



**COMMONWEALTH OF AUSTRALIA**

# **JOINT COMMITTEE**

**on**

**THE NATIONAL CRIME AUTHORITY**

**Reference: Evaluation of the National Crime Authority**

**SYDNEY**

**Thursday, 22 May 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

JOINT COMMITTEE  
ON  
THE NATIONAL CRIME AUTHORITY

Members:

Mr Bradford (Chair)

Senator Conroy	Mr Filing
Senator Ferris	Mr Sercombe
Senator Gibbs	Mr Truss
Senator McGauran	Mrs West
Senator Stott Despoja	

The Parliamentary Joint Committee on the National Crime Authority has resolved that it will conduct a comprehensive evaluation of the operations of the National Crime Authority.

The committee will examine in particular:

- (1) the constitution, role, functions and powers of the authority, and the need for a body such as the authority, having regard to the activities of other Commonwealth and state law enforcement agencies;
- (2) the efficiency and effectiveness of the authority;
- (3) accountability and parliamentary supervision of the authority; and
- (4) the need for amendment of the National Crime Authority Act 1984.

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JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

*Evaluation of the National Crime Authority*

SYDNEY

Thursday, 22 May 1997

Present

Mr Bradford (Chair)

Senator Conroy

Mr Filing

Senator Ferris

Mr Sercombe

Senator Gibbs

Senator McGauran

Senator Stott Despoja

The committee met at 9.05 a.m.

Mr Bradford took the chair.

**CHAIR**—Ladies and gentlemen, I will just make a couple of brief remarks. This is the first day we are spending in Sydney on the inquiry. We had the first day of the inquiry in Brisbane yesterday. The joint parliamentary committee is required by section 55 of the National Crime Authority Act 1984 to monitor and review the performance by the National Crime Authority of its functions. It has performed this task for the past 13 years with mixed success. The committee last undertook a comprehensive evaluation of the authority in 1990-91, which led to the committee tabling a report in November 1991 entitled *Who is to guard the guards?*

The current committee was established in May last year after the election. It has since found the operation of the NCA to be somewhat embroiled in controversy. In particular, Mr Justice Merkel in the Federal Court of Australia in June 1996 and Mr Justice Vincent in the Victorian Supreme Court in August 1996 made adverse findings which went very much to the heart of the NCA's operations. Today represents the continuation of this particular inquiry.

**CUSACK, Mr Greg**

**CHAIR**—I welcome Mr Cusack. Thank you very much for coming. The committee has received your submission and has published it. Is it the wish of the committee that the submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The submission read as follows—*

**CHAIR**—Before inviting you to make an opening statement in support of your submission, I am required to state that, if during the hearing you consider that information you might wish to give or a comment requested by committee member is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. Mr Cusack, as I said, we have got your submission, albeit brief but nevertheless challenging. Did you want to make some further opening comments before we go to questions?

**Mr Cusack**—Only on the basis that I still have contact with former staff of the National Crime Authority and staff, and they have all expressed their view at recent times that it has lost its way. As regards to my own tenure as a member of the organisation, I came in 1989 and it probably had lost its way at that stage. All the major money laundering activities inquiries conducted by the NCA—and I am talking about where millions of dollars in fact were involved—were done at my instigation. In fact, it was I who enhanced the position of the accountants in relation to investigating that sort of activity.

I am concerned, in relation to the NCA, and this is probably no criticism of the former head and now head, they are not and never were, as I understand it, practising lawyers except in a government capacity, and are now heading that organisation. In relation to the powers the NCA has—and I have grave misgivings in relation to what I perceive to be the takeover by the police in relation to those powers—if those powers were not supervised by an independent lawyer, it is my view that, no matter which police force, eventually they will be abused. I can give an instance of a similar organisation where in fact it was abused in relation to that particular organisation and those powers. That is briefly what I wish to say.

**CHAIR**—In your submission you say pretty much what you have just repeated—that you believe the NCA has failed to meet the criteria that were established for it. A lot of the submissions we have had express a view quite to the contrary. Perhaps you might enlarge on that particular criticism for us so we can understand exactly what your concerns are.

**Mr Cusack**—I was sent—I think it was last year—the annual report of the National Crime Authority. There were thousands of names in there of the people whom they had arrested, but then I started to look at the result—all it was was police work. Someone was fined \$2,000 or put on a bond, and this went on for page after page. The NCA was set up to combat organised crime, not to do ordinary police work. It should never be in competition with the police in relation to that.

That gets on to my other point in relation to independent investigators. I instituted independent investigators because I knew what the New South Wales Police Force—and, I might say, other police forces—was like. That was the only way that the NCA could have independence. If, for instance, as I understand, most of them are in fact with the AFP, I

think that is a retrograde step. They have got to have that independence away from a controlling organisation. It is the NCA whom they are responsible to, not another police force. If they are employed by another organisation, there goes their independence.

**Senator McGAURAN**—On the point you are articulating, what are you hoping for out of the annual report?

**Mr Cusack**—What I am hoping for is the fact that it is addressing organised crime. I am of the view that it is not addressing organised crime. It is addressing crime but not organised crime. As I see the operations, most of them could have been done by police forces. To give you one example in relation to when I was there, yes, we took on organised crime. In fact, we worked on George Freeman and Lennie McPherson and that was a significant operation. That culminated in what was the Wood royal commission because all the intelligence gained out of that was passed on to the Wood royal commission, and before that by ICAC, though ICAC, in my view, just did not come up to scratch.

Be that as it may, I am of the view that the NCA must focus on organised crime. In particular, I agree with the direction in which it is going now in relation to money laundering, and I am talking about large money laundering and overseas money laundering. I suppose that you will hear this in relation to heroin importation—it is just not an organisation; it is a number of individuals making a joint effort to get heroin into Australia and they may be placed in various parts of the world. That is what I regard as organised crime. I do not think at this stage that the NCA is doing that job.

**CHAIR**—Has it not been credited—and you mentioned a couple of names—with stopping some Mr Bigs or some Mr Big Enoughs, as they are sometimes described?

**Mr Cusack**—Yes. I am talking about the present day, I am not talking about the past. I am talking about what I saw in the annual report. I did not see any Mr Bigs in the annual report.

**Senator McGAURAN**—What about Mr Trimbole?

**Mr Cusack**—You are talking about \*\*\* Trimbole?

**Senator McGAURAN**—Probably.

**Mr Cusack**—I do not regard \*\*\* Trimbole as a Mr Big. His father was, but not him. He was a police matter. In fact, he was prosecuted when I was there, and this is another thing that I have difficulty with in relation to the police taking over. One of the reasons \*\*\* Trimbole walked from the previous prosecution is that the police had promised immunity to a person called O'Brien.



**Senator FERRIS**—Just in the interests of accuracy, this person's name was Rosario Trimbole and he got 15 years imprisonment with a non-parole period of 11 years.

**Mr Cusack**—For what?

**Senator FERRIS**—Drugs.

**CHAIR**—And Joseph Trimbole is there with him for six years.

**Senator McGAURAN**—Not big enough?

**Mr Cusack**—I do not know, as long as the police pick up the same. I do not know whether it was organised crime or just an intrastate activity. Do you understand what I mean? That is the point I am putting across.

**CHAIR**—Dominic Trimbole is there as well for three years, so they are keeping it in the family.

**Senator FERRIS**—A family reunion.

**CHAIR**—There are a few Romeos there, too.

**Mr Cusack**—The fact is that the Trimboles, the Romeos and various people are all over the place. They run from South Australia right through to Sydney and New South Wales.

**Senator CONROY**—Can I just come back to what you seem to think is a potential cause for the NCA losing its way, as you describe it. You mentioned concern at having a non-practising lawyer as the head of the NCA. That is a criticism that has been put to the committee before.

**Mr Cusack**—Yes.

**Senator CONROY**—Could you expand on why it is that a practising lawyer needs to be the head? That is the first question. Secondly, you expressed a concern that the powers could be abused. Given that the powers can only be exercised following a reference from the intergovernmental committee, what are the problems with having a non-practising lawyer as the head and how would that abuse take place, given that can only be exercised from a reference?

**Mr Cusack**—Dealing with your first point about the non-practising lawyers, all I am saying is that the two past heads of the National Crime Authority were employed by the Attorney-General's Department at one stage. Tom Sherman came down from Queensland. As I understand it, the present person was an employee of the Attorney-

General's Department. I do not regard that as independence because they are influenced by their previous employment, the Attorney-General's Department.

**Senator CONROY**—Do you have an example of when that has happened?

**Mr Cusack**—Just one example is the fact that the Attorney-General's Department did not like the idea of independent investigators. As soon as I left, they moved and it was condoned by the then chairman.

**Senator CONROY**—Who was?

**Mr Cusack**—Tom Sherman. The submission was put up, and I was asked about it. I told him I totally opposed it but it went on. That is just to give you one example. I see the potential there all the time, as far as I can gather in relation to that.

**Senator CONROY**—And the abuse of powers?

**Mr Cusack**—This goes also to my view in relation to the authority. It would seem—and this is from a couple of years back now—that the police commissioners have a very big influence upon the authority. If it gets to the situation where the police control the officers of the authority and the investigations, I perceive that the NCA's powers—which are quite formidable, even though I understand they are seeking further powers (I have never seen a police force yet that has not abused the powers it already has)—would be abused. I know of one particular instance—I can give evidence in camera in relation to how that occurred—not in the NCA but in a similar organisation with the same sorts of powers. It turned out later that the person who was allowed to do that was found to be corrupt.

**Senator CONROY**—Did that organisation have a reference mechanism like the NCA?

**Mr Cusack**—Yes.

**Senator CONROY**—From elected representatives?

**Mr Cusack**—Yes.

**Mr SERCOMBE**—It would be helpful if we could go in camera to hear that evidence, if Mr Cusack is prepared to do that.

**CHAIR**—We might do that at the end. We will press on, but we can come back to that shortly and have the in camera session at the end of your testimony.

I am not sure that I am convinced at all about your arguments for the head of the

NCA to be a practising lawyer. Another model might be for him to be an administrator, perhaps advised by salaried counsel. How would that work?

**Mr Cusack**—I would not argue against that particular model if the administrator came out of not his boss's area, so to speak. If the position were advertised and that person suited the criteria, I would have no problem with that if he in fact was advised on the legal aspects by an experienced counsel.

**CHAIR**—In terms of the broader personnel at the NCA, though, they come from a wide range of police forces. They are not all—

**Mr Cusack**—Yes.

**CHAIR**—In fact, the NCA has no police force of its own. You are not arguing for that. Isn't one of its strengths the fact that, on the question of corruption, there are limited terms of the members and the fact that police are seconded for limited periods of time from all of the state police forces and the Australian Federal Police force and some other areas? Isn't the problem with corruption in police forces the fact that it grows over time and through familiarity? Hasn't the NCA been absolutely predicated on avoiding that sort of scenario?

**Mr Cusack**—I will put it this way: that is the reason why I advocated independent investigators—which was put into place before I left. There were motions passed with the authority that there was going to be a small core. It was still envisaged that we would be drawing police officers from various forces but that there would be a small core of independent investigators employed by the authority, whose allegiance was to the authority. In the end, those police officers drawn from various forces throughout Australia owed their allegiance not to the NCA but back to their own police forces. If something comes up which is against the interest of their police force, that is where their loyalty will lie.

I do not criticise them for that in some respects. But that is the point that I am making. I can give you examples, again in camera, of police officers who I found were recommended by police commissioners to come to the NCA and were later found to be tarnished and we had to get rid of them. It was a very embarrassing manoeuvre to try to get rid of them without earning the ire of the police commissioner.

**CHAIR**—I think the NCA, in its discussions with us, has acknowledged that problem. I think it is true to say that in some state police forces the NCA was quite reluctant to accept secondees. Be that as it may, are you actually suggesting that the NCA ought to have in effect its own police force?

**Mr Cusack**—Yes, its own investigators. I have said that before.

**CHAIR**—It has 150 now. How many of them should be specialists?

**Mr Cusack**—We worked it out. Within the NCA files now, I recollect there is the approval of 15 investigators for Sydney, 10 for Melbourne and I think about five for each office in all the other places where there is an office. It came to a total of 40 officers, if I recall correctly.

**CHAIR**—On the composition of the authority, at the moment, as you say, it has two members, so it is one down on its establishment. Why is the government having problems finding a third member for the authority? Has it got to do with salary? Is the four-year fixed term a problem for people in your profession to move out of for a period of time? Is it the NCA's current reputation? What factors are involved?

**Mr Cusack**—I suppose reputation is one. Four years is a long time for someone to be taken out of practice and for someone else to set up their practice. I really cannot answer that, apart from those observations. I was a public defender when I was asked to become a member. For me it was going from a salaried position to another salaried position, so it did not worry me. I know the difficulties now because, after leaving the NCA, I am now back at the private bar, though sort of semi-retired, so to speak, but I still work.

I can understand the difficulties that people may have. I think probably the salary is not enough if you want to attract responsible people in this day and age.

**Senator McGAURAN**—Are the terms too short?

**Mr Cusack**—I think the act should be amended so people who are interested could go from being a member to a chairman. At the moment they cannot do that. In fact, there was some talk about amending the act a couple of years ago, I am told, but that did not happen. I think that is one way of doing it which gives continuity.

**Senator McGAURAN**—Are the terms too short not just to attract someone to the job but when you are in the job, given that you need a couple of years?

**Mr Cusack**—Four years is not too short. I took mine for three years, but I was asked to stay on for another six months, which I did. If you are a non-administrative person, unless you have got good assistance, I think it takes at least 12 months to really work into the system and understand what it is all about.

Let us face it, everything the NCA does is in secret. All I knew was that it was a secret organisation when I went there. So you do not really get a fill-in until you arrive, apart from reading the annual report, which is a rather bland document anyway.

**CHAIR**—On that issue, we contended with the NCA on that in our last meeting

with them. We have asked them to make it more reader-friendly and interesting so that people might read it and get something out of it. I think they have taken notice of our comments. From some discussions I have had with the chairman since, they are putting some creative minds towards making it a bit more attractive.

**Senator McGAURAN**—They are going to benchmark it more as to success and failure.

**Mr Cusack**—I see.

**Senator FERRIS**—If you were to go to a core of independent investigators, what skills would you be looking for in those people and how would you train those people if you were to keep them outside any of the existing police forces?

**Mr Cusack**—A core of investigators would have to be drawn from police forces themselves—experienced investigators. Considering that the area that the NCA should mainly be concerned with these days is money laundering, that sort of expertise should be given, if they do not have it.

**Senator FERRIS**—But if the difficulty is to maintain independence so that these people are not, as you say, tarnished, even if you got somebody who is a skilled investigator who had retired or resigned from a police service, surely any difficulties that they would bring to that position would still be related to the previous employment they had. How could you be sure that just because they resigned they would not be tarnished?

**Mr Cusack**—I think ‘tarnished’ is probably the wrong word. All I am saying is that they owe their allegiance back to their police forces, and I have found that to be so. That was one of the reasons—the fact that these investigators owe their allegiance to the NCA. There will come a time, if the NCA is still in existence, to investigate people, which, in fact, might affect even a police force that they have been involved in. All you can do is select these people in relation to recommendations and I am sure that you can find people whose loyalty, by that stage, would be to the NCA rather than to their former organisation.

**Senator FERRIS**—Do you think that might come about through resignation from the old organisation or somebody who becomes eminent and perhaps, in the five years before they retire, might go there? I am trying to establish how you would see that working in a practical sense, that is all.

**Mr Cusack**—It was working in a practical sense with the NCA, as I understood it, just before and after I left. That was in 1992 and the independent investigators were on board at that stage. There were about five or six. I was told by the then manager of the Sydney office, Mr Tim Sage, how things were progressing so well.

**Senator CONROY**—We were given evidence yesterday by Bob Bottom, who has strong views on many issues, as I am sure you know.

**Mr Cusack**—He certainly has.

**Senator CONROY**—He was very critical of the NCA in the period from about 1989 through to 1991 and believed that it had very much lost the plot in terms of the sorts of prosecutions that it was attempting to undertake. He described them as the trendy issues that it had got diverted onto. He made the point that prosecutions had almost collapsed to I think as low as 40 in one calendar year—either 1991 or 1992.

**CHAIR**—It was 1991.

**Senator CONROY**—Have you any view on what was happening there?

**Mr Cusack**—First of all, I do not regard the number of prosecutions as a benchmark for the NCA. It is the prosecution itself. A lot of the stuff that the NCA put together, sometimes—take the McPherson investigation. That took over two years before you got a result. I agree with Bottom in fact that in 1989-90 in certain ways the NCA had lost its way because when I got there there was an operation into Griffith. I overviewed it and found it was just a waste of time. In fact, I closed it down because it was reaping nothing except police overtime and living away allowances.

There were other operations which also were running on. Again, this was a result of the arrest of a person called O'Brien and his immunity. All those operations fell down because O'Brien eventually refused to give evidence against \*\*\* Trimbole in committal proceedings. There were four other prosecutions that could have been launched with his evidence but that was it.

So yes, I would agree with Bottom that in fact before I came there the NCA had lost its way. I found out that the police were so bored they were going to Kings Cross and picking up people for possessing cocaine, which meant that they just had nothing to do.

**Senator CONROY**—I am interested in that balance that you describe between doing police work and the major issues. We had some discussions yesterday with a couple of people from the Queensland Police Service and we asked them, 'Why couldn't you have done this prosecution by yourselves? Why couldn't you uncover this crop yourselves?' Because of their non-access to telephone tapping they said they would not have uncovered it in the way that it was uncovered because it had essentially come from across the border. The trail to the crop had come from New South Wales, which they could never have picked up themselves. How do you see that balance when you say that NCA are doing too much ordinary police work?

**Mr Cusack**—I have no quibble about if they cannot. I assume Queensland police

have got powers to tap?

**Senator CONROY**—No, specifically not.

**Mr Cusack**—I accept that and I accept what you are putting to me that that is the proper thing for them. ICAC did not have the power to tap telephones. When I was there I pushed through a memorandum of understanding which gave them the capacity to tap telephones. That is part of the NCA's job as well. I have no problem with that sort of cooperation.

**Senator FERRIS**—What sorts of performance indicators and public measures of success do you think the NCA should have to meet given the security of their work?

**Mr Cusack**—It is the expectation of the media and politicians that, every year, they should be able to produce the results of what all this money is being poured into. As to indicators, I am of the view that the indicators are really what Senator Conroy has put to me before in relation to the cooperation they are giving to other police forces and the major operations they have carried out. They should not say that, because they have cooperated with another police force, they are responsible for 300 arrests or someone else has been fined \$25 or \$1,000 or what have you. That is not part of the NCA's role. They should not be trumpeting that: they should be trumpeting their activities in relation to money laundering, which is a very important situation. It started when I was there and I understand it has gone on. I do not know what it is like now. The major prosecutions and the major seizures of money laundering occurred while I was there.

**Senator STOTT DESPOJA**—I apologise if you covered this while I was not here but what are your suggested amendments to the act in relation to the granting of references? You mentioned in your submission that you would propose that the act be amended; is that something you can elaborate on now?

**Mr Cusack**—It has now been held that the operations did not cover all the various court references which existed. All these references were viewed by independent counsel or drafted by independent counsel. They went through the counsel for the Attorney-General, who overviewed this. It is my view that, so there will be no problems in the future, the act will have to be changed. If various lawyers cannot get it right, including a person who advises the Attorney-General's Department, there must be something wrong with the act.

**Senator STOTT DESPOJA**—In relation to the precision and correctness of the drafting, do you have concerns about a lack of safeguards in relation to possible misuse of references—are your concerns related not so much to misuse as to clarification?

**Mr Cusack**—As regards misuse, the reference is what is given to them by the police commissioners of various states and the Commonwealth Attorney-General. All that

should be agreed upon before the reference is drafted. That is the situation, as it was then. We were given references. The reference I was responsible for was in relation to the Saxons. We had no challenge to that reference, but there were other references. Some of them were old references—particularly relating to the waterfront—which were badly drafted and could have been amended later on, and, in fact, were.

**CHAIR**—Now that you are a defence counsel, you would see a challenge to the references as always being a possibility.

**Mr Cusack**—Yes. In the light of the rulings, you would give anything a go.

**CHAIR**—This is a joint parliamentary committee, although it operates under the rules of the Senate. Rule 12 says that:

Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that that evidence is relevant to the committee's inquiry, the committee shall give consideration to expunging that evidence from the transcript of evidence, and to forbidding the publication of that evidence.

Any publication that is forbidden in terms of those rules would be a contempt.

There was a name mentioned that turned out not to be listed. I do not know if there is such a person, but I should ask the committee to decide that the name of that member of the Trimbole family whose first name was mentioned ought to be expunged from the evidence and publication of that name be forbidden.

Resolved (on motion by Senator Ferris, seconded by Senator Stott Despoja):

That, in accordance with rule 12, the name of the person mentioned in evidence be expunged from the transcript and publication of that name be forbidden.

**CHAIR**—So that name—the name \*\*\* Trimbole—is removed from the evidence, and that name will not be publicised, in case there is such a poor person out there. There probably is not a \*\*\* Trimbole. It would be an unusual name, in a way.

*Evidence was then taken in camera—*



[10.01 a.m.]

**MONTANO, Mrs Elizabeth Maria, Director, Australian Transaction Reports and Analysis Centre, Level 12, Tower A, Zenith Centre, McIntosh Street, Chatswood, Sydney, New South Wales**

**PINNER, Mr Graham Charles, Deputy Director, Money Laundering Targeting, Australian Transaction Reports and Analysis Centre, Level 12, Tower A, 821 Pacific Highway, Chatswood, Sydney, New South Wales**

**POWER, Mr Richard John, Senior Manager, Money Laundering Targeting, Australian Transaction Reports and Analysis Centre, Level 12, Tower A, 821 Pacific Highway, Chatswood, New South Wales**

**CHAIR**—I welcome Mrs Elizabeth Montano and her colleagues Graham Pinner and Richard Power as witnesses. The committee has received a submission from the Australian Transaction Reports and Analysis Centre, and we have published it. Is it the wish of the committee that the submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The submission read as follows—*

**CHAIR**—Before inviting you to make an opening statement in support of your submission, I am required to state that if during the hearing you consider that information you might wish to give, or comment requested by a committee member, is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also say to you that, as you are public officials, you will not be expected to comment on matters of government policy. Mrs Montano, do you want to make any additional remarks as an opening statement?

**Mrs Montano**—Thank you, Mr Chairman. It goes without saying that, if you want to apprehend senior crime figures, then you have to look for the money. Whilst they like to stay away from the actual crime on the street, they usually like to stay pretty close to the proceeds. On that philosophy, if you follow the money, you follow and find the big guys. That is certainly one of the basic philosophies upon which AUSTRAC works. In the context of this inquiry, it is one of the ways, we think, in which the NCA is a very effective law enforcement agency.

They use that technique coupled with the traditional policing techniques that they have access to and which they gain the benefit of through the cooperative way in which they run their task forces and their operations. From our perspective and our observations of the way in which they use the information we provide, they are very efficient and very effective.

**CHAIR**—I would like you to talk a little bit about the Limbeck reference. As your submission says, it allows the NCA to adopt an approach which obviously you would commend. But, as I understand it, from reading the NCA's submission, they see it as a limitation that they cannot be given references that are in some sense open-ended—by that I mean the Limbeck reference, unless I am misunderstanding it. Could you explain the circumstances surrounding the Limbeck reference and how it might be a model for other references and how it might impact on the way in which references might be given to the NCA?

**Mrs Montano**—I suppose I have to preface my comments by saying that AUSTRAC is not an investigatory agency; nor are we policy making and nor do we have a legal role to play. In that sense, our comments I think are peripheral. Having put those caveats on, I can say that the whole approach is very different from very traditional policing methods. Usually with policing methods you find a crime and you work from there. What our sort of work does in some ways, and what the Limbeck reference is getting to in very general terms, is that you find the unusual patterns of transactions and the unusual money flows—the things that just do not look quite right—and then you follow them back.

If you are sophisticated in the way you do that, you get yourself down to a pretty small core of things that you want to pursue. The NCA is very good at doing that in the

context of the 'Agio' task force, which I am sure they would have referred to in their submission and which we referred to. We are a member of that task force in the sense of providing financial intelligence into its operations. It allows them to look at the way in which the financial transactions are going on looking at the patterns. Then they combine it with the other material they have. They move on and they can then proceed to take a fairly reliable view that there is something there that is worth pursuing—something to put their resources into. It is not a red herring. It is not a dead end. So, in that sense, we think that philosophy is very good.

The Limbeck reference has never been challenged but, in the course of review of the NCA Act, we would have the view obviously that it is something worth looking at to ensure that, if government determines that it is an appropriate strategy for the NCA to pursue, it is beyond doubt that it has the ability and the powers to do it.

The really good thing about Limbeck in the context of the NCA is that the NCA obviously has unique coercive powers and it has the ability to rush in quickly, to get into the bank records, to go through, to call people in and to ask questions very quickly whilst the money is still moving. That is the beauty of some of this work.

We see money flowing all the time. If the NCA can catch that while it is still flowing, not only do they have the chance of finding the people on the street who generate the money but also they can find the people at the end and they can find the people in the middle, the financial intermediaries who make this a success for those who pursue this kind of operation. That is why we think it is a very important part of that overall strategy.

**CHAIR**—The NCA, in its submission, says:

A further constraint at present is that the NCA cannot investigate suspicious financial transactions which may or may not constitute money laundering, unless it is able to connect that activity with predicate criminal activity.

The Limbeck reference, as you describe it, overcomes that difficulty. But are you saying that it is on shaky legal grounds, that is, it is not authorised by the act?

**Senator CONROY**—Is further reference required? You pick up this completely new transaction and you think, 'That looks a bit odd.' You get the blokes at the NCA to go and have a look at it and they find it is completely separate from anything they have looked at before.

**Mrs Montano**—There have been a number of fairly large operations where the first whiff, as it were, that something is illegal has come from our data. It is fed into the 'Agio' task force. The 'Agio' task force then adds other data to it and then they proceed. I suppose it is a question almost of degree.

I cannot pass a comment on whether the Limbeck reference is legal or not. It has never been challenged. There is still an appeal pending in relation to the other references that were challenged. Whilst I am a lawyer, I do not have any personal expertise in relation to this area, and I really could not comment. In terms of supporting a strategy which we believe should be supported by appropriate legislative backing and appropriate references—if references are the appropriate way to do it—then we would support that approach because we think it works.

**CHAIR**—Is the Limbeck reference essentially a reference that enables the NCA to investigate anything to do with money laundering? It has not been challenged. But in the bikie case the main criticism of the reference was that it was too broad. That was Justice Merkel's criticism of it. In this case, the Limbeck reference is a very broad reference. It is almost like a one-sentence reference, is it?

**Mrs Montano**—It is very brief in that sense. You do not focus so much on the predicate offence, knowing what it is. If you knew where it was, you would not need to look at the financial transactions; you would know where the activity took place and you could work the normal way through.

I have to say that I feel a little uncomfortable about commenting on the Limbeck reference and it might be more appropriate for my deputy, Mr Pinner, to comment on it. Since I have been the director of AUSTRAC and joined the organisation about 15 months ago, there have not been a lot of avenues pursued—because there have been doubts about a number of things—which the NCA could have pursued had there been no challenges in relation to some of its activities. So, in terms of giving a historical perspective and comment, Mr Pinner, who has been with the agency since its inception, might be more appropriate to comment.

**Mr Pinner**—I guess the point about the Limbeck reference is that essentially your reference enabled the NCA to look at all financial transaction data that AUSTRAC had reported to it. That looked at two avenues: suspicious transactions reported by financial institutions and other cash dealers, and also financial transactions that AUSTRAC had used its computer system to analyse on a rules based system to again detect unusual patterns of transactions.

**Mr SERCOMBE**—I am sorry; a what based system?

**Mr Pinner**—It is a rules based computer system that we have developed. People might refer to these things as artificial intelligence. It is not that sophisticated. It is looking at certain rules, looking at flows from things like a drug source country and to a drug source country, for example.

But the point is that a reference couched in those terms is very wide, and that raises the issue of the legality or otherwise of those references. We obviously cannot

comment on that, but what we are saying is that the information that is provided from the material that we are getting and analysing is very useful. We know from a number of major operations that the NCA has been involved in, particularly in the last 12 to 18 months, that it is very effective and useful. I guess what we are saying is that we would hope that, if there are problems with that kind of reference, those problems are looked at and removed.

**Mr SERCOMBE**—Do you have any specific suggestions on where the NCA Act might be amended or what options there would be for amendment that would address the issues you have just referred to? I notice, for example, just immediately above the conclusion in Mrs Montano's report it is submitted that to put the matter beyond doubt appropriate amendments should be made to the act.

**Mrs Montano**—One can suggest appropriate amendments but not necessarily know how to draft them. I am afraid we are in that position. We have to be very careful. We are very conscious of our limited role and therefore we—

**Mr SERCOMBE**—That is why I asked for options rather than specific—

**CHAIR**—That is okay. We all have expert drafters to do that part of the job. But do you feel that you do not want to make some general suggestions to answer the question in a bit of detail?

**Mrs Montano**—I think what we can say is that, the wider the references are in terms of dealing with financial transaction material, the greater the opportunities there will be for the NCA and its partner agencies to deal with things. It is not only a law enforcement issue. A lot of the material that we find actually relates to revenue evasion. There are not many drug dealers who declare their income on their tax returns.

**CHAIR**—They are not that silly.

**Mrs Montano**—As a result, where you find things like large drug operations going on, you also find very large streams of money, which are and should be of interest to the Australian Taxation Office. Often the only way you know that that potential revenue is there and is about to be lost is by looking at the financial transactions. So from our perspective, the wider the power that can be given within the confines of the appropriate restraints and checks and balances, the better it is in an operational sense because these things are very dynamic, they are fluid and they move very quickly.

Often the money that is running today, for example, the international transfers that we monitor, represents the deal that was done last week. Because there is a flow, you are pretty sure that another deal is happening today. The point is that, if they can move quickly on the basis of just that, they can get to it very quickly. If they have to do more and more work to try to get to predicate offences or to work it up more generally before

they can go in and do things like use their coercive powers, then the chances of getting people while they are still performing the activity is lessened. So that is the thing we see. We see the funds moving all the time, and it really does need fast movement because you are not talking about money sitting in suitcases under beds which you can seize in a couple of weeks; you are talking about money that is going through accounts and straight out.

And the money does not necessarily go through accounts. You can make an international funds transfer by walking in off the street and saying to a bank, 'Here you are. I would like to transfer these funds to an account in Colombia,' or New York or wherever you want. It need not necessarily be a tax haven or a drug source; it might just be where you have organised to have your staging post. You just walk in there, transmit the money and it has gone. When law enforcement goes to pick up the pieces later and find out what is going on, and that includes the tax office, there is often nothing there. So you can find the trace of the activity but you will not necessarily find the money. Whilst finding the money is very important, perhaps an even more fundamental part of that is you cannot then get your leads to find the people who actually orchestrated it and who masterminded it.

**Senator CONROY**—In a situation where a complete stranger walks in off the street and suddenly says, 'Here's a bundle of money I want you to transfer offshore,' how quickly does a bank notify the authorities of an unusual transaction?

**Mrs Montano**—That sort of transaction could be notified in two ways. It is automatically notified because banks have an obligation to report those transfers to us. Because of the way in which we have facilitated the electronic delivery of their data, for most of those institutions we would know within 24 hours. So you can see patterns flowing and we have very regular updates.

The other way in which that could be reported to us is if a suspect transaction report is made by the institution, but that depends upon the institution forming a view that a certain transaction is the kind of transaction that they should report. There is no objective criterion; it is a subjective view. So in that sense that is perhaps a less reliable way in which you can do that, particularly more so as the financial sector moves towards, in improvements of their technologies, less face-to-face contact. You do not have as many tellers being able to say things like 'this fellow looked odd', 'he looked nervous and he wanted to get this transaction over and done with as quickly as possible', 'he tried to avoid the cameras' or 'he did this and he did that; therefore, I think that is unusual and I will put in a report'. If more and more people are doing transactions electronically, that human judgment is not in the picture anymore, so of course the analysis of the transactions themselves becomes more significant.

At the moment we get both those sorts of indicators—both the subjective human indicator and the objective indicator—but the objective one, I suppose, in some ways is

quicker and more reliable.

**Senator McGAURAN**—Can you give me an idea of the significance of casinos in money laundering? Could you give us a brief sketch of how that may be done? Is it being done? If so, do you have any files on that?

**Mrs Montano**—Casinos are a very interesting study, actually. I think the folklore is that they are used by people to launder money all the time. When you actually go and look at them, you find you could not say it does not happen—it probably does—but it is not as easy to do as people might think. It varies from state to state in Australia because the day-to-day control of the operations depends upon the particular licensing authority.

If, for example, I walked into a casino with \$200,000 in cash, I got some chips, I wandered around the tables for a couple of hours, I blew \$20,000, I had a few drinks and then I walked back to the cage and said, ‘Look! I’ve won! I’ve got all these chips. Can I please have a winner’s cheque’—that is, I got it here; I did not walk in with it—and then I go away, not only can I lead the law enforcement agencies on a funny ride but I can also show the revenue authority that I actually won it and therefore it is not assessable. If people could do that, then you would say, ‘Boy, is this an avenue.’

The fact is, though, many casinos, because of the state controls, cannot do that. The cheques that they get indicate whether they are a winning cheque or whether they are a re-encashment of the funds that people walked in with. So it is not that easy. It does happen but, in terms of surveilling that, I think we are probably the wrong agency—

**CHAIR**—How do they do that? Do they number the chips or something? How do they know you have been there for three hours?

**Mrs Montano**—There are always practical difficulties, but the procedures are such—and I have to say that if you want to know this in detail I can get you a briefing paper, because we have actually done some studies with casinos. That might be the way in which to answer the detailed question.

**Senator McGAURAN**—The methodology. Okay, give us that.

**Mrs Montano**—And the theory as opposed to the practice can also vary, and it varies from casino to casino. I can get you a paper on that.

**CHAIR**—We accept your offer on that and we will distribute it to all the members of the committee.

**Senator McGAURAN**—But you are not saying that it is a significant way that the drug lords are laundering their money, if at all?

**Mrs Montano**—Probably no more significant than many other ways. To be honest, I think there are a lot easier ways than going to a casino for a few hours; perhaps not as pleasurable but there are certainly easier ways.

**Mr FILING**—Except that it is a place where they would go—I mean, in the past they would have gone to the races or whatever. It is a place where they amuse themselves.

**Mrs Montano**—There is the element of the fact that you may well have a significant number of criminal elements at casinos.

**Mr FILING**—You could have a pool of mid-level drug traffickers in there with, say, \$10,000, \$15,000 or \$20,000 each playing at the tables and then actually walking out with winners' cheques.

**Mrs Montano**—If they win. It depends on the casino whether they can in fact walk in with the funds, pretend to have won it and walk out. That would be the classic laundering. But some of the casinos have operations in place so that they cannot do that. How that operates in practice, that is something we can brief you on further.

**Mr FILING**—But if they get a payout in cash—

**Mrs Montano**—They don't. Most casinos pay in cheques, which you can then trace back, and the casino will have recorded whether it is a winnings cheque or a refund of the funds they walked in with.

**CHAIR**—My point about the chips is that that is obviously the net result of their two hours there. They might have turned the \$200 they walked in with into \$600 and then ended up with \$180. How would you determine what the \$180 was?

**Mrs Montano**—Again, the different casinos have different procedures, but basically what they will often do is distinguish in the payout what it was, what proportion was what.

**CHAIR**—I do not go to casinos often—I have only been to a casino once in my life, I think, so I do not even understand how it works.

**Mrs Montano**—Casinos are cash dealers under our legislation and they must report all the transactions that every other cash dealer reports.

**Senator McGAURAN**—To you, not to the gaming authority.

**Mrs Montano**—They are in fact regulated by several bodies but in difficult aspects. In terms of their overall regulation and how they write out cheques on winnings



or refunds or whatever and the surveillance cameras, the way in which the games managers will report to the cage which does the cashing, they are ruled by the state authorities in relation to that. What we do is oblige them to report certain transactions and to identify their gambling customers. That is where we come into it. The problem is that all different kinds of people walk into casinos. There is the local who goes down and punts all the time. The account procedures and identification procedures may not be all that difficult in relation to them. But you have got the people flying in on junkets, especially organised gambling tours where they fly in, who come for three days to have fun and blow their money, or win, and they leave—

**Senator McGAURAN**—And the casino would report the sort of people who fly in on junkets, the big high rollers? They would be obliged to report those people to the gaming authority—

**Mrs Montano**—Not so much report the people. In relation to our legislation, they have to comply with some obligations in relation to identifying them if they have accounts. That is another question, whether they operate by way of accounts or not.

**Senator McGAURAN**—It does sound like those high rollers, though, would be reported and the information passed on to you or the National Crime Authority.

**Mrs Montano**—The gaming authorities obviously have a role in relation to that as well, in terms of who is coming in the doors and what is happening. They are there 24 hours a day. I have asked this question too: there are procedures, but are they followed? You can say that in relation to any cash dealer, not necessarily just casinos.

**Senator McGAURAN**—They bring in millions of dollars, those high rollers. It strikes me that their names must be reported to you.

**Mrs Montano**—If what they are going to do comes within our legislation, yes, but if not, they are not reported to us, but then the gaming authority has a role.

**Senator McGAURAN**—The NCA would be very interested on most counts to know from the gaming authority who these high rollers were, wouldn't they?

**Mrs Montano**—I suppose there is no crime in being a high roller; it is a question of what else you are doing.

**Senator McGAURAN**—That is absolutely correct; there is no crime in being a high roller. But at the same time the NCA cannot ignore them either. It may trigger something.

**Mrs Montano**—It may be an indicator of a certain activity. On its own it does not mean much, but in combination with other information, yes, it may mean a lot.

**Mr FILING**—One of the problems that I think you partly identified when you mentioned your relationships with the gaming commissions is that the state governments that license these casinos are both the beneficiaries and the overseers of the activities. You would be aware that almost 10 years ago the Western Australian government was criticised for being fairly lax in relation to the junket tours coming in from South-East Asia where gamblers were given cash to come and gamble in the Burswood Casino. There was little effective supervision or identification of the people involved. That criticism came from the Western Australian police at the time.

Do you think that there is a need for some sort of national supervision of casino activities or can you envisage a situation where, for instance, AUSTRAC, perhaps in conjunction with the NCA, could effectively do that using the powers you already have, with perhaps the opportunity of being able to get more information about the people coming backwards and forwards?

**Mrs Montano**—AUSTRAC's powers are limited. They are limited to conducting audits and inspections in relation to the actual reports and the obligations that are required under the Financial Transaction Reports Act. We can't ask for other information. We have no right to and therefore we don't.

We have excellent relations with the gaming authorities in the various jurisdictions. They are always very helpful and they understand our role and we understand their role. As to whether you could deal with it in other ways and whether the existing ways need improvement, I can't comment generally because we don't have access to the general regulation. We have to know how casinos operate generally in order to ensure that we understand what should be reported to us but, beyond that, we have no expertise and it is outside our jurisdiction.

**Mr FILING**—But wouldn't it be fair to say that in looking, for instance, at not necessarily the high rollers but visiting gamblers and criminal milieu using the casinos, it is highly unlikely they will be making great efforts to go to casinos where there is a more rigorous identification of gamblers or, for instance, supervision of cash transactions? Wouldn't it be fairer to have a standard system throughout the country so that there is perhaps no opportunity for one particular jurisdiction to be competitively more favourable to that type of gambler?

**Mrs Montano**—Playing jurisdictions off each other like that is a very common practice amongst many. There is obviously standardisation in relation to the legislation I administer, whether it is Burswood, Crown or whatever.

**Senator McGAURAN**—Or Christmas Island.

**Mrs Montano**—Yes, we have actually just done an audit of Christmas Island. In the last 12 months I think we have audited every casino. We have done what we call joint

studies with them. We go in with their compliance people to try to understand their businesses better and also to work out the way in which things might happen to make sure that our audits pick up what they should.

In relation to the variations between the states, I cannot personally comment because we have never conducted a study of the differences between the various jurisdictions in relation to which they administer their aspects of regulating casinos. It is really outside our responsibility. In fact, if we had ever tried to do that and seek assistance, I am sure we would have been told that it was outside our jurisdiction.

**Mr FILING**—You mean they might object to it being looked at?

**Mrs Montano**—I do not know if it is in that sense. We get on very well with them and we have common objectives in terms of making sure that the casinos are not used for improper purposes. It is not something that has arisen in those terms simply because it has not been put to us that we should look at that. Because we administer a nationwide piece of legislation anyway, uniformity in that sense is not an issue for us.

**Senator McGAURAN**—It is actually a very good point my colleague makes and maybe the committee might want to ponder down the track one day.

**CHAIR**—It is something we can look at independently. It would probably be helpful for the committee to have a closer look at casinos generally. As a member of the standing committee on financial institutions I did visit a number of casinos. That was the only time I have ever been to them.

The secretary has just informed me that the committee tried to do an investigation into casinos in the early 1990s and the states were not that happy about cooperating. We might have another shot at that. I am not so much saying we want to inquire into casinos but just the idea of standard regulations.

**Mr SERCOMBE**—I was wondering if we could take Ms Montano onto the issues in relation to mutual assistance with foreign organisations of a comparable nature to AUSTRAC and seek her views on the adequacy of present arrangements for mutual assistance in cooperation between her organisation and offshore authorities. Based on what you say, I may move on to some more specific questions.

**Mrs Montano**—The speedy exchange of financial intelligence between counterparts internationally is very important and can only get more important. We have to date two arrangements in place with TRACFIN, which is our counterpart in France, and with FinCEN, which is our counterpart in the United States. They have both been used. The American arrangement, which was only entered into at the beginning of last year, is used very frequently and is, we think, very successful. The operations have worked both ways.

**Mr SERCOMBE**—Does that give you access to financial intelligence that the United States agency collects outside the United States?

**Mrs Montano**—No.

**Mr SERCOMBE**—It does not give you access to the worldwide intelligence network?

**Mrs Montano**—No, it is what FinCEN holds in relation to American transactions. The aim, like many of these arrangements, is to build up a web of cooperative interoperable domestic arrangements.

**Mr SERCOMBE**—It is a pretty thin old web at the moment, isn't it?

**Mrs Montano**—I had not quite finished. I am in the course of negotiating another four arrangements right now, two of which I hope to have executed within the next month.

**Mr SERCOMBE**—Are you able to tell us with whom?

**Mrs Montano**—Yes, certainly. They are with Belgium, the Netherlands, the United Kingdom and New Zealand. When you go to enter into these sorts of arrangements, there are a couple of considerations to work out who you approach first and which are important. Obviously, the most important ones are the ones that AUSTRAC's client agencies think they need the most.

So what I did about six months ago was write to all client agencies saying, 'I am just about to embark on a big program in relation to entering into new MOUs. Who are important to you so I do not waste my resources, which are fairly limited on pursuing MOUs with countries which sound nice but are not very helpful?'

**Mr SERCOMBE**—Like Mongolia.

**Mrs Montano**—Yes, exactly. It is all very interesting, but how many deals go through Mongolia? We have a list of those. A lot of them are Asian countries, so that then brings you to the next question. Obviously we can only exchange information if they have comparable systems. So you are then limited to the countries within that group which have comparable legislation.

The reason we have gone for Belgium, the Netherlands, the UK and New Zealand as a first tranche, as it were, is that our agencies have said to us that they are operationally important. The Netherlands is important for things like amphetamine importations. The Netherlands is also seen to be a place which is used as a staging point for the movement of funds around the world. Similarly, Belgium has very active systems in relation to their domestic arrangements. The MOUs are not just there to exchange hard data; they are also

there to talk about techniques and practices and to talk about the way in which you use information technology. That is pretty important, because they are fairly sophisticated.

The United Kingdom is important because of the traditional links and the trading and the personal links between Australia and the United Kingdom. We have been involved in a number of cases where activity is going on in Australia which is known about by an agency. They cannot work out the way in which things are moving internationally. They have looked on our database. They have found transactions between the identified suspects and persons in the United Kingdom and they have gone, 'Ah,' because the money represents the financial end of the deal. So they have then been able to work with their counterparts in the UK to have those people looked at, and you end up finding a really nice smuggling ring or something. So that is very useful. The UK is obviously greatly placed for us in that regard.

New Zealand is important because of the open skies policy. We are breaking down the barriers between the two countries in many ways. Obviously, to have a common border type policy and approach, you need to have very comparable systems in place. So, if we think someone is using that trade and commerce initiative to disguise their activities, we can exchange information fairly quickly.

All those documents are moving along very well. I am waiting for the department to come back with some final comments on the Dutch and the Belgian ones. Obviously I have to seek the Attorney-General's approval to negotiate and to enter into those. Then it is for him to execute or to authorise me to execute the MOUs. That is a process that takes time.

On the other side they are doing exactly the same processes, but they are very close. We are also a member of the Egmont Group, which is a group of just financial intelligence units. So they are the specialists in the area. The group meets twice a year. We try to get to a meeting once a year—it is usually a very long way to travel to wherever the meetings are held—so that we keep those contacts up. We attend the practical workshops on the way in which it is done. You forge the links to be able to then go home and work on MOUs. I am actually attending a meeting of that group next month.

**Mr SERCOMBE**—Is it in Aruba or somewhere like that?

**Mrs Montano**—No, it is in Madrid. On that basis, it means you can push things along and you can personally negotiate.

**Mr SERCOMBE**—Significantly none of the countries that you have mentioned are Asian countries. I think I understand some of the complexities, but could you perhaps talk a little bit about how you might address similar MOU arrangements in future with a number of east Asian countries?

**Mrs Montano**—First of all, because we have to have reciprocity in place and be able to retain their information as well, they have to have domestic systems. If you look at the Asian region, there are five Asian members of the financial action task force. That is the international anti-money laundering umbrella group. That is Australia, New Zealand, Singapore, Hong Kong and Japan.

There is also a group that has just been formed in February. I think Mr Broome can elaborate further on that, because he has been quite pivotal to that group forming in relation to an Asia-Pacific group. That will be promoting an Asian perspective on anti-money laundering measures and adapting the techniques that are used in Europe to Asian economies and Asian cultures.

We are in the process of organising a memorandum of understanding with New Zealand. In relation to Hong Kong, our client agencies obtain a lot of information from Hong Kong already through their own channels. We are in the course of talking to Hong Kong about it but, given the circumstances, there is some question as to how they might participate.

It is interesting to know that the People's Republic of China has, in fact, joined that Asia-Pacific group. The financial action task force Asian secretariat—which has a mission to go out to Asian countries and entice them to initiate and establish systems—has had great success in China. They have had a mission to China. China has asked for assistance in relation to drafting and so forth. They are moving along very well. They have legislation almost in place.

**Mr FILING**—What about restrictions of the mutual assistance act?

**Mrs Montano**—The mutual assistance act obviously has some restraints on the way in which the information can be exchanged and in what circumstances and for what kinds of offences and penalties. Our exchanges have to be done in relation to that too. For example, it is interesting to note that the Chinese legislation provides for punishments which are fines and terms of imprisonment. So, in terms of money laundering offences, they are very similar types of offences to ours and there are similar sorts of penalties. That would obviously be a very big factor in any decision as to whether you enter into an MOU in the first place.

The permission I have from the Attorney-General is to go and negotiate with appropriate countries. In terms of appropriate, there is obviously the opinion of the department to consider. We also work with the Department of Foreign Affairs and Trade in relation to what would be an appropriate counterpart agency to work with. So we try to avoid getting into any problems in that regard.

**Mr FILING**—The United States is amongst those appropriate counterparts, surely.

**Mrs Montano**—Yes, but the kinds of offences that we are looking at, and providing information to, are financial crimes. If it were put to us that they wanted financial information in respect of certain kinds of offences—

**Mr FILING**—Say the Oklahoma bombing or something like that.

**Mrs Montano**—Yes, and if that is a death penalty associated with that or whatever. We have rights under all the MOUs to refuse to provide the information. We are not obliged to.

**Mr FILING**—Isn't that an obligation not a right? It is an obligation.

**Mrs Montano**—No, under the terms of the MOUs that we have, no party is required to hand it over. You can refuse.

**Mr FILING**—For instance, in Thailand there would be a range of offences—and I imagine it would be the same with the People's Republic of China—which would fall into the category where exchange would be prohibited unless there is an agreement.

**Mrs Montano**—Firstly, the only way in which they would ever get any information from Australia, or in which we would seek it from them, is with those sorts of considerations being taken into account. Secondly, there is a right in all of those documents to refuse to cooperate and to hand over.

**Mr FILING**—Wouldn't it be fair to say, though, that some of our neighbouring nations see that particular aspect of our mutual assistance arrangements as being a substantial impediment to effective law enforcement?

**Mrs Montano**—I do not think I am in a position to comment on that simply because I do not know. Our exposure to the mutual assistance act is very limited and only in relation to the exchange of this financial data, which is still a very new concept in some ways. I do not have any personal knowledge of that sort of a sentiment, so I really cannot comment.

**Mr FILING**—For instance, in the case of countries such as the United States in relation to financial transactions that relate to other offences, it would be fair to say that you would be restricted by the act from exchanging information.

**Mrs Montano**—What the MOU requires, which is under the act, is that we are told why the request is wanted in respect of the suspected offences and all those sorts of details. Then a decision can be made as to whether to assist or not. So that is a very big bar to information being provided in ways in which we would later regret.

**Mr FILING**—Given that we have got the Sydney Olympics in the year 2000 and

that the Director-General of Interpol, who recently visited Australia, has some very strong concerns about potential criminal activities that may occur and about security in particular, would it not be fair to say that Australia's own legislation would impair its opportunity of being completely able to exchange information with agencies that may assist in providing a high level of security for the Sydney Olympics?

**Mrs Montano**—I think the mutual assistance act reflects government policy in relation to the circumstances in which things will be given. I really cannot comment on the merit or otherwise of that.

**Mr FILING**—The reason I ask is that obviously there are going to be offences that involve, for example, terrorism, et cetera, where financial transactions that occur may well be—

**Mr SERCOMBE**—Mr Chairman, with respect, we are way off Mrs Montano's area.

**Mr FILING**—Are we?

**CHAIR**—Just a fraction, Paul. We do it from time to time.

**Mr FILING**—In that case, AUSTRAC and the NCA might be working together on it. Would it not be fair to say that type of restriction may impair the opportunity for getting information that may assist?

**Mrs Montano**—I do not know if it would or not. Australia considers terrorism a crime and hopefully the countries we are dealing with would consider it a crime too. It is a question of whether it then fits within the various criteria set out in the mutual assistance act. When a government decides to change those criteria to widen them for occasions like that it is a matter for government. It really is outside my area of expertise.

**Mr FILING**—You would not recommend, for instance, legislative change, as you have done in other areas, to accommodate that sort of problem?

**Mrs Montano**—The only area in which I have recommended legislative change is in respect of the areas in which AUSTRAC can competently comment. That is only in relation to the use of financial intelligence in investigative techniques and strategies. In terms of the wider issue, it is totally outside my authority to comment.

**Senator STOTT DESPOJA**—I have a question about legislative change in relation to the references, and it follows on from what Mr Sercombe was saying. You suggest amendment in order to clarify the validity of something such as the Limbeck reference. Do you have any concerns about the general nature of such a reference? I know you support strongly the philosophy of the Limbeck reference and I know you mentioned



the appropriate checks and balances. Do you have any concerns about its general nature and really if the appropriate checks and balances in fact do exist?

**Mrs Montano**—As to what are determined to be appropriate checks and balances?

**Senator STOTT DESPOJA**—Yes.

**Mrs Montano**—That is not a matter for me to comment on. Our view is that the evidence, as it were, shows financial flows are going on and that they, on our best educated guess with the experience of looking at transaction flows over a relatively fairly consistent period of time, are not being looked at. One of the reasons that these things are not being looked at may well be the fact that the legislative framework does not accommodate that kind of approach. In terms of legal history, the idea of tracing the money back to the source of the crime is a bit unusual in a very sort of scientific sense because it is only technology and very comprehensive reporting regimes that allow you to get into a position to see those things happening.

All the traditional sorts of techniques about how you frame powers, who you give powers to, and what checks and balances you do put on the processes are not necessarily all that well developed in relation to this area. Our comment is as simple as this: if in fact the NCA Act is going to be reviewed with a view to dealing with the concept of references or if it is going to be given power to do things by other means, our strong suggestion is that the idea of being able to work from the money backwards should not be lost. It is very important.

**Senator STOTT DESPOJA**—In regard to a generalised type of reference, are you talking specifically in terms of financial transactions? For example, you refer to the philosophy underlying the Limbeck reference and you say it should be adopted in respect of the fight against, among other things, organised crime. You are not suggesting that this sort of general type of reference should be extended to other areas of NCA activities, are you? Are you just specifically referring to financial transactions?

**Mrs Montano**—The NCA is there to concentrate on the big end of town anyway in relation to crime. So in that sense, by the fact that we are talking about the NCA doing that, it is limited already in relation to the kinds of activity you are talking about. Certainly, if you look at the agencies that have access to the Financial Transaction Reports Act data, they are a very limited group and we are very conscious of the fact that this is an idea which does need lots of controls and barriers put around it. It is not used for social security fraud in a direct sense, as in the DSS can go and get the information and chase it up itself. The AFP can do it on behalf of the DSS, but that is an example which shows that you do not open it up to everyone to use as just another information base because it is very sensitive information.

By the same token, for a body like the NCA which is there to use all the tools that

government wishes it to have so as to deal with some very serious problems which can require fairly drastic action sometimes, this is one of those things that should be considered in relation to that approach to crime.

**Senator GIBBS**—When you say things are not being looked at, when the NCA and yourselves are dealing with some sort of problem or crime, is that a frustrating aspect? Where you say things are not being looked at, is that something where you are both actually frustrated and you think, ‘We can’t look at that,’ and you really want to? Does it frustrate the whole thing?

**Mrs Montano**—No, I do not think it frustrates the whole thing. It is just that it is obvious that there are flows going out of the country which may not necessarily be straight crime in a traditional sense; it might be tax evasion. For example, the ATO has access to our database too and they get every suspect transaction report that is filed. So in that sense there are lots of opportunities. AUSTRAC’s job is giving other agencies opportunities to do things. Obviously, not all of those opportunities can be seized and taken advantage of.

For the NCA itself—Mr Broome might comment this afternoon—there are lots of opportunities there. For example, the recent announcement in the budget papers that their new policy proposal in respect of working with the ATO and with us to target some revenue that should be collected, and the associated crimes, has come out of the kind of material that we provide in a sense that that was seen to be a special need and the NCA has responded to it. It will have the opportunity to do a lot of work in relation to that with the ATO, so there are revenue benefits, and with us. In that sense, there are always opportunities being taken advantage of but it is like anything—there are always missed opportunities. The question is: where does government want to draw the line as to what it is willing to let go and what it wants to track and to deal with? That is a balancing act.

**Senator GIBBS**—Would you like to see the NCA given greater powers than what they have now so that you can work with them as the only law enforcement agency? You obviously work in closely with them now. You are working with the Federal Police. Would you prefer if the NCA was given greater powers to do whatever you and the ATO wanted to do so that they could be the only crime fighting organisation to work with in a specialist area?

**Mrs Montano**—I do not think that would be appropriate at all. The beauty of the NCA is that it gathers the talents it needs from a whole range of places and puts them onto a particular project. Our data is very versatile. Not only is it used in relation to organised crime and very serious drugs, it is also used in relation to other things. It has assisted in murder inquiries and in bird egg smuggling. The range of options for that material to be used is very wide and I would have to say that, if you are going to set up an agency like this, the legislation also requires complementary state and territory legislation which is in place so that things can be reported in relation to those sorts of

offences. So to limit that to just the NCA, I think, would be putting a lot of good information to waste. There is enough information there for everyone.

**Senator FERRIS**—I have two issues that I would like to raise with you. The first one relates to evidence given to us yesterday and this morning about the benefits of having more independence in the staff positions. As you would be aware, a large number of members of the NCA are from state police forces and the AFP. Have you ever felt that the loyalty of the seconded officers to the state force from which they have come compromised an inquiry that you were part of?

**Mrs Montano**—No. Having said no, we have very limited exposure to the way in which those sorts of aspects of the operations run. We have a very clear and defined role to play. We do not participate in the investigations, except to provide the financial intelligence and to suggest ways in which they might use the intelligence. We do not participate in the investigation. So if you were thinking of something like there is a policeman from one state and a policeman from another and because of rivalries or whatever they do not do the job, I would not know. We do not do that.

**Senator FERRIS**—It has been suggested there could be competitiveness.

**Mrs Montano**—We do not observe or participate in those aspects of the work. We are in this very unusual situation in some ways. Our material goes in and out at various points. It can start something off, like ‘We found something unusual. Would you like to go and look at it?’ The agency that has access, whatever it may be, will go and look at it.

Often we do not know what has happened with that until the end, and that is a big challenge for us in terms of determining what our performance indicators are—because what do people do with the information? In that sense, because we do not go into those sorts of operational issues, we may not know what happens on something until the very end.

We have a practice under our MOUs with the state and the Commonwealth agencies that we get feedback, but we get feedback in relation to what they have done with the information, what it has allowed them to achieve in the way of their objectives, how might we better give them the information, how might we better analyse it, are there any particular groups of cash dealers under legislation that they think are a risk that we should concentrate on in terms of our audits and so forth. It is a funny thing.

We come in and out of the process from time to time. We might start it, not hear anything for months and then someone will come back and say, ‘We’ve got on-line access to your database, as we all know, and we’ve been looking at this and that. But we need your specialist expertise to do a run on this or that,’ and we might come in and have an active role then in terms of our analysis. Then we may not hear of it again for another couple of months until there is a result.

Often the first thing we know of a result, as it were, is when we see it in the paper. In many cases, that is proper—that is absolutely the way we want it. I do not want my people to know things they should not know. So I cannot comment. I was trying to give you a context in which we operate. We would not know that sort of thing because we deliberately do not get involved in it. It is not our job.

**Senator FERRIS**—There has been a good deal of publicity about white-collar crime and the pursuit of corporate crime. Likewise, have you ever become aware of any zealotry in the pursuit of any particular companies or individuals—in the sense of accessing financial details in a way that might concern you in that there seems to be an over focus on individuals or companies?

**Mrs Montano**—No. Our client agencies have on-line access—that is, they get our data in a variety of ways. They can get specialist referrals from us. Something like, ‘This looks odd, this looks down your alley, would you like to look at it?’

But they also have on-line access—that is, they can get into the database themselves. That is all logged and we have authorised users. It is not all and sundry throughout the organisations. They are very small groups within the organisations that have access to the data, but we have not noticed any particular patterns like that at all. We have logs. We can look at that sort of thing, but we have not detected that.

**Senator CONROY**—Would your organisation have picked up the transaction between Elders and Mr Hawkins’s company?

**Mrs Montano**—Which transaction?

**Senator CONROY**—The H fee.

**Mrs Montano**—I will tell you what we do do , and I am not sufficiently aware of it to comment in relation to that particular thing. If there was an international funds transfer—

**Senator CONROY**—Through three different jurisdictions.

**Mrs Montano**—Yes, and if it took place since we received those things, which is 1992, and this all occurred long before it, then we would see a thing flowing. Because we only get the Swift messages—the bank to bank sort of coded messages—we see the parties, the amount and some details; we do not see purpose. So, on its own, it would not make the lights flash and someone say, ‘Here is corporate fraud.’ It would not do that; it does not do that. It would be nice if it did, but it does not. It is a tool. It is an intelligence source.

**Senator CONROY**—But, if you had been around in 1984, 1985 or 1986, you

could have picked up a transaction like that.

**Mrs Montano**—It would have seen a transaction. On its own, that would not have meant much more; but it could have been an overall picture.

**CHAIR**—Our time has expired. We spoke to you in your capacity as chairman of the Electronic Commerce Task Force, and that was very interesting for the committee. Is your office here in Sydney?

**Mrs Montano**—Yes, it is.

**CHAIR**—Is there anything that we could see there or would it be like going to an NCA office and saying, ‘You’ve seen one office, you’ve seen them all’? Would it be useful for us, as a committee, to visit and have a look at what you are doing, or is there nothing much to see there?

**Mrs Montano**—We have a number of analysis tools which are interesting to look at in the way in which they display the data and explain the way in which our data is used. I am more than happy to open our doors, obviously, in relation to the context in which the NCA uses the material. It would be useful if we knew what it was being used for in relation to background so we could direct you to the right machines. We have got machines that do lots of things and the question is which ones would be an appropriate thing for you to see in the context of what you want to see. I would not like you to come out and then decide that it was a waste of time.

**CHAIR**—Thanks for the offer. We will note that we may organise a committee visit at some future time. It is obviously becoming such an important area and it helps if we understand it fully, I think.

**Mrs Montano**—One thing you might like to look at is a process called ScreenIT, which is that rules based analysis that Mr Pinner referred to, which is a big part of how the ‘Agio’ Task Force works—you can understand the importance of financial intelligence into that process. That is something you might like to see. But it is part of a bigger process. So, on its own, it is just a thing.

**CHAIR**—Things interest us, I suppose; some things do. Thank you very much, Mrs Montano and your colleagues, for being with us this morning. We appreciate your time. As usual, you have been very helpful.

**Mrs Montano**—Thank you.

[11.12 a.m.]

**CAMERON, Mr Alan, Chairman, Australian Securities Commission, GPO Box 4866, Sydney, New South Wales 2001**

**LONGO, Mr Joseph Paul, National Director Enforcement and Acting Commission Member, Australian Securities Commission, GPO Box 4866, Sydney, New South Wales 2001**

**CHAIR**—I welcome representatives of the Australian Securities Commission.

**Mr FILING**—I notice that Mr Bill Coad, the foundation director of AUSTRAC, is with us today.

**CHAIR**—We have received a submission from you. Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The document read as follows—*

**CHAIR**—Before inviting you to make an opening statement in support of your submission, I am required to state that, if during the hearing, you consider that the information you might wish to give or the comment requested by a committee member is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also say that, because you are public officers, you will not be expected to comment on matters of government policy. Alan, do you wish to add to your submission by making an opening statement?

**Mr Cameron**—Perhaps I should simply say a little bit about the role of the ASC. I reflected on your terms of reference and on our submission and it seemed to me that our submission was very narrowly focused on the way in which we relate to the NCA. I thought perhaps I should set the context a little more clearly as to what the ASC actually does. The ASC is not purely a law enforcement agency. The ASC not only has a very important role in promoting compliance with the law but also in granting exemptions and modifications of the law in order to enable business to operate effectively. Indeed, I would like to say that we grant far more exemptions and modifications of the law than we ever prosecute people for breaking the law.

Nevertheless, we are quite a successful law enforcement agency. I have in front of me our last annual report and it points out that last year we recovered over \$16 million for investors. We put freezing orders on \$40 million worth of assets in order to protect them for the benefit of investors and creditors. This was also in a year in which 19 people were gaoled on ASC criminal charges and, indeed, the recent gaoling of Mr Peter Mitchell in Perth was the 100th gaol sentence obtained by the ASC in just over six years of operation.

Last year we opened our information line to enable people all over Australia to contact us for information about how they can locate investment advice, how they can report details of what they think is corporate malfeasance and so on. We also opened our home page on the Internet. We have electronic prospectuses now in operation as a result of the use of exemptive and modifying powers.

One of the other principal things we do is provide information about Australian companies. Some of you would be aware that the one-millionth live company was celebrated by the Parliamentary Secretary to the Treasurer only a week ago. It was an Australian-Chinese venture. There was a small ceremony in Melbourne that received a modicum of publicity. It is a significant achievement. From the days when the ASC was founded and there appeared to be 870,000 companies on the register, since then about 370,000 of those companies have been removed from the register because they are inactive. The commission has spent a lot of time cleaning up the database. Despite that removal, we have one million live companies on the database. That database is now accessible as of yesterday. It is accessible through the Internet. It is otherwise accessible by telephone, through information brokers or by visiting the ASC's offices around Australia. We have had a 60 per cent productivity gain in the information division since

1991.

But perhaps the starkest way in which I can demonstrate that the government no longer regards us purely as a law enforcement agency is to remind you that the new government, on election last year, moved the ASC from the Attorney-General's portfolio to the Treasury. That was clearly intended to signal that we perform an important role positively for business in the economic development of Australia. We are there, among other things, to promote investment and to create a credible climate for Australians to make investment and trading decisions. We see that as the justification and the reason behind our law enforcement activities.

I might say that the Treasurer still takes a very close personal interest in what we do and, in particular, has made it publicly clear that, despite the move to the Treasury, law enforcement remains the principal objective of what we do. He believes, as I do, that the community expects law enforcement to be the way in which we send the appropriate messages to the community about what appropriate corporate behaviour is. It is for that reason that we believe we have our powers.

This leads me inevitably to the question of the powers of the ASC. In some ways the ASC has powers that look and sound like the powers that the NCA has. Therefore, it is perhaps worth putting them in context. It has become traditional now for very many years that corporate regulators around the world have significant powers to compel people to answer questions and to produce documents. The reason behind those powers is simple. When people expect the public to contribute money to the affairs of companies, they will not do that unless they have confidence that that money, once invested, will be properly used.

The belief is that if those who are given the charge of those moneys are not required to explain their stewardship by compulsory powers, there will not be confidence in the process. If it is simply possible for directors and managers of companies to say, 'I don't choose to answer that question because it might incriminate me', there will be no confidence in the public investment process. Without that, there won't be jobs and there won't be development.

That is the traditional rationale for the investigative powers that are given to corporate regulators around the world. We have those powers, I believe, and no more. We are accountable for the use of those powers in some of the same ways that the NCA is accountable for the use of its powers. We are fully susceptible to Ombudsman review, to Administrative Appeals Tribunal review, to judicial review of our administrative decisions, to our own parliamentary committee, with which we meet two or three times a year, and of course directly to the parliament through committees like this.

In particular, the use of our investigative powers has just been the subject of a report by the Senate Legal and Constitutional References Committee of June 1995. That



report examined our powers in some detail, following lengthy hearings in two or three capital cities around Australia. I think it is fair to say that it concluded that our powers were not being abused and did not need any particular change. The former government did respond to that report. I think it is fair to say that the new government is also still looking at issues that arise out of that report. As I say, it has been the subject of detailed review and no substantial significant changes have been proposed to those powers at all.

Is there any overlap between the activities of the ASC and the NCA? That is probably an inevitable question and I will try and forestall it by giving my initial reaction anyway. I think the answer is this: while we clearly have a role to investigate corporate offences and deter that sort of behaviour, we do not have a lot of the police powers that are associated with the Australian Federal Police and the National Crime Authority. We have no power, for example, to tap telephones. We do not have the power in practice to execute warrants. We do have some limited warrant power but we do not normally exercise it. We simply are not a police force.

I was thinking about how to put this in a way that would not necessarily grab headlines: if we really thought in the course of any investigation that the people we were dealing with were the sort of people that the NCA normally deals with, people who are colloquially called organised crime people, we would simply not deal with the matter any further. It would be our normal practice to refer the matter either to the Australian Federal Police or to the NCA or to a state police force that is trained to deal with people like that in a way that our staff are not. Our staff are lawyers and accountants and financial analysts and investigators who are trained to look forensically at documents and not to deal with people who might turn nasty. It is people like that that I see as being what we normally call organised crime. I do not expect my staff to deal with those people. If I become aware of such matters in the course of the ordinary work of the commission I would certainly expect the staff, even without consulting me, in fact, to ensure that those matters are referred to more appropriate agencies.

The commission, as I say, is a successful investigator and pursuer of corporate crime but it is able to do that without getting anywhere near the area colloquially known as organised crime. We are in close collaboration with the NCA in various respects. Until December of last year I was also a member of the Commonwealth Law Enforcement Board, with the chairman of the NCA and the Commissioner of the Australian Federal Police and a couple of others. The new government decided that that was no longer appropriate following the move to Treasury, so I am no longer a member of that board, but the commission is still an active member of the HOCOLEA group, the heads of Commonwealth law enforcement agencies, and Mr Longo and I try and attend those meetings. We actively coordinate and cooperate at that level.

Further, there are joint task forces on which ASC representatives sit, but it is fair to say that the ASC's role in those task forces is usually limited to sharing of information and intelligence. We are not normally involved in the day-to-day and rather more difficult

street work, if I can call it that, of the sort of task forces that the NCA is concerned with. So in brief compass I think that is an attempt by me to explain where we fit in. We are very much the corporate law enforcer and also the business facilitator with respect to the financial sector.

Perhaps the final thing I should say—and I have not brought any material on it because it is a whole new subject—is that the Wallis report that was recently released is receiving consideration by the government and I think it is fair to say that that report contemplates that the body which is to succeed the ASC—it is really described in the report as the renamed ASC—will have the same law enforcement capacity as the ASC presently has, if Wallis is accepted by the government. Indeed, the only change that is proposed to the law enforcement capacities of the commission is twofold: first, that we should have the ability to receive enforceable undertakings, which, as you can hear from the very sound of it, is about civil enforcement. Civil enforcement is an important part of what we do. At the moment we do not have the capacity that the ACCC has to receive enforceable undertakings, so we will get that power if Wallis is accepted.

The second power is quite interesting, and it was adverted to in this earlier report. It is the ability to receive information from people voluntarily in a way that still protects them from any breach of contract or breach of confidentiality that might be associated with it. At the moment, if you want to help us with an investigation but you are under an obligation of confidence to somebody else, we have to give you a compulsory notice to comply with our requirements or you are not protected by breaking your obligation of confidence.

The Wallis report, I think like the Senate committee report, suggests that we should have the ability to receive that information voluntarily and you would still be protected to avoid the unnecessary giving of formal notices simply to overcome that problem. Mr Longo reminds me that it is not dealt with in the Senate committee report. It was dealt with in our submissions but it was not picked up by the Senate committee report. That is one of the reasons why we asked Wallis to deal with it, as I recall. It is really mentioned to show that it is at that level that our investigative powers have been under review in recent times.

**CHAIR**—Thank you, Mr Cameron. You have not been in Majorca lately have you?

**Mr Cameron**—No.

**Senator FERRIS**—Sadly.

**CHAIR**—On the question of your powers vis-a-vis the NCA, the NCA, as a high profile organisation, is coming in for some criticism from civil libertarians not only for the use of its powers but also for the fact that the powers even exist. Quite rightly, the

comparison is made with the powers that you have and, in some respects, your powers are even more far reaching than those of the NCA. Do you agree with that proposition? You are not limited by references in the way the NCA is. That is a question this committee is looking at in the terms of this inquiry: to what extent the NCA should continue to be limited by references. Do you have a view on that? Can you explain why you would not require that constraint or why that constraint has not been placed upon your organisation?

**Mr Cameron**—The compulsory powers of the commission can only be exercised when the commission has reason to suspect a contravention of the law. That is one of the reasons why you will see the commission frequently refusing to confirm that a matter is under investigation because we cannot commence an investigation under the law until we have reason to suspect a contravention. I mention that because it is not as though we can, without any reason at all, use our compulsory powers.

The second comment I would make, which might indicate why there is not the same issue about the ASC's powers, is that there is a tradition brought about by the long history of limited liability in English common law that bodies like ours will have those compulsory powers. There are judicial and political statements stretching back many years in support of the proposition that such powers, exercised reasonably, are essential to proper confidence in the investigation process.

**Mr Longo**—In this country, at least, the history is that the sorts of powers we are talking about were in existence since the late 1950s in Victoria. With the coming of the uniform companies acts, they were picked up in that legislation. Then we had the cooperative scheme and now we have the ASC law. I think, in broad terms, the evolution of the powers is as Mr Cameron has said. They are designed to enable the regulator to find out what happened in circumstances, as have been highlighted, involving many documents. Our role is to find out what happened.

Very often, in circumstances involving great complexity, many documents and the intervention of a wide range of financial advisers, lawyers and accountants, without these powers we would never be able to figure out what happened. So it is certainly consistent with the way the powers have developed in this country and others.

**CHAIR**—You are talking about this issue of self-incrimination. There are differences there in the way that you treat witnesses to the way the NCA does in relation to advising them of their right to remain silent. I think you are saying they have no such right.

**Mr Cameron**—They have no such right in our investigations but their answers cannot be used against them in criminal proceedings.

**Mr Longo**—I cannot comment authoritatively on how the NCA's powers work but I can certainly tell you how our powers work. If we can compel individuals to come and

talk to us and be examined under oath, that evidence cannot be used against them if, before answering a question, they say 'privilege'. So it is up to the person to say the word 'privilege'. By convention almost, if that happens, both the question and the answer cannot be used against that person in subsequent criminal proceedings or proceedings for the recovery of a penalty.

**Mr SERCOMBE**—What do you mean by, 'By convention almost'?

**Mr Longo**—Over the years, in order to ensure that these examinations occur with some efficiency, it is understood at the beginning of each examination that, if you want to assert the privilege, you merely say 'privilege'. No further elaboration is required in order to attract the privilege.

**Mr SERCOMBE**—That is very gentlemanly.

**Mr Cameron**—It may be gentlemanly, but if you were to say the full, 'I claim privilege in respect of this answer,' all the time, it would be very tedious for all concerned.

**CHAIR**—So where do you stop claiming privilege?

**Mr Cameron**—At the moment, you are required to claim privilege with respect to every answer. You will find in our transcripts people who remember halfway through the answer, so you will see the word 'privilege' pop up, or you will see that they forget all together. Sometimes they answer 'privilege' and then give you their name because they have been schooled to answer religiously 'privilege' before every answer.

There has been some discussion—I think there was some discussion before this committee, in the other Senate committee—about whether that rule was unduly technical and disadvantaged people who were a bit forgetful and that there ought to be the ability to have a blanket claim of privilege. That is a matter the commission—in fact, would you like to say a bit more about where the commission is at in its thinking on that subject?

**Mr Longo**—There is another inquiry going on at the moment into the derivative use of immunity. In the course of that inquiry, we have indicated support for a modification of that practice so that at any time during the examination a witness can simply say 'privilege' and thereafter every question and every answer will then attract the privilege.

There is one thing I would like to elaborate upon there. It is not for the ASC, during the course of the investigation, to challenge someone's assertion of privilege. That is not the right time to do it. If a person wishes to assert the privilege, then it is not for us at that point to challenge it. The proper time to challenge that issue would be at a subsequent trial if the prosecuting authority, the DPP, decided that it was inappropriate at

the time to claim the privilege, that there was no proper basis for it, in order to use the answer. I do not think that has ever occurred, the DPP has never actually made a challenge like that.

But I just wanted to stress that at the investigation stage, which is the stage that the ASC operates at, our interest is to find out what happened. If individuals wish to claim the privilege, it is not our policy at all to discourage them from doing so. It is a matter entirely for them.

**Mr SERCOMBE**—You indicated, Mr Cameron, that in circumstances—and we can only talk about hypothetical circumstances—where it became apparent to your people that you were dealing with what is colloquially regarded as organised crime it would be a matter that you would then seek to refer to either the AFP, the NCA or a state police force. Could I ask two things about that? Firstly, where is the threshold in hypothetical circumstances where that point may be reached? Secondly, how would you make a judgment about whether the matter you were dealing with was referred to the New South Wales police, for example, or the AFP or the NCA? How are those judgments made?

**Mr Cameron**—Based on a recent example, that I would rather not go into too much detail about, the threshold was reached to me when I was told that if our people were to visit a particular premises they would have to be accompanied by the state police or their security could not be assured. I took the view that the moment we reach the point where such a visit was essential—

**Mr SERCOMBE**—That is hardly organised crime.

**Mr Cameron**—No, but I make that point—we do not normally deal with people who will put the personal safety of our staff in jeopardy. Our people are not trained in any respect—nor am I—to deal with a situation like that, whereas the state police forces, the AFP and the NCA are. So it really is at that level of threshold. It is true—I think we were discussing this earlier—

**Mr SERCOMBE**—That is certainly no different from the local dog catcher who gets threatened by someone who holds a dog.

**Senator FERRIS**—I think there is a bit more money involved.

**Mr Cameron**—But even the dog catcher is presumably trained a bit—you mean if the dog owner turns up?

**Mr SERCOMBE**—Yes, the dog owner.

**Mr Cameron**—Absolutely, yes. Precisely. I think it is very much like that. As to where you would refer it, it really depends on what we think is happening. If we really

think it is the sorts of people that the NCA's references are directed to, then we would clearly consult the NCA or the AFP. But my recollection is that in normal practice it is the AFP, because we are talking about Commonwealth laws and it is normally going to be a matter for the AFP.

**Mr Longo**—That is right. I think also there is a regular level of communication between the ASC, the AFP and the NCA, among other law enforcement bodies. In the course of those regular lines of communication, a lot of these issues get picked up at an early stage and are dealt with appropriately.

**Mr Cameron**—I was going to mention earlier too that we do have something like 20 AFP officers attached to the commission at any time, but they are not in uniform and they are not normally wearing arms of any kind—not when they are doing our business of course.

**Senator STOTT DESPOJA**—I will just follow on from that. The process of referral to the NCA, for example, sounds rather informal. Is there a specific or formal process of referral that takes place?

**Mr Cameron**—In my recollection of the way the NCA works, it would be quite unusual for us to be able to refer it to the NCA in a way that they could actually investigate because of the way they work with references. It would normally therefore be to the AFP. Yes, it would start off quite informal, where they have quite close contacts between us, including a joint membership of various task forces and so on so that there is no difficulty about an informal referral.

**Senator STOTT DESPOJA**—You sound quite supportive of the move to Treasury from Attorney-General's. Are there any misgivings you have—for example, a lack of position, for example, on the Commonwealth Law Enforcement Board? Is that a particular problem or is that just appropriate under the circumstances?

**Mr Cameron**—No. If I had had a concern, it was that it might have sent a message to the community, particularly to some people in the community that I would not want to give this message to, that the government was not concerned about the enforcement of the laws aspect of what we do. I think both the natural concern of the commission about that subject and the natural concern of the Treasurer not to send that message lie behind his quite strong statements to the contrary, which he made soon after taking office and repeated again earlier this year in a public speech at a conference we ran here in Sydney. He is quite keen to send a message that law enforcement remains a principal way in which we achieve our overall objectives.

The commission has no problem with that and we have not changed our way of operating to reflect any different approach. If anything, we have come to believe that enforcement is an integral part of a lot of our activities. We should not be doing anything

without a mind to the enforcement aspect of what we are doing.

**Senator STOTT DESPOJA**—From the sounds of your submission—but not the Senate committee’s recommendations—you are supportive of the recommendation in relation to the ability to give enforceable undertakings. You do not see that as encroaching on or duplicating in any way the powers of the NCA or the AFP? That is not a consideration?

**Mr Cameron**—It is not an encroachment. That is my initial reaction merely because there is no overlap in the sorts of areas in which we would like to be able to use enforceable undertakings, I think, or illustrate the point. Normally, if you want to stop someone from publishing a misleading or a deceptive advertisement or to stop continuing publishing that, you have to sue them first and that is a civil proceeding. The beauty of an enforceable undertaking is that we can have an exchange of correspondence with that person, a breach of which would itself, without more, be a contempt, and that is an enforceable undertaking.

**Senator STOTT DESPOJA**—I see.

**Mr Cameron**—At the moment, in order to get us to that position, we would need to get those parties into a courtroom and have that undertaking made to the face of the court. So enforceable undertaking, we think, would be a useful addition to our bundle of potential responses to misconduct that might arise.

**Senator STOTT DESPOJA**—Right. Thank you.

**Mr FILING**—Your MOU was around 1991: is that right?

**Mr Cameron**—Yes.

**Mr FILING**—So it was back in the days when the NCA was styling itself as pursuing white-collar criminals. Obviously that particular role has changed since. We have had other witnesses give evidence that they felt that the specific white-collar criminal role that the NCA took was perhaps the wrong path for it. In fact, they saw it as a period when it was not as effective as at other times. Do you see that as the case?

**Mr Cameron**—The history of that MOU is that it related to a particular investigation which, in today’s climate, I think we would all agree, would have been dealt with by the ASC. It was very early in the life of the ASC when my predecessor had identified 16 matters of major national priority. The view was that the commission could not in its very early days pick up that matter as well. So an arrangement was entered into in the form of that MOU for that matter to be looked at by the NCA rather than by the ASC. I really do not think that that would be likely to happen again.

**Senator CONROY**—That was not one of the 16?

**Mr Cameron**—No.

**Mr SERCOMBE**—That was Operation Albert, wasn't it?

**Mr Cameron**—I think of it only as matter 13, which is its NCA reference. It was not one of the 16, no. I am not sure that I can immediately summon the precise chronology, but that 16 list was issued during 1991, so it would have been at about the same time as matter 13 was identified and agreed to be a matter that the NCA should look at rather than the ASC. We stopped dealing with the top 16 so long ago that perhaps I should not be so categorical. Mr Longo thinks it might have been; I do not think it was. I will just reread our submission.

**Senator CONROY**—I am just wondering why it would not have been one of the 16 if it was one of the ones you identified.

**Mr Cameron**—I am sorry, yes, you are quite right, because we kept one aspect of it. Why it is still on the list is because we kept one aspect of it. So the matter that is part of the top 16 is the ASC's residual part of the same companies and the same somewhat related transactions. That is what I was overlooking, I am sorry.

**Mr Longo**—There was a division of labour then.

**Mr Cameron**—There was a division of labour.

**Senator CONROY**—Is that an active case you are still pursuing? Is this residual part active at the moment?

**Mr Cameron**—That is complicated.

**Mr Longo**—It is complicated. There are aspects of it that remain alive and before the courts.

**Senator CONROY**—Northrop's decision.

**Mr Cameron**—Yes, it is under appeal though.

**Senator CONROY**—There is reserved judgment.

**Mr Cameron**—There are some quite complex legal aid applications and Dietrich applications, yes.

**Mr Longo**—There is some complexity—retrials, Dietrich applications—so it



remains alive in some respects.

**Mr FILING**—But, on reflection, you feel that perhaps the NCA was not the appropriate body at the time to take on the—

**Mr Cameron**—No, I was not intending to suggest that it was not appropriate at the time. I am really just saying that, in the current climate, I do not think it would even be suggested that it should be done in that way. But it was probably quite appropriate at the time. The ASC was under a lot of pressure to perform on a whole lot of fronts, including getting the other parts of its business up and running, and I think it was quite reasonable to have some division of responsibility with the other agencies, including the NCA.

**Mr FILING**—How well do you think Australia's corporate regulatory framework is judged by its consumers and, I might say, some of the other jurisdictions?

**Mr Cameron**—I think these days it is judged quite well. We have a formal process of asking the market what it thinks about our activities, how well we are performing. We do that through independent market research which we organise and pay for but do not ourselves conduct, and we report on the results of that every two years. It is from that research, for example, we learn that overwhelmingly the corporate marketplace thinks enforcement is the most important thing we do, and we try to be responsive to that information. But they also tell us how well they think we are going, and we report on that as well.

**Mr FILING**—For instance, how significant are, let us say, some of the more notorious cases—apart from the one that is under appeal; I am referring to the ones that tend to occupy the front pages of newspapers—as a means of perhaps setting that standard; that is, the public standing of the corporate regulatory framework?

**Mr Cameron**—I think the first thing to say is that we have an 80 per cent success rate; in connection with major criminal activities, 80 per cent of the occasions lead to a conviction or a plea of guilty. We regard that, if anything, as too high—and I have said that publicly on many occasions—because it might be thought to indicate that we have become risk averse and we are not prepared to lose criminal cases.

Clearly, you will lose criminal cases from time to time: witnesses will not come up to proof; explanations will be given at trial that were never proffered in the investigation stage or at the committal, but will be regarded by the jury as a possible reasonable explanation. So we do not expect and do not aim for a 100 per cent success rate. We think overall the success rate is good.

In major cases, our success rate is also good. The pleas of guilty by two of the three defendants in the Bond \$1.6 billion corporate fraud case, the largest in our history,

indicate that those defendants felt the case had been prepared in such a way that they would have no answer at trial. If defendants can so be persuaded that they consider their only appropriate course is to plead guilty, we regard that, in a sense, as the ultimate success.

**Mr FILING**—In that particular case, the penalties were seen widely as being fairly light in relation to Mr Bond's conviction.

**Mr Cameron**—Yes, and they are both under appeal. So it is probably not appropriate for me to say much about it.

**Mr FILING**—Other than perhaps on a general basis, given that the standing of the corporate regulatory framework and, of course, with that goes a lot of public confidence in investment and other areas, do you think that the general penalties available, or perhaps exercised by judges, are being exercised appropriately in a way that would enhance the confidence of the public in its regulatory framework?

**Mr Cameron**—That is a complex question, and I would certainly want to be thought to be answering it quite independently of the sentences that are now under appeal.

**Mr FILING**—Yes, of course.

**Mr Cameron**—In the first few years of the commission's life, the tendency appeared to be to have quite long sentences. Even discounting the 17-year sentence originally given to Miss Greenberg in your state, for example, the sentences were very long indeed in some cases. We wondered about that but I think they have tended to come back. First of all, there was more success for defendants in appealing in the early years than there has been lately. Our convictions are tending to stand up on appeal much more than they did before, and sentences appear to have congregated in the sort of three- to five- year end of the bracket for what is normally called white-collar crime. That is not only across ASC prosecutions but across white-collar crime prosecutions as well.

**Mr Longo**—That might be for first offenders.

**Mr Cameron**—Yes, the usual explanations given are usually right—that people usually are first offenders, they are usually towards the ends of their working lives so they are not likely to reoffend, and they are not likely to be allowed to get back into positions where they could commit the same offences. All of those reasons are able to be given and they tend to lead to sentences of that sort of duration. That is, if you like, a fact of life. I do not think it is really a role for the commission to be talking up sentencing too much. Our role really is to deter, detect and deal with offences when we find them and then it is the judicial role to work out what the appropriate sentences are.

**Senator CONROY**—You don't think talking up a sentence helps deter?

**Mr Cameron**—I do not think it is the role of the commission to be too aggressive in talking up sentencing. Politicians may do that and other commentators may do that. If we are seen to be doing that, other than in a reasonably objective fashion, I am just not sure it is the role for the corporate regulator to be thought to be, in effect, harping on the sentences. Part of the reason is that we are integrally involved in the process. If we are thought to be motivated by malice or vindictiveness, I do not think that would help the process. It is a difficult role. I certainly do not believe that sentencing should be too light, but I do not think it is the role of the commission to talk the process up too much.

**Mr Longo**—If I may amplify that statement, that is actually a very fundamental point because one of the things that makes us effective in the marketplace is our professionalism. People will not talk to us if they think they are dealing with cowboys in effect. Our officers deal professionally. The work they do they do objectively. They are trying to get to the facts. If there is evidence of misconduct, a brief is prepared and it goes to the DPP where it is independently dealt with; we have a lot of credibility in the market as a result. When people deal with us, they know they are dealing with people who are going to ask questions professionally and objectively. As Mr Cameron has said, that is very important in ensuring general acceptance of our powers. We are very concerned to ensure that we use our powers wisely and properly, and I think those powers enjoy general acceptance because that is what we do. We do try to exercise them professionally and wisely.

**Mr FILING**—Do you find that there are levels of corporate offences that are falling through the crack between the ASC and the various state fraud squads? I suggest, for instance, cases where there might be purely corporate offences or allegations of corporate offences rather than, say, criminal code charges and where the amount of money is not sufficient to really justify extensive investigation.

**Mr Cameron**—I do not think there is much evidence that that is a problem in practice. We have memoranda of understanding with several state police forces which are designed to address those sorts of issues. In several states, we deal with a lot of matters that in other states would be dealt with by state police forces, and that is an arrangement that the commission and the relevant state police forces are quite happy with. It has not in fact been a major problem. I can understand why you might think on the surface that it could be.

**Mr FILING**—There are a number of examples, particularly in my state, where I have been made aware of complaints that, on going to the ASC, have been referred to the state fraud squad, who have then said that it is the ASC's job, principally because the state fraud squad has got a backlog of about two to three years worth of work and the ASC seem to be this interested in a relatively minor amount—we are talking about below a threshold of a million dollars. That complaint has been put to me on a number of occasions, and generally not answered satisfactorily. That is why I asked the question.

**Mr Longo**—We are always very concerned to ensure that good judgments are made about those issues. We have case selection criteria where we try to put in one place the sorts of issues that the various enforcement committees around the country should take into account in deciding whether or not to investigate something and resource it for investigation. One feature is that, if it is a plain theft not involving abuse of a corporate form or otherwise really being a mainstream Corporations Law offence, that would weigh on us. It would not be determinative, but significant weight would be put on that factor. Perhaps some of the matters you are referring to could be of that nature—that they were certainly serious and they certainly involved theft, but there had to be a little bit more than that to attract our attention. We are a Corporations Law enforcement authority, and that would weigh on us.

**Mr FILING**—I am thinking in particular of where you might have a case where there is only an allegation of breach of, let us say, obligations of directors et cetera or a particular corporate offence that does not maybe involve a criminal offence. I think it would be fair to say that, if you went to the Western Australian Police Service Fraud Squad, they would refer you to the ASC. In the cases I am referring to, the ASC has referred them back to the fraud squad, who have said, ‘There’s nothing we can do.’ At the time of the assumption or the agreement of the control or regulation of the corporate framework by the ASC or by its predecessor and then the ASC, there was an understanding that those types of corporate offences would still be looked at by the ASC. That does not appear to be the case anymore.

**Mr Cameron**—It is a difficult question. In fact, there is one that has been attracting headlines in Perth this week. I am not sure whether you have been there, as I have. There is one which started off as an ASC investigation, because it was an investment adviser, and then the state police investigated it. There have been more charges added as a result. The current problem in Perth is about how to deal with the Dietrich application, which has now been made, as to whether that is a state or federal matter. That sort of issue is going to cause more attention to be posed on the problem you are suggesting.

There will, I suspect, be cases that you can point to where it will appear to fall between the cracks for that sort of reason. But the explanation Mr Longo gives you is certainly the way I have understood it. We would normally be looking for some inappropriate behaviour by a company officer, a director, that is in breach of the Corporations Law or, as in the case that is under attention in Perth, an investment adviser who was in fact not licensed, but we would say should have been licensed, to give the advice he was giving and then, we say, took the money. We look for that sort of factor rather than a pure—if I can call it that—theft of money from a company. We would look to those extra factors to really justify our interest.

**Mr FILING**—If I may just turn to the future rather than to this current situation: we recently heard evidence from the Electronic Commerce Task Force in relation to

electronic commercial transactions and in particular evidence referring to the practice, I think, of jurisdiction shopping or brokering—certainly a problem I would imagine the ASC is becoming more and more familiar with—where the issue of the jurisdiction applicable in the case of an electronic transaction that may have occurred, for instance, on a secure Internet transaction, may in fact be a matter of some doubt, given the fact that the packets of information travelled over a number of countries' telephone networks. What is the agency's view in relation to those particular types of problems, and where, for example, Australian corporations may be tempted to move transactions away from your regulatory framework into one that might be less onerous and perhaps less likely to cause them aggravation?

**Mr Cameron**—I think the first thing I should say is that the commission strongly believes, has asserted and will continue to assert that transactions on the Internet are not above the law. The law applies to transactions on the net and to advice given on the net. In every respect it applies to the net as it would apply to facsimile, or telephone, or mail, or newspapers or magazines. That does not mean to say that there are not enforcement difficulties in applying the law. There will occasionally be jurisdictional issues about identifying where the offence has occurred. But this is a global issue and markets generally are globalising. We are spending a fair deal of time in our international activities talking to our fellow regulators about these very issues and working out ways of cooperating to ensure that Australians are not disadvantaged, ripped off, or whatever, by fraudulent activity of any kind on the net.

I am not suggesting for a moment that that is going to be a perfect situation. But there is a deal of understanding between regulators world wide that we will need to cooperate to ensure that the net does not become a form of abuse. One of the ways of dealing with it, though, is to educate people to understand the limitations. If they choose to deal on the net, they need to understand that the regulator has more difficulty in looking after their interests on the net than we do in dealing across the counter or dealing clearly within the boundaries of Australia. So we see education of investors as a primary way of ensuring that people are not ripped off.

**Mr FILING**—For instance, would you agree with the proposition that the effect of this type of transaction may well be to drive down standards to the lowest common denominator that is available, let us say, on reasonable corporate areas?

**Mr Cameron**—While it might be thought that there is some risk of that, I still do not think there is any evidence of that being so. I like to quote the fact that I still get about one Nigerian loan letter a week. You probably would be familiar with Nigerian loan letters in this committee. I find it extraordinary that I get them addressed to me by my name and title at the commission, but leaving that aside, I mention it really just to say that that form of abuse is still there and there is no way that you can stop it. I do not think anybody thinks it brings the mails into disrepute that that is able to exist. Similarly, I do not see why the Internet should be brought into disrepute just because it is possible to

abuse it.

There are real advantages for Australian business and Australian investors for information investment being more readily available, including over the net. I try to see the net as a positive thing and to promote it as something which the Australian investor and issuer community should take more advantage of.

**Mr FILING**—I was thinking more of the Channel Islands than Nigeria, or perhaps other closer places where the *Economist* magazine, for instance, advertises extensively where you can incorporate and get some obvious taxation advantages.

**Mr Cameron**—I think I would still say—Mr Longo might wish to comment—that we are not actually seeing the evidence yet. If there is evidence, it links more of the people selling investment opportunities into Australia that are inappropriate. It is actually coming from larger countries closer to our shores, not from the Cayman Islands or any of those obvious places. It is rather coming from some of our South-East Asian neighbours and we are in consultation with our regulatory colleagues there to deal with that sort of phenomenon.

**Senator CONROY**—Without getting into any operational details, I wanted to ask you about TNT and the mysterious Mr Booth. I am interested in the detection angle. When did you first become aware of the activities?

**Mr Cameron**—The takeover, as I recall it, was announced publicly on a Wednesday—Mr Longo is cleverer than I am, he remembers the date.

**Mr Longo**—The trading occurred in the middle of September—17 or 18 September, thereabouts—and started to take the attention of the ASX surveillance team. When the takeover was announced on 2 October, I think—it could have been 3 October—what looked like many examples of unusual trading became a very obvious example of unusual trading and was immediately referred to us. I think that was around 3 or 4 October. At that point, given the magnitude of the sums involved and the fact that the profits had not been crystallised in a fashion that allowed them to be paid out to the person trading, we took Federal Court proceedings to immediately freeze the profits, not only in connection with that person, but, in fact, the profits arising out of several transactions which were regarded as unusual and warranting further investigation.

**Mr Cameron**—That was after the trading had been done. That was already noticed, in fact.

**Senator CONROY**—That was essentially the question I was trying to get to—you were on to it electronically.

**Mr Cameron**—The stock exchange, whose job it is to monitor the direct trading

and then to report to us, had noticed it before the takeover was announced. So the money was frozen within 48 hours and there was no way that whoever it was—

**Senator CONROY**—So there was just this odd transaction and I guess you would have been largely unaware of the—

**Mr Cameron**—It was a short-term option that was way out of the money, if I may use that jargon.

**Mr Longo**—Which had been to that point very thinly traded. In other words, no-one had any interest in it.

**CHAIR**—One of the criticisms of the NCA operatives has been that they are sometimes a bit zealous. There are probably a lot of Australians who are glad they are. You have not described your activities as being zealous, although you have used some other words to describe them. There is nothing intrinsically wrong with being zealous, is there?

**Mr Cameron**—I don't think there is anything wrong with being zealous.

**CHAIR**—I am zealous about a number of things.

**Mr Cameron**—I know that you are, Chairman. We are zealous in the pursuit of the interests of investors through investor protection and the interests of issuers to ensure that investment opportunities do get offered to people and capital is raised. I would like to think that we are passionate in the support of that activity.

One of the consequences of the Wallis report, if it is adopted, is that we will take on an even wider role for consumer protection than the finance sector generally. If the government does give us that role, you can be assured that we will pursue that passionately too, to the limits that it will involve.

**Senator CONROY**—Would transactions similar to the H fee come to your attention?

**Mr Cameron**—Do you mean whether it would be referred to us by somebody?

**Senator CONROY**—I don't know.

**Senator FERRIS**—Would you notice it?

**Senator CONROY**—Would you notice it or would it come to your attention automatically?

**Mr Cameron**—I suspect we would only be aware of it if somebody complained about it or an auditor drew it to our attention in that sense. We certainly do receive intelligence in all sorts of ways, including from newspapers and from auditors who are required to report to us in certain circumstances or from liquidators. Matters like the H fee could come to our attention in that way. It might be referred to us in the future by an NCA or an AFP as well, but I would normally expect it would come to us, if at all, through ordinary intelligence.

**Senator CONROY**—It started with you and was handed to the NCA.

**Mr Longo**—There might be misunderstanding about that. That matter never came through the ASC at all.

**Mr Cameron**—It came through the NCSC.

**Mr Longo**—Yes, the NCSC. This is really stretching my knowledge now. I thought there was an NCSC referral to the NCA in the late 1980s well before the ASC even existed. We never had any practical or legal role in that matter at all.

**Senator CONROY**—But you headed it up with the NCA?

**Mr Longo**—No, we didn't; the predecessor did.

**Mr Cameron**—It is not a matter within our present knowledge at all. That is my understanding of what happened.

**CHAIR**—I think we will draw this to a close to let you get back to doing what you are obviously passionate about doing. We do thank you, Mr Cameron and Mr Longo, for giving us your time today.



[12.12 p.m.]

**MARSDEN, Mr John, President, New South Wales Council of Civil Liberties, St John's Road, Glebe, New South Wales 2037**

**CHAIR**—I would like to welcome you here today. Before inviting you to make an opening statement, if you choose to do so, I am required to state that if, during the hearing, you consider the information you might wish to give or comment requested by committee members to be of a confidential or private nature, you can make an application for that information or comment to be given in camera and the committee will consider your application. The committee has received your submission and has published it. Is it the wish of the committee that the submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The document read as follows—*

**Mr Marsden**—We, as a council, played a pretty important role at the time of the establishment of the NCA. If you go back through the debates which were held in the Old Parliament House Senate chamber you will see the debates that I took part in as I, at the time, had my first stint as President of this council. I think I was also the National President at that stage. I remember it quite clearly because many of the issues that I took were then supported by the Law Council of Australia. The representative of the Law Council was Ian Temby, as he was known at that time.

Many of the things we said then have really come true; that is, with these types of organisations, be they the NCA or crime commissions—as we have in various states—their success rate is not great and the enormous infringement of an individual's rights and privacy are such that it does not justify that infringement. We have tried to set that out in our submission. What we try to say there is: is it really justifiable to have such intrusive powers and powers that any democrat would not support results such as these?

There is always, in organisations such as this, a problem that those who become involved in the structure of the organisation become so obsessive with the righteousness of what they are doing that this excessive zeal takes control of them in the pursuit of their targets. I suppose if one looks at some of the royal commissions that we have had, including the Costigan Royal Commission, one can see the damage that has been caused because of excessive zeal.

We think that we have justified our submission and the material that we have put to you. We are concerned, as any organisation should be, at organisations that go out on roving investigations, which is almost like trailing for evidence, which is not acceptable as a method of pursuing evidence. Trailing evidence is like trailing for fish with a net on the back of a boat up in the north of Queensland, if one had the pleasure to be up there, in the hope that by putting out a net they might find something and then move on it.

I also want to say to the committee, Mr Chairman, because I do not understand it, that yesterday I received a phone call from a person who refused to divulge his name but knew I was to give evidence here and who alleged that he was involved in policing. He spoke to me at some length about AUSTRAC, which I do not know a lot about. I presume it has something to do with intelligence gathering information. He told me at some length about 22 million pieces of information about individuals that is in AUSTRAC and that there could in fact be an enormous breach of privacy, and he went on and on. I was able to check out one part of his story. From one of the contact numbers I could tell he did come from a police organisation. But, in relation to whom he was and what it was about, as I did not know very much about AUSTRAC I cannot help you. But I think I should at least disclose to you that I did receive that phone call, that it did concern me. The person obviously knew what he was talking about and said that this was a very dangerous intrusion on rights of individuals.

**CHAIR**—A couple of hours ago representatives of the Australian Transaction Reports and Analysis Centre were here to talk to us and to tell us about their activities. You probably would have found that as informative as we did. I am surprised you do not know about them.

**Senator CONROY**—You will be able to get a copy of the *Hansard*.

**CHAIR**—I am surprised you do not know about it. It is quite a significant organisation and it is performing a valuable service, but there would be those elements that might concern you, I would imagine. In fact, I had a note to ask you about AUSTRAC.

**Mr Marsden**—It is probably another area of the council that someone else is dealing with. It is an issue that I had not dealt with until yesterday, and I just did not have enough time to brief myself.

**CHAIR**—It is an interesting coincidence.

**Senator FERRIS**—Chair, we could make available to Mr Marsden a copy of the AUSTRAC submission, which is a public document.

**CHAIR**—Yes, we will give you a copy of their submission for you to read at a later time. Sorry; I just wanted to let you know that.

**Mr Marsden**—I am just letting you know that I did receive a phone call that caused me some concern. That is merely what I wanted say in relation to summing up. In an organisation such as ours, frankly we deal with excesses by bureaucrats, by governments. It is always interesting that people will knock your organisation until they personally have had an experience and then suddenly want to be involved with civil liberties. I am sure more persons who were involved in shooting organisations joined councils of civil liberties in this state last year than ever before. We did not seem to have a lot of shooting organisations in our council until at this stage last year, so that is a kind of example of what I am talking about. Until you have had experience of being subjected to an inquiry of the nature set by the National Crime Authority, you probably do not really appreciate how incursive and intrusive it can be in relation to your own privacy.

**CHAIR**—Mr Marsden, in your submission you have called for a public inquiry where everything is brought out in the open.

**Mr Marsden**—This is the public inquiry.

**CHAIR**—This is a public inquiry. Whether in fact ultimately we, you or others judge whether everything was brought out into the open remains to be seen, but it is the intention of this committee that that be the case.

**Mr Marsden**—I saw that when I re-read this yesterday, and I accept that this is a public inquiry. I accept that you will bring everything out in the open and that it is an all party inquiry, as I look around the table, and, to that extent, I have no problems with this inquiry. Neither does my organisation.

**CHAIR**—Thank you. You make the point that the existence of organised crime in Australia is accepted, in the sense that you accept that it does exist. The question then is: how do we contend with it? All the evidence suggests that we are not doing it very successfully. At least in the drug aspect of it, even the latest royal commissioner said the war against drugs was being lost.

**Mr Marsden**—Half the royal commissioners have said that. Fitzgerald said that. Fitzgerald made recommendations in relation to drug law reform. The Le Dain royal commission in 1968 made similar recommendations. From memory, there are 19 royal commissions or inquiries, including two federal parliamentary inquiries, which have said the same thing and made recommendations to parliamentarians. Unfortunately, the governments of the day have not been prepared to accept those recommendations.

**CHAIR**—Are you talking about the recommendations for harm minimisation?

**Mr Marsden**—Harm minimisation. And you will always have that problem. In relation to organised crime, you have only to go back and look. When was organised crime the heaviest in the United States? When prohibition existed. If you have prohibition, whether it be in respect of drugs or alcohol or whatever, you are going to have crime, because the majority of the community out there does not necessarily accept that prohibition. In 1976, Neville Wran, the then newly elected Premier of this state, said that when you do not get the great majority of the population accepting the law, you are going to have a situation where there is a de facto acceptance, and there will be organised crime. It exists in relation to prostitution, alcohol and now drugs.

**Senator McGAURAN**—Heroin?

**Mr Marsden**—Organised crime exists in relation to heroin, because—

**Senator McGAURAN**—What about community acceptance?

**Mr Marsden**—There is no community acceptance in relation to decriminalising heroin. I accept that. But there is in relation to soft drugs. It is a crazy situation that I can go—I don't because I am too old—to a party at the showground on a Saturday night with 20,000 people, and 90 per cent of them are taking ecstasy tablets. That is a crazy situation. And the police will not do anything about that. Policing will not do anything about it, simply because you cannot deal with 20,000 people at a party who have taken ecstasy.

**CHAIR**—The inquiry is not about the national drug strategy.

**Mr Marsden**—I know that. I appreciate it.

**CHAIR**—I am sorry. I think those issues have to be debated. The national drug strategy has just been revised and that will be tabled and will, I am sure, receive a lot of public discussion. But I am not sure, in the very limited time that we have, that we ought to debate that issue with you.

**Mr Marsden**—No. I was just answering that question.

**CHAIR**—I would like to debate it with you, and I think I could. But not right now.

**Mr Marsden**—I think I would win.

**CHAIR**—I know you are a lawyer and not an accountant, so I wanted to take you to task for the figures that you have presented in your submission.

**Mr Marsden**—Are my mathematics not that good?

**CHAIR**—Your adding up is all right, but the inferences you have drawn are a bit wide of the mark. When you are dealing with organised criminals, do you not accept that bland measurements, in the terms you have made them, may be misleading? After all, the aim of the authority is to interfere, stop, discourage or deter organised criminals. That does not always result in arrests and charges or convictions.

**Mr Marsden**—No. If it is there as a deterrent, it should not have the powers it has.

**CHAIR**—Let me put it to you further on the statistics. You have concentrated in a fairly sensationalist way by coming up with this \$866,840 per conviction. I do not know if that is good or bad. It depends on who you have convicted and who you have deterred along the way, so I am only putting it to you that I do not think that is necessarily a fair way of measuring the effectiveness of the NCA. But further than that, what you have overlooked in the statistics is the activities that have been carried out by joint task forces and, if you use the same statistics to look at that that you have used to present the figures in your submission, then I think the performance of the NCA is much better. But you are aware that it does not operate on a stand-alone basis. It operates on—

**Mr Marsden**—I realise that. It does have joint task force tasks. Certainly, I have been involved, if I might say, in a number of those situations with New South Wales. I am well aware of that. But you cannot extrapolate the figures because you have to then look at the figures of the joining task force of the state instrumentality. These are the pure figures that you can deal with.

**CHAIR**—They are the figures that relate to persons charged directly by the NCA. If you were to then look at the task forces and the charges laid then the figures actually change quite significantly.

**Mr Marsden**—But they do not necessarily change the dollar per conviction, because you do not know what moneys have come in from the state governments in relation to the task force because they have been funded by state governments.

**CHAIR**—The point is then that the whole sort of measurement in this sort of way—I mean, the way that you have put it—sensationalises it and it implies that \$866,840 per conviction is somehow too high.

**Mr Marsden**—What I am saying is that, if a conviction to achieve a result is going to cost a million bucks, so be it. But I am saying that the type of convictions that have succeeded, the money has been put in during the years of its existence, their results at this stage have not been too damn good.

**CHAIR**—We had that proposition put to us early this morning, again dealing with the latest annual report, where there have been some fairly significant criminals gaoled for very long terms for drug offences, and we went through them because somebody made the same statement that you did—one of your colleagues actually.

**Mr Marsden**—One of my colleagues, Mr Cusack.

**CHAIR**—Yes, he made virtually the same contention. We pointed out to him that there were a number of—

**Mr Marsden**—He had an involvement as I remember.

**Mr FILING**—He was a member.

**Mr Marsden**—He was a member, yes. I did not hear his evidence this morning, but I have heard him speak on other occasions and he has been somewhat critical. I do not know whether he was this morning or not.

**CHAIR**—Yes, he was but I think he accepted that there are listed in the annual report a number of fairly insignificant offences in a sense, relatively, but there are also a number of very big players—Mr Big or Mr Big Enoughs—that have been—

**Mr Marsden**—But would they not have been arrested, charged as a result of activities of state police forces?

**Senator CONROY**—I take you up on your conclusion following on from that point. Your conclusion states that this paper supports the dismantling of the NCA in its

present form. What would be the form that you envisaged as an alternative? What powers would that have?

**Mr Marsden**—Certainly not the incursive powers that this NCA has, but we put up a proposition with a number of other organisations at the time of the parliamentary debate on this issue. That went for three full days, if I remember rightly, and there were a lot of working parties. It is a long time ago. I am sorry, I do not have the memory of it. I think that, if you go back to those papers, you will find it. I tried to get the papers so I could re-read everything, and I had some difficulties. I could not seem to get hold of them. I presume they are in the parliamentary library, but I could not get hold of them.

**Senator CONROY**—This other form for the NCA to have the sort of powers that you have outlined in 6.2—intrusive powers that you define—the compulsion to appear, compulsion to produce documents: would you envisage that this other body would have the power to tap phones?

**Mr Marsden**—I think the present power of the federal government in relation to tapping a phone is satisfactory and its ability to give that power to organisations such as another body would be, as far as I can see, unsatisfactory. I do not think we should extend it.

**Senator CONROY**—There are some state police that do not have that power.

**Mr Marsden**—All of them do not have the power, do they?

**Senator CONROY**—I think we got evidence yesterday that some state police may have the power or the capacity to get—

**Mr Marsden**—They have got the capacity to get it but they have not got the automatic power.

**Senator FERRIS**—More difficult.

**Mr Marsden**—Yes.

**Senator CONROY**—We were told yesterday that the Queensland police, probably for good reason, do not have the capacity to get it.

**Mr Marsden**—Probably for good reason. But I would have some question about any police force having it.

**Senator CONROY**—That is really what I am trying to get—what your position is in terms of your argument.

**Mr Marsden**—My argument in relation to this is that the present situation where they require the authority of the federal Attorney-General's Department is a satisfactory restriction.

**Senator CONROY**—So, if the Queensland police were chasing or trying to detect a crop in North Queensland and they wanted to use telephone tapping, how would you envisage that they get access to it—by going to the federal Attorney-General?

**Mr Marsden**—By going to the federal Attorney-General, which is not a difficult task. For example, we have just seen in New South Wales a royal commissioner suggest to the government that, before the police go on a drug raid, they should get a civilian to come with them. I do not know whether you read that last week. I do not think it is very practical, but that is the recommendation because of the dangers of police being involved in drug raids without an independent person watching over their shoulders. I, therefore, would have grave difficulties with the police having power in drug raids.

You are probably aware that there are serious allegations that when the NCA was chasing Mr Trimbole most of the activities were being linked to him by police persons through telephones and that information was coming to those police persons by persons who were seconded to the NCA. So there are problems, and I would have some difficulties extending the power of the federal Attorney-General's Department in that regard.

You are undoubtedly aware, and it was criticised, that during the Wood royal commission the attorney—both the former attorney and the present attorney, so it was non-political—would not give the state government a blanket power for the Wood royal commission. That was on both sides of the political fence.

**Senator CONROY**—Given that the reference system in which you vote the special powers of the NCA is via a political body, effectively—a combination of the police chiefs and the state Attorneys-General, ministers for justice, or whatever they are called in the states—is that not an equivalent safeguard to having to go to the Commonwealth Attorney-General?

**Mr Marsden**—No. I know that some people here might be cynical when I say that, but the Commonwealth Attorney-General and his department is mainly comprised of independent lawyers. The committee that you talk about is, firstly, political and, secondly, again, I have grave difficulties with commissioners of police being on committees of that nature.

I believe that the appointment of the Commissioner of Police in this state to the ICAC review committee has damaged ICAC in its ability to investigate police. ICAC has carried out some very, very good investigations of this state and very successful ones, but its investigations in relation to police were criticised by Commissioner Wood in his



inquiry, whether it was justified or not I do not know. I think that they were compromised by having the commissioner on that committee.

**Senator FERRIS**—I have asked this question of a number of other witnesses. You have used a word in your submission which I have used in my question—that is, zeal, zealotry in the pursuit of individuals by the National Crime Authority. Would you care to comment in any more detail or more generally on why you think excessive zeal was used in the case that you summarise in here?

**Mr Marsden**—I am certainly prepared to talk about it as a general thing, and I will talk about it in the specific, if you like. But when people get into these positions, it becomes very obsessive with them. We are all human beings. We all have obsessive traits. We make mistakes and make judgments. They become convinced of the righteousness of their cause, and the righteousness of their cause overrides the better good such as the criticism of the police at this New South Wales royal commission. They were prepared to lie or anything to convince someone because they thought it was for the better good of society.

They lose reality or objectivity. We have seen it in royal commissions. In fact, without being too cynical, I have seen in one segment of a royal commission here for the last 2½ years where the objectivity has been lost in reality. To that extent, they think the righteousness outweighs everything, and at the end of the day I do not believe they are objective enough to carry out the tasks they are set to carry out. If there is a turnover of persons, if they are there on a contract for a period of time and they go out and change around, okay.

It is the same that occurs in the criminal law process. If I am only a defending lawyer, I came to totally believe that everyone I appear for is innocent, that the police always lie and the prosecution always lie. If I am a prosecuting lawyer, I have a like attitude. It is a very dangerous situation.

**Senator McGAURAN**—What is an example of the NCA's righteousness overriding—

**Mr Marsden**—I think in the Elliott one they went overboard. I think they went into it without any objectivity. I think it was just way over the top. The two decisions of—

**Senator McGAURAN**—Have you got another one which relates to perhaps something a bit more important than the Elliott one, which has been flogged around.

**Mr Marsden**—You are talking about the NCA. The NCA is secret and I do not—

**Senator McGAURAN**—Drug lords, drug barons, Mr Xs. Where is the zealotry

there that has been against the better good of society?

**Mr Marsden**—Firstly, can I say that the NCA does not publish their inquiries to that extent. You do not get a lot of publicity like you got in the Elliott one. I do not have specific examples of that. But if you look at organisations such as this, be they crime commissions, be they royal commissions, you can see it throughout any of that type of organisation where they have very little respect for individual liberty and privacy because they think that at the end of the day what they are doing is for the better good and therefore you can step on any toes to do it.

**Senator McGAURAN**—But that is not the NCA.

**Mr Marsden**—If you gave me every inquiry or reference the NCA has had since its inception then I could probably find something for you.

**Senator McGAURAN**—Yes, but dig, find—you do not know really. You seem to have come to the table with a prejudice, as general as it is, and you have been unable to nail it down.

**Mr Marsden**—I made my position clear. As the Council for Civil Liberties has stated, we have a prejudice. We have a prejudice against any organisation that has the power to encroach onto a person's individual rights and liberties. I would have thought that you would respect that as a person elected to parliament. You are there to protect the rights and liberties of the individual—

**Senator McGAURAN**—I do not respect the way you have presented your civil liberties case. You have given no balance to it.

**Mr Marsden**—Well, that is your opinion, and I do not necessarily respect your opinion.

**CHAIR**—Do you have the same objection to the activities of the egg board and the noxious weed inspection—

**Mr Marsden**—They do not have the power.

**Senator CONROY**—We were told yesterday that the egg board has more power than the NCA.

**Mr Marsden**—I do not think they do. They do not have the power to force answers, the power to subpoena every document—

**Senator CONROY**—The white ant inspector can come into your house.

**Senator McGAURAN**—Do you want the drug lords cleaned up or not?

**Mr Marsden**—The drug laws cleaned up, yes.

**Senator McGAURAN**—The drug lords.

**Mr Marsden**—Yes, by all means.

**Senator McGAURAN**—So there has always got to be a balance to your civil liberties—

**Mr Marsden**—You obviously do not have a balance because you have come here prejudiced and are prepared to have a go at a civil liberties organisation. I do not know where you are from but I find you and the method of your questioning quite objectionable. If you put it on a balanced level, I will treat you on a balanced level.

**Senator McGAURAN**—Seeing you only gave us 30 minutes of your precious time for such an important inquiry, I thought—

**CHAIR**—Let us just cool it down a little bit.

**Senator FERRIS**—We had some evidence earlier this morning from Mr Cusack in relation to the need for very clear independence in the people who work in the investigative teams. Given the number of people who are seconded from state police forces and in particular the AFP, does your council or do you have a view on whether there is a preferable way of putting together the skilled investigators that make up those teams?

**Mr Marsden**—Yes. I certainly hold the view that it is best not to second them, if it is at all possible, from existing police services within close range. The success of the recent Wood royal commission on the police has to be sheeted home to the fact that they took police from everywhere who did not know each other. Unfortunately, the information I have over the history of the NCA is that, firstly, police have been there too long, and, secondly, in many joint efforts they have used groups of police from various states, and that occurred in the Trimbole matter; there was a whole group of New South Wales police who were here. None of them are now in the police service, as I understand it. So I think really you have got to look at the example set by Wood in New South Wales and look at bringing in one or two from each state to form your task force rather than a group. I think that is what they have done in the past.

There are also, of course, lateral investigators, where you can call in investigators from private investigating firms or experts in other areas to get into the investigating area. That is occurring more and more in policing.

**Senator FERRIS**—It was suggested by Mr Cusack and also by others that perhaps if you seconded people from a police force in a group of people or even individually they

may retain loyalty to the police force from which they came rather than identify a loyalty with the NCA.

**Mr Marsden**—I would very much concede that.

**Senator FERRIS**—How do you get around that?

**Mr Marsden**—It is again breaking that loyalty, that mateship, of the police services throughout the country. That is one of the enormous difficulties you have. A lot of the recommendations that are contained in the Wood report last week are going to try and break that. I do not necessarily put that on a pedestal as the perfect result, but I certainly say it is there to look at.

**Senator GIBBS**—Just following up on that, Mr Cusack said this morning that he felt the NCA should have their own investigators and he had a problem with secondment. Let us face it, in most local police in difficult states, the corruption is pretty systemic, isn't it?

**Mr Marsden**—Yes, enormous.

**Senator GIBBS**—I come from Queensland and—

**Mr Marsden**—Things have not changed.

**Senator GIBBS**—No, things have not changed. They have been involved in drugs, prostitution, and even one of our own national members of parliament who was an ex-policeman has ended up in gaol. His hands were not exactly clean. Going with Mr Cusack's thing of their own investigators, how would you be able to control it even if you did get police from different states who did not know each other? Surely just by the workings and getting to know what was going on, if they were corrupt by nature they would quickly pick up on what was going on. Do you think if the NCA did that maybe they could take them from the police academies everywhere and then do their own training and build up their own force that way?

**Mr Marsden**—I really think one of the steps in that direction is contract policing where you contract for five years so that they are on a contract to perform. They tried it here during the Fahey government and the police union stopped it, but certainly contract policing puts them on notice that they are only there for five years and going somewhere else.

Training them: a lot of the camaraderie and comradeship exists in the training process. Also one of the problems with the police colleges is that they have been thus far controlled by police. The committee may or may not know that I served on the New South Wales Police Board for some six years, so I know a little bit about these things. There

was an effort at Goulburn to turn it into a more academic institution. That was fought pretty strongly by the commissioner of the day and other police. I think again as a result of the changes that is going to happen.

But throughout the world you have problems with policing—the corruption is there throughout the world. You throw a group of very good honest citizens into dealing with the sleazy part of life and sleazy people and drug barons and people like that you really cannot expect not to have some persons fall to the enormous temptation. They are human. All police, NCA police and others, are underpaid. Police are terribly underpaid. They work enormous hours. A lot of people do not appreciate, and this is NCA police as well, that they work these odd hours where they might be on duty till midnight or one o'clock and they go home and get a couple of hours sleep, and suddenly they have to be at court at 10 o'clock the next morning even though they are not on duty. Marriages break up and there are alcohol problems. We really do not concede enough of the humanity of police persons and the problems they have dealing every day with this type of behaviour.

**Senator STOTT DESPOJA**—Senator Gibbs and Senator Ferris have asked questions in relation to secondment that I would have asked. But I am curious as to whether your organisation has received complaints from people who have been, or believe they may have been, under investigation by the NCA and feel thus that their civil liberties have been infringed upon.

**Mr Marsden**—I cannot answer that question; I am not the executive director. I have certain complaints referred to me but I cannot remember. I was away from the council for 12 years with my Law Society activities. We averaged something like 40 complaints a day. You have to judge which ones are genuine and which ones are not genuine and you take it from there. I would have to go through the records.

**Mr SERCOMBE**—I wonder if Mr Marsden might request the executive director to have a look at that.

**Mr Marsden**—I am only too happy to go through that and see if I can find that out for you.

**Senator STOTT DESPOJA**—Thank you, that would be appreciated.

**Mr SERCOMBE**—That would be very helpful.

**Mr Marsden**—I should also point out to Mr Filing that we are not connected as an organisation with the Western Australian organisation, because I received some complaints from politicians last year about whether we were the same organisation. I am just letting you know that we are not the same organisation.

**Mr FILING**—I knew that.

**Mr Marsden**—You knew that.

**Senator STOTT DESPOJA**—Following on from Senator Conroy's question: you have quite clearly recommended the abolition of this particular body. Obviously, you have an objection to certain powers and the very wide ranging powers of this body—but would not the same purpose be served if they were stripped away? I am trying to work out what the answer is because being a good Democrat, as you suggest, I do have a problem with people's civil liberties being infringed upon. But, by the same token, I recognise there is a strong argument in favour of an organisation that exists to combat specifically organised crime. So are we talking about a severe stripping away of the powers which are the most offensive, or are we talking about reconstituting a body or forming a new body? I am trying to find out what the answer is.

**Mr Marsden**—We at the time of its formation said it was not necessary. I have not been convinced that it is necessary. At the time it was an obsessive desire of the then Attorney-General, Gareth Evans, probably because Mr Evans read about it or heard about it in some forum overseas. I think that he himself would now have some doubts about its activities, although I would not try to pre-empt what he may or may not say.

**Senator CONROY**—It is in confidence.

**Mr Marsden**—Only if it is in confidence. That gets back to the whole scenario that it is in confidence. Are these organisations necessarily competent with this type of power? We have in this state a body called the crime commission, which has this sort of power and which in fact works well with the NCA.

If you look at the information coming from the Wood royal commission, the crime commission has not been capable of picking up corruption in the New South Wales Police Service at all: they investigated Lysaght and found nothing; they investigated the joint task force and found nothing. I am suggesting with respect that some of them are pretty incompetent. You give them these excessive powers and they do become incompetent.

I do not want to go into this in an open forum, but no-one knows more than me what it is like to have been subject to incursive powers over the last 2½ years. I have experienced it first hand. If I sat here in a closed circuit, I would tell you about it but, at the end of the day 2½ years later, I am still here. It has not happened and I am still around.

**CHAIR**—At some other time we might take you up on that. I understand entirely where you are coming from. I imagine you are entitled to have the very strong views that you have. That probably explains the sort of difference of opinion you had with Senator McGauran. Your submission is helpful, although provocative, and we do not expect it to be otherwise. Are you confident of the political process? Somebody yesterday paid our

committee a compliment—or parliamentary committees in general—and said they were really in a sense the only hope.

**Mr Marsden**—I recently appeared and gave evidence before a committee on international prisoners and I was very impressed with the whole operation of the committee and the final report. I must say that, every time I have given evidence before one of these committees, at the end of the day I have been impressed—except for one which was a committee on legal aid. I was not terribly impressed with the outcome of that committee because we still do not have enough money for legal aid but, again, I suppose that was a money thing, wasn't it?

**CHAIR**—We cannot always deliver the money but we will hopefully come up with some recommendations that might even take account of some of your concerns. You said that the NCA continues to violate the rights of every citizen of this nation and we cannot sit still while that happens but where—

**Mr Marsden**—The power which the NCA has allows it to violate the rights of every citizen of this nation.

**CHAIR**—But you are not saying it does?

**Mr Marsden**—No, I am not saying it does.

**CHAIR**—Because there are not hordes of people complaining. The number of complaints against the NCA and this committee has seen most of them—

**Senator STOTT DESPOJA**—Some of them might not know.

**CHAIR**—They might not know, but the ones we know about you can count on two hands.

**Mr Marsden**—Chairman, the situation with the number of complaints is that, firstly, a lot of them would not know and, secondly, when you get a complaint, you do not know the extent of that complaint until it is fully investigated and those complaints are not being investigated. I think Trimbole was a curse on this community but the way they dealt with that case and the leaks that came out of it were quite horrific. I was stunned at the whole scenario in relation to that case. I just do not think you can trust human beings with this sort of power.

**CHAIR**—There are lots of safeguards. I mean, are you aware of the many safeguards so far as the NCA is concerned?

**Mr Marsden**—I am aware of lots of safeguards.

**Mr FILING**—Mr Marsden, I am just interested with the theme of your submission. Bearing in mind that you acknowledge there is the necessity for resourced investigations of things like organised criminal drug networks and all the rest of it, can you think of elsewhere of any particular jurisdiction that might provide a sort of model in the absence of a body such as the NCA? You obviously have a very strong view about the Police Service and a very strong view about police commissioners—

**Mr Marsden**—No, not all commissioners. I made a comment about—

**Mr FILING**—In fairness, your counterpart, Robert Richter, whom you quoted here has a very strong view about the commissioners being happy with the NCA because the NCA is now doing more or less what he considers they think is their bidding rather than acting as an independent body.

**Mr Marsden**—Yes, Mr Filing, but you saw what happened to the FBI in America when it was under one person and how horrendous—

**Mr FILING**—Not personally—

**Mr Marsden**—I will accept the cynicism of the comment. I would just say that these organisations really do get out of control and can be abusive because of the powers they have, and that is a danger.

**Mr FILING**—Your submission is quite central to the function of this committee and to our inquiry. Now in offering your suggestion that it ought to be wound up essentially, what alternative model would you see as being able to perform the functions that it has?

**Senator CONROY**—You could forward us the information.

**Mr Marsden**—I think I would like to apply my mind to that. I started off by saying that the less prohibition you have, the less need there is for a NCA or special crime forces. But, of course, that is not something that will necessarily gather support around this table—I appreciate that.

**Mr FILING**—Crime generally is a means of enriching yourself and not necessarily of participating in a particular illegal transaction.

**Mr Marsden**—Yes, I understand that—

**Mr FILING**—I mean, if you do not deal in drugs, you will deal in something else.

**Mr Marsden**—I would rather have my alcohol controlled by the government than by the black market and I would rather have my marijuana controlled by the government



than by the black market.

**Mr FILING**—But according to recommendations of the Wood royal commission—and one of them was this idea of having shooting galleries—it would be a lot easier for youngsters to participate in shooting galleries than it would to purchase cigarettes at a newsagent, which would seem to me to be a perversion of government regulation.

**Mr Marsden**—Yes, but it is a lot easier for youngsters to buy heroin up at the Cross than it is to buy cigarettes at a shop.

**Mr FILING**—Yes, but your contention about prohibition does not take that into account. I mean, you are not suggesting, for instance, that heroin should be decriminalised.

**Mr Marsden**—No, I said it should be brought into a harm minimisation program.

**Mr FILING**—Well, it has been tried elsewhere and failed miserably.

**Mr Marsden**—That is another argument.

**CHAIR**—We might have to speak with you about that another time. We might take up your offer to come before the committee in a closed session to hear something about some of those other matters.

**Mr Marsden**—I would be quite happy to do that because I think that, particularly in the area of trawling for evidence, you would be somewhat surprised at some of the things I would be able to tell you. But I would not be able to do that in public.

**CHAIR**—I understand that. Your evidence is certainly helpful. Obviously, there are extremes: there are people telling us the NCA is a great organisation doing a great job; and you are at the other end of the spectrum telling us just the opposite. We will balance those things up and hopefully come up with a report that will somehow satisfy most people. Thanks, Mr Marsden.

#### **Luncheon adjournment**

[2.16 p.m.]

**SELMES, Mr Tony, Executive Director, Motor Traders Association of New South Wales, Locked Mail Bag 5012, Darlinghurst, New South Wales 2010**

**CHAIR**—Welcome, Mr Selmes. The committee has received your submission. Is it the wish of the committee that the submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The document read as follows—*

**CHAIR**—Before inviting you to make an opening statement in support of your submission, I am required to state that, if during the hearing you consider that information you might wish to give or a comment requested by a committee member is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. Tony, did you want to make some additional remarks or speak to this?

**Mr Selmes**—Yes, if I could.

**CHAIR**—Go ahead.

**Mr Selmes**—By way of background, the Motor Traders Association is an industry association consisting of about 5,000-plus businesses basically in the retail segment of the motor industry. One of our primary goals is to represent and promote the industry's interests in the community. As part of this function, the MTA establishes committees that give consideration to problems that concern the industry and society in general.

One of these problems is in the incidence of motor vehicle theft, which the association believes is unacceptably high. The MTA is the retail motor industry's representative on the New South Wales police commissioner's Motor Vehicle Theft Steering Committee. I act as the convener for the Motor Traders Association of Australia Motor Vehicle Theft Working Party and, as such, am a member of the National Motor Vehicle Theft Task Force, which was set up by the Prime Minister and premiers in dealing with crime generally. I am also a member of Crime Stoppers here in New South Wales.

I need to point out that motor vehicle theft is recognised as a major crime problem in Australia and costs the community in excess of \$1 billion annually. Police investigations of motor vehicle theft have revealed that professional theft is organised and is a national industry that transcends the borders of states and territories. My own experience as a Toyota dealer on the Gold Coast during the 1980s was that within the first four weeks of opening a dealership at Nerang I had three vehicles stolen and I did not know what had hit me. Those vehicles subsequently, I believe, ended up in South Australia.

**Senator CONROY**—Off the lot?

**Mr Selmes**—Off the lot, brand new. They disappeared. No matter how I increased the security of the premises, of the dealership, they still disappeared during the first four weeks. I thought I had made a terrible decision to live on the Gold Coast, which I have never felt that in all honesty.

There is a high probability that criminal activities such as tax evasion and money laundering are connected with vehicle theft, particularly the purchase of vehicles at insurance salvage auctions. There is an obvious role for the NCA to play in the

investigations of such criminal activity. There should be a greater degree of flexibility and broader focus in the NCA's operations to allow the investigation that this matter deserves.

The National Motor Vehicle Theft Task Force has realised the importance of a systematic approach to vehicle theft investigation and has recommended that the Australian Bureau of Criminal Intelligence conduct an ongoing strategic assessment of criminal activity. Notwithstanding this recommendation, MTA New South Wales sees a role for the National Crime Authority in breaking up existing organised theft operations.

Professional thieves steal vehicles for two main purposes. Firstly, vehicles are stolen for 'rebirthing', a process whereby legal identities are transferred to stolen vehicles to legitimise those vehicles. The second component of professional theft is where vehicles are stolen and stripped of their parts. The components are stolen from a vehicle and then sold to dishonest individuals and businesses who use the stolen parts to repair smashed or damaged vehicles.

This also places legitimate traders at a significant commercial disadvantage against those who are trading in illegally obtained spare parts. Indeed, part of our focus as an organisation representing the repair industry is that our members are commercially at a great disadvantage against the activities of the people involved in professional car theft. It makes it extremely difficult to continue on in business meeting all your legal obligations as you go.

The role of public motor vehicle auctions, particularly insurance salvage auctions, cannot be downplayed when considering the problem of professional motor vehicle theft. The link between the availability of vehicle identifiers and the incidence of professional theft is accepted, drawing the Industry Commission's attention to its 1995 report entitled *Vehicle and recreational marine craft repair and insurance industries*. The commission considered that 'the scope for stealing vehicles is enhanced by the sale of wrecked vehicles with their identifiers intact'.

Unacceptable to this association has been the willingness of auctions to fuel the professional theft industry by selling vehicles with their identifiers intact. The incentive to auction written-off vehicles has indubitably been a commercial one with insurance companies knowingly receiving inflated returns for the sales of these vehicles. The responsibility to stop car theft and the laundering of stolen cars or stolen parts lies with government, and this responsibility cannot be abrogated to the private sector.

Briefly, we suggest that the areas for resolution include the following. Professional vehicle theft can be minimised by adopting a national wrecks register in conjunction with a prohibition on the re-registration of total loss vehicles. In that regard, we firmly believe that the identifiers of the vehicles that are written-off by the insurance companies should not be allowed to re-enter into the registration process. So when people get a fixation about the motor car or having the compliance plates fixed to the vehicle, or whatever, that

is really irrelevant.

Professional thieves have the ability to reuse the numbers which they have just bought at auction from a vehicle that may be the size of this table and as thick. As long as the identifiers are on them, they could be paying thousands of dollars for a vehicle like that purely because the identifiers are on those vehicles. The professional thieves buy them. They pay them money. Insurance companies know that that is why they are getting such extraordinary money for something that size, yet the process is ever onwards.

We believe that component labelling and appropriate record keeping of the parts should take place. There ought to be a national approach to uniform registration procedures. Indeed, it is quite easy to see that the registration procedures across Australia are lax in varying degrees. I would have to say that, in my experience in Queensland, New South Wales and the ACT, New South Wales would probably have the strictest set of rules, but even those rules can be bypassed. As far as the other states are concerned, I think it is a far easier matter to register vehicles that have been rebirthed using this process of buying salvaged wrecks.

There ought to be national data swapping of stolen vehicles and vehicle parts by police and other government departments. In this regard, we have been very strongly supportive of that exchange of information. In my capacity as a member of the National Car Theft Task Force, we have been concerned about the appropriate funding for arrangements such as a national exchange of police information, NEVDIS—a national exchange of vehicle details information service—and so on. These things are attached to a national system providing the registration authorities and police authorities with details about motor vehicles that are part of the stolen car racket.

Generally speaking, manufacturers ought to continue their improvements of vehicle security. We have previously written to the National Crime Authority saying that there ought to be greater involvement in and a nationally coordinated investigation of professional motor vehicle theft. The response we received, understandably, was that they had other priorities. So on the basis that this is not a matter simply for New South Wales, Queensland, the ACT, Western Australia or whatever, it is a national problem. These thieves can pack them in the back of a semitrailer and basically overnight—certainly two nights later—could be just about anywhere else in Australia.

The people who lose out in all this are the legitimate businesses as well as the consumers, the policyholders, the voters and the insurance companies and then, in turn again, the policyholders through having to pay higher premiums. We believe that these organisations are not restricted by state boundaries. They are very much in the business of doing it nationally, and I would commend that to you.

I would like to make available for the committee to table a discussion paper by the National Motor Vehicle Theft Task Force entitled *Motor vehicle theft reduction plan*,

which was released to the public yesterday. It is a draft plan and discussion paper about a whole lot of things. It is about a national wrecks register; it is about uniform registration procedures; and it is about pre-emptive action in terms of educating young people that joy-riding is not just joy-riding, it is theft and the path that that takes them down.

There is a range of recommendations which I think ought to be taken into account. But the focus of what we are trying to do is to say: it is a national problem, not just a state border problem. I also table for the committee's indulgence correspondence that we have had both with the National Crime Authority, their response to us and a copy of the points that I have made in my introductory comments.

**CHAIR**—Thank you very much, Tony. What is the national car theft task force exactly—who constituted that?

**Mr Selmes**—It was set up by the former Prime Minister and the premiers to specifically address theft and crime issues and to focus particularly on car theft bearing in mind its cross-border implications. We have been set a task to involve the motor vehicle manufacturers; the organisations representing the retail end of the chain, which is in fact ourselves; the insurance council; and various police bodies across the state. It has basically meant that each state has a car theft reference group which generally is under the auspices of the police commissioner of the particular state and, from there, we have tried to develop downwards areas of mutual concern and possible suggestions for resolving these cross-border issues.

**CHAIR**—This is the report of that task force?

**Mr Selmes**—The draft is a discussion paper which was released yesterday. The process is open now until the middle of June to come up with the endorsement or otherwise of the recommendations that we make in the report. Those recommendations will then go back to the lead minister to take back to the Prime Minister and the Premiers Conference in relation to crime and theft.

**CHAIR**—So if those recommendations are adopted, will that address the problems you have talked about?

**Mr Selmes**—It will address some of the problems. I guess that, as national parliamentarians, you have a greater appreciation of the diversity of rules and regulations across the country and you would acknowledge the desirability of having a uniform basis of dealing with issues. Even if those recommendations were addressed tomorrow, it would not solve the problem straight away. The reality is that those recommendations will not be adopted tomorrow; nor will they be fully implemented, if I were to be really hard-nosed about it.

It is a multifaceted approach which needs continued pressure from the crime

investigatory function, from our own state police and also a political will in order to introduce a uniform national wrecks register. We also need a uniform series of minimum standards for registration procedures so that people cannot easily simply transfer a car, deregister it in one state, take it to another state and no-one knows or is none the wiser—except the consumer in the end or the industry in this state which has to make good the title of the vehicle that is subsequently found to be stolen.

So there is a commercial consequence in a double sense: one for the insurance companies when they pay out their policyholders; and a second one for the industry because, if it is sold through the normal commercial chain, those dealers generally have to make good those titles. That is another cost to the community because it is another cost that is passed on to the cost of selling motor vehicles.

**CHAIR**—You implied—and I got the impression from some of the things you said in your brief submission—that there was a degree of collusion, whether it was overt or it was in a less overt way, by insurance companies and I think you also mentioned the activities of some of the major car auctioneers. Do they know what is going on and just turn a blind eye to it?

**Mr Selmes**—I think there are certain commercial imperatives that deal with this issue. The fact of the matter still remains that the prime source, as we understand it, of the identifiers that are used in the rebirthing of stolen vehicles comes from vehicles that have been sold as salvaged vehicles through the auction system and more particularly through the insurance company salvage auction system.

For some years our association has battled the primary insurer in this state who also happens to have probably the major salvage auction—namely, the NRMA insurance company—to successfully argue that there are costs involved in this process and the short-term gain you might get from the incredible return you get on the salvage wreck is not compensated for by the pressure that applies to the premium that is paid by the policyholder. I believe that finally that story is getting through to the insurance companies that the people involved do look to the insurance salvage auctions to source their material of identifiers for rebirthing stolen vehicles.

**CHAIR**—But, still, what you said is that somebody will pay a few thousand dollars for something, even though it is a total wreck, as long as it has this appropriate number attached to it and they do it without any qualms, although they obviously know exactly what is going to happen to it; is that right?

**Mr Selmes**—I am in the position where I certainly would not like to imply deliberate collusion, but I would say that it is an extraordinary windfall for the auction system and the insurance companies to be able to dispose of these vehicles. Our proposition has always been that, with those vehicles that are written off by insurance companies, the numbers—the identifiers, the VIN number, the engine number and the

chassis number—should never be available for re-registration by registration authorities. If that decision were taken tomorrow, the price on salvage wrecks at the auctions would collapse. I have absolutely no doubt about that whatsoever. That, in turn, means there has to be some process of adjustment backwards through the way insurance companies account for their business, but that is the way it is.

**Senator FERRIS**—Can I ask you whether you believe organised crime is involved in this? Is it used as a technique for money laundering?

**Mr Selmes**—I believe it is. Obviously, I am not a professional crime fighter but the anecdotal evidence that we are given from our members from time to time is that this is a means of laundering money. For instance, we have suggested to AUSTRAC that they ought to station a few people at the auctions and take note of the people who pay significant amounts of money in cash to buy these so-called wrecks because we believe that would start to lead them into a whole lot of areas that, at the risk of implying some ethnic connections, would be fairly transparent.

**Senator FERRIS**—Have you drawn this to the attention of the NCA—I realise you have tabled some letters but we have not had the benefit of those yet?

**Mr Selmes**—Yes, we did write to the NCA pointing out that we believe that the national stolen car theft racket was a matter that they ought to have a look at, with its cross-fertilisation into drugs and whatever else.

**Senator FERRIS**—And they said in their letter that they did not think it was on their ‘menu of work’?

**Mr Selmes**—I did table that letter and I accept that we all have constraints as to how we go about our business. Can I sum it up by saying that the NCA stated:

... a ‘menu of work’ or designated areas of major organised crime. . . . The ‘menu of work’ governs the essential investigative focus for our agency.

...  
It is very difficult for the NCA to take on any investigation which falls outside the ‘menu of work’ let alone consideration of appropriateness in terms of our charter . . .

I regret that the NCA is unable to assist you, we do however, acknowledge your concern  
...

**Senator FERRIS**—But in the letter that you wrote to them you outlined that you believed organised crime was in it and you believed money laundering was in it; is that right?

**Mr Selmes**—Yes, we did. I said:

The MTA has advised agencies including the NSW Police Service and the Australian Transaction



Reports and Analysis Centre (AUSTRAC) of possible criminal activity such as tax evasion and money laundering connected with the sale of wrecked vehicles at insurance salvage auctions and with professional motor vehicle theft generally.

**Senator FERRIS**—Is there a national database of registered motor vehicles or is that simply state based information which is shared on an access basis?

**Mr Selmes**—Yes, it is the latter. There is no national database. Can I hasten to add that we do not believe there is simply the need for another bureaucracy at another level, but certainly we need to get to the stage where various state agencies can interchange information.

Can I point out to the success, from our point of view, of the registered encumbered vehicles system, REVS, for which our association funded a feasibility study back in the late 1980s to establish a register so that all financial companies had to record encumbrances. We were told by the various groups, 'It is impossible. You can't just make it work in the one state.' We took the view that, if you make it work in one state, you then simply shift the problem to the other states and all of a sudden they discover they have a problem and then they become part of it.

I am pleased to say that, at the beginning of this year, most Australian states now have their own REVS which does interchange with the New South Wales one. New South Wales took on the responsibility for the ACT and the Northern Territory and has now facilitated this exchange of information. The simple availability of that information means that anybody—the public or the industry—can ring up and find out whether a vehicle is encumbered or not.

By the way, they also record details about stolen vehicles. But I understand that, even as late as now, there is no immediate transposition of the information from the police service, for instance, to REVS; so there could be a delay. Someone could ring up today and say, 'Is this car all right?' and REVS says, 'Yes, it is.' Two days later they sell it and the new, excited owner goes to have it transferred to their name but then another day later the police are knocking on the door saying, 'The vehicle is stolen, give it back.' So you have this process.

One of the key recommendations in this motor vehicle draft discussion paper is about providing that national exchange of information. One of the areas of concern is the national exchange of police information, or NEPI, system on the vehicles of priority for the police service due to the lack of funding. I think it is a great shame that, for the sake of probably \$3 million or \$4 million, a \$1 billion illegal industry does not take a big knock—plus the flow-on to other areas.

**Senator FERRIS**—Just one other question to clarify this in my mind: this process of rebirthing could mean that cars are transported inter-state unregistered; so perhaps that

process might take in New South Wales and they would then be registered in South Australia. Is that the way you say it works?

**Mr Selmes**—When you talk about rebirthing, there are a couple of things with the interstate trade. I guess it would be useful if the committee could ever get a chance to go to a salvage auction and have a look to see what happens. What can happen is that the thief can either have stolen the vehicle already—the day before or the week before—or has lined up one that they are going to steal at a car park. They say it is a Holden automatic Berlina sedan. They then go to the auctions and bid for a Holden Berlina automatic sedan that is a wreck. They simply change the identifiers on the vehicle that they have stolen—or are about to steal—go to the registry and register it, and then, off they go and sell it in publications like the *Trading Post* or by the side of the road or whatever. It is as easy as that; and it is too easy.

**Senator FERRIS**—So it could be that the whole process takes place in one state or it could be that the vehicle is transported overnight and sold in another state?

**Mr Selmes**—That is absolutely right.

**Senator FERRIS**—And there would be no way of checking it in either process under the current arrangement?

**Mr Selmes**—Unless we bring about a uniform registration process which requires certain things. For instance, in New South Wales, you are required in the registration process to provide proof of ownership. That means you have to show a bill of sale and receipts, as well as identifying yourself through your licence, passport and credit cards. You take reasonable precautions to see that the person in front of you is the person who says they are the person who wants to register the vehicle.

So the rebirthed stolen vehicle can be done in this state but also can be done out of state. It also means that vehicles can be stolen here and, without changing the identifiers, can go to Melbourne, South Australia or Queensland and be registered anyway. So there are rebirthed stolen vehicles but there are also straight-out stolen vehicles, and both of them involve cross-border activity.

**Senator FERRIS**—Thank you very much.

**CHAIR**—Are there any other questions? Tony, thank you very much. Obviously, the committee's inquiry is focusing on the effectiveness of the NCA as it is. Your submission and what you have said today indicates that you believe the NCA should be taking a role in this particular issue.

You have not questioned—nor I assume would you—the job it is doing in terms of what its assessed priorities are. But I think the committee can deal with this matter. We

will have a close look at the draft paper and hopefully we can raise it with the NCA directly when the opportunity arises—maybe even this afternoon while they are here. Of course, we can also address the issue in the context of our report to the parliament, which we will finalise before the end of the year. Thank you very much for your time.

**Mr Selmes**—Thank you, Mr Chairman.

[2.55 p.m.]

**SAGE, Mr Tim, Former Regional Director, National Crime Authority, c/- GPO Box 3880, Sydney, New South Wales 2001**

**CHAIR**—I welcome Mr Tim Sage to the committee. Mr Sage is the Assistant Commissioner of the recently established Police Integrity Commission here in New South Wales. As I understand it, he was formerly involved—and still is involved in its wash-up—as assistant commissioner to Justice Wood in his royal commission just completed, and was formerly the regional manager of the NCA and manager of the Sydney office of the NCA.

We have not received a written submission from you. Before inviting you to make a statement, I am required to state that, if during the hearing you consider the information you wish to give or comment requested by a committee member is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. As you are a public officer, I should also point out that you will not be expected to comment on matters of government policy. Mr Sage, would you like to make some opening remarks?

**Mr Sage**—Firstly, as you have rightly pointed out I am here in my former capacity as a member of the staff of the National Crime Authority and not in my present position of Assistant Commissioner to the Police Integrity Commission. I make any comments in that context. I was a member of the staff of the National Crime Authority in the Sydney office from late October 1986 until 28 April 1996, when I went on secondment to the royal commission as a member of its staff in the late stages of its work. Then, on 14 October 1996, I was appointed to my present position.

I was first recruited to the National Crime Authority by Justice Stewart, the then chairman of the NCA. I was a principal legal officer on his staff. By 1989 I started to act in higher positions, and ultimately in the position that I held from 1990 until I left last year. I have served under all the chairmen of the National Crime Authority to date.

I guess I had a real commitment to and a belief in the National Crime Authority. That was why I initially sought to go there—I thought I could make a commitment to the fight against organised crime. I liked what I knew the National Crime Authority was about. I thought I understood its history in that it was established as a result of the recommendations of a number of royal commissions in Australia and a National Crimes Commission that met before the authority was established.

With the coercive powers that it was given by government, with the mirror legislation in the states—every state—and with the federal jurisdiction, I saw that it made it a very powerful body if it was properly led, and it targeted organised crime at the right level. So I believed that it had the tools to do that. I had an interest in the investigation of

organised crime, as I have said, and that is what attracted me to it.

I left it, as I have said, only last year. My resignation was effective as of only last Friday, 16 May. After I had finished a term of secondment I then negotiated with the now chairman of the authority, Mr Broome, to be granted leave without pay. Ultimately, his decision was that I would not be, and I tendered my resignation effective last Friday.

I still have an interest in that type of work. I have moved into an organisation that has similar powers, albeit they are confined to the state of New South Wales, but I have led multidisciplinary teams and I understand that concept very well. I have worked with police from every state and territory in Australia and have recruited them into the National Crime Authority. In my present position I have also recruited investigators from interstate into the Police Integrity Commission, so I have a fairly broad and detailed experience in this type of work.

So I accepted your invitation to come today because of the very senior operational position I held for a number of years in Sydney and because of the knowledge and experience I gained in that position. Also, I guess I was instrumental in commencing some investigations that resulted in some very good outcomes for the National Crime Authority and for Australia—investigations that I believed went right to the top of national and international organisations. The methodologies that we applied in Sydney were very effective at that level, so that is very briefly the reason I may be of some assistance to you and agreed to come along on your invitation.

**CHAIR**—Thanks, Mr Sage. You are aware of the terms of reference for our inquiry, which go to the very heart of the reason to be of the NCA, and ultimately our recommendations will look at the future of the NCA as how it should be constituted, what improvements can be made to it—I suppose ultimately as to whether it should exist at all. If you listen to some of the witnesses we have had today they would tell us it should be disbanded. At the other extreme, I suppose, we have had people telling us it is doing a great job and that indeed its powers should be strengthened. The remarks you made were somewhat circumspect—you talked about your enthusiasm for the NCA and that that is why you went there: can we infer from that that you no longer have quite that same degree of enthusiasm?

**Mr Sage**—Not because I am no longer in it, but I am little sceptical about where it might be going and whether it can continue to be effective—for a number of reasons, the first being that I think the budget allocation to the NCA has been diminished over the last few years, as has the allocation to the Federal Police, I understand. I just doubt now whether both organisations can continue to stand in their own right and be effective. I believe they have probably been trimmed well below the level of funding where they can operate as effectively as they should. So that is one reason that I doubt the continuance of the NCA in particular in its present form.

I guess money is not the only factor that should be considered. It is extremely difficult in an organisation of the nature of the NCA where there is constant criticism of it. As you say, today you have heard even more criticism of it and demands for it to be closed. Again, I have probably heard similar sentiments expressed many times and have been a part of a team in the National Crime Authority who have responded to those criticisms over the years.

Within the authority I have observed that a portion of the resources and the energy of the organisation has been committed to dealing with those issues, in the sense that it needs to fight its own fight to survive. That at times has been very debilitating to the NCA and some of the strongest critics of the NCA have been other law enforcement agencies and some very senior figures in those law enforcement agencies who have been required by their own legislation and the NCA's legislation to work with it in cooperation. So there has been that constant criticism of the NCA.

And, of course, there have been a number of reviews of the NCA in what I might term its very short life. At times there has not been a strong apparent support of the NCA by those in power in government. I wonder at times whether there is a strong commitment to law enforcement in agencies such as the NCA in government. If there is not, that is a sad thing for Australia. If there is, it has not always been communicated as strongly as it should be.

The thought has run through my mind on many occasions as to whether there is a strong position held in government—and I am talking about both governments now—for two agencies at the federal level. I think it is important that this government and any other government comes out and makes its position very clear in relation to what it believes should be the appropriate agency or agencies for law enforcement at the federal level.

So if the position of this government is that there be only one agency, then I am tending myself, because of what I know and having worked in the organisation for a number of years, to believe that it may be time to revisit some of the issues that were discussed in the Commonwealth law enforcement review in 1994, including models such as what was termed then the Attorney-General's model—of having the one agency with the NCA coercive powers within that agency to be used in investigations of organised crime, not to be available for the policing type of investigations that the Federal Police are currently involved in.

So I do not have a concluded view about it, but I think that because of a number of factors that are now apparent it may be time to look at the issue of a single agency at the Commonwealth level. I know there are some difficulties in a legislative sense with the mirror legislation in the states, but I am sure that could be overcome.

There has been a constant competition—sometimes quite a negative aspect of contest or jealousies between the NCA and the Federal Police—and wherever I could I

worked to try to overcome that. Others have been very aware of it, and it is not easy to resolve. Again, it needs a commitment at the top of both organisations. Just today I looked through some of the recommendations of the Commonwealth Law Enforcement Review Committee and I see that a lot of those recommendations have not been implemented. That could be for many reasons, but it may be because there has been a lack of commitment to those initiatives at the top of the organisations. Those recommendations and the implementation of them need to be driven from the top and maybe they have not been in the past.

So, to summarise what I am saying, I believe absolutely there is a need for the NCA or an NCA type body with the powers that the NCA has. The fight against organised crime will be very ineffective if the agency who has the mandate to investigate it does not have the coercive powers of the nature that the NCA has. They are absolutely essential to the investigation of organised crime matters, particularly if you are going to get to the top.

The notice powers and the requirement to give evidence make the tracing of assets and the targeting of principals in organisations who are receiving large sums of money easier than it would be without those powers. It is not always possible to get sufficient evidence to reach the standard that is required to obtain search warrants; whereas, with a special investigation under a reference, the issue of notices and the recovery of documents is quite efficient and is necessary if you are going to be following assets.

To me, that is essential in the investigation of organised crime. They are in there for money. That is their motivation. Most of the top players around the world never get their hands dirty on the product, they never touch it, but they certainly receive the proceeds. If you can focus on the investigation of the movement of money, tap into that and follow it, it will come down in a funnel effect and put you into the right level.

To me, that is what the National Crime Authority is about. It is not about doing state type investigations, drug squad work. It is about targeting organised crime at the top end, and how you get there is more effective with the powers that you have in the National Crime Authority. To close the NCA and walk away from those powers would be, to me, just a disgrace. So the retention of the powers is essential. Whether the retention of the NCA is a priority of government is another issue. But the powers should be contained within a federal body.

**CHAIR**—It has been said, in some quarters anyway, that the fight against drugs is being lost in Australia. We have had some discussions already and in fact your royal commissioner has made some recommendations, I suppose. I do not know whether you want to canvass those, but it is an issue for us. One of the criticisms of the NCA, and it was implied by Justice Wood in general terms, was, ‘If you can’t beat them on one end, you’ve got to try to attack them from another direction,’ and hence the idea that we can soften laws and so on tends to come through. It is not the first time it has come through from judges and royal commissioners. What do you feel about that?

**Mr Sage**—I will not canvass the recommendations of the royal commission because they are before government and those issues are for government. The drug problem is serious. I guess every initiative, whatever initiative you might consider, should be canvassed. There is no easy solution to it. Yes, on one hand it probably is very easy to say that the law enforcement war against drugs is failing. It is certainly not winning. It is still a problem and it is a massive problem for this country as it is for other countries around the world.

**CHAIR**—Should the NCA focus its attentions solely on the war against drugs? It has been suggested to us that it should be empowered to do the job and get it done. People have said they believe that, if it was properly resourced, focused and targeted on that issue, it could do the job.

**Mr Sage**—Confined to narcotics and money laundering investigations?

**CHAIR**—Yes.

**Mr Sage**—I do not entirely agree with that. I think that, wherever there is organised crime across state borders and international borders, those matters should be appropriate for the NCA to receive a reference from government for the investigation of them. Yes, narcotics is a major problem for society. But at any one time there may be two or three other very significant organised crime problems for this country or impacting on this country.

**Mr SERCOMBE**—I was wondering whether you might give us some opinions on the role of the region within the NCA structure, the relationship between your role as a regional director and the organisation centrally and whether there are, in budgetary matters, staffing matters, priority setting and strategic planning, I guess, adequate linkages at that sort of management level? Can you tell us about your experience?

**Mr Sage**—I have seen different models with different authorities. To me, another problem for the authority has been the constant turnover of staff at the top and the lack of continuity.

**Mr SERCOMBE**—At the central level rather than the region, or region as well?

**Mr Sage**—In talking about the relationship between the regional director and the national office or the central office, as you put it, of the National Crime Authority, there is a natural phenomenon: the new chairman and the new authority come in, they take an objective view of what they believe is happening within the authority and they put their own stamp on it. You have to be very flexible as a manager to be able to survive, because you are going in one direction under a chairman. He determines the priorities on the best advice he can get or forms his own opinion of what might be happening and he takes the authority in a particular direction.



Under Justice Stewart, as I recall, there was a sunset clause on the authority in the legislation until about 12 months before his term finished. So the authority was acutely aware of getting runs on the board, as it was put then. It at times, just to get those results, went into traditional police areas and got quick results, which got the state agencies and at times the federal police offside. These are the agencies that you are required to work with. Then the sunset clause was lifted and the authority under Stewart started to go into more proactive, long-term investigations. But that was for only 12 months or so.

Then Mr Faris came along. To put his own stamp, if I can put it that way, on the authority he determined that we should concentrate more on white collar crime and set about getting work in that area. So the staff and the regional director and leadership of the state office had to make a dramatic adjustment to try to come in behind the new direction. We had chairmen stand up in front of the staff and say, 'I'm here for the long haul. I'm here for four years and this is the direction we're going to go.' With Faris, in less than 12 months he was gone.

**CHAIR**—Not by his own choosing, exactly.

**Mr Sage**—No, not by his own choosing but by his own conduct. Then Justice Phillips came along and he was appointed. He took us again more into a white-collar area and our results in other areas diminished. We were more intelligence gathering based. He stayed for about 12 months. Then there was a gap and Mr Broome came along. Each chairman, although they say that they will not, has changed the direction of the authority, and it is—

**Mr SERCOMBE**—How would you characterise the authority under Mr Broome's stewardship, then?

**Mr Sage**—He was there for about only 12 months before I finished. We were still into a range of investigations under the menu of work that the Commonwealth Law Enforcement Review Committee had set, so there was a national coordination of investigations.

**Senator McGAURAN**—How did Mr Broome exactly change the direction?

**Mr Sage**—It has not changed dramatically. I have missed out one chairman who was there for four years, and that was Tom Sherman. It was under Tom Sherman that the recommendations of the review in relation to the menu were adopted. We had a coordinating role and we took on some national coordination responsibilities in the Asian and Italian organised crime area. There were a couple of national initiatives with the authority being more a coordinator of resources under a task force arrangement. That is being continued, as I understand it, under Mr Broome's leadership.

**Senator McGAURAN**—You could say that, under Mr Broome's leadership, the

focus has been more on the drug trade than it has been under any other chairman.

**Mr Sage**—Predominantly that is correct, yes.

**Mr SERCOMBE**—Do you have a view about the qualities required of a chairman? It has been put to this committee on a number of occasions that a person ought to have a fairly significant standing in the legal profession and ought to not have a public service background in order to operate at an optimum level as a chairman. Do you have a view on that specifically or—

**Mr Sage**—My strong view is that organisations with the power such as the authority has, if possible, should be headed by a judicial officer or a judge. That is just my personal view on it.

**Mr SERCOMBE**—Why?

**Mr Sage**—The powers can be very intrusive and they need to be administered, as I see it, by certainly someone with a very strong legal background. We go before judges to be granted telephone intercept warrants and listening device warrants. There is a recognition in parliament that that is necessary to protect the privacy of people and to properly administer those laws—

**Mr SERCOMBE**—There are some amendments before the parliament at the moment that in fact diminish that somewhat.

**Mr Sage**—Yes. I am vitally interested in that in my present position, because the amendments I am interested in are piggybacking on those. I believe the profile and the standing of a judge is necessary. The royal commission here in Sydney has been headed by a judge. That is obviously well known. I am sure that the government chose the royal commissioner because of his judicial standing and the position he held in the Supreme Court. That has been followed by a judge being appointed to the Police Integrity Commission. Again, it does not mean that in all cases a judge will be the best person. If I can put it in general terms, my position is that the NCA should be headed by a judge.

**Senator FERRIS**—Mr Sage, I believe you were here for some or all of the evidence given by the previous witness, Mr Selmes, relating to the motor traders and in particular stolen vehicles and the stolen vehicle market. Given that you were head of the National Crime Authority Sydney office during the time that he would have written to the NCA pointing out the money laundering and organised crime operation within the motor traders and stolen car market, could you give the committee some idea of why the NCA would have decided not to become involved in a request for investigations such as that?

**Mr Sage**—Firstly, I have no recollection of ever being aware that he had written to the National Crime Authority, so it was news to me today when he said that there had

been an exchange of correspondence. The only reason I know is the reason I have heard here today—that is, it was not a matter on the menu of the authority and they had plenty of other work.

**CHAIR**—The matter actually would have come to the Sydney office after you were seconded to the royal commission. In August you were at the royal commission.

**Mr Sage**—August 1996?

**CHAIR**—Yes.

**Mr Sage**—Yes, I was at the royal commission from April 1996.

**Senator FERRIS**—Given it would seem this has been operating for a long time, is it something that the Sydney office of the NCA would never have come across before? It just intrigues me that the two areas that the NCA has on their menu as important priorities—that is, organised crime and money laundering—were clearly identified for a long period of time as being part of this stolen car racket. It just does surprise me that the NCA, of their own volition, had not become interested in the area and perhaps referenced it themselves.

**Mr Sage**—I guess on a scale of one to 10, where does it fit?

**Senator FERRIS**—It is a national difficulty.

**Mr Sage**—You say it is a national problem, but I do not myself have any great knowledge of it. I am aware of car rebirthing and I am aware of some of the allegations that were made today about the auctioning of wrecks and about the premium price they bring because of the information that is contained on the identification plates that is then used to rebirth a car either in the home state or in another state. I can see from that that there could be scams operating in that industry, but I am not aware of it being a national organisation. I have no knowledge of that.

**Senator STOTT DESPOJA**—Mr Sage, you acknowledged that the NCA is a powerful body. You made reference to the potentially intrusive nature of the powers, be they coercive powers of having to give evidence or a range of powers. Do you believe there are adequate safeguards in place, or do you believe these powers are open to misuse or abuse? Do you believe that some of these powers have been abused during the NCA's history?

**Mr Sage**—In my experience in my office, I am not aware of them being abused. Yes, they are powerful. Yes, they need to be properly administered. I believe that to properly administer them where the buck stops at the top, there needs to be a depth of experience. That is one of the reasons why I personally believe it is a role for a judge or,

if not a judge, a very experienced barrister or solicitor. They need to have a combination of knowledge—with some knowledge of criminal investigations and hopefully organised crime activity and its nature in this country. So I think there needs to be a combination of qualifications.

But, no, I do not know of the misuse of the powers. Yes, they are very intrusive and they can be intrusive. They need to be, as I said, properly administered, and due consideration needs to be given to when they are used and how they are used.

**Senator STOTT DESPOJA**—Do you have any specific recommendations as to how the act could be amended in relation to changes to do with the composition of the NCA, bearing in mind your earlier submission regarding the idea of a single agency? Do you have specific amendments for changing the composition of the body? We heard earlier that people favoured amendments to the act in relation to the drafting of references: do you have any suggested amendments in relation to either of those?

**Mr Sage**—No, I do not, because I have not had time to consider, since I left, the reference issues. I have read the judgments, and I know that those matters, as I understand it, are still before the court—or some of them are before the court. So I have not had the need or the time to look at whether the act should be redrafted in relation to references. I am sure there has been a lot of work done and a lot of advice given to the authority in respect to those matters. It is just something that I would not comment on.

**CHAIR**—One of the criticisms of the NCA that has come through is that they are zealots—that they have been overzealous anyway in some of the inquiries that they have conducted or some of their activities: how do you react to that?

**Mr Sage**—I am pleased you qualified it with ‘overzealous’ because being zealous is a very admirable quality. It is a quality that is found in a large number of the staff of the authority. That may be the perception to the public, but—

**CHAIR**—Not only to the public but to some of the people that have been pursued.

**Mr Sage**—Some of them have been pursued?

**CHAIR**—Not the public, but some of the people that have been pursued by the NCA. I think they are more likely the ones that have described it as being—

**Senator FERRIS**—Victims of zealotry.

**CHAIR**—Yes, that they were overzealous.

**Mr Sage**—I am sure if they were not involved in criminal activity or organised crime activity it would not be of concern to them. In all cases, grounds are found to target

people and it does require a very dedicated, dogged investigative team to bring these people to justice. Organised crime participants are not easy targets. Particularly if they are well organised and structured and they have been around for years, they have learned their trade well. They have probably had the best advice they can get and it takes a lot of skill and sometimes a lot of time and money to run them down.

In some cases, there is a lot of failure in long-term targeting. But I guess there is always an outcome of it because you build your intelligence base. You might not get the charges that you want, but you certainly start to build or add a piece to the jigsaw that you are trying to put together of that organised crime enterprise.

**CHAIR**—What about the role of this committee? What was your experience of the parliamentary committees that were in operation at the time you were involved directly?

**Mr Sage**—This is my third occasion that I have been before an NCA parliamentary committee. On the other two occasions I participated in the briefing on some operational matters of the committee. This is the first time, to my memory, that I have given evidence.

I do not know that I can give a value judgment on the quality of parliamentary committees or their activity, because I have not been all that involved, being in a region. On all occasions it is the authority at the central level, as you put it earlier, that deals with the committee.

**Mr SERCOMBE**—Are you aware, Mr Sage, of the Australian Law Reform Commission's proposals with respect to NIIC or National Integrity and Investigations Commission with respect to the NCA and the AFP? If so, could you make some observations on that proposal and perhaps what sort of model might be desirable to carry out that sort of function for NCA activity?

**Mr Sage**—I read the reports some time ago and I do not know where it is at right now, but I question the need for it. I know that there were instances or allegations of corruption against the Federal Police that have come out in the royal commission. There has been an inquiry by Mr Harrison recently into some of the allegations against the Federal Police. I do not know that there is corruption in the NCA and the AFP to the extent that would necessitate a permanent body with the powers that were being suggested in that report. I just do not think that there is the work there. I have not seen, in my experience, evidence of systemic, widespread, whatever, corruption within the two federal agencies. They are very much smaller than the state police force here and it is just not on the same scale, and I do not think you could justify having a permanent agency with those powers. Perhaps the ombudsman's office with its role is still an adequate agency to address those allegations.

**Senator FERRIS**—Can I ask you for a view on evidence that was given to us

earlier today and to some extent yesterday about the difficulty of developing a sense of loyalty to the NCA when you are on secondment from a home police force interstate. It was suggested to us that many officers who are seconded still maintain a strong sense of loyalty to the state police force whence they came and that that might be adequately dealt with in employing people who are independent as distinct from seconded officers. Did you come across that difficulty?

**Mr Sage**—I certainly did. I recommended to the authority over a number of years that the authority contract investigators because of the loyalty that is always back to the home force. You come to the National Crime Authority as an investigator from a state or the Federal Police for two years or a maximum of three years. It stands to reason that your future is back in your home force. So you are always conscious of what is happening and your career path back in your home service and, whilst the authority may pay the salary for that time, the home force still owns the investigator. In some individuals they were loyal to the NCA but I believe there was always a part of them that was still back in the home force, and to me that is a natural phenomenon.

**Senator FERRIS**—Do you believe that the degree of difficulty that that created for people like yourself in the previous position that you had hindered in any way the quality of the work that those people were able to do, particularly if that work involved investigations in the state from where they came?

**Mr Sage**—That was an issue, yes, in the states. At times you had to choose the right investigators to put there and exercise some judgment about things such as the allocation of staff and who you would put back in that state. Those decisions were made frequently.

In Sydney, in running the NCA office, if I could have a group of investigators, maybe not all, who were contracted to the authority and had no loyalty or allegiance to any other body, that would bring a new level of loyalty to the NCA and, also, it would bring an element of continuity. If I could get them to be on my staff for five or 10 years, or at least make that commitment, there would not be this constant turnover. In Sydney at one stage I had over 60 investigators. In the main, most of them were there for two years.

So there is this constant turnover of investigators. Sometimes in a month you may lose four or five, in other months you could lose 10 if you had a recruitment program two years ago that suddenly came to an end. Some negotiation always went on with the police services. You could lose them even in a shorter period, if they sought a promotion back in the home force and they had to go back to take that promotion up. We never ever stood in the way of a career decision for a police officer.

So the authority did agree for me to recruit 10 investigators on contract and within two years the law enforcement review recommended that they become AFP officers. They went back in—they did not all go back in, some of them did not belong to it—but they

were made AFP officers so the contracting was finished. I am a supporter of contract investigators or some permanent investigators within the NCA.

I understand some of the arguments about the need to turn them over and have new blood coming through, and that is the anti-corruption policy and all those issues, but the downside of all that was you did not have continuity of investigators. You had to rely on the goodwill at times of the police service if you needed to keep an investigator for a longer period because you had a court case coming up or they were a key investigator in a long-term investigation that you had running and it was not appropriate to take them out. There is a whole range of issues.

**Senator FERRIS**—It is easy to see how it would be difficult to run a long-term investigative program, if you like, on somebody with a turnover like that. You just simply could not maintain the continuity of standard, surely.

**Mr Sage**—That is one issue. Also, at the recruitment it was difficult to get good investigators, or a continuity of good investigators, because most of the very best investigators were upwardly mobile in their own force. They did not want to leave there or their own force did not want to release them. So you get a range of experience and skills. At times we had police services who did not really care much about the NCA and it tended to be a bit of a dumping ground for investigators.

**Senator FERRIS**—It is easy to see how that could happen as well, I guess.

**Mr Sage**—There are a lot of issues in the police investigative side and the method of employing them.

**CHAIR**—As there are no further questions, Mr Sage, thank you very much for being prepared to come before us today. I realise it might have caused you a little bit of anxiety, but your comments have been extremely helpful to us and we appreciate it very much.

**Mr Sage**—Thank you.

### **Short adjournment**

[4.03 p.m.]

**BROOME, Mr John Harold, Chairperson, National Crime Authority, 201 Elizabeth Street, Sydney, New South Wales 2001**

**HAWKE, Mr Dene, General Manager Corporate, National Crime Authority, 340 Albert Street, Melbourne, Victoria 3001**

**LAMB, Mr Peter John, General Manager Operations, National Crime Authority, Cnr Elizabeth and Park Streets, Sydney, New South Wales 2001**

**MELICK, Mr Aziz Gregory, Member, National Crime Authority, GPO Box 5260 Sydney, New South Wales 2001**

**CHAIR**—I welcome to our public hearing officers from the National Crime Authority: Chairman, Mr John Broome; member, Mr Greg Melick; and two officers, Peter Lamb and Dene Hawke. The committee has received your submission and we have published it. Is it the wish of the committee that the submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The submission read as follows—*



**CHAIR**—Before inviting you to make an opening statement in support of your submission, I am required to state that, if, during the hearing, you consider that information you might wish to give or a comment requested by the committee is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also state, although I am sure you do not need me to, that, as public officers, you will not be expected to comment on matters of government policy.

Mr Broome, I do not know whether you would like to make an opening statement. This is only the second day of this inquiry, which will take us a number of months to complete. We thought it would be good for you to have the opportunity to meet us early in the piece. I am quite sure that we would like to give you the opportunity to meet us towards the end of the inquiry, at which time we might be in a position to discuss a number of options and some of our impressions of the inquiry as it transpires.

You have given a very comprehensive submission. In fact, it is so comprehensive and there are so many issues that in the time frame we have—although we do not necessarily have to finish right on 5 o'clock—we might not be able to cover them all today. Perhaps you would like to make some brief remarks over and above the submission that we have.

**Mr Broome**—We obviously welcome the opportunity to discuss this submission with the committee. We certainly look forward to the opportunity of appearing before the committee later in your deliberations to deal with the issues which may have arisen during the course of the hearings which you are conducting.

The basic point I would like to make is that I think this inquiry by the committee provides a very valuable opportunity to examine the work of the authority, in particular, the benefits of the experience which we have had over the years since the authority was established and a chance to examine whether changes should be made and, if so, what changes should be made to the legislation and the way the authority operates. To that extent, we, as much as the committee, will look forward to the comments that are made during the course of submissions to it.

We are certainly not only willing but would welcome the opportunity to respond to matters that come up in the course of the hearing. Certainly in so far as we do not cover issues which the committee would like us to deal with today, we can clearly take some issues on notice and provide you with material if that is what you would wish. That is all I want to say at this stage, so we can leave as much time for questions and issues which the committee wants to pursue.

**CHAIR**—One of the fundamental issues to the inquiry is whether the NCA is meeting the objectives for which it was established. Perhaps you might like to address that question briefly.

**Mr Broome**—An appropriate starting point to answer that question is to look at what we have ourselves identified as the objective of the authority. We have a mission statement which talks about counteracting organised criminal activity and reducing its impact on the Australian community in cooperation and partnership with other agencies. That is the role of the authority which has evolved over time and through experience.

There is clearly, as the committee is well aware, much greater emphasis these days on cooperation and partnership than was the case some years ago. We obviously believe that is the appropriate way for us to operate. Our task is to do what we can to counteract organised criminal activity, to use that kind of expression. Of course, the act refers to relevant criminal activity.

It is our view that, while the task is always going to be difficult, in recent years we have demonstrated a capacity to be successful in that regard. We have had major successes. Those successes have been because we have worked with our partners. It enables the authority to bridge that gap between the jurisdiction of individual law enforcement agencies, which is an essential part of both its statutory function and its purpose for its existence. Certainly from the submissions which I have had the opportunity to see which have been made to the committee from other law enforcement agencies, they have been very supportive of that role and, dare I say it, they have been quite fulsome in their comments about the way we go about it. I think that is the best recognition of our effectiveness—what our partners and those who work with us think our effectiveness to be rather than what we might say ourselves.

That said, I think we have developed a whole range of strategies to identify and deal with major areas of organised criminal behaviour. We have brought a strategic vision to the law enforcement community's work in this area. We are recognised as having a national focus in helping to share that focus with each of the partner agencies. We have developed a range of mechanisms to facilitate cooperation and coordination. I think they have been successful.

We have shown the benefit of the multidisciplinary approach which we use and which is seen both in Australia and internationally as a valuable model which produces good results. I think we have provided focus in areas such as proceeds and, in particular, money laundering as areas of interest in the area of organised crime. We have over the years provided advice to government on areas such as law reform and administrative reform in relation to the areas where we work.

So I think we are doing the job. That is not a reason for complacency by any means. There is still a huge challenge in front of us. There are always issues of just how we best use our resources and how we target the work that we do. But I think we are getting it right. I think one has to say that the events of the last week or so, in terms of the budget, provide some significant and much welcome recognition of that fact. I take this opportunity to say that I appreciate, and so does Mr Melick and the rest of the staff,

the support of the committee, which I know was strong and forthcoming in relation to questions of resources. We know that your assistance has been one of the reasons why we have seen the sorts of results we have. That is a very genuine thank you from our side of the table.

**CHAIR**—Thank you. All the committee members will probably want to ask some questions, but I will just quickly take you to the part of your submission on constraints on effectiveness. I would like to ask you about each of the constraints, but I will not do that right now because some of the other members want to ask questions. The first one you have listed is ‘limitation on resources’, despite the fact that in the budget you have received something of a substantial increase in funding at a time when most other agencies are going backwards still, or many are.

It was interesting yesterday, in talking to the Queensland CJC, to find that they have an annual budget of \$20 million for the state of Queensland and the National Crime Authority has a budget of around \$40 million. We were sort of making the point then that their budget is half of yours or yours is only twice theirs. Also, in the context of yesterday, of course there has been a lot of discussion and even in the last few days there were Justice Wood’s comments about us losing the war against drugs, we had a very colourful presentation from Bob Bottom that went for some time. He was sort of saying, ‘The problem should be solved. The NCA know who the Mr Bigs are. Why can’t they go and get them and stop it? Let’s get serious about it.’ The will is there, everyone seems to accept that. But are the resources missing or is it something else?

**Mr Broome**—Resources are obviously a major factor. You can work with only what you have got and certainly over the last couple of years, as the committee is well aware, we have been involved in a whole range of processes to fit within the budgets that we were given. Yes, we have had some increases this year. They are welcome and they will certainly assist. Could we use more? As I have consistently said to the committee, yes, we could. One has to be careful of course about saying that you can necessarily deal with these issues simply by increasing the expenditure at some sort of infinite rate; that is not sensible. One has to be able to maximise one’s effectiveness, keep a tight management control on the way the work is carried out and so on. But, having said that, there is plenty of room for additional growth.

**CHAIR**—The Queensland Police Service told us rather interestingly that the NCA’s decision to effectively close down its Western Australian office was impacting directly on Queensland. Paul Filing probably took as much notice as anyone of those comments. I got the impression that they were almost saying that it had actually opened up a corridor of some sort and that drugs were coming in now through Western Australia and finding their way to as far as Queensland.

**Mr Broome**—It is obviously the case that there is not one particular means by which major drug importations take place into Australia. Clearly those involved in these

activities will do so in a number of ways through a number of places using different techniques for the fairly obvious reason of trying to avoid detection. I think it is true that the level of activity which law enforcement generally is able to put into these activities does have some impact. I do not agree with those who say that effectively we or other law enforcement agencies are basically ineffective. I think we do make a significant difference.

But, if you reduce resources substantially, you simply do not have the people on the ground to carry out the work and that is going to have some impact. We tried to strike a balance this financial year with the available funds while maintaining a presence in each of the five states where we had offices. We recognised that the reductions we were making reduced the effectiveness of the individual offices and indeed reduced our overall effectiveness. That was recognised by the government at the time of the last budget and during the year. There is a relationship between resources and results. Therefore, if—and I am just postulating this on an assumption—there were increased importations coming through parts of Western Australia, then it would not be an unreasonable assumption that some of those drugs would find their way to other parts of the country.

**CHAIR**—I guess the acid test is if you got some additional money tomorrow, would you reactivate the Western Australian office? Would that be a priority?

**Mr Broome**—I think there are two points. Firstly, it is carrying out a number of quite successful operations at this time in cooperation with parts of our agency. Secondly, as a result of the budget, there will be increased resources in every NCA office.

What I will not say we will do is return any part of the organisation to a structure with the numbers they may have had at some time in the past; rather, we will make judgments about current priorities and current emphasises. I think that is the way it has to be. We have to be more flexible in the future than we have been in the past, in my view. We need to look at ways in which resources can be moved efficiently and effectively around the countryside, rather than thinking in terms of fixed structures of personnel that stay unchanged irrespective of changing circumstances.

Yes, we will see increases as a result of the budget, but whether we will necessarily go back to particular structures, I think, is a different question. Obviously, if we had more resources, we would put more people on the ground—we would most certainly do that across the board—but we would always want to make sure we got the maximum effect out of the dollars we had.

**Mr SERCOMBE**—I have not had the opportunity to have a detailed look at the budget yet, but I am wondering if Mr Broome could give us some amplification on the impacts of the budget on the NCA's operations. I was certainly under the impression that the additional resources were pretty tight, earmarked with respect to fraud and money laundering. But on the face of it, it would seem to me that that is not likely to significantly alter the assessment that you have given us in the past about the implications

for the rest of the organisation's operations. Under some scenarios, other core activities of the NCA could be under more pressure as a result of the budget, rather than less.

I am wondering whether you would care to comment on that. Before we get carried away with self-congratulation, we perhaps ought to recognise that the budget may be an ongoing negative.

**Mr Broome**—Can I answer that in a couple of ways. The budget both gave and took away. We, like other parts of our portfolio, were subject to a four per cent savings initiative, as I think it was called, which affected our base funding just as it affected, as I understand it, all other areas of the Attorney-General's portfolio. That was in addition to the one per cent efficiency dividend which was universally applied, and it was a reduction to our base funding as it currently exists in this financial year. That means that our base funding is about 25 per cent in round terms less than it was three years ago.

However, the budget did make provision for \$20 million over three years for a variety of work which was described as relating to areas such as money laundering, serious taxation fraud and so on. I am happy to talk to the committee in much more detail in a closed session, but can I make the point that the kind of work which we expect to be funded under that proposal is the kind of work we have been describing to the committee in confidential sessions that we have been doing in the past and which, for resource reasons, we were unable to develop and extend to the extent we wanted. Because, as the committee knows, that work will produce proceeds results and it will produce revenue results if you follow money trails and so on.

I am being fairly cryptic, but I think the members of the committee will understand the point I am making. A significant proportion of those funds will in fact enable us to do the very things we have been talking to you about for some time. That is in fact what we are going to do with them. So it does in our terms give us a significant level of assistance.

The problem we of course have to recognise is that our base funding is now at a very significantly reduced level. We will have to cross that bridge in three years time because, when the new policy proposal money is expended, we will then have a base which is substantially reduced from what it is even this year. So, yes, you are right to say that there are still those underlying issues, but the NPP money will give us a substantial capacity to do more this year in areas which the committee is already fully aware of.

**Mr SERCOMBE**—Realising we are not in camera, I will also be cryptic, but evidence was given in camera in earlier hearings that there were some very alarming aspects of law enforcement activity that you were no longer in a position to provide.

**Mr Broome**—And that has been addressed as well.

**Mr SERCOMBE**—Has that situation been addressed by the budget?

**Mr Broome**—Yes.

**Mr SERCOMBE**—That is positive.

**CHAIR**—It is all positive.

**Mr SERCOMBE**—I realise the bureaucratic difficulties of commenting upon other organisations, but you, Mr Broome, are the chairman of the board as well as the chairman of the NCA. With respect to the AFP and Customs, in particular, arising from the budget and the impact of their budgetary position on ongoing NCA activity and also general law enforcement, I wonder if you would care to make some comments about where those organisations find themselves as a result of the budget.

**Mr Broome**—Let me be a little circumspect and just perhaps make the comment that, certainly, I am aware that the AFP has, as we have, had that effective five per cent across-the-board impact on its budget to the extent that it has fewer available resources to do its job and to work with us. That obviously does have some impact on the combined effectiveness of the two organisations. I think that is a proposition with which few would disagree.

We have, I think it is fair to say, not noticed any particular issues in relation to our cooperation with Customs in recent times nor anything, that I am aware of, that particularly comes out of the budget, but those things have to be constantly reviewed. The simple reality is that all of us are going through situations of substantially reduced resources in general terms, and that affects the number of people on the ground. We have to make sure we are working together much better as a result and much more effectively, but I do not walk away from the proposition that, if you cut resources and continue to cut them, you will not only get efficiencies—and you may get those—but also start to impact on effectiveness.

**Mr SERCOMBE**—So you would not disagree with the proposition that the good fortune the NCA may have experienced in some areas of the budget has not been a good fortune that has been shared by AFP and Customs?

**Mr Broome**—So far as I am aware they have not been given funding for specific new policy proposals. To the extent that they have had further reductions, I have to agree with you.

**Mr FILING**—Mr Broome, there was some criticism at the recent conference on standing commissions on corruption and in some of the submissions, notably from Mr Marsden, from the New South Wales Council for Civil Liberties, and others. At the recent conference, Robert Richter made the point that one of the reasons some of the police commissioners may be happy with the present role of the NCA is that it gives them an opportunity of getting access to the special extraordinary powers of the NCA that in some

way, according to Richter and others, infringes the independence of the NCA.

Do you agree with that proposition? Do you think that there is in any way a tendency for the new role of liaison coordination to be seen as in fact being less independent than the way in which the NCA was originally envisaged?

**Mr Broome**—No, I do not. I will point out that the cooperative role of the authority was and is part of its statutory functions and has been there since day one. The fact that it did not work that way in its initial period is a different issue. But the functions we are performing now and the relationships we have, the statutory task forces which are established under section 11 of the act, are there exercising powers that were put in place on day one.

I do not get told, and neither does Mr Melick, by anybody on our staff or outside our staff how we will exercise our statutory powers. We independently exercise them. We make our own decisions, for which we are accountable on every occasion in the courts, when we issue a notice for someone to produce documents or for someone to attend a hearing, and that power is exercised independently and separately. Whatever the perception might be—and I do not think in fact the perception is as it is sometimes represented—that is not the reality.

**Mr FILING**—Amongst other evidence given to us yesterday in particular by Bob Bottom, and it is borne out by some of the statistics he has obtained from your own sources, the annual reports, his view was that the NCA in fact had—let us just say that its period of less effectiveness statistically was when it was chasing white-collar crime under Chairman Faris and Chairman Phillips. In that context he also mentioned Operation Albert and the area that has probably caused the authority most of its criticism in recent times. Is it fair to say, firstly, that it would be unlikely for the authority to be involved in that type of investigation now or in the future under its present role? Secondly, is that interpretation by Mr Bottom of the NCA's relative effectiveness over particular periods an accurate reflection of the statistical and other information?

**Mr Broome**—I think the figures he quotes and which are in the annual report will demonstrate that there were less arrests, either by the authority itself or by task forces that it was coordinating, in that sort of time frame. There was obviously a focus in the work of the authority on particular kinds of alleged criminal behaviour during that period of the very late 1980s and early 1990s. We have talked about that on a lot of occasions in the past. There was no ASC at the time; there was no-one else to do that kind of work. I have made it clear that I do not see the authority in general terms, and I know that Mr Melick agrees with this, engaged in the work which properly belongs to the ASC. We have enough work which clearly falls within our responsibilities to do in the first place.

But can I say that the work that we do is always the work that is given us by the intergovernmental committee in the references. If tomorrow ministers give us a reference

to deal with something which might be described by some as 'white-collar crime', that is appropriately, and would be because the ministers have so determined, within the area of responsibility of the authority, then so be it. I do not think that is going to happen in general terms—

**Mr FILING**—For instance, under those circumstances, given the understood objectives of the NCA and the parameters of the act, would you brief the Attorney-General in a situation like that as to perhaps the authority not wanting to go onto that particular type of inquiry and perhaps to encourage that view in the intergovernmental committee?

**Mr Broome**—The work that we are doing now and the way we are doing it has been endorsed by the IGC now for a number of years through changes of individual ministers and indeed changes of governments in various jurisdictions. I think it is widely accepted that that is the appropriate course of action. My own view is that that is right, but at the end of the day if a different view were to be taken by the IGC we would obviously take cognisance of it. If my views were asked about whether a significant shift of direction was either necessary or appropriate, it would be entirely consistent with everything I have said publicly since I have taken on the job of chairperson of this organisation to say, 'No, I do not. I think it has got the right basic direction at present.'

What I have been careful to do, however, is to recognise that we are a creature of the references given to us. At the end of the day, it is IGC which drives that process. We are obviously strongly consulted in that; our views I think would have some substantial weight. But I do not want to pre-empt what might happen in the future within the terms of the legislative framework.

**Senator CONROY**—Does the ASC have all the same powers that the NCA has?

**Mr Broome**—For practical purposes, yes.

**Mr Melick**—In fact, in some cases there are more because there is a right to derive immunity before the ASC but not before us.

**Senator CONROY**—So, if someone came to you and showed you documentation that exposed something like an H fee, would you then handpass that over to the ASC? We asked the ASC whether they could detect something like the H fee, and they indicated earlier today that they could not.

**Mr Broome**—I think the question of whether one can detect a particular form of activity and then how one goes about pursuing it depends on a number of circumstances. Speaking in general terms, if you start to look at some activity because you think that it might be appropriately pursued, then the ASC has relevant powers to do so. The issue is that none of us has the resources or the inclination, despite what some might suggest, to



go off looking in areas where there are not good reasons to do so. So it often comes back to whether there is some kind of trigger which leads to an investigation.

I do not want to get into any discussion about H fees or anything else to do with matters which have now been disposed of by the courts. As with many of our investigations, the process starts because of information which becomes known by various law enforcement agencies. It is examined and analysed and some initial investigations are carried out. We then, if appropriate, seek references and the process goes on from there. The ASC, of course, does not have to get a reference to exercise its power. So, if it were given reason to believe that there was some malpractice within a corporate structure and that breaches of the Corporations Law may be involved, in my view it has the capacity to investigate those matters. Whether it has the resources is a different question.

**Mr FILING**—This afternoon Mr Marsden from the civil liberties council was very strong about the feeling that the extraordinary powers the NCA has are not justified by the results of the NCA's work and that the balance would be outweighed by the interests of civil liberties of individual citizens. In the accountability process for the authority, and given the sort of secrecy of most of the work of the NCA, particularly in relation to its hearings, do you have any concerns that there is a perception in the public that the NCA has extraordinary and substantial powers wield against individual citizens with little to no apparent accountability?

Mr Marsden made the comment in response to a question that, in many instances, people who are being investigated may not necessarily know they are, or the extent to which they are, being investigated and therefore may not even be in a position to complain about the infringement of their civil liberties within a reasonable time of it coming to their notice.

**Mr Broome**—There are a few issues on that. First, is there a perception that we have powers which are significant and not appropriately accountable and which are capable of misuse? Is there a perception of that in the public mind, or at least in some areas of the public? Undoubtedly yes. If enough people write that kind of thing often enough, some people will start to believe it. Members of the committee, of course, know full well that that is simply not the case. Our powers are not extraordinary in any sense. In this day and age they are not even unusual, because they are shared by agencies at state and federal levels across all jurisdictions.

As to the secrecy, I would have thought that from the perspective of a council of civil liberties view of the world the confidentiality of the hearings is in fact a great protection for the civil liberties of the citizen. In so far as allegations are made by witnesses about another person, they are made in private and they stay there, unless and until sufficient evidence is obtained for people to be charged, in which case the normal court processes take their place.

Contrast that with a royal commission process in which the allegations are alive and floating around—often with no subsequent prosecutorial action taking place. So I think in fact that the confidentiality arrangements in our act are a very substantial protection of people's civil liberties.

In so far as people may be the subject of investigation and not know about it and never know about it, the reason for that will almost certainly be that, as a result of whatever inquiries have been undertaken, there is no basis to take the matter further. As a matter of law in this country there is no right to have natural justice in relation to the investigation process. There is in relation to judicial processes, and that is appropriately so.

But I often have people who suggest in the course of a hearing that we are to disclose to the person who is the witness—who may in fact not even be a person under any investigation themselves but generally be a witness to assist us—all that we know about the matter we are investigating. That is palpable nonsense. That is no way to conduct any sort of investigation and it would in fact disclose material to third parties which they have no right to know and would breach the confidentiality of other people.

So my view of it is that in fact the act itself reflects the very substantial concern of not only the Commonwealth parliament but the state parliaments to protect civil liberties and that those rights are substantially and adequately protected in our procedures and in our legal requirements.

The final point I make about the comments that have been made by Mr Marsden—and you alluded earlier, Mr Filing, to some comments Mr Richter made at that conference in Brisbane—is a degree of inconsistency between the views of the president of the council in New South Wales and those of the president in Victoria. Mr Richter said in Brisbane some weeks ago that in his view there was a need for a body such as the authority with its powers to deal with politicians, public servants, police officers and, when questioned, he added the office holders of public companies—but not, it appeared, for people in other categories.

The point I made at the time was that I thought it was a rather interesting proposition that the use of the powers that we have would depend on who you were rather than what you were suspected of having done. I think that is an extraordinary proposition to put forward, and I would reject it as being quite inappropriate.

On the other hand, there is still in his comments a strong recognition of the need for a body such as the authority. I have glanced at Mr Marsden's submission. I think a number of his figures are in fact quite incorrect and inaccurate but, as to his general proposition, I believe we have produced, certainly in recent years, significant results that are worth while. I think the committee has consistently accepted that that is the case and certainly its support for us suggests that you believe we are doing some worthwhile work.

There will always be those who criticise us and say that our powers are inappropriate, that we do not get results.

One of the reasons—and I for one do not object to this at all—that our processes often take a long time and are very expensive and so on is because of the very protections that are written into the legislation. It is because we operate through due process that you are not always successful. That has always been the case in relation to investigations. And that is a trade-off which the community makes. I am content for the parliament to give us the powers it thinks we should have and to exercise those the best way we can.

**Mr FILING**—But the council argues also, along with others, that all police type agencies want extra power—it seems to be a natural urge—and once they have been given it it is very hard to get it back again. I suppose the combined view is of this, particularly in the case of Mr Marsden because he has been particularly critical today, and follows on from criticism, that this is what the police commissioners are so happy about, to get their hands on your powers, to be able to improve their own investigations, et cetera, where they cannot have those powers under their normal statutory provisions. De facto, the police commissioners are getting those extra powers through the back door via the NCA. That seems to me to be the principal argument in relation to the NCA's powers where they are taken into consideration. The reason I mention that is that the last time we did this evaluation inquiry a number of the police commissioners were critical and, of course, on previous occasions they had been quite critical of the NCA. This time they are not.

**Mr Broome**—And therefore, QED, we must have become the puppets of the commissioners.

**Mr FILING**—That is the idea.

**Mr Broome**—I reject that as something for which, as with most of the assertions, dare I say it, in Mr Marsden's submission, there is no supporting evidence. The fact is, and I would challenge people, in any way, to counteract this proposition, every time I and, so far as I am aware, every other member of this authority over the years has exercised their statutory powers, they have done so as a matter of independent consideration of whether it is appropriate to exercise the powers, whether the relevant preconditions are satisfied, and so on. It is because there are only at present two who can exercise those powers that there is a very important and, if you like, natural filter on how those powers are exercised. They are not used willy-nilly at the behest of police commissioners, let alone other officers of those police forces. Those people may be involved in putting recommendations to us, but they get knocked back on occasions unless we are satisfied that all the relevant material is there. If we do issue a notice to somebody, that notice can and frequently has been challenged.

**Mr Melick**—It concerns me that significant sectors of the community continue to accuse us of abusing our powers, and talk about us as though we have done in the past,

yet there has never been, as far as I am aware, a finding that any member of the NCA has abused their power. Even Elliott, taken at its highest, was an unintentional stepping outside the bounds of a reference, and despite the fact there were 14 legal opinions to the fact that we had not stepped outside the reference.

**Mr FILING**—On that point, to what extent do you feel the authorities should be obliged, in a case where there may be some different opinions on the extent to which the NCA can act, particularly in a prosecution, and how extensively should you obtain legal opinions to support the view to prosecute?

**Mr Broome**—Before anybody is prosecuted, the independent directors of public prosecutions satisfy themselves that there is an appropriate case to be prosecuted. That has happened in every single case in which the authority has been involved as an investigative agency. No-one gets prosecuted unless the DPP or the DPP's agents, if they have, in fact, briefed the matter out, satisfy themselves that it is appropriate to do so. So there is a check and balance there. The second thing is, I do not detect in Mr Marsden's submission, or in any of the others, any proposition to the effect that Alan Cameron—and the powers he exercises—is prepared to go off willy-nilly and act at the behest of somebody else. I quite frankly find it offensive, unjustified and inconsistent with the fact that there are numerous bodies with similar powers and those who exercise them are not subject to that kind of criticism.

**Mr FILING**—Mr Bottom yesterday asserted that the egg marketing board of Queensland has more powers.

**Mr Melick**—And the banana board.

**Mr FILING**—And the banana board. I think the most important thing is, in the context of our inquiry, that the two single biggest criticisms are your performance, and generally that is assessed on the cost per charge, which we have heard in the past, in the House of Representatives as well, and the second one is this civil liberties argument, which is one that has been around for a long time. In fairness to Mr Marsden, he has been an advocate of civil liberties from go to whoa as far as the National Crime Commission, or National Crime Authority, as it became, was concerned. At the last evaluation inquiry there was a sunset clause, so there is some difference. To what extent do you think it ought to be mandatory for the authority to be reviewed on a periodic basis in a way that assesses these particular issues?

**Mr Broome**—I do not have any problem at all with it being subject to review on a regular basis. I would like to think that the period involved might be one in which we were allowed to get on with the job in between.

**Mr FILING**—Five or six years?

**Mr Broome**—I think five years is not an unreasonable period. But, with no disrespect meant to my colleagues in a lot of these other agencies, there are bodies which have had identical powers for 20 years that have never been reviewed, that have never been through this kind of scrutiny and which exercise those powers often in relation to civil matters let alone criminal matters. There is just something fundamentally inconsistent with the way that argument develops.

That said, we have never objected to scrutiny or to oversight. However, it is quite obvious that a public process which gets into the details of individual cases inevitably raises questions of the civil liberties of those who are involved in that matter who may not be those who are charged. I think we have to be very careful about what sort of review procedure is actually put in place to meet it. If, as a general rule, every five years there is an examination of the authority, so be it. I do not think there is a problem. But the focus on this organisation just seems to me to be a little out of balance. That is the only point I would make. I do not have a problem with it.

**Mr Melick**—That focus is the very problem with our act. The act is a series of compromises and in quite a lot of places absolute nonsense because of the hysteria and people's overreaction to the perceived interference of civil liberties. For example, in the section of the act dealing with the requirement to attach a copy of the reference to a section 28 summons and not a section 29 notice, there is nothing in the parliamentary debates about it. It is a matter that has exercised the Full Court of the Federal Court for nine months, and we still have not got a decision; yet we are supposed to be able to act in a timely and effective manner. I am getting sick of conducting hearings and having QCs turn up in front of me all the time taking technical points and referring it off to the Supreme Court or the Federal Court. It takes months to sort out. None of the other organisations that have the same powers we have have to undergo that process.

**CHAIR**—Obviously that whole issue is something we will want to address. You made the point somewhere that a complete rewrite of the act is necessary because it is too complex and difficult to interpret. In that context, there is a whole range of issues, hopefully, that we can work on in this inquiry.

**Mr Broome**—Despite a headline in one of the newspapers this week that the authority had demanded increases in its powers, our submission does not make any such demand. What powers we are given is quite frankly, at the end of the day, a matter for the parliaments of this country, as it should be. We can highlight issues which need to be examined and our powers and functions are an appropriate issue to be explored. But, at the end of the day, what powers we are given will be a matter for the parliaments, as it should be.

**Senator STOTT DESPOJA**—I was wondering where that headline had come from. Many of the questions I had in relation to the Marsden submission have been answered. I acknowledge your claims about the powers not necessarily being

extraordinary. Do you acknowledge, as Tim Sage did earlier in his submission, that they can in fact be quite intrusive? You sound quite satisfied with the current safeguards or the accountability mechanisms in the act. Do you feel that they are more than adequate?

**Mr Broome**—They are certainly intrusive; I do not walk away from that. Asking somebody to come along to a hearing and give evidence can be intrusive. Demanding that documentation be provided can be intrusive. But it is not an exceptional power. If people think that the kind of conduct we are investigating is serious, and I think they do, then I do not believe that it is disproportionate to have those kinds of powers to investigate that kind of alleged criminal behaviour.

Are the protections adequate? I think one of the major protections which are very important is that the hearing process remains confidential. There has been talk over the years about the fact that the authority should be more like a royal commission and conduct its hearings in public. I fundamentally believe that is wrong. I think it is a process which then will destroy individuals with no right of reply in ways which would be quite wrong. I think that is the greatest single protection which the act contains.

One can deal with issues such as self-incrimination in a variety of ways, but I think the fundamental question of the privacy of the people who are giving evidence is important. You people know as well as I do that, if it were to be publicly known that a person had given evidence, that would give rise to speculation in the press that could never ever be counteracted. I think that is a very dangerous process. That is why I think we have the right balance. I notice, for example, that Mr Bottom, who for years has argued that the royal commission public hearing model is the appropriate one, is now saying, 'I'm wrong.' I think the people who drafted the NCA Act and who were so firm about that got it right at the time. I think we should keep it there.

**Senator STOTT DESPOJA**—The last question I have relates to the submission of the Council of Civil Liberties and the question of legal professional privilege being written into the act. What is your response to claims that it is currently inappropriate for it not to be included?

**Mr Broome**—That is a fairly complex issue. There are circumstances in which the act might allow people to claim privilege and there are other circumstances where they cannot. In the trade practices context, there is no protection on the basis of legal professional privilege. In that situation, as a matter of policy, it has not always been pursued. But there is no protection given at all. I think that is the case in the ASC, although I may be corrected on that.

**Senator STOTT DESPOJA**—We discussed that.

**Mr Broome**—There are a number of ways that you can handle the question of privilege. It often depends on who is being asked the question—that is, who is the witness.

After all, it is the client's privilege, not the lawyer's; a point that is sometimes forgotten.

**Senator STOTT DESPOJA**—AUSTRAC's submission referred to the need for clarification of the NCA's general powers, specifically to clear up any doubts about the validity of the Limbeck reference. Do you have any concerns or any doubts about the validity of that reference? Presumably you would like to see—hopefully not presumably—amendments to the act that would clarify those powers.

**Mr Broome**—I would certainly like to see some areas of ambiguity in the legislation clarified. If it simply reduces the potential for legal argument when the parliamentary intention is probably clear but it is possible that someone can generate an argument to the contrary, I think that is commonsense. That is why we say a rewrite would be useful. Without even changing the meaning, it should be more clearly stated.

As to particular references, it is the case that we have a current decision of a Federal Court judge that challenges the way certain references have been written. As a result of that, ministers have reconsidered a number of references and reissued them. I do not want a public debate to discuss which ones may or may not be affected in that way, other than to say that the authority has consistently acted within the laws that have been laid down by the Federal Court. We are certainly complying with the decision in A1 and A2 unless and until it is reversed on appeal. Perhaps we can take that question on notice and give you a more confidential briefing.

**CHAIR**—In terms of what you take on notice, Mr Melick has mentioned one particular matter which obviously needs to be addressed. In terms of the so-called rewrite of the act, it would be very useful for us to be able to make some specific recommendations in terms of what needs to be done. I am not sure where we are going to get the right information from, unless it comes from you. Do you want to send us a list of suggestions other than the ones you have already mentioned?

**Mr Broome**—From the point of view of the committee's work, I think it would be very helpful at the end of the day for the committee to examine some of the underlying issues. For example, do we have a reference based process or do we have something else? If we have something else, what might it be? How do we meet the concerns that the Council of Civil Liberties expresses? They are real concerns, and I personally share some of the concerns it has about the way intrusive powers are used. I think we have to be very careful and balanced in that.

When it comes down to specific drafting, that is a matter for the drafters. I think that the important issue at this stage of the authority's life and in terms of the review that is being conducted is to get some of the basic issues about powers and functions debated in the course of the hearings you are conducting, get a sense of what you think is appropriate and workable in the sense of the kinds of things we do and how we do them, and then I think we can sit down with government and the drafters once decisions are

made about policy and work out how we do that better.

**Senator STOTT DESPOJA**—On that note, do you think this is the best process through which to achieve that outcome? Would you favour, as has been suggested at least in one submission, a more public inquiry, or are you satisfied that this committee is the appropriate domain?

**Mr Broome**—It is certainly the appropriate committee, given its responsibilities under the act. I would not want to question the underlying policy.

**Senator CONROY**—I wanted to come to the constraints you had listed. In the second one it says:

It could be strongly argued that the decision of Vincent J has been effectively overruled by the approach taken by the full Federal Court to the interpretation of references.

Could you clarify what is meant?

**Mr Broome**—There have been some challenges that are currently before the courts. In one case a judgment is currently reserved, so I have to be a little careful what I say. But there have been a number of challenges in relation to a summons which was issued by the authority some years ago which are being considered in the Federal Court. There have been a number of interlocutory matters raised in the course of the substantive issue. I would not say the full Federal Court in that matter has definitively ruled on that issue, but there are substantial indications, in both the decision at first instance on the interlocutory matter and in the full court decision which rejected the appeal from the judge's interlocutory ruling, that go in a very substantially different direction from that taken by Mr Justice Vincent. In fact, there is a matter that was heard in the Federal Court in Victoria a couple of weeks ago in which the basic approach adopted by His Honour in that other matter in relation to the way one interpreted references and the kind of evidence one took was rejected and a totally different approach taken by the Federal Court. So I think there is a clear divergence of judicial approach.

**Mr Melick**—This underlies the problem. As John has already said, we do not necessarily want more powers, we just want a clear and unequivocal and unambiguous act, because at the moment even the judiciary are not taking a consistent approach and, if the people who are being investigated have got the money, as a lot of them have, they can delay these proceedings indefinitely, for years.

**Senator CONROY**—To some degree I think Senator Stott Despoja asked this question. In your further restraints you have got:

Such an amendment would need to not only include money laundering within the definition of relevant criminal activity, but also authorise the use of coercive powers without the identification of a predicate offence.



From the evidence we got this morning from AUSTRAC, and I tried to draw from them this morning, there is this sort of scenario: they discover something that looks suspicious, they report it to you, you go running off looking at it. Unless, say, it was the case that we had just before you, the motor traders, where you suddenly come across a substantial ring of car thieves, you cannot do anything about it. What do you do?

**Mr Broome**—Can I say that we do not just see something suspicious put in front of us and go off after it; quite the contrary. That is in fact one of the problems.

**Senator CONROY**—I was not trying to trivialise the process.

**Mr Broome**—I did not mean to suggest that you were, Senator. But in fact it may be useful in relation to the money laundering issue for us to provide to the committee some material to explain how those issues are addressed in the course of references and so on. The fact is that through the 'Agio' task force we have appropriate access to significant AUSTRAC material and, as the committee knows, it has been very valuable material for us to use. We then develop usually from that material particular and quite specific matters to be examined and then ensure that before any of the special powers are used to do so that there is an appropriate reference which builds on that information.

**Senator CONROY**—Do you only need the reference to use the special powers? If you decided you did not want to use any of the special powers for the moment, you could go off and begin an investigation into that area?

**Mr Broome**—We have general powers of investigation in the National Crime Authority Act that enable us to do preliminary work, but we cannot and do not use our special powers other than in relation to matters identified in a reference which has been given by the IGC.

**Mr SERCOMBE**—And Limbeck serves that purpose at the moment?

**Mr Broome**—I would rather come back to that perhaps at a later stage. But I will say we certainly have at present in relation to those matters which are being investigated under reference a capacity to look at money laundering aspects.

**Mr SERCOMBE**—But you will give further evidence on that?

**Senator GIBBS**—We have heard a lot about the secondment of state police officers to the NCA and there have been some suggestions that there is a lot of corruption in state police forces. That is not just an allegation, it has been proven—and I come from Queensland, so I know.

There was a suggestion that the NCA should have its own investigators. I put that to Mr Marsden and, to be fair to Mr Marsden, he agreed with that. His suggestion was

that the investigator should be on a contract—say, a three-year contract, a five-year contract or whatever—so you did have your own investigators who would be loyal to the NCA and not to their state bodies.

He also said that your officers were extremely underpaid, and no doubt you are, too. He said that most police officers are underpaid, and we do know that. Human nature being human nature, if you do not have it, you want it; and if it is there, it is quite easy to fall into the trap of being a little dishonest. Would you agree with that? Do you think we should make recommendations in any sort of amended legislation that, firstly, you all get a pay rise—particularly the investigators—and, secondly, you have your own police force along those lines?

**Mr Broome**—This raises a very fundamental question and we have discussed it briefly with the committee in the past. The problem with the proposition that the NCA should engage its own independent investigators is that you have to first ask the question, ‘Where from?’ They do not pop out of thin air. They will come from state or federal police services.

**Mr SERCOMBE**—You have done it before.

**Mr Broome**—Yes, we have had them before, and we have gone back to a system where we believe that, for a variety of reasons, it is better to have staff on secondment. There are a couple of reasons for that.

A person would have to leave a large organisation, such as a state police service, and take up a contract with the authority with no long-term career structure. We cannot offer people long-term career structures. We are too small. We do not have the size that all of the state police services have and we do not have the capacity for people to work their way through. Therefore, I do not believe that you will necessarily get anything like the best and the brightest who will give up their long-term career prospects to come and work for us on a three-year contract. We have the ability to attract some of those people on postings to get experience and to work with us and do the sort of work we do because a lot of them find it very rewarding and interesting. That is the first issue.

The second issue is whether there are split loyalties. It is certainly true that human beings are different if they know that in the long term they have to go back to a particular home service. They do give us very dedicated, effective and professional assistance, but they know their long-term careers are somewhere else. But that is a trade-off which I think is an appropriate one to make, because I think the alternative is less effective for us.

As to pay rates, I do not think you will stop corruption merely by paying people more money because, if they are going to be corrupted, the amount of money they are offered will be much greater than anyone is going to be paid in terms of increased pay scales. That said, clearly I think there are some problems with the rates that are paid in the

public sector generally, whether it is law enforcement or elsewhere.

One of our problems is that with our seconded police we pay whatever the home service conditions might be. If, for example, the Queensland police were to win a 10 or 15 per cent salary increase from the Queensland government, we would have to meet that for our seconded Queensland police officers although there is no mechanism which gives us any recognition of that through federal funding arrangements. That does create a real problem for us, and I certainly think there is some scope for increased remuneration.

Our view, and it is a view that the authority has come to over a substantial period of time of looking at various models, is that, while it is not a perfect system, it is the best one that we can come up with in terms of the secondment arrangements. We have looked at some categories of staff having slightly longer periods than, say, two years. That can work in some situations but really if you take good young investigators, or even good experienced investigators, and put them into our organisation for two years and after that they go back to a home force where they can make a further career for themselves, that is probably the best option we are going to get.

**CHAIR**—Mr Broome, it was not our intention to go into an in camera session today, so any remarks that you have indicated you would prefer to make in private we can hold for another day. Are there any other questions from committee members?

**Mr FILING**—I have a question in relation to section 60 of the act, which provides for public sittings and conferences. They have not been a frequent occurrence and I wonder whether the authority may well reconsider having more frequent hearings and sittings. Perhaps there would be things like the conference that was held some four years ago, I think, on complex jury matters where, as a consequence, there seems to be a clearer recognition perhaps of the work of the NCA in that context. Is that something you intend to take up?

**Mr Broome**—There were, as I recall a long time ago back in the period of the first chairman of the authority, one or two public hearings of a kind that section 60 talks about. I say this with no disrespect: each was essentially the authority holding a public hearing, which was a press conference without questions. It was an opportunity to make some observations and some statements to say there were some serious issues that needed to be addressed. That was the nature of the event, as I recollect it. That is something that we can certainly look at in terms of public explanation of how we work and so on, but then I think these kinds of hearings in front of the public and the press are just as effective to do that. Indeed, I think the questioning is a useful way to bring out issues.

The other thing, of course, is that you cannot do anything in a public hearing that might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been charged with an offence. So you have got questions there about what you can really do in public given the nature of the work that we are dealing with—you cannot

talk about active matters and so on. There was a third element which I have totally lost.

**Mr FILING**—It was in relation to conferences.

**Mr Broome**—There was a time when the authority was in fact jointly sponsoring a number of conferences of that kind. I do not rule them out, but I have to say that in the last few years, given the resource situation, we have put our money at the sharp end.

**Mr FILING**—It seemed to me that at times when the authority has been criticised, it has drawn together—particularly those who have got an interest in particular areas—to liaise with the authority on some mutually interesting particular subject.

**Mr Broome**—There have been some useful discussions at some of those conferences and I do not belittle them at all, but they are not inexpensive. They take \$30,000 or \$40,000 to run. They take a great deal of staff time to organise, and the logistics are complex. We have taken the view that that is the kind of thing you would do in situations where resources were not as constrained as they are.

**CHAIR**—Thank you, Mr Broome, Mr Melick and your colleagues, for a frank and useful exchange with the committee once again. We appreciate the fact that you are willing to deal with us in that way. I think it is very much in the public interest that that occur. We will look forward to having further public discussions and perhaps some private discussions with you before we complete our inquiry. Thank you for appearing today. I declare the meeting closed.

**Committee adjourned at 5.10 p.m.**