ACC's email system for some activities. There could be opportunities to conduct joint IT research and procurement, and perhaps to manage some of the ACC's databases beside those created by CrimTrac, which has the potential to add to the efficiencies. CrimTrac also has significant expertise in IT project management and data administration that would be very useful to the merged organisation. At a minimum, it would make the task of harmonising information and intelligence needs simpler because they would be driven by a single board and implemented by a single chief executive.

There are some disadvantages with the straight merger option. At the management level, the CEO of the ACC would be looking after data and serving needs that relate to volume crime within jurisdictions. This seems to complicate the Australian Government's desire to make the ACC 'Australia's premier criminal intelligence body' because it would involve the organisation in areas that aren't really central to combating serious and organised crime. There's also a risk that new initiatives or new markets for criminal data might not be explored if they are a low priority in the fight against organised crime.

Also, it's not clear that a straight merger would deliver the desired benefits without other changes that promote information sharing and new investment. In particular, it's not certain that the merged body would be able to pay for the necessary technical overlays that could aggregate the existing databases so they could be searched, unless funds are found from CrimTrac or new investments, perhaps funded by unexplained-wealth seizures. And the data sovereignty challenges remain, too. It's too early to tell whether some of the challenges created by information sovereignty and inconsistent legislation would be overcome immediately by a merger. This is not to say that such investment and information sharing changes couldn't be arranged, but only that they should be examined as the proposal is developed.

Still, this option won't get off the ground unless the state and territory governments are willing to cooperate. Indeed, it would be harmful to progress this proposal at a time when there's so much controversy about Commonwealth-state finances and a 'federation' white paper is underway unless there's a very high level of confidence that a merger would be accepted.

So after testing the water, it may be necessary for the Australian Government's ministers to spend some political capital or dangle sufficiently juicy carrots in front of the states (such as new funding for their priorities) to make a straight merger happen.

Option 3: A staged approach

The third option is to adopt a staged approach to changes that enhance national criminal intelligence capability. This would focus on negotiating improvements in information sharing and connectivity within current organisational boundaries, and then assessing whether a merger of CrimTrac and the ACC is needed to realise both the aspiration for enhanced intelligence and efficiencies in data collection and management.

This option would require the Commonwealth's Attorney-General, Justice Minister and senior officials to put all of their effort into convincing their state and territory counterparts (and perhaps also the Australian Parliament) to make changes that will promote the ability of all agencies to exploit CrimTrac's data. This may require legislative change—or just clarification—in some jurisdictions. This course leaves the merger option open, but places it 'on ice' until all jurisdictions agree that the change, akin to Option 2, is needed.

As part of this option, it would be worth establishing a legislative basis for CrimTrac. This view has already been expressed a number of times, including by Skehill, the Victorian Law Reform Commission, academic Saskia Hufnagel⁴ and some interviewed for this report. Legislation could formalise important matters such as CrimTrac's role, governance and oversight. Importantly, the legislation could also identify who CrimTrac is authorised to share information with, and the conditions under which that information could be shared. If this legislation could be harmonised with relevant laws in all jurisdictions, there would be a real opportunity to address and resolve the matter of how CrimTrac shares its information with all Australian law enforcement, regulatory and intelligence agencies. The ACC's chief executive officer could also be brought onto the CrimTrac board as part of this change.

This course has some advantages. First, it's likely to involve less political friction, especially because it wouldn't involve an up-front move by the Commonwealth to 'centralise' a

function under its control. It would instead shift the onus onto all jurisdictions to make changes that enhance the current system before further steps are contemplated. It also puts the focus squarely upon promoting opportunities for all jurisdictions to mine CrimTrac's data, while retaining the integrity of the existing business model. This would maintain CrimTrac's broad focus on volume and organised crime, allow it to explore all new markets and opportunities, and not cost the Commonwealth a cent.

Some of this option's other advantages reflect the disadvantages of Option 2, especially in the way it would retain an independent CrimTrac that could focus on information sharing, albeit in a manner more closely integrated with the intelligence-sharing needs described above.

The disadvantages of the staged option include the lack of focus in the proposal: a detailed action plan, which identifies the key steps needed to promote the desired increased level of utility for CrimTrac's information, would be needed. Also, this option mightn't go anywhere if some participants express satisfaction with the current situation. It relies on a willingness on the part of all jurisdictions to undertake legislative change that will, importantly, impose further delay. Also forgone, at least for a time, is the opportunity to increase the resources available to the ACC.

It's also tempting to argue that if this option would work, Option 2 wouldn't have been recommended. That might be true. But, human nature being what it is, perhaps a staged approach is needed to encourage action by all jurisdictions to solve existing information-sharing limitations and to promote future investment in a national approach that will make the most of CrimTrac's data holdings. A joint meeting of the ACC and CrimTrac boards might be a useful way to start this discussion, at least so that senior officers can consider the needs of both organisations at the same time.

There are other opportunities to make the ACC even more capable. One would be to incorporate the financial intelligence functions of AUSTRAC into the ACC. The NCOA listed this opportunity as only a 'maybe', but on face value it has real potential to boost criminal intelligence capability. It's worthy of close study in the context of some other needs that have been raised by the NCOA's recommendation and the merger proposal.

The merger proposal highlights deeper needs

Deeper needs highlighted by the merger proposal include not only the need for better information and technology but also increasing operational imperatives for enhanced criminal intelligence capacity. The growing influence of international actors in Australia's organised crime scene is one driver of the need for better and deeper capability. According to the ACC's former CEO, John Lawler, about 70% of organised crime in Australia is directed from overseas—especially Southeast Asia. As the internet becomes a greater vector for crime, we should expect crime to become an even greater concern for the Commonwealth.

Cyber developments are also allowing some 'traditional' crimes to mutate into online forms, so now you don't need to meet a criminal to be affected by their activities. 'Darknets' and 'cryptocurrencies' are also being used to circumvent traditional law enforcement controls, which dramatically increases the complexity and costs of investigations and intelligence gathering.

These trends make falling resources for Australia's criminal intelligence agency particularly concerning. This year, the ACC will receive about \$87 million from the Australian Government. This is due to fall to \$72 million in 2017–18 (and the impact of inflation will probably reduce the figure by 7.5% in real terms). Incoming ACC Chief Executive Chris Dawson has explained that the agency's staff numbers are set to fall to around 450 by 2017–18. This leaves the agency about 150 staff members short, by Dawson's estimation. At the same time, expectations of the ACC are increasing, the agency's technology is overdue for replacement, and the challenge of organised crime grows, particularly as it becomes more transnational and exploits the cyberdomain. Put simply, the Australian Government is unlikely to get the criminal intelligence system it wants with the money it's planning to pay for it. There's a pressing need to revise the ACC's funding base, unless reducing the number of intelligence probes into serious and organised crime, special investigations and areas of expertise is a palatable outcome for the government and the national interest.

These aren't the only choices about law enforcement that the Australian Government will need to make. A number of other law enforcement areas involving more agencies than just the ACC and CrimTrac will require attention in the very

near future. First among them is managing, and perhaps rationalising, a large committee superstructure that governs the national response to crime. There's also a new minister and agency with law enforcement responsibilities on the way (the Australian Border Force). And there's an inconsistent legislative regime across Australia, some outdated policy frameworks, and an underutilised resource in business and the community.

There's also an increasing need to consider non-law-enforcement tools in the fight against organised crime. Following the example of countries such as the United Kingdom, it's worth considering how Australia's social and educational policy tools can be marshalled to bolster law enforcement efforts to stop important incubators of crime and gang recruitment. These efforts might also involve different ways to engage the business and community in this effort.

Organisationally, there are important emerging concerns about human capital for law enforcement, a diminishing resource base in the forward estimates, and a disaggregated approach to research and development.

It's time for the Abbott Cabinet to have a chance to consider its preferred ways to conduct law enforcement at the Commonwealth level in a holistic way, perhaps by commissioning a law enforcement white paper.

A white paper would be a big task, and perhaps more complicated than even the Defence white paper process, as the state and territory governments would need to be involved. But it would complement the Australian Government's federation white paper and create an opportunity for the Cabinet to think carefully about how law-enforcement relationships will work in Australia's future.

Importantly, such a paper would also give the Cabinet a chance to explore enhancements to Australia's criminal intelligence system beyond those envisaged by the NCOA.

The Commonwealth as steward of national criminal intelligence

CrimTrac's federated governance arrangements mean that the Commonwealth cannot claim to 'own' it in anything but a strictly legal sense. Indeed, the Commonwealth would do better to view itself more as a 'steward' of CrimTrac, and criminal intelligence more broadly, that works to further

the organisation for a common national purpose. Providing public goods at the national level is, after all, a proper role for the Commonwealth.

Providing those goods will require resources, and a 'merger and acquisition' approach has some appeal. It should certainly be considered and discussed by the Commonwealth's Justice Minister and his state counterparts, and by the ACC and CrimTrac boards. If there's a clear willingness on the part of all involved to genuinely explore the proposal, then a merger of the ACC and CrimTrac should be scoped further. Some guarantees by the Commonwealth could be offered—including preserving the broad focus of data collection, the use of the investment fund and future earnings for mutual benefit, and an agreed way to make sure that state police commissioners' needs will continue to be heard and met. The guarantees would put the negotiations on a strong footing.

But if there's opposition or doubt that the merger will be acceptable to the states and territories, despite all guarantees, then the staged approach outlined above should be adopted. This approach would make sure that the federal ministers don't burn their political capital unnecessarily and risk what's an excellent interjurisdictional venture. It would also make sure that there's some movement towards enhancing the nation's criminal intelligence system. Placing CrimTrac on a legislative basis might aid that process and kick-start the negotiations.

Regardless of the course taken, there's no avoiding the fact that the ACC will lose some intelligence analysis capability over the next few years if the budget forward estimates remain as they are. The commission also needs some investment to replace outdated information and intelligence platforms. These problems are likely to make the commission focus more narrowly, and to make do with outdated IT systems at a time when opportunities to exploit the cyberdomain for intelligence purposes are growing.

At the same time, law enforcement at the Commonwealth level is becoming more complex with the increasing threat from overseas criminals, the introduction of a third minister and agency with law enforcement responsibilities through the Australian Border Force, and a range of legislative, policy, resource and human capital needs. A white paper, perhaps developed in-house or by a small panel of eminent experts, would be a good way for the federal Cabinet to take a holistic view of its role in fighting crime.

Notes

1. Parliamentary Joint Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, May 2013, p. 59.
2. In this paper, contributions to a database, such as those held by CrimTrac, are described as 'information'. Information is factual, static and unprocessed. Intelligence is produced when information (from all sources) is analysed to produce insights about a problem of concern to decision-makers.
3. Parliamentary Joint Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, Chapter 4.
4. Saskia Hufnagel, *Policing cooperation across borders: comparative perspectives on law enforcement within the EU and Australia*, Ashgate Publishing, 2013, Section 5.

Acronyms and abbreviations

ACC	Australian Crime Commission
NCOA	National Commission of Audit
AUSTRAC	Australian Transactions Reports and Analysis Centre
IT	information technology

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RRP \$5.00

ISSN 2200-6648

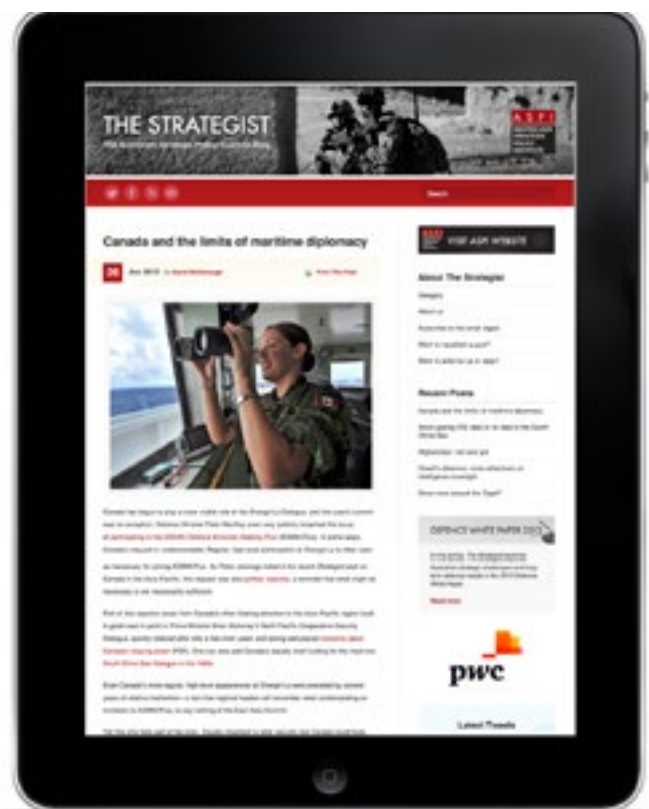
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