



COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE

on

THE NATIONAL CRIME AUTHORITY

Reference: Evaluation of the National Crime Authority

CANBERRA

Monday, 26 May 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT COMMITTEE
ON
THE NATIONAL CRIME AUTHORITY

Members:

Mr Bradford (Chair)

Senator Conroy
Senator Ferris
Senator Gibbs
Senator McGauran
Senator Stott Despoja

Mr Filing
Mr Sercombe
Mr Truss
Mrs West

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.

WITNESSES

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Evaluation of the National Crime Authority

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Present

Mr Bradford (Chair)

Senator Ferris

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Mr Filing

Mr Sercombe

Mr Truss

Mrs West

The committee met at 9.06 a.m.

Mr Bradford took the chair.

DIXON, Mr Stephen John, Executive Officer, Australian Bureau of Criminal Intelligence, PO Box 1936, Canberra, Australian Capital Territory 2601

HEWETT, Mr Neville Allen, Manager, Information Technology, Australian Bureau of Criminal Intelligence, PO Box 1936, Canberra, Australian Capital Territory 2601

MANISON, Mr Gary Frederick, Manager, Intelligence, Australian Bureau of Criminal Intelligence, PO Box 1936, Canberra, Australian Capital Territory 2601

O'NEILL, Mr Greg, Director, Australian Bureau of Criminal Intelligence, PO Box 1936, Canberra, Australian Capital Territory 2601

CHAIR—I declare the public hearing open and I welcome this morning witnesses from the Australian Bureau of Criminal Intelligence. The committee has received a submission from you which we appreciate and it has been published. 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 I invite 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 for any comment requested by committee members 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 request or application. I should say also to you that as you are public officials, you will not, of course, be expected to comment on matters of government policy. Mr O’Neill, do you wish to add to your submission by making an opening statement?

Mr O’Neill—I do. By way of opening, I would like to advise that I have a pamphlet here that I would like to leave with the committee. It is a public document which gives an overview of the role and function of the ABCI. Just by way of introduction to allow you to understand who the people are I have with me, on my right I have Mr Steve Dixon who is our executive officer. To my immediate left I have Mr Gary Manison who is the manager of the intelligence branch of the ABCI. He is a Northern Territory police officer with the rank of detective superintendent on secondment to the ABCI. Next to Mr Manison is Mr Neville Hewett who is the manager of our information technology area. I am a South Australian police officer with the rank of detective superintendent and I have been the director of the ABCI since October 1993. In that time, as you would possibly be aware, we have gone through the CLER report, and the ABCI has had a fairly significant re-focus since I have become director—not because I became director, but it was forced upon me.

The ABCI was established in 1981 under an initiative of the then Australian Police Ministers’ Council. The principal catalyst for the bureau’s creation were the recommendations emanating from the Williams and Woodward royal commissions which, in part, identified the existence of organised crime in this country and the need for a nationally centralised and coordinated intelligence facility. There was also widespread public concern over the issue of emerging organised crime impacting on the Australian community.

Prior to the actual establishment in 1981, a working party of senior police officers from New South Wales, Victoria and South Australia submitted a feasibility report on the establishment of the ABCI to the 1980 police commissioners’ conference. The commissioners’ conference subsequently recommended to the inaugural meeting of the APMC in August 1980 that an ABCI be established comprising surveillance, technical and investigative capabilities. Approval, however, was given for the ABCI to have an information collection, analysis and dissemination function only.

I mention this fact to illustrate to you that the ABCI has no operational arm and relies on its stakeholders, the eight state and territory police forces of Australia and agencies such as the Customs, the National Crime Authority, the Queensland CJC, the New South Wales Crime Commission and ICAC, with whom we have MOUs. We rely on them to pass information to us because without that we would wither on the vine.

The mission statement of the ABCI is to protect the Australian community from organised criminal activity through a cooperative national criminal intelligence service. The ABCI is therefore, along with five other common police services, a truly federalist body, having been established under an intergovernmental agreement. The Commonwealth, all states and the Northern Territory, committed their governments, manifested through their respective police services, to providing information, resources and other assistance to the ABCI, so that it could address the issue of serious and organised crime in Australia.

To that end, to give you an idea of how the ABCI is structured, every state and territory of Australia second police officers to the ABCI as intelligence officers. It is normally for a tenure of three years. The CLER report in 1994, which was quite critical of the role of the ABCI and said that it was failing in its function, suggested that the ABCI be civilianised. The working party that followed the CLER report partially civilianised it and we now have a civilian component of intelligence officers. This enables the ABCI to have a corporate history.

As you would appreciate, with every state and territory police officer returning home after three years, we really did not have any ongoing corporate history. If you wanted to know anything, you had to ask one of the typists who might have been there 10 years. With the partial civilianisation, we have got contracts of up to five years and that allows a corporate history of continuance. When I leave at the end of this year and the next director comes on board, there will always be a corporate history.

The ABCI is managed by the board of control, comprising all Australian commissioners of police. The current chairman is Mr Neil Comrie, Chief Commissioner of Victoria. The board is subject to policy directions of the Australasian Police Ministers Council. We meet twice a year as a board of control. We met in April of this year in Adelaide and we meet again in about September. The ABCI's intergovernmental agreement was updated to reflect the bureau's revised role and signed by all relevant police ministers on 4 July 1996.

The emergence of the NCA in the mid-1980s was not unlike that of the ABCI in the early 1980s. The impetus for the authority being generated in the late 1970s and the early 1980s was widespread community and political concern about the impact of organised crime upon Australian society. A series of royal commissions conducted by Justices Moffitt, Woodward, Williams and Stewart and Frank Costigan QC, were instrumental in identifying the existence of organised crime in Australia. Expectations of what the ABCI could achieve in 1981 were unrealistic and that is why, in the 1994-95 period, following the CLER report, we refocused.

I think that is about all at this stage I wish to make comment on, other than just to draw out the fact that the NCA more or less arose out of the same reasons that the ABCI did. We look upon the NCA as being the coordinated and investigative body and our role being the national intelligence repository.

CHAIR—Thank you, Mr O’Neill. One of the things that has come out of this inquiry so far has been a concern about the proliferation of different organisations seemingly, at least in the simplistic view, all doing the same things. The other day we heard from our colleagues on the ICAC committee in New South Wales, and they made the same point. The report we brought down in 1991 was called *Who is to guard the guards?* The question was somewhat rhetorical. We have so many guards guarding guards and proposals for even more. We have the possibility of an NIIC being set up to oversee or deal with complaints against the NCA. I am not entirely sure why you exist. Maybe you could run that by me again. Couldn’t you be a part of the NCA or couldn’t the NCA be a part of you? Why all these separate organisations?

Mr O’Neill—The NCA is actually too narrow. We can exist without the NCA. The whole idea of the ABCI was to look nationally. Prior to 1980 organised crime offences were being committed in each state and territory in Australia and New South Wales was attacking it in its own way and Western Australia was attacking it in its way et cetera, but no-one ever spoke to each other. I am an ex-detective from South Australia, and we had a buddy system where, if I was identifying or investigating a crime in South Australia which I thought may have some contact with New South Wales, I would ring my counterpart in New South Wales and we would talk about it. But no-one ever looked at the national picture. It only required someone to stand back and ask, ‘What is really happening?’

In fact, a lot of the time what we were looking at in South Australia was being committed by the same people in New South Wales, Western Australia and Victoria, but there was no coordination. Therefore, because the police forces of Australia handle 95 per cent of crime in Australia, it was required that we would act as the intelligence repository for those 95 per cent of crimes. With due respect, the AFP handle about five per cent and the NCA handle references, but the state and territory police forces handle most crime. We are owned by the eight states and territories. If we did not exist, then we would go back to the pre-1980s, when the states talked to each other only if they felt like it.

At the moment we have national projects like Project Wingclipping, which looks at outlaw motorcycle gangs. We have had Project Wingclipping since about 1982, and through that we have been able to coordinate what is now a national reference by the NCA called national reference Panzer. That was created out of the ABCI strategic assessment which identified that outlaw motorcycle gangs were a problem not just in Sydney and Melbourne but right across Australia. It is a result of our strategic assessment with information coming from our eight state and territory police forces that put together the Panzer reference.

The probe was probe Jaguar. Look at reference Blade into Asian organised crime. That reference came out of a strategic assessment done by the ABCI and coordinated with the National Crime Authority to identify, through talking to our eight state and territory stakeholders, that there was a problem with Asian organised crime right across Australia but mainly in the bigger cities of Melbourne and Sydney. Because we are owned by the

police forces, we can get information from them. We are a national arm of them.

Another one related to Italian organised crime. The Italian organised crime reference Cerberus arose from a strategic assessment done by the ABCI on Italian organised crime. The ABCI has been monitoring Italian organised crime since the early 1980s. It was one of the first projects the ABCI ever did. It was called Alpha. It started off looking at cannabis production. When we looked at cannabis production, we found at that time the predominate growers were in fact Italians in Adelaide, in Griffith and in Victoria along the Riverina. We have been monitoring the situation. If we were not there, then who would do it?

CHAIR—What is the difference between the strategic assessments you do and the strategic assessments the NCA does?

Mr O’Neill—The strategic assessments the NCA have been doing since 1995 are some of the products which we originally did and which we were criticised for in the CLER report as not doing them very well. We begged to differ with the CLER report, which we did. The commissioners of police put in a submission saying that they believed that the strategic assessments that were done were of a quality that they could handle.

There was some criticism which was justified. But the role of the ABCI, since the CLER report and with the partial civilianisation, has changed. We in fact now provide assistance with the NCA in providing those strategic intelligence reports. Those strategic ones are what they call the menu 11 items. We acted as a conduit with the states and territories to provide that information and intelligence to enable the NCA to provide those references.

CHAIR—Who oversees your activities? Are you responsible to some parliamentary committee?

Mr O’Neill—We are responsible to the eight commissioners of police and, through them, to the Australasian Police Ministers Council.

CHAIR—Other than your executive here, how many other people are involved in the ABCI?

Mr O’Neill—The total staff at the ABCI is approximately 63 people. It is made up of administration staff being unsworn members of the Australian Federal Police. The technology staff are unsworn members of the Australian Federal Police. The civilian analysts are unsworn members of the Australian Federal Police. Then we have the seconded police officers from every state and territory. We also have outposted liaison officers in the larger states—ABCI officers posted back to the main city headquarters.

CHAIR—Despite all the good work that you apparently do, you criticise the NCA

for its lack of involvement in the use of your database. Can you just enlarge on that criticism for us?

Mr O'Neill—The NCA maintains that section 11(1)(a) of the act prohibits us from receiving information on the references on any information. When a reference is proclaimed, certain members of the ABCI may be made members of that reference. However, to give you an example, on reference Blade, which is Asian organised crime, we have an intelligence officer, a seconded police officer, based at the bureau who is on that reference. But any other member of the ABCI who is not on that reference cannot look at the information coming in. So it is rather restricted.

The NCA maintain that section 11(1)(a) excludes the ABCI because it talks about law enforcement and they believe that we are not part of that section. They say we rely on section 12(2), which says that the NCA shall consult and cooperate with the ABCI. But there is a definition of what is 'consult and cooperate', and it does not include passing all information. Our submission is that, if section 11(1)(a) does exclude the ABCI, then it should be amended to include us, because I think the spirit of the function of the ABCI is to be a single, national intelligence repository, and we do not need others growing up around us in this day and age when there are money constraints.

The ABCI has the ability. We are currently re-engineering the ACID, the Australian Criminal Intelligence Database. The ACID re-engineering project is currently well in hand. By the end of this year we will have what we believe would be the best national intelligence database anywhere in the world. We would submit that, if any agency for any reason does not want to come on board, then they would have to have some fairly good reasons. It is possible it will be caveated. There is quite a number of reasons why we should have only one national intelligence database. I have had that support. In fact, as you may see I think in my submission, the New South Wales Crime Commission gave up their database and use the ACID totally.

Mr SERCOMBE—Has this matter of section 11(1)(a) been raised with the Police Ministers Conference?

Mr Dixon—I think from time to time it has been, without any satisfactory resolution, I would suggest. We have not approached it simplistically and said that it needs to be changed. I think what we have been trying to do over the last few years is work with perhaps the NCA to see whether it could be interpreted a little bit differently. It is still our view that that part of the act does allow us to get access to the information. The NCA, I think, views it slightly differently. We have been trying to work with the NCA, I guess, to overcome that rather than seek a legislative amendment.

Mr SERCOMBE—I ask that as obviously the Police Ministers Conference is an important lead-up to the Inter-Governmental Committee that ultimately governs the National Crime Authority. It would seem a fairly logical progression for the matter to be

resolved in a non-legislative way through the processes of the governing bodies of both your organisations. You are clearly closely interlinked at that governance level.

Mr O'Neill—Yes, we are more closely linked now with the formation of SCOCCI—the Standing Commission on Crime and Criminal Intelligence. I am a member of that, as are the board of control and the NCA's John Broome. The matter is being looked at at this stage—not so much section 11(1)(a). The last SCOCCI meeting in Adelaide referred back to the SCOCCI executive officer and myself to prepare a report on how the various jurisdictions—jurisdictions including the National Crime Authority and our other stakeholders with whom we have MOUs—use the national database. I believe the question is being addressed in so far as we have to report back to SCOCCI and identify who is and is not using ACID, and maybe then why these impediments are there.

Mr SERCOMBE—One of the issues that is the subject of a great deal of discussion about the NCA—and I would imagine common police services would deal with the same sorts of issues—is the question of the extent to which the organisations ought to be almost exclusively built around seconded officers and the extent to which there ought to be some core of permanence within the organisation. The arguments, I guess, are very familiar to you gentlemen. Do you feel that your organisation and other common police services suffer because of a view that a secondment might be a temporary sidelining from the main thrust of a police officer's career in his or her home force? Would you relate any issues you have from your own experience there in ABCI to the NCA?

Mr O'Neill—The ABCI now is the only common police service that has seconded police officers on it, other than the National Police Research Unit in Adelaide, whose current director is a South Australian police officer. The other common police services—and I would stand corrected on this—do not have seconded police officers. Until a couple of years ago the National Police Research Unit did but they civilianised.

We diminished the number of seconded police officers when we partially civilianised. It is my belief that there needs to be a mixture of both. I am very impressed with the use of the civilian intelligence officers. I believe that they have lifted the game of the ABCI, and lifted the performance and the output quite considerably. It is my opinion that police forces have only in the recent past come to terms with the need and the role and function of criminal intelligence. The army and the military have had it for thousands of years and work it very well. The police have struggled with it until the last five to 10 years. They are coming to terms with not only what it is, but what they can use it for both tactically and, more importantly, strategically.

I think it is important that we maintain a police input. As to whether or not it has any career difficulties, I am not personally aware of any police officer who has come to the ABCI who has been disadvantaged by working in a common police service. The problem I have at the ABCI is that, for some reason unbeknown to me, they like living in Canberra. Since the ABCI has been commissioned, about 50 per cent have never gone

home. They have resigned. I do not know why. It is definitely not my role. Notwithstanding, I think it is a good career move for them. We maintain training during the time they are here, and most who have gone back have continued with a very good career. I do not know if that answers your question.

Mr SERCOMBE—That is helpful.

Mr O'Neill—We need to have that police input. I believe that if we do not have it then maybe police, being what they are, may not recognise it as being part of theirs. If it was just a civilian based intelligence agency sitting in Canberra, they may say, 'Well, so what?' It is that interrelationship and that liaison that we have that keeps the flow going. We have a role: we have identified that we really have to market more. We are really into the forward move.

Mr SERCOMBE—I was interested in your comments about a goal of achieving a single national police intelligence system. From an operational point of view I can see the very considerable merit of that. From a public point of view, the crucial issue would be the extent to which the public could be totally satisfied in that circumstance that the system had the highest possible levels of integrity. Without in any sense wanting to impugn police services in a general sense, policeman are human beings. As we have discovered from royal commissions from time-to-time, including fairly recently, there are issues of access and possible misuse of information. That can occur in any intelligence system, but it becomes more of a problem if there is a tendency to develop a single focus system. I am wondering how the public can be assured of the highest levels of integrity within the operations of such a system, in terms of access.

Mr O'Neill—The ABCI is subject to regular audits through the police commissioners—the board of control. Normally, about every two years officers from the different states of Australia—not all from the one state—are brought in and they do a complete audit of the intelligence holdings. As you would have seen following the Wood royal commission and with Commissioner Ryan bringing in new policies in relation to the New South Wales police force, that has occurred right across the board. There is not one police force that I am aware of since the 1990s that has not brought in new integrity measures. They had their own anti-corruption branches or independent auditing branches. They also had the role of caveats.

To give you an example, if the New South Wales police were doing a covert operation they could use the ACID database but they can caveat it to the extent that no person other than members of that operation would have access to it, notwithstanding that it is the ACID database. Even the NCA can do that, and they have done it. That operation remains totally within the control of the commander of that operation till the matter is finalised, even through court and an appeal. Then, we say, 'Open the caveat wherever possible other than to cover protected witnesses, et cetera, so that information is allowed to be looked at by people who need to look at it.'

I believe at the moment that there are too many stand-alone computers and mainframes within various areas holding this information. We are still very blinkered. You said I was looking for a 'national police'; I am actually asking for a 'national law enforcement'. That is further than police. The New South Wales Crime Commission, through Phil Bradley, is quite happy to put their information on. They have no difficulty with us. There are other agencies expressing interest in it. We have even had expressions of interest from New Zealand. I am not restricting it to police, I am saying, 'Let us really attack organised crime, let us look at the full picture, let us not have little secrets and say, "I cannot tell you because the act says—".'

Mr SERCOMBE—Do Customs use it?

Mr Manison—They access it. They use it only for specific areas that they want to become involved with.

Mr O'Neill—They do provide information to us, if we seek it. It is within their bailiwick to give it to us.

Senator FERRIS—Mr O'Neill, could I ask you a couple of questions that reflect information we have received from earlier witnesses? You may have already answered my first question in a sense, but I would like to ask it again anyway. You told us this morning that you have 63 people on your staff. There are 118 police on the NCA staff, and then we have the AFP and state police.

What is it then that stops Australia being able to get on top of organised crime? We had evidence in Brisbane last week from Mr Bob Bottom, who some of you may know, who said that we have lost the war on drugs. We have had other evidence from people who have said that Australia has lost the war on drugs. How can it be that, with all of these very effective groups, there is still something that we are not able to do through the framework of law enforcement that enables us to say that we are at least getting on top of the war on drugs?

Mr Manison—In relation to the contribution made by the ABCI and other intelligence organisations, to answer the question, we are only as good as the information we get. We are only as good as the resources that are put into the fight against drugs—the organised crime, if you can call it that. All intelligence points to the fact that the groups that are involved in the importation of drugs and those manufacturing them and growing them in this country are very entrepreneurial and opportunistic.

We are restricted in what we can offer the ABCI in support of the fight against drugs in relation to the NCA by the fact that, in many instances, a lot of information and intelligence does not flow freely to our organisation. Without that information, we are locked in a position where we cannot identify the full story, both in a strategic sense and also provide information on a tactical basis to identify people involved in that crime

involved with drugs. The answer the bureau has is that we are doing our best, but we could do better if we had more information provided to us and if we could use our analysts in a more tactical sense and in a more strategic sense.

Senator FERRIS—Mr Manison, are you telling me that there is a territoriality about sharing information on drug dealers in a national sense?

Mr Manison—There certainly is.

Mr O'Neill—There has been for some time. The Commonwealth law enforcement arrangements review, the CLER report, raised this very issue of turfdom. That is why I mentioned a while ago that police are still having—

Senator FERRIS—That is why I thought you might have partly answered my question.

Mr O'Neill—It is common knowledge that detectives—and I am one of them—are one of the worst offenders. You keep it in your notebook. You have the old boy system where you will tell them but you do not really trust anybody else. I have raised this with the board of control and I am currently discussing it with Kevin Rogers, the executive officer of SCOCCI, and we are addressing it.

Our future lies in training police officers so that, from the day they walk into that academy, intelligence is as important a role as is learning how to do a high speed pursuit, learning how to fire a weapon, learning how to handle prisoners or anything else. It is not a thing that gets picked up in about fifth year as a constable because someone suddenly says, 'That's the BCI if you have to go in there,' which is the Bureau of Criminal Intelligence.

We have to start from day one to show them in their curriculum and in their training the role and importance of intelligence so that it just becomes second nature to them. At the moment we get it in dribs and drabs. We are addressing this issue in the immediate future at the Australian Institute of Police Management where we have asked the commissioners to send a younger person—middle rank; about the detective inspector rank, who has got some career ahead of them and who is not a dyed-in-the-wool old time detective—to a course at Manly for about three days where we will actually show them what intelligence can do in an investigation. Hopefully, this will be the start of them thinking about intelligence when they are putting together an operation order.

We are working on it in my home state and in different states. I inherited a bureau in South Australia where we had all these people sitting in the office. No-one could come in because it was pretty secret. It was a special handshake and all of that. What I did was send them out. They went into the drug squad and into the major crime squad. I said to them, 'You go out and, wherever they go, you follow them. Let them think you're a pain

in the butt, but you follow them.' What has happened now is that these officers in these squads realise the importance of the intelligence officer. They are included in every operation. They see the value of it, and that is the only way we can market it.

Getting back to your point, there is a difficulty, but we are addressing it. I know the commissioners are addressing it, but it is a thing we have had for years. We never got used to intelligence. We churned out books and books on strategic intelligence, and if you were to say to someone, 'What did you do with them?', I would bet you could go to most police forces and they would be locked in a Godfrey four-drawer cabinet because they did not know what to do with them. There was nine months work done for nothing. Now when we send anything out we are looking for validation. We are asking them, 'Tell us what you did with it,' and we want to know by a certain date. If they do not, then we are going to go to someone and say, 'What did we do it for?'

It is a changing period. I appreciate what you are saying about the NCA having all these police officers. They are the investigators; we are the intelligence resource. What we are saying is, 'Use us.' We cannot sit here in Canberra and hope they will use us. That is why we put liaison officers out into the states and territories. The largest states and territories now have liaison officers. They are our marketing officers; they are our figurehead. They brief people right across the states and territories. This is a thing that has been evolving since 1995. I think the future is better, but it still needs a lot of effort from a lot of people.

Senator FERRIS—To what extent do you think the process might be assisted if you were to be made part of the NCA, as a bureau within the NCA? Do you think that would enable there to be more freedom of information?

Mr O'Neill—Historically, the NCA was not liked and accepted—this is my perception—by the police forces when it first came out. In the early days of the NCA, as you would appreciate in *Who is to guard the guards?*, the NCA was considered as an outsider. Thankfully, that has changed. We have a very good working relationship with the NCA. I am on several committees with them. I think the NCA has been seen to be far better since they have been given this role of coordination of the state references and the task forces.

There is still some degree of concern because, in their act, the NCA only does certain things. So they are restricted where we are not. My personal opinion is that I would like to see the intelligence side of the NCA go into the ABCI rather than the other way, because the NCA is still rather narrow, even though they have a national role. I would personally say that the NCA should be the investigative coordinator and that the ABCI should be the intelligence side. Why can't the NCA put their intelligence—they can have it caveated; they can have double doors or whatever—in the ABCI? Why not have one national intelligence?

Senator FERRIS—You have convinced me. I guess the thing I find so interesting is that you explained in your earlier statement that you are actually composed of state based police officers, and so is the NCA. I would have thought that that would give you a shared focus, if you like, but I do find it quite extraordinary to learn—perhaps I should not be surprised—that, in fact, there are pecking orders in law enforcement bodies in the same way as there are in other organisations in the sense that—

CHAIR—Not in political parties.

Senator FERRIS—Speak for yourself! I want to pursue that matter. The situation now is that police come from the state bodies: you yourself are from my own state of South Australia. To what extent do you think the police who come to Canberra are still tied by loyalty, and maybe by networks, back to their own state? We have had some evidence that suggests that when people do move into these national bodies it is difficult to get them to focus nationally. For example, if they come from South Australia, it is difficult for them to focus on information which might be flowing in from Queensland, because they are still philosophically and, to some extent, mentally tied back to the police force from which they came.

Mr O'Neill—With great respect, Senator, I totally reject that, having been at the bureau since 1993. I got the feeling that, for the first time—in my time, it was 30-odd years as a policeman—I was actually looking at the national picture. I am going to find it very difficult—in fact, I think I will be an absolute pain in the butt to South Australia when I get back—because, having to go back and sit within those boundaries of South Australia, I do not think I can perform.

Every intelligence officer who has ever come to the bureau and goes back performs very well. When you sit here on a national project—whether it be EGRET or stolen cars—you do forget about the fact that you are South Australian or whatever. You really do look at the national picture. You get friends in every state and territory and you have a great network. So I would say no, it is just the reverse of what you said. Coming to the bureau opens their minds, and every commissioner who has ever had one go back says that you can always tell someone who has been to the ABCI. Not that you can tell them much, but you can tell them! They are a better person than they were when they left the state.

Senator FERRIS—We have also had some evidence earlier of allegations of the NCA having pursued a case with perhaps more zealotry than might be required, and we have had some evidence that suggests that some people have been disadvantaged in their lives as a result of that. Has any of you ever seen any evidence where individuals have been pursued with more enthusiasm than you might have thought was required?

Mr O'Neill—In my role at the ABCI, no. If that were brought to my attention, I would certainly want to know why. I think I know of the case you are talking about. In my 33 years as a police officer, I have never personally had that. I realise there have been

commissions—in New South Wales, there was one—where they have indicated that they have gone after someone. That would not occur in the intelligence area, because of the very fact that we rely on intelligence. Some intelligence is not always fact. If it were ever brought to my attention—or, I am quite sure, to that of any of my staff who were told to go and see what we could find on somebody—that would be reported immediately to the Board of Control. It just would not occur.

Senator FERRIS—There is one other thing, and it is off that issue. We also had some evidence last week from the Motor Traders Association—and I was reminded to ask you the question by your reference to car theft—which suggested that car theft and a process known as rebirthing are in fact a national issue involving many thousands of dollars worth of stolen cars and cars that have been written off. We heard that the NCA had been requested to get involved in that because of the capacity for organised crime and money laundering, and that they had declined to do so. I was interested that you mentioned it a few minutes ago in the context of something else. Would you see that car stealing and that rebirthing procedure are a national issue that should be taken up on a national basis?

Mr O'Neill—Yes. The ABCI in fact has a national project on automobile theft called Kansas. My friend to my left was the actual instigator of it in his original time at the bureau in the 1980s. It is a national project where the states and territories can input onto the ACID database information relative to stolen cars. Over the time since Kansas commenced in 1989, we have done several strategy assessments, either at our own behest or at the behest of the commissioners, to look at the issue of stolen cars across Australia.

And it is not only about stolen cars. A great percentage of cars, as you might appreciate in South Australia, involve two offences. We have illegal use, which is joyriding, where there is never any intent to keep the vehicle; and we have the larceny of the motor vehicle, where they have actually kept it. We have identified for some years that this is a national problem. There have been task forces and working parties on it, but it gets back to the governments really needing to make some laws about the disposal of wrecked cars. From my own position—

Senator FERRIS—And the re-registration of them.

Mr O'Neill—That is right. What do you do with the VIN plates, and all the rest of it? I know they are working on it, but it is a long, slow process. We have Kansas and we monitor stolen cars. At the moment it is being re-engineered because of the fact that we have also been approached by the national task force. But it relies on our stakeholders to help us. I cannot send any person from the bureau to go and pick up any of it. So, there has not been a lot of information coming in. It comes in in dribs and drabs. If you ask the states, they say, 'Oh no, we're looking at it.' Occasionally, someone will ring up and say, 'We've picked up an organised crime group in, say, Holden Hill, and we're addressing that.' But, after that, it dies. There does not seem to be any ongoing momentum of

commitment to do it. But we do have a national project.

Senator FERRIS—The Motor Traders Association released a report last week, of which we were given a copy, which indicates that it is a huge national issue. It has resulted in a floor being put in the resale of wrecked vehicles. It is a money laundering operation and an opportunity for organised crime. It does seem extraordinary that, nearly 10 years after your operation Kansas started, we still have not got a reference to the National Crime Authority on it.

Mr O'Neill—Yes. I cannot answer that. I am not aware of it ever being at the NCA.

Senator FERRIS—Could you initiate something like that? Is it a role for your organisation? If you amass enough intelligence on something, do you have a process by which you could then say, 'We believe that this should now be taken up on a national basis by the NCA'?

Mr O'Neill—We have.

Senator FERRIS—Can you explain that process?

Mr O'Neill—Yes. What we would normally do is this: if we do a strategic assessment of the type you are talking about, we put in a schedule to the management committee, the Board of Control, saying that because of these indicators we wish to do a strategic assessment on stolen motor vehicles in Australia, as we have done in the past. If that is approved by the Board of Control—and it is a very quick process—we then do a strategic assessment. If our findings are as we no doubt knew they would be, we then take that to the Board of Control and request that that be passed through the senior officers' group to the Australian police ministers for consideration of it being taken up. It may go to SCOCCI, where SCOCCI may recommend that the NCA take on a reference. So, we are in the position to facilitate it. As I said, currently Kansas has been reactivated as a result of some liaison we had earlier this year with the National Automotive Task Force.

Senator FERRIS—You may wish to have a look at this report from the Motor Traders Association. It makes quite terrifying reading.

Mr SERCOMBE—Mr O'Neill, I get the impression that ABCI's stock-in-trade, as it were, is primarily in areas that are much more the focus of state police forces, perhaps, rather than the subject matter of NCA references. The violent crime linkages analysis, for example, and the National Missing Persons Unit are obviously critically important issues, but they are not within the ambit of NCA activity in the normal run of things. I was wondering if you could confirm—or correct me, if I am misunderstanding—where your essential priorities are.

You have spoken also, as has your brochure, about the involvement of ABCI in drug matters, and you have made some comments about that. I am wondering if in areas such as major fraud, for example, there is in fact a capacity to utilise your databases at the present time, and where you would see that sort of activity as fitting into priorities? Perhaps in relation to that also, what are your linkages, if any, to Austrac?

Mr O'Neill—Yes. I will ask Mr Hewitt to speak on that in a moment. I go back to your earlier comments about us not being closely related to NCA references. With respect, I think the NCA references are our bread and butter. Look at the NCA references at the moment in relation to Panzer, outlawed motorcycle gangs; Blade, Asian organised crime; Cerberus as it was, on Italian organised crime: they are the offences that are being committed in the states and territories of Australia, and they are the offences being investigated by the states and territories. The AFP has a role wherever there is importation, but 95 per cent of that work is state and territory police work and, therefore, we have a vital interest in it. It is our bread and butter, as well as other issues. I will ask Mr Hewitt to talk about where we are at the moment in relation to fraud.

Mr Hewitt—Essentially, the senior officers group, comprising the commissioners, received a working party report from the heads of the fraud squads in each of the jurisdictions. That working party report was referred to the ABCI to develop a business case for the establishment of a national fraud database. The draft of the business case is in its final stages of preparation. In fact, on Wednesday, those members of the fraud working party are meeting at the ABCI to dot the i's and cross the t's for a submission to the Board of Control in September. That is only a proposal to establish a national fraud database, and that is the stage we have got to there.

Mr SERCOMBE—And Austrac? What is the linkage to Austrac?

Mr Dixon—Up until probably the recent amendment that is going through with the FTR Act, the ABCI was excluded from receiving Austrac information. We have been trying for the last few years to correct that situation; and, as I understand it, some legislation has recently been introduced to provide the ABCI with access to Austrac information. Once we get that, we will be looking at what our role is in supporting the states and territories in relation to that.

CHAIR—What is the legislation?

Mr Dixon—I am not exactly sure. I think there are some amendments to the FTR Act.

Senator FERRIS—Would you say it was crucial for you to have access to Austrac information?

Mr Dixon—We have been saying that for some years.

Mr O'Neill—It is. Are you querying that, or are you agreeing with it?

Senator FERRIS—I posed the question why would it be that you have not had access in the past, when you both actually are dealing in the principles of intelligence—one financial and one criminal. I am just puzzled by the time delay.

Mr O'Neill—It was an unusual situation. As a South Australian police officer, I had access to Austrac while I was in South Australia, as most of the police officers have currently. But, once I got to Canberra, I could not use that, because the ABCI was not considered a legal identity, in so far as it was not under any act. Therefore, because it was under an intergovernmental agreement, it was excluded from the act. If we did a strategic assessment on anything, we could not look at Austrac to see what the financial side was.

Senator FERRIS—But could you go back to someone in the South Australian police force and ask them to access it for you?

Mr O'Neill—We asked that question and they said no, because it was an ABCI document and therefore, even though a South Australian police officer on secondment to the ABCI could be putting it together and had that approval while he or she was in South Australia, they could not use it in an ABCI document. And so, as you would appreciate, a strategic assessment had certain fairly important issues missing out of it. Following submissions, that is now being addressed.

Mr Manison—I will comment that one way that we got around that was the fact that I became a member of the management committee of the money laundering task force, and I nominated a number of my officers as members of the working group on that reference. By the very ability to be a member of that task force, we had access to the Austrac information. But we had to restrict our activity to matters purely within that reference.

Mr Hewitt—I also add that we were in support of Austrac. In providing a national service, the ABCI's infrastructure is actually supporting access via the state jurisdictions to the Austrac services.

Mr O'Neill—In fairness to Austrac, I will comment on a matter that Mr Dixon just raised. Originally, Austrac was put together for law enforcement to look at, to provide operational and investigative capabilities, not intelligence. Not being operational, we are only intelligence.

Mr SERCOMBE—They provide raw intelligence; they have not got a role in assessment.

Mr FILING—Last week in Brisbane we heard some evidence from one particular witness, Bob Bottom, whom you have probably heard of, that the Chinese Triads are

largely responsible for heroin importation in Australia. Does that match with your information?

Mr O'Neill—The Chinese are one of the main importers of heroin through Sydney and Melbourne, yes.

Mr FILING—So what Bob Bottom had to say to us is matched up by the criminal intelligence?

Mr O'Neill—Yes.

Mr FILING—And is it also a fact that, as he pointed out, their distribution network is largely through Vietnamese Australians?

Mr O'Neill—That is my understanding, yes.

Mr FILING—That is true, also?

Mr O'Neill—Yes.

Mr FILING—I think that the ABCI was instrumental back in the mid-1980s in identifying motorcycle gangs as being responsible for manufacturing amphetamines, importing weapons and for organising criminal activities on a reasonably large scale within Australia. Is that the case?

Mr O'Neill—Yes. That is correct.

Mr FILING—And, to your information, is that still now dominated by the Hell's Angels organisation in the United States?

Mr O'Neill—Not necessarily the Hell's Angels in the United States. There are other motorcycle organisations as powerful as the Hell's Angels both in the United States and here in Australia. The Hell's Angels are up near the top, but there are others just as bad. Our strategic assessment Jaguar, which preceded the National Crime Authority reference Panzer, identified those groups and, to answer your question, yes, the outlaw motorcycle gangs were into amphetamine distribution, firearms trafficking and prostitution.

Mr FILING—Did you think that under the circumstances—and I can recollect some of the information in the mid-1980s when I was in the Western Australian police service—there was an adequate response from the governments of the day to what presented itself as a very serious criminal threat to Australia?

Mr O'Neill—I cannot comment on that other than to say that the ABCI was given the approval to do a national project, Wingclipping—it was one of our first projects—and

that was at the behest of the police commissioners who are the board of control. The outlaw motorcycle gangs have always been a problem and they have been addressed. I think that since the 1990s there has been a greater emphasis and it has been brought more to the fore.

I said that the 1980s was the creation of the ABCI and the NCA, but it has taken a while. I think that is why we are here today and we are still trying to do it. People are still struggling. When you look at the budget cuts, you ask yourself whether they are really keen on it, or whether it is just for some other reason. I think that we are marching forward, but I think that we could go a bit quicker than we are at the moment.

Mr FILING—In relation to the heroin importation, has the ABCI done any strategic assessments of the size of the heroin importation problem in Australia in terms of value and amounts?

Mr O'Neill—We have. I would take advice from Mr Manison, who is my manager of intelligence, on what the current situation is.

Mr Manison—Currently, we provide in Australia an illicit drug report annually—

Mr FILING—Yes. We have a copy of that, thank you very much.

Mr Manison—One of the problems that we have in all of this is that getting information in relation to drugs is inhibited by the fact that everyone has a different reporting system. At the moment we have a joint project being funded to develop common national drug reporting methods so we will have the same form of counting and the same statistics in relation to how much heroin and similar other drugs are seized. As to an estimate of how much actually comes into the country, we can make assessments but it is restricted to the information that we receive.

Mr FILING—What is your assessment?

Mr Manison—I am not in a position to provide an assessment at the moment. I can take that on notice. I cannot give you a definitive answer at the moment.

Mr FILING—But you would probably agree with the assessment by others—including Police Commissioner Comrie of Victoria—that the country is awash in heroin?

Mr Manison—There are obviously significant amounts coming into the country.

Mr FILING—Commissioner Falconer in Western Australia, has also indicated serious concerns about the extent of the heroin importation problem in Western Australia.

Mr Manison—I think that they are genuine concerns by those commissioners.

Mr FILING—Would you agree with the Queensland police submission made last week that reductions in the staffing of the NCA and the AFP in Western Australia have opened up a pipeline from Western Australia to the east coast in relation to drugs?

Mr Manison—I could not comment on that.

Mr O'Neill—I can comment on that. I have had discussions with Commissioner Falconer and he has advised, and I have no reason to disagree with him—he has been public at SCOCCI and APMC on that very matter—that the demise of those two authorities in that state have certainly opened the doors to the importation of illicit drugs through Western Australia, yes.

Mr FILING—Would it be fair to say that the funding cuts, as you said earlier, would have exacerbated those problems?

Mr O'Neill—That is my advice from Commissioner Falconer, yes.

Mr FILING—The next thing is in relation to the mutual assistance legislation under which, presumably, you operate your interchange of information with other agencies overseas.

Mr O'Neill—We use the AFP international desk for our information. We have close contacts with sister agencies, the National Criminal Intelligence Service in London and the Canadian Criminal Intelligence Service in Ottawa and various FBI and other groups. But we use the international desk of the AFP and their liaison officers. We have a very good role with them.

Mr FILING—You are presumably conscious of what was an informal policy and has now become legislated policy in relation to the exchange of criminal information where a suspect has been arrested in a country, charged with a capital offence, and the Attorney-General is now legally unable to exchange that information without a commitment from that country that they would not carry out the penalty?

Mr O'Neill—I am personally aware of that through being at APMCs and similar forums, yes.

Mr FILING—Are you conscious of considerable concerns on the part of, particularly, some of our regional neighbours—their police agencies—that this presents a serious impediment to the exchange of information?

Mr O'Neill—It has not been brought to my attention in an official capacity, but I could imagine that it would cause that problem. It would be a problem that would not possibly come to me in the first instance. It would be an issue that would be brought to the attention of the Australian Federal Police, as the official police force to deal with

overseas agencies. We do get strategic assessments from the Australian Federal Police and we are aware of the drug situation in other countries, particularly South-East Asia, so I would agree that it would cause problems, yes.

Mr FILING—For instance, are you aware of any instances where there may be a direct interchange from agency to agency without operating through the Mutual Assistance Act?

Mr O'Neill—No, I am not.

Mr FILING—Does your agency from time to time communicate directly with other agencies overseas in relation to criminal information?

Mr O'Neill—Yes.

Mr FILING—Under what circumstances would that occur?

Mr O'Neill—It would occur in one or two ways, and I will give you an example. In 1995 I visited the National Criminal Intelligence Service in London and I formed a very close liaison with a couple of intelligence officers over there, particularly in the area of kidnapping and extortion which is a fairly new thing to Australia. In fact, we now have a kidnapping and extortion product contamination desk at the ABCI. We have had extortions and kidnappings in the last 18 months since I have been back where we liaise direct with NCIS. We do not always go through the AFP international desk because of this need. We might ring them in the middle of the night, or in the middle of their night.

Mr FILING—Does NCIS have the same restriction on information as the Australians have inflicted on themselves?

Mr O'Neill—I am not aware of that. We have had a very good flow of information from NCIS, as we have had with the Criminal Intelligence Service of Canada. We have a fairly informal relationship. There is no MOU; we see ourselves as just a brother agency. We are doing the same thing in Australia that NCIS is doing in England.

Mr FILING—Is it possible in the case, let us say, of a similar occurrence as the Oklahoma bombing in the United States where information was available in Australia of somebody being arrested in the United States and charged with an offence relating to it, that there might be a request for information via NCIS?

Mr O'Neill—Are you talking about NCIS in London to the United States?

Mr FILING—Yes.

Mr O'Neill—I would not know. I cannot talk about what NCIS might do. If I

wanted to know about that information in the United States I would go through the legal attache at the US embassy—we have a very good liaison there—and I would get that through him. I would either go through the legal attache or I would go through the AFP international desk. But on an issue like that where the FBI was involved I would go through the legal attache.

Mr FILING—Given that Australia is due to host the Olympics in the year 2000—and I think that is referred to in your submission—and that we heard from the Secretary-General of Interpol at a recent hearing that information exchange is absolutely critical at a time like this for Australia, because of the obvious threats likely to present themselves to Australia, are you concerned that Australia may in fact be restricting information to itself that may assist in the early detection and prevention perhaps of terrorist, extortion or kidnapping activities within Australia during the Olympics?

Mr O'Neill—I do not think so. I was at the inaugural meeting of the Olympics security committee. The ABCI has been on it since day one. Mr Manison is now our representative on it. We are also on several committees, including one the AFP have put up. The feeling that I and Mr Manison have is that it is a very good unit that they have got together, the whole system, and I do not think that there will be any turfdom in that. I feel very confident about the system they have put together.

Mr FILING—Okay. Thanks.

Mr O'Neill—You asked me earlier about the lack of impetus from governments. Mr Dixon brought something to my attention, in regard to the immigration department in the early 1990s. We received information that the Hell's Angels were going to do a world run in Australia and we put a submission to government which the government acted on and the immigration department refused access. They certainly were committed there and the world run did not occur. In fact, at times when we identify outlaw motorcycle gangs coming to Australia for any reason, whether it is a funeral or whatever, we raise it at the time and they are turned back at the barriers. So I think there is a commitment.

Mr FILING—I would like to pursue one other point if I may. I was speaking to NCIS last year and they indicated they had similar problems in relation to relations with police services in the South-East Asian region, particularly the Philippines and Thailand, in relation to child sex tours. They were interested in some of the experiences within Australia. I am interested to know, in relation to child sex tours and paedophile networks that operate visits to South-East Asian locations, whether the ABCI has an information database, whether it has exchanges with the relevant police forces in the region and whether you have come across any problems similar to what the National Criminal Intelligence Service has?

Mr O'Neill—We have the national database EGRET, which looks at paedophilia. In relation to matters in South-East Asia, we work through the Australian Federal Police.

We have a very good liaison there. It is my belief, from what I have read and seen, that the Australian Federal Police have control of the information flowing. I think we have a very good knowledge of what is occurring through the AFP liaison officers. We rely on the Australian Federal Police for their information, and I have no difficulty with the information that is currently being received.

Mr FILING—Even from Cambodia, for instance?

Mr O'Neill—I cannot talk about state by state or country by country. I am just saying that from the feedback I have from the Australian Federal Police at the moment, through their liaison officers, I think we are getting the true picture.

Mr FILING—For instance, at a recent inquiry we had World Vision indicated that they felt they got an insufficient response on information they had passed on to Australian authorities in relation to serious concerns they had about paedophile activities within the World Vision program within Cambodia.

Mr O'Neill—I cannot comment on that. I am not aware of it. Whether or not it even got to the AFP I do not know. You would have to ask the AFP.

Mr FILING—I think they wrote to the Minister for Justice. Today or yesterday in the newspapers there were substantial reports in relation to cannabis exports from Cambodia. They were indicating that Cambodia is now a very significant source of cannabis imports. Does that marry with ABCI information?

Mr Manison—It is clear the programs that have occurred within Australia to suppress the growth of cannabis have been quite effective. There has been a large deal of resources placed into programs in the various growing regions of Australia. Task forces, such as Cerberus, were very effective in this area and it appears that there is a shortage. That shortfall is being provided by exports from other countries into Australia.

Mr FILING—For instance, are you confident that you are getting sufficient intelligence from the Cambodian authorities, your counterparts, or wherever the information comes from in Cambodia's police service, in that relation?

Mr Manison—We rely, in this area, on the AFP through their system of disseminating their intelligence and to date we have had quite a good flow of information. One of the things that occurs is—you must understand that we generally do not get the raw intelligence; there is a value adding process that occurs with the AFP in this and we get periodic reports from them in relation to what events are occurring in this criminal area in South-East Asia. There is a lag. There is some time between when the information goes to the AFP and it is processed and when it comes to us in the form of tactical or strategic reports.

Mr FILING—For instance, are they sending over cannabis in sea containers to Australia?

Mr Manison—I cannot comment on that but I assume that that is the way drugs are imported into the country. It seems the most common means of bringing it into the country is in cargo within those containers.

Mr FILING—Have you any idea of the extent to which that is occurring?

Mr Manison—No. We have never gone into that.

Mr FILING—Would it be fair to say that presumably the people who are responsible for importing it see the level of customs inspection as being not much of a threat to that particular trade?

Mr Manison—In the information provided to us it appears that there probably is less checking of containers than there was previously.

Mr FILING—And the Minister for Customs says that we are winning the fight against drugs?

Mr Manison—I do not think it is appropriate for me to comment on that.

Mr FILING—Does the ABCI have any information on who is responsible for importing cannabis from Cambodia?

Mr O'Neill—We most likely have; I would have to take that on notice. We have a drug desk at the ABCI. We could possibly provide that information out of this session but I would not be able to tell you at this stage. If you want that advice, I can provide it.

Mr FILING—Is it the same people who are involved in cultivating cannabis, or others?

Mr O'Neill—I would have to take advice on that. When we talk about organised crime we are not talking about Italians, et cetera, we are talking about entrepreneurial groups. You will have an Italian, a Chinese, a Vietnamese and a Libyan get together if they think there is a quid in it. Organised crime is only organised for the commodity, not because they all come from the same country. They are very entrepreneurial. They move. What they are doing today or tomorrow is they will be selling cars and the day after they will be running television stations or something.

Mr FILING—Would it be fair to say that in relation to Chinese Triads, for instance, they would be largely reliant in their organisation on people that they could trust and communicate with intimately and they are likely to come from the same community?

Mr O'Neill—Are you talking about Triads in Australia?

Mr FILING—Yes.

Mr O'Neill—We do not work on the assumption that there are Triads organising crime. We still say they are entrepreneurial. My personal opinion is that the Triads, per se, are not great organisers. They are just entrepreneurial groups who will go from one group to another. The evidence shows that they will join groups with anyone if there is a quid in it. Once they have made their money they will break up and look for something else to do. It is almost as if they put out for tenders.

Mr FILING—But they are organised in so much as they have a common purpose?

Mr O'Neill—Common purpose, yes—the common purpose being monetary.

CHAIR—We need to move on to Mr Smeaton. Thank you gentlemen. You have given us some food for thought here. As you see it, you are obviously performing a valuable task, but one that is not necessarily valued by those who are meant to be taking advantage of the service. In particular, you have pointed to the NCA. Is that a true understanding of what you said?

Mr O'Neill—I think the NCA appreciate the value, but think they are hindered by it. I said to a senior officer of the NCA last week, 'It is my belief that section 11(1)(a) allows us,' and he said, 'It is my belief it doesn't.'

CHAIR—We will try to sort that out. How many police officers have you got attached to the ABCI?

Mr O'Neill—Basically, each state has one, except for New South Wales, which has four or five. Myself and Mr Manison and a couple of others are on what we call national positions, so we are not part of the secondment. You would be looking at about 12 to 15 police officers.

CHAIR—Plus a lot of administration staff?

Mr O'Neill—Administration and seven civilian intelligence officers.

CHAIR—Do you produce an annual report?

Mr O'Neill—We certainly do.

CHAIR—Do you have some performance standards or measurements? I take it all these police never arrest anybody?

Mr O'Neill—Our people?

CHAIR—Yes.

Mr O'Neill—No. That is what I said. We are not operational; we do not have a cell block at the back of the ABCI.

Senator FERRIS—It would be helpful if we could have a copy of your annual report.

Mr Dixon—Yes, Senator. Our annual report forms part of the common police services annual report. The six common police services combine their annual report into a consolidated document. We can provide that for you.

CHAIR—We might have a look at that. Thank you very much for your time this morning. It has been very valuable for us.

[10.27 a.m.]

SMEATON, Mr Daryl Peter, Executive Member, Commonwealth Law Enforcement Board, 111 Canberra Avenue, Griffith, Australian Capital Territory 2604

CHAIR—Welcome. We have received a submission from the Commonwealth Law Enforcement Board and we have published it. 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, I am required to remind you that if, during the hearing, you consider information you might wish to give or a comment requested by committee members is of a confidential or private nature, you may make application for that information or comment to be given in camera and the committee will consider that application. I also need to remind you that, as a public officer, you are not expected to comment on matters of government policy. We have your submission, which we have read with interest. I now invite you to make some additional comments.

Mr Smeaton—I appear in my capacity as the executive member of the Commonwealth Law Enforcement Board—that is, the full-time member of the board. The board also comprises the head of the National Crime Authority as the chair of the board, the Commissioner of the Australian Federal Police, and members from Austrac and the Attorney-General's Department. The board was established in March 1994 following government acceptance of the major recommendations of the review of Commonwealth law enforcement arrangements.

Briefly, the functions of the board are to advise the Attorney-General on matters affecting the law enforcement interests of the Commonwealth, which include the functions and priorities to be pursued by Commonwealth law enforcement agencies, statutory appointments and national law enforcement issues. The board also prepares national criminal assessments for the minister and the government, provides the government annually with a list of Commonwealth law enforcement priorities, reports to the minister on the performance of Commonwealth law enforcement agencies, relates priorities and functions to resources and reports to the minister on those, advises Commonwealth law enforcement agencies on appropriate coordination arrangements, authorises best practice standards and standards for the prevention and deterrence of fraud and, of course, reports annually to the parliament.

I should add that I wear another hat as Director of the Office of Law Enforcement Coordination in the Attorney-General's Department, which provides day-to-day advice to the Attorney-General on executive government issues. These include, in the context of this inquiry, advice on the National Crime Authority legislation; operational and administrative policy issues; appointments; and, importantly, the issue of references.

In preparing for this inquiry the board decided that it would not make a detailed submission, on the basis that its constituent members would be making such submissions on their own behalf. It was agreed, however, that those submissions, while addressing the terms of reference from the individual agency's perspective, would be strongly supportive of the performance of the National Crime Authority and its continued necessity as an integral partner in the national law enforcement effort. In my other capacity, I and my staff have contributed to the submission from the Attorney-General's Department.

The major point of my brief submission is that the National Crime Authority is an

essential part of the Commonwealth and national law enforcement effort. Without it, that effort would be essentially uncoordinated, unstructured and unsuccessful. If we did not have the National Crime Authority, we would have to have another national organisation doing much the same thing. That is all I wanted to add, Mr Chairman. I am happy to answer questions.

CHAIR—Thank you. Mr Smeaton, just so we can understand your role in all of this, along with that of the cast of thousands we seem to be confronting in this inquiry already: how many people are involved in CLEB—how many personnel?

Mr Smeaton—Within the Office of Law Enforcement Coordination, which provides support to the board, there are 40 staff but they are mainly staff of the Attorney-General's Department, most of whom provide executive policy support to the Attorney-General. In respect of the board itself, there are approximately 15 staff who provide direct services to the board in those areas of strategic crime assessments, planning and priorities, and fraud control.

CHAIR—Any policemen involved directly?

Mr Smeaton—No. We have had, on occasion, police officers working within the board but we are public servants generally.

CHAIR—Everybody that comes before us goes to great pains to justify their existence. Maybe you should give us a bit of a burst on that as well. As I said, you are here. I cannot believe there are all these people are doing all this work and yet, as some of my colleagues suggested, we still do not seem to be getting anywhere. That is not entirely fair, I am sure—we have had some successes—but now we have got this SCOCCI in place and we are going to have an NIIC very soon, and we have got CJs and ICACs. There are layers and layers of it and you are another one.

Senator FERRIS—No offence meant.

CHAIR—No, no offence.

Mr Smeaton—None taken, Senator.

CHAIR—You report on the performance of the NCA. Is this an ad hoc thing? Do you have particular expertise that enables you to tell the A-G whether the NCA is doing a good job or not? Is that an important part of your role?

Mr Smeaton—It is an important part of the advice to government on planning and priorities. Perhaps if I can just briefly put this issue into context. Indeed Mr Sercombe, in one of his opening questions, referred to this very issue of what appeared to be a plethora of agencies doing much the same thing. Indeed, the review of Commonwealth law

enforcement agencies had the same criticism, particularly of the Commonwealth law enforcement effort, and as a result made a recommendation that there should be better coordination of that effort.

It recommended to the government, and the government accepted, the establishment of the Commonwealth Law Enforcement Board to bring about that better coordination, to provide a forum in which the heads of the agencies involved in the Commonwealth law enforcement effort could work more closely together on important policy issues and advise government on them and to bring about a more focused strategic alliance in that Commonwealth law enforcement effort. I believe that that has been one of the major successes of the Commonwealth law enforcement effort in the last three years: the strategic alliance that is working and is producing results between the National Crime Authority, the Australian Federal Police and Austrac.

It is interesting that, at the time of the Commonwealth law enforcement review, the states and territories decided to have their own review of their efforts in relation to the National Crime Authority. That led to the establishment of SCOCCI, the Standing Committee on Organised Crime and Criminal Intelligence, as the principal advisory body to the Inter-Governmental Committee in relation to the National Crime Authority. Again I would submit to you that the establishment of SCOCCI is producing those coordinated results and that coordinated advice to the IGC, such that the national law enforcement effort is much more focused, much more structured and, indeed, more successful.

Mr FILING—In your body—and, of course, in your previous incarnation—your advice would be given substantial weight and would be seen as being a key adviser in the formulation of Commonwealth law enforcement policy in the Attorney-General's Department. You have heard as part of the evidence from the ABCI, and presumably you are aware of fairly wide ranging views around the country in relation to this, about the effect of federal cutbacks in Commonwealth law enforcement. Do you agree with the view that the across-the-board cutbacks that have occurred, not only under this present government but also under the previous government, have interfered with the investigation and detection of importation of drugs, for instance? And would you agree with the previous police commissioners who say that the country is awash in heroin?

Mr Smeaton—To take the first part of that question, it is clear that any reduction in resources of a law enforcement agency does not help it to achieve the best outcome, but law enforcement agencies are not immune from the need for governments to address fiscal issues as compared with any other agency. Therefore, law enforcement has had to take its licks the same as anybody else and to focus its efforts in such a way as to achieve optimum results from the resources made available to it. Certainly it is my belief that the National Crime Authority has done that to the best of its ability. In the latest budget the government has recognised the significant need for the authority to address major fraud issues arising out of, particularly, financial reports, and criminal activity obviously is a focus.

Mr FILING—But largely in relation to the Commonwealth?

Mr Smeaton—No, it is not necessarily, of course, related to the Commonwealth. The National Crime Authority has a national focus.

Mr FILING—The budget papers and the announcement specifically referred to investigations of fraud against the Commonwealth.

Mr Smeaton—Of course. Fraud against the Commonwealth affects things like national revenue and, of course, national expenditure programs, which has a flow-on effect on the whole of the country. I would not want to give any impression that just because it is fraud on the Commonwealth it does not have a major effect on the whole nation and therefore by—

Mr FILING—I appreciate that. I understand. I did not mean to say that it was not worth fighting it; it is, because obviously it is a serious influence on the revenue and expenditure. But at the same time you would be aware—I am not sure whether you were present but I mentioned the evidence given by the Queensland police commissioner's representative last week—they are very concerned that cutbacks, in particular to personnel in the NCA and AFP offices in Western Australia, have created a new conduit for drugs from the west coast to the east coast. That is now of serious concern to the Western Australian police force and to the Queensland police force.

Mr Smeaton—Yes, I am certainly aware of those views. I am not in a position to comment on operational issues. They are clearly matters that you need address—

Mr FILING—Would you not have entertained these types of views when formulating policy on the Commonwealth Law Enforcement Board's part?

Mr Smeaton—Clearly. They are matters that do come to our attention when we are looking at issues relating to both the Commonwealth and the national law enforcement effort. As I said earlier, though, we live within the constraints imposed by government on resources available for law enforcement. Therefore, we cut our cloth to meet the resources available to us.

Mr FILING—You are obviously conscious of the quite considerable flow-on social effects of the importation of heroin, in particular, into the country.

Mr Smeaton—Yes, I am aware of those.

Mr FILING—Would you agree with the proposition that there is room for exemption or quarantining from cuts in an area of such significant social effect as the importation of heroin?

Mr Smeaton—It is a difficult question for me to answer in a direct way. Let me answer it in this way. The board is responsible for advising government on planning and priorities that the Commonwealth law enforcement agencies should address, and those planning and priority assessments are backed up by the strategic crime assessments produced by the office within my organisation. That enables us to place before government strategic advice, which includes issues relating to resourcing, legislation, administration et cetera. However, the decisions in relation to those are matters for government, and they are matter that government needs to weigh up against the other priorities that government needs to address.

Mr FILING—But acting on the advice of informed and qualified advisers like yourself?

Mr Smeaton—Clearly. That is our job—to put that informed advice before government.

Mr FILING—You were part of the process that was responsible for the Commonwealth law enforcement review report in 1992, was it?

Mr Smeaton—It was 1993-94.

Mr FILING—That report set up a proposed menu of work for the NCA, which is something that has been a subject of debate since. Four years later, one of those subjects, Chinese Triads, which was part of the original menu, has been mentioned by witnesses in hearings to us as being of still very serious concern in the importation of heroin. What strategic efforts have been made since 1993 to attack the criminal activities responsible, as per the menu of work, as per the evidence we have heard, in relation to the importation of heroin, which is largely conducted by Chinese Triads?

Mr Smeaton—I am not in a position to give you views from an operational perspective, Mr Filing. Clearly, you would need to address those issues in that sense to the National Crime Authority and to the Australian Federal Police. Suffice to say that, from the Commonwealth Law Enforcement Board's perspective, the authority has kept the board informed of its strategic assessments in relation to the menu of items put forward by the CLER and accepted by government as essential parts of the future work of the National Crime Authority. Those strategic assessments have been presented when completed to the intergovernmental committee, so that it can make informed decisions about the future work of the National Crime Authority.

Mr FILING—So my constituents who ask me what the Commonwealth government is doing about the heroin flood into Australia can be reassured that, since 1993, there has been a strategic attack on heroin importation by Chinese Triads. Is that a fair comment?

Mr Smeaton—I believe that is a fair comment, yes.

Mr FILING—In that case, why is it still a very serious problem?

Mr Smeaton—It is a very serious problem in the whole world, Mr Filing, and I do not think Australia is immune from the effects of very large production of heroin in the producing areas.

Mr FILING—Can I just interpose there? At the beginning of our session I mentioned that the across-the-board cuts had in fact exacerbated the problem. That was a concession by the ABCI. It has been a concession by most of the police agencies that we have spoken to, and I would say also by the NCA, when we spoke to them at an earlier hearing and a previous activity. Under those circumstances, given that presumably advice to the government on this matter is considered to be important, what advice has been given to the government in relation to the effect of cutbacks in relation to the importation of heroin?

Mr Smeaton—I think it would be fair to say that the advice has been, as I said earlier, across the whole range of the national law enforcement effort, which obviously includes addressing the issue of importation of narcotic drugs, and that the reduction in resources has not assisted in helping law enforcement agencies address the problem. That has been quite clear in the public statements of the chair of the National Crime Authority, and the Attorney-General himself has said publicly that resource reductions do not help in the fight.

But, as I said as well, we are aware that governments take decisions across the whole range of the services that they are required to provide and they make those decisions based on the best advice available to them. I believe we have given them the best advice, but decisions of that matter are taken by governments.

Mr FILING—When I asked the question to the Minister, the Attorney-General in the House, and when I have asked the question to, I think, the Minister for Customs, in both cases, particularly in the case of the A-G, I was informed that in fact cutbacks could be accommodated within operational rearrangements within the agencies—that was the AFP and the NCA. In the case of the Minister for Customs, he has recently said that he is winning the war against drugs, which just about nobody other than he agrees with. Certainly, that has been the case when you ask the question around the place.

Under those circumstances, is it not fair to say that where other agencies and other authorities—for instance, the police commissioners—are asked the question they, almost to a man or woman, agree with the fact that the cutbacks have reduced the opportunity of detecting the importation of this huge amount of heroin coming into the country?

Mr Smeaton—They certainly have made those views publicly and clearly and well

known. I have acknowledged here today that reductions in resources do not help law enforcement agencies address major issues of law enforcement concern.

Mr FILING—The Victorian Police Commissioner has spoken in terms of a crisis. Is that a fair comment?

Mr Smeaton—Yes, he has.

Mr FILING—And so has the Western Australian Police Commissioner.

Mr Smeaton—Yes.

Mr FILING—And they have literally implored the federal government to reassess its across-the-board cuts.

Mr Smeaton—Yes, they have.

Mr FILING—What has been the advice under those circumstances from CLEB in relation to the liaising and the arrangements with Commonwealth law enforcement agencies?

Mr Smeaton—As I said earlier, Mr Filing, we put the strategic advice to government which covers the whole range of the law enforcement effort, and have certainly said that reductions in resources do not help in the fight.

Mr FILING—I turn, if I may, to the mutual assistance legislation in which, obviously, information is exchanged between Australia and overseas law enforcement agencies. You are, of course, conscious of the introduction of the mutual assistance legislation which formalised the previously informal arrangement relating to the exchange of information where a suspect has been arrested in a foreign country which is a signatory to the mutual assistance legislation where, for instance, they have been charged with a capital offence in that country?

Mr Smeaton—Yes, Mr Filing, I am aware of that.

Mr FILING—And you are also conscious that the advice the Attorney-General would have received would have been that, consistent with Australia's international obligations, that particular policy should be legislated.

Mr Smeaton—May I just clarify that there is still a very large amount of exchange of information and assistance to law enforcement agencies around the world that does not come within the confines—if I can use that expression—of the mutual legal assistance act or treaties. The Australian Federal Police has a highly efficient and very effective international liaison network. Certainly, from my experience around the world, there is

probably no other national law enforcement agency that has such a broad spread and such a good reputation.

Certainly, in terms of the formal exchange of information, particularly relating to prosecutions and to formal investigations, the mutual assistance act does apply and governments—both the previous government and the current government—have agreed and the parliament has legislated to the effect that there will be restrictions on the exchange of information where capital offences, the death penalty, may be applied, and that is something that is extant now.

Mr FILING—I suppose you have heard the expression that is used about Australia amongst our regional neighbours of Australia being a NATO country, ‘No Action, Talk Only’, in relation to the international exchange of information on criminals?

Mr Smeaton—I had not heard that, but it is an interesting view.

Mr FILING—You would be aware of the large number of comments made at the conference that was organised in 1994 by the NCA and the AFP into organised drug trafficking in the Asian region when a number of our Asian neighbour counterpart agencies indicated concerns about this particular policy?

Mr Smeaton—I am aware that there are some concerns that have been expressed. To a very, very great extent it does not affect the normal exchange of intelligence, assistance and information between Australian law enforcement and law enforcement in those other countries. If you asking me for a personal view, I happen to support, very much, the Australian government’s view and the Australian parliament’s view that where the potential is for the death penalty to be imposed, we should restrict the information. That is my personal view and it has been prescribed by the parliament.

Mr FILING—That would be the case, for instance, if there was an Australian information source in relation to the Oklahoma bombing?

Mr Smeaton—I am not in a position to comment on a specific case. Clearly, there are emotive issues quite often involved in this particular area. The parliament has prescribed a restriction on the exchange of information in those sorts of cases and that is the legislation under which Australian law enforcement agencies operate.

Mr FILING—I appreciate the fact that part of the advice the A-G would have received would have been that it was consistent with our international obligations when preparing the legislation, I presume. These concerns have been reflected in a different way by the Secretary-General of Interpol when he came and gave evidence to us. In particular, we have the situation where the Sydney Olympics are looming large on the horizon. Terrorism, extortion and kidnapping may not necessarily involve capital punishment in Australia, but in other countries where there are similar types of offences, they may be

capital offences. Therefore, Australia's reluctance to interchange information under certain circumstances may be an impediment for us. That is a fair comment, isn't it?

Mr Smeaton—I said earlier that the mutual assistance arrangements are very, very narrow. The vast majority of the exchange of information, assistance and coordination of effort between Australian law enforcement agencies and international law enforcement agencies goes on everyday in a very successful and coordinated way. I do not believe that the very narrow restriction in the area of formal mutual legal assistance has any major effect on the necessary and important exchange of law enforcement information.

I certainly do not believe that it will have any major effect on the important work leading up to the Sydney Olympics and the work that is going on now. In fact, the director of the ABCI has this morning given evidence that the arrangements there are very effective and the international dimensions of those arrangements are also very effective.

Mr FILING—Will the cutbacks to funding for law enforcement agencies have an effect?

Mr Smeaton—I think cutbacks in any agency have an effect.

Mr FILING—That is all I was asking, a yes or no.

Mr Smeaton—Yes, there is an effect.

Mrs WEST—Is CLEB responsible for determining the menu for the NCA on issues?

Mr Smeaton—No, it advises the Commonwealth minister on those matters, but the determination of the work of the National Crime Authority formally and under legislation falls under the terms of the Intergovernmental Committee on the National Crime Authority.

Mrs WEST—Do you have any responsibility in advising or recommending any budgetary reductions to the Commonwealth government?

Mr Smeaton—I can honestly say that I have not recommended any budgetary reductions, but governments take decisions on the broad economic needs, so reductions have been made. But neither the board nor I personally have recommended reductions.

Mrs WEST—Do you know who advises the government on where savings can be made?

Mr Smeaton—That is a matter for the Minister for Finance and the Treasurer in formulating the budget through the Expenditure Review Committee.

Mrs WEST—So you are not asked if you can comply with a certain amount of reduction in your own facilities?

Mr Smeaton—We are asked that all the time. Our job is to try to find ways why that should not happen, and that has certainly been the position of the board and its constituent agencies. I think it would be fair to say that we have consistently argued that increased resources are needed to provide effective national and Commonwealth law enforcement efforts.

Mrs WEST—Have any cuts been effected in your department? Have you had any reductions in available funding?

Mr Smeaton—Each of the agencies involved in the board has had reductions in resources in the last two years.

Mrs WEST—Would you like to see a change in policy?

Mr Smeaton—Clearly, yes, but I am well aware that decisions in respect of resourcing are matters for broad government policy. I am no different from any other public servant—we would like more resources to do what we think we need to do in terms of the job in front of us.

Mrs WEST—Where would the best value for those resources go? If you had to prioritise, would it go to operations or strategic planning?

Mr Smeaton—There is no doubt in my mind that the most important thing is the operational side of the agencies. But it is also quite clear that the old system, if you like, of anecdotal advice to government in support of resource bids is no longer appropriate. Therefore, strategic planning, strategic advice and strategic assessment is vital to informing government about needs for resources.

Mrs WEST—To the best of your knowledge, do we have more criminals in the community or more public servants employed to fight the criminals out there in the community?

Mr Smeaton—I have no idea. The national law enforcement effort is about 40,000 strong. I suspect that it is about line ball given the crime statistics that we publish annually.

Senator FERRIS—Mr Smeaton, I think you were here this morning when I was asking the previous witnesses about national car theft. Could you tell me whether you have ever drawn to the Attorney-General's attention, in a general sense, the issues that I raised earlier this morning? That is, the opportunity that car rebirthing procedures offer for laundering of money and also for organised crime. If you have, could you tell us the

process that might occur by which that reference might go to the NCA? You probably heard me say that when the question was asked of the NCA last week, it transpired that the Motor Traders Association, who had drawn it to the NCA's attention, had declined to become involved and said it was a state matter.

Mr Smeaton—To answer the first part of your question: no, we have not informed the current Attorney-General of the issue relating to automobile theft, although it has been an issue addressed previously in terms of examining whether or not there was a need for a national effort against the matter.

In terms of how a matter gets before the National Crime Authority under a reference, there are really, I suppose, four methods. The authority itself is generally the major instigator of references to be issued to it. That advice comes out of its strategic assessment work.

Then there will be issues that arise out of the broad policy examination of law enforcement. In that sense, my agency and the Attorney-General's Department have, in the past, advised the Commonwealth Attorney-General or the Commonwealth minister responsible to seek the agreement of the intergovernmental committee to issue a reference.

The state ministers themselves or state governments can seek both or either a state reference or a national reference. The Standing Committee on Organised Crime and Criminal Intelligence could clearly put forward a request to the intergovernmental committee for a reference.

Senator FERRIS—I realise that you are constrained in relation to policy matters concerning the previous government, but are you able to explain to us by what means it was determined that the NCA should not get a reference on this issue?

Mr Smeaton—I am trying to dredge my memory a little bit, Senator, but certainly at the time I think it was determined that the matter had not reached the stage that a national effort was required. There has clearly been concerted action within individual jurisdictions. New South Wales, for example, has done an enormous amount of work in this particular area, and I am aware of quite successful work across state borders on a bilateral operational sense between state police services. But the matter of a national reference has not come before the IGC in relation to automobile theft thus far.

Senator FERRIS—How many years ago would it have been that you made the decision that it was not of significant national interest?

Mr Smeaton—Without being absolutely accurate, it would be four to five years ago that it was last looked at.

Senator FERRIS—The witness that we had last week in Sydney from the Motor

Traders Association referred to a document that was released, I believe, just very recently which showed that in fact there is a potential for money laundering on a large scale and also national organised crime. I just wonder, given these circumstances, whether there would be any way in which you might normally see that and initiate another review, or would it be that an organisation such as the MTA would have to approach you? Is your role reactive or proactive in setting up those sorts of inquiries?

Mr Smeaton—It is both. Certainly we constantly monitor the criminal environment to advise government on emerging issues, both current and future. That is the work of the two major constituent parts of my organisation: the Office of Strategic Crime Assessments, and the Office of Law Enforcement Policy who do the current planning and priority advice to government.

At the same time, we are proactive through that process, but the reaction clearly requires us, if a matter comes to the attention of either the minister or the intergovernmental committee, to make an assessment and to provide advice such that ministers, properly through the formal structure set out in the National Crime Authority Act, can make a decision in relation to whether or not a reference should be issued to pursue that particular crime.

Senator FERRIS—I think you were also here when the previous witnesses talked about territoriality and fiefdoms in intelligence gathering and the difficulty of interacting with various databases and so on. Have you ever become aware of the way that sort of difficulty, in a national sense, for yourself might have interfered with the efficiency of the operations that you are able to carry out?

Mr Smeaton—I believe that that has been—and was certainly until, I suppose, the last three years—the major detractor from effective national law enforcement. It was certainly a major finding of the review of Commonwealth law enforcement arrangements and, indeed, a major finding of the review by Mr John Avery and Sir Max Bingham looking at the state use of the National Crime Authority.

Hence the establishment of both my board and the Standing Committee on Organised Crime and Criminal Intelligence. It is all a bit family like. We are all in it together. We talk about a plethora of agencies but there are only about 11 effective law enforcement agencies fighting in this area. They include the eight police services, the National Crime Authority, the CJC and the New South Wales Crime Commission. Those bodies meet on a very regular basis. The exchange and coordination of information is of a high order.

I think it will be a long time before turfdom goes completely in law enforcement, but let me say that it is not unique to law enforcement. But I think the effort in the last three years has been highly successful and it is becoming more so. I think we have broken down those barriers. They are still partly there and we need to continue working on that.

There is no doubt in my mind that the free exchange of criminal intelligence information is the key to the best outcome. I believe through SCOCCI, and through the arrangements that my agency has put in place at the Commonwealth level, that we are now achieving very effective intelligence assessments.

Senator FERRIS—That is notwithstanding the fact that there are still two databases. The NCA has an intelligence database and so does the ABCI. I appreciate the comments you are making and I am very reassured to hear them, but clearly we have not got to the end of that line yet. There is still a little way to go.

Mr Smeaton—I think we are always working towards being more effective. There are restrictions in relation to the exchange of information that are legislatively based.

Senator FERRIS—I understand that.

Mr Smeaton—And some of those do need to be addressed. I am aware, for example, that the authority has raised the issue of addressing the secrecy provision with its own legislation. Certainly, as the ABCI gave evidence this morning, the issue of its access to certain information needs to be addressed. We have at the Commonwealth level moved recently and legislation will soon be before the parliament—which the minister has agreed—in relation to ABCI access to Austrac information. Those issues are being addressed in a coordinated way but it does require, in many cases, the decision of the parliaments to make some changes that are necessary now. They may not have been necessarily aware of those issues in the past.

Senator FERRIS—Within the constraints of what you are able to tell us—and I have asked this question of a number of other witnesses—have you seen or have you become aware of any evidence that suggests that individuals in the NCA, or groups within task forces, unnecessarily, enthusiastically, pursue individuals or groups—in other words, exercise zealotry in their pursuit of particular individuals or groups?

Mr Smeaton—No, never.

Senator FERRIS—Do you believe that there is a sufficient framework within the NCA to ensure that if that were to occur in a broad sense that there would be means by which it could be detected and dealt with?

Mr Smeaton—Yes, I am very confident of that and have been right through the whole life of the National Crime Authority. I believe that the authority conducts its work to the highest ethical standards in a transparent and accountable way. I think it would be fair to say that the authority is more accountable in terms of the number of agencies to which it is required to report than any other law enforcement agency in the country.

Senator FERRIS—Just in closing, has the board ever looked at the possibility of

making funding available under a victims of crime arrangement to be available to individuals who can demonstrate that they have been unnecessarily pursued by the NCA or that their lives have been irreparably damaged as a result of public activities involving the NCA? We have had evidence so far of individuals whose lives have been irreparably damaged by circumstances involving the NCA. Have you ever looked at the principle of not ex gratia payments but individuals having access by application to be assessed for some sort of payment for any damage they are able to demonstrate?

Mr Smeaton—The issue has been raised some time ago. I do recall, without recalling all of the detail, certainly some request to the Attorney-General for an examination of that issue. It is not something that my board is responsible for and nor do we have resources available to us for that. In terms of what might be available at a state level, I am not competent to comment. It seems to me that there are within most legal systems both opportunities and resources available to people to take civil or criminal action to protect their own rights and to protect their own reputations. I believe that those avenues should be pursued.

Senator FERRIS—I do not disagree. My only point is that you have got to have the money in the first place to be able to mount those cases. In many situations the people who would be applying would have expended considerable resources already in legal costs. I just wondered if, as a matter of principle, the Commonwealth had ever examined a circumstance under which those applications could be made ex the court—not within the court system. They could put a case to a body such as yourself, an examination could be undertaken and, if a decision was made that the case could be sustained, a payment could be made. I accept the principle of the court system, but I am not thinking about that.

Mr Smeaton—From my own experience, Senator, I am not aware of any examination that has been done along those lines. Certainly, it is not planned by my board to undertake that sort of examination. But in terms of an issue that the chairman has raised today about the future examination of complaints, for example, against the National Crime Authority, the government is currently preparing its response to the report of the Australian Law Reform Commission.

I believe that issues such as those you have raised will be addressed in terms of the government's response to the ALRC report. A proper complaints process in relation to the National Crime Authority finally—and I have to say that it has not been without trying—will be put in place which will, I believe, provide opportunities for people in the circumstances that you have outlined to seek redress and a proper examination of their claims.

Senator FERRIS—Thanks, Mr Smeaton.

CHAIR—You heard the ABCI talk about the problems with interpretation of section 11(1)(a) of the act. Has that been an issue for you?

Mr Smeaton—Not personally or directly. But certainly issues such as the review of the legislation are matters that we are currently examining. I understand that the submission of the Attorney-General's Department to this inquiry has addressed some issues in relation to parts of the National Crime Authority Act that do need examination. I do not have a copy of that submission in front of me so I am not able to comment on the particular section. But we will have a look at that. It has been raised and officers with me today have taken note of that and we will see what we can do.

CHAIR—Some submissions have actually suggested that there was a need for a complete rewrite of the act. Is that contemplated as well?

Mr Smeaton—I think it would be fair to say that it is now 13 years since the act was passed by the parliament. There have been some amendments to the act, but not a lot. Indeed, in the last four years, there has been none, for reasons that I will not canvass here. But I think it is clear that the act requires substantial review. Clearly, to address matters that have arisen out of recent court decisions, there is a need to review certain sections of the act. The submission from the department makes that point and there is work proceeding right now to prepare advice for government to review the act in a substantial way.

CHAIR—Yes. The outcome of this inquiry might be another recommendation to assist that process. The Queensland Police Service was critical of what they saw as the NCA-AFP alliance. Are you aware of that sort of complaint?

Mr Smeaton—I am not. I am a little surprised that anybody would be critical of what I think has been the most successful move at the Commonwealth level in the history of the National Crime Authority, and that is the strategic alliance between the AFP and the NCA in relation to Commonwealth offences. That is its main concern.

CHAIR—You might have a look at their submission which has been made public and perhaps take that question on notice and give us a response to that criticism from where you sit.

Mr Smeaton—Yes, I would be happy to do that.

CHAIR—Thank you for appearing this morning.

[11.20 a.m.]

**MARTIN, Mr Brian Ross, Director, Commonwealth Director of Public Prosecutions,
4 Marcus Clarke Street, Canberra, Australian Capital Territory**

**THORNTON, Mr John, Senior Assistant Director, Commonwealth Director of Public
Prosecutions, 4 Marcus Clarke Street, Canberra, Australian Capital Territory**

CHAIR—Welcome. We have received a submission from you, thank you. We have actually published it. 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 will advise you that, if during the hearing you consider that any information you might wish to give or any comment requested by committee members is of a confidential or a private nature, you can make application for that information or comment to be given in camera, and the committee will consider your application. You are public officers, and so you will not, of course, be expected to comment on matters of government policy. Mr Martin, do you want to add anything to your submission or make an opening statement?

Mr Martin—No, thank you, Mr Chairman.

CHAIR—We will go straight to questions. A question we have asked some of your state counterparts is in relation to the quality of briefs that you receive from the NCA. Could you comment on that, and on how often they need to be returned for clarification or more investigation?

Mr Martin—That obviously varies, Mr Chairman. The quality is very much in line with the quality we receive from the Australian Federal Police. I suspect that is partly because the officers who work within the NCA have generally been seconded from the federal force. The quality is quite reasonable, but it will vary from case to case with individuals, obviously. We do not have to return the briefs as such. We may send matters back for further evidence and so on; but it is not a case of returning the briefs: there would just be follow-up on various issues.

CHAIR—In the broad terms of your memorandum of understanding, does the NCA seek preliminary advice on evidence from you?

Mr Martin—Yes, they do. I think that, in the early days, they were probably a little reluctant to do so. There was a very secretive approach to matters in the early days. But in recent years that has relaxed more, and they have been prepared to seek our advice at an early stage, which we regard as pretty important. It is necessary that we have input in terms of the sort of evidence that they are collecting, its admissibility and all those sort of factors.

CHAIR—Are you able to express a view about the NCA's success rate compared with that of other Commonwealth law enforcement agencies?

Mr Martin—I do not think so. We have not had very many, not so that you could start collecting those sort of statistics. It is a different form of organisation in terms of its investigations, and so I do not think it would be fair to even attempt that.

CHAIR—We have heard evidence this morning that the NCA is extraordinarily accountable, at least theoretically, in terms of the number of bodies, including this committee, that have some responsibility to oversight its affairs. It has, of course, special

powers; and we have heard already in the course of our inquiry some criticism of that. Obviously, there are views at either end of the spectrum about the use of the special powers. On the other hand, is it your impression that those powers are not unusual when compared with the powers of the ASC or the ACCC—or indeed, the Queensland Egg Board, as it was put to us?

Mr Martin—Yes, I saw that piece of publicity about the Egg Board. I do not think their powers are extraordinary at all. I think you have to bear in mind that criminals do not play by Queensberry rules. These powers are necessary if we are to continue to mount a decent fight. So I have no criticism of the powers at all. As for whether they have been abused in an individual case, I am not aware of any even anecdotal evidence to suggest that that is at all common. In fact, the people that I have dealt with have always been acutely conscious of the limits to their powers. It does not mean mistakes are not made. It is the same with the ASC but generally they are acutely aware of their limits and they try to work within them, as far as I am concerned.

Senator FERRIS—We heard from a witness earlier this morning that what they call turfdoms—I would call them fiefdoms—have, in the view of some people, interfered with the overall efficiency of, in particular, curbing drug related crime. This particular witness gave evidence that suggested that perhaps the turfdoms in relation to intelligence may have meant that national bodies may not have been as well informed about some of those matters as they might have been. Have you ever come across that sort of turfdom? If you have, has it ever interfered, in your view, with the efficiency of charges proceeding?

Mr Martin—I do not think we could say that we have ever had any specific examples of that. I think we are aware anecdotally, over the years, of the fact that there was some jealousy between the forces, particularly in the early stages, with one guarding its own turf, so to speak. Of course the NCA, in its early days, was particularly concerned about the secrecy provisions. I guess that led to some of it as well. But I am not aware of it being a problem in recent times. But, then, we are not involved in that operational area so we really cannot comment in depth on that.

Senator FERRIS—We heard earlier that it is difficult to get people to focus on a national view when they come from a state force, that there is always a loyalty back to that particular state force from whence they came, and often only on a secondment; that people are conscious of the fact that ultimately they will want to go back and resume their careers in their state. Have you ever become aware of that and, if so, do you have any comment to make on it?

Mr Martin—No, not from an operational point of view but I can imagine it occurring. Coming from an Australian rules football state that has just joined the AFL that same problem exists. That is just human nature, I think.

Senator FERRIS—What an interesting analogy. The NCA has a particular place

in society in relation to the pecking order of law enforcement agencies. I think it is generally accepted that if the NCA is involved in something it is at a very high level. Have you ever been aware, or could you comment on any suggestion, that the involvement of the NCA in a particular charge may elevate the crime in relation to the way juries view the situation?

Mr Martin—I doubt that that occurs. I think juries are more concerned with what they are confronted with by way of the nature of the charge and the evidence—the scale of it, the seriousness and those sorts of things. I do not think it would have any influence on a jury whatsoever. Bearing in mind that they hear an officer say, ‘I was attached to the NCA and I was part of a task force’ or whatever. But that is a very brief passing reference at the beginning. In the main, they are concerned with the evidence that has been collated and so on. I would not perceive that as a problem at all in the court.

Mr FILING—Back in the 1980s, I think 1987, Frank Costigan gave an address to Labor lawyers in Queensland in which he made some comments in relation to the NCA, which related to another area which you have been interested in. He could not understand how it was that there was almost rampant corruption going on in the state governments in Queensland and Western Australia and yet the NCA had failed to act or had been seen to be completely indolent. Do you think that under the circumstances that the present system of references from the intergovernmental committee is going to assist in detecting things such as corruption in, say, Western Australia’s state government?

Mr Martin—That is enormously difficult to answer, I must say. Are you asking whether the present system adequately copes?

Mr FILING—Let me put it another way. Could the intergovernmental Committee’s authority, in relation to references, have inhibited the opportunity for earlier detection of some of the larger scale corruption in the governments of Western Australia, Queensland and New South Wales, given the serious community concern?

Mr Martin—Did you add South Australia?

Mr FILING—And South Australia.

Mr Martin—I did not know we had corruption at that level in South Australia.

Mr FILING—And Tasmania.

Mr Martin—I do not think I am in a position to answer that except by way of going to Western Australia, as you adverted to. I doubt that a change in the system would have exposed the sort of corruption that the WA royal commission exposed. I do not think that was due to any fault in the current system that exists. You are talking about corruption inside government deals. That was very difficult for anyone to detect, even the

opposition. I do not think that that is the fault of the system. In other areas, it may be that the current system is a little restrictive.

Mr FILING—Would it not be fair to say that it was highly unlikely that the Inter-Governmental Committee was going to investigate allegations against one of its constituent members where those allegations reflected on members of the same government.

Mr Martin—I am not going to accede to that proposition because that assumes that those on the committee are not prepared to exercise their powers independently of what party they belong to. I would assume that those on the committee would put aside political loyalties in arriving at their decisions as to what should and should not be investigated. I hope that is the case.

Mr FILING—So you are a bit of an idealist?

Mr Martin—Probably, but I hope that is the case. If it is not the case, they should not be on the committee.

Mr FILING—My next question relates to the NCA's special powers and the evidence that may have been elicited during one of its closed hearings. I have a question in relation to the rules of evidence in a prosecution. How much of an assistance is evidence that has been ascertained in a closed hearing of the NCA in relation to a prosecution? Can it at times be seen to be an impotence to the effective prosecution of a case?

Mr Martin—I do not think so. The fact of whether it is closed does not affect the admissibility. It comes back to the rules that govern those sorts of things. That is on the assumption that the NCA, as the investigators, provide all that material to us as the prosecutors, which they do. I do not think the fact that it is a closed hearing is a problem. It is no different from the AFP conducting its inquiries. It does not do that in public. The AFP carries on its records of interview and so on in private.

Mr FILING—What about in the case where somebody lies to the NCA and then changes their evidence to a trial?

Mr Martin—That comes back to the past. I am sorry, I am having a bit of blank at the moment. I know under ASC law, section 19 on inquiry or questioning, they can claim privilege, in which case you cannot use their answers in the trial. So it is not the fact that it is in private, it is whatever the relevant provision says, whether you can use the answers that they gave. I am not sure of it at the moment.

Mr FILING—There has been some criticism about this at a recent conference in Brisbane of standing commissions on corruption organised by the Caxton Legal Centre.

Mr Robert Richter QC made the assertion that he felt that the reason that the police commissioners now accepted the NCA's role, given that there were some earlier differences of opinions between the police commissioners and the NCA in its earlier incarnations, was principally because the commissioners could now access those special powers through the back door, using the NCA and its so-called liaison role. Are you familiar with that criticism and do you have any comments?

Mr Martin—Mr Richter brings a certain point of view to those sorts of comments. If he is suggesting that the NCA is prepared to allow its powers to be abused, then I have not seen any evidence of that at all. But, again, we are not inside in operations from day to day.

The resistance that I was aware of when the NCA was first created was a natural resistance on the part of other law enforcement agencies to see some of the funds that would otherwise go to them being directed into a new organisation—a secret organisation as it was perceived—and there was a natural jealousy. They now accept it and realise that there is a role and place for it in law enforcement in Australia. They have seen the value of it. I do not accept the criticism that Mr Richter has directed in that sense.

Mr FILING—Given that the Commonwealth DPP office, and for that matter the state DPP offices, are an effective layer of accountability in relation to the NCA's powers, presumably in your role in that context you would see the Commonwealth DPP's role as also providing that layer of accountability by making sure that prosecutions are able to stand up adequately. Is that correct?

Mr Martin—Absolutely. It is not an accountability in the sense of being written, 'You will be accountable,' but the practical effect is, that if they abuse their powers then the evidence will not be admissible, and we will tell them so, or the court will tell them so.

Can I just go back to your earlier question? I am reminded by Mr Walsh that this idea of the state police going to the NCA and using the powers through the back door in effect is prevented because the NCA cannot act unless they have a formal reference.

Mr FILING—So we can effectively knock that into a cocked hat.

Mr Martin—Absolutely.

Mr FILING—In relation to your role as a layer of accountability, do you believe that the NCA, in formulating a brief, should seek independent counsel's opinion as to the evidence and, of course, the likely success or otherwise of the prosecution, or should it be restricted to the DPP, your advice, when entering into prosecution?

Mr Martin—We have always taken the view that once they are into it that it

would be appropriate for them to seek the DPP's advice because we are the ones in there day by day who have a full understanding of the workings of the criminal law and can see the traps, et cetera. There is nothing to stop them getting independent advice, I suppose. They have to pay for it, which might be a drawback, but I do not see why there would be any reason in favour of getting independent advice rather than going to the group.

Mr FILING—It has been suggested by some of our submissions that the NCA ought to take more extensive advice from counsel in relation to its prosecutions to overcome the criticism that it is overzealous.

Mr Martin—If that is meant to mean that perhaps they should be getting more advice at an earlier stage generally, that may be so, although I really cannot comment in terms of experience on that. If it is meant to mean that it should be from someone other than the DPP, then I do not understand why that should be so, unless it is someone from the independent bar who has put the submission to you, and they may have an ulterior motive. I really do not accept that there is any reason to go outside the DPP. Of course, at the end of the day it is the DPP who has to be satisfied and make the decision to prosecute.

Mr FILING—And, of course, the DPP is answerable directly to the parliament.

Mr Martin—Absolutely.

Mr FILING—I want to turn to the more generalised discussion, if I may, and ask a couple of questions on the criminal justice system. In recent times, in particular in relation to a number of prosecutions, there have been very serious concerns expressed about the penalties given to particular offences, one of which is now under appeal. I would not want to raise that with you other than to say that there is a strong feeling in the community that the criminal justice system is in some disrepute because of that.

Does the DPP have a role in advising the Commonwealth in relation to penalties that are being given in the case of serious drug trafficking offences or serious frauds? To what extent should there be an ongoing review of sentencing in relation to these Commonwealth offences?

Mr Martin—The decision whether to appeal is one for the DPP. We do not involve the government in any sense in that matter. As you are aware, the Attorney-General can give specific directions if he sees fit to do so and has to table those directions. I do not know of any direction ever having been given to appeal. At the end of the day, I suppose at the moment it comes back to my decision, having received reports from case officers and others as to whether particular sentences should be the subject of an appeal.

So we do not advise the Commonwealth in that regard. However, if we were of the

view that there was a particular area where the maximum penalties were inadequate, or something of that nature, then certainly I would take that up as a matter of policy with the Attorney-General. But I think the proposition that you are putting is really based upon not the maximum sentences that are available but the actual sentences that are being handed out.

Mr FILING—The tariffs.

Mr Martin—The tariffs. There is no question that if we consider that the sentences are light, then we take them on appeal. We do so carefully because we do not want to be seen to be just finetuning; they have to be significantly out of line. If we are of the view—and it has been done in the states—that the existing tariff is too low then we are quite happy to take up a matter and say to the Court of Appeal, ‘This is within the range of the existing tariff but the tariff is too low.’ So we keep it under review in that sense.

I do not agree that the criminal justice system is in disrepute. I agree that there is a lot of ill-informed criticism both of the system and of the sentences. But in the vast majority of cases the sentences are within an acceptable range. There are, of course, a number of cases that pop up every year where the judge has gone off with an idiosyncratic view and imposed a sentence that is out of line; they are the sorts of sentences that we appeal against.

Mr FILING—What about what is called the plea bargaining process or where an accused is prepared to plead guilty to a lesser charge? To what extent, in relation to the DPP’s role in this, should the matter be transparent; in other words, openly visible to the rest of the community and subject to some sort of review or process of accountability? Clearly, when the matter is dealt with by a court, that is fine—unless there is an appeal. But to what extent do you believe that the community ought to be able to see the process—

Mr Martin—The process of plea bargaining?

Mr FILING—I suppose plea bargaining is the wrong description but where, for instance, there is a concessional plea of guilty.

Mr Martin—That is an interesting question—under the terms of reference relating to the NCA, Mr Filing?

Mr FILING—Because you are the people who prosecute the NCA’s cases in Commonwealth matters.

Mr Martin—So you are talking about NCA cases where there is a negotiation—

Mr FILING—Of course.

Mr Martin—And it applies across the board anyway, that is not a problem. We have some guidelines about how we approach these things and they are public. I have been given by Mr Thornton paragraph 5.12 and following of what the DPP has called the prosecution policy of the Commonwealth. First, the guidelines are there to be seen. Second, when the matter comes before the court, what has happened becomes public and to that extent there is an accountability. And, believe me, judges are not slow to criticise if they perceive that something untoward has occurred. The media also have a role to play there because they are always very interested—particularly in high profile cases—with the deals, so to speak, that have been done.

So there is plenty of accountability, if you like, there. I do not see how you can realistically bring in any other form of supervision of that role. That is what you have an independent DPP for. That is the very purpose that the DPP is there for: to take out of consideration both commercial and political matters. I do not see how you can change that system or why there is any need for a change in it. The DPP is very accountable at the end of the day—publicly.

Mr FILING—Can I just say specifically in relation to the NCA prosecutions—because the NCA has these special powers and, given the criticism earlier this year in relation to Operation Albert and the resultant prosecution which is under appeal and so we will not discuss it directly—there has been a perception that the NCA operates in some sort of secret process where, at the end of the day, one is unable to openly see the process in action. And the NCA's interrelationship with the DPP's office is a key part of that process in the prosecution.

Mr Martin—Yes. But I think the answer to it is that, while the early stages or their investigation stages may be secret—and there are good reasons for that—when it comes to dealing with the DPP, they are now out in the open literally because the DPP is an independent officer, is accountable to the court and is accountable to parliament. Therefore, what they are proposing by way of the deal is publicly scrutinised—or scrutinised by somebody independent of them.

Mr FILING—What happens in the case where, in the formulation of a prosecution, the DPP becomes aware of NCA officers having operated outside the terms of the law? What do you feel are the DPP's obligations in that sort of role?

Mr Martin—It is no different from state DPPs or from Crown prosecutors in the old days. If people have made mistakes and they are outside, then you follow through to make sure they understand that they have made mistakes and that those instructing them understand it, et cetera. It is a matter of education and development. If there is reasonable cause to suspect that they have committed a criminal offence, then that matter would be referred on to the appropriate authority for investigation.

Mr FILING—Take, for instance, the preliminary process to a prosecution of the arrest and the initial processing of an accused. We have had a complaint from a witness in relation to that in a particular matter. Does the DPP's office take an interest where a person who has been prosecuted by the NCA has been unnecessarily subjected to adverse or prejudicial conduct in relation to that process? And I am talking about the sort of thing that is described as walking the gauntlet, where the media are tipped off and the accused is basically paraded through the gauntlet of media to being processed in the first part of a prosecution.

Mr Martin—If I became aware of that, then I would make my views very strongly known that that sort of conduct was not acceptable. I would make it known within the NCA and, if it went far enough, I might even take it further. I do not know how far you can take it. I suppose, ultimately, the disciplinary measures are there for those within the hierarchy of the NCA. If it were serious enough—I do not know—maybe you would report to the Attorney-General, for example, the NCA being within his portfolio.

If it were a criminal offence—and I am not sure how you could see a criminal offence in this—I guess it would be taken to the AFP for the matter to be investigated. But, one way or another, it would be made very clear that that sort of thing is not acceptable. But it is not the sort of thing that normally comes the way of the DPP. The DPP gets the brief: there is the person who has been charged; here is the witness who has been questioned; and there is the material. If someone has been paraded in front of the media, normally that is not a matter that would come to our attention.

Mr FILING—But if, for instance, the defence complained of this as being prejudicial to their client's fair trial, presumably—

Mr Martin—Then it would come out in court, apart from anything, and the court would have a look at it. If necessary, the court would condemn it and it might affect the admissibility of the evidence that followed.

Mr FILING—In your MOU with the NCA, are there guidelines as to the correct process in which to initiate the prosecution?

Mr Martin—I would have to check the MOU. I am sorry, I have not read that through in detail. I am not sure that there would be. But the guidelines are available, if I can produce a copy for the committee.

Mr FILING—Thank you, we would appreciate that.

Mr Martin—I doubt if they are in there.

Senator FERRIS—Have any staff from your office ever been outposted to work within the NCA?

Mr Martin—Apparently we have had a couple of people seconded to the NCA, but they then cease to be DPP officers; they become legal people assisting the NCA. That is all just part of their staff development.

Senator FERRIS—Not part of one of the teams within a reference?

Mr Martin—No.

Senator FERRIS—I have a question that follows on from the questions Mr Filing was asking. Have you ever thought of, or would you have a view on, any means by which a person who was picked up by the NCA, and who was going to be charged with serious corporate fraud, should have the opportunity to argue before a judge that they should have their preliminary hearing in a closed session?

If I can explain and take a little further the comments that Mr Filing asked before, we have heard from a person who claimed to have been put through that process that Mr Filing outlined and bail was set at a figure, but was later overruled by the NCA. The person was able to present quite a compelling case, it seemed to me, that he had been unnecessarily exposed to public scrutiny before he was even charged. Would there be any means by which he could have the right to argue before a judge that his preliminary hearing should be in a closed court?

Mr Martin—When you mention preliminary hearing, do you mean—

Senator FERRIS—The first charges.

Mr Martin—Committal proceedings?

Senator FERRIS—Yes.

Mr Martin—I find that a bit difficult to relate back to the process that had taken place at the earlier stage. We are assuming at the moment that someone has been paraded before the press deliberately by the NCA. By the way, when I was asking those questions earlier you have got to bear in mind there is a sort of separation of powers here.

Senator FERRIS—I recognise that.

Mr Martin—We do not get involved in policing the NCA or anybody else. But if I become aware, or my people become aware, during the course of a prosecution that something has been done in a manner which is unacceptable, then naturally we are going to make our views known about the matter and if necessary—if it is criminal—refer it on. That is the sort of thing I am talking about. But there is a clear separation of roles and powers and we are not there to oversight the AFP or the NCA.

If something like that has happened, I do not see why it then reflects upon whether a preliminary hearing should or should not be in private. The issue of closing of courts is quite separate from whether someone has been unfairly paraded before the media at an early stage. What the argument could be, for example, is that I have already been paraded before the media; the media interest in this is so heavy that I will not be able to get a fair trial if the preliminary hearing is conducted in public. That is one line of argument. That is a matter to be taken up by the court.

They can go to the court and say, 'The history of publicity and so on is so overwhelming that I cannot get a fair trial.' There is nothing to stop them making that application to the court now and using what happened previously as part of the grounds. Then it becomes a question for the court, balancing out that interest and the other public interests that these sorts of proceedings should be conducted under.

Senator FERRIS—I guess the difficulty this particular case had—and obviously we cannot go into details about it, since it was a closed hearing—was that it all happened on the same day: person unloaded from paddy wagon, media scrum at the door of the paddy wagon, person taken into the court and then the charges and so on proceeded. The difficulty would be trying to argue that all within that process, I would have thought.

Mr Martin—There is no difficulty. Presuming this person was legally represented, believe me, defence counsels that are worth anything will not have any difficulty in saying, 'Your Worship,' or 'Your Honour,' depending on where you are, 'We need a little time, please. We've been subjected to some terrible behaviour outside. We think the NCA has misbehaved. We want an adjournment or we want to close the court.' I do not see any problem with that at all.

Senator FERRIS—So you think the current procedures are adequate if they are properly used?

Mr Martin—Yes.

CHAIR—I have noted your comments on the need for amendment of the NCA Act in relation to clarifying the meaning of 'reference' and 'reasonable excuse'. Are there other areas where—it might be helpful if you perhaps take this on notice—the act could be improved, or clarified or needs amendment? The sentiment has been put to us that it does need a complete rewrite. We will try to get to the bottom of that, but any help you can give us will be appreciated.

Mr Martin—I do not think there was anything else specifically, except I can appreciate the concern that may have been expressed to you that the need for the reference in order for them to start exercising their powers is somewhat of a hindrance when you compare it with other law enforcement agencies who can move ahead without satisfying somebody that they need a reference. Of course, the very fact that you need a reference

opens up immediate lines of argument down the track that you are outside your terms of reference et cetera. How many other law enforcement agencies, if they come across a crime during the course of their investigations of one matter, cannot investigate the other crime or cannot venture outside the terms of the crime they are investigating for fear of breaching their terms of reference? If they see something out there that is an offence, they go for it.

CHAIR—So you are actually then arguing or suggesting that there is a case for us looking at that whole question of whether the system of references could perhaps be replaced with a system that allowed the NCA to prioritise its own operations?

Mr Martin—I do not know about prioritising its own operations; that is a real question of policy. But I think there is room for a careful examination of that restriction, yes.

CHAIR—Good, thank you. In the same line then: both the Merkel and Vincent judgments—you can judge how far you can comment; I will ask the question—criticised the NCA in that context. I suppose that underlines the concern. In both of those cases the judges had a known civil libertarian bent. At any time were you asked for advice as to whether they were suitable to sit in judgment on those cases?

Mr Martin—The prosecution in front of Justice Vincent was conducted by state prosecution. I think there was state prosecution in both, so we did not have a role in those. I am not going to comment on the bents or otherwise of the judges.

CHAIR—No, that is fine.

Mr Martin—But obviously those matters are, as I understand it, being referred to courts of appeal to be examined. The very fact that that has happened highlights the need for an examination of that procedure.

CHAIR—I could understand it if this were in a case that you were prosecuting and you had some concerns. Let us say it was Justice Vincent—I do not know whether it is appropriate to do this in public; you tell me if it is not—and he had obviously been critical of the NCA in the past. What would you do about it?

Mr Martin—I flatly refuse to comment if you put the name ‘Justice Vincent’ in there.

CHAIR—‘A judge’. Let me rephrase it: if you were faced with a judge who in the past had been critical of the NCA and you were prosecuting an NCA matter, what would you do?

Mr Martin—I would instruct my people to give very serious consideration to

whether they should object to a judge presiding if the judge in that way or in any other way had shown a disposition that could be perceived as demonstrating a bias against—be it the NCA, the AFP—the particular case. Sometimes during the course of pre-hearings or the trial judges will express views that might be perceived as premature. If that happens, the defence or the prosecution can raise with the judge the propriety of the judge continuing to sit.

CHAIR—So the current system caters quite well for that.

Mr Martin—The current system caters for it very well. You can either challenge the sitting of a judge on actual bias, which is a very rare event indeed and should be, or on the basis of perceived bias by virtue of something that has happened or has been said, either prior to the trial or during it.

CHAIR—Or, indeed, if he had expressed views at some point of time that were interpreted as anti-NCA views.

Mr Martin—That might be just one factor. The whole thing is operating in public. Judges must be seen as unbiased. If there is any reason why it might be perceived by an ordinary member of the public that the particular judge was not impartial, then it can be raised by the defence or the prosecution. I do not want to restrict my answer to saying where they have said, ‘We hate the NCA’—which, of course, was not the case anyway—but if something like that occurs, then it is raised in the appropriate fashion.

CHAIR—Picking up from there—and we will just try and wrap it up—on the question of somebody being paraded or, in other words, the NCA or somebody tipping off the press that this big arrest was about to happen, as was the implication; what about the practice of their putting out press releases? The AFP does this as well. We get copies of press releases that effectively trumpet their success in a drug bust or an arrest. Does that concern you?

Mr Martin—Firstly, any law enforcement agency must be very careful about that because at that stage it could be perceived as a contempt of court. It has been known to happen that evidence has been held inadmissible or proceedings have been stayed by virtue of that occurring. So it is something that any law enforcement agency must be very careful with.

However, I can see a basis for the agencies, perhaps, wanting to put out a press release in appropriate and limited terms because it prevents them from then having to run the gauntlet, so to speak, of questions and answers and appearing like idiots when they have to say, ‘Look, we can’t comment on that.’ So a confined, proper press release might be the better way for them to go, because they know it is going to attract publicity.

CHAIR—Mr Martin and Mr Thornton, thank you very much. You have been very

helpful.

Committee adjourned at 12.03 p.m.