

SPECIAL REPORT

February 2015

A long time coming

The case for a white paper on Commonwealth law enforcement policy

David Connery



Executive summary

Strong international, technological, political and social forces are changing the criminal challenge to Australia. These forces mean that the Australian Government will need to take a greater role in law enforcement in the future.

So far, the Commonwealth's responses to these challenges have been evolutionary, reactive or incremental. While those responses include excellent innovations, some change occurs because events make recent decisions redundant—a concern amply demonstrated by the recent funding top-up for counterterrorism spending. There are also questions about where national leadership is needed to meet these challenges, and whether our current responses, particularly to serious and organised crime, are still optimal.

All our law enforcement agencies face important organisational challenges, especially with sharing information, getting people with the right skills, and incorporating technology into their work.

An examination of these factors shows that it's time for the federal cabinet to take a coordinated and strategic look at its law enforcement responsibilities, starting with a review. While a national review covering all areas of law enforcement would be preferable—so that state and territory law enforcement agencies could be included—that's probably not practical yet. So the initial step should be a review of how today's Commonwealth law enforcement system needs to adapt to the anticipated operating environment over the next 10–20 years.

The review should examine the interdependencies within the Commonwealth system, its links with the state and territory law enforcement systems, international partnerships and capacity building, and the relationship between the Commonwealth agencies and the private and community sectors.

The review should lead to a statement of the desired policy, organisational, legislative, operational and resource landscape for law enforcement out to 2020–30. Such a statement should leverage and institutionalise relationships between all agencies with a stake in making Australia a 'just and secure' society.

A major policy statement is needed now because it would explain what the Australian Government intends to do in the law enforcement space in the future, and how it will work with the other jurisdictions to achieve those aims. A law enforcement white paper process, which would help inform the Federation White Paper that's now under development, would be a good way to assemble the arguments and allow the federal cabinet to decide on what role it will take in this central policy area. It would also provide the clear policy lead for all federal law enforcement and related agencies to do their own forward planning, based on the understanding they are contributing to Cabinet's aims and working as part of an interdependent system.

It's time to build a law enforcement system for the future

Cabinet needs to outline its expectations for the Commonwealth's law enforcement system over the next decade or so.

Those expectations should be derived from a high-level but comprehensive review of how criminal challenges will affect Australia's economy, community, sovereignty and international objectives. The review, which should lead to a cabinet-endorsed policy white paper, must take a broad view of the Commonwealth's law enforcement system. And, while the law enforcement community should be the focus of the review and subsequent white paper, the review's recommendations will need to be framed by the roles played by business, the community sector, international partners and—critically—the states and territories. The latter group is especially important to consider because of the close interdependencies between and among the state and federal jurisdictions. This perspective will allow the review to consider how to place pressure on major crime actors through intelligence, police and non-police instruments, such as taxation, immigration, education, social services and research.

It's a particularly good time for the Commonwealth to be undertaking such a policy process.

Last year, the Abbott government established the National Commission of Audit to 'examine the scope for efficiency and productivity improvements across all areas of Commonwealth expenditure, and to make recommendations to achieve savings'. A number of law enforcement agencies were reviewed, and recommendations were made to merge or abolish some of them. Decisions on these proposals are yet to be announced.

More recently, the Australian Government has commissioned a white paper about reforming the Australian federation. The key desired outcome for that policy review is to 'fix the federation', but, at present, law enforcement will not be the subject of an issues paper: it'll probably only receive attention 'to a lesser degree' under the very broad heading of 'justice'.¹ It's hard to see how complete answers to the nation's revenue and spending issues can be developed without a clear view of how the major cross-jurisdictional function of law enforcement is performed.

And in the not too distant future, agencies such as the Australian Federal Police (AFP) and Australian Crime Commission (ACC)—both of whom had new chief executives appointed last year—will want to do some planning of their own. This policy process could provide a lead for their respective planning activities.

This special report examines the case for a law enforcement white paper and the challenges for the Commonwealth's law enforcement system. It also includes discussion of the three key drivers behind those challenges. The report is based on an examination of a number of related inquiries and reports and on interviews with senior Commonwealth law enforcement and policy officials.

A white paper on law enforcement

A white paper is simply a statement of government policy. But it has a special status in the Australian system of government because it's a comprehensive statement about how the government will manage a major policy area in the future. The strongest white papers are those that are 'owned' by the entire federal cabinet and that reflect a bipartisan consensus.

White paper processes are challenging and politically risky. Not all bear fruit. The challenge in completing them arises from their complexity—they'll necessarily roam broadly and deeply, and it can be hard to examine a policy area discretely. Political risk also adds complexity and caution. Such risk can arise where promised funding isn't delivered or subsequent events render the original policy redundant. It also arises because a white paper leaves a clear statement for others to use to judge a government's success or otherwise.

The resources needed to develop a white paper can vary dramatically. For example, Defence is assigning a large number of people to its current white paper effort—perhaps about a hundred staff-years, according to one estimate—but previous iterations have involved fewer people. Much will depend on exactly what the government wants to achieve through the process.

We suggest, in this case, that the Australian Government should aim to achieve three main (and related) outcomes from a law enforcement white paper process.

First, it should identify ways to remove the overlaps and bridge the gaps between its responsibilities and those of the other major actors, including the states and territories

and the community and private sectors. While it would be preferable to conduct a policy review in a way that includes the states and territories, in particular, that's probably not practical because those governments will have their own needs and priorities. As a consequence, this process should be seen as a starting point for a much larger national review. It's vital to ensure that all stakeholders are considered in the analysis because they provide important support in the national fight against crime, often by providing physical, intellectual and information capability. This consideration is also important because Commonwealth actions can have implications for the other players, including through spending priorities and regulation.

Second, the white paper should provide the basis for subsequent agency planning. In this way, a white paper could help to harmonise or integrate the efforts of Commonwealth law enforcement agencies. This should include ways to include the benefits that non-police agencies can bring to the system and an examination of legal innovations that could make the system even more effective. It should also identify interdependencies with the state and territory law enforcement agencies.

Third, the white paper should outline a commitment to resourcing the law enforcement system. The commitment should include nationwide capacity development in agreed areas and sustainable funding that allows agencies to meet the government's expectations. To achieve this, the review and white paper should establish a new baseline for law enforcement that is informed by the risk posed by crime, rather than non-rational historical spending patterns.

There are two main models that could be used to conduct the review and produce the white paper, which are separate tasks. For the review, one option is to appoint a team of 'insiders', working under an appropriate minister or cabinet subcommittee, to conduct the review and ultimately produce the white paper. This approach could involve many working parties to examine specific areas in depth, and a coordinating department integrating their outputs. Other processes have used a 'consultant' approach, in which eminent people conduct a review into the policy area. If this approach is adopted, it would be worth considering a small panel that includes people with expertise in the Commonwealth, state, business and international arenas. The endorsed results could then be incorporated into an authoritative white paper, led by the Attorney-General's Department.

The challenges for the Commonwealth's law enforcement system

The challenges facing the Commonwealth's role in law enforcement are not particularly new. Many have been emerging over the past decade, but some are gathering pace, especially those concerned with the internet. The seven main ones are briefly explained here.

- 1. Dealing with the demand for products and services provided by organised crime.** Rates of 'volume' crime (such as theft) are generally trending downward, but cybercrime is increasing, and there's still a lot we don't know about other kinds of high-end crime. Even though most Australians are very law-abiding, we can't foresee an end to the challenge of dealing with organised crime because many ordinary people still wish to indulge in behaviour that makes opportunities for criminals. Well-established forms of 'denied' demand for drugs, gambling or prostitution have been joined by newer niche demands, such as for exotic wildlife or human organs. Reducing this demand is not a function solely of law enforcement, as it will involve many other government policy areas, including health, social, education and corrections policies.
- 2. Managing long-term responses to terrorism and cybercrime.** While the Daesh movement in Syria and Iraq has captured international attention, it's not the only terrorist movement of concern to Australia's interests. It's also not new, but part of a continuum of activity that pre-dates 9/11 and will continue into the future. However, there's a real possibility that this latest terrorist front will create real challenges for social harmony in Australia (and elsewhere) if it manages to inspire further random attacks. Efforts to tackle this threat on the social, economic, political, law enforcement and military fronts will need to be tightly coordinated so that they're mutually reinforcing.

The threat posed by cybercrime is another challenge for law enforcement agencies, especially if minor criminal cyber activity increases to the point where it becomes volume crime. While law enforcement agencies have been fast to recognise this challenge, its scope, speed and reach make it difficult to counter.

3. Identifying the optimal split between Commonwealth, national and state and territory responsibilities. At present, there's a live discussion about the future shape of the Commonwealth's law enforcement agencies. In addition to the new border force, there have been recommendations to merge some smaller agencies into the ACC. Getting the optimal organisational arrangements will be a major task for the Commonwealth as they need to balance a number of imperatives, including focus, funding and stakeholder/partner needs.

Some responsibilities will always remain with the states and territories, but national approaches that involve all jurisdictions working together are better in some situations. We've seen this already in areas such as counterterrorism and, to an increasing extent, criminal intelligence. As technology becomes ever more pervasive—and complex and different legal frameworks are adopted by the jurisdictions—national approaches may also be more effective in such areas as capacity development and operations against unexplained wealth and cybercrime.

Comprehensive responses must also include non-police resources, including intelligence, taxation, customs, banking and education agencies. Many are represented at the state and federal levels, and all need to be incorporated into a systemic view of law enforcement.

4. Managing and dealing with the challenge of new technology. While adapting to existing technology is challenging enough, relentless advances in technology that will undoubtedly pose significant new problems, even as they offer opportunities for law enforcers. For one, the ability to collect new biometric information doesn't mean this technology will be acceptable: some members of the public will balk at the idea of such information being retained and shared by police. Further technological challenges are mounting through innovations such as crypto currencies, the dark net and powerful encryption. All these challenges increase the complexity of investigations and the cost of each one.

The challenge of technological change—as well as shared and separate responsibilities among the jurisdictions—is highlighted in the information sharing area. While there are some very good examples effective and efficient sharing among agencies in all jurisdictions, there's a clear consensus from the officials interviewed for this report

that more could be done. This includes more ways to collect different kinds of information with relevance to law enforcement, and also more ways to make better use of information already held. The challenge of aligning expectation with capability will surely only increase as new sources (such as through biometric sources) and emerging ways of satisfying demand (such as through big data analytics) are developed. As a result, there needs to be ongoing work to make the best use of information in the national interest wherever it is held, and to identify and address the cultural, educational, structural, technical, legislative and risk dimensions of the challenge.

- 5. Sustaining law enforcement involvement in foreign policy.** Australian law enforcement has played an important part in furthering Australia's national interests over the past decade. Our police have been deployed on peacekeeping missions, in major capacity-development missions, and even on investigations overseas. The challenge for police arises when simultaneous no-notice missions create problems in concurrency and prioritisation. Unlike the Australian Defence Force, the Australian Federal Police (AFP) holds no significant reserve of members waiting for deployment in peacekeeping or large capacity-building operations. This means that additional police for missions like the Flight MH17 operation (which involved more than 160 AFP officers) or the 2002 Bali bombings investigation (which involved nearly 500 AFP officers in Indonesia and Australia) need to be diverted from other duties.
- 6. Law enforcement skills and capability.** It's clear that the range of skills needed within law enforcement agencies has expanded. Police 'street-smarts' are still a critical ingredient for success, but so too are people with advanced cyberskills, forensic accounting qualifications or expertise in biotech disciplines. Interlocutors for this report mentioned that people from specialist areas are given more general investigative tasks when a major event or investigation occurs. It's important to realise that the AFP has about 500 investigators in its workforce of around 6,500 people. This means that, like all police forces, it will never have enough detectives to cover every case. What's more, the professional skills of police can vary from place to place. National police professional registration has long been discussed as one way of ensuring compatibility among the jurisdictions.

It's also important for law enforcement agencies to use modern acquisition and technology development techniques. Used well, these innovations could cut the time between identifying a new concept of police employment and the technology that can support that concept, and the fielding of new capability with frontline or specialist police. At present, the small economies of scale and high cost of planning mean that our agencies lag behind technology changes.

- 7. Funding within and for our agencies.** Two related budgeting issues create real challenges for our agencies. The first is finding the optimal split between funding for crime prevention and funding for crime response. This can create a dilemma for agencies, which must decide whether to invest in the low-profile activities of gathering intelligence and disrupting crime, or to focus their effort after a crime has been committed (which leads to high-profile arrests and good publicity for the government).

This isn't simple to reconcile, especially because all Commonwealth law enforcement agencies have been given reduced budgets over the forward estimates. Some have since received top-ups, largely for counterterrorism initiatives, or have had smaller initiatives funded from the proceeds of crime account. While this funding is welcome, ad hoc injections tend to be less than optimal because the funding measures often lapse and because it takes a long time to build new police capability. It might take two years to get a fully operational police constable in some jurisdictions; getting experienced investigators and leaders takes significantly longer.

Despite the top-ups, the government cash allocation to the major law enforcement agencies is planned to fall from 2013–14 spending by 14.3% in real terms over the period from 2014–15 to 2017–18.² Will these instruments of national security be capable of performing when required if the cuts and 'efficiency dividends' are applied as planned?

Of course, some reprioritisation may be possible to free resources, and those options should be explored. Interestingly, such a prioritisation might not come from within law enforcement agencies if social, welfare or related programs are used to tackle the crime from different angles.

Changes and trends in law enforcement in Australia

Major emerging trends can be expected to complicate the task of ensuring that the Commonwealth's system for law enforcement remains fit for purpose.

Immediately after federation in 1901, the Australian Government saw no role for the Commonwealth in law enforcement. Instead, early Australian governments decided to rely on state police forces to enforce Commonwealth law. This position changed in 1917, when the first discernible Commonwealth police organisation was established after Prime Minister Billy Hughes was pelted with an egg in Warwick, Queensland. That organisation, with just a handful of officers, was focused on surveillance and policing in the Australian Capital Territory.

Since that beginning, the Commonwealth's security and law enforcement agencies have grown in size, scope and sophistication. Today, the Commonwealth employs around 14,500 people in this function and spends about \$4.5 billion a year on it.³

The growth in the Commonwealth's law enforcement role has been based on the retention of its early roles and expansion into new ones. The expansion has matched growth in legislation, changing technology, increasing Commonwealth involvement in all aspects of Australian society, and a realisation that police can play an important role in national security and foreign policy.

Changes in these areas have been driven in no small part by three major trends: the increasing internationalisation of criminal threats, the cumulative impact of largely incremental changes in the Commonwealth's law enforcement bodies, and significant capability development challenges for agencies. An examination of those trends provides some of the background that a white paper process would need to consider.

The expanding international dimension of Australian law enforcement

There was a time when organised crime in Australia was largely about Australian-based groups that conducted all their business here, and enforcement was primarily a matter for state police.

That changed in the 1960s as greater volumes of drugs were imported, often through connections between local migrant groups and their home countries. Violence and corruption—always features of major criminal gangs—were also on the rise as demand for illicit goods increased.⁴

Further change since then has been largely due to increased international travel and shipping, the increasing scope of criminal activity and a greater ability to exploit telecommunications as a vector for crime. The internet has driven change in major ways: it has made money transfers easier and increased the volume of commerce that can be transacted remotely, quickly and sometimes anonymously. This has given organised criminals, as well as other nefarious users, ways to exploit new vulnerabilities or use information technology to plan and perpetrate old crimes differently. Nowadays, the average Australian doesn't need to go to the backstreets of Kings Cross, Carlton or Fortitude Valley to encounter organised crime.

These changes in criminal threats have meant that the Commonwealth now has a larger role to play in law enforcement. Its role has been expanded partly by the greater importance of existing Commonwealth authorities in telecommunications, banking and customs, the Commonwealth's expanded reach into corporations, and the national requirement for counterterrorism operations. These changes mean that 33 Commonwealth agencies now have law enforcement responsibilities of some type, especially in the area of investigations.⁵

Changes in the international dimension of crime have been reflected in changes to the sources and spread of crime. For example, the ACC has publicly advised that 70% of its major criminal targets live or conduct significant activities overseas. This means that the Commonwealth's powers and relationships are critical to pursuing and disrupting much criminal activity in Australia. The increasing scale of financial crime and money laundering is also relevant. While the amount of such activities is unmeasurable, they're described as a 'common denominator' for organised crime activity by AUSTRAC, Australia's financial intelligence unit. Importantly, this type of crime engages the Australian Government's responsibilities for the financial and telecommunications sectors and, because much of it has an international dimension, the government's external affairs powers too.

Also important has been the way law enforcement has been considered as a tool of foreign policy over the past decade or so. While Commonwealth agencies have placed liaison officers overseas since the early 1970s, their role was usually a transactional one. That began to change in the late 1970s, when it was realised that offering training for foreign police made them better able to work with Australian police and could increase Australia's influence in their home countries.

The AFP's training and capacity-development role grew markedly over a short period in the late 1980s, before it was expanded further through major overseas missions. While our police have been involved in peacekeeping since 1964, the 1999 East Timor referendum, 2002 Bali investigation and 2003 intervention in Solomon Islands showed how law enforcement agencies could make direct contributions to Australia's international objectives. This model has been expanded now to include cooperative educational institutions, major capacity and change management programs, and ready-response police units.

In many cases, our law enforcement agencies have been used to support stabilisation missions, to participate in collaborative international investigations and, most recently, to demonstrate national resolve after the Flight MH17 atrocity. This wide variety of uses for police in foreign policy shows that governments want different options, with varying profiles, to achieve their international objectives.

Australia's international law enforcement cooperation and agreements now cover a range of criminal matters, from extradition, mutual cooperation and recovering the proceeds of crime to conventions about terrorism, money laundering and corruption. Australia is also a leading member and supporter of a range of international organisations, including the Financial Action Task Force, INTERPOL, ASEANAPOL and the Virtual Global Task Force combating child sexual abuse. On top of this, Australian agencies maintain very active bilateral partnerships, notably in Indonesia, Papua New Guinea and Solomon Islands. These agreements and associations require significant attention and resources from Commonwealth agencies but also deliver real benefits.⁶

These dimensions of the internationalisation of crime and law enforcement result from trends that are unlikely to be reversed: indeed, they're the product of changes that will entrench the foreign criminal threat to and from Australia and

make it more likely that the Australian Government will want to use law enforcement agencies overseas.

These trends have been met with many responses from the Australian Government, but the government hasn't created a strictly coherent system: there are overlaps and gaps.

Incremental, evolutionary and reactive change

In the past few years there have been some excellent law enforcement innovations, such as the National Anti-Gangs Squad and the Australian Gangs Intelligence Coordination Centre, which is hosted by the ACC. Many of these innovations have been responses to the internationalisation of crime, and involve using the Commonwealth's information sources more effectively to identify criminals, their associates and their activities.

Other factors also driving incremental, evolutionary or reactive change are the Commonwealth's expanding role in national life, particularly in the regulation of markets and corporations, the delivery of services, and, critically, revenue raising. The increasing influence of international agreements on Australia, imposing obligations that need to be introduced through law and enforced by Australian agencies, has also been a change driver.

Another important and incremental change—which shouldn't be reversed, regardless of any other change—has been towards greater cooperation between federal, state and territory law enforcement agencies. This change is essential in the fight against modern crime, and many senior law enforcement officers now describe cooperation in some areas, such as drug crime and counterterrorism, as 'habitual' or 'deep'. This cooperation has been enhanced by a desire not only to arrest offenders, but to disrupt or 'take down the network'.

Technological innovation has been one driver of this cooperation. Telephone interception, computer analysis, advanced forensics and database capabilities have all derived significant value from either the Commonwealth's ownership of certain technologies or its ability to unify a national effort.

But perhaps the main change driver has been cultural: police officers across Australia see sense in cooperating and have built trust and networks among themselves. Cooperation ultimately depends upon the continuation and institutionalisation of these collaborative behaviours.

International experience is also showing that the law enforcement effort needs to include more than just law enforcement agencies. Because crime is being interpreted in an increasingly holistic sense, and because the motivations for crime are extremely varied and variable, a broader range of government, business and community organisations is seen as vital in fighting crime, but also in dealing with some of its causes.

To help promote collaboration, a number of organisational innovations have sought more joined-up efforts across Australia's eight law enforcement jurisdictions (New Zealand has been included in some, too). Joint counterterrorism teams, joint task forces on the waterfront and a national operation against Australia's largest bkie gang have been part of this trend. Collaboration has also been extended in other areas (for example, to combat child exploitation), but there are more opportunities. Foremost among them is the seizure of unexplained wealth.

Changes in Australia's legal regimes to make the country a harder target, particularly for organised criminals and terrorists, have also been proposed, made and challenged in a number of areas. Among them are the change to the onus of proof in the cases of unexplained wealth, laws that aim to prevent criminals from working together in gangs and an enhanced ability to retain information about online activities. But there's also criticism that some of this legislation runs counter to certain individual freedoms.⁷

There are also arrangements that warrant review, some gaps in Australia's systems, and some role overlap. For instance, the entire criminal intelligence system is one place where a new look is needed. The 2013 joint parliamentary inquiry into this aspect of the law enforcement system noted 'serious legislative, technological, resource and cultural impediments to the flow of intelligence which produce unequal intelligence holdings, an incomplete picture of criminal threats and undermine stakeholder confidence.' Contrary to the view of multijurisdictional cooperation expressed in this paper, the inquiry also noted that 'Some law enforcement agencies hold reservations about sharing their own information and seem not to recognise the value added to that information when converted into intelligence and returned to them.' While the parliamentary committee also recorded many expressions of intent for better cooperation, the system is still stymied by the diverging needs and views of its stakeholders.⁸

In line with this, the future of the ACC, the CrimTrac Agency and AUSTRAC as separate entities is also uncertain. There's a push in government to settle this by promoting the ACC as the nation's premier criminal intelligence agency by merging the two others into it. That change could bring major advantages, but the views of other stakeholders—including state governments and major financial institutions—aren't yet clear. Nor is it clear what might happen to residual functions that aren't core to criminal intelligence, such as anti-money-laundering regulation. Changing current arrangements and designing a new system will require the support and active cooperation of all stakeholders, including those outside the law enforcement sector.

The introduction of the Australian Border Force is set to be another area in which the impact of incremental change will be hard to anticipate. While good legislative drafting will probably solve most of the challenges, gaps and overlaps will probably arise only after working arrangements have been tested. This change alone makes a holistic examination of law enforcement worthwhile, especially for the capability-development challenges that are likely to arise.

Challenges in building law enforcement capability

Law enforcement agencies experience some interesting capability development and budgeting challenges. Their situation is tough, but the same can be said for most other agencies in government. So why should this sector—or system—be treated differently from others?

The key reason is that the government and public lose in two ways when law enforcement agencies are under-resourced for their jobs and the criminal challenges that they face. First, government revenue is reduced because less tax is paid, or more people break the law because the risk of being caught and punished is reduced. Second, reduced law enforcement capacity is likely to affect the government's objectives. For example, it may reduce safety in the community, make the borders less secure or limit responses to international challenges. This can have a direct impact on business confidence or community harmony.

The changing conditions mentioned in this paper mean that law enforcement agencies now need a large number of highly specialised staff. Some areas are obvious and are affected by conditions in the broader economy—for instance, in cybersecurity and analysis experts. There's also a greater need for their officers to work across

jurisdictions and provide evidence that can be used in courts outside their home states. There's also value in broader professionalisation for individual police workforces, which are traditionally inwardly focused in their training, standards and recruitment. That's changing, and police now see value in developing a profession that embodies common practices and standards.⁹

While the capability of individuals is important, the capacity of organisations to meet expanding or changing remits is also worth considering. One such consideration is the number of skilled professionals needed to staff the entire system. Investigators and intelligence analysts, for example, are sought by a variety of government and non-government agencies and are costly to develop. According to comments gathered for this report, the level of skill among investigators across the nation is somewhat uneven, suggesting that a different approach might be needed to training and developing those officers.

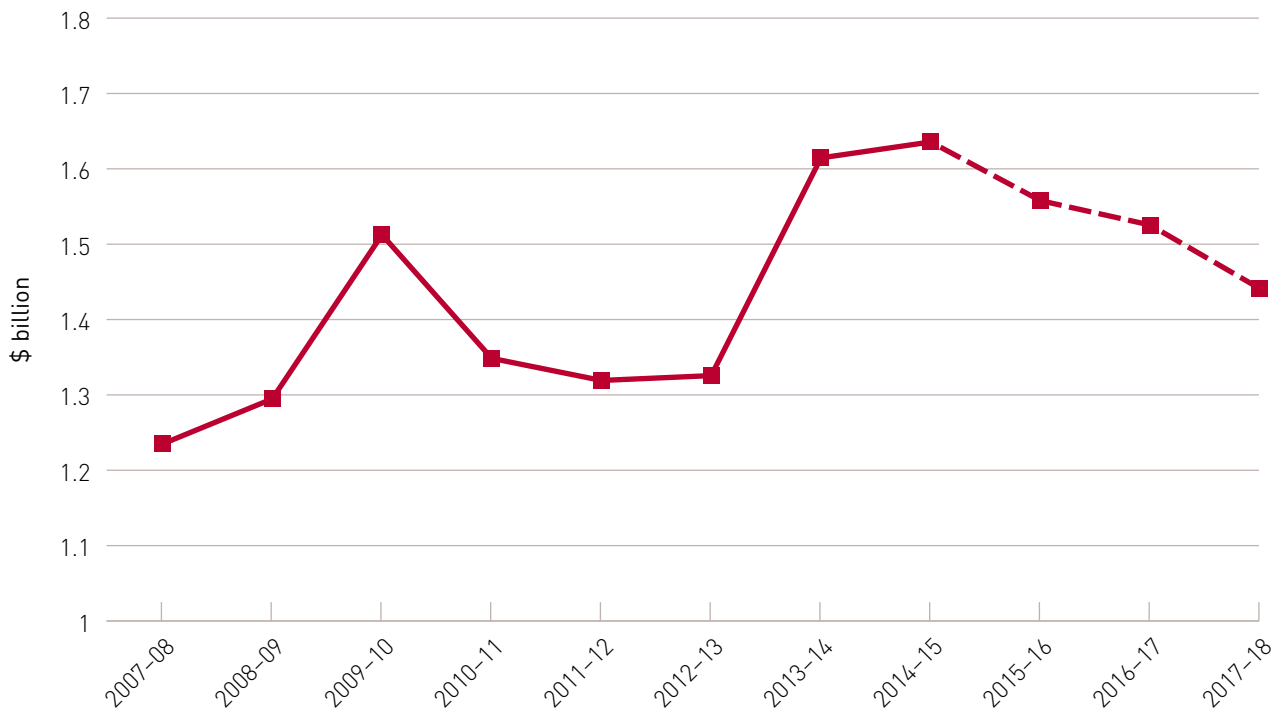
Investment in law enforcement technology is also uneven across the nation. For example, the Commonwealth and some states can afford high-end surveillance equipment and aircraft, but other jurisdictions can't. This uneven capability can be exploited by criminals and also has an important impact on interoperability, including in basic areas such as case management. Criminal intelligence is set to benefit from further technological advances that will probably make the national-level data repositories and analysis agencies ever more critical to the efforts of each state.

There are also valid questions about how the different pieces of the system should interact in the future. The point at which prosecutors get involved in investigations is a good example. While there are different schools of thought, the prevailing view calls for early engagement between prosecutors and investigators so that appropriate evidence is gathered, briefs meet functional needs and, ultimately, resources aren't wasted. Others have questioned the balance between the attention that the ACC should pay to the investigation of crime versus the ACC's intelligence function (a balance ultimately set by the ACC board, which consists of leading state and Commonwealth law enforcement officials). The Australian Government's 2009 Organised Crime Strategic Framework was largely focused on law enforcement, but recent international strategies also bring social services, health, education and non-government organisations such as charities into the mix.

The budget dimension of the law enforcement picture is equally concerning. A number of years of fluctuating and generally falling budgets (see figures 1 and 2) have led agencies to trim their workforces in many ways.

Some of the agencies' approaches to achieving savings, such as reviewing loadings and cutting incidental costs, have had positive results, but the agencies must now cut staff to meet their budgets. Often, it's experienced staff who are

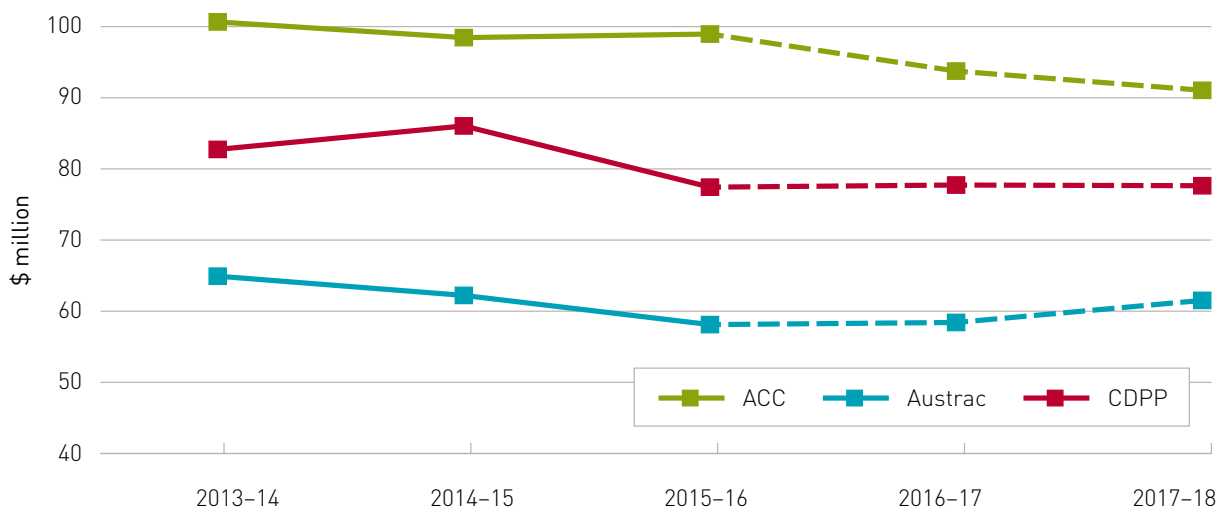
Figure 1: AFP, total cash received and forward estimates, 2007–08 to 2017–18 (\$ billion)



Note: Actual 2007–08 to 2014–15; forward estimates 2015–16 to 2017–18.

Source: Portfolio Additional Estimates 2014–15, February 2015 (using Table 3.2.4).

Figure 2: Smaller Commonwealth law enforcement and justice agencies, total cash received and forward estimates, 2013–14 to 2017–18 (\$ million)



Note: Actual 2013–14 to 2014–15; forward estimates 2015–16 to 2017–18.

Source: Portfolio Additional Estimates 2014–15, February 2015 (using Table 3.2.4 for each agency).

let go, because redundancy packages make separation more attractive for senior people. The effect of the redundancies varies from case to case: sometimes they allow ‘new blood’ to rise; sometimes they mean that vast amounts of experience walks out the door. Either way, new, inexperienced people must be brought into the organisation.

Budget cuts and the cumulative impact of efficiency dividends also have a real effect on the core work of investigating and prosecuting criminals. The CEO of the ACC explained those impacts in his first Senate Estimates appearance in May 2014:

Between 2007–08 and 2014–15, the Australian Crime Commission appropriation funding has reduced by 12.5% due to lapsing programs, increased savings measures and reduced revenue. Reduced funding and higher costs mean each year going forward there will be a reduction in staffing levels under current appropriations in the forward estimates.

He outlined the scale of the staffing decrease: from 542 full-time equivalent (FTE) in May 2014 to 450 FTE in 2017–18, if current funding plans were implemented. He estimated that 600 FTE are required to perform the ACC’s functions. While some of the job losses will be in the corporate area, most will come from the commission’s workforce of intelligence analysts. Those losses will reduce the ACC’s ability to perform its core function of investigating and analysing serious and organised crime.¹⁰

The ACC’s not alone. The Australian Securities and Investments Commission (ASIC) is also set to lose investigative capacity if planned budget cuts are implemented.¹¹ This means that some criminals will escape investigation and thus prosecution unless funding is increased.

Other agencies have also described how unpredictable variations in their funding affect their operations. In some agencies, priorities change quicker than variations to the funding level, often because of changes in political and public expectations. Even then, funding can be changed faster than new capability can be developed and matured. When combined with budgeting methods that include ‘lapsing’ as well as ‘ongoing’ funding, this means that agency planning operates within a ‘concertina’.

The Australian Government’s recent injection of \$630 million for counterterrorism is a case in point. While very necessary, this increase ran counter to the decision in the May 2014 Budget to further reduce funding for the ACC and, in the ‘out years’, the AFP. Those agencies have been on a downsizing path recently and have offered redundancies to staff, but now they’ll need more people to meet the increased expectations for counterterrorism. Curiously, other agencies with important roles, most notably the Department of Foreign Affairs and Trade (DFAT), didn’t receive additional funding in this tranche. Providing further funding to DFAT so the department can promote overseas cooperation against terrorism, organised crime and illicit financing would be a worthy inclusion in next year’s budget.

It’s been a long time coming

The last major review of Australia’s law enforcement capability was in 2009. It was intended to be a broad inquiry into national police capability, but that was impossible because of the wide differences in police capability needs between the states and the Commonwealth. So instead of taking a broad, systemic view, the review focused on the AFP. This view was necessary, but it was insufficient.

It’s time to try again, this time using the federal cabinet’s imprimatur to examine Australia’s crime and law enforcement challenge, and then to define the Commonwealth’s desired law enforcement system for the next 10–20 years. The new review should examine what the Commonwealth’s system should be organised to achieve in the context of Australia’s multijurisdictional law enforcement landscape, and should be followed by a white paper.

There are options for producing a white paper, but the key determiners of success are holistically oriented terms of reference and cabinet endorsement. This will mean that all ministers have a stake in the product and, importantly, will have stated their desire to set the cabinet’s mark on the future of this critical national policy area.

A definitive statement about government expectations couldn’t come at a better time for the Commonwealth’s law enforcement agencies themselves, many of whom are now under new leaders and actively thinking about their future. Authoritative guidance, that has cabinet’s imprint, will provide that task with a good starting point.

Notes

- 1 Australian Government, *Reform of the Federation White Paper—terms of reference*, 2014.
- 2 Australian Government, *Budget 2014–15, Budget strategy and outlook*, May 2014, pp. 6–18. This reduction is largely due to the cessation of a number of temporary measures as well as recent efficiency measures that have reduced departmental resourcing. This impact has been partially offset by additional funding provided to the Australian Customs and Border Protection Service to reform border protection services and by the \$630 million for counterterrorism announced in August 2014.
- 3 Australian Government, *Budget 2014–15, Portfolio Budget Statements—Attorney General’s portfolio*, May 2014, various tables – author’s calculation.
- 4 Steve Bolt, *History of drug laws*, State Library of NSW, 2011.
- 5 Commonwealth Director of Public Prosecutions, *Annual report 2013–14*, p. 32.
- 6 See David Connery, Natalie Sambhi and Michael McKenzie, *A return on investment: the future of police cooperation between Australia and Indonesia*, ASPI special report, March 2014, [online](#); and David Connery and Karl Claxton, *Shared interests, enduring cooperation: the future of Australia–PNG police cooperation*, ASPI special report, October 2014, [online](#).
- 7 For examples, see Hon Justice MJ Beazley AO, ‘Rule of law and national security concerns: whither human rights?’, World Bar Conference, 5–6 September 2014, Queenstown, New Zealand; and Human Rights Watch, *World Report 2015*.
- 8 Parliamentary Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, Commonwealth of Australia, Canberra, 2013, p. ix.
- 9 Australia New Zealand Police Advisory Agency, *Australia New Zealand Police Professionalisation Strategy 2013–18*, 2014.
- 10 Since Mr Dawson’s May 2014 appearance at Senate Estimates, the government allocated a further \$24 million over four years to the ACC so that it can develop a new capability to support terrorism investigations. In total, the ACC will have 535 staff in 2014–15—and broader responsibilities (Portfolio Additional Estimates 2014–15, Table 2.1).
- 11 Pat McGrath, ‘ASIC to analyse Westfield meeting, but warns of funding cut impact on investigations’, *ABC News*, 30 May 2014.

Acronyms and abbreviations

ACC	Australian Crime Commission
AFP	Australian Federal Police
ASIC	Australian Securities and Investments Commission
AUSTRAC	Australian Transaction Reports and Analysis Centre
CDPP	Commonwealth Director of Public Prosecutions
DFAT	Department of Foreign Affairs and Trade

About the author

David Connery is ASPI’s senior analyst in the Strategic Policing and Law Enforcement Program.

Important disclaimer

This publication is designed to provide accurate and authoritative information in relation to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering any form of professional or other advice or services. No person should rely on the contents of this publication without first obtaining advice from a qualified professional person.

About Special Reports

Generally written by ASPI experts, Special Reports are intended to deepen understanding on critical questions facing key strategic decision-makers and, where appropriate, provide policy recommendations. In some instances, material of a more technical nature may appear in this series, where it adds to the understanding of the issue at hand. Special Reports reflect the personal views of the author(s), and do not in any way express or reflect the views of the Australian Government or represent the formal position of ASPI on any particular issue.

ASPI

Tel +61 2 6270 5100

Fax + 61 2 6273 9566

Email enquiries@aspi.org.au

Web www.aspi.org.au



[Facebook.com/ASPI.org](https://www.facebook.com/ASPI.org)



[@ASPI_org](https://twitter.com/ASPI_org)

© The Australian Strategic Policy Institute Limited 2015

This publication is subject to copyright. Except as permitted under the *Copyright Act 1968*, no part of it may in any form or by any means (electronic, mechanical, microcopying, photocopying, recording or otherwise) be reproduced, stored in a retrieval system or transmitted without prior written permission. Enquiries should be addressed to the publishers.

Notwithstanding the above, Educational Institutions (including Schools, Independent Colleges, Universities, and TAFEs) are granted permission to make copies of copyrighted works strictly for educational purposes without explicit permission from ASPI and free of charge.

RRP \$5.00

ISSN 2200-6648

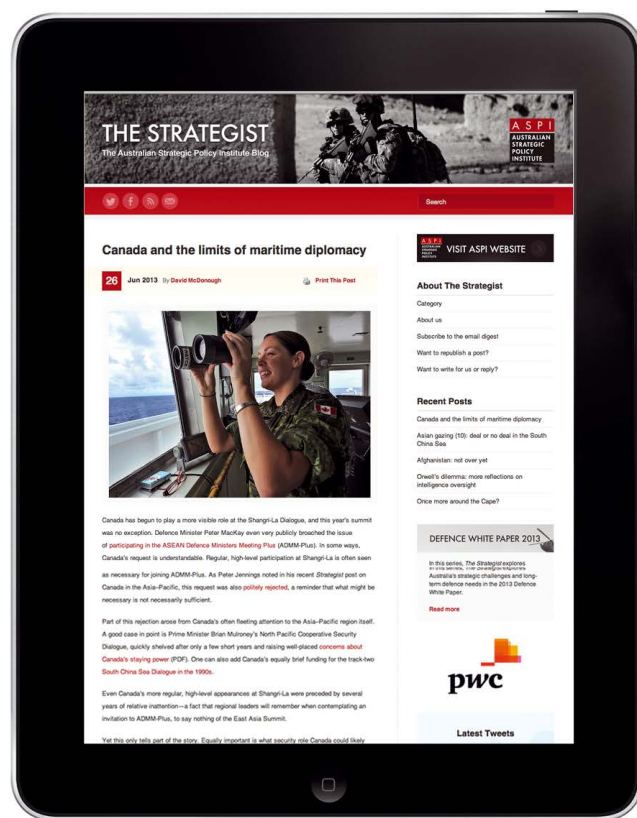
WHAT'S YOUR STRATEGY?



Stay informed via the field's leading think tank, the Australian Strategic Policy Institute.

BLOG

ASPI's blog, **The Strategist**, delivers fresh ideas on Australia's defence and strategic policy choices as well as encouraging discussion and debate among interested stakeholders in the online strategy community. Visit and subscribe to an email digest at www.aspistrategist.org.au. You can follow on Twitter (@ASPI_org) and like us on Facebook (www.facebook.com/ASPI.org).



To find out more about ASPI and membership go to www.aspi.org.au or contact us on 02 6270 5100 and enquiries@aspi.org.au.