



**COMMONWEALTH OF AUSTRALIA**

# **JOINT COMMITTEE**

**on**

**THE NATIONAL CRIME AUTHORITY**

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

**ADELAIDE**

Tuesday, 10 June 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.

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JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

Evaluation of the National Crime Authority

ADELAIDE

Tuesday, 10 June 1997

Present

Mr Bradford (Chair)

Senator Ferris

Mr Filing

Senator Stott Despoja

The committee met at 9.09 a.m.

Mr Bradford took the chair.

**CHAIR**—I declare the public hearing open. This is the first and probably the only day that we will spend in Adelaide on this particular inquiry. We have before us a number of very challenging and interesting witnesses and submissions which we will be dealing with during the day. As this hearing has unfolded, it has become evident to us all that it has assumed considerable importance. We are looking forward, over the course of the next few months, to bringing out a report that will be significant and will make some very useful recommendations as far as the future of the NCA is concerned.

**GRAY, Mr Malcolm Forgan, member of committee, South Australian Bar Association, 98 Carrington Street, Adelaide, South Australia 5000**

**CHAIR**—This morning we welcome our first witness, Mr Malcolm Gray QC. Mr Gray, we have received a submission from you and it has been published. Is it the wish of the committee that the submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The submission read as follows—*

**CHAIR**—Mr Gray, before inviting you to make a statement in support of your submission, I am required to state that, if during the hearing you consider that there is information you might wish to give or if there is 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 application. I should also remind you—although I am sure you do not need reminding—that it is a contempt for a witness to give any evidence which a witness knows to be false or misleading in a material particular. Mr Gray, if you would like to make some opening remarks in addition to your submission, you are most welcome to do so.

**Mr Gray**—I am here to represent the South Australian Bar Association, but I have had some previous association with the National Crime Authority. Can I, at the outset, apologise for Michael Abbott, who is the President of the South Australian Bar Association; unfortunately, he has not been able to attend this morning.

The submission that we have put in is directed to the committee's terms of reference as a whole, rather than addressing each of the separate terms. It speaks from the standpoint of observations of a body which has operated now for some 13 years under the provisions of some fairly unique legislation. In particular, the submission seeks to address aspects in respect of the proper functioning of the body; the special aspect of its role in being a Commonwealth and state empowered body; its ability to be effective; and, the proper exercise of the special powers that have been given to the body. Further, the submission touches upon the effect that the suggestions that we make might have on the body's accountability.

The submission assumes the need for a specialised body to deal with the threat posed to society by organised criminal activity, but it is in fact a call for critical attention to be given to the mandate that is to be given to such a body with the aim that its functioning, effectiveness and accountability can be enhanced.

The thrust of the submission is that it is in the area of expectations that the present legislative structure is most wanting. Put in another way, what does the legislature want from this body? We think that if that question can be answered with some clarity, then the appropriate patch can be marked out and, importantly, the effectiveness of the body dealing with it can be assessed. It is to that that the submission is directed. That is all I want to say by way of preliminary remarks. I am happy to attempt to answer questions.

**CHAIR**—I am sure there will be a lot of questions. I realise that you are representing the bar association, but you were a member of the authority. Which years did that cover?

**Mr Gray**—From 1991 to 1995.

**CHAIR**—You made the point in your submission that organised crime is not defined. Is that, in your view, a weakness in the act? You have actually given us a suggested definition, which you have referred to as coming from an article, which states that:

Organised crime is a systematic and continuous conspiracy to commit serious offences.

Is that a definition that you think ought to be incorporated in the act?

**Mr Gray**—It is a definition that could be incorporated in the act. The difficulty that the act suffers from at the present time, from the point of view of both those who are appearing for witnesses before the authority or examining the exercise of their search powers, and from the authority's point of view itself, is that the present definition that the authority operates under is cast in such terms as to be really meaningless as to what the particular activity is that the authority is investigating. It is cast in terms of offences which are suspected of having been committed.

The effect of that has been arguably for the authority to go into areas that one might not really think are traditional organised activity: witness Mr Elliott. The activities may well fall within the scope of the definition. It is arguable whether that is the sort of activity that the National Crime Authority, in its own terms, ought to have been investigating.

**CHAIR**—You were on the authority at the time that the authority went down that track. I take it from what you just said then that you would be critical of the decision of the NCA to get into that particular area?

**Mr Gray**—No, the decision was made before I was part of the authority. All I am saying is that the decision is capable of being made in terms of the existing definition. I would suggest that it is arguable as to whether or not that truly falls within a mandate of organised criminal activity that it is intended to direct this body towards.

**CHAIR**—So you do not think it should have a role in, say, white collar crime?

**Mr Gray**—No. You cannot define crime as white collar crime. Crime is crime. You can define crime in terms of organised criminal activity; I think everyone has got a relatively clear understanding of what it is. It is broadly described as the mobs, the mafia—the sort of activity that is engaged in by certain elements in the community in an organised fashion. It is that sort of activity that the definition is directed towards.

I was looking at this matter this morning. Whilst the definition has been criticised, the definition that the FBI uses of organised crime is probably illuminating, at least as to how it ought to be structured and looked at. The FBI's definition is:



. . . any group having some manner of formalised structure and whose primary objective is to obtain money—

you could probably add ‘power or influence’ to that—

through illegal activities.

Then you may also add:

Such groups (generally) maintain their position through the use of violence or threats of violence, corrupt public officials, graft or extortion.

Alternatively, you could say that it is often a feature of such groupings. Finally, such activities:

. . . generally have a significant impact on the people in their locales or region or country as a whole.

It is that sort of concept that I am arguing for as being organised criminal activity which is comprehensible. Once you get into that area of looking at it in that light and reorientating the act towards that, then you give an objective for the body that you are creating to meet what is perceived as the threat of that activity. In that way, you can then make it accountable in looking at that activity, rather than looking at individual matters, as happens now, related to exercises of power from time to time.

**CHAIR**—Which of my Senate colleagues would like to start with questions?

**Senator STOTT DESPOJA**—I am curious about some of the evidence we have had from civil liberties organisations, who have expressed grave concern about the extraordinary nature of the powers of the NCA and also the intrusiveness and secrecy powers of the NCA. Do you have a comment on that?

**Mr Gray**—Yes, they are extraordinary powers and as they are extraordinary powers, they ought to be capable of being exercised in an accountable fashion. One of the difficulties that the act suffers under at the moment is because of two things: firstly, the definition under which the powers are exercised; and, secondly, the Commonwealth-state dichotomy. Both of those are often productive of the exercise of the powers in a way that may not be accountable. So in one sense, part of this submission is directed towards seeking to make the exercise of those powers more accountable than they might be at the present time because of confusions in the act.

**Senator STOTT DESPOJA**—It is interesting, because in some of the responses we have had some people have said that the powers are extraordinary and that they are not justified. Other people have suggested that they are extraordinary powers but that they warrant an accountability and transparency mechanism. Others have suggested that the

powers have been abused. Do you think the powers have been abused?

**Mr Gray**—Not in the corrupt sense of abuse. In the more neutral sense of exceeding the powers, then there have been court decisions where it has been said that the powers have not been properly used or invoked.

**Senator STOTT DESPOJA**—In relation to defining activities and the role of the organisation, a number of people have put forward proposals for changes to or replacement of the references system. Do you have any particular proposal—legislative or otherwise—that we should consider, especially in light of the Vincent and the Merkel rulings?

**Mr Gray**—Yes, in effect, that is what the submission drives at in attempting a new definition of organised crime, in paragraph 13. As far as the references are concerned, paragraphs 15 and 16 of the submission are directed towards trying to define the activity that the National Crime Authority is looking at. Without doing that, it is really impossible to measure the effectiveness of the body itself. This massive list of large and minor offences that appears in the National Crime Authority's report gives no indication in any way how that might have affected any particular area of criminal activity.

**Senator STOTT DESPOJA**—I note your comments in relation to outlaw motorcycle gangs and things like that. I understand your point. Moving on from that, you have made comments about the self-incrimination powers. Obviously, you have concerns with, I think, the South Australian police submission relating to extension of the investigative powers—those of, say, the ASC to the NCA. Could you elaborate on that for the committee?

**Mr Gray**—The concern we have with the suggestion that the powers are not sufficient in their terms I think reflects a misunderstanding of the actual power and the exercise of the power. Properly understood, together with the accountability that goes with the exercise of those powers, the power, as it is a special power, can be exercised properly and its accountability maintained. What seems to be suggested is an unaccountable use of those powers. The privilege against self-incrimination which at the present time results from a choice by the legislature to, in effect, allow it to be waived, puts the waiver in the hands of the law enforcement prosecutorial arm, namely, the attorneys-general or directors of public prosecution. The effect of a power like the ASC's powers of waiver of self-incrimination, in effect, allows the ASC to make that decision. If the ASC looks at a person, suspects them of offences and wants to get evidence from them, then they make the decision, virtually.

**Senator STOTT DESPOJA**—So that investigative authority has that decision, has that power?

**Mr Gray**—It has that decision making—the decision, in effect, to allow a person

to make answer without any risk of being prosecuted as a consequence of the answers.

**CHAIR**—Let me be clear about what you are saying here. If there is a definition, I think what you were advocating in these paragraphs, as I read them, was that you could see some relaxing of the present system of references to allow them to be broader or more general or even to do away with the reference system?

**Mr Gray**—No, I am not suggesting at all doing away with the reference system, because the reference system is really the accountability system. Knowing what the body is looking at means that you can at least measure, one would hope, in an accountable way, what the body is actually doing and what it is in fact achieving. It is said, of course, that the present reference system is too narrow, but that has not been the way that the references have been framed in the past. The references have been framed so broadly that it impelled Justice Merkel to say that they did not really mean anything anyway. Whilst there is this artificial definition of relevant criminal activity, with all these bits hanging off it, you will always get references drawn in an impenetrable fashion.

**Senator FERRIS**—Mr Gray, I would like to ask you to reflect on your years with the NCA, from 1991 to 1995. I have a couple of questions related to that. We have had some comment from previous witnesses that suggests that the system of open references—that is, a reference which has no completion date—might in some way be more effective. The current way of not pursuing references after a report has been made to the minister means that ongoing information related to that reference is not given as high a priority as perhaps it could be. Do you have any comment to make in relation to your period there on having timeless references? For example, take a reference that might just say to look at drug trafficking and its links with organised crime.

**Mr Gray**—Just as a broad general reference?

**Senator FERRIS**—Yes.

**Mr Gray**—I think, in order to make the body accountable, you would need a much more specific reference than that, because you have got no way of measuring the impact that the body is having on whatever you have given them if you define it too broadly. There is a middle course, which is what I am really on about. It is not hampering the body so much by forcing them to only arguably investigate offences which have taken place, even though the act talks about ‘may be taking place’. There is a need for the body to be proactive, to an extent, in preventing offences which might take place. On the other hand, to just broadly allow the body to roam freely over anything means that neither the parliament nor the people have got a means of determining whether the body is accountable.

**Senator FERRIS**—What if it had, say, a five-year writ time line of reference with, say, reporting periods at two years and three years—something like that? It has been

suggested to us that having references that expire when the report is made to the minister in some ways interferes with the efficiency of the ongoing investigation.

**Mr Gray**—I have some difficulty with that as a concept. The idea of time-lining references is an accountability mechanism. In many cases, references which are to be the subject of a report are renewed subsequently. On the other hand, if the matters dealt with in terms of the reference have been completed, there is every reason for saying that that should not be then a matter of further concern for the authority, particularly when you are attempting to manage resources.

**Senator FERRIS**—When you were at the NCA there were 16 members of staff who were AFP officers. There are now 54. We have heard from previous witnesses about difficulties of territoriality involving various state police seconded to the NCA and a phrase—which I must admit I had not heard before—called ‘turfdom’. Did you encounter issues of turfdom in your time at the NCA? If you did, did you see that as in any way inhibiting the efficiency of operation?

**Mr Gray**—I am not sure that I quite understand the expression ‘turfdom’. Does that mean the AFP protecting themselves or—

**Senator FERRIS**—It means various state police forces not sharing information and also federal bodies not sharing information; computer information on various issues related to references not being shared, based on loyalties to previous employers or the base employer when you are seconded; and all that interfering with the efficiency of either a reference or the pursuit of criminals. Were you aware of that?

**Mr Gray**—Yes, but perhaps in a more limited way than the broad spectrum that you have just painted. That is an endemic problem of law enforcement—this idea of patch protection, this idea of turfdom. The National Crime Authority, in one sense—because it covers all aspects of law enforcement—is bound to have some elements of that sort of thing happening. It was the clear hope of the legislature when they first enacted the act that this business of intelligence sharing would be overcome, to a great extent, by giving that as the first function of the National Crime Authority.

That function and the setting up of the Australian Bureau of Criminal Intelligence have, to a great extent, ameliorated this non-sharing of information amongst state and federal police forces. But that is not to say that there still are not some elements of the state police forces and the Federal Police force who will keep to themselves things that they want to keep to themselves. It is happening much, much less than it certainly was when I first started with the National Crime Authority and the situation is certainly much better than it was before the National Crime Authority Act was enacted. Police forces generally do not like sharing intelligence. But they are getting better at it.

**Senator FERRIS**—In 1983 when the NCA Act went through the parliament, the

second reading speech said:

. . . a fresh look must be had at existing arrangements and institutions for the investigation and prosecution of criminal offences of a serious kind, particularly offences in the nature of organised crime.

We have now got more than 20 federal policing bodies involved in the investigation of organised crime. Yet a number of witnesses, including Mr Costigan, who spoke to us last week, agreed that the country is awash with heroin. I see in the newspaper this morning that it is cheaper to buy heroin in the major cities than it is to buy marijuana. Do you think the law enforcement agencies, particularly the NCA, are getting their foot on this problem?

**Mr Gray**—They are clearly having great difficulty. That is a very good reason for this committee looking very hard at making sure that they can make a body like the National Crime Authority an effective body.

**Senator FERRIS**—When there are so many federal agencies and so many police, so many people with great power, working on this issue, how could it be that we are losing so dramatically?

**Mr Gray**—I cannot answer that question.

**Senator FERRIS**—Do you think it is that more power is needed in some area? Would that help?

**Mr Gray**—I would be interested in someone describing to me what the power is that one would give in particular areas before you can actually positively answer that question. It is a very nice generalisation to say, ‘To stop this, we must give more power.’ But what?

**Senator FERRIS**—That is my question to you and that is a question that we have asked a number of other witnesses. They have given varying answers. It is clearly a very difficult question to answer. It just seems tragic that we should be so dramatically losing what other people have described as such an open war. It is very open. Just two streets from here, it is very open.

**CHAIR**—We might pursue that a bit later.

**Mr FILING**—I would like to pursue that line as well, if I may. You helped set up the Perth office of the National Crime Authority in your capacity as a member. You would be aware of the importance of this Western Australian office to operations both within Western Australia and those linked to South Australia as well. In your view, how significant was that office and how significant has it been in relation to joint operations with other law enforcement agencies and also, for instance, in relation to South Australia’s office as well?

**Mr Gray**—I think the comments probably apply to both Perth and South Australia. I think both of the offices were very significant. What has been done at present as a result of the funding cuts has really emasculated the offices.

**Mr FILING**—Would you agree with submissions we have received from the Queensland police commissioner, from Mr Falconer, the police commissioner of Western Australia and from a number of others, including Mr Day, the police minister for Western Australia, that the cutbacks to staffing, particularly in Western Australia, and also South Australia, have had a serious deleterious effect on the campaign against drug trafficking?

**Mr Gray**—I suspect that is so but I am not really in a position to say that. Clearly, if you cut a body which is operating in a particular area, that of organised crime, which is reflected in drug activity, there must be an impact if that body was in fact doing its job. I have got no reason to think that both of the offices were not doing their job in that area.

**Mr FILING**—Would you agree that the presence of the NCA, both in South Australia and WA, over the past few years, has been seen by law enforcement bodies as being a very significant addition to the effort against drug trafficking?

**Mr Gray**—The answer is yes.

**Mr FILING**—So in withdrawing part of those resources because of cutbacks, it is fair to say, would you agree, that that in fact has withdrawn resources that are not available now to law enforcement agencies operating in the same way?

**Mr Gray**—Yes.

**Mr FILING**—Could I tell my constituents who might be concerned about the fact that their children might be able to buy heroin at \$13 a pop on the street, that in fact federal government cutbacks have had the effect of making it more available on the streets because of the deleterious effect on the anti-drug trafficking effort of the various law enforcement agencies?

**Mr Gray**—I suppose you could tell your constituents that. I cannot say. I can make the observation that it would seem to lead from the reduction in resources that are available in relation to organised criminal activity that concerns itself with drugs.

**Mr FILING**—Given that the NCA provided a number of activities or assistance particularly to the Western Australian and South Australian police forces, the Federal Police and Customs that otherwise would not be available, could you describe the sorts of things that the NCA could do that were not around before the NCA got into what is considered now to be its most effective role, which is the role it has undertaken in the past few years under chairmen Phillips, Sherman and Broome?

**Mr Gray**—The general role of the National Crime Authority in relation to organised crime relies upon a mixture of intelligence gathering and investigation of matters leading to the prosecution of persons for offences. It is supplemented by out of the ordinary powers concerning such investigation and search for things. If you diminish that from the law enforcement armoury, I suppose, then of course there is a diminution overall of what law enforcement is doing in relation to that.

**Mr FILING**—Are you surprised at the gravity with which, for instance, Commissioners Falconer and Comrie and the commissioner of the Queensland police view the situation?

**Mr Gray**—No.

**Mr FILING**—For instance, are you aware that there has been a conduit of heroin coming from WA to the eastern states because of the cutbacks in recent times?

**Mr Gray**—I cannot say whether that is so or not, but logically it must follow.

**Mr FILING**—I turn to the question of the bombing of the NCA offices in Adelaide. Some 3½ years since the bombing has taken place, there has still not been identified, for prosecution purposes, a suspect or a person charged, other than the prosecution that took place a couple of years back. Given your previous position, do you consider that to be a matter of some concern, that it is taking so long for the South Australian police force to arrive at a prosecution, or do you have any other comments in relation to it?

**Mr Gray**—I really have no comment in relation to it at all.

**Mr FILING**—Why?

**Mr Gray**—There are a number of crimes that occur that are never solved or the offenders escape. This may well be one of them.

**Mr FILING**—Given that that was one of the most significant and probably, I would have thought, threatening events to occur within the law enforcement environment within Australia, wouldn't you consider it to be unusual that it has taken so long for there to be a resolution of the case?

**Mr Gray**—I would not consider it unusual, from my knowledge of law enforcement. I know that the South Australian police have been committed to doing everything they can to determine the perpetrator of the crime. I know that the National Crime Authority officers have done the same.

**Mr FILING**—Just dwelling on the South Australian milieu and the links with the

Western Australian organised criminal networks, particularly in relation to drug trafficking, are you conscious that those links still remain and that there are still significant criminal operations that straddle the Western Australian, South Australian and Northern Territory borders?

**Mr Gray**—I know that that was the case and I have no reason to think that there has been any change.

**Mr FILING**—There has been a fair bit of comment that the NCA, certainly during the time you were a member, was very successful in detecting and identifying cannabis plantations around Australia. There has been some comment that the success of the operations in relation to cannabis plantations has made cannabis relatively more expensive. Is that a fair comment or are the relative price differentials between cannabis and heroin influenced by other things?

**Mr Gray**—I think it is probably influenced by other things. I do not know whether I can comment on that at all.

**Mr FILING**—I turn back to comments made earlier in relation to the question of white collar crime and in particular matter No. 10, Operation Albert. You made a comment that—and I may be paraphrasing it wrongly, so please forgive me—the Elliott matter was not within the usual NCA reference mould. Do you share the view of those who believe that the Elliott matter amounted to a sort of witch-hunt in the way in which it was referred to the NCA, given that it was originally an inquiry or a matter that the NCSC looked into?

**Mr Gray**—No, I do not share that view.

**Mr FILING**—Do you think that, under the circumstances, the NCA ought to be looking into matters like Operation Albert, matter No. 10?

**Mr Gray**—Personally, no. I think that that really is a matter for a serious fraud office type of organisation or the ASC fulfilling its proper charter.

**Mr FILING**—Do you think it is fair for Mr Elliott, for instance, to assert that he was the target of a concerted political witch-hunt? I might add that this was prior to the NCA receiving the reference. I am talking about the actual reference formulation phase.

**Mr Gray**—The strict answer is no, but the real answer is that I am not really in a position to say.

**Mr FILING**—It was an unusual investigation for the NCA; I think it has been conceded by most of the NCA—certainly it has been conceded by Mr Broome and by others—that it would be highly unlikely that the NCA would ever have a reference of that



sort again. The question of the NCA investigation of Harlin was a matter of leakage prior to the 1990 federal election—that was in the early stage of the NCA looking into the matter and I think well preceded your involvement in the authority. Under those circumstances, did you think that that was an appropriate way for an investigation of this sort to be launched or to be treated?

**Mr Gray**—I am not in a position to say.

**CHAIR**—The point you made in your submission about federal-state considerations is that—and I quote:

The body has been created as a national investigatory body not as a national body to be utilised by State police forces for their own law enforcement ends. That seemed to be slightly at odds with the point you made to Mr Filing about the need for an NCA presence here. One of the criticisms we have heard from some witnesses is that it has in fact become an adjunct to state police forces who take advantage—not using that in a pejorative sense—of the special powers for their own ends. Is the physical presence of NCA personnel here really a factor at all?

**Mr Gray**—It is a factor in so far as the resource is in the particular state. It is on the ground. The other side of the coin to what I was talking about with Mr Filing is to ensure that the body, when it operates here, operates outside of, and not as an adjunct to, state police forces. It does not mean that they are not achieving the same objectives.

One of the things that has concerned the bar association has been the confusion in powers and the exercise of powers by state, federal and NCA investigators in relation to various matters. Some comments that were made—which may have been wrongly attributed anyway—by the present police commissioner seem to indicate still a lack of an understanding of the National Crime Authority as being a national resource directed towards organised criminal activity, rather than a supplement to the South Australian police force performing in an area that the South Australian police force might or might not choose to engage in.

**CHAIR**—But it is not clear to me why they need to be physically here. In a sense, the fact that they are here, or were here, probably confuses the situation. In effect, the NCA could be situated in its entirety in one city and, in that sense, serve its purpose of operating as task force coordinator and come to South Australia as and when is required.

**Mr Gray**—From a practical point of view, that just does not work. From a practical point of view, in order to cooperate and to coordinate, you need physical bodies in the location. Even if you were to restrict the role of the National Crime Authority—it would appear that the NCA in Western Australia and South Australia is being driven towards this at the moment—to mere coordination of activities, even that restriction requires a presence. What has been taken away as a result of the funding cuts in those two states is a proper spectrum of the functions of the body being exercised in that state.

**CHAIR**—Senator Ferris made the point about what might be needed to be more effective in this war, as we call it. If more resources were made available, and arguably they should be, those resources should be used to re-establish a stronger presence of the NCA in both South Australia and Western Australia. Is that your view?

**Mr Gray**—Yes, amongst other things.

**Senator FERRIS**—Referring back to Mr Costigan's evidence, he suggested a model of the NCA which would see it as primarily a body of investigation and reference back to state police, rather than a body which also prosecutes. In the annual report you may have seen lists of people where prosecutions have been successful. But many of them, in relation to drugs, have relatively small penalties. Mr Costigan's suggestion was for an NCA which was a body with great power and powers of inquiry, but the actual police work would then be handed back for prosecution, rather than the NCA itself being involved in the prosecution on a daily basis. Do you have any comment on that?

**Mr Gray**—I have not read Mr Costigan's evidence, so I am not entirely sure what he said. But there are really three stages in relation to overall law enforcement: you start off by investigating a matter, and you have given powers to the National Crime Authority to investigate in a broad and general sense. Out of that investigation will come some evidence, intelligence or information as to the commission of offences. The commission of offences requires enforcement, usually by law enforcement bodies. That is where state police forces and federal police come in to enforce the law. Following upon that enforcement is, at the end of the day, the prosecution of those offences.

The National Crime Authority straddles the investigation and enforcement functions of that process. It has nothing to do, under the act, with the prosecution of offences. The evidence which is assembled in the course of both the investigation and what I have called the enforcement process is assembled and given to the prosecuting authorities who then take a prosecution, and people are subsequently convicted or not of the offences.

The issue is the balance in respect of a body like the National Crime Authority in relation to investigation and enforcement—those two factors. The balance, perhaps from economic necessity, seems to be swinging back towards investigation rather than enforcement. But I think the National Crime Authority, for its part, would always argue that it needs to have a role in both those functions—the investigation and the enforcement functions. The question of how you adjust that balance I think is a fine one and one that needs quite a bit of thinking out. Part of that dichotomy underlies the submission that we are making here with respect to attempting to work out what you want from the body.

**Mr FILING**—Mr Gray, can I ask you some questions in relation to matter No. 10, which you may be able to answer questions about. I will touch first on a couple of matters relating to the authority under the act in relation to the power to summons witnesses and take evidence. Is it usual or is it considered to be entirely within the principles of the act

for a third party to be present at a hearing when a witness is giving evidence?

**Mr Gray**—Do you mean a party—

**Mr FILING**—When I say a third party, for example, a member of the New Zealand serious fraud squad.

**Mr Gray**—I think the act provides for that to be able to be done.

**Mr FILING**—What is the normal process in relation to the notification of witnesses that such a person is present at a hearing?

**Mr Gray**—I am not aware of such a notification.

**Mr FILING**—Is it, for instance, required of the member undertaking the hearing to inform a witness that there is a person of that sort of third party status present at the hearing?

**Mr Gray**—The member conducting a hearing is obliged to make, in effect, confidentiality orders before the hearing commences. One would assume that an order would be made in terms of such a person being present at the hearing.

**Mr FILING**—Given that the person, say, from the New Zealand serious fraud squad, having been present at a hearing, may return to their home nation, to what extent does the National Crime Authority Act extend to the New Zealand jurisdiction to prevent him from breaching those confidentiality requirements?

**Mr Gray**—I do not know.

**Mr FILING**—What about a person who had given evidence at a hearing as a summonsed witness, who learnt that there was a member of the New Zealand serious fraud squad present and who then ascertained later or alleged later that that person had used that information outside the Australian jurisdiction, within New Zealand? Is that, in your view, as a former member of the authority, appropriate practice under the powers given under section 28 of the NCA Act?

**Mr Gray**—I do not know that there is such a thing as an appropriate practice. That is really a matter for individual members who are conducting the hearings, one would have thought. I would like to make it clear that I do not know anything about any of the matters that you are putting to me at the present time.

**Mr FILING**—I really wanted to talk to you about the principles behind it more than anything else, as you understand them as a former member.

**Mr Gray**—Certainly.

**Mr FILING**—Obviously, one of the aspects of our inquiry is to ascertain whether there are requirements for amendments to the act either to make it more efficient or certainly in some instances to make it more comprehensible to people who might find themselves falling under its purview at some stage.

**Mr Gray**—I understand that.

**Mr FILING**—Is it fair to say that somebody who had given evidence under those circumstances may well feel that the act is oppressive or gives the authority undue oppressive powers in relation to the rights of civil liberties and the rights of a witness?

**Mr Gray**—That is in that particular circumstance—if I understand you rightly—of a person not being a member of the staff of the authority or of another law enforcement agency?

**Mr FILING**—Yes, of another Australian law enforcement agency—one that might be bound by the confidentiality requirements of the act more or less all the time.

**Mr Gray**—There is certainly an issue related to confidentiality requirements where that person is from overseas. There can be no doubt about that. But I do not know that I would take it any further than that. Strictly speaking, the confidentiality requirements of the act as they stand at the present time would, or should, protect a witness who is appearing in a hearing before the authority, at which hearing there are present other persons not being members of the authority but being from other law enforcement agencies.

**Mr FILING**—But that would only apply as long as they remained within the Australian jurisdiction?

**Mr Gray**—It applies to us all in so far as persons are within the Australian jurisdiction.

**Mr FILING**—Would it be possible under the power of sections 28 and 29 for the authority to allow for another party, a representative from another law enforcement agency—perhaps one from overseas—to be present and then return to their home base and use the information because they would be in effect free of the confidentiality arrangements within their own jurisdiction?

**Mr Gray**—You can postulate that as a hypothetical case.

**Mr FILING**—We have had evidence from civil liberties representatives that some of the oppressive behaviour they have alleged on the part of the NCA revolves around these powers, which are amongst the most significant powers under the act. We have had specific allegations in relation particularly to sections 28 and 29 where a third party law

enforcement agency representative was present and then used the information in their own jurisdiction. Do you think the sections should remain as they are? Is that appropriate or ought there to be a clearer delineation of to what extent third party witnesses should be present and to what extent they ought to be able to use the information they have learnt?

**Mr Gray**—Only when they come from overseas, as I understand the thrust of what you are saying, because I would have thought that the present confidentiality requirements are sufficient protection against that. I would have also thought that, generally speaking, properly used, the situation that you are postulating ought not to occur. Certainly, it would be a misuse of the section to deliberately engineer the ability of someone to publish abroad that which cannot be published within Australia.

**Mr FILING**—Or use the information in another jurisdiction in, say, a criminal investigation?

**Mr Gray**—That is more speculative, given Australia's place in the world and principles of international comity and all that sort of thing. I think you are suggesting a far more ulterior purpose than the one that I am directing my attention to.

**Mr FILING**—The reason I have raised this is that, obviously, your experience and the principles under which you have acted as a member of the NCA are important to our understanding of how these sections work and to what extent they ought to be either amended or kept as they are.

**Mr Gray**—I will add I have never had the problem of—

**Mr FILING**—I was going to ask you, have you been aware of that ever occurring?

**Mr Gray**—That has not occurred in my experience. It just has not occurred in my experience. I am reflecting now on overseas witnesses who have been the subject of section 28 hearings and I can say that that has not arisen as a possibility or as a problem.

**Mr FILING**—As you know, there is a practice, from time to time, used by law enforcement agencies when making arrests of making the person walk the gauntlet—tipping the media off so that they are present when the person arrives at the lock-up or wherever they are being processed. Have you been aware of that ever occurring in relation to people arrested by the NCA?

**Mr Gray**—No, I have not.

**Mr FILING**—Or arrested by officers of the NCA?

**Mr Gray**—No, I have not.

**Mr FILING**—Are there any principles on the way in which people in that position ought to be treated that are understood by officers acting for the NCA?

**Mr Gray**—I do not know that there are any articulated principles—not that I am aware of, anyway. I would just take the very strong view that that is not what ought to happen.

**Mr FILING**—Would it be, in your view from your perspective as a lawyer as well, likely to prejudice the opportunity for a person to have a fair trial if they were treated in that fashion and it might jeopardise the case?

**Mr Gray**—That probably puts it too strongly because to do so could ultimately, result in a contempt of court. But it is undesirable, certainly in my view, that that should happen.

**Senator STOTT DESPOJA**—Just briefly, Mr Gray, following on from my earlier questions in relation to self-incrimination, I was just wondering if you thought that legal professional privilege should actually be written into the act?

**Mr Gray**—It is written into the act, in effect, and it has been interpreted as though it were written into the act. That is that curious provision which says that the legal practitioner may take legal professional privilege but must give the name of his client, leaving to one side the question of whether—because it is the client's privilege—the client can in fact take the privilege. There is an argument that they cannot, although there is a decision that they can. It would be good to have that clarified because it seems to me to be an open question at the present time and it seems to me a question of whether it is appropriate that legal professional privilege be able to be claimed.

Perhaps I should add this too. There appears to be an express abrogation, or possibly an implied abrogation, of the privilege in relation to documents and an express one, as far as documents are concerned that are business records, in so far as they may be self-incriminatory—to mix two concepts. It would be good for the act to be quite clear in its terms as to when the privileges apply and when they do not. Legal professional privilege is certainly in a clouded area as far as the act is concerned.

**CHAIR**—Just on the question of privilege against self-incrimination, can you just quickly take me through that part of your submission? It seems that you are arguing for the status quo. The South Australian police commissioner has made a point about the need for the NCA to have powers similar to those given to royal commissions of inquiry. If not, there is a definite requirement to incorporate a power to compel persons to answer questions truthfully, with the proviso that, should they be coerced to answer questions, the answers cannot be used in evidence against them and may be used against others identified as being involved in criminal activities by such evidence. You have said in your submission that that shows a misunderstanding of the nature of the coercive power. Just

take me through that. There is a difference in the way the NCA approaches that issue to the way the ASC does.

**Mr Gray**—There is certainly a difference in approach between the NCA and the ASC.

**CHAIR**—Which is the better approach from the NCA's perspective?

**Mr Gray**—I cannot speak on behalf of the NCA. That is a matter of judgment and really determines upon how you actually want to exercise the power. Can I just go back and try and put this in some sort of order. The purpose of compulsory questioning is to obtain information. The purpose of compulsory questioning is not to force a person to incriminate themselves. That seems to be the general underlying principle in relation to that. The compulsory questioning, therefore, is directed towards people who have information to add to the intelligence source rather than compulsorily interrogating them as a police officer might well like to do when he has a suspect. So you start from the premise that the people who are coming before the body are there to give information but they have a privilege against incriminating themselves; they are not there for the purposes of a compulsory interrogation where things are put to them to force them to confess to the crime.

However, such people as you may bring before the body are people who may well have been engaged in some forms of wrongdoing. If they are engaged in the principal form of wrongdoing, you would not have them in to question them because all you would be doing would be interrogating them. Evidence given to royal commissions is not used, cannot be used, against a person in relation to the commission of offences. Therefore, the privilege is in effect kept in royal commissions.

If the body knows that persons coming before the particular body have been guilty of a degree of wrongdoing, the body may then make an assessment as to whether or not their information is still more important than that they be convicted and punished for whatever offences they have committed. It is in that assessment where you get the divergence between what the Australian Securities Commission may do and what the National Crime Authority may do. The Australian Securities Commission may make up their own minds because any evidence given before the Australian Securities Commission cannot be used against the person. All that they can do is to use the information gained.

But the Australian Securities Commission do not have to go to a prosecuting authority and say, 'This man might have committed these offences. If he gives us answers which show that he has committed these offences, will you give him an indemnity from prosecution'—or, in the case of the National Crime Authority Act—'an undertaking that he will not be prosecuted for these offences?' It is the prosecuting authority that therefore makes that particular decision.

Given the nature of the sort of offences that the National Crime Authority is concerned with, serious criminal offences of a very black kind, it seems to me only appropriate that such a decision ought to be the subject of the prosecuting authorities, not the investigating body.

**CHAIR**—So you are actually arguing for the status quo?

**Mr Gray**—The status quo.

**CHAIR**—I thought you were.

**Mr Gray**—I am sorry I was so convoluted.

**CHAIR**—In other words, the existing arrangements are more advantageous for an organisation like the NCA? It gives them, as I understood what you said, some flexibility.

**Mr Gray**—The existing arrangements seem to me to give a sufficient compulsive power. I am speaking now in a straddling capacity. It seems to me that the balance is right with respect to the compulsive power, if the self-incrimination aspect of it is a matter for the prosecuting authorities to determine.

**CHAIR**—Also then there is, in your view, adequate protection for people who are called before the NCA for the same reasons?

**Mr Gray**—There is, but it would be more adequate if one could better define the spectrum of what the NCA are investigating at any particular point in time.

**Mr FILING**—Given his very strong views about the powers of the NCA, do you think it was a mistake not to have objected to Justice Vincent hearing the Elliott matter on the part of the authority, given that you had the opportunity?

**Mr Gray**—It was near the end of my time with the authority. That is a matter which I think you should ask someone else.

**Mr FILING**—It is just that we heard Mr Costigan the other day use the expression ‘incompetence’ in relation to the prosecution. I just wondered if there was a feeling that perhaps things could have been done in a different way, given the outcome.

**Mr Gray**—I do not want to comment on that.

**CHAIR**—We might wrap it up because I think you have been given more time than you were scheduled to be given. Perhaps there is one question very close to home: when you were a member of the NCA, in terms of the accountability, did the parliamentary joint committee, in your view, do its job or is it unclear about what its job



was? In fact, the other question is: should it be given wider powers in terms of the briefings it receives or a wider oversight in terms of the briefings it is entitled to receive from the NCA?

**Mr Gray**—Can I go back a little. When I first started with the National Crime Authority this committee was suffering, I suspect, from the views of former chairmen that the provisions of the act meant that this committee should neither be told anything nor be able to learn anything. Over time, that has changed and I think that at the present time it is about right that the amount of information that this committee has been given, consistent with the confidentiality requirements of the act, enables the committee to properly assess and perform its accountability function with respect to the National Crime Authority. So I think it is about right at the moment.

**CHAIR**—Thank you, that is very helpful. Mr Gray, thank you very much for your time.

[10.32 a.m.]

**EDMONDS, Detective Superintendent Denis George, Officer in Charge, Drug Task Force, South Australia Police, Police Headquarters, Flinders Street, Adelaide**

**MOTT, Assistant Commissioner Arthur William, Assistant Commissioner (Crime Operations), Western Australia Police Service, Police Headquarters, 2 Adelaide Terrace, Perth Western Australia 6000**

**CHAIR**—We have received a submission from the South Australia Police. We have also got a submission from the Western Australian Minister for Police. Hopefully, that will not cause any problem. We have received those submissions and they have been published. Is it the wish of the committee these submissions be incorporated in the transcript of evidence? There being no objection it is so ordered.

*The documents read as follows—*

**CHAIR**—Before inviting you to make an opening statement in support of your submission, I am required to state that if during the hearing you consider information you wish to give or comment requested by a committee member is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in a material particular. I should also perhaps state that, as public officials or officers, we will not expect you to comment on matters of government policy. Did either or both of you wish to make an opening statement?

**Asst Commissioner Mott**—Just before I make my opening statement, I am going to refer to the names of some of the NCA references, and also I will make reference in respect of one of the operations under one of those references to some outcomes in terms of the proceeds of crime seizures. I am not sure whether you would consider that to be material that should be heard in camera. I will not be going beyond that, but I would not expect that it would be something that could not be heard publicly.

**CHAIR**—That is in your hands largely.

**Asst Commissioner Mott**—Mr Chairman and members of the Federal Parliamentary Joint Committee on the National Crime Authority, my full name is Arthur William Mott and I am the Assistant Commissioner, Crime Operations in the Western Australia Police Service. I am also the WA Police Service representative on the Standing Committee on Organised Crime and Criminal Intelligence Working Party. Thank you for this opportunity to give evidence to this parliamentary joint committee, and I undertake to provide you with the Western Australia Police Service perspective of the NCA, particularly in terms of its relevance to law enforcement in our state, the largest single police jurisdiction in the world with a very large, mostly isolated and exposed coastline and a very large state border.

In terms of role and function, the National Crime Authority is an essential component of law enforcement in Australia, particularly in terms of the ability of the nation to identify and deal with organised crime groups. The NCA provides a capability to analyse intelligence and produce strategic assessments from which plans can be developed to deal with the activities of organised crime groups that threaten the safety and security of the Australian community. Examples of such national strategic assessments into organised or national criminal activities include such items as organised paedophile activity, Project Bodega, and Japanese organised crime, Project Yakuza. These projects could not have been successfully achieved by any one state jurisdiction acting alone, whereas the NCA with its multidisciplinary and jurisdictional approach has been very successful in producing quality assessments which now form the basis on which law enforcement agencies in Australia are formulating their direction.

The activities of organised crime groups invariably cross both state and

jurisdictional borders and therefore require a coordinated approach of all relevant law enforcement agencies to deal with them. This coordination role is an essential function of the NCA and has been achieved with the establishment of multijurisdictional task forces. The success of this approach was well demonstrated in Western Australia through Operation Cerberus which was directed at Italian-influenced organised crime and resulted in arrests of senior Italo-Australian criminal identities and seizure of assets over the course of the operation. The outcome of Cerberus was a thorough understanding of the nature and extent of Italo-Australian organised criminal activity and the risk such activity poses to the Australian community.

The establishment of multijurisdictional task forces to deal with organised crime enables the statutory powers of the various law enforcement agencies involved to be utilised in a coordinated manner, thereby increasing the effectiveness of the task force. Similarly, through its coordination role, the NCA is able to draw together and maximise the use of the physical resources of the agencies involved.

In the past the NCA assisted in the completeness of investigations by providing the WA Police Service with specialist resources, such as financial analysts, legal advice and a national covert investigative capacity. Through this process the Authority has performed a value adding function to state investigations. An example of this function can be seen in a study of Operation Husky, a state investigation incorporated in the NCA reference Cerberus, which resulted in the creation of a joint task force actively targeting not only the principals but also the entire organisation, including its sport and asset structure. The NCA provided specialist and technical expertise and used its multijurisdictional coordinating role to great effect, resulting in proceeds of crime seizures totalling \$2.79 million, including in excess of \$840,000 in cash. This operation is a premier example of inter-agency cooperation and the results which can be achieved when an agency has the ability to reach across boundaries.

The joint task force approach currently adopted by the NCA is unquestionably the benchmark in methodology in the investigation of organised crime at both the national and state levels. This method of investigation, *inter alia*, facilitates the concept of best practice being adopted by its members. It is the considered opinion of the WA Police Service that the organised criminal activity prevalent in Australia can only be combated successfully if the combined resources of all law enforcement agencies are pooled and directed towards this endeavour and properly coordinated.

The need for such a body as the NCA is vital. In a federation, no state or territory law enforcement agency has the capacity to address organised crime of national significance on its own. It is this void that brought about the introduction of the NCA and the need is now more significant than ever. Any move towards closure or downsizing is strongly opposed by the WA Police Service.

In terms of efficiency and effectiveness of the NCA, in the recent past prior to the

budget cuts the NCA provided the capacity to cross-jurisdictionally coordinate and investigate organised crime. Indeed, this was the key feature in its creation. In Western Australia this was particularly evident in each of the national references, such as Cerberus, Blade, Panzer and Freshnet. However, because of the recent budget cuts, the NCA in Perth has been reduced to what is arguably a single reference office, as against the multi-reference agency it was only a short while ago.

The NCA no longer has its previous capability to effectively analyse, produce assessments, investigate organised crime or coordinate multi-jurisdictional task forces due to these cuts. Before the evolution of this situation, law enforcement in Western Australia maintained a strong, coordinated and dedicated anti-organised crime capability fostered through the close relationship between the WA Police Service, the NCA, the Australian Federal Police and the Australian Customs Service. During this period there was notable success in the identification, operational targeting and apprehension of major criminals with significant seizures of narcotics, proceeds of crime and weapons. The NCA in the past played a significant part in coordinating these activities.

The downsizing of the Perth NCA would appear to have been introduced in order that the NCA presence on the east coast could be maintained with optimum strength. Whatever the reasons, the effect of the downsizing in Western Australia has had a serious impact on state law enforcement resources. Within Western Australia the NCA was reduced from a full-time staff capacity of about 31 personnel in 1995-96 to 15 staff in 1996-97. The loss of human resources included investigative, analytical and support staff at operational and corporate level. Downsizing such as this must obviously result in loss of efficiency and effectiveness.

Coincidentally, it was during this period that the WA Police Service had, of its own initiative, decided that it would be beneficial to introduce its own dedicated organised crime squad and to substantially increase the resources and capability of the Bureau of Criminal Intelligence. A very large proportion of the work that should have been undertaken by an adequately staffed NCA office was, out of necessity, passed to the WA Police Service at a time when the resources of the AFP and ACS have also been reduced in Western Australia.

It is difficult to comprehend what may have occurred but for these timely developments in the WA Police Service. Western Australia is currently experiencing a higher than normal number of heroin related deaths, which is an indication of the amount of high grade heroin available in this state. There have been markedly reduced significant barrier seizures of heroin and cannabis in Western Australia in recent times and it is believed this can be attributed to the current situation with the NCA, the AFP and the Australian Customs Service as their circumstances do not allow for a concentrated effort in detecting such infiltration.

Originally in Operation Panzer there were nine outlaw motor cycle gangs in the

national reference, with two being from Western Australia. In late 1996, two former eastern state based gangs commenced to open chapters in Western Australia. The NCA's limited ability to conduct any Panzer investigations in Western Australia has resulted in the onus for effective investigation reverting to the WA Police Service. There have not been any in-depth NCA western region assessments of the outlaw motor cycle gangs located in this state during Operation Panzer due to the shortage of staff. Outlaw motor cycle gangs and organised crime groups are becoming more aware of the resource shortages of the other law enforcement agencies in Western Australia.

There are indications that organised crime groups have recognised the vulnerability of Western Australia due to the cuts that have occurred in the Perth office of the NCA and other Commonwealth law enforcement agencies. It is therefore not surprising that they are moving into this state. Unless the ability of the NCA and these other agencies to deal with organised crime is returned to its former strength, the situation can only worsen.

In closing, I would like to reinforce that the WA Police Service supports the need for the NCA and advocates that not only should it be returned to its former strength in Western Australia but that it should be increased nationally to ensure Australia's capacity to counter organised crime is not diminished at a time when it is clearly under threat.

**CHAIR**—There might be some advantage in having had you both together because there are common elements in your interests. I asked the secretary why we were not dealing with you separately but I think that, now we have you both here, we will stick with that arrangement, although it occurred to me that it might have been better if we had done it the other way. Superintendent Edmonds, do you wish to make a statement as well?

**Det. Supt Edmonds**—There is no need for me to make any sort of a general statement. I can only reflect on what Mr Mott has said, and you will be pleased to know that we have not had the benefit of prior collusion.

**CHAIR**—I saw you sitting there together for at least five minutes. I am sure that there will be questions from the committee members. Actually, I was not aware, Assistant Commissioner Mott, that you were on the Standing Committee on Organised Crime and Criminal Intelligence, the SCOCCI.

**Asst Commissioner Mott**—On the SCOCCI working party—not the standing committee.

**CHAIR**—The working party set it up, did it?

**Asst Commissioner Mott**—No, the working party, principally, assists with crime across Australia and that group really looks more at the operational issues in respect of the activities of the NCA in terms of the various references and how they impact on each of the states.

**CHAIR**—So it is within the SCOCCI or under the umbrella of SCOCCI?

**Asst Commissioner Mott**—Yes, one step down.

**CHAIR**—Just comment on your role on that working party. That is, obviously, something you think is a good idea.

**Asst Commissioner Mott**—Yes. It provides each of the law enforcement agencies with the opportunity to closely examine the various references in respect to how they are operating within each of the states in terms of monitoring the progress of those references and ensuring that they are proceeding in the best interest of law enforcement generally across Australia and particularly in terms of the states' involvement.

**Mr FILING**—In opening questions, may I just advise you that, in a submission made to the inquiry in Queensland, a representative of the Queensland Police Commissioner made the observation that, because of the cutbacks in Western Australia, up a conduit of drugs from the west coast to the east coast had been opened up, and that was a matter of serious concern. I presume that is the basis for the concern registered by the New South Wales Police in the *Australian* today, too. Are you aware of this conduit being opened up?

**Asst Commissioner Mott**—When you look at barrier seizures over the past six or so years, many of those large seizures were destined for the eastern seaboard but intercepted on the west coast. So that certainly indicates that drug importations on the west coast are not necessarily purely for distribution initially in the west coast. But I add that indications also are present that some of the drugs that do come in through the west coast and come across to the eastern seaboard are turned around, because of the links between the organised crime groups, and returned to the west. So there are certainly indications there that importations that come in on the western seaboard can in fact finish up on the eastern seaboard.

**Mr FILING**—Would it be fair to say, as Bob Bottom indicated in his evidence to the committee in Queensland on the same day, that couriers are coming over, sometimes up to 10 or 11 at a time, on the same flights?

**Asst Commissioner Mott**—I am not aware of the numbers of couriers. I would not be able to comment on that and that is perhaps a matter that would be best put to the Customs Service.

**Mr FILING**—Mr Bottom indicated in his evidence that, in some instances, there has been evidence of people, couriers, from South-East Asia, for instance, who have come here, been convicted and then gaoled, and actually written to relatives, inviting them to come over because the conditions are so good. In actual fact, they would walk away with more money, for instance, than they could earn in Thailand from their earnings in prison.

**Asst Commissioner Mott**—I am not aware of that, but I would certainly think that the proceeds that can be derived from drug importation in terms of the payment that a courier would receive would be far in excess of what a person would earn in one of those South-East Asian countries in a normal occupation.

**Mr FILING**—So Mr Bottom's assertion that, in actual fact, the occupational hazard or the risk associated with, say, couriating drugs into Australia is so relatively small, particularly compared to, say, Thailand's own domestic situation, that it might appear to be an attractive career prospect for somebody wanting to make some money.

**Asst Commissioner Mott**—The number of barrier seizures in Western Australia since August 1996 would indicate that there would be less likelihood of someone being intercepted on the western seaboard now than there was previously.

**Mr FILING**—You are also aware, of course, that there is now a conduit of designer drugs coming from western Europe to Western Australia by plane?

**Asst Commissioner Mott**—That is correct.

**Mr FILING**—Is that a substantial amount and is that also going east?

**Asst Commissioner Mott**—I am not aware of the quantities and I am not aware of the destinations of those, but I am aware of those drugs coming in from Europe and England.

**Mr FILING**—Mr Falconer's submission echoed the words of Mr Comrie, the Chief Commissioner of the Victorian police, Mr Court, the Premier of Western Australia, and Mr Day, the Minister for Police and Emergency Services in Western Australia, who have also mirrored the concerns registered by the Australian Bureau of Criminal Intelligence to this committee. Given that the problem is of such seriousness and the level of drugs is, in Mr Comrie's words, such that we are awash in heroin, is it somewhat of a surprise to you, given the peculiar problem in WA that both federal ministers responsible for the administration of the NCA and, I might say, Customs come from Western Australia, that they are not aware, or seem to be less aware, of the problem?

**Asst Commissioner Mott**—I would think that anyone should be aware of the problem in Western Australia at the moment, given the number of heroin related deaths that have occurred this year and the publicity that has received. I would think that anyone in Western Australia would be conscious of that fact, because it has received widespread publicity.

**Mr FILING**—Mr Prosser, the minister for customs, said in recent times that we are winning the fight against drugs. He seems to be unique. Is that a fair comment, coming to that conclusion?



**Asst Commissioner Mott**—I am not sure that we ever win the war against drugs. In terms of dealing with drug issues, I think the best we can ever hope for is to put some sort of lid on it. I think we are really kidding ourselves if we ever think that we are going to get it to a stage where we can absolutely remove it. I do not think that will ever occur. If you look at history in other countries, in my view once it exists in a country the role of law enforcement agencies should be to try and absolutely minimise the availability of the drugs and their impact on the community.

**Mr FILING**—The ABCI, Bob Bottom, the Queensland Police Commissioner's representative and others have all conceded that the heroin importation problem has been predominantly organised by Chinese triad gangs. Is that an observation that you would agree with?

**Asst Commissioner Mott**—I do not think it is entirely restricted to Chinese triad gangs. The indications are that there are a number of organisations that are involved in the importation of heroin and I do not think it would be right to restrict it to principally one group.

**Mr FILING**—For instance, is there a difference between WA and, say, the east coast? That is what they say on the east coast, but are there other elements involved in Western Australia?

**Asst Commissioner Mott**—There are other elements involved in Western Australia, yes.

**Mr FILING**—Who are they?

**Asst Commissioner Mott**—I do not want to detail or name the groups or outline—

**Mr FILING**—You can generalise.

**Asst Commissioner Mott**—Even in generalising, I think it is probably risky because of some operational matters that we currently have running at the moment and I would not want to put those in jeopardy.

**Mr FILING**—Okay. You mentioned also in relation to Operation Panzer particular problems that the cutbacks had on the monitoring and detection of organised motorcycle gangs in Western Australia. How long has this particular problem of the involvement of motorcycle gangs in, for instance, amphetamine production, firearm production and distribution been known to law enforcement agencies within Australia?

**Asst Commissioner Mott**—In Western Australia it has been known for some time and that has been addressed. The problem we had in respect of Panzer was the limited

ability of the NCA to do a full inquiry and investigation into the issue of outlaw motorcycle gangs in Western Australia.

**Mr FILING**—Is there a continuing problem in WA with organised motorcycle gangs?

**Asst Commissioner Mott**—The indications are that some of the eastern seaboard outlaw motorcycle gangs, and two of them in particular, are moving to establish chapters in Western Australia and that certainly will create some additional problems for us, from a law enforcement perspective.

**Mr FILING**—Can I just turn to a matter that has obviously achieved some significance in the last few days, and it relates obviously to drug trafficking and the prospects for drug trafficking detection. Given the unfortunate incident in the last few days in relation to this tape of drug squad officers, are you, as Assistant Commissioner, aware that there is a serious problem in Western Australia in relation to the drug squad and the fight against organised drug trafficking from within the Western Australian Police Service's perspective?

**Asst Commissioner Mott**—I am aware of two allegations being made in respect of the drug squad in Western Australia. One of those allegations I would consider is not a good indicator for my portfolio or our agency in terms of the information that has been released to date. But I would stress that both of those allegations are being investigated by our internal affairs unit and also, in one instance, the Anti-Corruption Commission. It is my view that they should be fully investigated and, in my view, the sooner the better, and that the matter then should be dealt with from that point onwards. But they are allegations at this point in time, albeit that one of them is of a serious nature.

**Mr FILING**—Mr Day, the Minister for Police and Emergency Services in Western Australia, has commented that he believes the ACC, the Anti-Corruption Commission, augmented with surveillance and tapping powers that could be granted from the Commonwealth, could in fact achieve the same results as a royal commission. Are you conscious that the ACC has that ability?

**Asst Commissioner Mott**—Yes, the ACC has the powers of a royal commission and has the ability to set up a special investigator with the powers of a royal commission, and I believe that is the appropriate course that this should take at this point in time to enable those processes which have been put in place, and I believe are adequate to deal with these sorts of matters, to in fact do just that.

**Mr FILING**—In fact, I understand that in the ACC's investigative team they even have somebody from the Wood royal commission present.

**Asst Commissioner Mott**—That is correct.

**Mr FILING**—Would you agree then that the opportunity for surveillance and tapping and the sorts of techniques used in the Wood royal commission, like pinhole cameras, et cetera, would be the most effective way of identifying any potential corruption?

**Asst Commissioner Mott**—They would certainly be matters that the ACC would consider, and I think it is really up to the Anti-Corruption Commission to determine how it goes about its business in terms of investigating these sorts of allegations.

**Mr FILING**—Just back on the question of the problem in relation to drug trafficking, some time ago the *West Australian* newspaper calculated or estimated that about—and I may be wrong—\$600 million of illicit drugs enters through Western Australia's frontier on an annual basis. Are you conscious of any figures of that sort?

**Asst Commissioner Mott**—No, I am not sure how the *West Australian* would arrive at that sort of figure, and I do not have any estimations of the amount coming into Western Australia. I think the best people to deal with that are the Customs Service, who, of course, have the responsibility for that.

**Mr FILING**—I think we heard evidence from the Secretary-General of Interpol that something in the region of 12 per cent to 25 per cent or 26 per cent only is the amount usually detected or apprehended in the drug trafficking activities. In other words, whatever is seized is generally only a very minor part of what is actually moving around. Is that a fair comment?

**Asst Commissioner Mott**—That would be correct. Certainly once it gets onto the street, it is only a small proportion. That is why we are very keen to see an increase in the ability of our law enforcement agencies to intercept it at the barrier.

**Mr FILING**—Can I also just ask, if I may, about the importation of cannabis in containers that appears to be coming through Western Australia as well. Are you conscious of that?

**Asst Commissioner Mott**—I am only aware of one consignment that came by container. That is not to say that there have not been others, but I am aware of one that came in in a container.

**Mr FILING**—From your experience and your perspective, is that an unusual, let us say, feature of drug trafficking when people feel confident enough to send drugs in container loads?

**Asst Commissioner Mott**—Drug traffickers, particularly within organised crime groups, will try any method at all and, can I say, they are very ingenious in some of the methods they come up with in terms of importing drugs. It is essential for us then as a nation to have the best available means of intercepting that, either at the border or before

it comes into the country.

**Mr FILING**—Would it be fair for me to say to my constituents, who are asking me why there are so much drugs around, that it is because there is an effective reduction in the resources coming from the Commonwealth government to combat importation of drugs from overseas?

**Asst Commissioner Mott**—The figures I have in respect of barrier seizures clearly indicate that there have been far fewer barrier seizures in the past 12 months than previously.

**Mr FILING**—Just one last question: would you then agree that in fact we are in a situation of crisis rather than management?

**Asst Commissioner Mott**—I am not sure I would describe it as a crisis. I know from the figures—

**Mr FILING**—Mr Comrie has.

**Asst Commissioner Mott**—Right. In terms of looking at it from a Western Australian perspective, I know that our drug squad and our organised crime squad, since it has been established, have been very effective in dealing with drug issues and have had some significant results in terms of both the street dealing in drugs and organised crime groups dealing in drugs.

**Mr FILING**—But I think Mr Falconer himself has said there is a crisis.

**Asst Commissioner Mott**—Well, it certainly is a problem. I am not sure I would use the term crisis, but it is certainly a problem and we recognise it is a problem that we are dealing with. But we find it very difficult to deal with it when we have these reductions and particularly when there seems to be less impact in dealing with it at the barrier.

**CHAIR**—Mr Edmonds, did you write the South Australian police submission?

**Det. Supt Edmonds**—I did not write it, Sir; I had some input into it.

**Senator FERRIS**—Mr Edmonds, could I ask you to reflect on some earlier witnesses' evidence in relation to the movement of staff from various state jurisdictions to the NCA on secondment. Three years ago there were 16 members of the AFP working in the NCA structure. There are now 54. In relation to the transfer of people from your own jurisdiction, for example, do you have difficulties in, first of all, getting your people to more or less set aside the state loyalties that they have when they move to the NCA and, similarly, their being able to effectively fit back into their own jurisdiction, particularly now given the great growth in AFP police within the NCA.

**Det. Supt Edmonds**—No, there is no problem there. The work that the NCA does primarily reflects on state legislations and there is also obviously some investigation into federal offences. There is a need to maintain a balance within a jurisdiction of local state police and the Federal Police seconded to the NCA.

**Senator FERRIS**—Would you say this balance is about right now?

**Det. Supt Edmonds**—I am not sure what the situation is in some other jurisdictions. I know that the NCA in Adelaide has been drastically downsized and I suppose that, if the positions were there within the NCA, albeit that the South Australian police has also downsized, we would most certainly make the effort to provide the resources.

**Senator FERRIS**—I am not sure whether you were here when I was asking some questions related to drugs some of which Mr Filing has just recently brought up. Could you reflect on a letter which has come from the minister here, Mr Stephen Baker, which we have included in our papers, where he talks about the difficulties for South Australian police in relation to reduced flow of intelligence, reduction in financial analysis and increased demands on your limited investigative resources flowing from the downsizing of the NCA's office here. Do you believe that has had any effect on your ability to manage the South Australian drug scene which, like Mr Filing's reference to Western Australia, does seem recently to have become much more difficult to manage—in a public sense anyway?

**Det. Supt Edmonds**—At the moment, the resources of the NCA in Adelaide are almost entirely committed to Operation Viking, which is an investigation into South-East Asian organised crime reflecting the national Blade reference. There is certainly scope for us to get assistance from the NCA in drug investigations in this state—motorcycle gangs and production of cannabis—that go across state borders. If we had more people within the NCA here and more NCA resources in general, investigators and resource staff, then we could make a greater effort towards those investigations.

**Senator FERRIS**—Given the wide powers that the NCA have and clearly the more limited powers in relation to those particular powers that the state jurisdictions have, does that in some way inhibit your efficiency of investigation into the drug trade in South Australia?

**Det. Supt Edmonds**—We have limited resources, as most jurisdictions do. If we had the input of the NCA and, again, even if it was just at a coordinating level, then we could be more effective. At the moment we have fairly extensive production of cannabis in this state. We have clandestine laboratories existing that manufacture amphetamine based products. All of those investigations could be enhanced at a state level if we had more resources within the NCA to provide assistance and to help us coordinate the investigations here and interstate through the NCA's networking system.

**Senator FERRIS**—Would that extend to heroin trafficking? I am a South Australian and there has been a good deal of publicity of recent weeks in relation to heroin in the city area here and shooting galleries and so on. Are you saying that the investigation and prosecution of those dealers is also being inhibited?

**Det. Supt Edmonds**—Certainly. I do not think you can differentiate between drug types when you are talking about the drug scene or investigations. No matter what the drug type, it is a national problem. Some of the designer drugs, and obviously heroin, have international connections because overseas is the source of the product.

**Senator FERRIS**—Given the recognition of those difficulties, what has the South Australian police force done about that in relation to the federal issue?

**Det. Supt Edmonds**—Apart from the usual strategies that police jurisdictions adopt in investigating drug offences, what we have done in this state is have Operation Viking as a cooperative effort between state police, Federal Police and the National Crime Authority. It goes beyond merely an agreement. We actually have investigators from each agency all co-located and all working together under a memorandum of understanding. That investigation is into South-East Asian organised crime. They are the sorts of things you can do if you have the resources. At the moment, most of the resources for that operation are coming from the South Australia Police or the locally based Federal Police.

**Senator FERRIS**—We have had some evidence from previous witnesses which suggests an issue which you may know as turfdom, territoriality and the sort of holding to one's chest of information. To what extent would you see that might have interfered with the efficiency of these sorts of drug investigations?

**Det. Supt Edmonds**—There is always a danger that people will become territorial and do not share with other agencies. We are fortunate in this state in that we are a fairly small community and the law enforcement people all get on very well together and we have a commitment to share information. I suppose it works fairly well in this state because we have South Australia police seconded to the National Crime Authority. We find it very easy to establish and maintain dialogue.

**Senator FERRIS**—Are you aware of the issue of turfdom?

**Det. Supt Edmonds**—Most certainly. It exists worldwide.

**Senator FERRIS**—What can you do to deal with that? What have you done, perhaps in relation to federal bodies, to deal with it?

**Det. Supt Edmonds**—Once again, the establishment of Operation Viking has set the scene for the sharing of information, not only in relation to that investigation, but in

other jobs that are running that may be state based or federally based. We are quite at ease in sharing information. I think one of the successes of any policing endeavour where it incorporates police and non-police is that the organisation must be seen as being credible within the eyes of the police service in that jurisdiction.

**Senator FERRIS**—To clarify that, are you saying that the use of task forces per se, in principle, is a way of breaking down those barriers of territoriality?

**Det. Supt Edmonds**—Most certainly.

**Senator STOTT DESPOJA**—I would also like to discuss the South Australian scene. In the South Australian submission concern is expressed, as you have said today, about the drastic downsizing in NCA resources and staff. You mentioned that this is placing increasing demands on the resources of the South Australian police. Are you able to explain in what way there are increasing demands on the police force here?

**Det. Supt Edmonds**—In regard to the provision of investigators: there are only two NCA investigators attached to the NCA here and they are drawn from SAPOL. It would be advantageous to have more NCA investigators so they could become, once again, proactive rather than reactive and take on an investigative role rather than a purely coordination role. There is room for both; there is a need for both.

The types of organised crime activity that we are dealing with require a lot of work in chasing paper trails, chasing bank accounts, obtaining and examining intelligence, because quite often the people that we are investigating, if you are looking at drug offences, never handle the product. You will never kick the front door in, as they say, and find a house full of drugs. With those particular people that will never happen. You have to go about proving your case in another way and that is to get intelligence, get information, chase up the paper trail. All of those sorts of things require experts in the fields of intelligence—accountancy, solicitors—which are requirements above and beyond a requirement for police who have the background and the training to do the on-the-ground investigations.

**Senator STOTT DESPOJA**—This morning Mr Filing mentioned the word ‘emasculatation’ in relation to the impact of the funding cuts on NCA services and staffing resources. Would you agree that the NCA here has been emasculated?

**Det. Supt Edmonds**—It has most certainly been well and truly downsized. One of the unfortunate aspects of that is that in this state there is the potential to do some very proactive investigations into organised crime. At the moment it is my perception that the NCA here is really only in a position to provide some support to local police and adopt a purely coordinating role.

**Senator STOTT DESPOJA**—Would you describe the NCA office here in the

same way that the Assistant Commissioner has referred to the one in Western Australia—as a ‘single reference agency’?

**Det. Supt Edmonds**—Yes.

**Senator STOTT DESPOJA**—Are you aware of any investigations that have not commenced or have not been followed through as a consequence of budget cuts to the organisation?

**Det. Supt Edmonds**—I think we could have done more work here on the Panzer reference and probably the Freshnet reference.

**Senator STOTT DESPOJA**—And that is as a direct result of downsizing?

**Det. Supt Edmonds**—Yes.

**Senator STOTT DESPOJA**—I notice in the submission that there is an argument for not merely an investigative role—and you have mentioned this—for the NCA but perhaps the NCA should be or could be providing additional resources and assistance to other agencies. Is that just not happening?

**Det. Supt Edmonds**—The NCA here are providing what they can. What they have got they have given us.

**Senator STOTT DESPOJA**—I see. How many NCA officers are in the Adelaide office?

**Det. Supt Edmonds**—I am not sure of that.

**Senator STOTT DESPOJA**—I am happy to put that on notice, if you like.

**Det. Supt Edmonds**—I am not sure how many.

**Senator STOTT DESPOJA**—Assistant Commissioner, would you know how many AFP officers are in the Perth office of the NCA?

**Asst Commissioner Mott**—No. I think it is a very small number. I think it is reducing again but I would like to take that on notice also, if I could.

**Det. Supt Edmonds**—One of the constant topics on the agenda of the management committee of Operation Viking, which is a multi-jurisdictional task force, is always lack of personnel—where we can get them from and how we can juggle the books to find a person.



**Senator STOTT DESPOJA**—Is that difficult?

**Det. Supt Edmonds**—Yes.

**Senator STOTT DESPOJA**—The Assistant Commissioner referred to an awareness among criminals of the shortages in law enforcement agencies in the National Crime Authority specifically. I hope I do not misquote you, Assistant Commissioner, but you mentioned that as a consequence criminals were moving into the state. Would you, Superintendent Edmonds, like to comment on that in South Australia? Do you think there are people knowingly moving into this state because they are aware of the shortage in the NCA and other crime fighting areas funding wise?

**Det. Supt Edmonds**—I am not sure that I could say that I have noticed that, but we must appreciate that South Australia, even given the fact that it is a fairly small population and a relatively quiet little backwater compared with some of the eastern states, has a significant organised crime problem. It is not necessarily crimes that are committed within the state, but it would be my submission that much of the organised crime that happens across the country is generated from here.

**Senator STOTT DESPOJA**—So in that case we not only warrant an NCA local office but one that is appropriately resourced?

**Det. Supt Edmonds**—If we had an NCA office that was appropriately resourced, with the right sort of resources, then I am sure that the NCA office in Adelaide could provide an excellent service, a better service, to law enforcement agencies across the country because of our localised cell of organisers of criminal activity.

**Senator STOTT DESPOJA**—I turn to a matter that Mr Filing brought up this morning, and that is in relation to the bombing of the NCA offices in 1994, I think on 2 March. Do you have any idea when an arrest would be made of the person or persons involved in that bombing?

**Det. Supt Edmonds**—I don't think it would be appropriate for me to make any sort of public comment in relation the bombing.

**Senator STOTT DESPOJA**—Would you be prepared to proffer any reasons for the delay in getting a prosecution?

**Det. Supt Edmonds**—It is an issue that I really can't discuss in this forum because there are issues other than the NCA bombing that would necessarily be brought into the discussion and it would not be appropriate at this point in time.

**Senator STOTT DESPOJA**—You would not care to comment in that case on arguments that may have been put forward that suggest NCA or other enforcement bodies may have gone in too early or too quickly?

**Det. Supt Edmonds**—I suspect that would be a matter of speculation on the part of the people who made the comment.

**Senator STOTT DESPOJA**—Thank you. I turn to the issue of references. I note that in the South Australian submission there are suggestions in relation to legislative change—I think in relation to search powers and warrants and hearings. There is considerable discussion about the uncertainty surrounding references. I am wondering if there are any legislative proposals, specific or otherwise, as to how we could clarify the reference situation or regarding changes that could be made to reduce, perhaps, some of the uncertainty to which you refer in your submission. I am happy for this to be taken on notice as well.

Are there any legislative proposals, specific or otherwise, as to how we could clarify the reference situation or changes that could be made to perhaps to reduce the uncertainty to which you refer in your submission?

**Det. Supt Edmonds**—To my knowledge, there are no proposals in place at the moment.

**Senator STOTT DESPOJA**—Is there any particular reason that in the submission there is a preference for targeting of an entity rather than individuals in relation to the references?

**Det. Supt Edmonds**—It is our submission that it might take away some of the confusion that comes into place once a reference is made.

**Senator STOTT DESPOJA**—Thank you.

**CHAIR**—Obviously we have had a fair bit of input on that issue, and I think the committee will want to make some recommendations about the reference system. Obviously it ties in with a number of different parts of the act. You make the point that you prefer to target an entity rather than individuals. What you are saying there is that you think that references ought to be broad. The criticism of Justice Merkel, I think, was that the reference was so broad as to be too broad. Is that right?

**Det. Supt Edmonds**—In some instances it may be difficult to be specific. If you take the example we gave of clandestine laboratories, while it might be claimed that they were once the exclusive domain of a particular criminal group, that is no longer the case. In this country, we have the laboratories, we have the precursor chemicals, we have the people involved in the manufacture and we have the distribution networks. So the

manufacture and distribution of amphetamine based products is an entity that could be investigated. If you try to investigate one of the groups involved in the manufacture, then it can create duplication of effort and uncertainty as to where the boundaries are.

**CHAIR**—Have either of you gentlemen actually worked with the NCA as seconded officers during your careers?

**Asst Commissioner Mott**—No.

**Det. Supt Edmonds**—No.

**CHAIR**—Do officers that you are working with who have worked with the NCA and come back to your own police forces benefit from the experience? Are they better policemen?

**Asst Commissioner Mott**—Yes, I do not think there is any doubt about that, Mr Chairman.

**CHAIR**—So they see it as a desirable part of their career path to be seconded to the NCA for a period of time?

**Det. Supt Edmonds**—Provided the NCA is seen as being the organisation that it is supposed to be and they can do the kind of work that they are sent there for, then it is most certainly an excellent part of their career development. It gives them a much broader insight into issues of crime across the country.

**CHAIR**—Should the NCA have its own investigators, though? There is a debate which has been presented to the committee about whether it should or should not, and there is a view that it perhaps should have half a dozen or 10 of its own investigatory staff rather than relying on seconded AFP or state police officers?

**Det. Supt Edmonds**—It would be my view that there are some benefits in having investigators with a law enforcement background attached to the NCA and NCA officers with some degree of permanency, even if it is only to establish and maintain the networking across jurisdictions and to have a good grasp of what the NCA is doing. It probably gives the NCA the opportunity to identify criminal activity that can be developed into an investigation, either at a local or a state level, and it may then give the NCA the opportunity to second the right sort of expertise in for that particular job and send them home again afterwards. Once again, it is a task force concept.

**CHAIR**—Is that your position, too, Mr Mott? Is that your view?

**Asst Commissioner Mott**—It is, Mr Chairman. There is certainly a need for continuity. The seconded officers, of course, go in there for a period of time and then

return to their own jurisdictions. There is a need for some continuity, but also it is very advantageous for law enforcement on a national perspective and also from a state perspective to have those officers going in there who then become fully abreast of the issues from a national perspective in terms of organised crime and are able to take that back into their own jurisdictions, which then gives us some ongoing link into issues to deal with in organised crime across the nation.

**CHAIR**—But I take it the suggestion about permanent officers for the NCA would mean that they would be there permanently. So that would not happen, would it?

**Asst Commissioner Mott**—It would be my view that there should be some permanent officers, but there also should be seconded officers.

**CHAIR**—A mix. Just one point and we will go back to one of the other members. On the bombing of the Adelaide office, I should say publicly that the committee has been kept informed by your Police Commissioner of the progress of the investigation. I understand your reluctance, quite properly, to comment specifically. I should acknowledge the fact that the committee has corresponded with the Police Commissioner here on a number of occasions and I think it is fair to say that we are being kept informed. Mr Filing may well take the view that we are not happy with the progress of the investigation, but that is another issue. The fact is that we—

**Senator STOTT DESPOJA**—We can still ask questions at a public hearing.

**Mr FILING**—Do you want to press that? Do you want me to comment on how I feel about that?

**CHAIR**—Yes, you can do that. But the point I make, in fairness, is that we are being kept informed. I do not think there is any debate about that.

**Mr FILING**—Mr Mott, one of the criticisms from a long time ago with the treatment of officers who were seconded to the NCA was that in some instances you get men and women who become very well trained in very highly specialised investigative areas and on their return to their home forces, because of promotion requirements, would then find themselves perhaps going to a country police station where, obviously, those skills could not be used in the same way. How do you accommodate in the Western Australian context people who have been seconded to the NCA who return to their home force with all these skills and experience, obviously important experience that are in reasonably short supply around the country?

**Asst Commissioner Mott**—We are in a much better position to accommodate that now with our organised crime squad. In fact, that organised crime squad certainly has one ex-member from the NCA and that is proving very beneficial. In fact, we are continuing on with the matter that was previously being dealt with by the NCA. Had we not had the organised crime squad in place, that matter would have faltered. It is a very important one

from a Western Australian perspective, and can I say also from a national perspective.

We now have an avenue there when those people are returning to be able to utilise their skills in a much more productive way because of the fact of having that organised crime squad which, of course, is dealing with these sorts of issues. It is always a problem for policing, no matter where a person serves, that, through promotion, naturally they are going to move around within their career. But I would think that they would still be skills and knowledge that would be beneficial to them, albeit to a lesser extent perhaps, no matter where they went in their career.

**Mr FILING**—I remember from the previous evaluation inquiry in 1990-91 that one of the witnesses made the observation that in fact those sorts of skills are in such short supply that it was in fact a gross waste to allow highly trained investigators who had been with the NCA to basically return to standard police work.

**Asst Commissioner Mott**—It may have been the case in the past, but our focus there, particularly with our organised crime squad, is naturally to deal with organised crime but also a lot of the upper level drug trafficking which organised crime is very closely involved in, of course. Can I also say our drug squad now, through our Delta program, is much more focused on major drug issues, although we still look at street dealing and things of that nature. So, again, those skills can be utilised also within that field because, again, there are links. When you are dealing with drug issues, there are always links into organised crime.

**Mr FILING**—Can I ask, Superintendent Edmonds, in relation to the bombing, are you satisfied that sufficient resources have been made available to the South Australian Police Force to properly investigate the bombing?

**Det. Supt Edmonds**—Have been now or were in the past?

**Mr FILING**—Now and in the past.

**Det. Supt Edmonds**—I suppose in an investigation like that—and I speak in very general terms—it is difficult to know when you have got too many resources. It is a bit like how many detectives should you have in a drug squad. It is a question I cannot really give you a definitive answer on.

**Mr FILING**—Well, given that it is probably the most grievous attack on a law enforcement agency in recent memory, other than, say, the shootings in Victoria of police officers—and that it was in such a threatening way, with the delivery of a bomb to the NCA officers themselves—would you not agree that under normal circumstances it would be treated as probably one of the most important, if not the most important, investigation mounted by the South Australian police in recent history.

**Det. Supt Edmonds**—I believe it has been treated as a very important investigation, and I would make the comment that whatever resources we have deemed necessary to put into it have been put into it.

**Mr FILING**—And is the file, in fact, active?

**Det. Supt Edmonds**—Once again, I really do not want to start making comment on the status of investigations.

**Mr FILING**—I am asking the question because it has been put to me personally that have there been periods where nothing has been done in recent times on the inquiry?

**Det. Supt Edmonds**—To my knowledge, no.

**Mr FILING**—So, if somebody was to allege that, that would be false?

**Det. Supt Edmonds**—Yes.

**Senator FERRIS**—Could I ask a question of either of you? We have had some witnesses suggest that organised crime and money laundering were involved in the theft of motor vehicles and, in particular, the use of a process known as rebirthing of motor vehicles. Are you familiar with the process of rebirthing?

**Det. Supt Edmonds**—Yes.

**Senator FERRIS**—Could you comment on whether you have evidence that might suggest that money laundering and organised crime are involved in that issue, and whether you have ever put up a proposal to the NCA that there should be a national reference?

**Asst Commissioner Mott**—Yes, I am not aware of that occurring in Western Australia, but one of the advantages, I guess, of living in the west and having such a long distance to the border is that it is pretty difficult to ferry vehicles across the border. I am not saying that that does not occur, but certainly I know for a fact that it occurs far less than it does on the eastern seaboard. So I am not aware from a Western Australian perspective of any link between organised crime and motor vehicle theft in Western Australia, and I am not in a position to comment in respect of the eastern seaboard.

**Det. Supt Edmonds**—From our perspective, there is a lot of traffic in stolen cars between the eastern states and South Australia. Cars are stolen from the eastern states, even up through to Queensland, and find their way into this state, and cars stolen from here find their way to the eastern seaboard. The practice of rebirthing is not new and it does occur across the eastern states and in South Australia, and I suspect it would occur in Western Australia at a localised level.

Several investigations that we have run here have shown that there are links between stolen car rings in this state and in other states. As far as a reference to the NCA about it goes, I am not sure if a recommendation has been made. I know that there are state and national committees looking at vehicle theft, and some of the results of those committees have been the notification of wrecks to the motor registrar, the proposed establishment of a national wrecks register and the proposed establishment of national registration and licensing systems. Those initiatives will help to curb the trade of stolen cars.

**Senator FERRIS**—I asked the question because evidence from a representative of the motor vehicle industry in Sydney indicated to us that they did believe that the issue of money laundering and organised crime had become entrenched in the theft of cars, and a suggestion had been made by the industry group to the NCA that they should take it up as a reference. They were told that it was not on their menu of work. It occurred to me that if such a link could be established, then it surely should be treated as a national issue.

**Det. Supt Edmonds**—There is no doubt that the theft and either re-identification or wrecking of cars is very much an organised crime activity. It is not necessarily linked to other types of organised crime and the money laundering would come as a result of successfully running one of these stolen car rings. It is certainly a national problem given that it costs the Australian community significant amounts of money every year in a number of ways.

**Senator FERRIS**—Yes, and it is also quite surprising that if a decision were to be made on a policy basis nationally that wrecked cars could not be re-registered, the process would be significantly inhibited.

**Det. Supt Edmonds**—There are probably some reasonably simple things that could be undertaken, but to be successful they have got to be done nationally and there has got to be agreement between jurisdictions as to what will or will not be done and how it will be done.

**Senator FERRIS**—Would it be possible for you to check with your force to see whether there had ever been a recommendation made that that should be taken up as a national reference?

**Det. Supt Edmonds**—Yes.

**Senator FERRIS**—Thank you.

**Asst Commissioner Mott**—Mr Chairman, I wonder if I could just add to what Superintendent Edmonds has said in respect of that. There is a national motor vehicle theft task force in place at the moment and I am the Western Australian representative on that—

one of my other hats that I wear. That task force has come up with some very, very good recommendations in respect of dealing with the issue of rebirthing of vehicles.

I would suggest that if you see that as a big issue for this committee that you might get hold of a copy of that report because the suggestions Superintendent Edmonds has made in respect of how this can be countered, are very much contained within that report. It is about things like wreck registers, about the labelling of vehicle component parts, about the identification markings on vehicles—all of these issues that make it very easy now to rebirth vehicles within Australia.

It is the view of that committee or task force—which is chaired by Mr Leon Daphne, the managing director of the Nissan company and which, can I say, had representatives of the motor vehicle industry and all of the interested stakeholders in this issue from an Australian perspective—that if those recommendations are adopted by the leaders' forum that this task force reports to, it is my belief and the belief of the representatives on that task force that it will have a dramatic impact on reducing motor vehicle theft in Australia.

**Senator FERRIS**—Yes, I asked the question from that area of interest but also from the point of view of trying to better understand the way in which the process of references evolves. So, thank you for the information.

**CHAIR**—Just on the section 22 powers that the South Australian commissioner has referred to in his submission: are you arguing there for an extension of the search warrant powers in section 22? Perhaps in your answer you could just describe the situation that exists within section 67 of the summary offences act here in South Australia.

**Det. Supt Edmonds**—South Australia is a little unique in that a document known as a general search warrant can be issued to police under that particular section of the summary offences act. Now, it is because of the very wide powers it contains that we jealously guard it and there is a policy within the South Australia police that that particular warrant will only be issued to people who are designated as detectives and to some other people who may be officers in charge of remote police stations.

**CHAIR**—What you are saying is that it is an extraordinary situation or power and I imagine that civil libertarian groups would have concerns about it.

**Det. Supt Edmonds**—I think they would have concerns about it if we used it incorrectly.

**CHAIR**—What does it actually give you power to do?

**Det. Supt Edmonds**—It empowers us, at any time of the day or night, to enter any premises and search, find evidence and take possession of property.



**CHAIR**—But the warrant has to be issued by a judge or magistrate?

**Det. Supt Edmonds**—No. The warrant is actually issued by the Commissioner of Police.

**CHAIR**—You have said that those sorts of powers should be given to a national crime fighting body if it is to be completely effective. What do you envisage would happen then, as far as the NCA is concerned?

**Det. Supt Edmonds**—It is our submission that NCA investigators attached to the NCA, if there is some confusion as to the authorities and powers under the section 22 warrants—it may well be a simple solution, but perhaps unpalatable to some people—be issued with a search warrant that is in existence at all times of the day or night.

**CHAIR**—So they would not be required to apply to a judge, as is required under the present section 22?

**Det. Supt Edmonds**—At some time I can give you a copy of such a warrant.

**CHAIR**—That would be useful.

**Senator STOTT DESPOJA**—You mentioned—I presume I am quoting you correctly—that significant organised crime activity was generated in South Australia.

**Det. Supt Edmonds**—Yes. It is not necessarily perpetrated in this state, but masterminded here.

**Senator STOTT DESPOJA**—Do you think that the federal government is conscious of that and recognises the fact that organised crime activity is in South Australia?

**Det. Supt Edmonds**—I suppose it would depend on which part of the federal government we are talking about. In general terms, it is probably something that even the wider public do not appreciate. They isolate crime to the area where it happened. Obviously the crime has occurred there, but those people who put the plan together or who masterminded it or who financed it or who laundered the money as a result of it may be well and truly remote from the crime site.

Once again, that is one of the benefits of having the NCA, where you can then go across jurisdictions and follow these crimes to the nth degree. We are all capable of solving our own local crimes but, if we are going to get the higher levels of organised crime people, then we must be able to go across jurisdictions.

**Senator STOTT DESPOJA**—Presumably your interstate colleagues are aware of

the nature of criminal activity that is generated here. Have they expressed to you their concern specifically about the downsizing or the severe budget cuts to the South Australian office of the NCA?

**Det. Supt Edmonds**—I have had conversations with some of my counterparts interstate and they have expressed concerns about the NCA downsizing here but they neglected to tell me that they had actually given me some of their people.

**Senator FERRIS**—I have a question which I would like each of you to respond to. In your contact with the NCA over a period of years and with different references, have you ever seen any examples of the NCA officers pursuing with unreasonable zealotry any individuals or particular entities within a reference?

**Asst Commissioner Mott**—No, not personally.

**Det. Supt Edmonds**—No, I do not think so. In my association with the NCA here, I do not think you could say that anybody was singled out for harassment.

**Senator FERRIS**—You would be aware that those comments have been made, particularly in relation to Operation Albert?

**Det. Supt Edmonds**—Those sorts of comments are directed at law enforcement in general. It is an occupational hazard.

**Senator FERRIS**—Thank you.

**Mr FILING**—Mr Mott might answer the question: do you believe that in a major effort against organised drug trafficking there ought to be more substantial powers to seize the assets of drug traffickers, illicit assets, and to re-employ those directly back into the campaign against drugs rather than have them directed off to the consolidated revenue fund where they are used for other things?

**Asst Commissioner Mott**—Yes. That is one of the difficulties we face certainly in Western Australia, and that to some extent has been corrected in the last 12 months by the allocation by our state government of half a million dollars to be utilised on drug task forces. We found that to be very beneficial this year and it has resulted in some very significant breakthroughs in terms of dealing with illicit drug trafficking and also seizure of assets.

I have advocated now for some time that one of the difficulties we face as law enforcement agencies is that we do not have a crystal ball that we can look into to foresee the sort of intelligence we are going to be provided with over the course of a year that will lead us into major operations. It would be very beneficial—and we have proved that already this year—if law enforcement agencies had access to a pool of funds so that they

could go to some management group and indicate that they required X amount of dollars for a major operation based on intelligence received that would enable them to then progress and work through that operation.

I think there are also benefits in that many of these operations result in further seizure of assets and it would, from my experience, invariably return more money than is invested. Can I also say that there is, in my view, a good political message in that for governments in that they are saying that they are using the funds seized from criminals to lock up more criminals. I think that is a healthy perspective to put to the community rather than using taxpayers' dollars to do it. We are in fact then using the funds that have been taken from people who choose to go down this path previously, to follow along to lock up their mates, so to speak.

**Mr FILING**—Would you agree with that, Superintendent?

**Det. Supt Edmonds**—I support that, yes.

**Mr FILING**—If you seized, let us say, light aircraft or vehicles, they could be used directly as part of surveillance and other types of activities that would go to fighting drug trafficking?

**Det. Supt Edmonds**—If there was a need for it. I do not know that we need to go down the track that some United States of America States have, where they all drive around in flash cars and own their own aeroplane. But, in general terms, there is a need to reinvest, if that is the word, proceeds of crime in the investigation of other crimes. At the moment the taxpayer is funding the investigations and it seems to me to be a little unbalanced.

**Mr FILING**—If I can just summarise with both of you: it comes down basically to resources? Resources means greater inroads into drug trafficking?

**Asst Commissioner Mott**—With the best of planning, it is very difficult to determine, as I said earlier, what intelligence you are going to receive over the course of the year. Each agency receives a budget amount and they then plan what they are going to do in terms of dealing with organised crime or drug trafficking. But, as has occurred in the west, you may then receive some intelligence which indicates that, if you had the capacity, you could fund a further operation which would have a significant inroad, but because your resources are already committed and your funds are already committed, you do not have that flexibility. As I say, this half a million dollars we have been given this year has given us that capacity. We have found it to be very, very beneficial and it has certainly helped us to make some significant inroads into some organised crime groups within Western Australia.

**Mr FILING**—Would you both agree that drug trafficking or, let us say, the

associated activities to do with drug trafficking or drug taking is probably the underlying cause of most of our criminal problems?

**Det. Supt Edmonds**—Yes, there is evidence to support that. Much of the crime in the community can be related back to illicit drugs.

**Asst Commissioner Mott**—From my perspective also, much of organised crime, of course, is also directly linked to drug trafficking.

**CHAIR**—Finally, Mr Mott, earlier you had agreed, I think with Senator Ferris, that the so-called effort or war against organised crime and particularly, I suppose, against drug traffickers was one we could not win. Essentially you thought from a law enforcement perspective the emphasis was to keep the lid on it. I must say I do not entirely agree with that, but you might like to clarify that. There is a big push at the moment to say, ‘We can’t win it from a law enforcement point of view, let’s decriminalise or legalise and get on with other things.’

**Asst Commissioner Mott**—Mr Chairman, if I might clarify that. What I mean by that is I do not mean that we cannot do something about it. What I mean is, we will never eradicate it. We will never eradicate all crime from the community. There is no country in the world that does not have some level of crime. What I am saying is that we will never eradicate organised crime completely from the community, as we will never eradicate drug use from the community. What we must best achieve and aim towards is reducing that as much as we possibly can and absolutely minimising the effects of it.

That is the point I am making. I think we are kidding ourselves if we think we can remove drug trafficking and drug use from the community. That will not occur. I think it would be unrealistic of us as a community to have that expectation. What we have to expect is that we are able to achieve an acceptable reduction, both in terms of the availability of drugs and in terms of the impact of drugs.

**CHAIR**—Thank you, Mr Mott and Superintendent Edmonds, for your time this morning. The committee has received from Superintendent Edmonds a copy of a General Search Warrant. Is it the wish of the committee that it be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The document read as follows—*

[12.02 p.m.]

**RANN, Hon. Michael David, Leader of the Opposition, Parliament House, Adelaide, South Australia**

**CHAIR**—We do not have a submission as such but we do welcome an opening statement from you, Mr Rann. Just before you do that, I am required to state that, if during the hearing, you consider that information you might wish to give or a comment raised by a committee member is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in a material particular.

The other matter I will just raise with you before you proceed with your opening statement is that you did write to me, as chairman of the committee, back in July of last year. Would you have any objection to that letter being included in the transcript of your evidence?

**Mr Rann**—No problems at all.

**CHAIR**—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—*

**Mr Rann**—I would like to thank the committee and you, Chairman, for this opportunity to bring evidence in relation to your evaluation of the future of the National Crime Authority. There are a number of issues that I want to address this morning, including my visit to the FBI in Washington DC last September, which I believe could have relevance to the committee's inquiries; and I certainly apologise if my opening statement is somewhat longer than usual.

As a former minister, as Leader of the Opposition and as a shadow minister for crime prevention, I have been a strong supporter over the years of the South Australian Police and, indeed, in recent years of the NCA and the need for a National Crime Authority. I know members of the committee are aware of the extraordinary events in 1994 which saw the bombing of the NCA headquarters in Adelaide and the tragic killing of one detective and the wounding of others. I was therefore most concerned when cuts to the NCA were announced.

Last July I met personally with the Prime Minister, Mr John Howard, to discuss the NCA and to brief him on information supplied to me by the Right Honourable Mike Moore, the former New Zealand Prime Minister, in relation to the activities of outlaw motor cycle gangs in both our countries. I want to say on the record that I was given a very fair and courteous hearing by Mr Howard.

Both verbally and in writing I expressed my concern to the Prime Minister that at a time when major NCA investigations were under way into both organised crime and into outlaw motor cycle gangs, we had heard through press reports that in South Australia, the NCA office staff would be cut from 33 down to 10, with jobs being lost including investigative accountants, lawyers and police, as well as administrative staff. I expressed concern that the Adelaide office appeared to be suffering the greatest cuts of any NCA office in the nation and that this had occurred following the fatal bombing of the NCA in the state during an inquiry into organised drug trafficking.

I told the Prime Minister that such cuts were unwarranted and not in the best interest of law enforcement and that apart, from the effect on ongoing investigations, I was concerned that these cuts, particularly here in South Australia, sent the wrong message to both the community and to organised crime. I also raised my concerns with Mr Howard at the Federal Court's decision that determined that some of the NCA's powers were excessive and that the Authority's investigations might in future be restricted to general police powers. I expressed the hope that the government would appeal against that decision or perhaps legislate if that appeal were unsuccessful.

I gave the Prime Minister a copy of a most disturbing report presented to a New Zealand parliamentary inquiry into organised crime. That report outlines ties between New Zealand, Australian and United States crime gangs and their efforts to maximise the profits from criminal activity, including the manufacture and distribution of drugs. It was clear

from the New Zealand information that organised crime being run through outlaw motor cycle gangs was of an increasingly sophisticated and ruthless nature which crossed state and national boundaries. I believe that these gangs must be a priority for investigation by the NCA and evidence in New Zealand revealed that gangs with Australian links were trading in illegal weapons, as well as the production and sale of illegal drugs, extortion and protection rackets.

The clear message of the former New Zealand Prime Minister and the parliamentary inquiry in New Zealand was that, in order to isolate, dismantle and destroy these criminal gangs, Australia cannot just rely on normal policing methods. Normal policing methods of containment were found in New Zealand to be no longer effective where crime had become organised and globalised and where gangs had become the foot soldiers for crime bosses who managed the illegal drug trade. So I told Mr Howard that the NCA must, in my view, be given the extra powers it needed to deal effectively with these gangs. Following the meeting and correspondence with Mr Howard, I arranged for the Right Honourable Mike Moore and another New Zealand member of parliament, former minister the Honourable Phil Goff, to join me in a meeting with the Chairman of the NCA in Sydney, John Broome, to detail information coming to light in New Zealand, that there had been an agreement to carve up territory between gangs in Australia and New Zealand and to reduce the number of gangs which has led to territorial wars between gangs in Australia, including in South Australia.

In August 1996, I again wrote to the Prime Minister expressing my concern at media reports that two major NCA operations, Operation Cerberus and Operation Panzer, had been either abandoned or significantly reduced. I expressed my concern because I understand that Operation Cerberus was investigating drug offences and it had been claimed that the bombing attack on the NCA's Adelaide headquarters in 1994 was directly related to the NCA's inquiries in this area. I also expressed a special concern about Operation Panzer, which was the NCA's specific inquiry into criminal activities, including outlaw motorcycle gangs, drug dealing, prostitution and murder.

In September 1994, I visited the FBI in Washington and met with senior agents and intelligence personnel of the FBI who are responsible for tracking the national and international activities of outlaw motorcycle gangs. These senior agents of the FBI in Washington told me that they believed it was critically important to better coordinate the law enforcement response to this growing international gang crime problem. They appealed for more information from Australia and New Zealand about the activities of criminal motorcycle gangs, which had clear links to gangs in the United States.

The senior agents told me that criminal motorcycle gangs in the United States were highly organised big business that franchised—and they used the word franchise repeatedly—crime operations to other countries, including Australia. These gangs were said to be heavily involved in the manufacture and illegal sale of amphetamines, including drugs such as ecstasy, meth and the highly addictive ICE, which is being targeted at

United States teenagers. I was told that United States gangs with affiliates here in Australia were involved in violent crimes such as murder, assault, theft, kidnap, rape, sexual offences, weapons and explosive offences, extortion, prostitution and the intimidation of witnesses.

I was told that gang leaders in other countries, including Australia, are required to report back to United States motorcycle gang chiefs on a regular basis, and if they do not report back in person they can lose their franchise. Adelaide was listed on two FBI gang surveys I was shown. The FBI appealed for much closer cooperation and coordination with Australia and New Zealand and the agents told me it was important for immigration and law enforcement authorities in our respective countries to more closely monitor the movements of gang leaders and members of gangs, most of whom had extensive criminal records.

The FBI gave me at that stage an unpublished report on the activities of the Hell's Angels, which were described by the FBI as the largest, richest, most sophisticated and best organised outlaw motorcycle gang in the world, and I was given details on the international affiliates of major United States bikie gangs, including the Hell's Angels and the Bandidos, both of whom were listed as having chapters in Adelaide and in many other Australian centres. In fact, most states I believe were mentioned.

The clear message that I received from the FBI was that normal policing powers were not sufficient to tackle these crime gangs, and I was told that you cannot deal with sophisticated international crime operations by using normal policing methods, because the key was to follow 'the money tree'. I understand that non-association laws aimed at dismantling crime gangs have been introduced into the New Zealand parliament and under these laws, if they are passed, a member of an organised crime gang who has committed a serious crime such as rape would not only receive a heavy sentence, but can then be prohibited by the courts from having contact with the gang or even with individual gang members after he or she leaves gaol. That is because to get promotion up the ranks in groups like the Hell's Angels, you have to have recorded convictions. So it is again aimed at dismantling their operations and way of doing things.

So, Chairman, with your permission, I will table the report from the FBI on the Hell's Angels. It is from their organisational intelligence unit and it is less than a year old. I can also present a report from my visit to and discussions with the FBI agents, including some material about Australian links.

**CHAIR**—Thank you. We are happy for you to table those, and we will collect them at the conclusion of the hearing.

**Mr Rann**—That is one of the reasons why I believe we need an NCA—because of the international as well as interstate arrangements involving these outlaw crime gangs. I



think the message is that we would be very foolish if we regarded these people as meatheads on motorbikes, because they are a very sophisticated operation.

The second example I wanted to discuss this morning relates directly to my view that the National Crime Authority with special powers should be responsible for examining corruption at governmental and corporate level across Australia. Last year I had reason to contact the state director of the NCA in Adelaide with information that I believed warranted an NCA inquiry.

Just to put this into context, during the past couple of years I have received a series of leaked, confidential documents about two multi-million dollar outsourcing contracts here in South Australia. The leaked information has included cabinet submissions, documents from cabinet subcommittees, Crown Law documents all about the \$1.5 billion water and sewerage outsourcing contract, and later we received the entire contract itself.

We have also received confidential cabinet information about South Australia's other outsourcing contract with the US computer firm EDS. The EDS leaks, including, again, confidential cabinet information, were given to us by a senior cabinet minister intent on damaging the credibility and bringing down the former Premier Dean Brown, and successfully did so. These are matters of a political nature which I believe should be dealt with politically and, except for the breach of a cabinet minister's legal oath of confidentiality, these are not matters that, in my view, would normally be the subject of inquiries by law enforcement officers.

However, in July 1996 I was approached by a South Australian citizen I knew who was not acting politically but in good faith because she believed a major crime had been committed. She was not making any allegations against politicians but this citizen wanted advice on her legal responsibilities, her rights and her duties about information she had been given by a senior South Australian public servant which, if accurate, detailed a series of criminal and ethical offences involving the tendering process for a \$1.5 billion water contract which was eventually awarded to a French-British consortium.

The citizen who phoned me had been approached by the senior public servant who was directly involved in the tender and negotiating process. Now, according to my informant, the public servant was worried about their liability, having witnessed and been given knowledge of irregularities, including collusion, conflict of interest and improper fraternisation during and after the tender process.

Much of the allegations concerned the conduct of Mr Terry Bourke, a Sydney consultant paid half a million dollars for his central role in the water negotiations, and there were claims of gross unethical and improper conduct involving Mr Bourke during that process. The opposition and several Adelaide journalists, including a journalist from the *Business Review Weekly*, were given similar information by other sources at about the

same time. So, the information I got from the citizen basically backed up other information that we and Adelaide journalists were being given.

There were claims of bribery and claims that one negotiator improperly passed on information from one tenderer to another in order to influence the outcome of the process. Some of these matters have already been raised in the federal Senate late last year by the shadow Attorney-General, Nick Bolkus.

I could have raised these matters in parliament 11 months ago. Instead, I advised my informant to immediately take her information to the National Crime Authority and also to the South Australian Auditor-General, who had already been critical of the tender process and the fact that one tender—the successful bid—was received hours after the deadline and after other bids had been opened and distributed to unauthorised personnel.

My informant took legal advice but first, after talking to her solicitor, advised the primary source, which is the senior public servant, to give any direct evidence to law enforcement authorities. When the public servant declined to do so after some weeks, my informant agreed to give her information only to the National Crime Authority because it involved national and international issues and she wanted only to provide that information directly to law enforcement officers, where privilege applied. She was not actually the prime source. She had been passed this information by the direct witness, who was a senior public servant. She was most concerned about confidentiality, given the nature of the allegations and implications for her own security and safety.

The informant asked me to intervene on her behalf. I immediately phoned the National Crime Authority's South Australian director, John Ganley, who spoke personally to me, to the informant, and arranged for her to be interviewed by NCA officers.

During several conversations with Mr Ganley, I was told that any investigation should, more appropriately, be pursued by the anti-corruption branch of the South Australian Police, because there was no reference under which the NCA could pursue the inquiry. So on 7 August 1996, Mr Ganley asked me to prepare a letter giving him the authority to provide my confidential information to the South Australian Police—because there was other information we had been given which supported my informant's information.

I advised Mr Ganley that I was willing to do so. I signed the letter and I was willing to speak with officers of the SA anti-corruption branch in order to assist their inquiries. I was not contacted. I was never contacted by the anti-corruption branch. I have also been informed that a business leader, offering to speak to the National Crime Authority or to SA Police regarding his concerns about serious irregularities with the outsourcing water contract, was also never interviewed by the SA Police.

On the evening of Monday, 30 September 1996, just before parliament resumed, a

Labor parliamentary colleague was contacted late at night at home by the then Deputy Premier and former Minister for Police, Stephen Baker. He informed my colleague that the South Australian Police anti-corruption branch had completed its preliminary investigations and found no substance to the allegations. The Deputy Premier also revealed to my parliamentary colleague that I had been a source of information given to the National Crime Authority and to the SA Police.

I could not understand why I was not contacted by the police directly. I cannot understand why the then Deputy Premier, who was supposed to be at arms-length from police operations, should be given information about confidential sources of information and the names of those investigated and be passing that information to others, late at night, to pass on to me. I found that breach of security about my confidential information most disturbing.

After having received information about a potential crime, I adopted the proper course of any citizen, in my view, of informing what I believe to be the appropriate law enforcement authorities. I did so on a strictly confidential and privileged basis. Indeed, I was asked by the state director of the NCA to preserve this confidentiality and, in particular, not to raise the matter in state parliament as this might prejudice police inquiries. I took the advice of the National Crime Authority in the belief that this was the appropriate course of conduct by me in order to assist both the NCA and the police to complete their investigations unfettered by allegations made under parliamentary privilege.

I question greatly, with the benefit of hindsight, that when possible corruption may involve, directly or indirectly, such a tangled web of international companies and government employees, as may be the case with the problems with the water outsourcing contract, whether the NCA should hand over such matters to state based police agencies. I fear that it may be a lack of resources and inadequate powers or a problem with the reference system—about which I am not an expert in any way—which influences these decisions by the NCA.

In raising these concerns, I am in no way—I want to stress this—criticising the actions of Mr Ganley. At all times, Mr Ganley was both courteous and most professional.

I was most disappointed that the former Deputy Premier had been given privileged and confidential information about my quite proper involvement in informing the NCA about the information I was given. That is why I believe the NCA should be the vehicle nationally for similar corruption inquiries, particularly those where the allegations focus on interstate and overseas activities and where state government officers are directly involved in the allegations.

I was most disappointed that the former Deputy Premier had been given privileged and confidential information about my quite proper involvement in informing the NCA about the information I was given, and that is why I believe the NCA should be the

vehicle nationally for similar corruption inquiries, particularly those where the allegations focus on interstate and overseas activities and where state government officers are directly involved in the allegations.

I understand that the inquiry of the anti-corruption branch of the local police found nothing because the senior public servant refused to confirm the discussions with both my informant and others. However, the senior public servant has recently repeated these extraordinary claims and allegations to a South Australian journalist from the *Adelaide Review* during extensive off-the-record interviews, so it seems that the public servant seems prepared to brief journalists, other public servants and friends but not law enforcement agencies and that obviously concerns me.

I have recently been contacted by the New Zealand serious fraud squad, asking me for information about the tender process for the SA water deal, because they are investigating allegations about a tender process in New Zealand where the same company, United Water, was the successful bidder. The letter from the New Zealand serious fraud squad listed a series of allegations of bribery and corruption in the bidding processes by United Water's French parent company, CGE, in water and other contracts around the world.

In conclusion, the prevalence these days of outsourcing and privatisation contracts involving billions of dollars, state governments and multinational companies—some of which have an overseas track record of tender corruption and corruption which may be crossing national and international boundaries—underscores the need for an effective, properly resourced, national crime fighting organisation, an organisation which is at arm's length from state governments which could be politically embarrassed by the results of investigations. It is clear to me that there are times when state based police organisations cannot act, and it must then fall upon the NCA to investigate and prosecute to prevent the further penetration of institutional corporate corruptions. But to do so, the NCA must be fully resourced. I think it would be a sad day for Australian law enforcement if what we were left with was a toothless tiger in the NCA, incapable of undertaking investigations of a major scale because of cut-backs.

**CHAIR**—Thank you very much Mr Rann, I think that has raised a few interesting issues. A couple of housekeeping matters here—you mentioned one Terry Bourke: could you just run by us the context of your mentioning his name, so that I can be sure that he has not been adversely reflected on.

**Mr Rann**—Mr Terry Bourke has been questioned by select committees in South Australia and the matter raised, including Mr Bourke's involvement, has been the subject of discussion in the Australian Senate.

**CHAIR**—What is he alleged to have done?

**Mr Rann**—The allegation from the public servant who approached my informant, from other people who approached various Adelaide journalists and which was raised in the Australian Senate is that there was improper collusion in the tender process. This has been the subject of much political controversy here in South Australia for some time. So it is fairly much on the public record.

**CHAIR**—Okay, we will let it go.

**Mr FILING**—It is not THE Terry Bourke is it?

**Mr Rann**—It is not a Terry Bourke who does not live in Sydney.

**CHAIR**—My South Australian colleagues probably know a lot more about this water outsourcing matter than I do, I do not think I had heard of it before, but can I be sure about two aspects of what you have said. You made it clear you were not criticising Mr Ganley but were you alleging that there had been some sort of a breach of security in the NCA?

**Mr Rann**—My concern, as all members of parliament know here, was that we had been given—as had a number of journalists in this city—a considerable amount of information which we did not raise politically but, because of the nature of the information given to me by a citizen who did not want matters raised in parliament, but had spoken to a senior public servant who had gone to her for advice because they were friends, she felt that she had been compromised by being given this extraordinary information by a senior public servant involved in the bidding process.

I said, ‘Look, go and see the NCA,’ and I mentioned the NCA particularly because a number of the allegations, which I have not detailed, involved international movements of money and also involved national issues rather than just South Australian issues.

She went to her solicitor, on my advice, to see what legal privileges she was being given. This was someone who was not involved at all but had been given information that she felt what she should do as a citizen. Mr Ganley asked me not to raise the issues in parliament. He knew that I had a right to do so and recognised that right but suggested that it would help the inquiries if it was not fettered by allegations under parliamentary privilege.

Eventually when it was clear that the NCA could not pursue the inquiries directly because of a lack of a reference—and I do not understand how the system works—he said, ‘I think you are going to have to hand over your material and empower me because of our conversations’—and the material that I had sent—‘to hand it over to the anti-corruption branch.’ I did so in my belief that the same confidentiality would be awarded to the information I handed over to the ACB.

**CHAIR**—In that sense, your complaint is not against the NCA but against the SA anti-corruption branch?

**Mr Rann**—Yes, and I have raised those concerns with both the former police commissioner and the present police commission and had discussions with him just shortly after his appointment—very amicable discussions. I think the view was that there had been perhaps a breakdown in communications. I did find it extraordinary to have a political colleague ring me up late at night to say that the then Deputy Premier knew that I had given information to the NCA and the ACB and would they pass this on to me. It just seemed odd that the police commissioner himself wouldn't have rung me directly or spoken to me.

**CHAIR**—Out of that experience, you are suggesting that the NCA ought to be empowered to deal with those sorts of matters rather than a state based authority?

**Mr Rann**—I just think that when we are dealing with contracts involving billions of dollars—and this was the biggest contract at that time awarded in Australian history—and where the allegations, whether true or not, involved international organisations, international companies, and also involved international movements of money and so on, the NCA should be the body which the citizen that spoke to me should be able to go to and that they would follow through the inquiry from go to whoa.

**CHAIR**—It was never set up as a national corruption fighter as such. New South Wales has got ICAC and Queensland has got the CJC. You do not have an equivalent in—

**Mr Rann**—No, and therein lies the problem. There is no ICAC, no corruption inquiry mechanism, in this state, and so it is left to the state police if the NCA will not or cannot be directly involved.

**CHAIR**—Just a couple of other things, then I will move on to other questions. The outlaw motorcycle gangs is something you raised with the committee and you are concerned that the NCA's lack of resources might be inhibiting the effort against that. But that remains, of course, on the menu of work. You are aware that it remains on the menu of work for the NCA and that its interest in OMCGs is continuing.

**Mr Rann**—My concern was that the cuts in South Australia meant that the investigations here had been either abandoned, according to media reports, or substantially reduced, particularly when there have been territorial wars here in South Australia and when the head of the NCA in Sydney, the chairman and staff acknowledge that there had been problems here with outlaw motorcycle gangs. It just seemed to me that here is a place where there was a tragic bombing and territorial wars involving outlaw motorcycle gangs, but we have suffered the greatest cuts.

**CHAIR**—Two other quick things. You expressed concern in your correspondence with this committee about the impact of Mr Justice Vincent's findings or decisions. You are aware that the Commonwealth Attorney-General has conducted an internal review of Mr Justice Vincent's findings. This committee is not yet aware of the outcome of that but that may well lead, as you suggested, to some legislative response, although most of his findings are actually being appealed as well and, of course, we do not yet have the outcome of those appeals.

**Mr Rann**—Yes, after writing to the Prime Minister, I received correspondence from the Attorney-General, I think it was, as well as directly from the Prime Minister, along those lines that they were having a look at appeals or possibly legislation.

**Senator FERRIS**—Mr Rann, are you suggesting that the reason you did not get the call from the police or from the NCA yourself was because of some political interference?

**Mr Rann**—No, I am not suggesting that. What I am suggesting is that, as a member of parliament, making the decision basically to immediately inform the NCA because I thought it was the right thing to do and having discussions with the NCA in relation to, 'If you want it to be confidential, then this is going to be confidential,' then basically to have both the name of the person who was the subject of the inquiry being banded around to parliamentary colleagues and the breach of my own information—this has greatly concerned the citizen who came to see me, who wonders whether or not she did the right thing.

We presumably all want citizens to come forward with information really about major crimes. I was just concerned at what I thought was sloppy procedures—I am not making any suggestion of political interference—and that is why I believe that on something as big as this the NCA should be directly involved.

**Senator FERRIS**—Can you explain to the committee why it was that your political colleague got the phone call? Did that colleague have some involvement in this case? Why was that person selected, do you think?

**Mr Rann**—None at all.

**Senator FERRIS**—So the call was a surprise to him?

**Mr Rann**—The call was a surprise to him and the call was a surprise to me. I would have thought that under normal circumstances either the head of the ACB or the former police commissioner would have asked to see me or requested an interview to inform me of the progress of an investigation, particularly after I had been asked not to raise these matters in state parliament, which I did not.

**Senator FERRIS**—Was this the first time you had been involved in a process like this where these sorts of circumstances occurred? Have there been other times when you have gone to police on other matters where there has been a different process?

**Mr Rann**—Absolutely. On all other matters, I have had an extraordinarily satisfactory experience with the South Australian Police. Again, I am not criticising the South Australian Police at all, and I am delighted with the appointment of Mal Hyde as police commissioner in this state.

My point is that this is an area where I think the NCA should be the vehicle—national, international issues, corruption allegations, whether true or false, being made by a senior public servant through an intermediary involving state government officers as well as consultants. It seemed to me that you needed someone at arms-length from the local scene to actually look at the issues.

**Senator STOTT DESPOJA**—Mr Rann, who was the colleague that received the phone call?

**Mr Rann**—The colleague was Kevin Foley.

**Mr FILING**—Who was the cabinet minister who gave you the documents from cabinet?

**Mr Rann**—I think we should leave that to their own conscience.

**Mr FILING**—I am asking you.

**Mr Rann**—If you are asking me, the cabinet minister involved was John Wayne Olsen.

**Mr FILING**—When you asked the informant to take the matter to the—I beg your pardon. In fact, it was not you who asked the informant to take the matter to the NCA and the Auditor-General, was it?

**Mr Rann**—Yes.

**Mr FILING**—I'm sorry, I was just referring to my notes.

**Mr Rann**—What happened was that she phoned me—it was an extraordinary story—and told me the story, and she said, 'What do I do, who do I go to see?' I just said, 'Look, my gut feeling as a non-lawyer is to go and see the NCA, and also go to see the South Australian Auditor-General.' I think the advice from her solicitor was that she should not see the Auditor-General because they were not sworn police officers, but should go to see an agency like the NCA where there were sworn police officers.



**Mr FILING**—You mentioned also in your information that some business leader was concerned about the outsourcing contract and he was never interviewed by the South Australian Police. Who was that person?

**Mr Rann**—The person was Pierre Alla, who was the head of an organisation which was one of the unsuccessful bidders.

**Mr FILING**—When your colleague Mr Foley was allegedly contacted—when he says he was contacted by Mr Baker—under what circumstances did Mr Baker initiate that contact?

**Mr Rann**—He was acting Minister of Infrastructure at the time and it was immediately before parliament was to resume. But he was also, of course, Deputy Premier and Minister for Police.

**Mr FILING**—Just so I can be clear on this, what prompted—I suppose that was the question that has already been asked—what did Mr Foley believe prompted Mr Baker to contact him?

**Mr Rann**—None of us is sure. I wrote to the former Police Commissioner, David Hunt, asking him why my confidentiality had been breached. His response, from memory, was, ‘I think you were perceived not as a direct witness or a source but, basically, as a conduit for information.’ I was still asked to be a conduit on a confidential basis. The situation—why I would not have been contacted by the police commissioner—was, to me, extraordinary.

**Mr FILING**—Just on the subject of your concern about the fact that Mr Baker appeared to have known that you were an informant to the NCA: to your knowledge, was there any correspondence or any other commentary to the effect that you had informed the NCA? Had this matter been a subject of public note?

**Mr Rann**—No, not at all. The only thing I did was, following a request by the NCA for me to hand over information to the anti-corruption branch because they did not have the reference powers, I had to write a very short letter saying to John Ganley, ‘Following our discussions, please feel free to hand over relevant information, et cetera, to the anti-corruption branch.’ That was the only correspondence.

**Mr FILING**—Has Mr Ganley had any involvement with you consequent to this?

**Mr Rann**—No.

**Mr FILING**—So what the last you had from Mr Ganley?

**Mr Rann**—The last I had from Mr Ganley was a thing about the process, ‘It is

now over with the ACB'—along those lines. I was told that they would be contacting me. They did not.

**Mr FILING**—Have you got any written record from Mr Ganley as to the conclusion of your involvement with him?

**Mr Rann**—No. It is really my letter, following his conversation, which I am happy to supply to the committee. I have not got it here, but I am happy to do that.

**Mr FILING**—Thank you.

**Mr Rann**—I am also happy to send the committee copies of my correspondence, both to the Police Commissioner and the response from the Police Commissioner.

**Mr FILING**—When you were contacted by the New Zealand serious fraud squad, how did they initiate this? How did they know that you had any involvement in relation to the tender process?

**Mr Rann**—This, to me, was somewhat curious. The letter from the New Zealand fraud squad, was, I think, because there had been publicity in New Zealand about the water deal and because of my involvement in opposing the water deal, which is quite different from corruption allegations. I think that perhaps they decided that this company was based in South Australia, even though it was French-British owned, and therefore perhaps I might be able to help them with their inquiries. They mentioned a series of allegations about CGE operations overseas. They said that it was a Papakura water contract. They said they had found no problems or no crimes at that stage but wanted information about whether I knew about problems with the tendering process here or internationally. So we sent them copies of the Auditor-General's inquiries and parliamentary material.

**Mr FILING**—One of the criticisms of the NCA in the 1980s, particularly from Mr Costigan QC, who gave an address to Labor lawyers in Brisbane in 1987, was that corrupt activity in government went on in a number of states, New South Wales, Queensland, Western Australia and, I suppose, to an extent, South Australia in relation to State Bank, but nothing seemed to have been investigated by the NCA to say the safe had been dragged past the window of the NCA.

When we spoke to Mr Costigan the other day in Canberra and listened to his submission, he agreed, I suppose, with the proposition that it would be highly unlikely that the IGC, the intergovernmental committee, given that back then there were obviously representatives from each of those state governments on the intergovernmental committee, would be initiating or discussing initiating inquiries into themselves. Is that a fair comment?

**Mr Rann**—Could you just elaborate on that?

**Mr FILING**—The intergovernmental committee is the body that is responsible for formulating references and—

**Mr Rann**—Yes. That is with the ministers from the states and territories?

**Mr FILING**—Yes, the Commonwealth Attorney-General.

**Mr Rann**—And ministers for police?

**Mr FILING**—Ministers for police or ministers for justice, or Attorneys-General—

**Mr Rann**—So it can be either?

**Mr FILING**—Whomsoever the state decides to send. And the criticism was that in each of those cases, Queensland, Western Australia, South Australia and New South Wales, the NCA was not looking into any of them and that that may have been because the people who were likely to be looked at had representatives on the intergovernmental committee which actually formulates the references.

**Mr Rann**—That would be a major concern, I guess, because we do not have an ICAC. That is why I strongly believe in an NCA, a well-resourced NCA.

**Mr FILING**—Do you think the NCA should have investigated the SA State Bank?

**Mr Rann**—I think that they should investigate claims of major corruption across Australia—absolutely.

**Mr FILING**—The other thing is that the motorcycle gangs—if we can just turn to that briefly—allegations and the information and the issues arising from it have been a matter of some concern for some time. Certainly I am aware that there was concern when Mr Bannon was Premier of South Australia. Are you aware of any interest at the time in beefing up investigations into motorcycle gangs?

**Mr Rann**—Yes. You would be aware obviously of the major inquiry into motorcycle gangs initiated by the South Australian Police. My point is that the information that I went to your Chairman, John Bradford, with, to the Prime Minister with, to the Chairman of the National Crime Authority nationally with, came from a New Zealand inquiry last year. It is not a political matter; it is not party political. It is about crime, and I think all of us, whether we are Labor, Liberal, Democrat or even Independent, would be concerned about that.

**Mr FILING**—I commend you for your interest in it, but we have heard evidence

from the Australian Bureau of Criminal Intelligence, from representatives from the Western Australian and South Australian police forces, about their concerns about motorcycle gangs, more recent concerns about their activities and the fact that they have been underresourced in trying to come to grips with what is seen to be a very serious problem. To what extent do you believe there should be NCA involvement in relation to the specific South Australian problem? Perhaps you could answer that one first and then I will come to the second part.

**Mr Rann**—The FBI and the New Zealand parliamentary inquiry, and particularly Mike Moore, are basically saying that this is a sophisticated international organisation. Hell's Angels, I was told by the FBI, have their own corporate law firm and will sue if their name or colours and copyrighted trade marks are used without their authorisation internationally. We are not just dealing with thugs on motor bikes. The message I got was that there needed to be much greater national and international cooperation, not just in South Australia but across the country.

**Mr FILING**—Are you aware that, under the previous Labor administrations and under the current Liberal coalition government, there is in fact legislation or an arrangement whereby, in the case of the United States, where most of this information would probably be sourced, where someone has been arrested and charged with an offence that involves a capital penalty Australia would be restricted from providing information that may assist in the investigation or the conviction of that person unless the United States gave an undertaking that they would not carry out the penalty in relation to the offence?

**Mr Rann**—I just think that is crazy. What they said to me at the FBI is that we should be looking to closely monitor the movements of gang leaders and members. We had discussions that authorities in the US, Australia and New Zealand should cooperate in banning the international movements of known outlaw gang leaders with criminal records and should even seriously look at their passports because we need to track them much more closely, particularly when they say—I am not an expert on it; I can only go on what these FBI people told me—that they are required to report back to the United States in person; otherwise they lose their Australian franchise.

**Mr FILING**—And you are obviously presumably conscious of the fact that over a period of time, since probably the early 1980s, there have been a number of internecine wars between various bikie gangs—

**Mr Rann**—Yes.

**Mr FILING**—to achieve either supremacy or to, I suppose, prove themselves to their franchisors.

**Mr Rann**—The New Zealand police report which I sent to the chairman, and I

know there has been some controversy about that report in New Zealand, essentially said that there was a meeting—I think in 1994, but I would have to check from the report—in Sydney of Australian and New Zealand gang leaders, in which there was essentially an agreement that there were too many gangs operating and that they had to basically reduce the numbers in order to maximise their profitability. So, essentially, that led to a series of territorial wars, including in places like Adelaide.

**Senator STOTT DESPOJA**—Mr Rann, in relation to the phone call to your colleague Mr Foley, you mentioned sloppiness. Is that what you really attribute this breach of confidentiality to, or could you actually specifically state who you think is responsible for, or what organisation is responsible for the breach?

**Mr Rann**—I do not know. I do not know, and whether there is a misunderstanding about the confidential nature of the information—I was asked not to raise the matter in parliament, even though there was a recognition that I had a right to do so. Therefore I believe that, because I was acting for someone who was very frightened about the information they had been given, we were all acting in good faith and in a confidential way. Therefore, I was surprised that it had got into the political realms.

**Senator STOTT DESPOJA**—I am just seeking clarification on what you envisage the role or the powers of the NCA should be. You have mentioned the fact that we do not have an equivalent body to something like ICAC, but would you really envisage the NCA fulfilling that role or responsibility in this state, or indeed at any national level? Where do we draw the line? Is the responsibility of the NCA white collar crime, is it drugs, or is it this kind of corruption investigation? Is it possible to say?

**Mr Rann**—Well, I think obviously drugs. I guess what I am trying to say today is that, where you have got an issue which clearly involves massive multinational organisations and involves billions of dollars, involves not just things that occur at street level in South Australia or business level in South Australia, that is where you need an NCA.

**Senator STOTT DESPOJA**—You have said both in your letter to the chair and also today that there is a need for a body like the NCA to be adequately resourced. Are you prepared to outline or specifically state what adequate resourcing is? For example, in relation to staffing, do you believe that it should revert to the 33 staff people that it had before the recent quite drastic cuts? Is that adequate, or is there a funding figure you would like to nominate?

**Mr Rann**—I am not qualified to pluck a figure out of the air and say that is what is needed, because I do not know; I am not operationally involved and nor should I be. My only point is that it seemed to me that when we had a detective killed through a bombing, and that bombing occurred during a major drug inquiry into organised crime, it seemed to me to be an extraordinary insult to the memory of that detective to actually

single this office out for the toughest cuts in the country.

**Senator STOTT DESPOJA**—Judging from your letter that we have yet to see a conviction in relation to that bombing, I presume you are very concerned. Do you have any theories or any knowledge as to why there has been a three-year delay?

**Mr Rann**—No, not at all, but it obviously concerns me that the cutback in resources occurred at a time when there had been no, and still there has been no conviction.

**Senator STOTT DESPOJA**—So you would have no qualms about stating that perhaps the investigation into or a conviction in that bombing is hampered by the recent cuts in federal funding cuts to the NCA?

**Mr Rann**—If the media reports that the cuts included cuts to Operation Cerberus, which apparently was the inquiry involved, then that would concern me enormously. What sort of message does that send to the community, to our kids, to organised crime in South Australia, when they are cutting the inquiry which was linked directly with the bombing and we still do not have someone behind bars?

**Senator STOTT DESPOJA**—You have mentioned Cerberus and also Panzer as two investigations that could be or are being hampered by changes or cutbacks in resources. Are you aware of any other areas that have been affected?

**Mr Rann**—No. These are two issues that I have had personal involvement in, mainly because of my friendship with Mike Moore, who just contacted me from New Zealand and said, ‘You should have a look at this information because it is mentioning Australia all the time.’ When I got that information, I sent a copy to the police commissioner and a copy to the NCA.

**Senator STOTT DESPOJA**—Do you have any comment to make on the recent budget allocation of \$20 million to the NCA for investigation of fraud activities?

**Mr Rann**—That is \$20 million extra on last year’s budget, is it?

**Senator STOTT DESPOJA**—It is \$20 million extra on last year’s budget, yes.

**Mr Rann**—I think any additional resources are most welcome.

**Senator STOTT DESPOJA**—That is over a three-year period, too.

**CHAIR**—Just to clarify one aspect of the evidence you have in respect to Mr Olsen: is that an accusation that you have made anywhere else before?

**Mr Rann**—It has been made again in the federal parliament but I have always said that I would only confirm that if I was asked directly by a parliamentary committee, and that is what happened today from Mr Filing. Put it this way: Mr Olsen, before he became Premier, was particularly helpful to the opposition.

**CHAIR**—I think we should provide the opportunity for Mr Olsen to respond to that accusation to the committee.

**Mr Rann**—Fine.

**CHAIR**—Either in writing or, if he chooses to do so, to appear before the committee.

**Mr Rann**—I hope he does.

**CHAIR**—And to place that on the record.

**Mr FILING**—You made comments, Mr Rann, in relation to the inquiry into the bombing of the Adelaide office of the NCA. Are you satisfied that sufficient resources have been allocated to assist the detection and prosecution of the offender?

**Mr Rann**—My point on this is that, whilst I know nothing operationally about the inquiry, it just concerned me that during those inquiries the budget of the NCA's Adelaide office was essentially cut, which led to a reduction in numbers to one-third of what it was before. That just seems to me to be appalling, in anyone's terms.

**Mr FILING**—It would be fair to say the NCA was not actually investigating this particular offence?

**Mr Rann**—Being that the NCA was involved in Operation Cerberus in terms of drug related crimes here in South Australia by organised crime, it seemed to me that the two inquiries ran in parallel.

**Mr FILING**—Except that there is a coronial inquiry and, of course, the serious crime squad or the major crime squad are conducting a murder inquiry, which are both separate from the NCA's investigations or its activities. This really reflects more on the South Australian allocation of resources, I would have thought.

**Mr Rann**—I am not aware of the operational matters of the inquiry and cannot comment on that at all. All I know is that the decision to cut funds to the NCA office in Adelaide has been seen by the entire community and across the board politically as being symbolically and actually a major blow to law enforcement in this state.

**Mr FILING**—And that has been a continuing cut since 1994?

**Mr Rann**—Whoever makes the cuts, I do not care whether it is Labor cuts or Liberal cuts—

**Mr FILING**—I appreciate that. I am just saying that it is not an overnight thing. This has been occurring for the last three budgets.

**Mr Rann**—But the cut from 33 to 10 was announced last year.

**Mr FILING**—Yes.

**Mr Rann**—And that is a big cut.

**Mr FILING**—I am quite conscious of that. Would you agree then with the Western Australian police commissioner, the Victorian police commissioner, the Australian Bureau of Criminal Intelligence and a range of others, including the Queensland police commissioner, that these cuts have a deleterious effect on the anti-drug trafficking operations both in South Australia and elsewhere?

**Mr FILING**—I am quite conscious of that. Would you agree, then, with the Western Australian police commissioner, the Victorian police commissioner, the Australian Bureau of Criminal Intelligence and a range of others, including the Queensland police commissioner, that these cuts have a deleterious effect on anti-drug trafficking operations, both in South Australia and elsewhere?

**Mr Rann**—Certainly, in terms of Operation Cerberus, yes.

**Mr FILING**—What do you believe is necessary to resource the NCA and, for that matter, their fellow law enforcement agencies like the South Australian Police Service and others, to enable them to tackle properly this problem—the problem of, as Mr Comrie from Victoria has said, our being awash in heroin?

**Mr Rann**—Whatever is necessary. This is a serious threat to our kids' future. My view is that, when it comes to tackling people who peddle death to our young people, then we should do whatever is necessary. It should be the moral equivalent of war on these people.

**Mr FILING**—Would that include, for instance, the seizure of assets—substantial seizure of assets—to re-employ those towards the effort?

**Mr Rann**—Absolutely.

**Mr FILING**—And you are prepared to sponsor this?



**Mr Rann**—We have got seizure of assets legislation in South Australia.

**Mr FILING**—But I mean this seizure of assets that is then ploughed back into the effort, rather than its going to consolidated revenue where it is disbursed back to government expenditure.

**Mr Rann**—Absolutely.

**Mr FILING**—I am not sure if you heard the comments of the South Australian police superintendent.

**Mr Rann**—No, I did not; I just came in on the end of that.

**Mr FILING**—In essence, both Mr Mott from Western Australia and Superintendent Edmonds from the South Australian police force agreed with the proposition that the cuts in South Australia and Western Australia are, in effect, opening up almost a conduit of drugs from the west coast through to the east coast. Are you conscious of this?

**Mr Rann**—No, not in any operational detail. That is a thing that should be left to the law enforcement authorities.

**Mr FILING**—Given that there has been some success in recent times in relation to cannabis plantations, within the Australian context anyway, there is some speculation that the availability of heroin and its low price is actually a response to that. In other words, it is replacing cannabis on the streets because of the reduced availability of cannabis at present. Are you conscious of this?

**Mr Rann**—I have only heard reports, but I have not got any direct evidence of that.

**Senator STOTT DESPOJA**—Just in relation to the powers of the NCA, are you aware of any complaints from constituents or people who have had dealings with the NCA or, from your own knowledge, are you aware of circumstances where the powers have been misused or abused?

**Mr Rann**—I have been given no evidence of the powers of the NCA having been misused or abused. The only thing is that following those press reports about the Federal Court decision, I raised it in general terms with the FBI. I guess their point was that you need special powers. They said, ‘You have got to follow the money tree.’ Those were the words they used. I guess the message that I was getting from New Zealand and from the United States was that general policing powers alone would not help crack an internationally sophisticated crime organisation, that you had to match them in terms of sophistication and also in terms of international activities. But I am not qualified in terms

of legal expertise to comment about where the line is drawn. That should be left to others, including your committee.

**Senator STOTT DESPOJA**—Do you wish to put on record any concerns or comments you have regarding various powers, the secrecy provisions or the discovery process or professional legal privilege?

**Mr Rann**—No, I do not think that is my area of expertise, so I will stick to those things that I know.

**Senator STOTT DESPOJA**—Okay. That is fine.

**CHAIR**—Finally, just before we finish, you have made some statements, with which I strongly agree, about the impact of drugs, in particular, on our kids. I think you have advocated that you believe that the NCA should be given whatever powers are necessary to do its job. How would you contend with the arguments that we are getting from civil libertarian organisations about the need to actually restrict or reduce the powers of the NCA?

**Mr Rann**—I recently got attacked by civil libertarians for advocating some measures against repeat persistent paedophiles. My view these days is that when you get attacked in law journals when you start talking about people who prey on the lives of kids, then I know where the public is, and the public are right, not the lawyers.

**CHAIR**—So what would be your attitude in the broad decriminalisation, legalisation debate versus the other side of the debate, which actually promotes the view that we ought to be strengthening the law enforcement side if we are going to win the war?

**Mr Rann**—I think that to win the war you need a combination of education and you also need a combination of law enforcement. I have never believed that legalising heroin or other drugs is going to assist the problem and that is something that I have always maintained in public life.

**CHAIR**—As I understand it the laws in respect of marijuana here in South Australia are probably the most liberal of any in Australia: do you support the current laws here in South Australia as far as marijuana is concerned?

**Mr Rann**—I think they are currently looking at whether those laws are too liberal or not, and so I would have to look at the evidence from the police on that, and from others who are more qualified.

**CHAIR**—So you don't have a strong view about that?

**Mr Rann**—I would certainly oppose further liberalisation.

**CHAIR**—Thank you very much Mr Rann.

**Luncheon adjournment**

[2.07 p.m.]

**ROFE, Mr Paul John Lawrence, Director, Department of Public Prosecutions, 7/45 Pirie Street, Adelaide, South Australia**

**CHAIR**—Welcome, Mr Rofe. We do not have a submission from you, but perhaps you would like to make an opening statement or a few remarks. There are a number of questions that I am sure the committee members will have for you. I should say though that I am required to state that, if during the hearing you consider that information you might wish to give or comment requested by committee members is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in a material particular. As you are also a public official, you will not be expected to comment on matters of government policy. If you would like to make some remarks, you are welcome to.

**Mr Rofe**—I have been the Director of Public Prosecutions since its inception in July 1992. Prior to that I was Crown Prosecutor for South Australia since about 1988 and have worked in the state prosecution office since 1977. I have had reasonably frequent contact with the National Crime Authority since its inception in this state through the various members, Mr Le Grand, Mr Gray and the regional director, presently Mr Ganley. Several of my staff have left and worked for the NCA and then returned to my office.

Generally speaking, I think our relationship can be characterised as very good. It has not been a frequent contact relationship, particularly over recent years. Very few major prosecutions have come directly from the authority—probably the most notable being the Barry Moyses prosecution—certainly in recent times, due to the reduction of the office, and of course the bombing of the Adelaide office, for which I personally had the conduct of the prosecution.

Probably the Hidden Valley drug charges were the only major charges that directly came from the authority. We have had reasonably frequent prosecutions, mainly through matters that had been handed to SAPOL by the authority. These have proceeded in the normal way. Certainly, commercial fraud and tax—white-collar stuff—has been generally handled by the Commonwealth Director of Public Prosecutions in this state.

I regard the authority as a useful body in this state and generally in a national context. My only concerns relate to direction and focus. I had concerns when that appeared to change, I think in the early 1990s under Justice Phillips, from what was organised crime to white-collar crime. Although I see the connection, I had some difficulty, given the then existence of the NCSC, as to why that change would occur. In particular, the authority was an extremely useful intelligence gathering organisation, with national significance.

We have experienced problems, particularly in the Hidden Valley drug matter, which was a Northern Territory-South Australia operation. The committee may know that the South Australian prosecution was aborted due to problems with the lack of uniformity, if I can put it that way, of the criminal law crossing the borders. It has since been recommenced and, I understand, finished in the Northern Territory.

**CHAIR**—The issue of privilege against self-incrimination is one that the committee is being confronted with from a number of different directions. Mr Costigan suggested that the self-incrimination rule be repealed on the proviso that answers given in such circumstances should be admissible. We have already had a discussion earlier today along the same lines. What is your view of this current situation?

**Mr Rofe**—In the context of authority hearings?

**CHAIR**—Yes, section 30 arrangements. Are you familiar with section 30 of the act?

**Mr Rofe**—I would agree with their removal.

**CHAIR**—You would agree with their removal?

**Mr Rofe**—In that context. But, again, I would have to ask what Mr Costigan meant by ‘admissible’. Are we talking admissible in subsequent criminal proceedings or what? I do not quite understand exactly the context in which—

**CHAIR**—Let me come back to it in another way in a moment.

**Senator STOTT DESPOJA**—I was not there for the Costigan evidence so I cannot elaborate, but I was going to ask a question I have asked of other witnesses in relation to professional legal privilege being in the act. Do you care to comment on that, specifically?

**Mr Rofe**—If we have a body like the authority, those sorts of restrictions should be removed but I think there should obviously be safeguards about the use of material then gained in subsequent criminal proceedings.

**Senator STOTT DESPOJA**—Would you care to comment on the impact of the funding cuts at a federal level on the NCA’s activities and its effectiveness in a state like South Australia?

**Mr Rofe**—Certainly the situation over recent years, and the current situation, is that there is virtually no—to my knowledge, anyway—major investigation prosecution because of the reduction in numbers. As I understand it, South Australia has been reduced in status from a member to regional director.

**Senator STOTT DESPOJA**—You are aware of operations or investigations that have gone ahead or have been slowed down or stopped as a consequence of funding cuts?

**Mr Rofe**—No. I do not really know anything about anything, which is the way it should be. I see the end results, and I am not seeing too many end results.

**Senator STOTT DESPOJA**—Perhaps you would like to elaborate on the concern you expressed regarding the move towards more white collar crime investigations?

**Mr Rofe**—It was something that struck me at the time I was at the conference that Justice Phillips announced. It was a conference into Italian organised crime. The one thing that struck me at that was the lack of communication between the individual police forces on intelligence. It seemed to me that the authority could have fulfilled a very useful role with ABCI in coordinating that. Then, at the end of the conference, it was announced that they were moving to white collar crime, and I had some difficulty with it.

**Senator STOTT DESPOJA**—Another issue that has been brought up a number of times is the issue of references and whether or not the act needs to be amended in some way to provide for more certainty in the drafting of references or some clarification in some way. Do you have a view regarding the references?

**Mr Rofe**—My personal view is that I gave evidence on one reference and found myself a term of it after I gave evidence. I think there is a need for that. Being the DPP, unless one is involved in major prosecutions resulting from direct authority investigation, one is not conscious necessarily of what occurs in the day-to-day operation of the authority.

**Senator STOTT DESPOJA**—Do you have a view in regard to targeting individuals or entities in terms of the drafting of references?

**Mr Rofe**—Certainly entities. I think the motorcycle groups, or if it appears there is a particular cultural group or ethnic group that the evidence seems to be pointing towards as organising crime, then they should be identified.

**Senator STOTT DESPOJA**—I have a couple of questions in relation to drug law reform, and obviously you may care to comment in this area. I note your comments recently regarding the heroin trials in the ACT. Am I correct in the understanding that you would like to see those trials proceed?

**Mr Rofe**—Yes, I would.

**Senator STOTT DESPOJA**—Do you have a view in relation to legislation which, I believe, is before the current South Australian parliament in relation to regulated availability of cannabis?

**Mr Rofe**—I am not aware of the specifics of that legislation. Yes, I am in favour of regulating the supply, particularly of cannabis, simply on a quality control basis. My experience in 20 years of prosecuting is that, once you are introduced to the criminal elements who control drug supply and distribution, then it is very difficult for these people to get out without actually getting in and joining in the distribution chain—whatever the addiction problems may be.

**Senator STOTT DESPOJA**—Would it be fair to say that you believe a combination of tactics are required in relation to ‘winning’ the war on drugs, including education, drug law reform, as well as whether it is boosting or adequately resourcing the enforcement agencies?

**Mr Rofe**—Absolutely. I think you can pour as much as you like into the enforcement agencies. If you are still maintaining the only illegal supply, you are going to have problems.

**Senator STOTT DESPOJA**—Clearly you do endorse some form of drug law reform?

**Mr Rofe**—Yes. In my view, we are not winning at the moment. I think the evidence of that is really the number of overdose deaths continually reported, which I think can only be attributed to not being able to control quality, let alone the source.

**Mr FILING**—As part of the accountability process for the NCA, the DPP’s office obviously acts as a layer of accountability on the quality of the prosecution and prosecution briefs. Generally speaking, do you take a role in assessing the quality of the briefs? What is your relationship with the authority in relation to where you find that briefs are substandard or, for instance, the evidence is lacking in substance?

**Mr Rofe**—Yes, I do take that role. But, as I said, it has been so infrequent in this state in recent years. The accountability would go directly to the regional director. I would call him in and indicate where I found the brief to be of inferior quality and, if that had resulted in no prosecution, inform him of that and leave what happened from then on to him.

**Mr FILING**—Where there is some question as to the legal standing of the reference, would you brief yourself from independent counsel, for instance in the case where you might be troubled by the standing of a reference?

**Mr Rofe**—The only really current major prosecution we have is subject to the full Federal Court present hearing on the reference involved. I have simply taken advice from the authority on the advice that they have taken with respect to that.

**Mr FILING**—You would not see it necessary, for instance, to take independent counsel on that?

**Mr Rofe**—No.

**Mr FILING**—That has probably answered my question. Do you have an MOU with the NCA?

**Mr Rofe**—No.

**Mr FILING**—None. So each particular instance, though they have been infrequent, of contact or working with the NCA is based on the circumstances at the time?

**Mr Rofe**—That is right.

**Mr FILING**—To what extent would you consider yourself taking responsibility in relation to the behaviour, let us say, of the officers who may have made an arrest or who may be conducting the charge, say, in the case where there may be an allegation of unfairness, like making the accused person walk the gauntlet past the media?

**Mr Rofe**—They are probably matters I would take directly to the chairman. It has never happened.

**Mr FILING**—In your experience.

**Mr Rofe**—In my experience in this state.

**Mr FILING**—I know it is a hypothetical and I apologise, but unfortunately I do not have much experience to go on. What would you expect the chairman to do as a consequence of bringing that sort of behaviour to his attention? What would you expect as a response?

**Mr Rofe**—I guess I would expect the same that I would expect from the commissioner in relation to local police. My understanding is now that effectively the South Australian authority is staffed by local police. In those terms it would be no different. That would be a matter then for either disciplinary action or, in the extreme case, I guess, obviously prosecution as a contempt if the behaviour was sufficiently grave.

**Mr FILING**—In the case where officers of the NCA have conducted an interview under normal circumstances without the coercive powers, what rules do you normally expect them to apply in relation to the questioning of suspects?

**Mr Rofe**—I would expect them to know that if they do not apply the local rules, the evidence will not be admissible in a local prosecution.

**Mr FILING**—In the case of a federal offence?



**Mr Rofe**—Similarly, but again, that is usually outside my jurisdiction.

**Mr FILING**—I appreciate that. I suppose what I am trying to draw out is the process of accountability. One of the criticisms, as you are probably aware, is that the accountability process is alleged to be deficient and there is less scrutiny of what many might consider to be quite extensive powers than is desirable. In your experience, do you believe that those powers are properly accountable and, if so, where do you see the greatest level of accountability in the use of them?

**Mr Rofe**—There is certainly accountability if they are, as they say, an investigative agency gathering evidence for a prosecution because that prosecution will presumably become subject to the attention of the court. So in that sense the greatest level of accountability is there. It is a much more difficult operation, I think, if you talk about them in terms of an intelligence gathering agency because how they get it and what they do with it tends, obviously, to remain within the authority. I do not know enough about the workings of the various committees in that respect. But I think the accountability from my point of view, if I prosecute a National Crime Authority investigation, is that they are before the court.

**Mr FILING**—As you know, the NCA is created in Commonwealth and state statutes. Do you consider, for instance, that the South Australian parliament takes a sufficiently vigilant role in the accountability process as part of its own parliamentary responsibilities?

**Mr Rofe**—To my knowledge, yes.

**Mr FILING**—For instance, one case that comes immediately to mind is the bombing. Did you consider that the South Australian parliament took an interest in that in the sense of having a responsibility in relation to the South Australian NCA Act?

**Mr Rofe**—The bombing was a SAPOL investigation, a major crime investigation. I think it is difficult to confuse that with an NCA accountability, or responsibility. It just happened that it was the authority's office that was bombed. I am not sure that I can draw anything out of them at all. Certainly I have seen nothing to indicate other than the parliament does take an interest in the operations of the authority in this state.

**Mr FILING**—I will give you a hypothetical question in relation to, say, a prosecution similar to the bombing matter, where someone might complain about the behaviour of one of the officers in relation to the preparation of the prosecutorial brief. Where would you expect that complaint to be dealt with?

**Mr Rofe**—The commissioner.

**Mr FILING**—Of the South Australian police?

**Mr Rofe**—The investigating officers are his officers.

**Mr FILING**—I am thinking in the case where it might be someone who is actually seconded to the NCA who might have had a role to play, say as a witness, or somebody who is material to the case in some way.

**Mr Rofe**—We are very careful to keep that division, that is, the authority and the SAPOL division, investigation and witness division, quite separate. I am not quite sure where you are going, but again it got through the committal stages, you would appreciate, so there was the court scrutiny of what various witnesses who were members of the authority or working for the authority had to say.

**Mr FILING**—Their evidence was tested in the committal proceedings?

**Mr Rofe**—Yes.

**Mr FILING**—Can I just ask specifically: were you aware of where there was some differences in relation to the committal proceedings between witnesses over material facts of the pre and post-bombing incident?

**Mr Rofe**—There was some apparent conflict relating to incidents pre-bombing which gave the background and, on the prosecution case, contributed to the motive to the bombing. I only say that simply because the nature of the cross-examination was obviously based on alleged discrepancies.

**Mr FILING**—That was apparent to you before the committal proceedings started, or did they come to light during the committal proceedings?

**Mr Rofe**—During the committal proceedings. I can say quite categorically that none of those had any effect on my decision not to prosecute eventually. I did not regard it as any more significant than I would in any other murder prosecution.

**Mr FILING**—We have obviously asked other witnesses today from South Australia Police from the perspective of other agencies. But, in particular, this is has probably been the greatest single challenge in a way to the law, a bombing attack on the National Crime Authority, its own headquarters in Adelaide. Are you satisfied that sufficient attention and resources have been allocated to try and track the offender and have him or her prosecuted and convicted from your perspective as DPP?

**Mr Rofe**—Yes, and are still being.

**Mr FILING**—They are still being?

**Mr Rofe**—Yes.

**Mr FILING**—You would not have any cause for concern that perhaps it has not been treated as seriously as it ought?

**Mr Rofe**—No. I think it has been treated with the requisite seriousness.

**Mr FILING**—The fact that it has taken three years so far and we still have not had a coronial inquest yet.

**Mr Rofe**—That I understand to be because it is an ongoing investigation.

**Mr FILING**—Obviously, we have to deal with perceptions, I suppose, more than anything else, because it is perception that probably drives people's feelings about the case but, given the seriousness of it, the length of time that it has taken to, in fact, arrive at any form of result—in fact, there is no result at all—that is a matter of concern, wouldn't you agree?

**Mr Rofe**—Well, obviously I agree that there concern that there is, as you call it, no result. In one sense there was a result. There was an arrest quite soon after and a committal proceeding and a committal for trial, and a decision by me that there was insufficient to obtain a conviction. That was a decision that had to be made. It was made. The investigation continues. Obviously, I would like to bring it to a conclusion and that those responsible are brought to account.

**Mr FILING**—The reason I ask is that historically this has been one of the most serious, if not the most serious, incidents affecting the National Crime Authority, and as committee overseeing the NCA it is a matter of grave concern to us. Personally it is a matter of concern to me. I used to work with Geoffrey Bowen, so it is one of those things that you would like to see resolved some way soon. But, given those circumstances, do you think in any way there could be greater resources devoted to arriving at a more swifter conclusion? I suppose you may have already answered that in a way, but surely there must be some way of devoting more resources to getting a conclusion.

**Mr Rofe**—Not in my opinion. I think enormous resources were devoted to it at the time, and considerable resources are still being. We are still chasing down every lead, direction that we got from the first arrest and committal. There has got to be a finite limit to resources. Just pouring resources will not necessarily achieve any more results than an ordered investigation. But I take your point and personally I regard the matter as the gravest thing that has happened in this state. And on your point about Mr Bowen, I had to explain my decision to Mrs Bowen, which was difficult.

**Mr FILING**—Yes, I appreciate that.

**CHAIR**—I just need to take you back to this self-incrimination rule, because I was confused.

**Mr Rofe**—Let me have quick look at section 30.

**CHAIR**—I think that was what we were talking about. Mr Costigan suggested the repeal of the self-incrimination rule on the proviso that answers given in such circumstances should be inadmissible. Now, that is the reverse of what the situation is at the moment, is it?

**Mr Rofe**—I really do not know.

**CHAIR**—I thought you would know.

**Mr Rofe**—As I understand the section 30 hearings, I cannot see any basis for a self-incrimination rule, other than that those answers could then be used in subsequent proceedings. If that was not so, I do not see any basis for having self-incrimination.

**CHAIR**—But at the moment, where the cohesive hearing power is used, people are not compelled to answer. Is that correct?

**Mr Rofe**—As I understand it, they have a reasonable excuse for failure to answer, yes, and that takes you out of the penalty provisions of the act.

**CHAIR**—So the suggestion that some have made, and again we had this discussion with the Bar Association, was, I think,—I will have to reread it because it gets a bit confusing—that they thought there might be an argument for turning it round. No, sorry; I think they were actually in favour of maintaining the status quo. But there have been suggestions that it ought to be a matter, as it is for the ASC, of people being compelled to answer, in which case it could not be used in evidence against them. It also became a question of who was granting the immunity—the investigating body or the prosecutorial body.

**Mr Rofe**—It has to be the prosecutorial body.

**CHAIR**—In the case of the NCA.

**Mr Rofe**—As I understand the section 30 exclusions, if the DPP gives an undertaking not to use whatever answers are obtained, then the privilege against self-incrimination lapses or it no longer becomes a reasonable excuse for failure to answer.

**CHAIR**—So in that case the NCA would approach you before they conducted the hearing. Is that the way it would work?

**Mr Rofe**—That is right, under subsection 6.

**CHAIR**—I will read the transcript carefully and see if I can figure all of that out. Thank you very much for appearing.

[2.54 p.m.]

**CALDICOTT, Mr Craig, Council Member, and Member, Criminal Law Committee, Law Society of South Australia, 124 Waymouth Street, Adelaide, South Australia 5000**

**EY, Mr Stephen, Member, Criminal Law Committee, Law Society of South Australia, 124 Waymouth Street, Adelaide, South Australia 5000**

**FITZGERALD, Dr Barry Charles, Executive Director, Law Society of South Australia, 124 Waymouth Street, Adelaide, South Australia 5000**

**PFEIFFER, Mr Norman, Senior Trust Accountant, Law Society of South Australia, 124 Waymouth Street, Adelaide, South Australia 5000**

**CHAIR**—We do not have a submission from you. Dr Fitzgerald, are you going to make a statement?

**Dr Fitzgerald**—Yes.

**CHAIR**—I am required to state that if during the hearing you consider the information you might wish to give or comment requested by a committee member is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in a material particular—whatever that means. But I am sure you will know what that means.

**Dr Fitzgerald**—Can I stress at the outset that the Law Society of South Australia has not a strict policy on many of the issues which I suspect you may wish to run past us this afternoon. Rather, what we have attempted to do is to gather together a group of people who we think will cover the areas that your committee may wish to chat with us on.

Mr Ey, on my left, and Mr Caldicott, on my right, are both very experienced criminal lawyers. They have had dealings with the NCA and certainly will be able to provide the lawyer and probably a client's perspective on, again, a number of the issues. Mr Pfeiffer, on the extreme right, is the senior trust accountant at the Law Society. My position is that of the Executive Director of the Law Society of South Australia.

Whilst not wishing to anticipate the areas of questioning by the committee, we have taken the opportunity to present an introductory statement on a couple of areas which I understand to be areas of interest to you, both from observation this morning and previous communication with your executive officer. We know that the question of client

legal privilege will be something that you may wish to canvass with us. I think probably on this issue our position is quite clear. The central justification for what sometimes is called legal professional privilege but more properly is referred to as client professional privilege is the necessity for clients involved in the legal process to be able to be appropriately represented and consequently to be able to communicate fully and frankly with their legal advisers.

We are well aware that there will be some perceived competition between interests such as the interests of the courts and the interests of natural justice and the interests of civil liberty, but we are happy to talk with you on this area this afternoon.

The recent Commonwealth Evidence Act does provide a useful definition of the concept of client legal privilege and we have actually used that in these few notes here to provide a framework for at least what we are talking about when we make that reference. I will not bore you with the three sections or the three elements, but certainly in terms of our notion of what we are referring to we have documented that for the record.

The second area that you may wish to chat with us about, particularly my two colleagues on either side here, is the question of self-incrimination and the summoning of witnesses to give evidence. We, as the Law Society, have no particular policy position on this issue, but we believe that the NCA Act should be reviewed to clarify a number of the powers of the authority and certainly clarified in relation to the confidentiality provisions which apply to witnesses. At this stage we are not suggesting that it should be taken in any particular direction, but we would accept that there are some uncertainties there.

We believe there appear to be cloudy areas relating to matters such as the presence of third parties at interview, the extent to which information provided to the NCA may be used in other jurisdictions, the differing powers between groups such as the NCA, the ASC or the Australian Federal Police, and also some confusion over the nature and extent of the self-incrimination powers.

Further, we suggest that there is some uncertainty and lack of clarity about some of the references not only in terms of scope—this is the NCA references—completion date, and applicability to actual or possible criminal offences; and we believe there is some need for review there and certainly clarification, without suggesting what direction that might be taken. Others at the table may wish to suggest some specific areas of improvement there.

We are aware of an interest of the committee in possible money laundering so far as trust accounts are concerned. Back a couple of years ago in 1995, the *Australian Financial Review* carried a report that the then Minister for Justice, Duncan Kerr, claimed that ‘there was increasing evidence that solicitors were laundering money through trust accounts’.

The Law Society requested but received at that time no evidence that such activity was taking place in South Australia from the minister. Trust account inspections, reports from private auditors and direct information from the Legal Practitioners Conduct Board, which in this state liaises very closely with the fraud task force of the state police, is that no South Australian solicitor is being or has been investigated for such criminal activity.

We are also well conscious of the claims made back in November 1993 by the then Senator Sid Spindler in a dissenting statement to the report of the Senate Standing Committee on Legal and Constitutional Affairs in which he cited and claimed examples of money laundering by solicitors. I repeat that there is nothing that the Law Society is aware of to suggest that solicitors are assisting major crime in this way in this state. Mr Pfeiffer, at the end, could go into some detail about what procedures and regulatory methods are in place here, should you wish to do that.

I conclude these introductory remarks by repeating that the law society witnesses who are here today, appear to provide your committee with the benefit of their individual extensive experience in the areas of criminal law and to assist you with specific examples of operational problems or processes which might be improved to make the NCA more effective in the fight against organised crime; I believe they will also be commenting on the need to protect the rights of individuals and the process of justice.

**CHAIR**—Dr Fitzgerald, do you want that statement to be incorporated? There were parts you did not read.

**Dr Fitzgerald**—As you will. I did leave out some of the matters of detail.

**CHAIR**—I think it would be good if we agreed to incorporate that statement in the transcript. 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**—I think you were here before when we were talking to the DPP about the self-incrimination powers. Can you enlarge on that? You did allude to it in your statement. Do you support the status quo? That is what I am trying to find out as far as the NCA hearing process is concerned.

**Mr Caldicott**—I think there is some advantage, from a personal perspective, to the status quo remaining. The only thing that concerns me about the rights relating to self-incrimination is that a person being summonsed before the NCA or requiring to produce documents is not really aware of what it is that is being investigated. The problem that arises and which has occurred in recent times is where there have been summonses to produce documents. If you are an entity such as a bank there is no problem. There is simply a summons to produce documents and they are produced under the compelling nature of a subpoena. However, if you are a person who may be the subject of an investigation, you are first requested to supply all those documents pursuant to a summons. Once that summons compels you to produce all those documents, you do not know whether you are incriminating yourself or not because you simply do not know what it is that they are investigating. At the moment it appears that the NCA do not feel obliged to attach the references to a summons to produce documents. It is different when there is a summons to witness to come before its hearing.

The documents are produced and you may well have incriminated yourself without knowing it and then you are summonsed to appear, again not necessarily fully understanding or comprehending what it is that is being investigated—sure it is, though, that after you have been there for a while, you soon glean an idea what it is they are investigating. Purely from a client's point of view and possibly from a civil liberties view, a person should know what is being investigated, even if it is just in broad terms, before they are compelled to produce documents.

**CHAIR**—Let us deal with the document side of it. At the moment the NCA can require, by the use of its special powers, documents. Is that right?

**Mr Caldicott**—Yes.

**CHAIR**—Your client receives a visit from the NCA, I suppose. Is that the way it works?

**Mr Caldicott**—Yes. What happens, as I understand it, and I have to speak hypothetically because of confidentiality provisions of the act, is that an officer of the NCA comes forward and produces a summons to produce a list of documents. It is usually a very wide ranging request for just about every financial document that could be in existence.

**CHAIR**—He arrives, without notice, at a place of business or a home or whatever.



**Mr Caldicott**—Yes. He arrives there and hands over the summons to produce the goods and to have those documents produced to the NCA at a specific time and to an employee of the NCA. It is usually a designated employee of the NCA under the summons for the document to be produced.

**CHAIR**—And the person so served cannot refuse to hand over the documents? What is the situation there?

**Mr Caldicott**—What happens is that a client can refuse to hand over the documents if he believes that he may incriminate himself in respect of those documents. But he does not know what is being investigated, so he does not know, by the production of those documents, whether he is incriminating himself or not.

**CHAIR**—If he knows he has done something wrong, then he would pretty well know what was going on, wouldn't he?

**Mr Caldicott**—That is the problem. You simply do not know. It may be an innocent explanation. By the production of banking records, taxation records, a whole series of other type of documentation, suddenly he may innocently hand over those documents believing that he is innocent, but the police, who have an influence in the NCA, have a very suspicious nature about them and wish to investigate matters further. From a client's perspective, you would simply like to know what is being investigated. It could be something innocuous such as, 'What was that transaction in respect of that building?' Why does the NCA have to say, 'We want every financial document that you've ever possessed going back for the last four years'?

**CHAIR**—So you are arguing against the extent of the existing power?

**Mr Caldicott**—No, I think there needs to be some direction to the NCA to say that it is simply to define what it is that they are wishing to examine, to compel to be produced to them. I am not saying that they should not have that power. I am saying that the client or the person receiving the summons should know what it is about.

**CHAIR**—In the hearing situation, what is your attitude to the self-incrimination situation there?

**Mr Caldicott**—With the recent first decision in A1 and A2 and the awaited decision in A1 and A2, versus the NCA, it is not yet known whether the refined references which have been attached to the summons go far enough, bearing in mind that all they seem to have done is delete murder and treason off the state reference, that they are of the view that the recent references are accurate and correct. I again say that a person is entitled to know what it is that is being investigated. It cannot simply be, 'We summons you to appear to discuss a whole series of very wide-ranging topics.' I would have thought that it is simply to narrow the issues so the person knows what it is that is

being asked of him.

**Mr Ey**—I support what Mr Caldicott says. I think it is necessary for a person's rights to know that.

**CHAIR**—To be clear about it, you are saying at the moment that does not occur?

**Mr Caldicott**—No, it does not occur because again a question was asked at a hearing, 'Is a person under investigation?' And the response was, 'Yes, he is.' The question came back, 'What is the investigation?' And the response came back, 'We are, in effect, not going to tell you.' So, it is clear that the person was a suspect of having committed an offence which was part of the reference, that he was suspected of having committed a crime, and, as a result of that, he did not know what the crime was or what it was all about. He simply had been told that he was now a suspect of a serious charge, without knowing what it was.

**Mr FILING**—Sections 28 and 29 of the act I presume you are familiar with, that is, the hearings? We have received a complaint from a witness as to the inclusion in a hearing of a third party—in fact an unidentified third party, not an NCA officer—who, as a consequence of their being present, was obviously able to pick up the information that was exchanged, then return to their home jurisdiction, from where they were able to use it without fear of the confidentiality requirements of the NCA Act within the Australian jurisdiction. Does the Law Society have a view in relation to the exercise of that particular section, which is section 29, I think? I will get the exact one. I do apologise for it. I had the thing immediately under my fingers but—

**Mr Caldicott**—I am aware that it has been raised. Again simply from a personal point of view, I would have thought that having third parties present simply as an exercise to gather information for a third party is an abuse of process. It has to be an abuse of process, because the NCA is set up to have a special investigation pursuant to a special function, which is under section 54.

**Mr FILING**—I am sorry to interrupt you. I beg your pardon, that was section 25(3)(d).

**Mr Caldicott**—As I was saying, I would have thought that having third parties present simply to enable a third party to gather information is an abuse of process, and it appears to be at odds with what a special investigation is all about. 'Special investigation' is what the act talks about. 'Special investigation' refers to the special function, which refers to the references which are referred by the various ministers to the NCA. If that was used in the manner that has been described, namely, a third party being present simply to facilitate that third party's gathering of information, that is an abuse of process.

**Mr FILING**—Under those circumstances, you would prefer the act to be amended

to more heavily circumscribe that power?

**Mr Caldicott**—I certainly would. From my own personal point of view, I would have requested that person to be known. I would have in those circumstances requested that the hearing not proceed before the NCA.

**Mr FILING**—And the other matter is in relation to disclosure of matters relating to the hearings. Obviously in this particular instance, we have identified a way whereby one might be able to perhaps not so much connive but certainly permit the disclosure of material through the inclusion of a third party from another jurisdiction in dual hearings. Section 25 gives fairly wide provisions to the authority in relation to authorisation of disclosure and the revocation of directions under subsection 9 in relation to disclosure prohibitions.

A number of witnesses have given evidence to the committee that they consider that aspects of the NCA's behaviour have been unnecessarily oppressive or in some instances overzealous, and we have received a specific complaint from someone who believes that they were in fact unfairly treated because this third party presence at the hearing was allowed to take place and that then led to the disclosure of information in New Zealand, where the New Zealand serious fraud squad was able to make further inquiries.

We are obviously interested in knowing if there are some areas where the act can be amended to perhaps prevent overzealous or, let us say, oppressive behaviour on the part of the authority. We have already discussed the third party presence. What are the minimum criteria that you would require of the NCA in such a set of circumstances? What would you see as being necessary to allow this to take place?

**Mr Caldicott**—I would say a person appearing knowing what he is appearing for. Secondly, the NCA should only be involved in the investigation and, once they have finished their investigation or got to the stage where they suspect a person has committed an offence, they should pass that material and information or whatever they have gathered to the appropriate authorities, such as the Australian Federal Police, the South Australia Police, or the DPP, in conjunction with those authorities, whether it be state or Commonwealth.

You need those guidelines because what has happened is that there has been a meshing, the NCA believing that they not only can investigate but can arrest and prosecute and have a fair degree of say in all of those actions, whereas clearly the act defines their role simply as an investigatory one and to hand over that material to the proper authorities. It is where there is that grey area where they seem to overstep the boundary, where the problems arise and have arisen in the past. They are simply there to investigate, and thoroughly investigate. The reason why they have been given such wide powers is that they are only an investigatory body and they are not the persons to do the arresting and

they are not the persons to do the prosecuting. That is where the checks and balances arise.

**Mr FILING**—It has been put to us that in actual fact it is quite absurd for a body like the NCA, for instance, to be circumscribed in a way that does not apply to nearly all other investigative bodies, whether they are in law enforcement or in things like regulation of the marketing of eggs. Obviously the assumption is that a body like the NCA should be completely constricted to very rigorous or well-defined areas of investigation, when someone may, for instance, give evidence that might incriminate them in something that is separate or different but in fact is of note and is criminal behaviour.

**Mr Caldicott**—The reason we say that there should be such a delineation between what the NCA does and the other bodies is that they have been given such wide powers to investigate. We do not have the joy of public access to these hearings. It is effectively a closed shop. They can investigate. They do not tell the person what they are investigating. They do not tell the person why they require these documents. They, in some instances, limit the right of access to lawyers.

**Mr FILING**—I am sorry to interrupt, but wouldn't it be fair to say that the secrecy aspects are a protection in themselves? They can quite clearly be seen as being unoppressive, allowing a person to feel comfortable with being able to give evidence without fear of being identified or vilified as somebody who has been investigated by the NCA.

**Mr Caldicott**—Certainly checks and balances sometimes work, but if the public do not have access to those hearings we could have a Kafka type situation, in his book *The Trial*, when he did not know why he was there. The whole process happens without him. Part of our judicial system is that justice is seen to be done, and where people are compelled, not knowing what it is about, to give answers—

**Mr FILING**—Just on the Kafkaesque aspects of this, are you aware of anybody having complained that they were subjected to a hearing without being informed exactly what the purpose or the nature of the inquiry was?

**Mr Caldicott**—Yes. As part of a hearing I heard a series of questions being asked of a person which simply appeared to ask him to recite who his relatives were in a whole series of questions relating to who was married to whom, who were his cousins, who were his other relatives and those types of cases. At the end of the day, whilst we could fathom what it was about, certainly the questions were of a nature that made it nearly impossible to know what should have been easily ascertainable by other means and other methods rather than him being called along to recite who his relatives were.

**Senator STOTT DESPOJA**—Following on from Mr Filing's comments, I am wondering if you or any of your colleagues are aware of or have clients who have claimed or feel that the NCA abused their powers in some way. Is that a situation you are aware of with people claiming that the powers have been used in an inappropriate way?

**Mr Ey**—I am not specifically aware of any.

**Mr Caldicott**—A number of my clients have been, again as part of various operations instituted by the NCA. There are complaints about the fact that they appear to be not only investigating but they appear also to be part of the arrest procedure and they appear to be part of the prosecutorial procedure. Again, and I keep coming back to this, the NCA was set up so that they had these very wide powers to investigate.

**Dr Fitzgerald**—I was present this morning when similar questions were asked of Mr Gray. I think Senator Ferris talked of Frank Costigan's model where the NCA investigates but hands it over to the state police for prosecutorial purposes. For the benefit of my colleagues, Mr Gray delineated three stages. He referred to investigation, enforcement and prosecution. His comment, and I think we would be comfortable with it, was that the NCA appropriately straddles the first two, though the latter one with less clarity than the first. Certainly we would support the handing over of the third stage, as Mr Costigan obviously was suggesting to you, to other authorities.

**CHAIR**—Which one is the prosecutorial one? The NCA does not do any prosecuting at all, does it?

**Dr Fitzgerald**—They prepare a lot of the material, as I think you heard from Mr Rofe, in terms of the work that goes into getting it pretty close to that stage.

**Mr FILING**—And they give legal advice, as Mr Rofe said, to the DPP.

**Mr Ey**—And they attend on raids in conjunction with the state.

**Mr FILING**—I would have thought, if I may intercede there, that there are opportunities—for instance, a good case that we have been familiar with for several years is the Skrijel matter which you may or may not have come across. Mr Skrijel was a fisherman at South End and he, in fact, fell foul—

**Dr Fitzgerald**—I do know about him, now that you have mentioned that.

**Mr FILING**—He fell foul of the NCA, unfortunately, because when he complained to the then Premier of South Australia, the premier sent the head of the drug squad, who happened to be Barry Moyse, out to help him and that was the beginning of his misfortunes.

In this particular instance, Mr Skrijel's problem is that his alleged oppression by the NCA occurred as a result of what we would consider to be 'quite normal prosecutorial processes'. There was the question of evidence: he had his trial overturned on the basis of what he considered—and was able to prove—to be false evidence. In the case of other aspects of his treatment, he was able to show quite significantly that officers of the NCA had not treated him fairly and, in fact, had acted in some instances allegedly outside the law.

The difficulty is that there is no means for him to get a proper investigation of his complaints other than by the NCA themselves or, in this particular instance, by the Deputy Ombudsman of the Victorian parliament, who happens to have responsibility for police, for they were Victorian Police officers attached to the NCA. Under those circumstances, the aspects of the NCA's powers relating to oppressive behaviour would not have any bearing on it. It could have been the Victoria Police, it could have been South Australia Police, it could have been any other law enforcement agency. Under those circumstances, what would you propose as being a way of overcoming that type of problem?

**Mr Caldicott**—I think there simply needs to be a guardian to guard the guardians. I would have thought that there possibly needs to be a person or a group of people which review any complaints. I would have thought that, whilst there may be any number of that type of complaint, most of them could be dealt with as having no foundation, but those complaints that appear to have some foundation should be looked at very, very closely.

**Mr FILING**—As you know, the Law Reform Commission has proposed a commission to overlook the NCA and the AFP and, of course, there is another body acting and presumably there would have to be somebody overlooking them as well. The other model that was proposed was for the Inspector-General of Security to be empowered to investigate individual complaints against the NCA, using whatever resources may be necessary to be applied to it and having full access to the records and to the workings of the NCA in order to be able to properly investigate it. Does the society have any view on the two models?

**Mr Caldicott**—Either model we would be happy with. It is really a case of other people looking at it and deciding which is the more preferred model. But either model whereby an aggrieved citizen can make a complaint about mishandling by the NCA should occur. I would have thought with one person the investigation could happen a lot quicker than if you had a committee dealing with it. But with a committee you might be able to have the levelling out and an input of various ideas as to what is appropriate action.

**Mr FILING**—Would you, for instance, propose that the process be either in camera or in public?

**Mr Caldicott**—I would have thought it would initially be in camera because some of the material may be very confidential, highly sensitive material, and it would be in the form of a complaint to the committee or to the Inspector-General in camera in the first instance.

**Senator STOTT DESPOJA**—Just leading on from that, apart from perhaps grievance and review mechanisms, to which you have just referred, gentlemen, is there anything else you would like to put on record in relation to changes that you think would be, or should be, made in order to perhaps balance, if you believe it does need balancing even more so, the public interest with the personal civil liberties? Are there any other changes you would make? I guess that leads on also, Dr Fitzgerald, to your comments regarding legal professional privilege or client privilege. Should that actually be enshrined in the act? Do you think that is appropriate and are there any other changes you would make to perhaps satisfy some of the concerns of people regarding civil liberties?

**Dr Fitzgerald**—I think just to pick up the latter point, Senator, the comments that Mr Gray made this morning were interesting ones. He was saying that in effect it is there, it has been legislated as if it has been there, but it still remains cloudy in various ways. I have not studied that section of the act in the interim, but certainly it would seem that there are some questions requiring a focus by a group like yours in terms of just making more specific, irrespective of where you stand on the question, how far it should or should not go. As it stands at the moment, it is obviously still unclear.

As I said, one of the few positions that the Law Society would put to you officially is the very strong belief in the need to retain client legal privilege. We do not have any stated policy positions on many of the other issues that we have talked about this afternoon, but that is one on which there is a fairly clear point of view that has been put to earlier NCA discussions, as it has been put to various other committees of inquiry. I think it is interesting that probably even a group like the trade practices inquiry, which had a good time belting lawyers around, was fairly clear on the appropriateness of retaining that in order to protect the interests of justice and the rights of the individual.

**Senator STOTT DESPOJA**—Speaking of belting lawyers around, you mentioned earlier money laundering and solicitors and in particular a dissenting report by my former colleague Sid Spindler. I presume that former Senator Spindler was referring to possible incidences on a national level in relation to money laundering. He did not necessarily specifically state that South Australian solicitors were involved.

**Dr Fitzgerald**—No.

**Senator STOTT DESPOJA**—Just a final question in relation to the arrangement regarding references. Do you have any particular views as to how the act or otherwise should be changed in relation to references, especially in light of the Vincent and Merkel—

**Dr Fitzgerald**—I mentioned three or four in those introductory comments and perhaps I will leave Mr Caldicott and Mr Ey to pick them up from the position of people much closer than I am to it. But I know the areas related to the length of the references. Apparently many of the references are just very, very vague so far as the extent to which the activity can occur. The questions such as the ones that we did talk about before, the differing powers, clarification of just what the powers are—I think it is interesting to have sat and listened to a number of the witnesses give strong testimony to the value of and the importance of the mutual cooperation of the various groups that do go together to form teams such as those involved in Viking and other activities.

One of the difficulties is that each of them tends to be operating from different perspectives in terms of where their powers stop and start and what might be clear for one group as to what confidentiality means or what one group can or cannot do in terms of working with or on witnesses. It appears that in those team situations there does remain some lack of clarity.

The other things that you did talk about this morning—certainly we would strongly support clarifications in terms of scope. I think Mr Caldicott has indicated from a first hand example how some of the references appear to be a very broad fishing expedition, and I think there is need for clarification in terms of scope and I think the nature of the applicability of the reference to actual or possible criminal offences.

Again, Mr Gray this morning gave you fairly fulsome evidence in terms of the distinction that is sometimes made between an actual offence that may have been committed and the prevention of one that might be committed. Now, again, I think we would share his comments to you that there needs to be clarification. Maybe there needs to be some distinctions made between when the NCA is acting on something that has happened a la the bombing, or a la many of the other things that one could point to, as distinct from working on something which they anticipate is about to happen or which they have good cause to believe is in the offing. I think there are a number of areas within those sorts of things that certainly a sharper focus is needed without us putting a particular point of view as to what direction that should take.

**CHAIR**—Mr Pfeiffer, I do not know whether you wanted to add anything. I think the question was probably answered about the possible abuse of trust accounts. I took it what was said was that there had not been any instances of misuse identified of trust accounts being used for money laundering or concealment or the application of the proceeds of crime. Is that right?

**Mr Pfeiffer**—That is correct. From where I work as an inspector and also from the work of the independent auditors that I see, there has been no specific example certainly at this stage brought to surface. I would not necessarily say that is going to be the case forever and a day, but certainly there has been no history or past experiences of that occurring or happening.



**CHAIR**—What type of sanctions would apply if there was a case identified?

**Dr Fitzgerald**—That would be a contravention of the Legal Practitioners Act professional conduct rules and that person would almost certainly be struck off.

**Mr Caldicott**—And he would be prosecuted under our Summary Offences Act and also under the Cash Transactions Act, so there is a whole series of penalties that are applicable.

**CHAIR**—Is there anything that you would like to add?

**Dr Fitzgerald**—Maybe I can ask a Dorothy Dixier of my colleagues, having listened to some of your questions—and I have not discussed it with either of them. It is the question of the extent of the NCA resources. I know that Mr Filing has certainly been concerned about that during examination of other witnesses: do you have any impression as to what the current situation is in relation to NCA activity in South Australia and whether it is at, above, or below an appropriate level?

**CHAIR**—A very good question that one.

**Mr Caldicott**—Anecdotally, I can say it appears that the members of the NCA complain that they do not have enough persons. They say that they have got too much work to do and not enough time to do it. Again I simply do not know because we simply do not know what they are doing, other than it appears to be the case that if you are going to have a body such as the NCA you should have it adequately funded and financed and have an adequate standard of personnel. If you cannot do those things, then I think it is more of a problem to have it underresourced, underfunded and undermanned.

**Mr FILING**—Do you mean that might cause them to cut corners?

**Mr Caldicott**—Yes, corners will be cut, investigations compromised, they may not investigate a matter fully enough and thereby reach a conclusion that there is an innocent explanation for it; so they could go off without a proper investigation and an innocent person may be charged as a result of it. And charges dropped eventually.

**Mr FILING**—Perhaps your panel might answer the question: have you ever come across any law enforcement officer who has been happy with their resources?

**Mr Ey**—No, but following on from what Mr Caldicott said, anecdotally again, it appears from my information that the NCA is grossly understaffed and underresourced and therefore is not really achieving what possibly it was set out to look to achieve.

**CHAIR**—Any other questions, Dr Fitzgerald?

**Mr Fitzgerald**—No thank you Mr Chairman. I knew you were busting to ask that one.

**Mr Ey**—In relation to the money laundering: with the investigations and inquiries that the Law Society do carry out, I would have thought it would come to light very quickly if money laundering was taking place. We are, as a profession, required to explain the most minuscule things and sometimes as practitioners it gets up our nose a bit because they require explanations about very small things and if money laundering were taking place then I think the Law Society would very quickly pick it up.

**CHAIR**—But fraud is a different thing. The answer would be different in respect of cases of fraud, because they are not uncommon.

**Mr Ey**—But they ultimately do get picked up and anecdotally again we know of a number of lawyers who have been done for fraud but that is because you cannot continue to hide it indefinitely and processes will throw up these fraudulent activities in due course.

**Mr FILING**—Who has conducted the hearings in Adelaide for the NCA with your experience Craig?

**Mr Caldicott**—Mr Malcolm Gray who was here earlier and Mr Melick. They have been the only two that I know.

**Mr FILING**—The only two here?

**Mr Caldicott**—Yes.

**CHAIR**—Gentlemen, thank you very much for your time today, we appreciate it very much. I declare the public hearing closed.

**Committee adjourned at 3.38 p.m.**