



Submission to the Queensland Parliament Legal Affairs and Community Safety Committee— *Serious and Organised Crime Legislation Amendment Bill 2016*— Dr John Coyne

This submission does not reflect an Australian Strategic Policy Institute (ASPI) perspective but is the opinion of the author Dr John Coyne, Head of Border Security Program, ASPI.

Overview

ASPI welcomes the opportunity for one of its staff to make a submission to the Queensland Parliament Legal Affairs and Community Safety Committee on the *Serious and Organised Crime Legislation Amendment Bill 2016*. This submission will address two specific issues:

- Whether the implementation of the *Serious and Organised Crime Legislation Amendment Bill 2016* will result in a new Organised Crime Regime capable of tackling serious and organised crime in all its forms; and
- Whether the *Serious and Organised Crime Legislation Amendment Bill 2016* will improve the clarity, administration and operation of particular occupational and industry licensing Acts. Serious and Organised Crime Legislation Amendment Bill 2016

Overall, this stakeholder submission strongly supports the introduction of the legislative amendments contained within the *Serious and Organised Crime Legislation Amendment Bill 2016*. Furthermore, this submission provides additional recommendations for consideration by the Legal Affairs and Community Safety Committee within the scope of the draft bill.

A New Organised Crime Regime

The legislative amendments contained within the *Serious and Organised Crime Legislation Amendment Bill 2016*, does offer the opportunity for the Queensland Criminal Justice System to refocus on the criminal and anti-social behaviour of individual participants and associates of criminal groups. This being said the following observations are offered to the committee for further consideration:

1. The proposed amendments, whilst extensive, do not appear to promote the level of strategy integration that is needed in a comprehensive criminal justice serious and organised crime regime.
2. The amendments, especially those focussed on occupational and industry Acts are focussed on the crime problem of today. With this focus, the proposed amendments may not offer the necessary frameworks to deal with the agile and entrepreneurial nature of contemporary or future organised crime.
3. Many of the proposed amendments contained within the Bill are focussed on proactively managing offenders or high risk individuals involved in organised crime. As such, there is potential for consideration of legislative reform focussed on creating a regime across crime types (child sex offenders, sex offenders, and organised crime) for the management of persons who represent a high risk to community safety.

Integration

In today's complex and ever-changing criminal environment, law enforcement agencies have become increasingly aware that their capabilities have been substantially surpassed by the number of criminal acts and rapid expansion of globalized crime. As such the criminal justice system experiences various and competing demands.

When it comes to organised crime it is easy to adopt a militarised 'war on organised crime' perspective that's focussed primarily on 'attacking' contemporary threats: in this case Outlaw Motorcycle Gangs. But this kind of approach leaves the criminal justice system without a capacity to focus and prioritise its efforts.

Academic research and discourse highlights that the future of successful law enforcement activities against organised crime must be better coordinated and involve holistic strategies. These holistic strategies need to focus on the achievement of an appropriate balance between 'prevention', 'detection', 'disruption' and 'investigation' outcomes. To achieve such a diverse range of outcomes, strategies need to draw upon a range of traditional and non-traditional or, perhaps more correctly termed, non-enforcement strategies.

This amendment bill could have a significantly greater impact on community safety if it created a clearer legislative framework for the integration of the various amendments into a single holistic organised crime regime.

Agility

In 1969 ██████████ formulated the hierarchical model of organised crime that has, until recently, dominated law enforcement thinking. Almost from its publication Cressey's model was criticised for defining organised crime in a far too simplistic manner that ignored the evidence that it was a much more networked activity. Most researchers now agree that the problem of organised crime is much more complex than the Cressy model indicates.

There is increasing agreement in academic and professional circles that organised crime has a networked structure. Such perspectives support the position that organised crime should be considered entrepreneurial in nature: capable of moving quickly to take advantage of opportunities and avoid unnecessary risks. It is also increasingly prone to greying the line between legitimate and illicit economies as a means of deception and profit maximisation.

The dynamic business model and organisational theory for organised crime further complicates law enforcement attempts to develop proactive strategies to detect, disrupt, prevent and investigate groups and entities

- In this context organised crime business models and their inherent flexibility afford them the opportunity to rapidly identify risks and opportunities for exploitation.
- The organised crime decision-making process is supported by a plethora of open source information including information on police strategies and operations.
- The organised crime business model allows for the rapid purchase and employment of new technology at a rate which at times far exceeds that of law enforcement. Organised crime networks are then able to rapidly change operations or activities and take immediate action when an opportunity or unacceptable risk arises.

In contrast the analytical work undertaken in the criminal justice system starts and finishes with analysis of police indices and databases on previously recorded and investigated criminal activity. Law enforcement tends therefore to focus on the elements of recorded crime and evidence in comparison to examining a range of sources to estimate what is not known. This approach is likely to be associated with the law enforcement culture of 'evidence-based intelligence' assessments.

The amorphous nature of organised crime ensures that law enforcement's adversarial models over-generalise the public safety implications. This over-simplification of the organised crime problem prevents the criminal justice system from developing evidence based disruption or harm reduction strategies.

Organised crime responses to law enforcement disruptions in Australia's illicit drug markets illustrate this point. When law enforcement disrupt organised crime syndicates, a gap in the global supply chain is created. In the Australian context, despite record seizures and arrests, illicit drugs remain readily available in the Australian market illustrating the ability of organised crime groups to rapidly occupy gaps in the supply chain.

In 2010 the United Nations Office of Drug Control (UNODC) argued that law enforcement's focus on groups instead of markets was limiting its capacity to proactively deal with organised crime. The UNODC report (2010) argued that the limited availability of data on groups was inhibiting the development of effective strategies. Arguably, concerted law enforcement intelligence focused on markets (which encompass a wider array of data sources) will result in data that will permit imaginative entrepreneurial responses to organised crime. To be effective this approach must also include holistic responses that utilise networked law enforcement partners and stakeholders from outside of the law enforcement community.

The amendments proposed within the *Serious and Organised Crime Legislation Amendment Bill 2016*, especially those focussed on occupational and industry Acts are, as expected, clearly focussed on the organised crime problem of today. But given the amorphous and entrepreneurial nature of organised crime it is likely that their disruptive effect will be short lived. As such, the Legal Affairs and Community Safety Committee should consider options for increasing the agility of the Queensland organised crime regime to deal with the entrepreneurial and amorphous nature of contemporary and future organised crime.

Control of High Risk Persons

The criminal justice systems in Australian jurisdictions are all established on a presumption of innocence. Across a small number of crime types, including terrorism and child sex offences, some of these same jurisdictions are now proactively using administrative action to apply increasingly restrictive control measures to persons who are assessed as representing a high risk to community safety.

A number of the measures contained within the *Serious and Organised Crime Legislation Amendment Bill 2016* are reflective of this evolving proactive community safety risk mitigation paradigm. The piecemeal nature of the *Serious and Organised Crime Legislation Amendment Bill 2016* provisions for managing high risk offenders does not assure a consistent approach to community safety risk mitigation: nor does it provide the necessary protections to the application of these measures. The Legal Affairs and Community Safety Committee could consider how the *Serious and Organised Crime Legislation Amendment Bill 2016* could be used to centralise and harmonise the risk mitigation of high risk persons across a range of criminal offences: including sexual assault, child sex related offences, and organised crime.

Recommendation

This submission:

- strongly supports the *Serious and Organised Crime Legislation Amendment Bill 2016* in its entirety; and
- Recommends that the Legal Affairs and Community Safety Committee consider further enhancement of the Queensland Organised Crime Regime based on the issues raised in this submission.