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Date introduced: 3 December 2015
House: House of Representatives
Portfolio: Justice

Commencement: A single day to be fixed by Proclamation or 1 July 2016, whichever is the earlier.

Links: The links to the Bills, their Explanatory Memoranda and second reading speeches can be found on the home pages for the Australian Crime Commission Amendment (National Policing Information) Bill 2015 and the Australian Crime Commission (National Policing Information Charges) Bill 2015, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
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Purpose of the Bills

The purpose of the Australian Crime Commission Amendment (National Policing Information) Bill 2015 (the Consolidation Bill) is to amend the Australian Crime Commission Act 2002 (the ACC Act) to merge CrimTrac and its functions into the Australian Crime Commission, and make consequential amendments to other Acts.¹

The purpose of the Australian Crime Commission (National Policing Information Charges) Bill 2015 (the Charges Bill) is to provide a legislative basis for the Australian Crime Commission (ACC) to charge for national policing information services.

Background

CrimTrac

CrimTrac was established in 2000 under an Intergovernmental Agreement (IGA) between the Commonwealth and state and territory governments to ‘enhance Australian law enforcement with an emphasis on information-based policing facilitated through rapid access to detailed, current and accurate police information’.²

The services CrimTrac provides include the National Police Checking Service (criminal history checking), the National Child Offender System (comprising the Australian National Child Offender Register and the Managed Person System), the National Police Reference System and the National Firearms Identification Database.³ By providing access to information collated from police records around the country, CrimTrac aims to minimise opportunities for people to evade laws by crossing state borders.

The IGA establishes the broad objectives of CrimTrac and a Board of Management with representation from all jurisdictions. The agency is a ‘joint venture partnership’ between the Commonwealth Attorney-General’s Department (AGD) and the state and federal police agencies.⁴ In accordance with the IGA, it is established as an executive agency within the Attorney-General’s portfolio.⁵ The Minister for Justice stated the merged agency would be supported by a new IGA.⁶

CrimTrac is headed by a Chief Executive Officer (CEO; currently Nicole Rose) and as at June 2015, had 207 employees.⁷ The agency operates under a self-funded model whereby most of its revenue is derived from charges paid by police and certain other agencies for its National Police Checking Service.⁸ The charges are paid into the National Policing Information Systems and Services Special Account and used towards operating expenses and police information services to all jurisdictions.⁹

Australian Crime Commission

The Australian Crime Commission (ACC) commenced as Australia’s national criminal intelligence agency in 2003, replacing the National Crime Authority (NCA), the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments.¹⁰ It has a specific focus on serious and organised crime of national significance.¹¹

⁵ IGA, clause 7.2; CrimTrac, Annual report 2014–15, CrimTrac, Canberra, 2015, p. 6; Public Service Act 1999, Part 9; both accessed 25 January 2016.
⁷ IGA, clause 7.1; CrimTrac, Annual report 2014–15, op. cit., pp. 7, 68.

The ACC’s main functions, as set out in the ACC Act, are to:

- collect, correlate, analyse and disseminate criminal information and intelligence and to maintain it in a national database
- undertake intelligence operations
- investigate matters relating to ‘federally relevant criminal activity’ (where relevant criminal activity is serious and organised crime or Indigenous violence or child abuse) and
- report on the outcomes of its operations and investigations and provide criminal information and intelligence to the ACC Board.12

Operations and investigations must be approved by the ACC Board, which also determines whether the operation or investigation is a ‘special’ operation or investigation, in which the ACC’s coercive powers (broadly equivalent to those of a Royal Commission) may be used.13

The ACC is a statutory agency within the Attorney-General’s portfolio.14 It is headed by a CEO (currently Chris Dawson) and as at June 2015, had a staff of 581, plus 36 secondees from other Commonwealth agencies and state and territory law enforcement agencies.15 The ACC Board includes the heads of the state and territory police agencies, and reports to an Inter-Governmental Committee comprising the Commonwealth Minister for Justice and a minister from each state and territory.16

**Merger of CrimTrac into the ACC**

The 2014 Commission of Audit considered whether agencies responsible for criminal intelligence and information should be merged. It concluded the agencies were working effectively together, but recommended CrimTrac be merged with the ACC ‘to better harness their collective resources’ and ‘better support law enforcement operations by the Australian Federal Police (AFP) and other Commonwealth and State agencies’.17

The Commission of Audit noted that implementing its recommendation would require consultation with state and territory governments, stating: ‘It is critical that their interests are reflected, including through the continued representation of the State police commissioners on the Australian Crime Commission board’.18

The Commonwealth consulted state and territory governments through the ACC and CrimTrac boards on options to ‘improve collaboration’ between the two agencies.19 In November 2015, the Law, Crime, and Community Safety Council, comprising justice ministers from all Australian jurisdictions, agreed to the Commonwealth taking the necessary steps to merge CrimTrac and the ACC.20 The Minister for Justice, to whom both agencies are responsible, stated:

State and Territory Attorneys-General and Police Ministers gave historic in-principle agreement to embrace the new national security measure that will see CrimTrac IT specialists work side by side with the ACC’s top intelligence analysts to pursue and undermine evolving national security threats.

...
With today’s agreement from each jurisdiction, the Commonwealth will work towards getting the newly merged agency up and running by 1 July 2016. This will ensure that each jurisdiction has sufficient time to make the necessary legislative changes.

This merger is vital because our law enforcement and protection agencies need accurate information and intelligence to respond to immediate threats.

In this security landscape we must provide ample and instant information that identifies the patterns and associations that can help detect and disrupt significant threats.\(^{21}\)

He also reportedly stated that the merger ‘is not about cutting the costs or the personnel of either agency’.\(^{22}\)

The Bills follow the introduction of the Australian Crime Commission Amendment (Criminology Research) Bill 2015 in October 2015.\(^{23}\) That Bill, which was before the Senate as at the date of publication of this Bills Digest, would merge the Australian Institute of Criminology (AIC) into the ACC.\(^{24}\) That merger was not recommended by the Commission of Audit, which suggested consideration be given to relocating the AIC to a university.\(^{25}\)

**Committee consideration**

The Senate Standing Committee for Selection of Bills deferred its consideration of the Bills at its final meeting of 2015.\(^{26}\)

The Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights had not reported on the Bills as at the date of publication of this Bills Digest.

**Policy position of non-government parties/independents**

The positions of non-government parties and independents were not known as at date of publication of this Bills Digest.

**Position of major interest groups**

The positions of major interest groups were not known as at date of publication of this Bills Digest.

**Financial implications**

The Explanatory Memoranda for the Bills state that the merger will be cost-neutral, with small savings expected over the forward estimates.\(^{27}\) While the Charges Bill will establish a legislative basis for the ACC to charge for the provision of national policing information services, CrimTrac already charges for the same services, so the Government anticipates no direct financial impact.\(^{28}\)

**Statement of Compatibility with Human Rights**

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the compatibility of the Bills with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government recognised that the Consolidation Bill engages the right to freedom from unlawful or arbitrary interferences with a person’s privacy under Article 17 of

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28. Explanatory Memorandum, Charges Bill, p. 3.
the International Covenant on Civil and Political Rights. However, the Government considers that, to the extent that the measures in the Consolidation Bill may limit those rights and freedoms, such limitations are reasonable, necessary and proportionate. The government did not consider that the Charges Bill engages any of the applicable rights and freedoms.

**Key issues and provisions**

**National policing information function**

The term *national policing information* is inserted into subsection 4(1) of the ACC Act by item 1 of Schedule 1 of the Consolidation Bill, to mean information that:

(a) is collected by any of the following in the performance or exercise of its functions or powers:

(i) the Australian Federal Police;

(ii) the police force of a State;

(iii) a body prescribed by the regulations; and

(b) is of a kind prescribed by the regulations;

but does not include the following:

(c) any further information, opinion, interpretation or conclusion derived by the ACC from collected information;

(d) any collected information included in an analysis, report or other presentation by the ACC of material referred to in paragraph (c).

The definition is intended to ensure that information collected by the ACC through its existing investigatory and intelligence functions is separate and apart from national policing information of the type currently dealt with by CrimTrac.

Section 7A of the ACC Act sets out the functions of the ACC. Item 3 of Schedule 1 of the Consolidation Bill would insert proposed paragraph 7A(fa) to provide an additional function concerning national policing information, specifically:

(fa) to provide systems and services relating to national policing information, including the following:

(i) collecting, correlating and organising national policing information;

(ii) providing access to national policing information;

(iii) supporting and facilitating the exchange of national policing information;

(iv) providing nationally coordinated criminal history checks on payment of a charge imposed by the Charges Act.

Section 7C of the ACC Act sets out the functions of the ACC Board. Items 4 and 5 of Schedule 1 of the Consolidation Bill will amend section 7C to take account of the ACC’s new national policing information function. The Board will determine priorities in relation to national policing information systems and services and, amongst other things, develop related policies.

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30. The Statement of Compatibility with Human Rights can be found at pages 4–7 of the Explanatory Memorandum to the Consolidation Bill.

31. The Statement of Compatibility with Human Rights can be found at page 4 of the Explanatory Memorandum to the Charges Bill.
The ACC Board has seven Commonwealth representatives, six of whom are voting members, and one representative from each state and territory, being the head of each police force. The CrimTrac Board comprises two Commonwealth representatives and one representative from each state and territory, again the head of each police force. The Bills will not make any change to the provision determining the composition of the ACC Board. Accordingly, this could equate to greater Commonwealth influence over national policing services compared to the current arrangements. An attempt to ensure somewhat more even representation is made in item 7 of Schedule 1 of the Consolidation Bill, which will amend section 7F of the ACC Act so that nine members (not including the CEO) are required for a quorum, instead of seven. Further, item 8 will insert proposed section 7L, which provides the Board may make recommendations about its composition and functioning to the Inter-Governmental Committee.

**Charges and fees for national policing information**

The Consolidation and Charges Bills together contain provisions so that the ACC can provide national policing information services according to the same funding model that currently applies to CrimTrac.

**National policing information charge**

Clause 6 of the Charges Bill will provide a legislative basis for the ACC to impose charges, as taxes, for applications for, and provision of, national policing information services. Clause 7 of the Charges Bill will provide that the amount charged is to be determined by the responsible Minister by legislative instrument, and allow the Minister to charge different amounts for different classes of persons for the same kind of service. The Explanatory Memorandum states that currently, CrimTrac charges for criminal history checks for the purpose of employment screening, but does not charge police for those checks if required for operational policing purposes.

Proposed section 15A of the ACC Act will provide that charges imposed under the Charges Act are payable to the ACC on behalf of the Commonwealth, are debts due to the Commonwealth and give the ACC authority to recover, waive, reduce or refund charges in particular cases. Proposed subsection 15A(4) will provide that the Commonwealth is not liable to pay charges imposed under the Charges Act, but that it is Parliament’s intention that it be notionally liable.

The Board will make recommendations about charges for national policing information services, which the Minister will be required to take into account.

The only service CrimTrac currently charges for is criminal history checking (through the National Police Checking Service). The Bills would provide a framework for the continuation of charges for that service and imposition of charges for other national policing information services in future. The Explanatory Memorandum states the approach ‘ensures the self-funded CrimTrac business model will be able to continue to meet the emerging information technology needs of police as national policing information services evolve’.

**Fees for services**

Proposed section 15 of the ACC Act will allow the ACC to charge a fee that is not a tax for services provided in the course of its national policing information functions. The Explanatory Memorandum for the Consolidation Bill states that this will allow the ACC to provide services to specific agencies on a fee-for-service basis, as

32. *ACC Act*, subsection 7B(2).
34. Explanatory Memorandum, Consolidation Bill, p. 15.
35. Explanatory Memorandum, Charges Bill, p. 2.
36. Ibid., p. 7.
37. Item 14 of Schedule 1 of the Consolidation Bill.
38. This is because the Commonwealth cannot impose a tax on itself. Explanatory Memorandum, Consolidation Bill, p. 18.
39. Items 5 and 6 of Schedule 1 of the Consolidation Bill (proposed paragraph 7C(1)(gb) and subsections 7C(7) to (9); Subclause 7(3) of the Charges Bill.
41. Ibid.
42. Item 14 of Schedule 1 of the Consolidation Bill.
CrimTrac currently does (for instance for fingerprinting services), separately to the national policing information charge, which also subsidises other services provided to police.\(^{43}\)

**Clause 8** of the Charges Bill will provide that the national policing information charge is not payable by a person for a service for which a fee was imposed under section 15 of the ACC Act (that is, the service was provided on a fee-for-service basis).

**National Policing Information Systems and Services Special Account**

The National Policing Information Systems and Services Special Account (Special Account) was established in October 2006.\(^{44}\) The revenue CrimTrac generates through charges for its services is paid into the Special Account. The key purpose for which amounts may be debited is ‘scoping, developing, procuring, implementing and operating new and existing information technology systems and services in relation to the [CrimTrac] Agency and its stakeholders and clients’.\(^{45}\)

**Item 32 of Schedule 1** of the Consolidation Bill will insert *proposed sections 59C* (establishment), 59D (credits) and 59E (purposes) into the ACC Act to continue the Special Account and the way it currently operates in legislation. The Special Account will continue to be a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.\(^{46}\)

The purposes listed in *proposed section 59E* of the ACC Act largely mirror those in the 2006 instrument, and are tied to national policing information functions. *Proposed paragraph 59E(c)*, which does not have an equivalent in the 2006 instrument, will allow remuneration and allowances to be paid to people for national policing information functions. The Explanatory Memorandum to the Consolidation Bill states: ‘This is necessary to continue current arrangements where staff supporting CrimTrac functions are paid for by Special Account funds, while ACC staff will continue to be remunerated through appropriations.’\(^{47}\)

The Board will make recommendations to the Minister about expenditure from the Special Account.\(^{48}\)

**Accredited bodies for the purposes of criminal history checks**

The CrimTrac CEO is currently responsible for determining which organisations can access criminal history checks through CrimTrac, within the parameters set by the CrimTrac Board.

**Item 17 of Schedule 1** of the Consolidation Bill will insert *proposed subsections 46A(5), (6) and (7)* into the ACC Act to transfer that responsibility to the ACC CEO. The CEO will be able to approve, in writing, a Commonwealth, state or territory body, and any other body or organisation in Australia or overseas as an *accredited body* for the purposes of receiving nationally coordinated criminal history checks. In deciding whether to approve an organisation, the CEO will be required to act in accordance with any policy determined, and any direction given, in writing by the Board.

**Information disclosure**

Sections 59AA-59AD of the ACC Act govern the ACC’s disclosure of information to government and private sector organisations, including the purposes for which information may be shared and with whom.

**Items 29, 30 and 31 of Schedule 1** of the Consolidation Bill will amend sections 59AA and 59AB and insert *proposed section 59AAA* to take account of the ACC’s new national policing information function. The amendments aim to ensure the provisions appropriately distinguish between disclosure of national policing information and other information held by the ACC under its existing functions.

**Proposed subsection 59AA(1A)** will require the CEO to act in accordance with any policy determined, and any direction given, in writing by the Board when deciding whether to disclose national policing information to an Australian or foreign agency or an international body. **Proposed subsection 59AA(1B)** will require the CEO to

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43. Explanatory Memorandum, Consolidation Bill, p. 17.
45. Ibid., clause 5.
47. Explanatory Memorandum, Consolidation Bill, p. 28.
48. *Item 5 of Schedule 1 of the Consolidation Bill (proposed paragraph 7C(1)(ga)).*
obtain approval from the Board before disclosing national policing information to a body other than an Australian police force, certain Commonwealth agencies and bodies prescribed by the regulations.

**Proposed subsection 59AB(2A)** will require the CEO to act in accordance with any policy determined and any direction given in writing by the Board when deciding whether to disclose national policing information to a private sector organisation. **Proposed subsection 59AB(2B)** will require the CEO to obtain approval from the Board before making any such disclosures.

**Proposed section 59AAA** will provide specifically for disclosure of information from a criminal history check performed by the ACC. The information will be able to be disclosed to an accredited body, or the person to whom it relates, if the disclosure would not be contrary to any Australian law or any conditions or restrictions determined by the Board. The rationale for this amendment is set out in the Explanatory Memorandum to the Consolidation Bill as follows:

> Currently, CrimTrac will only conduct a nationally coordinated criminal history check on an individual where that individual has applied for such a check through an accredited agency. In the future, CrimTrac has advised that the Board may wish to move to a model where individuals can apply for and access a nationally coordinated criminal history check about themselves, without going through an accredited body as an intermediary. ⁴⁹

**Other changes and issues associated with the merger**

**Parliamentary oversight**

The ACC and AFP are overseen by the Parliamentary Joint Committee on Law Enforcement. ⁵⁰ The merger will bring CrimTrac’s current functions and staff within the Committee’s remit.

**Integrity measures**

ACC staff are subject to the targeted integrity testing regime that also applies to the AFP, Australian Commission for Law Enforcement Integrity (ACLEI) and the Department of Immigration and Border Protection under the *Crimes Act 1914*, and targeted and random testing for drug and alcohol use. ⁵¹ The merger would apply those regimes to staff transferred from CrimTrac. Integrity testing operations are designed to test the integrity of employees using controlled or simulated situations. An operation can be undertaken where an authorising officer is satisfied that there are reasonable grounds to suspect a staff member has committed, is committing or is likely to commit an offence punishable by at least 12 months imprisonment, and that it is appropriate in all the circumstances to conduct the operation. ⁵²

The ACC and CrimTrac are both already subject to oversight by ACLEI, the organisation charged with preventing, detecting and investigating corruption in Commonwealth law enforcement agencies. ⁵³

**ACC powers**

As noted in the Background section of this Bills Digest, the ACC has access to significant coercive powers similar to those of a Royal Commission. Under the ACC Act, those powers are only available to persons appointed by the Governor-General as examiners and ACC staff members who are also constables. ⁵⁴ Accordingly, the merger will not extend access to coercive powers under the ACC Act to staff transferred from CrimTrac.

Controlled operations, assumed identities and witness identity protection powers under Parts IAB, IAC and IACA respectively of the *Crimes Act* are available to any ‘member of staff of the ACC’ provided relevant thresholds are met. ⁵⁵ However, given the nature of the powers as investigative tools and hence the thresholds for use, the fact

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⁵². *Crimes Act*, sections 15JD, 15JE and 15JG.
⁵⁵. *Crimes Act*, sections 3 (definition of law enforcement officer); 15GH and 15GI (controlled operations); 15K, 15KA and 15KB (assumed identities), and 15M and 15ME (witness identity protection).
they will now be available to current staff of CrimTrac is unlikely to have any impact in practice, provided the powers are used in accordance with the law.

**Concluding comments**

The support of state and territory governments will be important in ensuring the ongoing effective operation of the functions currently performed by CrimTrac, which support law enforcement agencies across Australia. The support for the ACC/CrimTrac merger provided by state and territory governments in November 2015 was characterised in the Minister’s media release as ‘in-principle’ agreement. This appears to suggest those governments have not been consulted on the detail of the merger as set out in the Consolidation Bill. State and territory governments had not commented publicly on the Bill as at date of publication of this Bills Digest.

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