COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE

on

THE NATIONAL CRIME AUTHORITY

Reference: Evaluation of the National Crime Authority

CANBERRA

Monday, 23 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

BUTLER, Mr David, First Assistant Commissioner, Small Business, Australian Taxation Office, 2 Constitution Avenue, Canberra City, Australian Capital Territory 2601 1002

GALLAGHER, Mr Bernard, National Director, Special Investigations, Australian Taxation Office, 2 Constitution Avenue, Canberra City, Australian Capital Territory 2601 1002

SCANLON, Mr Peter Damian, c/- Arnold Bloch Leibler, 21/333 Collins Street, Melbourne, Victoria 1089

TAYLOR, Mr Kevin, Assistant Commissioner, Australian Taxation Office, 2 Constitution Avenue, Canberra City, Australian Capital Territory 2601 . 1002

JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

Evaluation of the National Crime Authority

CANBERRA

Monday, 23 June 1997

Present

Mr Bradford (Chair)

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

The committee met at 9.08 a.m.

Mr Bradford took the chair.

BUTLER, Mr David, First Assistant Commissioner, Small Business, Australian Taxation Office, 2 Constitution Avenue, Canberra City, Australian Capital Territory 2601

GALLAGHER, Mr Bernard, National Director, Special Investigations, Australian Taxation Office, 2 Constitution Avenue, Canberra City, Australian Capital Territory 2601

TAYLOR, Mr Kevin, Assistant Commissioner, Australian Taxation Office, 2 Constitution Avenue, Canberra City, Australian Capital Territory 2601

CHAIR—Welcome. The committee has received a submission from the Australian Taxation Office. Is it the wish of the committee that the submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The submission read as follows—

CHAIR—Before inviting you to make an opening statement in support of your submission, I am required to state that if during the hearing you consider the information you might wish to give, or a comment requested by committee members of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also remind you that is a contempt for a witness to give any evidence which the witness knows to be false or misleading in a material particular. I should also point out that as public officials, you will not, of course, be expected to comment on matters of government policy. I now invite you to make some opening remarks.

Mr Butler—My role in the tax office is such that I have responsibility Australia wide for over 3,000 staff in the small business program, and that also includes an area called special investigations. The special investigations area has responsibility for dealing with the tax affairs of people involved in criminal or suspected criminal transactions.Mr Taylor and Mr Gallagher have national roles in respect of the special investigations area. They have more day-to-day involvement than I would.

Our special investigations area deals with the least compliant taxpayers of all. There is approximately 160 staff Australia wide. It is an area that, despite a number of reorganisations and restructures in the tax office, has stayed in place. It does have a difficult role in a sense that we cannot use normal risk management approaches. When you are looking after, say, small business where there is over one million small business people, there is a need to understand risks and manage those risks more broadly. With the sorts of people we deal with in the special investigations area, a one-on-one type audit action is necessary. We cannot use our usual case selection techniques; we need to rely upon information from other agencies to help us find the sorts of taxpayers who may be involved in criminal activity.

It is important to know that we are not actually involved in criminal detection itself. Our role is to administer tax laws and ensure that all people meet their tax obligations, be they involved in legal or illegal pursuits. With the National Crime Authority, we have had involvement in a range of task forces over several years. We have found this has lead to improved agency communication, better targeting and case selection, and better use of government resources—that is, across agency government resources. It has allowed the ATO to access other information that would not otherwise be obtained and it has allowed for sharing of skills across agencies.

We believed this has have proven to be a successful means in investigation organised crime, especially the financial aspects of it. We believe the NCA has played a strong and useful coordination role.

CHAIR—Thanks, Mr Butler. People involved in organised crime are probably the most least likely people to want to pay tax on their ill-gotten gains. Do you have any idea what sort of potential revenue there might be for the tax department if it were to be

successful in collecting tax on that sort of money that is disappearing?

Mr Butler—No, we do not really have a good idea of the full extent of the revenue that may be payable because in many ways you are dealing with international organised crime as well as Australia wide. So it may well be people who are operating outside Australia who are involved in activity within Australia. There are all sorts of issues there about source of income and where they may be taxed on those profits.

But I will just give you an idea. With the 160 staff we have in the special investigations area Australia wide, we raise each year over $50 million on average in revenue. It is quite resource intensive. As I said, in my opening, basically a one-on-one approach is needed whereas, if we are looking at managing the tax affairs of thousands of taxpayers, we can do it through different ways.

The best I can really give you is an idea of the number of audits and results from those audits each year. It is usually over $50 million per annum that we raise in tax and penalties.

CHAIR—How many audits does that involve?

Mr Butler—For the year ended 30 June 1996 it was 658 audits. This year up to 31 March 1997 there have been 405 audits and $33.3 million raised.

CHAIR—Whilst it is resource intensive, do you judge it to be cost-effective?

Mr Butler—Certainly, on a strict cost basis for the ATO, our salary and administration funds for running the whole special investigations area Australia wide ranges between $7 million and $8 million a year. So the expenditure is $8 million and the returns over $50 million in revenue raised. It is also difficult to collect some of this money, of course, so the collections are sometimes behind when the revenue is raised.

So it is cost-effective in that sense, but, if you compared it with other activity we do in the ATO, the return is not as significant, dollar for dollar. If we had a $7 million investment in small business, you would expect a bigger return. But it is one of those things where you need to balance the need to ensure that all taxpayers meet their tax obligations and to be doing something about people involved in illegal occupations, illegal activity.

CHAIR—But the priority of the tax department is to collect revenue. The legality or illegality of certain activities is, as you have already said, not really your primary concern. Is that right?

Mr Butler—That is correct.

CHAIR—You could direct the $7 million somewhere else and collect more tax revenue?

Mr Butler—We could, but we believe that it has been shown that there is a need for all taxpayers to see that all people are brought to account not just people involved in illegal activity. Over the years we have certainly had a lot of views put to us that people involved in illegal occupations ought to be paying tax as much as anyone else. We have not expanded the area to any real degree over recent times because of that benefit from the cost return but, nevertheless, we have maintained it mainly because we believe that there is a need to see a balance across the whole community. Irrespective of what you do, across the whole community there is an obligation of tax liability.

CHAIR—The corollary to some extent is that if you had 320 people working in this area, would you collect $100 million instead of $50 million?

Mr Butler—It is hard to say that the incremental change would be to that degree because when you are in these sorts of activities you always deal with the easier cases first, I guess. Whether there are twice the number of taxpayers out there whom we should be looking at is really unknown by us. We do not have broad data on these people. We do not have broad data on people involved in criminal activities or occupations and we rely upon other law enforcement agencies to provide information to us about particular individuals.

CHAIR—There is one final question from me. Did you want to add something, Mr Taylor?

Mr Taylor—I would like to add to that. The idea of doing an equation on dollar in, dollar out does not take into account our responsibility to assist law enforcement. Quite a number of our staff are engaged in assisting in inquiries made under our act to provide information to law enforcement. That is a big effort the tax office puts in as part of our role in assisting the combating of crime.

CHAIR—That was the question I was probably going to try and get Mr Butler to elucidate upon. What comes first here? Do you notify the other law enforcement authorities if you have some suspicions about someone's activities, or do they involve you? What comes first?

Mr Butler—On almost every occasion, other authorities tell us about particular people. It is relatively rare that we would actually do it the other way and tell a law enforcement agency about a particular individual. We rely heavily upon information provided to us, but there would be occasions when staff of the ATO undertaking audits, or some activity in the field, might come across individuals who they suspect might be involved in illegal occupations or businesses. It could also be that staff involved in looking at data—say, cash transactions reporting data from AUSTRAC—might see trends

there that are of some concern. But it is relatively rare that we actually inform a law enforcement agency about particular individuals. It is the other way around normally.

CHAIR—Is that because your priority is to collect money? I mean, the person is merrily going along getting his or her ill-gotten gains; you are collecting the tax; the government is happy, and that is the priority rather than you bringing the law enforcement authorities in early in which case you may not get the revenue then. The person might disappear, or the modus operandi will change and make it more difficult.

Mr Taylor—I would like to answer that question, Mr Chairman. It is really a matter of us not being involved in detecting crime. We are involved in ascertaining that people have earned income and we collect tax on that income. In other words, the source of the income is not our primary concern so our inquiries are directed at income and assets accumulated. Because of that, that is all we have to ascertain and we levy the tax on that.

Mr SERCOMBE—I was wondering if I could ask you about existing legislation and what constraints that may pose at the present time? For example, the NCA has given us evidence that the proceeds of crime legislation, particularly the Commonwealth legislation rather than that of some of the states, is extraordinarily restrictive because of the threshold mechanism requiring action, or the charging of a person with an indictable offence. I do not know whether that is an issue that, from ATO's point of view, has aspects that you would care to comment on.

Mr Taylor—The only thing that I would like to comment on there is that the ATO and the Director of Public Prosecutions have come to an arrangement—I think there is a copy with our papers—whereby, there is no conflict between the Commonwealth proceeds of crime action and tax action. The results or the funds of both actions, get put into consolidated revenue. So, we think of it as the whole of a government approach. In other words, we try to use either the tax law or the proceeds of crime legislation, whichever is the most appropriate.

Mr SERCOMBE—And, from your experience the proceeds of crime legislation is an adequate tool? Are you aware of particular problems with it?

Mr Taylor—It is effective in certain circumstances and, in some circumstances, more effective than the tax legislation. An instance of that would be where there could be funds where a person does not own the funds but actually is in control of them. The Commonwealth Proceeds of Crime Act covers that situation more adequately than the tax legislation.

Mr SERCOMBE—In terms of the operation of your office, this committee has had evidence from one particularly disgruntled individual who is involved in a dispute with you where he has claimed that the NCA has utilised its general powers, its non-

coercive powers, to investigate Commonwealth offences that carry a penalty of imprisonment for more than three years. Obviously, you are unlikely to be aware of the particular case, or probably you would not want to comment on it anyway, but I am wondering if you can tell us what sorts of offences under the tax act carry offences of three plus years imprisonment and where the NCA may, in your experience, seek to intervene?

Mr Taylor—Generally, the offence would not be under the tax act, as such. It would be under the Commonwealth Crimes Act, sections 29D and 29B. The reason for that is that the NCA, as you well know, is targeting organised crime and so fraud on the Commonwealth would be the offence that they would normally be investigating when they are conducting a tax related investigation. That is where both tax and the NCA would be involved.

CHAIR—I think that you are not being entirely clear on this point. What we found, and the NCA has found, I think, is that this sort of money trail is probably the most effective way of detecting and catching organised criminals. It seems to me that you are in an ideal position to up the ante at that particular end of the spectrum. Why are you not doing more? Could the tax department be given a greater role in law enforcement? I suppose that is what I am asking. You said that it does not have one, but I am asking you: in your view, could it have one, and would it be effective in that sense in following money trails, or being part of that activity?

Mr Butler—It is important to realise that the tax office has a fairly big brief in the administration of Australia's tax laws. We are a significant revenue collector. We certainly look at things like money trails with our tax hats on to ensure that people pay tax. If there is a lot of money passing out of the country through banks and that sort of thing, that is often an indicator of people involved in a business—be it legal or otherwise—who may not be paying their tax.

So, we are involved in looking at money trail type information but, predominantly, we do this to see if there are trends or information there that would lead us to individuals who may not have paid their tax. That is a big focus of our activities. We have staff who actually work very closely with AUSTRAC in Sydney and we have got all sorts of computer systems developed to analyse that cash information just to target individuals, or to look at areas or industries that have high cash turnover and, perhaps, high tax avoidance or evasion, with complications coming from that.

We do not look at that, as I have said, with a view to seeing if there are other laws against the Commonwealth that have been, or potentially have been, broken or breached. Certainly, if we come across cases where we feel that that may have happened, we are in a position to advise others of that. We do follow the main trail but, as I have said, our focus is more on tax compliance and enforcement.

CHAIR—Are you familiar with the contentious issue that arose with the NCA's 1994-95 annual report? They claimed—as it turned out, incorrectly—that there had been some tax revenue recovered; but, in fact, it turned out that that was not the case. It became a matter not so much of semantics, I guess, but of terminological inexactitude or something like that—which is a neat way of saying it was a mistake, I suppose. Can you explain your understanding of what happened there and if it is likely to continue to happen? There is a difference between actually saying there is a tax liability there and actually moving to collect the tax. Is that what it was all about?

Mr Butler—Certainly, I have seen the National Crime Authority annual report with that statement in it. I am not in a position to talk about individual cases, of course, because the secrecy provisions of the Income Tax Assessment Act prohibit that. Generally speaking, certainly in the whole range of tax cases and not just in terms of people involved in cases where the NCA might be involved, we will raise assessments, or there may well be disputes. If the dispute is settled, there may be action taken by the ATO to collect money. That could take some period of time if people do take it to higher level courts and things like that.

It is difficult if you are trying to find what is, say, the dollar benefit of the NCA's help in working with the ATO on particular cases. It is hard to draw those definite links, because you might actually get some involvement from the NCA in a case, but the case might go over a period of time. The NCA may have only been involved for a short period, but the case might take a year to resolve: therefore, what portion of any result is directly attributable to the NCA? So it is quite complex and involved and it does depend upon assessments raised, adjustments made later and disputes where taxpayers may go to court and win some issues and not win others; and then there is the collecting of the final tax payable. That can all take some time. Is that the sort of thing you were after?

CHAIR—The problem, it seems to me, is that the public never gets the bottom line. Is it because of the provisions you are talking about that we never find out exactly what the bottom line on a particular item was or where a matter was?

Mr Butler—For an individual, Mr Chairman?

CHAIR—I am sorry. Yes. Wasn't the point made that, although a tax liability can be detected, we never find out how much was actually collected? Is that not made public? That is the problem that the NCA has. That is the point I am making. They can claim that their activities have led to a tax liability being incurred, but they never find out whether it is collected or not.

Mr Butler—Certainly, we do not and cannot advise them of issues along the track about whether taxpayers dispute assessments. We involve the NCA where we have a tax related investigation or matter under consideration but, when it comes to providing information back to them about adjustments or tax collected, ultimately we are not in a

position to advise them of that on an individual basis. We are certainly happy to advise them on a global basis and to say, ‘Of all the cases in which we have had some involvement with the NCA, here is the net result.’ We do not collect that data, or we have not collected it up until now, because we have not seen a business need to do that.

It would take some judgment on a case-by case basis to make those links, because of the things I was saying. You could have a tax case going for, say, 12 months, and the NCA is involved for 2 months, with X dollars to show at the end, so what part of that is related to the NCA involvement? It would be a judgment on a case-by-case basis, over a period of time, to get that sort of information together. The tax office has not seen a business need to do that to date, but we are in a position to start collecting that for the future, if that were seen to be necessary.

CHAIR—From the NCA’s reporting point of view, you do not think it unreasonable for them to make a claim in gross terms? They cannot really do anything else. The alternative, I suppose, would be not to claim that they have had responsibility at all. That is where they created the problem. Before, they made a bland statement that their activities had led to the recovery of some millions of dollars of tax revenue. That turned out in the end not necessarily to be the case. The fact is that we do not know whether it was or was not so.

Mr Butler—Whether it is reasonable or not is really not for me to say. The chairman of the NCA is the person who should judge what is reasonable to put in his annual report to parliament. Certainly, we are quite prepared to work with the NCA to give them greater clarity on outcomes of cases, but we will not be able to do that on an individual basis. Certainly, through global figures annually, we are certainly prepared to look at providing information to the NCA in future, so that they know exactly what links there might be in dollars collected at the end of the day.

CHAIR—But at the moment you are not doing that?

Mr Butler—We have not been doing that, Mr Chairman.

CHAIR—And have they asked you to do that?

Mr Butler—I have been informed that they have not asked us for global figures. They have actually asked us in the past for individual cases, which we have not provided because of the secrecy provisions in the tax laws.

Mr Gallagher—We have a similar problem ourselves when reporting on figures for annual report figures, primarily because we do much of our case work with other agencies, such as the NCA, the AFP and various DPPs. Often, the assessments we raise are not collectable, because the DPP or another agency might seek to confiscate the assets that are behind the income in question. When we report, for example, that in 1995-96 we

raised $58 million, we do so in the knowledge that we may never collect part of those assessments, because of confiscation actions.

The NCA, of course, is in exactly the same position because the assessments they raise—and I feel that they are quite entitled to claim part of the benefit in raising those assessments—are subject to appeal and subject to other things, such as confiscation perhaps by other agencies as well.

CHAIR—I think we have probably covered everything. We might let you off fairly lightly today. We have got the tax department here and we should not make it as easy for them, because they do not always reciprocate! Anyway, that is the luck of the draw. Thank you for your time this morning.

Short adjournment

[10.05 a.m.]

SCANLON, Mr Peter Damian, c/- Arnold Bloch Leibler, 21/333 Collins Street, Melbourne, Victoria

WALKER, Mr John Christopher QC

CHAIR—Welcome. The committee has received a submission from Mr Scanlon in the form of a letter and an attachment which was his submission to the Attorney-General's internal inquiry into the decision of Mr Justice Vincent. That particular document refers to some attachments which the committee does not have at this point, but we may be able to get those from the Attorney-General's Department—I am not sure about that. Is it the wish of the committee that the submission in that form be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The submission read as follows—

CHAIR—Before inviting you to make an opening statement in support of your submission, I am required to state that, if during the hearing you consider that information you might wish to give or comment required 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 that application at the point you request it. I also remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in a material particular.

I remind committee members and also make it clear to Mr Scanlon that the terms of reference for this inquiry are in four parts. The committee is examining in particular:

(1) the constitution, role, functions and powers of the authority, and the need 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 [or otherwise] for amendment of the National Crime Authority Act 1984.

I point out to the committee and to Mr Scanlon that we operate under the Senate standing orders for committees. In particular, I draw everyone's attention to the fact that I am required as chairman of the committee to ensure that all questions put to witnesses are relevant to the committee's inquiry and that information sought by those questions is necessary for the purpose of that inquiry. Were a member of the committee to request discussion or a ruling of the chairman on this matter, the committee will be required to deliberate in private session and to determine whether any question which is the subject of the ruling is to be permitted.

I also make clear to the committee and to Mr Scanlon that if the witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken. The committee will deal with that matter as it arises.

The other brief remark I make is that Mr Scanlon has strongly held and stated views about the performance of the NCA which I believe are entirely relevant to our inquiry. I understand that, in general terms, those views are entitled to be subjected to questioning by members of the committee. However, I do not believe it is within the power of this committee, nor would it be proper for this committee, to attempt in any way to be seen to be re-trying Mr Scanlon. He was acquitted. I will not allow any line of questioning to proceed down that track and I will rule out of order any questioning that proceeds down that track or crosses what I acknowledge is a difficult line but, as far as I am concerned, a line I will draw. Having made that clear, Mr Scanlon, I now ask you to

proceed with your opening remarks.

Mr Scanlon—Thank you, Mr Bradford, and members of the committee. Originally I was asked to give evidence on—in my shorthand way of reviewing your terms of reference—the function and the role of the NCA. Much as I personally would like to put my involvement with the NCA behind me, I agreed to do that. I agreed because what happened to me was wrong. It was unfair and, in my view, does not have a place in our society. It was unfair on all those people around me: my family, my work colleagues, the organisations I worked for, the companies I was involved in and my friends.

I am not a person with interests or intimacy in politics or the law; I never have been. I belong to the world of commerce. I was and am shocked that what happened to me is possible in our society. It shocks me more that it is still happening. I recognise that you cannot address the unfairness to me. I also recognise that I do not have the expertise or experience to lecture you, or any one, on the type of policing authorities that we, as a society, need. However, I did expect that someone would take action to stop what happened, and is happening, to me happening to others. I thought in desperation it might be this committee, hence the reason I agreed to appear.

Before I even accepted the invitation to appear, before I have been asked one question, I was being pressured not to appear. For a publicly reserved person, I find my utterings in the national parliament front page news for days in succession and the subject of talk-back radio and news. Information I am bound, by threat of gaol, not to share with even my wife, publicly but selectively is available—information carefully constructed to create a lie. The message is clear: you dare to give detrimental evidence to this committee, you will pay. Well I am here; I will not be intimidated. I think I need you to support that, otherwise how else will you learn and get people to appear.

However, as a consequence of the recent intimidation, I do request your indulgence. I need some time to tell you what I did, what I said, and the consequences to me. I think you owe that to me; but, further, I think it will help you make the assessment of whether the NCA, with its current culture, competence and integrity, is what we really want in this society. Let me start by telling you what I did.

In 1986 I was, amongst many numerous roles, a non-executive director of Elders IXL. I had resigned as an executive two years prior, to work for my family company. At that time—that is, in the middle of 1986—the major priority for the company Elders was the expansion, via acquisition, of its brewery interests into the UK. I had no executive role in this project and in fact Elders had relocated a most senior management team to London to handle the project.

Simultaneously, the events surrounding BHP created a major issue for Elders. There was a shortage of available experienced people within the Elders management to deal with it. The senior people of Elders asked me to help. I did. The problem was simple:

as a consequence of the BHP situation, control of Elders could pass to a new party without the shareholders of Elders getting a say or a fair bid. Whether that would have been Holmes a Court, BHP, Adsteam, Equiticorp, IEL, or whomever, was irrelevant: it was not to the benefit of the Elders shareholders. Elders had frequently and openly communicated that it welcomed any 100 per cent cash bid for Elders but would fight any attempt at minority control of Elders by partial takeover. The problem was that the law then allowed partial takeovers. It was a very bad law and has since been changed.

At that time, Equiticorp acquired and held a strategic parcel in BHP shares. The events were quite frantic and around this time—probably in June 1986—the directors of Elders IXL received a paper. That paper still exists and is available, and is in the archives of the NCA. This paper explained the circumstances that existed for the shareholders of Elders at that time and concluded that there had to be a change of plan by Elders IXL. It outlined various major strategic alternatives that Elders could adopt. These included fairly major things, such as a bid for BHP for $8 billion or accepting a cash bid from Holmes a Court for Elders; they were very major decisions for the company to make. They would all take time to assess, but events were moving very fast. They were worried that these options that they wished to canvass could be closed out. They made a decision. I would like to read to you the decision they made which was minuted:

The Board discussed its options in respect of its investment in BHP in the light of the partial takeover offer made by Bell Resources Group Limited for BHP and agreed that management should proceed with arranging the necessary facilities and taking other appropriate action to place the company in a position to adopt any of the various options open to it and to implement them at short notice.

That is a recorded, ratified board minute and produced in evidence at the recent trial. They made that decision.

One of those actions that was taken was an option straddle plan. I know this to be a fact because it was my office, not Elders, that devised that plan. I personally explained that to the chairman and deputy chairman of Elders IXL what that plan meant, they agreed to that plan and asked me if my office would try and execute it. I arranged that to happen, it did happen.

That plan had two parts. The first was that I negotiated an indemnity agreement with Equiticorp and I negotiated a call option agreement with the McIntosh brokering house. These agreements were legal, known to be so, and have been subsequently confirmed by every major commercial barrister in Melbourne that they were legal. The terms of these agreements had been confirmed by the other parties on the other side to both agreements. The terms did not require any disclosure, and in fact if they did they would not have been worth entering into. The essence of them was that they were able to be entered into without the need for disclosure.

These agreements were successful. They kept the options open for Elders as long

as it was necessary for Elders. As importantly, it generated a net cash profit to Elders of $90 million. This is real profit, it is in the accounts, the cash arrived and, as a consequence of this action, that was the result to Elders.

It was the first time ever that the company Elders had entered into these type of arrangements, particularly in the call options market. They had no expertise in this area at all and in fact at the end of this period, Elders recruited the person from my office so they could actually transfer the expertise inside the company. They had never operated in this market prior to that.

That is what I did. I think my office did it well. I read with interest that the directors of the company have said on oath to the National Crime Authority that I had the authority to enter those agreements and that they believed they were in the best interest of the company. Others can make their own judgments, but that is clearly what I did and I do not resile from it. The NCA obviously decided it should make some judgment about that and it became part of an investigation.

Let me tell you about the investigation. I think it is probably best, rather than use my words, to quote from some of the senior people at the NCA: the chairman, the senior QC who led the investigation and the QC who assisted him. This is an affidavit sworn by the then chairman of the NCA, a Mr Julian Leckie, and produced in evidence at the recent trial. I would like to be careful when I quote, so if I could speak slowly and carefully:

At the time when the NCA first took over Operation Albert in December 1989, I believe that one aspect of the Elders matters was . . . involving an association between Equiticorp/Beid/Hawkins and Elders, and that a parcel of BHP shares acquired by Beid was suspected to form an undisclosed portion of Elders' cross-shareholding in BHP.

He said:

It should be noted that at that stage—

and this was August 1990—

. . . the H fee was a key part of the investigation and had been the subject of monthly reports—already described—since at least June 1990. This operation was directed entirely to the investigation of this matter.

In conducting the hearings referred to, the witnesses were cross-examined, re-examined and gave answers on the matters relating to the H fee.

I would like the committee to note that last sentence again. That is from the then Chairman of the National Crime Authority. I will now give a couple of short quotes from Mr Rozenes, the man who led the investigation—a supposedly senior QC in Melbourne who was later to be the Commonwealth DPP. He said:

It is important to distinguish between the H-fee and the FX transactions. The H-fee was said to refer to a payment of a fee to Equiticorp/Beid/Hawkins for the alleged warehousing by Beid of a strategic parcel of . . . (BHP) shares . . . At the time when the H-fee was first mentioned there was no knowledge of the foreign exchange transactions which appeared later to be the precise manner in which the H-fee was paid.

That was Mr Rozenes. Just to complete the picture, his assistant, Mr Lorkin, in evidence also sworn under affidavit and produced in the court, said:

I can recollect the NCA undertaking inquiries regarding the H-fee prior to the hearings being held concerning the H-fee, and I believe I discussed these from time to time with Mr Livermore, and I also discussed these matters re the H- fee with Mr Rozenes QC.

I will ignore the fact that these affidavits were all prepared to mislead the court and will concentrate on one single issue that there is no doubt, from the evidence of the chairman, the senior investigator, and the QC assisting the senior investigator, that the Elders Equiticorp indemnity agreement H fee was a key part of their investigation. In my view, those statements mean there cannot be any doubt.

It may surprise you to learn that, despite being compelled to give evidence on numerous occasions to the NCA, despite all this preparation, knowledge and interest that the NCA had in the indemnity agreement I entered into and the H fee, despite me writing to them and saying, 'Could you please tell me what you think I have done wrong? I do not think I have done anything wrong, what are you on about?', despite receiving a number of summonses with pages of supporting material, I was never asked one question about the indemnity agreement, the H fee or Elders and Equiticorp in relation to the BHP shares. There was not one question, nor one word. Never was it mentioned. The phrase 'H fee' was never mentioned to me. That is absolutely staggering to me.

Let us pretend this was a genuine investigation. Perhaps they thought I did not know anything and was not an appropriate person to ask. Every other director of Elders IXL was compelled to attend the NCA—one after another, often for long and numerous sessions. Guess what: not one question was put to any director or officer of Elders IXL about the relationship between Elders and Equiticorp and the BHP shares. No questions were asked about the indemnity agreement or the H fee. That is an interesting way of doing an investigation.

Perhaps they were worried about the people at Elders: they might give them a wrong answer. But they had other people to ask. They had a lot of directors from BHP. Were there questions about the H fee, Equiticorp and Elders? Not a one. There are thousands of pages of transcript and not one question. Were any questions about Equiticorp and the H fee put to all the lawyers and advisers to BHP and Elders? There were none. Were any put to the bankers? Not one.

So we get to the Equiticorp directors—a perfect place to ask the questions. They

have Equiticorp directors compelled to come and give evidence. Still not one question relating to the H fee and not one question relating to the relationship between Elders and Equiticorp on the BHP shares. There was not one question in the whole expensive, farcical investigation into the Elders-Equiticorp role re BHP—not one question.

The fact is there was no investigation. It is impossible to sustain there was an investigation. Why? You can guess. I am not here to give you the answers, but I can tell you that most of the answers I come up with are fairly frightening. Perhaps we should be able to go to the papers. We will go to the internal NCA papers to discover why it was that there were no questions asked.

There is a Mr Cusack, one of the three people who were controlling the NCA at the time, who under oath says he was given a full briefing paper before he chaired the meeting which explained all this. It had been used to prepared his affidavit that he filed in the court last year. Unfortunately, when the judge asked for the NCA to bring it to the court, it had been lost. This is the competent NCA. It lost the briefing paper to the chairman which explained these answers. I guess that is possible.

The real issue is that there is an absolutely critical document in the processes of the NCA called a statement in support. The officer who is in charge of the investigation or the team leader has to explain why he is actually bringing someone in to question or why he is subpoenaing documents compulsory. It is fundamental to the process of the NCA. It explains the whole authority and reason why someone like me is called to give evidence under compulsion.

That has to be the go. It must be the place to find the answer. We know many copies existed: the team leader had a copy, most of the team members had a copy, the chairman had a copy and, of course, we have a copy in the central secure file of the NCA. We have the original copy in that file. In fact, we were told at the committal that it existed. We were actually told that it existed.

The magistrate demanded that the NCA find that document and deliver it up to the defence. It never came. We pursued it. We then were told at the trial that it was accidentally shredded. The authority—from which I was compelled to go and give evidence—was accidentally shredded. It got lost out of the master file.

I cannot tell you why there was not an investigation. In my view I do not think you will ever be able to work it out either because the normal sources of information that you would go to, the so-called checks and balances that you keep inferring may be there, are gone. They demand integrity. There is no integrity. They at least demand competence that you can keep a file copy of one of the fundamental instruments of power that you are operating on.

I say to you it is frightening. Is this what we want? Is this the role and action of a

body expected to be at the highest levels of the law, morality and competency? Is this what we want?

I would like to deal with my evidence that I gave to the NCA, because it appears everyone else would like to deal with my evidence. Frankly, I am flattered that someone has now deemed it important to actually produce it in the national parliament. I suspect that it is the only time I will ever be mentioned in the national parliament.

I have learnt a couple of techniques by reading the way these people give their affidavits. If you are skilled in the law, if you are from the law background—I suspect, skilled in politics is true—there are lots of little ways you phrase things. They are just beautiful. You read these sorts of comments whenever you are meant to go along. This is from Mr Rozenes:

> Although I have had my memory refreshed by some of these discussions and also some documents which I have recently been shown, I am unable to confidently state when I first was aware of certain facts or held the beliefs that I am about to describe.

In other words, 'Do not hold me responsible for anything I say here.' These are obviously the techniques that you learn in this business, but I must admit that I did not go to that school. Mr Leckie, the chairman, says:

> Although I had my memory refreshed by some of these discussions and also some documents which I have recently been shown, some of which are referred to in this affidavit, I am unable to independently recollect when I was first aware of any particular fact.

He then goes on to give all the dates of when he was aware. Let me tell you what happened. Let me first tell you, I intend to reaffirm the evidence I gave to the NCA on the forex transactions is truthful. On Christmas Eve, two days or so before, I cannot even remember the year, sitting here, I received a summons. It related to a forex transaction and Elders—no mention of the word Equiticorp anywhere in the document.

I do not have, nor do I claim to have, any expertise on forex matters. I have never worked in a forex operation. The forex is a major component of Elders Finance, and you need to understand that Elders Finance was a separate operation from Elders IXL: it had a separate board, of which I was not a member. It had a separate chief executive and it had separate management, with which I was never involved. Elders Finance did billions of dollars of forex transactions every year. I now know that they did, in the years in question, over $1 billion of forex transactions with Equiticorp themselves. I did not have that knowledge at that time.

However, the summons was of no concern to me. I came back from holidays, changed from my shorts and T-shirt into a suit, picked up a legal representative and went to the NCA. I did remember some things that I thought might relate to what they were asking about. I did not have any documents to check and I had no right to ask anyone

about them. I could not tell my wife where I was going, because that was threatenable with gaol; so I went to town and told her I was going into the office for a while and that I had some things to do.

I did know that I believed Australian companies should hedge their foreign currency risk when they owned overseas business. I believe in that strongly and always have. I am on the record in many places that, conceptually, it makes sense to try and match two companies with the opposite exposures, rather than go through middlemen and the banks. I did know that I talked to a number of corporates about that possibility and, many times, had referred them to Elders Finance.

I did remember that one of these corporates was the Equiticorp group and that the chairman, Allan Hawkins, after a conversation I had had with him, expressed interest, and that it was left for Elders Finance to complete a satisfactory agreement. I did know that. And I thought the forex that was in the summons perhaps related to one of those conversations. That is what I told the NCA, and then I went back to my holiday.

When Mr Rozenes started the interview, he told me that there was a foreign exchange loss, even though he knew that to be incorrect. I believed him. I accepted that it was a forex loss. Why wouldn't I? I had no way of knowing that what he was saying to me was factually untrue. I accepted his assertion and I responded and I would like to tell you exactly what I responded. The question was this:

ROZENES: Now I wonder if I might ask you to tell us, Mr Scanlon, your first knowledge of the transaction referred to in the summons whereby a foreign exchange loss of some 39 odd million was suffered by Elders IXL in favour of the Bank of New Zealand?

SCANLON: I think, sir, my involvement in that may be in setting up a hedge contract that led to the transaction.

That was my answer; it is still my answer today.

ROZENES: Had you been charged with the responsibility of finding any hedge contract?

SCANLON: No, I had not and I had no authority to enter into any.

ROZENES: So it was an incidental matter?

SCANLON: It was.

I then went on later in the interview to say:

I left it, as I would normally do, for Ken to do his business and follow it up.
ROZENES: All right. Did you make some written report to the board, or the company saying, 'Look, et cetera'?

SCANLON: No, I did not. I did not enter into a contract.

It is fairly clear that I did not enter into a contract. I had no authority to do that. I was acting as Ken's spokesman for convenience at the time. I would have thought that was reasonably clear, yet I read in the paper every day that I actually executed the transaction. I want you to bear with me for a minute, because I think this is important. It is important to me, and I am hoping that from this you will understand the risk. When you give awesome powers to someone, there is a need for them to be used properly. That is my purpose in doing this.

What I now understand Mr Rozenes was doing had nothing to do with any investigation of the forex transaction. He had made a conclusion that, if he could deliberately try and set me up so that I would confirm that I had entered into a hedge contract after a magical date of 10 August 1987, that was enough for him to get me into a conspiracy charge. The whole interview was about him getting me to admit that I entered into a hedge contract after 10 August 1987, because he had a bit of paper that said it happened on 10 August. He knew I did not have the bit of paper. So, if he could get me to say it was after 10 August, he was then going to claim that I lied about something that happened four years prior to this interview, when I came back from holidays.

He tried—six times. It was what you would call an ambush, an entrapment. Let me tell you that he failed. I will tell you what the consequence of his failing was, but I want you to actually hear how an investigation takes place, with the use of authority by people whom you would expect to have a different standard—sorry: whom I expect to have a different standard. I would like you to bear with me, because I regard this as the single specific way I can explain to you what happens to a person. This was a question:

ROZENES: Can you recall when it was you (may have) set up Hedge Contract?

SCANLON: Approximately the third quarter of 1987.

I would think a reasonable person would think that 'approximately the third quarter of 1987' meant probably around June, July or August. I do not think that is an unreasonable conclusion. The next question was:

ROZENES: What were the circumstances?

SCANLON: AT A NUMBER OF MEETINGS during that part of 1987, it was brought to my attention . . .

I missed one point to tell you: he not only wanted me to say that it happened after 10 August but also to confirm that I, along with other people, had made this decision on 19 August at a meeting they called at Sefton. He had two prongs: he wanted me to say, 'This came out of a meeting on August 19 at Sefton, and I raced off and did this contract because it was urgent.' I have got no idea about Sefton in 1987: this was 1991. I said 'at a number of meetings'. The next question was:

ROZENES: Was that a meeting that was conducted each year at Sefton?

SCANLON: It was often there; I do not know if it was every year or not.

ROZENES: But it was a yearly meeting?

SCANLON: Yes, it was a PRE-RUNNER TO A BUDGET SESSION.

The pre-runner to the budget session meeting at Sefton took place in May of 1987: clearly, factually, it existed—by all of the evidence—in May of 1987. He was having a bit of trouble getting where he wanted to be, and so he had another go:

ROZENES: Can you recall when it was Mr. Jarrett was overseas?—

Because, at the same time, I had said I had rung Mr Jarrett—

SCANLON: No better than I told you earlier.

ROZENES: Whatever was the time that you were talking to Mr Hawkins?

SCANLON: Yes. I remember it is the same question I think.

Let me tell you how these people cleverly try and trap you:

ROZENES: Are you able to say how long after the Sefton meeting—

In May, to my mind—

this conversation took place?

SCANLON: I do not think it would have been long.

ROZENES: Was it a matter of weeks rather than months.—

He has not been able to get me to say that the meeting was in August, so he says:

You see, Sefton is around the second half of August?

SCANLON: Is it? I really cannot remember when the Sefton one is.

The ambush was not working so well, so Rozenes then told me that the conversation took place after 19 August. He continued:

We can give you an exact date for that. 19 August. The meeting—let me tell you this—the meeting of Elders IXL at Sefton is on Wednesday, 19 August, and that is a meeting at which you yourself were present, Mr Scanlon. I will see if I can tell you something about it that that might refresh your

memory. At any event, it is somewhere after 19 August that you had this conversation. Can you say whether it was in August or September?

My answer was that I could not. So, he had managed to get August 19 in there but he still could not get me to say it. It went on and on. That was the entrapment.

Let me tell you what the NCA said I said; what Senator Conroy is quoting in the paper that I said; what every paper is now running that I said, and what every person I know thinks that I said. You have heard what I said. They were the exact answers. Let me now read to you what the Crown prosecution case statement is saying—it is all over the front page of the *Age*—or what I am supposed to have said, and what Senator Conroy keeps using for his reason to be puzzled. I respect other people who would be puzzled because they are using not my evidence but what the Crown said I said. Here is the evidence. Here is what the Crown, from the NCA, said in my committal:

Scanlon's evidence is false and demonstrably so. According to Scanlon at the Strategy Meeting held at Sefton in August 1987 it was determined Elders IXL should urgently set about hedging this exposure.

That is the interpretation of what I have just read to you. The major reason I was on trial was because of this evidence, because of what the Crown said I said, the story told by Scanlon to the National Crime Authority. This is what they said to the judge. The prosecution case stated that it involved a final decision to hedge some $200 million of the Courage exposure at the Sefton meeting in August 1987. This was 19 and 20 August 1987. He told the NCA that:

Subsequent to a meeting an agreement was reached between Elders and Hawkins to hedge this exposure. The problem for the defendant is that when the documentation was brought into existence, not by Elders, to give evidence to this transaction, the contract was to have been in existence from 10 August. The contract was one entered into by Scanlon—see his evidence before the NCA.

That is just false. There is no way that any reasonable person can answer saying, 'I cannot say when I entered into the conversations.' You cannot say that someone who says, 'I did not enter into the contract; I had no authority,' can say that. That is now enshrined everywhere I go.

I do not know the standards that you wish to impose on authorities like the NCA but they are not my standards. If you think there is integrity, that it is being handled honourably, that there are checks and balances out there, there are not. It demands people with integrity. There is no integrity there. That is unfair. It is not what I think you want.

I would like to digress for a moment to illustrate to you the naivety, I believe, that most people live with about some of these checks and balances. The prosecutor is meant by convention to actually be separate from the investigatory body. In this case, the barrister who was actually representing the DPP in prosecuting me was, in fact, the

barrister who advised the NCA right through the investigation to bring the charges. There are your checks and balances. Let me tell you that the DPP in Victoria took no role in supervising that barrister until he went off the rails in the trial towards the end. They freely admit that they were giving no attention to it because they assumed that they had outsourced it to the barrister.

Let me tell you that the NCA brief was shopped around until an accommodating barrister was found. Knowing that if he gave the right answer he got the work—which is his business—he gave the right answer. In business we call that a conflict of interest. For some reason that was not regarded as a conflict of interest.

I give you one example—and I think that you have had plenty of examples—and just in case you do not think that is factual, I would like to bring it back to specifics. I do not wish, through what I have to say, to give you general allegations. I would like to give you specifics of what happened and for you to sort out why and what it means. A witness, as you may be aware, was due to appear before the judge. He was an important witness. It was known that he was to appear before the judge. One week prior to his appearance he was compelled to go to the NCA under the orders of the prosecutor. The prosecutor for the Crown and the DPP decided that a much better result would be gained by interviewing this witness at the NCA, with its awesome powers and its no rules of evidence, than would be gained in front of the judge. Why would you do that?

He was asked why he did that. He said that he ordered it. That is not my allegation: he said that he ordered it. The reason he gave in court for ordering it was clearly false. When the witness received a paper stating why he was being compelled to go to the NCA, it was not the reason that the prosecutor gave to the judge. But there is no redress. Please be careful when you contemplate these great checks and balances. I have found them not to exist.

I would like to tell you what the real evidence was about involving the forex. You now understand mine. You understand what I did that no-one ever asked me anything about. What they asked me about—I gave them my knowledge—they falsely used to pull up by the bootstraps a chance to get me onto a charge and to put it into history for all time.

I was fairly hurt, obviously, when I was charged. I was unable to protect my family. I was searched at airports every time I left the country, which was normal for me in my business. I believe my phones were tapped, though I cannot tell you whether they were or not. I am suspicious of the break-ins that occurred in my home because the burglars took papers. They did not take my money, or my jewellery, or anything else like that. They just took my briefcase and papers. I cannot tell you who did that. I have no idea.

I believe that I was under surveillance and, obviously, the whole relationship with

the people I used to work has changed. They were all intimidated because they were all potential witnesses in the trial. We were no longer able to talk.

Eventually, I got a thing called a hand-up brief. I had never had a hand-up brief before. Those of you with legal training would know more. I called it a 'hub' because it seemed to be easier. This was the information that the Crown was providing to the defence to help explain why they had charged me, and what information they were basing it on. It fascinated me. I think that there were 24 arch binders of information. I think my name was in twice for the whole 24 volumes. I think that there were 10,000 pages and my name was in twice and both times, it seemed to me, had no relevance.

However, I discovered for the first time that all the so-called stolen money that was meant to be the subject of the charges was returned to Elders Finance. It all came back to Elders Finance. I had no idea of that until I read the hand-up brief. Furthermore, I discovered that it was not wrong that they were mistaken when they thought I had taken the money. They actually had positive evidence in there to say that I did not get any of the money. There was no assertion that I got any of the money. I thought that that was what they were on about. I thought theft meant theft.

I thought they thought that I had stolen $66 million, but then I read that they did not think that I had taken one cent. Not only that, I discovered that the money had come back to Elders Finance. More importantly, it disclosed to me that Elders Finance, via its chief executive, had lent $250 million to Equiticorp after the stock market crash when Equiticorp was clearly insolvent. It was as clear as day, and news to me.

I became very suspicious. I decided that I needed to know and understand more. I decided that I could not go along and say, 'I didn't steal the money,' because it seemed to me that there was a bigger force working against me. I decided that there was not enough information in the hand-up brief for me to come to the conclusions of what did happen. So I decided to ask the company I worked for, then called Foster's, for the papers. I thought that would help me understand it. They refused and in fact took me to court and injuncted me from being able to have access to the papers, even though the NCA had them already. Here I was, trying to work out what happened, I thought it was reasonable to go and ask the company who had the papers to give me the papers, and I was taken to court—another expensive day in court—and injuncted from using the papers when the NCA had them.

I decided to borrow some money—and borrow it I did. I funded an investigation into the true facts, that investigation being undertaken by my legal team. I think they did a brilliant job. When you read the press release, that is where it comes from. What happened is available to you if you wish. You do not need to read the press release. You can have the specifics. It is all factual and evidentially supported. Do not worry about just the press release. We can put it through to you on moving slides, piece by piece, every dollar; it goes to every paper. I was not leaving anything to chance. I can promise you that we spent enormous time and energy actually making sure we did understand it. Let me tell

you there is some staggering information; to me, absolutely mind-boggling.

First of all, it did confirm that all the $66 million came back to Elders Finance immediately it was sent out, that Elders never lost control of the funds; it was not six months later, or a week later, but immediately—a straight round-robin of the funds. It is fantastic, if you are trying to hide a payment to someone, that you actually complete the circuit in a day and bring it back to yourself. Amazing! It actually came back, though, to Elders Finance not as Equiticorp funds. That made me suspicious. It actually was used to pay off debts that were not Equiticorp debts, on the same day.

Equiticorp was insolvent. It is absolutely clear as the day that Elders Finance lent over $250 million to Equiticorp, and associate groups of Equiticorp, post the crash. It showed that $400 million was needed by Equiticorp to try and stave off insolvency, and it showed that every cent of the $400 million was disguised and handled by Elders Finance. The $66 million forex transaction was a minor part of it. Every cent of it was disguised—the most elaborate disguises you have ever seen. The money was going around to something like 122 companies, through Hong Kong, Vanuatu—wherever you name. We can tell you where every cent of it went and you will not find any involvement, or any suggestion of any involvement, by myself. It is all there if someone wanted to actually tell you—and we are prepared to do it.

It also showed that every paper that was put to the Elders Finance board during this period was concocted, and it showed that the chief executive of Elders Finance at that time knew they were concocted. That was shown because of his own notes in his own handwriting that were at the NCA. It also showed that Ken Jarrett refused to give an interview at the New Zealand fraud squad at the time over these issues. It also showed that Elders Finance was the only lender to get their loan funds back from Equiticorp; no other lender did. It also showed that not only did Elders Finance get all their money back, they got $23 million in fees for doing it.

You now know Elders paid a confidential settlement sum to the statutory manager of Equiticorp because of these events. If you do not know, that is what happened. It is confidential; they settled out of court so this would not become—. I would commend you, if you are interested, to look at it. I think it is great work. However, that is not today's purpose. But the real shock to me was that the NCA had all this information; so did Foster's. They had it explained to them by the man who discovered the H fee. There is a man who worked for the statutory manager, a solicitor. He discovered the H fee. There is no doubt on the evidence who discovered the H fee—it was a man called Jones. He had worked out where every cent went.

It would have made my life much cheaper and easier had I been able to access it. Here we have in the NCA the whole chart of where every dollar of all that money went. He explains why. It is not a secret; it is all there. Page after page of fund movements, all available in the NCA. It was buried. There was not one follow up by the NCA with Jones.

They did not want to know. It is complex, but it is there.

This organisation that claims it is an expert is now actually spending their time on money laundering. Great ability—it should not be hard for them. If my lawyers can work it out, I have to believe someone who claims they are an expert on money laundering could. You are welcome to it.

I keep asking you: is that what we want? The next person may not be able to cope with the demand of strength, finance and support. That person can be anyone. Quite frankly—and I say this not lightly—it could be one of you. It could be now. You could be under duress now. How do we know? What impact does that type of action happening affect the dynamics of this committee? I do not know.

I have been long and I will conclude, Mr Chairman. I thank you for your indulgence, but you do not need more evidence in factual matters re the NCA operators. What we know—and these are facts—is that the NCA acts illegally; the NCA destroys critical evidence; the NCA misleads parliament; the NCA misled the intergovernmental committee that purports to supervise its powers; the NCA misleads the courts; the NCA deliberately misleads witnesses; the NCA creates false evidence; the NCA disregards court orders; that NCA secret information is selectively publicly available; the NCA provides false information to other law enforcement agencies; the NCA withholds evidence from the court; the NCA makes false public statements; the NCA offers to arrange indemnities in return for evidence that cannot be substantiated; and the NCA threatens witnesses.

The facts are clear. The Australian Law Reform Commission concluded in 1996 that 'The NCA is not an authority in which the public can have any confidence.' It is too late for me. Please do something to protect the others. Thank you Mr Chairman.

CHAIR—Thank you, Mr Scanlon. You indicated that you have a number of documents there that you would like to make available. I take it that you are actually wishing to table those documents. Could you just make it clear which ones you are referring to?

Mr Scanlon—Mr Chairman, in the speed of which I had to change, can I first say that all of the documents I have are available to the committee—that is an open offer. I am not sure which of them you wish to have and whether or not your secretary might like to work with my lawyer and determine which of them you wish to have. I am relaxed, but certainly I will table them.

CHAIR—It is not clear to me which ones we might wish to have either so I think we will take up your offer, if the committee is happy, to work with you and see which ones might subsequently be tabled. If everyone is happy about that, then it is so ordered.

Senator McGAURAN—That would specifically include the Jones document—the

one with the charts.

CHAIR—We will take it that all of the documents you have referred to in your verbal submission will be available to the committee. We will work with you to determine which ones may be of interest to us. It might be helpful if you just describe for the committee what your current business activities are, Mr Scanlon.

Mr Scanlon—Less than they used to be, Mr Chairman. I resigned from most of my positions of trust and public positions, firstly, because I felt I was virtually forced to in many cases and, secondly, because in other cases I felt that it may compromise the organisation. For example, I stood down as chairman of the TAB and I stood down as chairman of a company Jamieson Equities, which was my main one.

Basically, I currently have very limited directorships—and I am not seeking any either, obviously—but I primarily work for my family company as an investor where appropriate. I will give you an example, if that is the tone that you are after: I am chairman of a group called Doxa for Youth Foundation. It is one of the positions I did not give up. I agonised over whether being charged with theft of $66 million you can actually be chairman of a youth foundation which handles trust funds. It is a difficult question. But I feel so passionately about the particular cause that, with the support of my directors, I did not give it up.

Part of the operation of the Doxa for Youth Foundation is that it raises money by its own activities to fund its program, which is actually to help disadvantaged youth. In doing that, it needs liquor licences. To give you an instance of the sort of pressure you are under when you are in these circumstances is that the NCA intervened at the liquor commission—sought representation and got it—to object to the Doxa for Youth Foundation getting a licence because I was chairman of that organisation.

CHAIR—When was that?

Mr Scanlon—That would have happened just before the trial started—I am sorry, I have not got the exact year.

CHAIR—That is okay.

Mr Scanlon—I just find it staggering that the NCA is running along to the liquor commission to stop a charity organisation from getting a liquor licence to carry out its normal operations, but that is what happened. That is factual; it is on the record.

CHAIR—So you are no longer a director of any public company—

Mr Scanlon—Yes, I am. I am still the director of one—the Lang Corporation. It is the only public company I am a director of.

CHAIR—What would you put as being the extent of your financial losses that you have incurred as a result of all of this?

Mr Scanlon—I think the issue is not about money, Mr Chairman, and I would rather not get into that.

CHAIR—Are you proposing any action—

Mr Scanlon—I am party to an action that was started some time back. If this committee or someone in authority can solve the problem of the NCA, that is what I wish to have addressed.

CHAIR—In the submission your solicitors made to the Attorney-General, Daryl Williams, this statement is made:

It is of importance to note in the context of an investigation into the National Crime Authority that on behalf of our client it has been consistently maintained that the National Crime Authority did not in fact carry out a true investigation but rather set out to construct a case.

It seems to me that is the crux of your complaint here today. I put it to you that, although you are critical of the so-called checks and balances—and, in fact, that is the crux of our inquiry—a magistrate played a role in this matter and made a decision. The Victorian DPP—although, I think you described their activities as being less involved than they perhaps should have been at one stage—obviously made an assessment of the evidence and decided to proceed.

Mr Scanlon—I have to stop you there, Mr Chairman. That is not true. The barrister advising the NCA made the assessment of the evidence, not the DPP. They outsourced those decisions. The world has changed.

Mr SERCOMBE—But the DPP must have signed off on it, Mr Scanlon?

Mr Scanlon—But you make it sound like the DPP sat down and looked at the case. The DPP in fact did not. He regarded himself as having a conflict of interest because he played tennis with me once. The deputy head of the DPP said he had a conflict because he went to school with me. So we actually had a man who was working with the prosecutor who was not even a QC.

Senator CONROY—Who are we talking about?

CHAIR—Just a second, Senator—

Senator CONROY—It is a point of information, that is all. I was just asking who it is that we are referring to.

Mr Scanlon—Who was the DPP that had a conflict of interest?

Senator CONROY—No, who is the barrister?

Mr Scanlon—It is a long Polish origin name—Woinarski, I think.

Mr SERCOMBE—Brind Woinarski.

CHAIR—We will take that on board.

Mr Scanlon—I think your point is valid. The checks and balances that you talk about, if you go through them, do not exist. You talk about the magistrate; you need to understand things such as the information that explained what happened not being available at committal. The papers that were needed to be able to address this question were not available. My lawyer said, 'You cannot possibly take the risk of getting up there and saying what you think happened until we have completed the investigation.' They were specifically injuncted from us. What he heard was what the NCA said.

CHAIR—The NCSC was strapped for cash at the time and took the opportunity to hand the matter to the NCA and we are all aware of the history of that.

Mr Scanlon—I do not know, I might be naive, but I cannot believe that, on 13 December, Mr Rozenes and Mr Lorkin were briefed to consider whether the Elders matter warranted the NCA's attention. They were handed a room full of documents on 13 December. By 19 December—six days later—they had studied all the documents, they had written an opinion, they had the opinion formulated in an NCA request for reference and had received the reference. Fantastic work!

CHAIR—Do you blame the NCA? You finish with a number of comments about the performance of the NCA, which is absolutely relevant to what we are looking at. Do you blame the NCA for this from go to whoa, if I can put it in those terms?

Mr Scanlon—I am certainly not interested in political conspiracies and all those sorts of issues. What I am telling you is that the NCA unfairly and incompetently treated me.

CHAIR—That is the point. Were they incompetent or were they malicious? The question is why?

Mr Scanlon—I think there is a much more important question than that: how can we afford to have it? Before you even get to why, how can you afford to allow this to happen? You have to weigh up the balance and the benefit you get from it. But there is no benefit. There are no experts at the NCA. All the experts are contracted out to accounting firms. There is no body of expertise at the NCA, none at all, in relation to these sort of

matters. I can promise you, none at all.

CHAIR—Senator Stott Despoja wanted to clarify one—I did ask that question, but you can ask it again.

Senator STOTT DESPOJA—I want to chase up your earlier comments when the chair asked you about the extent of losses and you indicated that you were a party to a claim presumably to pursue compensation. I was wondering if that was indeed the case. Are you pursuing compensation and does that involve Mr John Elliott?

Mr Scanlon—The answer, I think, to those questions is yes. I believe it includes compensation. It was originally trying to force the issue to expose what the NCA was trying to do. That was my primary intention. It is still on foot and it would include compensation claims.However, I am a bit reluctant to go into detail, because I am also covered by an indemnity under the Fosters articles that I believe will at least, because I was found innocent, give me the right to claim back that money I spent paying external people in my case. However, Fosters has been unwilling to agree to that so that is probably going to end up in court, too. They have been unwilling to do that despite what I think is a very clear article. I cannot get it back twice is, I guess, what I am saying.

Senator STOTT DESPOJA—Just one further question: at this stage, have you been offered any money by the NCA?

Mr Scanlon—No, I have not.

Mr SERCOMBE—Mr Scanlon referred, just in passing, to his association with Doxa Youth Foundation. I would imagine from that interest you have in youth matters that you would be aware of the scale of the drug trade in Australia and many other countries and the effect that has on young people in particular. You would probably also be aware, I guess anecdotally, that this committee has had evidence that that trade is on the scale of the international oil trade in terms of turnover. Given the scale of the threat to our society that that sort of criminal behaviour presents, could you give us a view about the use of the coercive powers of a national crime authority in relation to dealing with issues that arise from that sort of criminal activity? Do you believe that the relatively sophisticated nature of much of that trade and the money laundering activities associated with it justify the sorts of operations the NCA pursues in that area?

Mr Scanlon—I want to be careful that I do not become an expert on policing matters, but I will answer that question.

Mr SERCOMBE—Presumably you have a view on the NCA's coercive—

Mr Scanlon—Yes, I have a view, and I appreciate your comment about the drug thing. There may possibly be a role for coercive powers in this society. I am not here to

say there should or should not be. However, certain things need to go with them. To ask someone to answer questions by compulsion, without access to the documents before they answer, is blatantly unfair. It is not on, just as it is not on in a court of law. It is not there to actually find anything out; it is just straight entrapment. There is no room for the use of coercive powers for entrapment. There is room to force people to learn something by it, and there is no reason not to give them documentation. There is no reason at all not to tell them what it is you are investigating.

So you have to be careful to separate out questions. Coercive powers and the NCA are two different issues. If relevant police authorities that I had respect and trust in said coercive powers were necessary for them to achieve the types of things you were talking about, I, as a member of society, would not put my hand up—even after my experience—and say, 'Under no circumstances should that be true.' But it has to be reasonable. You must have a chance to know what it is about. You must have a chance to have some documents.

Now let me go to the second half of your question. You have put coercive powers and the NCA together. Under no circumstances would I give coercive powers to the NCA. There is no expertise and no integrity. The people that are supervising have to assume they are being lied to. There is no chance to investigate what they are doing because the documents will be destroyed. You cannot take the risk.

Mr SERCOMBE—Nonetheless, Mr Scanlon, you are acknowledging that there is a case for the operation of coercive powers in some criminal investigations?

Mr Scanlon—I am saying that I am not able to say there should not be.

Mr SERCOMBE—The submission that came from your solicitors did talk about political motivation and unlawful investigations as a basis for a great deal of the NCA's activities—

Mr Scanlon—What letter to where?

Mr SERCOMBE—This is a letter that was provided to this committee—

Mr Scanlon—Is it my submission?

Mr SERCOMBE—From Arnold Bloch Leibler, dated 30 August 1996, addressed to the Attorney-General.

Mr Scanlon—I was just checking that we were not talking about a press release or something.

Mr SERCOMBE—It seems to me that you are also indicating that there is some

political motivation in the way this matter unfolded. I would like to go back, briefly, to the very origin of this matter which, as far as I am aware, was a letter from Mr Bosch, the then chairman of the National Securities Commission, to the then chairman of the NCA, where he said, amongst other things:

> We have been concerned about the way in which some directors of Elders IXL have gained effective control of one of Australia's major companies. It appears that there may have been breaches of the Companies legislation and the Companies (Acquisition of Shares) legislation and possibly State Crimes Acts.

He went on to say that they have been investigating these matters and that:

> . . . we had come to the conclusion that while there was sufficient evidence to believe that offences may have been committed, substantial further work was required before it would be appropriate to institute legal proceedings.

In the brief that was prepared after that by the NCA to the Attorney-General, they came to the following conclusion:

> In summary, the circumstances revealed by the information held by the Authority . . . suggest substantial planning and organization by those involved in respect of the relevant criminal activities herein referred to involving the use of sophisticated methods and techniques to camouflage the illegal activities in a manner calculated to defeat ordinary police methods of investigation.

What I would like your response on, Mr Scanlon, is against the background of that advice from Mr Bosch—the view presented to the Attorney-General that there could be criminal activity that was seeking to be camouflaged and therefore not responsive to normal police methods of investigation—whether you would think in those sorts of circumstances it would be appropriate for a law enforcement body to want to have a closer look.

I come back to the very obvious point that has been made: in any sense neither you nor any of your colleagues, co-accused, can be anything other than regarded as innocent because you have been acquitted, but what this committee has to do is to form a view about the reasonableness of the NCA's actions. I would suggest to you that, faced with Bosch's comments to Faris and faced with the results of their preliminary investigations, they had no alternative but to proceed with an investigation, and to suggest that it is politically motivated does not seem to me to square with the facts.

Mr Scanlon—Let me address some of those points. What you are saying is that no reasonable, intelligent person looking at the way that those events were conducted by Mr Bosch, Mr Faris and Mr Rozenes could possibly conclude that they were genuine. You think about it—I am not asking you to question it—the NCSC had declared they had 16 major companies they needed to review. They were their most important target list. They actually went to the trouble of publicly putting that. Elders was not on it.

Now we are told that the NCA had this money and therefore they offered their services—the NCSC had scarce resources. You would think they would take one of their 16. It is the obvious answer, is it not? They would say, 'Gosh, these are our most important 16.' No, that is not what happened.

Let me tell you the next thing: the NCA had absolutely no expertise in handling this money—none. It is beyond question. Even the NCSC said that they had no expertise. They had never done it before. They went and recruited new people to start a new type of investigation that they had never done before. Why wasn't the money just given to the NCSC? It seems to me the most simple way to solve the problem.

It is clearly fake. I do not know why it was fake, but it is fake. If you are not prepared to sit and look at the facts and come to that conclusion, then you will have a different view. But it is clearly fake. I cannot tell you why. It is absolutely fake. I agree that people should have the right in this country to investigate if they see fit; I need that as a citizen as well as anyone else does but—

Mr SERCOMBE—But you would agree it is a serious matter when someone of Bosch's standing at that time makes allegations in respect of very serious criminal matters.

Mr Scanlon—Why wasn't he looking at it?

Mr SERCOMBE—I do not know.

Mr Scanlon—Well, it does not make sense, does it? Why did his No. 1 man who actually ran the place—not Bosch—say there was no reason to look at Elders IXL, and said so under oath at the trial last year?

Mr SERCOMBE—In relation to the sorts of advice the NCA gets for specialised areas, if we can move on a little in time to the H fee matter. The advice provided to the authority by consultant accountant Duesberrys in 1990, amongst other things, said:

> . . . on the basis of a brief outline of the transaction . . . this firm had agreed with the view expressed by officers of the National Crime Authority that the nature of the foreign exchange transaction and particularly the way that it came to the attention of the investigating agencies did suggest that it, perhaps of all the transactions we have so far reviewed; (sic) is the transaction most likely on its face to show evidence of impropriety.

Once again, I put it to you, Mr Scanlon, that here are the specialist outside sources that you referred to the NCA using—and I would have thought quite properly using given the complexities of these matters—indicating that in their assessment there is on the face of it evidence of impropriety. Now, how can an authority that is acting responsibly in the public interest fail to then proceed to investigate when it has that material in front of it?

Mr Scanlon—It should, but it should do it properly. It should actually go to its

supervising body and tell them they are going to. It went to its supervising body and said that nothing had changed. It deliberately lied to the people supervising them.

CHAIR—Which authority?

Mr Scanlon—The inter-government committee that actually supervised it. It specifically went to them and said, 'Nothing has changed.' It lied to them. Why? I do not have an argument with you that things that look wrong should be looked at. That is not my problem. But then why not investigate it if it is such a problem; why not ask people?

CHAIR—Mrs West had a question and then we might go to Senator Stott Despoja.

Mrs WEST—Would it be reasonable to assume that you approve of the ASC as an investigative body for white collar crime?

Mr Scanlon—Yes, of course.

Mrs WEST—Given that it was not in existence at the time of the investigation of this episode, would you have preferred the whole investigation to have gone uninvestigated?

Mr Scanlon—Of course, but I do not deny the opportunity for the community to investigate an action I have taken, as long as it is done properly and with the right checks and balances. I have done nothing wrong in my opinion. I actually think I did a terrific job for Elders at that time under a lot of pressure. I have made many decisions in my time; some have been right and some have been wrong. I believe I actually did a very good job at that time under great pressure; I believe it was legal; and I would have been delighted to be asked to have a chance to skite about it.

Mrs WEST—Are you aware of some of the other duties and responsibilities of the NCA and would you accept that they carry out their duties in a fairly responsible manner in detecting sources of organised crime? What is your opinion of the other duties of the NCA?

Mr Scanlon—I would have to be honest and say—

Mrs WEST—Do you accept—

Mr Scanlon—No, I do not accept it. I do not think I am qualified to answer it but I worry about your source of information. If the information is coming from the NCA, it will be false. You need to accept that the information coming to the supervising body and to the public is false. It is false; therefore do not make any decisions based on what they tell you. Once you know that, why would you have it; how could you take the risk? I am not saying, 'Don't fight drugs.' Of course I am not saying that. I am not saying that you

do not need to work out the proper degrees of authority and strength of the NCA; of course I am not saying that. This is what I am saying: please do not pretend that the NCA has a role in its current culture, with its current competency, with its current integrity and with its current people to be able to do that because it cannot.

CHAIR—Just to be clear on that point: you have been critical, but you are now backtracking a little and you are not so critical of the powers of the NCA. I mean, the end may justify the means in some circumstances but in your case you are saying that those powers were abused.

Mr Scanlon—I am saying that the current NCA has lost its right to exist and to have those powers. What I am trying to say is that if it is set up as a new body tomorrow or it is put in as part of the Federal Police that that per se is not objectionable to me. I accept you have to make a decision with some powers and make a balance between the powers to achieve the results for the community. What I am telling you is that, if any source of that information is from the NCA, you ought to disregard it.

Senator McGAURAN—I just want to understand the status of this chart book that I have in front of me. Am I right in understanding that it was undertaken by an expert obviously within Phillips Fox for the NCA—

Mr Scanlon—No, for the statutory manager of Equiticorp.

Senator McGAURAN—Right. And therefore it concluded that the forex transactions were transparent and legitimate.

Mr Scanlon—No, it did not do that, because they clearly were not.

Senator McGAURAN—Could you clarify the status of this chart book?

Mr Scanlon—Sure. I know it is complex and I will try and do it simply. But if in the simplification you think it is over-simplified, please tell me. Equiticorp went broke. When Equiticorp went broke, a statutory manager was appointed. The statutory manager had a lawyer working for him by the name of Jones. He is the man who went through all of the detail of what happened in Equiticorp. He traced all these funds that are recorded in this book—and I will come back to what they say—but he could not work out the full story on the money called H fee.

The first time H fee was ever heard of was when this man wrote to the New Zealand fraud squad and said, ‘Can you help me get some information for my statutory management duties. I am missing one little bit and it is called the H fee. Can you get me some information on it?’ They then went to the NCA and said, ‘Can you use your powers to get this information, because we want to help this fellow Mr Jones?’—all of which is illegal. But that, in my view, is what I think happened.

You are not meant to use the NCA to help a statutory manager achieve his own financial ends. That seems to me to have nothing to do with the checks and balances that Mr Sercombe was quizzing me on. That is where the H fee came from. He was an expert on this. He was interested because he believed the money, the H fee, belonged to Equiticorp. He suspected that there was an agreement that Equiticorp produce them some funds—

Senator McGAURAN—What did he conclude?

Mr Scanlon—He concludes that the money was redefined as a forex instead of being paid straight as a fee so that Equiticorp could not get the funds.

CHAIR—One thing has occurred to me that you should clarify. You maintained that there were a number of break-ins at your home. How many and when? Are you implying the NCA was responsible for those?

Mr Scanlon—I am not prepared to say that, because I do not know.

Mr SERCOMBE—Do you suspect that might be the case?

Mr Scanlon—Yes, I do. But I am obviously paranoid and intimidated by these people.

CHAIR—Why would they need to do that to get documents when they have got the powers to ask for those documents and come through your front door, unlocked by you? Why would they have to break in?

Mr Scanlon—It is very different to get a copy of a transcript versus understanding where you are sitting legally and where you are heading. I think you will find they cannot get those sorts of documents.

CHAIR—Okay. How many break-ins?

Mr Scanlon—Two in my major residence and one in a beach house.

CHAIR—You have obviously reported them to the police.

Mr Scanlon—Yes.

CHAIR—What has happened? Obviously, nothing has happened. They only stole documents?

Mr Scanlon—And a couple of kitchen cups on the way out.

CHAIR—That is an interesting turn of events, isn't it?

Mr Scanlon—Yes.

Senator CONROY—For the committee's information and to add to the collection of material that Mr Scanlon has made available—and he has quoted from quite a number of the documents I have—I seek leave to table Mr Scanlon's transcript, which he has already included in what he is tabling. I am presuming that that is okay.

CHAIR—This is a transcript in-confidence of evidence given by Mr Scanlon.

Senator McGAURAN—Is that what was available in the parliament?

Senator CONROY—Mr Scanlon has just tabled the same document.

Mr Scanlon—No, I think we better be a bit more precise. Senator Conroy, you actually took selected parts of that evidence—not all of it.

Senator CONROY—And you just read other selected parts and then offered the full transcript to the committee.

CHAIR—Let us do this properly. This is not one of the documents that you have tabled, Mr Scanlon?

Mr Scanlon—It is. I think Senator Conroy is absolutely correct to say that it is a document I referred to quite significantly in my thing. I should consider his request and I would like to ask whether, firstly, legally I am even allowed to—

CHAIR—I am prepared to let you do that, if you want to consult with your counsel.

Mr Scanlon—I understand, given that everyone else has got it, that there should not be any legal impediment to my tabling it.

CHAIR—I take it that the committee is happy for this particular document to be tabled?

Senator CONROY—It is already tabled.

CHAIR—Well, it is. Do you wish to pursue that one being tabled or not? If there is no objection, it is accepted as a tabled document.

Senator CONROY—I would like to table the prosecution case statement. I think you called it HUB—hand-up brief.

Mr Scanlon—I think you are talking about two different things there.

Senator CONROY—I would like to table the prosecution case statement.

CHAIR—This is a document entitled 'Director of Public Prosecutions versus—

Mr Scanlon—Mr Chairman, I think I would have to object to that on the basis that it has no status at all and it was not accepted by the court itself.

Mr FILING—Does Mr Scanlon wish to have his legal counsel sit adjacent to us?

CHAIR—Mr Walker, the proceedings allow you to sit at the table and for Mr Scanlon to consult with you at his leisure, within reason, before he answers questions. We are perfectly happy for that to occur.This document is not amongst the documents that Mr Scanlon has offered to table, I take it.

Mr Scanlon—It has no standing, Mr Chairman. It actually was not accepted by the court. It is simply a chance for the prosecutor to make emotional argument prior to the case starting, which he never made and was not accepted by the court. Therefore, I think it is inappropriate to be here.

CHAIR—The operative thing is that I would rule in those circumstances that it is not relevant to the inquiry.

Senator CONROY—Am I allowed to say anything before you make a ruling?

CHAIR—You can argue—

Senator CONROY—The NCA have said publicly that this document is a publicly available document. They have stated that. They have stated that the transcripts that are being read from are publicly available, legal documents. They have not, at any stage—

Senator FERRIS—Under section 55, I would object to this under relevance.

CHAIR—My ruling on the tabling of this document is that it is not relevant and therefore it is not acceptable.

Senator CONROY—You are seriously suggesting that the prosecution statement in this case—

CHAIR—I am seriously suggesting that.

Senator CONROY—That it is irrelevant to a discussion after all of the issues that Mr Scanlon has raised in his own evidence?

CHAIR—Order! Just a moment. There is to be no further discussion on that. If you want to resolve it further, we will go into a closed session to resolve it, if that decision has to be questioned.

Senator STOTT DESPOJA—Mr Chairman, I would suggest that that may be appropriate because Senator Ferris has brought up the section 55. Isn't the immediate assumption, by virtue of taking Mr Scanlon's evidence and submission, that we have made relevant anything relevant to that discussion—whether it is a transcript or something else?

CHAIR—If there is to be a discussion on my ruling, I would direct that the committee moves into a closed session and we will just adjourn the public hearing for a minute or two.

Short adjournment

CHAIR—The committee has determined to accept the document for tabling and, having done so, I now advise you that in answer to any questions that may be put to you by Senator Conroy or by any other member of the committee in respect of that document, you could request that the answers be given in camera. The hearing will proceed.

Mr Scanlon—Mr Chairman, I obviously accept your decision and the committee's decision. Firstly, just in case you are unsure—I mean this in nothing but good faith; and I am not as skilled in these areas as I should be—that document does not form any part of any transcript anywhere. I am not too sure if Senator Conroy claimed it did or not. I am not saying. Secondly, it has never been accepted in any court. Thirdly, it is not publicly available.

CHAIR—I take your point.

Mr Scanlon—I just think you ought to understand.

CHAIR—But I will reiterate it is a prosecution case statement. You did refer to aspects of it in your earlier comments.

Senator FERRIS—Chair, the basis on which we discussed this matter in our private meeting was on the assurance by Senator Conroy that this had been determined by the NCA to be a public document. If that is not the case—we have just received advice from Mr Scanlon that it is not the case—then I believe we should reconsider the matter.

CHAIR—It is Mr Scanlon's—

Senator CONROY—What I said and what others said was that Mr Melick has said these are publicly available documents.

Mr Scanlon—You read it in the paper?

Senator CONROY—I am a bit surprised, I have to say to you.

CHAIR—Just a moment, Senator. It is clearly not a public document. But it has been, as Mr Melick I think said, fairly broadly distributed. There are a number of copies of it available. If the committee wants to give further consideration to the matter on the basis of whether it is a public document, I am happy to resolve that in private session. I do not understand that to have been a major point of contention.

Mr TRUSS—Perhaps Mr Scanlon might like to amplify his comments that he believes that it not be a public document, because the committee was under the impression that the NCA regarded it as a public document.

Mr Scanlon—Would it be appropriate—because I think it would help us all—if I asked Mr Walker to explain that to you so you get it pedantically correct rather than a layman trying to explain?

CHAIR—Thank you.

Mr Walker—This document is produced pursuant to a crimes trials procedure legislation in Victoria. It is prepared by the prosecutor and it is served on the defence at the outset of a trial proceeding. The defence have an opportunity to file objections to the document. The document remains a purely confidential, private document between the parties until the judge rules upon the objections, if there are any.

In this particular instance, this judge never got to consider the document. So it was simply given privately to each accused and the defence filed their objections. The judge was never called upon to rule upon it. So it is not a court document. It is not a public document. It ought not be publicly available. If it has been obtained by people, then it has been obtained outside the law.

CHAIR—Thanks, Mr Walker.

Senator STOTT DESPOJA—I just wanted to clarify. Mr Melick, in public comments to the *Financial Review* on 20 June this year, said:

As far as I am concerned, the documents he—

referring to Senator Conroy—

has been quoting were part of the hand-up brief in the committal proceedings in 1994, and as such have been in the public domain since that date.

Am I referring to different documents?

Mr Scanlon—Yes.

Senator STOTT DESPOJA—So you would argue that this one has—

Mr Walker—It is a fact this document was not part of the hand-up brief. It had not then come into existence.

Mr FILING—Mr Scanlon, have you referred in any way—in your evidence or your submission—to this document, directly or indirectly?

Mr Scanlon—That sounds like an involved answer. Let me check that. As far as I am aware, it was the opening at committal that I was using to quote what the Crown Prosecutor said. I think it is a bit hard to ask me about indirectly.

Mr FILING—Could it be said that any part of your submission—your verbal submission or your written submission—was based on or associated with part or the whole of that document?

Mr Scanlon—Yes.

Mr FILING—In that case—

Mr Scanlon—All I can tell you is that it serves no useful purpose for you. It has nothing of factual base in it. It has no useful purpose to you. It is like me writing to someone I am in an argument with saying, 'I am going to say these things. What are you going to say about them.' And then you ask a judge to say what is fair to have been said.

Mr SERCOMBE—Would it not be true to say that you would regard this as an example of the unreasonableness of the NCA?

Mr Scanlon—It is just another way of asking us to get it into—

Mr SERCOMBE—In that circumstance, it seems appropriate for the committee to have a look at it on that basis.

Mr Walker—If I may just make this observation, that document contains a number of matters which were ruled inadmissible, both at the committal and at the trial.

CHAIR—I understand that.

Mr Walker—That is my concern. In so far as Mr Scanlon may have made observations which are consistent with what appears in that document, because after all the

prosecutor did make an opening at the committal, much of which he has incorporated into this document, then of course, I would advise Mr Scanlon not to be concerned about that. But this document contains allegations which both the magistrate and the trial judge ultimately ruled irrelevant to the matters then being tried. I am concerned that if you accept this document in its entirety, those allegations can become a matter of public debate.

CHAIR—Thank you.

Mr FILING—In dealing with your submission in totality, obviously your theme and the general thrust of your submission is that the NCA acted unreasonably, as Mr Sercombe has commented in questions. I want to ascertain why you referred to or used that document as part of your submission. Was it to show, as Mr Sercombe has tried to draw out, that the NCA acted unreasonably. If so, is that document an example of how the NCA has acted unreasonably?

Mr Scanlon—No, I was really trying to draw on the fact that that evidence has been falsely created. It has ended up being presented in the newspapers and everything so you can pick up the same things in many newspapers every day, from what I am trying to say to you. I can go back to the factual evidence that I gave. That was the key document you have in front of you and I have been willing to table what I actually did say so you can make your own decisions about what I said.

Mr FILING—Are you aware the committee has within its powers the authority to accept the document? It becomes a privileged document and the committee makes whatever decision it wishes in relation to the publication. It may, for instance, prohibit the publication and then, of course, it is protected by the Parliamentary Privileges Act.

Mr Scanlon—My understanding is that that is a useless right you have.

Mr FILING—It is a lot less useless than it being tabled in *Hansard*.

Mr Scanlon—I am not an expert.

CHAIR—Let me just point out to the committee that at 12.30 when the Senate sits, the standing orders will preclude our continuing to sit. I am going to suggest that, in view of the evidence and the advice we have now received from Mr Walker, we should reconsider this matter in private session. You should bear in mind that this is taking up time, Senator Conroy. So if you want to pursue it—

Mr SERCOMBE—Mr Chairman, could I ask one more question; I think it is relevant. Is it true to say that any of the contents in yesterday's *Sunday Age* publication reflect the contents of this document to your knowledge?

Mr Walker—I cannot answer that. I have not studied that particular article, I am afraid. It is not a paper that I give any great credence to.

CHAIR—In the absence of any further suggestions and in view of what Mr Walker said, I think we have got no option but to declare the public session on hold and have a further private discussion.

Short adjournment

Mr Walker—Mr Scanlon will be back in a moment. You may wish to take up some time by my dealing with the annexures about which you asked—the annexures to the letter of 30 August which were submitted on behalf of Mr Scanlon.

CHAIR—Yes, I referred to the fact that the annexures were not enclosed. You can answer that now.

Mr Walker—I have a folder here which we are willing to table, Mr Chairman. I will just read into the transcript the list of annexures. Annexure A is the transcript of the evidence National Crime Authority witness Donna Hargreaves gave at the trial relating to her inadvertent shredding of documents. Annexure B is an article of 25 August 1996 from the *Sunday Age*. Annexure C is a resolution of the 13th Inter-Governmental Committee held on 31 August 1990, a memorandum dated 5 September 1990, a National Crime Authority minute dated 21 August 1990, a section 29 notice No. MN57, dated 18 July 1990 and a section 29 notice No. MN56, dated 18 July 1990. Annexure D is the National Crime Authority report to the parliament. Annexure E is the decision of Mr Justice Merkel in the case A1 and Another against the National Crime Authority and others, Federal Court of Australia, unreported. Annexure F is the National Crime Authority media release. Annexure G is an outline of submissions. Annexure H is a statement of directors of Elders signed in October 1995.

CHAIR—In relation to the private meeting, the committee has acceded to Senator Conroy's request that the document be tabled but that it be done in camera, which means that the document will not be made public at this point in time, subject to members of the committee having a close look at the document at a future time. That would also mean that if Senator Conroy is going to proceed with any questions that refer to the document, that would need to be done in camera.

Senator CONROY—I would also like to table a number of other documents which I believe Mr Melick has indicated were part of the hand-up brief—that is, Mr Elliott's transcript and Ms Jane Yuile's evidentiary statement. I think both of those have been quoted from. Mr Melick has indicated that they were part of a hand-up brief which Mr Scanlon referred to.

Mr Scanlon—Excuse me, when did I quote from Mr Elliott's evidence or Ms

Yuile's evidence?

Senator CONROY—No, I have.

Senator McGAURAN—Yet more documents are tabled but the committee is utterly unaware that they are—

CHAIR—Which transcript is this, Senator Conroy?

Senator CONROY—That is Elliott's.

CHAIR—At what point? Where was this tendered?

Senator CONROY—I quoted from it. Mr Melick has indicated . . .

CHAIR—This is evidence that Mr Elliott gave at an NCA hearing?

Senator CONROY—It is the same as Mr Scanlon's.

CHAIR—Then it would be up to the committee to determine whether it takes this as in camera as well, in view of us not having had the chance to read this document.

Senator FERRIS—Chair, could I ask Mr Walker whether he might have any comments to make on this document?

Mr Walker—This is a transcript taken pursuant to the coercive powers of the National Crime Authority, as I understand it, and with all the usual secrecy provisions applicable, of evidence given by Mr Elliott. It was part of the hand-up brief that was objected to at the Magistrates Court and reserved for decision. It never became part of the evidence before Mr Justice Vincent. Having said that, I would say that under the ordinary rules, it is a document which ought not be disseminated by the NCA at this stage. But, more importantly, it cannot have any real relevance to Mr Scanlon. It is difficult to see how it is going to assist in any questioning of Mr Scanlon.

Senator CONROY—If we ever get to questions, you might find out.

Mr Walker—If Mr Elliott were to be before this committee, I could understand questions directed towards what he said, but by the very nature of the proceedings, it is difficult to imagine.

CHAIR—Mr Walker, that is helpful. What is the other document, Senator Conroy?

Senator CONROY—Evidentiary statement from Jane Yuile from Price Waterhouse.

Mr Walker—I have no objection to that being tendered. It was part of the evidence before the magistrate.

CHAIR—If there is no objection—

Mr FILING—Can I just say, Mr Chairman, that all of us would like to be able to question our witness to the best of our ability, based on the documentation that is available to the committee. I view that having documents tabled at the 11th hour to the committee for the committee's use makes it difficult to do that. I would respectfully suggest that the committee ask Mr Scanlon—and also, to consider those documents admission or otherwise—to come back to us at some stage where we can deal with these matters in a much better prepared way. I am just concerned that I have not had a chance to look at these documents before now.

CHAIR—That is the point that we were making earlier. There is no objection from Mr Walker. I take it that no committee members have any objection to the Jane Elizabeth Yuile document being tabled then?

Senator McGAURAN—I object. I am simply not familiar with the document, so I am not going to endorse it.

CHAIR—Mr Filing has raised the point that, for the committee to accede to your request, Senator Conroy, in the tabling of these documents, we would have to go back and have a further private discussion about them.

Senator CONROY—As long as Mr Walker is happy to accept.

CHAIR—I think so because some committee members are not happy about that until they have had a chance to look at the documents.

Mr Walker—I would like to clarify something, Mr Chairman. I said I have no objection to the document being tendered. I have to say that I am familiar with Ms Yuile's evidence. She never mentions Mr Scanlon. She has never, as far as I know, met Mr Scanlon. It has no relevance to Mr Scanlon.

CHAIR—Thank you. Senator Conroy, it is up to you. If you want to pursue the tabling of these documents, we will have to resolve to go back into a private meeting to determine whether they are acceptable to the committee or not, rather than have the argument out here in public.

Senator CONROY—Yes, I would like to table them.

Senator FERRIS—Would Senator Conroy be prepared to incorporate those in the decision that the committee has just previously made in the interests of time? Could we

then consider the status of the documents when members of the committee have had a chance to peruse them? They may subsequently decide that they be released for public dissemination.

CHAIR—Senator Conroy, are you prepared to accede to—

Senator CONROY—No. I think that these two are substantively different from the previous one. I do not accept that—

CHAIR—If we are going to have this argument about the status of the documents—

Senator CONROY—Mr Walker has said that they were part of the hand-up brief, whereas Mr Walker clearly stated before that the first document was not. So they are substantively different, which is why I will not accept that they be incorporated in a previous decision.

CHAIR—We will have this argument in a private meeting.

Short adjournment

CHAIR—Mr Scanlon, I am sorry to have done that to you again. It is important for you and for the committee that these things are done properly and discussed properly. In the private discussion we had, Senator Conroy withdrew his request to table those two documents. Are there any other questions for Mr Scanlon?

Senator CONROY—Probably about three hours worth, but we have about seven minutes.

CHAIR—You have about three minutes, so you had better see how you go.

Senator CONROY—Mr Scanlon, I would like to talk to you about your oral evidence this morning about how unfairly the NCA has treated you and about a number of allegations you have made about them. In particular, I think you said that with the case they were investigating they 'changed the nature', that it started off on one thing over here and it moved into what was colloquially known as the H fee. So I would like to talk to you about the investigation and how it was being conducted, in particular with reference to what are known as the Swiss bonds, and ask if you are associated with any of the following companies: Westfin Co, Bartex and AMST? These companies are registered in the Bahamas and purchased the convertible bonds in Elders in 1984-85, using three banks: Credit Agricol, Hong Kong and Shanghai Bank and Bankers Trust. The transaction was organised by Mr Wiesener—

Senator FERRIS—Mr Chair, I would like to raise the matter of relevance. Again,

Senator Conroy is asking questions which are way outside the terms of reference of this inquiry and I would like you to rule on the question of relevance under section 55.

CHAIR—Senator Conroy, how are these questions relevant—can you point directly to evidence Mr Scanlon has given us?

Senator CONROY—Mr Scanlon's evidence this morning was about the conduct of the NCA's investigation, how it changed from an investigation—I put to you that the references is about these matters—into something he says is outside these matters: the H fee. These are actually the issues that the NCA were investigating, on Mr Scanlon's own evidence.

CHAIR—Mr Scanlon, are you prepared to answer that question?

Mr Scanlon—I think I can, but he would have to go through each one. He listed 30 people and he asked me if I was ever—what was the question?

Senator CONROY—No I said: are you associated with Westfin Co, Bartex or AMST?

Mr Scanlon—No.

Senator CONROY—So these companies, which are registered in the Bahamas, and which purchased the convertible bonds in Elders—

Mr Scanlon—Are you telling me that or asking me that? I actually do not—

Senator CONROY—I am asking you whether you are associated with this transaction. I have asked you about the companies, and now I am asking you about a transaction to do with the convertible bonds. Do you know a Mr Peter Stussi? Have you ever met Mr Peter Stussi?

Mr Scanlon—Not to my knowledge.

Senator FERRIS—Mr Chairman, I want to draw your attention to the time: senators have to move.

CHAIR—We need to finish by 12.30 p.m. and I propose at virtually 12.29½ to draw the proceedings to a close, while we still have a quorum. Senator Conroy, I would have to take the view that that question is relevant to the extent that Mr Scanlon has entered into a discussion about some of those facts, albeit obliquely in the evidence that he has given us.

Senator CONROY—Thank you. Mr Stussi is a bank officer with Cantrade, and he has testified in a Swiss magistrate's court in 1994 that you, Mr Elliott and Mr Jarrett attended his bank and signed beneficial ownership forms for a discretionary trust. Would you like to comment on that?

Mr Scanlon—I think, Mr Conroy, I understand—

CHAIR—Mr Scanlon, you will have to refer to him as Senator Conroy. Senators get very offended if we do not address them by that title.

Senator CONROY—I do not offend easily. It is all right, Mr Scanlon.

Mr Scanlon—I apologise. It is best that I tell you the answer. I think it is unfair of you to try and use—if you are; and I am not saying you are—the last two minutes—

Senator CONROY—I am not.

Mr Scanlon—I am sorry, but it is not my fault and I cannot take responsibility. You made comments in the press that I should come here and explain my evidence. I have come here to explain my evidence. I let you table the copy of my evidence. The first question you get to ask is not about what you said you wanted me to come for. I find that very strange. Then you use the last two minutes to actually change it. You claimed in parliament you needed me here to answer the questions about my evidence. You actually quoted my evidence. You have not got one question on it. You have changed. It is very hard to believe that is a credible position for you.

Let me tell you that, during the 1980s, Elders issued many so called hybrid securities, such as the bonds and warrants I think you are talking about and incorrectly calling convertible bonds. I was not an owner or a beneficial owner of those 1984 securities. I believe that this is the case generally for all those securities during that time. However—and this is the important point surely—whatever securities that I owned or beneficially owned during that period while I was a director of Elders I declared, as per the requirements under the act, to the board of the company and the shareholders of the company via the annual report, and to the appropriate authorities.

Senator CONROY—So, when Mr Stussi says before the magistrate in Switzerland that he met you at a party at Mr Weisener's house for the Monaco Grand Prix, you are saying that is not true.

Mr Scanlon—I am saying I do not recall meeting Peter Stussi.

Senator CONROY—So, when Mr Stussi says that you attended his bank to sign a beneficial ownership form that he had there for a discretionary trust, that is also not true?

Mr Scanlon—Senator Conroy, surely the issue that you wish to understand is whether or not I owned any of those bonds and, if I did, whether I declared them. I have made that answer very clear indeed.

Senator CONROY—I repeat my question. Are you saying that Mr Stussi's evidence before the Swiss Magistrate's Court in 1994 that you attended his bank and signed a beneficial ownership form is untrue?

Mr Scanlon—I cannot, because I have no knowledge of any evidence that whatever-his-name-is has ever given. I have never seen any. I do not even know he has given any. So how can I say it is untrue?

CHAIR—I think time has beaten us, Mr Scanlon. We appreciate very much that you have been prepared to come before us this morning. Your evidence, I am sure, will be valuable to us as we consider drawing conclusions and making recommendations about the future of the NCA. It may well be that, as a result of the committee giving consideration to the one document at least that has been tabled in camera or, indeed, as a result of developments that may arise out of a further private meeting of the committee, we may invite you to appear again at a mutually convenient time. I am not asking that as a question. That offer may be made, if the committee determines that it would be in our interests for it to invite you to appear. As I say, I believe you have made a contribution to our proceedings, and we appreciate the fact you have been prepared to give your time to be here this morning. Thank you very much.

Committee adjourned at 12.30 p.m.