



**COMMONWEALTH OF AUSTRALIA**

# **JOINT COMMITTEE**

**on**

**THE NATIONAL CRIME AUTHORITY**

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

**CANBERRA**

**Monday, 16 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.

**WITNESSES**

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JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

*Evaluation of the National Crime Authority*

CANBERRA

Monday, 16 June 1997

Present

Mr Bradford (Chair)

Senator Conroy

Mr Truss

Senator Gibbs

Mrs West

Senator McGauran

The committee met at 9.09 a.m.

Mr Bradford took the chair.

**McLEOD, Mr Ronald Neville, Inspector-General of Intelligence and Security, c/- Prime Minister's Department, Canberra, Australian Capital Territory**

**CHAIR**—I declare the meeting open. Welcome, Mr McLeod. Before inviting you to make an opening statement I am required to state that if, during the hearing, you consider the information you might wish to give or a comment requested by committee members to be of a confidential or private nature, you can make application for that information or comment to be given in camera, and the committee will consider your request. I 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 and that, as a government official, you will not be expected to comment on matters of government policy. You are welcome to proceed with an opening statement.

**Mr McLeod**—To get the ball rolling, I might just speak very briefly about my office, how it came into being and what the primary role of the office is, to help give context to this morning's proceedings. This year is the 10th anniversary of the existence of my office. The office arose from a recommendation that was made in the second Hope royal commission into Australia's intelligence and security community, back in 1982. I think that in 1982, when the Hope royal commission was under way, there was a general atmosphere that there was the need for the intelligence and security community to be exposed to a better range of accountability mechanisms. That desire was given some impetus when, in the course of the royal commission, as you might recall, there was a raid by ASIS as part of a training exercise involving the Sheraton Hotel in Melbourne, which attracted quite a degree of public attention at the time.

**CHAIR**—That was notorious.

**Mr McLeod**—I think that particular incident only reinforced the feeling at the time that the security and intelligence community needed to be placed under a more effective accountability framework. One of the ways in which that was done was to establish my office. The government accepted the recommendation of the Hope royal commission and in 1987 my office first came into being with the passage of the Inspector-General of Intelligence and Security Act. Under that act, I am an independent statutory office holder. I am appointed for a three-year term. I am appointed on the decision of the government of the day, but under the act the Prime Minister is required to consult with the Leader of the Opposition before the appointment is made. There is a sense of bipartisanship associated with the appointment to this office.

My formal role is to ensure that the five security and intelligence agencies are acting legally, acting with a full sense of propriety, complying with government directives and guidelines and that, in their day-to-day activities, they are fully respecting human rights. I basically do that in two ways. The first way is by dealing with public complaints, which I receive from time to time from people who feel that their interests or rights have been adversely affected in some way by the agencies. I deal with those complaints and I

may conduct formal inquiries or deal with them to finality in a preliminary way.

I also have a responsibility to monitor the day-to-day activities of the agencies, so that I can become familiar with the workings of the agencies and how they go about their business. In that way, I am able to make reports to the appropriate ministers and to the parliament in my annual report, attesting to the manner in which the agencies are going about their business.

I was described by Mr Justice Hope as an independent watchdog who—in his words—‘would bring the agencies to book if they were misbehaving and reassure the public if public fears that they were misbehaving are misplaced’. I guess there are two arms in the role of the office: to ensure that the agencies are doing the right thing and to be able to give independent advice to the government from time to time to that effect, but also to provide that wider level of public reassurance that the intelligence and security community is going about its business in an appropriate fashion.

**CHAIR**—Thank you. Mr McLeod, you sound like the perfect one to take on the same role in respect of the NCA.

**Mrs WEST**—Absolutely. Do we need an NCA?

**CHAIR**—Hang on, before we get to that: you are, aren't you?

**Mr McLeod**—You would recall that there was the proposal which was earlier put to the parliament that there be a dual appointment of the Inspector-General of Intelligence and Security as an inspector-general for the National Crime Authority also. I think the earlier bill was very much modelled on legislation which currently applies to my current office. I think the aim of the body at that time was very similar to the type of role that my body plays, albeit in relation to the National Crime Authority rather than the intelligence and security community. But that bill—for reasons that I am sure you are aware of—failed to go through the parliament.

**CHAIR**—But that was the intention then. Now, of course, as you know, you have had some input into the ALRC's considerations. What has changed? Why do we need to form a whole new bureaucracy in this NIIC when we have you ideally placed to take on the role?

**Mr McLeod**—Against the background that the previous attempt to expand my role failed in the parliament, the Law Reform Commission inquiry, I think, was a means of opening the whole issue up again to see whether there might be another model that could be developed and that might have bipartisan support in the parliament.

The earlier proposal had dealt only with the National Crime Authority. When the Law Reform Commission received its reference, it had already had a separate reference to

deal with the complaint handling mechanisms in connection with the Australian Federal Police, so its inquiry really rolled two separate references together and the Law Reform Commission was perhaps conscious that there was not a great deal of support originally for a freestanding body to deal just with the NCA. I think your committee earlier had expressed the view that the workload, if a separate body was established just to look at the NCA, was probably too small to make that a viable body.

Given that the approach of using my office had failed, the Law Reform Commission's focus was to look for another alternative, and I think it latched onto the idea that if there were a separate new body to deal both with the National Crime Authority and the Australian Federal Police, with that additional workload that would come from dealing with two bodies it might create a critical mass, so to speak, in having a new body established to deal with both the Federal Police and the National Crime Authority.

I was invited to give evidence to that inquiry, and it was clear to me what the direction of thinking in the Law Reform Commission was at the time. It seemed to me that in an ideal world there was something of a case that could be made to establish a new freestanding body to deal with both the National Crime Authority and the Australian Federal Police. I lent my support to that proposal at the time.

As it has transpired, the idea of establishing a new body to deal just with the two law enforcement agencies appears not to have found a lot of favour. While the government's position on that is yet to be announced, I think it is clear from my knowledge of some of the discussions going on within government that there is not a great deal of support for that view.

I think we are looking at a situation where, if the National Crime Authority is to have a body looking at complaints lodged against that organisation, we have really got to look at an existing body to see whether there is a body that could most satisfactorily, with some adjustment to its charter, pick up that role.

I think the two obvious choices are my office or the Commonwealth Ombudsman. And if we are looking at the issue in a more limited context, I think my view would be that my office is a more appropriate body to be dealing with the National Crime Authority than I believe is the case with the Commonwealth Ombudsman. And I think it really reopens the same arguments and the same sort of case as existed three or four years ago when the earlier bill went before the parliament.

**CHAIR**—We are putting the AFP aside, dealing with the NCA. You are saying that your office would not be interested obviously or able to be taking on complaints against the AFP—that someone else would have to do that?

**Mr McLeod**—With the police area, the Australian Federal Police, the Ombudsman already has a role in relation to the Australian police. With that body I think you have got

a mixture of functions. You have got activities that the Federal Police are engaged in which are genuinely national in character, but you have also got substantial activities which are more in the nature of community policing, particularly here in the ACT. The model—well, not so much the model but the arrangement—that has been in place now for some time, of the ombudsman overseeing the complaints that are lodged in relation to the Federal Police, is essentially overseeing complaints concerning community policing, and I think there is a much better case that can be made, that that sort of activity is more appropriate to a body like an ombudsman.

It then becomes a question of judging whether it is feasible or practicable to split the jurisdiction for the handling of complaints in relation to the AFP between community policing type complaints at one end of the spectrum and those perhaps more significant national responsibilities that the Federal Police conduct, which may be more akin to the work of the National Crime Authority. But I think there are questions of practicality there as to whether you would think it sensible to have two separate bodies dealing with the same organisation for different types of complaints, which might not always be as clear as that distinction would suggest.

More recently there has been a separate inquiry into the Australian Federal Police, leading to the Harrison report. From the Attorney-General's press release I understand that there are some recommendations in that report which suggest that at least Mr Harrison favoured strengthening the ombudsman's role in handling complaints concerning the Australian Federal Police. That is another strand, if you like, that the government will need to consider in relation to the police. So there is at least the possibility that, if those recommendations are adopted, it really leaves the question to be resolved as to how complaints in connection with the National Crime Authority should be dealt with.

**Mrs WEST**—How long have you been Inspector-General?

**Mr McLeod**—Two years.

**Mrs WEST**—So you have had about three or four inspector-generals from 1987?

**Mr McLeod**—I am the third.

**Mrs WEST**—What relationships do you have with the NCA? How have they been?

**Mr McLeod**—I do not have any formal relations with the NCA, because the intelligence and security area really does not touch the activities of the National Crime Authority. I do know John Broome and, given the possibility that my office may be given responsibility for the National Crime Authority, in recent months I have had discussions with John about the nature of the complaints work that has been generated in connection in his organisation, and we have discussed the pros and cons of whether my office ought to pick up this role or whether there may be arguments in favour of another body carrying



out that role.

The contact has been more of an informal nature in helping me and John understand each other and in helping us to firm up on our own thinking on whether or not my office might be an appropriate body to deal with complaints.

**Mrs WEST**—Do you have any special powers or special privileges for your office, like the NCA?

**Mr McLeod**—Yes, under my legislation I have the full array of royal commissioner powers. So, in effect, I am a standing royal commissioner. I have the normal royal commission powers to require people to appear before me to give evidence. I can take evidence on oath. I have got full access to all of the papers, the people and the records of the intelligence and security community. In terms of the powers that one would want in a complaint body dealing with the NCA, it would really be a mirror image of the powers that I have already in my act.

**Mrs WEST**—Are you concerned over the special powers the NCA have?

**Mr McLeod**—Looking at the National Crime Authority, I am not concerned in the sense that governments have seen fit to invest bodies like the NCA with very powerful coercive powers. But that is also true in the intelligence and security community, where a body like ASIO, for example, has got substantial special powers that are not available to most other agencies of government—powers that people would normally regard as potentially representing substantial invasions of the privacy of individuals.

Those powers exist because they are judged to be important for the purposes of good government, and I think the law enforcement area is somewhat akin to the intelligence and security area in the sense that law enforcement bodies have very strong coercive powers which the community is prepared to allow them to exercise within a framework because of the importance of those powers in carrying out a law enforcement activity.

But I think that in the law enforcement area, like the intelligence area, there is a strong argument that there does need to be an appropriate set of accountability arrangements to ensure that a government body which does have these very powerful responsibilities, which potentially could be abused, in fact carries out its responsibilities with proper regard to the exercise of those powers and where an external body is seen to be overseeing the way in which those powers are exercised. From my point of view, that is part of an appropriate check and balance on a body that does have powers which, in other respects, could be seen to be very coercive. That is perhaps good reason why the absence of a body overseeing the way in which the NCA carries out its business is clearly a serious gap in the accountability framework that exists at the moment.

**CHAIR**—There was a suggestion that we might get access to the Harrison Report. There being no objections by the committee, we will write to the Attorney-General and request a copy of that report.

**Mrs WEST**—How many people are involved in your office?

**Mr McLeod**—I have five people who assist me. The staffing in the office has fluctuated over time according to the immediate demands in the office. I have had up to 12 staff, but five is about the core level of staff. I do not have a big office, but that is sufficient to enable me to deal with the matters that arise in the security and intelligence community.

Perhaps one of the points worth noting is that in a small office like mine, where the volume of complaints is not large but where some of those complaints often involve quite sensitive issues, it is normal that major inquiries are conducted personally by the Inspector-General himself so that there is that personal involvement in all of the serious matters that come to the office's attention.

With a body that has a much broader charter, where matters are being dealt with across a very broad front, it is probably not possible to be giving the same degree of personal attention to all major inquiries as is given with a small office where the expectation of the workload is not going to be particularly high. As I understand it, the number of complaints that the NCA has had lodged against it since its inception, while some of them no doubt are quite complex, are not particularly large in number.

**CHAIR**—Just before I go to Senator Conroy: that does, I suppose, raise the question that some of the complaints against the NCA that this committee has become involved in have been complex. In fact, some of the complainants appear to not want to take no for an answer, at least until somebody finds in their favour. But you have the powers of royal commissioner?

**Mr McLeod**—Yes.

**CHAIR**—I guess that would probably be the answer—for one or two of the complainants who essentially are asking for a royal commission. In fact, in the case of Mr Skrijel, for instance, the investigation by Mr Quick QC recommended a royal commission. The government of the day did not take that attitude; they referred it to the police ombudsman in Victoria. But you could possibly resolve that issue.

**Mr McLeod**—I think the existence of an office like mine is better than having either an ad hoc royal commission or appointing in an ad hoc way a special investigator, because the fact that the office exists provides access to a person who is concerned about the activities of a particular agency. So there is free access.

It also provides an immediate mechanism for the complaint to be looked at to see whether, *prima facie*, it does warrant serious attention. Often, I think complaints that do not warrant substantial inquiry can be dealt with much more informally through a standing mechanism, whereas they tend to sit and await attention if there is not a recognised mechanism already in place. Until some matters are looked at, it is often unclear whether or not there is any substance in them and they do require some kind of preliminary investigation to be able to sift the grain from the chaff.

**CHAIR**—Sure.

**Senator CONROY**—Just on a point of information, the National Crime Authority Amendment Bill (No. 2) 1992—the one that was laid aside in the end—talks about establishing an office of inspector-general of the National Crime Authority. Was that separate from you, or did that just put the National Crime Authority inside your—

**Mr McLeod**—I think that really goes back to the nature of the earlier bill. The intent was that there would be a separate office of inspector-general of the National Crime Authority, but the government's intention at the time was that there would be a dual appointment of one person who would be both Inspector-General of the National Crime Authority and Inspector-General of Intelligence and Security. There would be close commonality of the powers expressed, I think, in the National Crime Authority Act. I think it was an amendment to the National Crime Authority Act, so there would be a kind of mirror image expression of very similar or the same powers and responsibilities.

**Senator CONROY**—As I am relatively new to parliament and I think Mrs West is as well, could you outline what happened in the past. You said, 'You would know the arguments of what went wrong back then.' I actually do not. I was wondering if you could give a very quick summary of it.

**Mr McLeod**—I was not Inspector-General at the time, but as I understand it, there was bipartisan support between the then government and the then opposition about the creation of the Inspector-General's office. I think that was also an adoption of previous recommendations of this committee. The bill was passed by the House of Representatives, but in the Senate a disagreement emerged between the government and the opposition over the question of whether this committee should have access to operational information within the NCA. The Attorney-General at the time, Mr Duffy, was not prepared to concede on that point and the opposition then withdrew its support for the bill. The bill, in effect, lapsed. As I understand it, there was not any—

**Senator CONROY**—It sounds like an ongoing position.

**Mr McLeod**—Yes.

**CHAIR**—I think there is more likely to be agreement on that issue now than there

was then, frankly.

**Mr McLeod**—As I understand it, there was no disagreement or debate between the parties over the Inspector-General. But because that matter was in the same bill, it suffered the same fate.

**Mr TRUSS**—I would like to explore a little bit more about the way in which your office works. You mentioned that you have five staff. About how many complaints a year do you normally get?

**Mr McLeod**—It varies from year to year, but we would get between 15 and 25 complaints a year.

**Mr TRUSS**—About how many of those raise issues of substance? I can recall, for instance, as a member, coming to you about a complaint from a constituent which, frankly, did not have any substance, so I suspect there may be others like that.

**Mr McLeod**—Yes. The bulk of them, in fact, have little substance. I go into a preliminary inquiry mode with all complaints but, with the bulk, after a preliminary investigation I am generally able to conclude that there is not anything of substance being raised and those complainants get a substantive response. The matter does not go beyond that. In a small number of cases—in most years maybe of the order of three or four cases—the issues, after preliminary investigation, clearly warrant more detailed investigation. I then go into formal inquiry mode and I conduct a formal inquiry into those complaints.

**Mr TRUSS**—In camera always?

**Mr McLeod**—Yes, they are always in camera. My act does have quite a powerful secrecy provision in it which provides protection to witnesses who appear before me. The material that they present to me will not be used against them in other proceedings. That is an encouragement to people to be open and frank.

**Mr TRUSS**—Are the complaints generally about the conduct of individual officers or about breaches of national security?

**Mr McLeod**—In a general sense they are always about the actions of people, because organisations are only aggregations of individuals. But to get the sense of what I think the question is about, the bulk of the complaints that I get do not deal so much with the actions of individuals that might give rise to questions about whether the individuals have conducted themselves properly, but rather with the significance of the way the individuals have acted on behalf of the agency. The more significant ones really raise questions about whether the agents of the agency have properly pursued the interests of the agency in a legitimate and proper fashion.

**Mr TRUSS**—Which may be a little different from some of the complaints that might come about the NCA.

**Mr McLeod**—Yes.

**Mr TRUSS**—What sort of staff do you have? You have got five staff. Do they have an investigative background or a clerical background or an administrative background?

**Mr McLeod**—Over the time I have been in the office there have been some staff changes. I have had legally qualified people, people who have had experience dealing with citizens' complaints in bodies like the human rights commission and the Commonwealth Ombudsman, people who have had experience working in policy areas of departments, who are familiar with policy in the intelligence and security area and people with good investigative skills—not necessarily in the intelligence area but which lend themselves to being used very effectively, once they understand the nature of the work environment. So I have had a mixed group of people.

**Mr TRUSS**—Do you have any staff on secondment from ASIO?

**Mr McLeod**—Not at the moment. On occasions, the office has had people working with them from the agencies. But, as a generalisation, the people have tended to be drawn from elsewhere in government than the agencies themselves. In some ways that is important in reinforcing the sense of objectivity and disinterestedness which needs to underlie the work of a body like mine.

**Mr TRUSS**—There is a parliamentary committee with a role in regard to ASIO.

**Mr McLeod**—Yes.

**Mr TRUSS**—What is your relationship, if any, with that committee?

**Mr McLeod**—I have had only informal relationships with that committee in the time that I have been in office. It has not had any substantial inquiries under way in the last two years that might have warranted my being invited to appear before the committee. If it was pursuing a matter that warranted seeking evidence from my office, no doubt I would be obliged to attend and give evidence.

**Mr TRUSS**—But you do not report to them in any way?

**Mr McLeod**—I do not report to them in any sense at all. As another example, members might recall that, following the commission of inquiry into ASIS, which reported two years ago, there were recommendations that went to the previous government—and which have been reconsidered by the current government. One of the recommendations

made by that commission of inquiry was that there be a parliamentary committee established to oversight the activities of ASIS. Part of the proposal for that committee was that my office would have a formal relationship with that committee, in the sense that I would be there to assist the committee. That was going to be part of the terms of reference of that committee. The thinking in that case was that, if a parliamentary committee is set up to deal with a particular area of government which the Inspector-General has a role in relation to overseeing, there ought to be some formalised link between the Inspector-General and the parliamentary committee, even though the Inspector-General's primary obligation is to report to the ministers responsible for the different agencies.

**Mr TRUSS**—If we were to try and envisage a situation where you or your office had a role with the National Crime Authority, bearing in mind that this committee also has some kind of function to deal with complaints—although most of the evidence coming to the committee suggests that we do not do that very well—would you envisage this committee ceding its role in investigating complaints to an office such as your own, or would there be a way the two powers could coexist?

**Mr McLeod**—It is not a matter that I have given a lot of thought to. My initial reaction would be that if you have a statutory body like mine with the formal role to deal with complaints lodged in respect of the NCA, I think it would make good sense for that body to be seen as the normal body that should receive complaints and investigate them in the first instance. The need for a parliamentary committee to be a complaint handling body I think would tend to diminish with the existence of a body like that. If a body did exist of that kind, it would make sense to me for there to be some formal relationship between that complaint handling body and your committee, so that at the parliamentary level there was some capacity to understand and appreciate the nature of issues coming before the complaints body and provide some sort of backdrop to the way in which the community is reacting to this organisation as part of your broader interest in that body.

**Mr TRUSS**—You have, as you have mentioned, substantial obligations to secrecy. Do you think that same level of secrecy would be required in dealing with complaints in relation to the National Crime Authority, particularly bearing in mind that some of those complaints could come from very high profile public figures involved in cases or actions which receive a lot of media attention?

**Mr McLeod**—Again, I have not thought about that in fine detail. I do not really see any difficulty in encouraging a high level of secrecy in the manner in which evidence is presented to an inspector-general. If people appearing before the Inspector-General for their own purposes go public in relation to their own complaint, I do not think the secrecy provisions were ever designed to try and limit that capacity. I think what they are really intended to do is, first of all, to place a heavy obligation on me and my staff to deal with sensitive material and to respect its confidentiality; and, at the same time, to provide some people with an assurance that if they have concerns about an important agency of

government with coercive powers which they may be reluctant to pursue in other avenues or pursue publicly, they have a means of speaking openly and frankly with an agency of government which has then got some capacity to examine them and to pursue those matters while providing necessary protection to the witness.

**Mr TRUSS**—However, if you were dealing with a case, in your current office, where the person making the complaint was in the newspapers every day, and perhaps even publicly criticising the way in which you were carrying out your investigatory role, do you still have an obligation to remain secret? In which case, somebody could destroy your office by making public allegations that you could not respond to.

**Mr McLeod**—It is a little bit hard to answer that in a generalisation. The office did deal with a sensitive matter a year or so ago where a person working with ASIO, who was suspected of being a KGB agent, was charged with a number of offences. Some of those charges were withdrawn before the matter finally went to court, but the person concerned admitted guilt in relation to some other matters. There was something of a public campaign associated with that case seeking to criticise ASIO for what purported to be a degree of victimisation of this person. I had conducted an inquiry and completed my investigations into that matter and I felt that the way in which the media were dealing with that matter was unfair in relation to the reputation of ASIO. I went public and made a statement which sought to simply put before the public the facts of the outcome of my inquiry—not the confidential nature of the material that I dealt with—as a means of trying to ensure that there was a balanced understanding in the community as to the facts of the matter.

I use that as an example of circumstances where, if a body like mine exists partly to give public reassurance that the agencies that have these coercive powers are applying them properly in the community's interests, I think that it is often better for the community to hear from some independent body an expression of view that the agency is, in fact, doing the right thing. Perhaps, there is a more sceptical community out there that would be less convinced if the agency itself simply made some exhortation of their innocence, if you like.

**Mr TRUSS**—Finally, on that same issue: in light of the fact that you report only to ministers, as I understand it, and those reports are never made public, how is there an assurance in the community that ministers are not failing to act on your important recommendations, or that matters have been properly and reasonably dealt with?

**Mr McLeod**—My individual reports to ministers are not published as a matter of course, though occasionally they have been. I do produce an annual report and it is my practice to deal in summary fashion with the major complaints that I have dealt with during the year, unless there are overwhelming national interest considerations that would suggest that I not make—even in an abbreviated form—any reference to some of those matters. So, through that public annual report which is tabled in the parliament, I think

that there is a measure of reassurance for the community at large. I also include value judgments in that report about my assessment of how the agencies are carrying out their work. I would hope that that carries with it some strength with the community in accepting how I have assessed the agencies.

It is true that I also produce a secret report which goes to the Prime Minister and to the Leader of the Opposition. So while the point you raised was more in connection with the public, I think that as far as the parliament is concerned, at least through the major parties, there is some capacity for both sides of parliament to have access even to the secret report to provide that level of reassurance, if it is needed, that things are not being withheld by a government simply because they are embarrassing or uncomfortable.

**CHAIR**—Thank you. Let me follow up a couple of things in that line of questioning. Some of the aggrieved people that have appeared before us have talked about compensation, and so on. Are you able to recommend or award an ex gratia payment, or compensation, or something, where someone has been wronged and there has been financial harm caused?

**Mr McLeod**—I do not at the moment. I do have the capacity to recommend compensation, and I and my predecessors have in a relatively small, but not unimportant, number of cases.

**Senator CONROY**—Of the order of \$200 million?

**Mr McLeod**—Not quite that high, Senator.

**CHAIR**—Do you recommend amounts, or just the general concept of compensation?

**Mr McLeod**—No. Up to this point I merely recommend that compensation be payable and it is then left to the lawyers of the Commonwealth and the parties concerned to sort out how that matter is resolved. But again, arising out of the commission of inquiry into ASIS, the previous government and the current government have accepted that there will be amendments to my act put forward in the future which will give me the power to actually determine the amount of compensation. From my point of view that would be an improvement in the sense that, having conducted a major inquiry and having reached a view on the extent to which a person has been disadvantaged, in reporting to the minister I would assert that there is no better person in a position to express a value judgment as to the degree of compensation that ought to be awarded. If my office had the power to actually determine that, in the cases that I am aware of, it would have obviated a lot of difficult legal disputation between the parties and often a lengthy period of time before those matters are finally resolved, which I think would not be the case if there were a determinative conclusion reached by my office.



**CHAIR**—Would that apply in a situation where someone had been found not guilty as a result of a trial? Would they then have the capacity to come to you and complain on that issue, that in the case of the NCA it had acted improperly and caused them loss, and ask you to make an assessment on that issue alone?

**Mr McLeod**—If one assumed that the NCA legislation was similar to my current legislation, a person would have the capacity at the moment to lodge a complaint with my office as to that person's position following the sort of circumstances that you mentioned. Whether I would believe there is a case for the award of some compensation would depend very much on the particular circumstances.

**CHAIR**—But if you were empowered, then you would be able to investigate that because the complaint essentially would have been against the authority and the way it investigated the matter. I am not talking about a particularly high profile matter here but, in general terms, that people had been made to run the gauntlet of the press, or something—those sorts of complaints—and their names had been besmirched in that way.

**Mr McLeod**—I am saying that, potentially, that capacity would exist. I am not saying that I would, or I would not recommend, but I think that there would have to be some basis in terms of there being established some degree of impropriety in the way in which the organisation had dealt with the person that may have given rise to the individual feeling substantially disadvantaged.

**CHAIR**—What about the situation where the matter was actually before the courts and you got a complaint along the same lines? What sort of scenario would exist then?

**Mr McLeod**—I think that you are really pushing me into an area where I would be reluctant to give a generalised answer. I think the particular circumstances really would determine the basis for whether some compensation was warranted.

**CHAIR**—No. It is not the question of compensation; it is the question for a role for the Inspector-General, if you had the capacity. We will leave that aside.

**Senator CONROY**—In overseas—rather than Australian—experience have there been cases where individuals have tried to use the appeals mechanism to a supervisory body as a stall?

**Mr McLeod**—Yes.

**Senator CONROY**—Is that something that is common overseas?

**Mr McLeod**—I am sure that does occur, no question about that. Just from my general knowledge over many years of public administration, it is not uncommon—where citizens have a range of review mechanisms available to them—for people to seek a stay

of execution by pursuing the review avenues that are available to them. That is a legitimate and proper exercise of their democratic rights, and that in itself is one of the inevitable consequences of providing certain rights to citizens in a situation where they may not have existed previously. That is not to say that you do not have mechanisms in place that can deal with these things expeditiously and, thereby, seek to try and negate the benefits that people—merely through some delay—might be seeking.

**CHAIR**—I would like to clarify the earlier model of the Inspector-General having a role in handling complaints. The NCA gets complaints against itself that do not come to this committee. One question—this is to some extent hypothetical—would be: in what situation would they be required to refer them to you? This committee gets complaints. If the change to involve you was to occur, you have acknowledged that there would be a joint role and this committee would look at a complaint and determine that it went to you. I assume that you were saying that you would then see some possibility of coming back to this committee at some point in time.

Some people are confident that this committee ought to handle complaints. It is, after all, a committee of elected representatives, and they have faith in the parliamentary committee system. In theory, there is no reason why this committee should not do it. In practice, the problem has been resources and the time members of parliament have to devote to complex complaints. You would basically do all of that side of it, but people would still like to see a role for this committee in looking at or being involved in the matter ultimately. There are a lot of questions yet to be answered there, are there not?

**Mr McLeod**—Yes.

**Senator CONROY**—You would like us looking over your shoulder?

**Mr McLeod**—Again, I will draw an analogy from my own community. When my office was initially established, complaints were open-ended, in the sense that they could come from members of the public and also from staff members of the agencies themselves who were disaffected or concerned about some aspect of their employment. Over time, as complaints have come through my organisation, a number have given rise to recommendations that the agencies themselves have better machinery for the handling of internal employment related complaints. The intelligence agencies now have satisfactory machinery to deal with employment related complaints, such that my office rarely receives an employment related complaint now.

You might argue that a similar model should apply to the National Crime Authority—that the chief executive officer of the Crime Authority ought to be responsible for the normal discipline and maintenance of proper standards within his own organisation so far as his own staff are concerned. The only complication there is that perhaps the community sees law enforcement agencies as a little different to other agencies of government. In the community at large there may not be quite the same confidence that

law enforcement bodies should be seen to be dealing with their own complaints. We have seen that concern expressed in particular ways in different states.

I think the earlier bill had not envisaged that the Inspector-General would interfere with the way in which, if you like, internal disciplinary matters in relation to the staff of the NCA would be dealt with. Such people, particularly those who are on secondment from the state police forces, at the moment are dealt with through the disciplinary systems of the various states who are the owners of these people ultimately.

Whether or not that would be the model that would be supported if there were a new proposal is a matter for consideration and debate. Given that the National Crime Authority is a federal body, in the sense that it is made up by the cooperation of the Commonwealth and the states in putting it together and in staffing it, I think there would be particular state interests that probably need to be very carefully considered.

I am really hinting that I would not see an Inspector-General as a matter of course simply picking up all disciplinary matters or concerns that might affect the staff of the NCA. There would need to be some means by which the Inspector-General could come to an understanding with both the head of the NCA and the state concerned in how a particular matter should best be handled.

**CHAIR**—Okay.

**Mrs WEST**—I was just going to ask two very final questions. Do we need the NCA and, if so, why?

**Mr McLeod**—I think I will duck that one. In fairness, whether or not we need the NCA is a matter better debated in this building by the permanent occupants, rather than for me to be expressing a view about. Without saying anything about the NCA as such, I think there is no question that, when you look at trends in society, you see trends towards organised crime, towards serious corruption in some instances and towards an increased drug problem which is national in its character. I maintain reasonably close contact with the state police commissioners and I have over the last 12 months or so touched in discussion with them on matters relating to the NCA and my own office. Without exception, there is very strong support for some kind of national effort in combating crime as it is incapable of really being dealt with in its totality by separate state based police forces.

**Mrs WEST**—That question was based on the fact that we have 22 law enforcement agencies with a total of we do not know how many people who are involved in fighting organised crime in the community and we have noticed over the last 10 years or so that we are losing the war on crime. I merely ask whether we are duplicating jurisdictions and could we streamline them to become more efficient and more effective by distributing the powers to other bodies that are already in existence.

**CHAIR**—I think that has been answered. I will just check one thing with you for the record, which I need to be sure of. The ALRC report says in respect of your submission—we may have got someone else’s submission. Anyway the statement is made that the submission clearly points to the unsuitability of either the Inspector-General or the Ombudsman for the task of investigating complaints against the NCA. The remarks you have made this morning I think have clarified that. Have they done that to your satisfaction?

**Mr McLeod**—I hope they have to yours.

**CHAIR**—I think you have answered well.

**Mr McLeod**—I think I explained earlier that my views to the Law Reform Commission were in a particular context where it was clear to me that they were seeking a different model to what had been put up earlier and where, in an ideal world, if resources were not a problem, something of a case could be made to have a separate oversight body looking over the two Commonwealth law enforcement agencies: the AFP and the NCA. Clearly, that seems to be an option that, for different reasons, is not in favour at the moment.

In those circumstances, the submissions that I have put to you today have been in a context where a new body with a special purpose dealing with both those bodies does not seem to be finding favour. Essentially, my view is that a specialist body that can deal with a discrete area like the law enforcement area or the intelligence area, over time can develop an understanding, a level of expertise and a knowledge of how that particular industry works to be a more effective watchdog than a more generally based body like the ombudsman, whose charter really covers the whole breadth of government activity.

In an area like law enforcement and an area like security and intelligence, where of necessity a high level of secrecy must surround the way in which those bodies carry out their activities, there is a good case to be made for saying that you really do need a specialist oversight body that understands the different nature of work in these government agencies, rather than in the rest of government where, as a generality, the concept of open government prevails.

**CHAIR**—Mr McLeod, we would like to thank you. The evidence you have given has been extremely useful to us.

[10.19 a.m.]

**COLLINS, Mr Terry James, Secretary, Police Federation of Australia and New Zealand, Unit 2, 8th Floor, 157 Liverpool Street, Sydney, New South Wales**

**EATON, Mr Christopher John, National Secretary, Australian Federal Police Association, 40 Thesiger Court, Deakin, Australian Capital Territory**

**CHAIR**—Welcome. We have received your submissions and we have a standing resolution for publication. Is it the wish of the committee that the 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, if you would like to do so in support of your submission, I am required to say that, during the hearing, if you consider any information you might wish to give or comment requested by committee members to be 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 would remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading material, in particular. Would you now like to make some opening remarks?

**Mr Eaton**—Yes. I am the National Secretary of the Australian Federal Police Association. I also represent, with my colleague Mr Collins, the Police Federation of Australia and New Zealand. Thank you for the opportunity to address the committee.

This morning you received a copy of the AFPA written submission, and after I have given this address I will broadly summarise for you the pertinent points. Some observations on a recent crime of extortion against Arnott's Biscuits Ltd, extending into both the New South Wales and Queensland jurisdictions, could be of assistance to your deliberations. This was not the first attempt to extort money from real or threatened adulteration of food products in Australia. The even more recent Nestle extortion attempt confirms world vulnerability to this type of offence.

The general manager of Arnott's, when interviewed on the *Business Sunday* program a couple of weeks ago, made a point of mentioning the jurisdictional problems of conducting the extortion investigation in two states in Australia. Mr Roberts made the observation that, from his perspective, the jurisdictional barrier was a negative—or words to that effect. He commented on how, in his view, the investigation was not sufficiently 'seamless'. The Queensland police commissioner, interviewed on Mr Roberts's comments, disagreed while acknowledging that, in an ideal world, a single police response might work more efficiently. But he did, however, emphasis the 'might'.

I am certain that Mr Roberts was not criticising the performance of police in either state, but that he was making an important observation on jurisdictional boundaries in a sub-national law enforcement environment like Australia. In commerce he is probably more familiar with seamless and unhindered transactions, probably strategic analysis and planning implementation. The jurisdictional differences and required protocols between them are only a pinprick to global commerce but they are often a chain mail fence to law enforcement. Translate the minor intrusion of jurisdiction on lawful global commerce to transnational criminal activity and the chain mail fence becomes an almost impossible burden for law enforcement.

Quite frankly, this is the political law enforcement dilemma of the new millennium. And this committee is in a strong position to influence how it is approached in Australia.

There is persuasive argument for development of a seamless Australian law

enforcement approach that does not inherently rely on cross-jurisdictional cooperation, memoranda of understanding, coordination conferences and the like. These only serve, albeit with the best of intentions, to delay decision making and field action. These delays can be particularly debilitating to time-sensitive investigations.

However, the NCA does provide the rudiment for such a seamless vehicle. Its strength is in its total Australian legislative underpinning. Its weakness is in its restriction to terms of reference set within a political environment which are inherently limited in scope. While, to some extent, this has been overcome by the development of a menu of work, following the review of Commonwealth law enforcement arrangements in 1994, the real trigger for NCA action remains a political one.

I have no doubt that the IGC sets terms of reference only on the advice of the NCA itself and of police services. If that is the case why have politicians comprising the membership of the IGC at all, why not rely on the NCA and police commissioners to set its menu of work and thereby remove the potential for political partisanship and allegations of it?

The AFPA recommends to you that IGC membership be formally widened to include all Australian police commissioners, with a view to totally replacing political membership over time. This would simply be an acknowledgment of the existing practice, in any event. Additionally, in line with the long term strategic approach to the development of the NCA, terms of reference should be displaced as the determinative tool for its field work and more time-sensitive and flexible methods should replace it.

Of course, the NCA was not set up to concern itself with incidents of individual crime, albeit that they have actually received terms of reference on such matters in the past. The NCA was established in 1984 when it was determined that so-called organised crime was a serious threat to Australia and to Australians and that traditional police arrangements could not then cope. The focus was on organised crime. That was the problem then trumpeted politically that drove the creation of the NCA. It cannot and should not be used as a repository of either the political hot potato or political hardball. It both cheapens the objective of the organisation and unnecessarily endangers its viability.

In my view, in 1984 we got the answer right but for the wrong reasons. Of course, organised crime is a problem but is a constantly shifting and reshaping chameleon-like creature which takes advantage of disorganised law enforcement far more than it thrives on its own organising abilities. The problem is not so much organised crime as it is disorganised policing and disorganised jurisdictions.

A national multi-jurisdictional police service in Australia would be the answer but its achievement is a pipe dream. However, progressively breaking down jurisdictional limitations could achieve the same end. This could be commenced by increasing the mobility of police through all jurisdictions, encouraging common employment standards

and enacting common legislative prohibitions and authorities throughout Australia.

The resolution of these issues relies on parliamentary support, particularly Commonwealth parliamentary support. For instance, the greatest impediment to national mobility in policing is the existence of disparate superannuation schemes in Australia with restrictive portability arrangements. This parliament could lead in proposing necessary reforms which would benefit not only policing but allied agencies such as the NCA.

There are some people, including some politicians, who believe that cross-jurisdictional tension and even intra-jurisdictional competition law enforcement is a healthy thing, that it stimulates innovation and is a competitive counter to corruption. There is some concern at the concept of an all-encompassing single policing body, not simply because of the perceived extent of its power but because there is a view it might not investigate itself without an eye to self-preservation and self-interest. Such observations, in our view, are purely intuitive and academic. There is no empirical evidence to support them. There is however plenty of empirical evidence to the contrary.

Policing is the most fragmented, oversighted and singularly competitive public sector function in Australia. Without traversing the history, recent authoritative conclusions in New South Wales are that an integrity driven policing culture supplemented by a single focused external oversight mechanism is the answer; simple and uncomplicated, not convoluted and restrictive.

Extrapolating the contemporary realities of crime from its global gestation to its community impact, we can reach only one conclusion for policing. Unnecessary jurisdictional boundaries between these two extreme manifestations of crime significantly degrade law enforcement efficiency and effectiveness. This is a world problem, not only an Australian one.

The NCA in its politically limited way is a step in the right direction. Like all good ideas in action, mistakes are made and change is then required. For instance, it must be said that, unlike any other large law enforcement organisation in this country, the NCA is very much dependent on the attitude of its chairperson for its character and corporate style, although this was far more evident in its first 10 years than today. This was partly due to its then recent creation, the uncertainty of its actual business and the regular changes in personnel at the top and in the seconded police.

Tom Sherman consolidated what John Phillips started and John Broome now reaps: a stable and more balanced, multi-disciplined work force with an operational field focus that now commands wider police respect. It is the cooperative and conclusive spirit in the NCA that will sustain it for the future. While there are still some elements in the NCA who see themselves above this, they are now in the substantial minority and likely to wither further. We look forward to this committee adding further value to the NCA and its product and, in doing so, benefiting the entire matrix of Australian law enforcement



organisations.

Mr Chairman, I thought I might quickly refer to something in Mr McLeod's evidence earlier today: the reference to the Australian Law Reform Commission's recommendation on the establishment of an NIIC, a National Investigation and Integrity Commission, as I think it is.

The Australian Federal Police Association—which of course is representing the Australian Federal Police; we are covered by the Australian Ombudsman—had a view some months ago that it was an unnecessary complication to create a new agency focused in the way that was recommended. But I must confess that the current competition between the Ombudsman and that recommendation in the public arena has forced us to reassess our position, and to some extent now we are warming to the notion of an NIIC, the creation of a focused organisation.

I would have to say that the suggestion that the Inspector-General be the repository for complaints against the NCA has its roots in the suggestion that there is a secrecy provision in the act which makes it more allied to the security services. We just do not see an allied relationship with the security services and the NCA. The allied relationship is with policing and law enforcement, and that is an open, transparent and accountable provision, not a secrecy provision.

We have noticed that in America recently the Clinton administration in particular has tried to marry the CIA and the FBI more closely together, particularly as it competes with and combats drug crime in that country and internationally. Whilst that might be a useful tactic in the future, to try to separate the NCA from the policing profession in an accountability process with the Inspector-General would be a backward step.

**Senator CONROY**—Just prior to your arrival, Mr McLeod suggested that the Harrison report dealt with a number of these issues. He is on the public record as saying that he had made some examination of it and that he believed that the AFP was more appropriate, and the indications from the Harrison report were that the AFP should be with the Ombudsman. He indicated that that was the direction that the Harrison report seemed to be going. I do not know if that helps your last comment.

**Mr Eaton**—Unfortunately, of course, in the absence of the Harrison report how can we make a judgment?

**Senator CONROY**—Would you all like to see it?

**Mr Eaton**—The Harrison report has been itself kept secret. It might be for good operational reasons, but our real concern about that is it does not help public confidence or our internal member confidence. When you have an inquiry, albeit not a public inquiry, into a police organisation, we expect it to be transparent, open and accountable. We have

asked the Attorney-General for a copy of that report, and I would hope that at some stage in the future we would have, if not the full copy of the report, at least a report with the confidential operational material expunged from it. But I would like to see the report before we can make a comment about that, Senator Conroy. Would it be useful, Mr Chairman, if I briefly walked you through the submission, or is it okay the way it is?

**CHAIR**—We only just got it this morning, so maybe you could just take us very quickly through it because we have not had a chance to go through it.

**Mr Eaton**—Mr Collins will then no doubt want to speak on behalf of the Police Federation of Australia and New Zealand. We observe in our submission that the NCA brings several major advantages to law enforcement in Australia. The first, of course, is an Australia-wide legislative underpinning. Legislation that is identical in any Commonwealth jurisdiction is a very important asset that it contains. The second is operational access to coercive powers. And the third is a departure from traditional hierarchy of police organisations which are often themselves restrictive. The last advantage is multi-disciplinary and multi-jurisdictional task forces.

We make the observation later on that first page there are serious financial and political pressures on the NCA. This is not as much a reflection of the pain they are causing some politicians as it is of their serious limitations. They are too small and unconnected to a national policing strategy. Without either a global or a fully combined national focus, they are ultimately doomed to irrelevance—perhaps not in our time, but certainly in time.

We observe that there needs to be a coherent and connected national strategy for the natural hierarchy of Australian law enforcement. We have attached a figure there which attempts to extrapolate that. The NCA provides a real opportunity to meld jurisdictional interests and apply those interests more widely by the incremental change of its focus and its spread of work.

Perhaps a brief resume of the environment in which the NCA operates would be useful, and that is a basis on which we draw conclusions. We outline trans-national crime and our view of trans-national crime that it is the centre of all our international law enforcement interests and its most important interest is to the Australian Federal Police.

We go through some contemporary global realities, Mr Chairman. In those, we address theft and fraud, which we assess as being the major issue in the late 1990s in the world and also for Australia. We also mention that official corruption, which is another highly important issue for the 1990s and into the new millennium, is a direct cause of society's present cynicism about both public officials and public institutions.

We outline an extensive list of international political corruption but, as you know, this list is pretty well dated, particularly in Australia. Official corruption will be as

significant as theft, fraud and money laundering in a world policing focus. There is no doubt about that.

We then address the exploitation of humanity, which has two elements that we have in our submission. The first is the sexual abuse of under-age children, on which Australia has recently enacted a piece of long-arm legislation, extraterritorial legislation. Exploitation of children and sexual abuse of children will be a major and significant issue for the Australian Federal Police for the next 10 years.

We are noticing that in the Third World countries now there is a sensitivity to the exploitation of women, finally, and that will translate itself into a global focus, particularly from Australia.

On narcotics, we observe that there is a changing social emphasis, that there is a debate that is extant and will no doubt continue in relation to the law reform of drugs abuse. But we make the observation that no reform of drug abuse laws will reform the whole-of-life criminals who dominate the cultivation, harvesting, production and marketing of illicit narcotic products. They will simply adjust their strategies or product lines. It is a false premise to argue a saving in law enforcement costs associated with drug reform. These criminals, their organisations and their networks must remain law enforcement targets because, if unchecked, they will proliferate in many other ways.

We have indicated that the answer to the problems that we are identifying are essentially jurisdictional ones and that, if global crime and global social reformation are the problems, then global policing reflecting at least in part that global social reformation is the answer.

We make the conclusions progressively that, as governments of nation states become increasingly irrelevant globally and locally—and I do not think this is the place to debate that—as the greatest if not only motive for business, particular multinational business, is profit, and as the only motive for crime, particularly transnational crime, is the achievement of an illegal power-profit cycle and, with social commitment and responsibility in all its forms increasingly losing widespread significance, reformed globally policing may provide one of the only options for the maintenance of stable communities in large enough numbers to prevent serious problems in the future. The NCA forms part of that matrix.

The advantages the NCA brings to Australian policing should not be lost in the future. The NCA could—and I stress ‘could’—evolve in the following ways. The operation arm of the NCA could be developed as the precursor to a national criminal investigation resource where state, territory and federal police work on national trans-jurisdictional investigations—not merely investigations of so called organised crime delegated to it by politicians but those that need a timely and appropriate multi-jurisdictional approach in the interests of the entire Australian community. This could

include serial murders, serial rape, sexual abuse of children and fraud, for instance, where Australian jurisdictions are irrelevant to the commission of crime but a serious impediment to investigating them.

Secondly, the coercive powers arm of the organisations could be progressively transferred to selected judicial elements of all jurisdictions. Police and other law enforcement agencies could then access that coercive power, as managed by trained judges under warrant. The test could be the seriousness of the offence or the inability to finalise investigation using traditional, non-coercive methods.

Public interest should be an overriding factor, not the present reliance on political considerations, in NCA referrals. This would be a fundamental shift in general criminal law but on logically based criteria, not without its international precedence.

Thirdly, the non-police staff of the NCA could be attached to the Australian Federal Police, where they can influence a far larger and more widely tasked organisation with the positive elements of its structure and talents. There are also economies of scale in this approach.

Specifically on your terms of reference, Mr Chairman, we have addressed term of reference (1) broadly. On the second, the AFPA views the NCA as an efficient and effective body, limited only by the present approach of government to reducing its budget, which could see a significant shift in this observation of ours.

On your third term of reference, the IGC should be first supplemented by a formal inclusion of all Australian police commissioners and then ultimately replaced by a board of Australian police commissioners. The joint committee operates satisfactorily, albeit that some NCA chairpersons have ignored some of its past recommendations. The monitoring of the NCA by the joint committee should be uninhibited by the secret provisions of the NCA Act. We have no specific recommendations on amendments to the legislation.

**CHAIR**—Mr Collins, do you want to take us quickly through your submission?

**Mr Collins**—Yes, Mr Chairman. I will be brief so as not to repeat what Mr Eaton has said. Let me at the outset put my position in perspective. The police federation is the national representative body of police associations in every police jurisdiction in Australia. We have a collective membership of over 40,000. The AFPA is an affiliate of this body and we support the submission of the AFPA. The police federation made a submission to the 1990 joint committee, appeared at hearings in November 1990 and February 1991, and our submission now is on all fours with the submission then.

Very briefly put, it is this. Selective investigations by the NCA either duplicate existing police jurisdiction investigations and/or suffer from a lack of resources compared to those in the police jurisdictions. The NCA's special powers therefore are an inefficient

use of a valuable crime fighting tool. The special powers provided to the NCA should be an adjunct to police powers and utilised within the existing Australian jurisdictions.

The use of the NCA special powers in conjunction with existing police jurisdictional powers should not be restricted to organised crime. In our submission six years ago we dealt with the difficulties of definition of organised crime. Without repeating the proposal put by Mr Eaton on behalf of the AFPA, I should indicate that we support those.

As a background, I will simply provide on the record two comments by the President of the New South Wales Police Association, just to add the view of the states, who we represent. Mr Tunchon says:

While acknowledging the fine work of the NCA staff, I believe it is important to remember that for every additional law enforcement agency, substantial public funds are utilised to provide administrative and logistical resources.

Rather than compete between agencies for different references, or try to establish multiple working relationships, would the public of Australia not be better served by a simple model of state police and federal police.

Again, we, the police associations of Australia represented by the federation, support that submission by the AFPA.

At the joint committee hearing of February 1991, the federation was questioned by Senator Loosley on inter-jurisdictional industrial relations restrictions and by Mr Filing on nationally recognised standards for police qualifications and inter-jurisdictional transfers. Since then, considerable progress has been made regarding these matters. There is significant consensus on developing national professional standards for police in Australia, consensus both between police jurisdictions and with the police federation.

In October 1996, the police federation adopted a national strategy for the development of a police profession, involving the development of national common core competencies; the development of a national core training curriculum based on national competencies; the alignment of all police training courses and qualifications, allowing for police inter-jurisdictional recognition; the recognition by education institutions of common police qualifications, allowing for credit transfer across Australasia; the regulation and validation of police training by the police industry itself; an Australasian lateral and cross-jurisdictional entry system; a professional police registration board; and a professional police certificate to practise. The South West Pacific Regional Police Commissioners Conference of March 1996 agreed in principle to an Australasian lateral and cross-jurisdictional entry system.

Many of these proposals or goals have been achieved or are in the process of being achieved. There are national police common core competencies in existence for

operational, managerial, executive and supervisory duties. There is a national police recruit training curriculum being developed, based on those competencies. Specialist tasks are the subject of review, to be brought into line with national common core competencies. There is a National Police Education Standards Council, recognised by the Public Administration Industry Training Advisory Board—the government sponsored board—to assist industry training. That council will also be on the Public Safety-Industry Training Advisory Board.

The National Police Education Standards Council has established a course approvals committee, so that all police training, both within the jurisdictions and externally, will be accredited by this body. A register of all existing police training courses, both internal and external, is being compiled. The police federation is a member of this industry body. I am a director of the Public Administration Industry Training Advisory Board and will be a director of the Public Safety-Industry Training Advisory Board.

So the development of a national police profession and complementary standards are very much in place. The police federation is totally supportive of it; we have a policy supporting it and we are involved completely in all that I have said to you. The development of such professional standards and the resultant inter-jurisdictional mobility complements the proposals put by the AFPA and supported by the federation.

I believe the cross transfer of skills and expertise between jurisdictions, based on national competencies, identified by a nationally recognised certificate to practise, issued by a national professional police registration board and complemented by the reference of special NCA powers to the relevant police jurisdictions will provide a more effective response to major crime in Australia than occurs under the current relationship between the NCA and state, federal and territory police jurisdictions. Thank you, Mr Chairman. I am prepared to answer any questions.

**CHAIR**—Thank you both, Mr Eaton and Mr Collins. You have given us considerable food for thought there. I am reflecting, Mr Eaton, on what you said—please correct me if I am wrong—and the bottom line seems to be that the problem is not so much organised crime but disorganised policing. Is that a main theme?

**Mr Eaton**—It is a main theme, certainly, yes. Another is disorganised jurisdictions. To some extent police are prisoners of a jurisdiction which is essentially driving that disorganisation itself.

**CHAIR**—It is not the first time we have heard that but you have expressed it more succinctly than some other people have. You suggest, though, that the political input will be taken out of the reference process. The whole question of references is fundamental to our inquiry—as to what form they should take or whether they should in fact exist at all. I am a bit perplexed about your suggestion that the power effectively for providing references be actually given to the police commissioners. One of the main issues for us is

accountability of the NCA. That seems to be fundamentally important. The reference system is a major plank in the accountability mechanisms, in which this committee also has a role. Who do the public trust in this? Do they trust the police or the politicians or do they not trust any of us?

**Mr Eaton**—It is not to say that politicians do not have a role in supervising and/or providing the accountability mechanism for police. Currently you set a police agenda, if you like, or a menu of work through legislation. They are accountable through a variety of politically created mechanisms. In our case it is the Commonwealth Ombudsman. In the case of New South Wales it is the Police Integrity Commission. The recommendation of the Australian Law Reform Commission, which I have already referred to, is the NIIC.

Politicians always have a role in supervising the work of an organisation that is a political creation, such as policing. What I am saying is that the direct relationship between setting the work of the NCA is not replicated in the police industry. There is no police commissioner who receives a direct task from politicians. I am trying to remove the potential for politicians, the IGC, to be seen as making a political decision to refer a particular matter to the NCA. If it had a set legislative menu of work and therefore the operational consideration of—

**CHAIR**—Would the clear definition of organised crime be—

**Mr Eaton**—My argument is that organised crime is just too unclear, it has an indefinable character. What is organised crime today is not organised crime of yesterday or tomorrow. It changes. Therefore, you need to have those who are operationally contemporaneously active making those decisions. I am sure the IGC actually does that. I am sure the IGC police ministers or attorneys-general—whichever is set; in our case the Attorney-General—would rely on the advice of the NCA and the police commissioners before they set those terms of reference. I am saying, ‘Let the real practice be the reality.’ Politicians, of course, would then have the role of assessing the effectiveness, efficiency and accountability of the organisation in the normal process as they do with police organisations.

**CHAIR**—You seem to be concerned by some of Mr McLeod’s earlier suggestions about what his role could be in investigating complaints against the NCA. Why have you suddenly become alarmed about the prospect of the Ombudsman being involved in handling complaints against the AFP?

**Mr Eaton**—The term ‘alarmed’ is a misrepresentation of what I said. Let me say this: I am not concerned about what Mr McLeod said. It is an opinion that he gave and I heard only part of what he said anyway. I am referring, I suppose, to a previous report of this committee that suggested that the Inspector-General would be a proper repository of the complaints against the NCA. I am saying that that puts it akin to the security industry, not to the policing industry. If you want to replicate the industry in which it works or the

profession in which it works, it is the police profession. Mr McLeod is simply saying that he could adjust his organisation to meet the expectations of an accountability oversight of the NCA, no doubt referring to the recommendations of the Australian Law Reform Commission and your own committee some years ago.

Our concern about the Commonwealth Ombudsman is that it is not sufficiently focused. Its only real public persona is that it investigates the Australian Federal Police. It is seeking to investigate the NCA. This public furore which is occurring where the ombudsman, for the first time, is producing public documents on incomplete investigations, is of concern to my members. Our view is that you do not need secrecy but you do need confidentiality. You do not need to try people in the public for a political imperative.

In our view, Ms Smith, the Commonwealth Ombudsman, is doing her best to secure the existence of that organisation against the recommendation of the Australian Law Reform Commission for the creation of a more focused one. We have now reached a point in our own organisation's thinking, that perhaps a more focused organisation like the Police Integrity Commission of New South Wales and the Commonwealth sector is appropriate.

**CHAIR**—There is just one final question from me. You mentioned the USA model which is emerging, to some extent, with CIA and FBI functions, and yet your own report seems to indicate that organised crime is, in fact, not only an international problem, but a problem that really needs a national security focus. I would have thought that your own submission was a very good argument for giving it that focus, as much as for the suggestion that it should have a policing focus.

**Mr Eaton**—I think that you are mixing up the issues. Certainly, in the operational elements of the organisation there are a range of skills that the security industry have in the world which could be devoted to far more overt law enforcement activity. There is no doubt about that. That is what Clinton has recognised in America, and it is not the first administration to recognise that. Devoting some of the security and CIA resources, particularly electronic resources, to the collection of law enforcement information, is a very useful and cost effective use of government resources in this new world.

I am talking about oversight. When I refer to oversight, I do not necessarily refer to operational activity. In terms of oversight, there should be a greater narrowing of the NCA to the law enforcement profession than to the security profession. In terms of the security profession exercising some of its resources and skills in a law enforcement way, I support that. I do not see any conflict between the two positions.

**Mrs WEST**—Why has it taken so long? You had these submissions back in 1991-92. Have any of those recommendations been acted on?



**Mr Eaton**—Not to the best of my knowledge.

**Mrs WEST** - Why not? Can you give any reasons?

**Mr Eaton**—I wish I could. I think it becomes too hard in the end. The matrix of people who are directing the NCA and managing it—the Inter-Governmental Committee, your own committee, a series of management cultures that revolve around state police commissioners and the Australian Federal Police Commissioner—is such a mix-match that it enables the NCA, quite frankly, or the government, to avoid making a hard decision. No-one says that this is easy; to some extent, there is always going to be some fallout from making any decision. So I suppose that it is best not to make one but to let it simply evolve naturally. I do not think that we can afford the time for the NCA to evolve naturally; it has to be managed.

**Mrs WEST** - We have seen what has happened to crime over the last 14 years since the NCA has been established. It has not got any easier; it has got worse; we are losing the war. How do we, as a community, and your union, deal with the cultural corruption within the police force and among officers within the policing framework? How do you overcome such inconsistencies with policing within that culture? How would you deal with it?

**Mr Eaton**—The reason policing has a culture which is susceptible to corruption is primarily to do with its roots. Policing was designed off the back of a military model, which was power down but the field from bottom up. Accountability was downward and yet operationally it was upward—if that is not clear, I apologise. That in itself allowed the creation of cliques, of squads, and a group mentality to manifest itself. It did not have a corporate manifestation.

What the Australian Federal Police has done, for instance, is to break down the hierarchy of a traditional police organisation. To some extent, it has modelled itself on the NCA, which has a team environment with a management structure that is not so much concerned with operational activity but with operational management, operational design and political focus.

What policing has done and is doing, and the recent New South Wales royal commission has recommended similar things, is break down a hierarchical organisation which, to some extent, fosters cliques and groups that can become corrupt. The mere fact that we deal with criminality must mean there is some susceptibility to corruption.

We need to have two things. Firstly, we need a very open and transparent organisation that is regularly oversights and monitored by a specifically designated organisation like the Commonwealth Ombudsman. Secondly, you need to have an operational ethic, a culture, which rejects any criminality. There must be an integrity

driven culture. Policing is moving that way in Australia. Quite frankly, we are leading many nations in that. We do not need to be ashamed of our own development.

We have had a lot of navel gazing over the last 20 years in policing as a result of the recommendations in 1984 to create the NCA. I believe that the reason the NCA was created had nothing to do with creating a multi-jurisdictional force, it was because you did not have any confidence in police, and to say otherwise is simply avoiding reality. You were not confident the police could handle organised crime as it was growing in this country. I believe policing has changed significantly in the last 15 years to a point where we can have a far more transparent, open and accountable organisation, and with an integrity based operational ethic.

**Mrs WEST**—So you want the wider allocation of special powers. You would see that we have evolved and matured to a stage where you would not see abuse of those special powers. Is that correct?

**Mr Eaton**—I do not believe that you would give them to an operational police organisation. They are reposed in the NCA and ICAC and CJC because you see that they have some experience in dealing with those sorts of authorities because they are judicially based. I see that taking it out of a dedicated or specific organisation is the answer and putting it in the hands of the judges of either the Federal Court or the Supreme Courts of the states, and access coercive powers by warrant. There will have to be a lot of discussion about how those powers are actioned. It would have to be under warrant. It would have to have some basis such as, as I have indicated in my submission, there is a public interest.

There are numerous crimes that have occurred that are state based and multi-jurisdictional based over the last five or six years that could have been very well assisted by the access to coercive powers. However, they are not organised crime in the sense of the definition in the NCA Act, so the NCA could not be actioned in that regard. You only have to look at the horrific crimes that have occurred and the investigations could have been assisted. Police have a fair idea of who has committed the offence and by interviewing witnesses and others around the offender, as it were, in a coercive way, might well have resolved the crime a lot earlier than it did, if it has been resolved at all.

**Mr TRUSS**—Could I suggest to you that public confidence in the state police forces is not so strong that the public would be prepared to grant them NCA type powers.

**Mr Eaton**—I am not asking for that. Whilst I will not make any comment about public confidence, I must say that I noticed that the *Bulletin* indicated recently that public confidence in the police was in the high 50s and public confidence in politicians was in the low 10s. Perhaps I would throw the comment back at you and say that given the environment of law enforcement today, it is amazing that the public still has confidence in their police. We are not asking for those powers to be directly reposed in police. I am

saying that they should be put into the wider judiciary rather than a small, dedicated agency.

**Mr TRUSS**—That is what is in his submission, that the NCA powers should be given to the existing jurisdictions.

**Mr Eaton**—That is in Mr Collins's submission. What he is saying is that it could go into the judiciary in the fashion that we have recommended, that the Supreme Court judges, or Federal Court judges, access those coercive powers more regularly and more widely by warrant, not police themselves.

**Mr TRUSS**—The chairman suggested that you had succinctly put the view that the problem was not organised crime but disorganised police. Are you actually suggesting that better organisation would break organised crime in Australia?

**Mr Eaton**—I am suggesting that the jurisdictions themselves are disorganised and then necessarily policing, not police, is disorganised. We are a small nation. We might be large geographically, but we are small in number and yet we have nine jurisdictions.

I am saying that the mere existence of those jurisdictions manifests itself in disorganised policing. I gave the example of the Arnott's Biscuits fraud, where the chairman said on the *Business Sunday* program that this had cost his company \$10 million to date and he did not see a seamless investigation between New South Wales and Queensland. The reason is that there are protocols between two state governments and two state police organisations which necessarily delay field decision making and immediacy. You have to break down those jurisdictions.

The NCA is the first attempt to break those jurisdictions. Take it that next step further; it is an evolving mechanism, not a static one. It was great in 1984, perhaps; it is not too good in 1997. You have to go one step further now and enable the creation of a more widely focused organisation underpinned by policing which does not have the restriction of jurisdiction.

**Mr TRUSS**—In Melbourne the police spoke to the committee about the drug trade and about setting up border check points to stop the drugs flowing from New South Wales into Victoria, and identified in public evidence that the drug trade was centred on the Vietnamese community in Cabramatta. If the police know so much about it why has more not been done to stamp it out?

**Mr Eaton**—One only has to read the AFP annual report and the report of the New South Wales police and allied agencies in that jurisdiction to see that an enormous amount has been done. The problem is as much social as it is law enforcement. I do not believe we have the social elements of drugs of abuse correct and right. There is no doubt that there has to be a lot more work done on the social causes of narcotic abuse. The law

enforcement focus is on the cultivation and manipulation, if you like, of the narcotic into this country and outside this country.

There is no doubt that those criminal elements of the Vietnamese community in Cabramatta are a major source of importation of heroin into this country. But, Mr Truss, only recently the Australian Federal Police have seized around 300 kilograms of cocaine from a series of Colombian syndicates. We do not need to focus merely on heroin. I will say this to you in direct answer to your question: the jurisdictional barriers are an impediment. To try to shut up a state in Australia is, quite frankly, ridiculous. To even suggest it is ridiculous. To shut up this nation is ridiculous too. The suggestion that this is an island nation and we can shut up our borders is also ridiculous. We have to outreach our law enforcement.

The Australian Federal Police needs to spend far more time in the world in which these offences gestate so that we can see and predict what is happening in this country to try to overcome it in the nations where it actually is occurring. I can give you a recent example of paedophilia—it does have a relationship—where in Australia we investigated an allegation of paedophilia in Cambodia. The prosecution was commenced and completed in Australia and the person charged was found not guilty. The point I am trying to make is that we would have been better off to have had that nation prosecute in their environment. Equally, in narcotic law enforcement, we should be policing and assisting the police of those nations that cultivate, grow and reap the harvests that make the narcotic that come to this country.

In short, our disorganised jurisdictions are the reason that it is not working to the satisfaction of all of us, but do not believe that those criminals are going to go away just because you legalise a narcotic. Secondly, we need to outreach our jurisdiction into the international jurisdiction.

**Mr TRUSS**—The key point of my question was: what organisational factors are limiting the capacity to stop the flow of drugs into Victoria from Cabramatta and via the Cabramatta cartels?

**Mr Eaton**—Multi-jurisdictional task forces primarily is the problem. The New South Wales police jurisdiction is geographically inhibited. The mere fact that a narcotic can cross an Australian border without any impediment is an indication of that. Our state borders are not real. They do not prevent anyone from doing anything but they do prevent police from investigating properly. What we need, as I have said in the submission, is a far more holistic national and international strategy which involves melding the interests of the New South Wales police and the Victoria police, in this instance, so they can cross that mythical state border with a bit more ease.

**Mr TRUSS**—But would you actually go so far as to suggest that the Victorian policeman that named particular organisations and groups in Melbourne should come to

Sydney and arrest them?

**Mr Eaton**—I think it is a bit extreme, but that might be an element of it. Absolutely.

**Mr Collins**—If the problem is jurisdictional impediments and the NCA was put there to overcome that, then it has not. The NCA has recruited New South Wales police—and let us say it is the police involved in the Cabramatta exercise—and the Victorian police involved in the exercise perhaps and put them together in another bureaucracy.

What we are suggesting is that it is now time to remove that ninth jurisdiction and have the powers, under proper political control, with the expertise of the police commissioners to utilise those powers. Instead of taking the New South Wales and Victorian police and putting them into an NCA bureaucracy, you give the powers—not the bureaucracy powers but special powers—to those police working in Cabramatta and in Melbourne under the political control that exists, and by reference, but with the expertise of the police commissioners on the IGC as well. They are the ones who will know which are the appropriate officers. They are the ones who will know what powers are needed.

At the moment we are taking the operatives away from that expertise and putting them into a separate bureaucracy. As Mr Eaton said, that is how it started. Times have changed and it now seems to us that a whole host of changes are occurring, including a recognition by the police jurisdictions themselves that, for professional reasons and for reasons of national standards, they are now moving towards this holistic approach. I think this committee has an opportunity to assist that greatly.

**Senator GIBBS**—You are not saying to give the special powers to every state police force, just certain squads within the police force?

**Mr Eaton**—Access to it by warrant, yes.

**Senator GIBBS**—Each state would have a drug squad or whatever you want to call it and then the NCA powers. Mr Eaton, you were saying before how it would be really a good idea if different countries worked together. We all know here when drugs come into Australia, they are likely to come in at one point and they circulate around Australia. For instance, they will go from Cabramatta up to the Valley or Darra or vice versa in Queensland. Is it not a bit hard though to prosecute overseas when, in the Golden Triangle, they do not even stop those people growing? That is their livelihood and they actually encourage it. If the government there would stop those people from actually growing the poppies and whatever else they grow, isn't that a prime concern? They just don't do it, do they?

**Mr Eaton**—No. Some don't. You are quite right. We don't want to go into who they are; we already know who they are. In some cases, one of the elements is to

prosecute in the nation of the cultivation and initial movement of the narcotic through another country. A second element of that is that you find out far more about what has happened to the narcotic before it comes to Australia than you do when it gets to Australia. The realities are that when it is in Australia, our own jurisdictional inhibitors actually facilitate, as Mr Truss has indicated, its free movement around the country.

What we need to do is prevent it getting here. It should be a substantial element of the Australian Federal Police responsibility anyway and more widely, if the NCA is reconstructed, a responsibility of the state and territory police as well to prevent it at source as far as possible and to prosecute at source as far as possible. That does not mean it is not going to come here. It does mean that we will know more about what does come here though.

At the moment, the AFP has a very limited number of federal agents internationally. They provide probably the most valuable intelligence source to our organisation and, certainly, most of our operational activity revolves around our international liaison network of federal agents. We need more is what I am saying.

If you reconstructed the NCA to be a nationally focused organisation, then the AFP could focus more internationally than it currently does. At the moment, the AFP fills that gap between the NCA and state police and the national needs to the cost of its international interests.

**Senator GIBBS**—I suppose you would need a much larger budget.

**Mr Eaton**—To some extent, maybe—perhaps a reallocated or a reconfigured budget. The AFP is certainly in a very difficult position at the moment, but then that is true of almost all Commonwealth departments. The axe has been falling very liberally. Indeed, the NCA is in financial strife itself. I have made the point in the submission that you need to consider alterations and reform in the budget context. That aside, it may well be that you reconfigure the AFP and the budget needs a little manipulation rather than an increase. That is my observation.

**CHAIR**—You mentioned liaison officers. Obviously, you acknowledge the work they are doing. I observed them in Hong Kong recently and I am aware that we have what I regard as a strong presence in Bangkok.

**Mr Eaton**—Yes.

**CHAIR**—There is nothing wrong with what we are doing. It is just that we need to do more of it.

**Mr Eaton**—Absolutely. The fact is that we were to be in Vietnam two years ago and we are still not there.

**CHAIR**—That is because there are some problems with the Vietnamese government and not with the Australian government.

**Mr Eaton**—That might well be. Budgetary considerations now mean we are not—

**CHAIR**—We would like to be in Beijing as well, but the PRC is making it difficult.

**Mr Eaton**—Yes. You are informed about that. There are other nations that would like to have Australian Federal Police presence—an Australian presence—that would have no political problems or impediments such as those two do. Perhaps they are bad examples. We do not have any presence in Africa, for instance, in Nigeria and Chad where an awful lot of the narcotic distributors now live and work from. We do not have a presence in some nations in Europe, particularly in the former Baltic states where, quite frankly, we have a hotbed of ready access to criminals ready to work—

**CHAIR**—Yes. We acknowledge that it is up to those governments to allow us to operate in their countries on a cooperative basis.

**Mr Eaton**—Yes, absolutely.

**CHAIR**—What you are saying, I think, is probably right. Let me check. Are you saying that a very efficient way to fight drugs would be at their source rather than wait until they get here when the problem seems to be compounded?

**Mr Eaton**—Yes, that is exactly right.

**CHAIR**—That makes sense to me. Mr Eaton and Mr Collins, your submissions are extremely interesting and I am sure they will be valuable to us. We appreciate the time you have given us this morning.

[11.15 a.m.]

**JONES, Mr Leslie George, National Director, Border Management, Australian Customs Service, Constitution Avenue, Canberra, Australian Capital Territory**

**ROCHE, Mr Michael John, Acting Chief Executive Officer, Australian Customs Service, Constitution Avenue, Canberra, Australian Capital Territory**

**CHAIR**—Welcome. The committee has received a submission from the Australian Customs Service 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 document read as follows—*



**CHAIR**—Before inviting you to make an opening statement in support of your submission, if you would like to, I am required to state that if, during the hearing, you consider the information you might wish to give or a comment requested by a committee member to be 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 remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in any material particular. As public officials, you will not, of course, be expected to comment on matters of government policy. Mr Roche, do you want to add anything to your submission?

**Mr Roche**—No, thank you, Mr Chairman.

**CHAIR**—Perhaps we can ask a few questions.

**Mr Roche**—We would be happy to proceed that way.

**CHAIR**—I suppose I might pre-empt some question that my colleagues might want to ask. The Customs Service obviously is really a vital ingredient in this war against drugs, as I prefer to call it. It is a war that we are apparently not winning, according to almost all of the submissions we have had from everybody—from law enforcement authorities across the board. What is your current perspective on it, from the customs point of view? We are told you are only inspecting one per cent of the cargo coming into Sydney Harbour. Those sorts of figures are being bandied around. Perhaps you can give us an indication of what the facts are in terms of your—is interdiction the right word, or inspection?

**Mr Roche**—Inspection, yes.

**CHAIR**—I guess that implied in that are questions such as: why aren't you doing more, do you need to do more, should you be doing more?

**Mr Roche**—Perhaps I can start by saying that Customs has a very specific role in this: our role is focused primarily at the border or at the customs barrier. Under ministerial agreements with the NCA and with the AFP, the responsibility for investigation of drug related offences beyond the barrier belongs primarily to those two organisations.

It is true that Customs inspects, I think, less cargo these days and fewer passengers than it used to. In the 1950s, for example, I think we would frequently open just about every case for air passengers, and so on. The reality is that there is no empirical evidence that we are aware of that suggests that the amount of inspection you do, or the number of people you have doing inspections, materially affects the results you get. What we do believe—

**CHAIR**—Sorry, say that again.

**Mr Roche**—There is no empirical evidence that we have that suggests that the number of people you have inspecting, or the number of inspections you do, actually materially affects your results.

**CHAIR**—I would have thought that was almost—I was going to say commonsense, but that is no reflection on you. Surely, the more people you have got doing the work, the more effective you are going to be?

**Mr Roche**—We believe that the single most important factor in achieving better results is better intelligence; that you can significantly add to the resources you have on the ground, but if it is not driven through intelligence then you can be looking in the wrong places. I could, I suppose, in camera give you a relatively recent example.

**CHAIR**—We might deal with that before we finish.

**Senator GIBBS**—Mr Roche, does that mean you basically rely on intelligence from overseas—for example, that you could get a tip-off from a certain country saying, ‘Have a look at this particular person’?

**Mr Roche**—I was going to go on and say that what does materially affect our results is, firstly, intelligence; secondly, technology; and, thirdly, the application of officers, with appropriate levels of skills, in the right place at the right time. I do not think there is any evidence at all that having an officer at the end of every wharf, as we might have had in the 1950s, makes any difference to the outcomes.

Our intelligence, and I suppose the relevance to this inquiry, comes from a wide range of sources, both in Australia and overseas. One of the significant benefits that we have found from working with the NCA is the amount and quality of the intelligence that comes from that working relationship. I suppose our intelligence comes from two directions. One is about methods of operation—modus operandi and so on—that alert us to the types of shipments and the types of passengers that we want to target. That is based on the experience of other countries and the direct intelligence we get from those other countries.

The other type of intelligence we get comes from the Australian end where, generally, police forces working from a target are able to give us information which will help us identify shipments and passengers that are related to something that has happened in Australia. It is quite wide ranging and goes much beyond simply what we get from overseas.

**Mr Jones**—I can add an element to that. There are two key features of our business that come down to drug identification. One is of targeting known or suspected people or consignments and there, obviously, the information from the Australian Federal Police, the National Crime Authority or from overseas sources of known or suspected drug

couriers is very important.

The other dimension of our business is profiling, where we are trying to draw an identikit picture of what a drug courier or a drug consignment that you examine might contain by way of identifiable elements. Again, that sort of intelligence from overseas, customs sources, police sources, the Australian Federal Police or any source, for that matter, that can help you improve the quality of drawing that identikit picture and help you say that you should be looking at these types of consignments because this commodity is being used to conceal drugs or this type of person from West Africa is being used to internally conceal drugs, is very important to us.

**Mr Roche**—I suppose there is a good illustration of that over the last 12 months or so where at airports our rate of personal searches, I think, dropped slightly but the amount and number of seizures we are making from personal searches has risen. Our success rate is up and the actual physical search rate is down.

**Mr TRUSS**—You do not actually know, with respect, that the success rate is up. You have collected more but you do not know how much got through without your knowing.

**Mr Roche**—I do know that we are actually succeeding in more cases because more of those searches produce a result even though there are fewer searches overall.

**Mr TRUSS**—I accept that, but you do not know if the proportion of detected contraband has improved.

**Mr Roche**—No.

**Mr Jones**—We know the qualitative issue in relation to those searches that have been undertaken.

**Mr Roche**—To measure how we are going and for our staff to measure how we are going we must have some objective type measures. One of the objective measures we use is the rate at which we succeed in those searches.

**CHAIR**—Are you talking about searches of people flying into the country?

**Mr Roche**—Yes.

**CHAIR**—What about cargo inspection?

**Mr Roche**—If you look at seizure statistics over the last 12 months you see that it has been a fairly successful year. I do not believe that the seizure rates over the last five or so years would suggest to you that any changes in staffing numbers have resulted in

lower seizure rates.

**Mr Jones**—We do a lot of cargo examinations that are unsuccessful in terms of producing a tangible result of a drug seizure. Quite clearly, what we are always seeking to improve is the quality of our targeting. Which consignments should we open? You open them, from a drug related point of view, with the prospect that you are going to find narcotics.

**CHAIR**—Can you tell us in public, or maybe when we go into private session, how you intercepted the recent pineapple—

**Mr Jones**—I do not think we should do that publicly.

**CHAIR**—We will have a brief in camera session to deal with the other matter in a moment. How do you work with the NCA? How effective is it? What do you actually do with them?

**Mr Roche**—We work with them at a liaison coordination level. We are a member of SCOCCI, as are they; our chief executive is a member of the Heads of Commonwealth Law Enforcement Agencies—HOCOLEA—as is theirs, and there are a number of other coordinating committees. We have the opportunity to influence the way in which they go about some of their investigations that are of relevance to us. We are members, I think, of virtually all of the task forces.

**CHAIR**—So it is a good relationship?

**Mr Roche**—It is a very good relationship. I think we work well with them.

**CHAIR**—No turfdom involved?

**Mr Roche**—No, we do not feel that way between the NCA and Customs.

**CHAIR**—You have officers, as does the AFP, in some of our overseas posts, do you not?

**Mr Roche**—Yes. There are a limited number of posts; Brussels, Washington and Tokyo. They are more related to the commercial side. They do work on the drug side but their work is more related to commercial matters. The actual representation in overseas posts of drug related matters is primarily a matter for the AFP.

**CHAIR**—And no role for Customs, say, in Bangkok or Hong Kong?

**Mr Roche**—There certainly could be a role, but with limited resources you have to make choices and I think—

**CHAIR**—But you heard what the AFP Association representative suggested: we would be better concentrating resources on fighting the problem where it is coming from. If you had the resources, would it be an option, do you think, to have Customs—

**Mr Roche**—I do not know that we would be seeking to duplicate what the AFP are doing.

**Mr Jones**—May I comment on that? I am aware that there was a joint review some years ago with the Australian Federal Police and the Australian Customs Service as to whether Customs should have people located at overseas posts, specifically for drug related matters. The conclusion was no, it shouldn't. The reality is that we also have very strong liaison with a range of other foreign customs services, a number of whom do have people in Bangkok. That includes New Zealand and the UK and we have strong liaison with the New Zealand Customs Service and the UK customs and excise organisation. Together with the Australian Federal Police presence in Bangkok, I doubt very much that anything would be served by the ACS having someone in Bangkok.

**CHAIR**—Last year Brian Toohey wrote an article in the *Sun-Herald*—I am sure you saw it—where he suggested the Customs Service has virtually given up trying to stop the import of steroids. Did you see that article?

**Mr Roche**—Yes, I saw that article.

**CHAIR**—I actually took it up with the minister at the time. He has given me an answer and I do not know that you can add anything. Steroids are another drug. They are probably downplayed in terms of their importance, but the point Brian Toohey was making in his article is that we ought to be very concerned about the importation of steroids because they are illegal and because they have some very nasty side effects for the people who are taking them. I ask you: are you happy about the effort the Customs Service is making to stop the importation of steroids?

**Mr Roche**—I think there is a balanced effort being made. I would point out that not all steroids are illegal. There are many legal steroids in Australia and that is one of the difficulties in dealing with steroids. But I believe that we are acting appropriately. We certainly seize enough of them.

**Mr TRUSS**—Do you have a view about how successful the NCA is in catching the Mr Bigs of crime, particularly in the drug trade?

**Mr Roche**—I do not know that there have been that many caught. There have certainly been many peripheral people picked up and certainly some very large seizures, but I think we would all like to get closer to the Mr Bigs.

**Mr TRUSS**—When you identify some illegal drug coming into the country, do the

arrests tend to be of just the courier and maybe one or two around?

**Mr Roche**—No. When we do make a seizure at the barrier, our responsibility is to hand that investigation over to the AFP or the NCA. If it has come as a result of a NCA inquiry, then the NCA will be informed and, if not, the AFP. The judgment then as to whether that shipment is allowed to be run in a controlled delivery or whether the couriers are simply to be arrested—how much further investigation can be done—is a matter for the AFP and the NCA. On many occasions, there will be attempts to take the shipment further down the train.

**Mr Jones**—Philosophically we are very strongly committed to the notion of controlled delivery, otherwise all we finish up with is a box full of drugs. We are strongly committed and, where we can participate in a controlled delivery, we will do so, so that you broaden the outcome of a result in terms of trying to track some of the other people involved in the activity.

**Mr TRUSS**—The suggestion has been that all the effort that goes into airports is never likely to pick up more than small quantities and small fry, that the big importation comes through containers and special shipments, special flights and the like. How do you devote your resources towards combating the problem at the various levels?

**Mr Jones**—We certainly have a separate business area for passenger processing. I am not sure that I would agree that only small things come through passenger processing. We have had some fairly significant seizures in passenger terminals, whether that be in luggage or on the person. We have found quantities that are significant to us of seven or eight kilos of heroin strapped to a person's body. On the passenger side of things, we have probably made more advances in terms of our targeting capabilities and our access to information that helps us draw profile pictures. That is probably a feature of some of the data or information that is available out of that industry.

In the cargo area, we know we need to catch up on building the appropriate targeting systems of the quality that we have put into the passenger area. We have a proper and reasonable balance between the staffing or other resources that we allocate in the passenger area to cargo. We monitor very closely the sorts of outcomes we are getting out of our investment in those areas to ensure that it is producing the right results for us at all times. The difficulty is that you can draw up a hypothesis on a consignment of cargo that I would defy anybody to say ought not be examined, and yet it can be an extremely expensive exercise to undertake, and you do not find narcotics. That can be frustrating at times. It means that we continually need to refine our selection and targeting practices.

**Mr TRUSS**—Is your relationship with the NCA constructive and always satisfactory?

**Mr Jones**—I believe so. The NCA have access to powers. They have access to

information which they are prepared to contribute into joint activities with us. They would gain access to prospective consignments or people involved in the importation of drugs perhaps before we would because of their relative responsibilities. They are more than prepared to bring that forward and get our involvement at the border. Equally, we take a responsible view, in relation to their request to us, for controlled deliveries. They give us assurances and indemnities in writing that, if we allow something to pass through the barriers unimpeded, they will bring those issues back to us for proper accountability of other customable issues at a later time.

**Mr Roche**—There are a couple of areas in which they are quite a positive help to us. One is that generally they act as a good filter of intelligence. The quality of the intelligence we do get from them, even if it originates from a state police force, tends to be better than we might otherwise get. Indeed, that is an area where we would be glad to see greater levels of cooperation between ourselves and state police forces. That is helping that.

The second thing is that, amongst their references, money laundering is of particular interest to us. We do quite a bit of work with the NCA on money laundering on the grounds that, while you might not always get the drugs, the money trails should lead you to it and should lead you to the important people. We are very strongly supportive of that and we do a lot of work with them and with AUSTRAC in that area.

**CHAIR**—Are controlled deliveries an ad hoc sort of arrangement you come to with the NCA? What controls are in place to ensure that that does not go off the rails?

**Mr Roche**—There are, I suppose, two types of controlled delivery. One relates to where the drug is actually being imported with our knowledge and I will have Mr Jones talk about that. The other is where we have seized a drug or shipment at an airport or whatever and on the spot a decision has to be made very quickly as to whether to proceed with the controlled delivery. Generally any delay will lessen the value of it.

**CHAIR**—When you say you have ‘seized’, do you mean you have detected but not stopped the person?

**Mr Roche**—We have detected and, generally, stopped the person. The typical scenario at an airport will involve us detecting the drug and stopping the person. We will have the person in custody and we will have the drug. At that stage the AFP or the NCA become involved. It will be the AFP in circumstances where we did not know about it in advance. A decision has to be made then as to whether the courier can be allowed to go.

**CHAIR**—Go where?

**Mr Roche**—To go on with the delivery.

**Mr Jones**—Obviously they seek the cooperation of the person involved. That is forthcoming in more cases than it is not. We will then allow that person to leave the airport, not generally with the drugs, I might add.

**CHAIR**—But under surveillance?

**Mr Jones**—Under surveillance.

**Mr Roche**—Frequently the drugs are substituted at that stage. There is often a small quantity of the shipment mixed in with it.

**CHAIR**—The other aspect of it is when you have detected drugs in a container and you leave the container sitting there and try to police it. The NCA attempts then to locate the people who own it.

**Mr Jones**—It is not 'locate'; those people will themselves generally come forward seeking delivery of their consignment, unless they have become aware of our interest in their container or consignment. Then they will abandon it; that has happened.

In relation to consignments of cargo and controlled delivery of cargo, the more frequent occurrence would be for the AFP or the NCA to be aware that someone whom they have an interest in is seeking to import some drugs. The officer of police would go to a senior officer then and seek approval under the legislation to enable a controlled activity to be undertaken. Under the law we get a copy of that approval from the assistant commissioner of police or the head of the NCA, or whoever the particular approving authority is, and then we usually get from both, or either NCA or AFP, a request for an indemnity. That is to allow the entirety of the consignment to move through so that the drugs can move. Provided we are satisfied with the overall security and control of the controlled operation we will agree to that.

**CHAIR**—What sort of indemnity?

**Mr Jones**—The goods are subject to Customs control. There are interests of Customs other than narcotics. There is usually revenue to be collected in relation to goods or there may be other prohibited goods in the consignment that we have a concern about and an interest in that are outside the narcotics legislation.

**Mr Roche**—They must undertake to ensure that all aspects of the Customs legislation are complied with and that any Customs goods which were not the subject of the controlled operation are returned forthwith to Customs to be dealt with.

I would like just to go back a bit to the airport scenario. I was going to make the point that the decision at that stage as to whether to attempt a controlled delivery or not is purely in the hands of the AFP. Provided that those assurances are given to us and the



customs requirements have been complied with, it is their call.

**CHAIR**—Of course, the person who agrees to cooperate is putting his or her life absolutely at risk in that situation. I suppose they have to cover that base as well, haven't they?

**Mr Roche**—They have some difficult choices to make.

**CHAIR**—Yes. I guess the one that grabs everyone's attention is when you stop a boat sailing down from up north somewhere and climb aboard and find it stacked with drugs. In practice, how many drugs are coming into Australia that way, rather than through ports and so on?

**Mr Jones**—Rarely do we find one of those things accidentally, though we have. We had a very large consignment of heroin being imported into Darwin harbour that we had no knowledge of whatsoever. Our aircraft and our vessels were out patrolling for an illegal immigrant vessel and we were notified by people on one of the islands adjacent to Darwin that there was a foreign fishing vessel there. When we approached the foreign fishing vessel, one of our officers observed them throwing some goods overboard. We were able to retrieve some of that immediately and were rather stunned to find that it was full of heroin. However, normally speaking, when we approach or pursue a vessel and there is a large volume of drugs on the vessel, we have some prior knowledge that that was to take place. That is the more common occurrence.

**CHAIR**—Illegal immigrants are another issue altogether. The perception is of Australia as a huge island with a coastline like it is and some people think this is happening every day. They think it must be happening because there is so much coastline there and that there are probably consignments of drugs coming in every second day.

**Mr Roche**—We do not necessarily believe that. It is very patchy. Between November and January we had two very big shipments of cannabis resin intercepted on the east coast of Australia—one of 10 tonnes into Port Stephens and one of about eight tonnes into Hervey Bay. That skewed the results for that year—

**Mr Jones**—Our way.

**Mr Roche**—Yes. The point I would make in relation to that is the point I was making earlier about the importance of technology these days as opposed to sheer numbers of people on the ground. Our ability with the Port Stephens exercise was highly dependent on our ability to track a vessel from off the coast of Western Australia, to follow it right around Australia, to know what it was doing virtually every minute of the day and to track anyone who came near it or who had any contacts with it. It was a very significant investment in terms of Coastwatch, in terms of the aircraft, the logistics, and in terms of the electronics and the quality of the radars we are using these days. Then, when it

actually came to attempting to land it, there was the ability to have two customs vessels on tap ready to intercept it.

**CHAIR**—You have offered to give us some information on a couple of matters in camera. If the committee is happy for that to occur, I will close the public hearing and we will move briefly to an in camera session.

*Evidence was then taken in camera—*

**Committee adjourned at 11.54 a.m.**

