



COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE

on

THE NATIONAL CRIME AUTHORITY

Reference: Evaluation of the National Crime Authority

MELBOURNE

Thursday, 12 June 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT COMMITTEE
ON
THE NATIONAL CRIME AUTHORITY

Members:

Mr Bradford (Chair)

Senator Conroy
Senator Ferris
Senator Gibbs
Senator McGauran
Senator Stott Despoja

Mr Filing
Mr Sercombe
Mr Truss
Mrs West

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

The committee will examine in particular:

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

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JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

Evaluation of the National Crime Authority

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Present

Mr Bradford (Chair)

Senator Conroy

Mr Filing

Senator McGauran

Mr Sercombe

Senator Stott Despoja

Mr Truss

Mrs West

The committee met at 9.30 a.m.

Mr Bradford took the chair.

ELLIOTT, Mr John Dorman

RICHTER, Mr Robert QC, Counsel to J.D. Elliott

CHAIR—Good morning, ladies and gentlemen. I declare open the public hearing of the Joint Committee on the National Crime Authority and welcome you here. Two members of the committee are absent; Senator Jenny Ferris is overseas, and Senator Brenda Gibbs is unwell and unable to be here. The balance of the committee is here.

This morning we welcome Mr John Elliott as our witness. He is accompanied by Mr Robert Richter, who is his counsel and is not appearing as a witness. I would like to make a few opening remarks before inviting Mr Elliott to make an opening statement, which I assume he wants to do. The committee has received a submission from Mr Elliott, which has been published. Is it the wish of the committee that the submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The document read as follows—

CHAIR—Mr Elliott, before inviting you to make an opening statement in support of your submission, I am required to state that, if during the hearing you consider that information you might wish to give, or comment requested by committee members, is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in any material particular.

I want to briefly remind the committee and our witness this morning that this inquiry has established terms of reference which include a broad consideration of the need for bodies such as the National Crime Authority, the efficiency and effectiveness of the authority, the issue of accountability and parliamentary supervision of the authority, and the need for amendment to the National Crime Authority Act 1984.

We operate as a joint standing committee under the standing orders of the Senate. Those standing orders make very clear the fact that evidence received must be within, and relevant to, the terms of reference. Mr Elliott is one of the NCA's most vociferous critics. Obviously we welcome your submission. It is important to this committee to hear from you in view of your own experience with the NCA.

Mr Elliott describes the NCA as ill-conceived, yet I should say that it was born out of a recognition that organised crime was a major problem and the traditional police forces lacked appropriate jurisdiction and powers. I ought to say, without wanting in any way to pre-empt what Mr Elliott will say, that I think it is fair that most of the evidence has illustrated that the problem still remains in respect of drug trafficking even in terms of the evidence we received yesterday. The problem may even be bigger now and more difficult to solve than it was when the NCA was formed.

Mr Elliott's submission says that he is appearing today without rancour and out of a sense of duty and we certainly welcome that and we hope that the exchange that you have with our committee this morning will be productive and will assist us with achieving our objectives. If you would like to proceed to make an opening statement, you are most welcome to do so.

Mr Elliott—Thank you, Mr Chair. The last time I was in this room, the Lord Mayor was giving us an official function for the celebration of Carlton's premiership win in 1995. I want to raise one question. I was concerned that you have said that the document was made public. It surprised me that, without any discussion with me, it was made public last night prior to this meeting this morning. I had the press hounding me and I told them that I was not free to discuss the matter in any shape or form; I could have been exempted from my parliamentary privilege.

CHAIR—The normal course is that the committee resolves to release submissions for publication as they are received. In relation to your submission, it was only released

upon request, so we took the decision not to distribute it in that sense. Certainly, the rules under which the committee operates mean that, when your submission is received, it is available for publication. I apologise if that has caused you any inconvenience but that is the way we operate. Obviously, some of the press asked for the document and others did not, but it was certainly available.

Mr Elliott—It made it exceptionally difficult because I thought I was under an obligation to make my comments here. And here they are: they have all got the document and they are all ringing up.

CHAIR—I am sorry about that but that is the way it is done. I understand that, in your particular case, it may have been more difficult, but submissions are published or made available as they are received. And so that was the case. I am sorry if that has caused you any inconvenience.

Mr Elliott—Thank you, Mr Chairman. I do appear here out of a high and sure sense of duty. I appear in the hope that, as representatives of the national parliament, the supreme policy making body of Australia, you will come to understand and accept that there is no role in a decent, open and civilised society for the institution known as the National Crime Authority. Mr Chairman, I heard your remarks on drugs. I think all of us want to fight drugs, but we cannot have a body such as this, which is beholden to no-one, doing what they have done in my instance.

In my view, the Australian values a deeply held belief in the notion of a fair go. We are wary of and have just contempt for unchecked authority. They are anathema to the purpose, culture and methods of this organisation. They serve no good national purpose and they should be disbanded forthwith.

At the end of questioning, I would like to make a statement, if I may. My submissions go to the heart of the issue as to why the NCA has not been and cannot be an effective, trustworthy or useful arm of government in Australia. There are five fundamental flaws that strike against it which came out in the seven years that they attacked and chased me. The first is that the NCA is a body that has been used for base political purposes—and that could still be going on today. Nobody can be certain that it is not.

The second is that the NCA is effectively a body above and beyond the reach of the law. During our discussions this morning I will challenge you as to how you can supervise this body because I do not believe you can, and nobody is supervising the body. The body says that at times it is only an investigatory body. When I took them to the Federal Court that is what they said yet in their annual report they say that they have charged a number of people.

The third is that there is not one practical function of the NCA that cannot be undertaken by an already established institution of the state. I hear you talk about drugs, I

think every single person in the community wants to stamp out drugs or reduce it. The problem is that it seems very different that drugs are much easier to get stuck into, I would think, because there is at least repetition; people that are dealing in drugs generally repeat themselves. For the life of me, I cannot see why the established police forces of our state, which are experienced in chasing criminal action, would not be better placed to do it.

Fourthly, the structure, the culture and the methods provide a direct threat to the civil liberty of individual citizens in this nation. Finally, if, as I have heard people saying, they have to be kept in place—I cannot see why they should—the institution and its structures and personnel require radical surgery. In my submission I have addressed each of those points.

My case was a very high profile case. The glare of the spotlight on me, my family and colleagues was harsh. In that environment, the NCA blundered. They did not make legal oversights, not technicalities, not inadvertent mistakes; none of these things. They deceived, they covered up, they knowingly broke the law on at least 20 occasions, which are outlined in my appendix 2.

I think it is the first time in a court case where, as the case unfolded, the judge got behind the actions of the NCA and forced more and more documents to be produced. In a sense, it became apparent that the ends justify the means in all circumstances and in no way did this body observe the law. I cannot see how they can be checked in any shape or form in that respect.

I was fortunate to have the capacity and wherewithal to fight and clear my name and restore my reputation. I pity those Australians who fall within the ambit of this organisation who do not have such resources. I suppose during the four or five years when my case was public I received between 30 and 50 letters from people who said they had been attacked by the NCA.

I do not have the time or the resources to follow up with those but, based on the experience I have had and just reading some of the letters, you would certainly feel that a number of Australians have been unjustly treated. I do not think you can hide behind the fact that we have to fight drugs in this country to protect an organisation such as this.

I appear today as a victim—as you said, without rancour—because I accept that, at the end of the day, despite all the treachery, all the misconduct by the NCA and all the cost, the Victorian court system prevailed. I am very happy now to take your questions on my statement and my submission, Mr Chairman.

CHAIR—I would like you to make your position entirely clear. You have acknowledged that the fight—what I call the war—against drugs is an important one. I think society makes a judgment that, in an effort that is required to stamp out drugs, ends

in a sense do justify means, to use your words. Clearly, state police cannot do the job without the extraordinary powers that the NCA enables them to use in joint task force arrangements. Are you suggesting that state police forces should have those powers given to them, if the NCA were disbanded?

Mr Elliott—All I am saying is that no body should have the powers the NCA has. For example, there is no person or body to deal with complaints about the NCA. During the hearings, we complained continually about the leaks they were sending into the press, and yet their law states very clearly that they are supposed to protect witnesses.

CHAIR—On that issue, that is a major concern and it is an issue which is currently under active consideration because it has been a matter that has caused concern to a number of people. The Australian Law Reform Commission has recommended the formation of another body to deal with complaints. This committee has received complaints—I do not think it ever received one from you, incidentally—from a number of people who are aggrieved or who feel aggrieved. But, in the past, this committee has not had the capacity or wherewithal to deal with complaints. On that issue, you are quite right. But that can be fixed, can it not?

Mr Elliott—At the moment, I do not know—maybe it can be fixed. When we complained, we had to complain to the NCA, under the act, and they were the judge and jury.

Mr FILING—Why didn't you complain to this committee?

Mr Elliott—At that time, we were under secrecy provisions.

Mr FILING—You were still entitled to come forward and make a complaint. I heard your comments earlier about your view as to how effective the committee can be, and the committee has reported on a number of occasions that the provisions of the act do prevent it from making proper investigations of complaints. Nonetheless, I have been on the committee for seven years, and I do not recollect an approach from you in relation to your particular problems.

Mr Elliott—I did not make a complaint to you at all. I do not think your committee can supervise the NCA in any shape or form. It is a farce to think it could. Did you know that they operated outside the reference?

Mr FILING—No. But, at the time when your case started, it is true to say that the NCA had been in turmoil for about a year and a half. This committee had been closely examining one particular aspect of that from the changeover from one chairman to the other. However, regarding what you had to say earlier about the committee, in what way would you see the committee being beefed up to deal with a complaint like yours?

Mr Elliott—I think it is impossible for a parliamentary committee to supervise the NCA. They can snow you as they deem fit. We have already identified that Mr Broome did not tell the truth to you in the public briefing he gave you in March, where somebody on your committee asked a question about payments to Deloittes—that was a sum of \$98,720 in the 1995-96 annual accounts—and he said it came from independent advice on complex financial transactions and that it was to bring an expert witness from overseas to give evidence.

That is just not truthful. In fact, it was part of our case. It was given by a man called Mr Heeps, who is a resident of Victoria. Mr Broome then went on and said it was paid out before he joined the NCA. That is not true either. The problem is how can you, as a committee, question and, in effect, test the truthfulness of what is going on?

CHAIR—Just to pull back to where we were and get some order in the questioning, your comment was that the NCA is beholden to no-one. It has even been suggested that this committee should have a lot more power and that some of the restrictions imposed on it in its dealings with the NCA should be removed. Some people think this committee should be able to do the job. Mr Filing is the only member of the committee who was a member at the time. All the rest of us have been appointed to the committee since those days. The fact is, though, that you did not—as others have done—approach the committee. You have said that is because you thought the committee could not help. I am not sure whether it might or might not have, but the fact is that you did not approach the committee.

You have said that the NCA is beholden to no-one. You would understand from the dealings you had with the legislation that there are degrees of accountability there, but you are saying they are inadequate. There is the parliamentary joint committee. There is the intergovernmental committee, which really has more power than this committee because it has state representatives on it. In effect, it provided and agreed to the reference in your situation. It had input from people from different political parties on it. So there is some accountability. People say that the reference system itself—although they have different views about it—provides an accountability mechanism.

Mr Elliott—I suppose my case, which I set out at annexure 2, lists 20 cases of illegal behaviour that came out in the court case. How are you as a committee able to supervise that behaviour? When you interview the chairman of the NCA, you just listen to what he says and you have no wherewithal to not accept what he says.

We have even had the problems in the judiciary where most courts I think have believed that the NCA would always act within its law, which is something one would expect to occur. In my instance, it clearly did not. Therefore, the courts also have been loath, I think, to look behind what the NCA is doing because they have accepted it on face value.

In my case, the judge through the essence of time as things unfolded in the court

case—I do not think he had planned to do that because he said, ‘I’m going to call the jury,’ in the first three weeks of the trial. The trial went for six months and there was never a jury appointed, as more and more unfolded.

The problem I see is that you do not know what they are doing. In the courts, I think in this case more by good counsel exposing things, the judge was prepared to keep making the NCA produce documents. The NCA shredded very important documents associated with the reference. When we were in front of the magistrate, we were committed for trial. On the last day, the magistrate asked the NCA to produce these documents to help the defence counsel prepare the case for the trial. When we got to court they never appeared, and they had been shredded and no copies had been kept; and they were very, very important documents.

It is this sort of behaviour, but I do not know how a committee supervises it. That is the problem I have got. I suppose my other question is that they are really beholden to no-one.

Mr FILING—There are—

CHAIR—Let me get some order please. Before I go to the deputy chairman, let me just be quite sure about this. Set your own situation aside—

Mr Elliott—I can’t.

CHAIR—No, in the sense that you look at it objectively. Take the drug effort, which you have acknowledged and I think every Australian acknowledges is vital. There was acknowledged to be a need for a body like the NCA and, if the job is going to be done, in most people’s judgment that body seems to have to have those powers. Assuming, as we ought to do, that it exercises those powers properly and within the law, would you then concede that there is a need for it?

Mr Elliott—I am no expert. You people sit on the committee. You know what the Australian Federal Police do and what all the state police forces do. I do not hold myself out to be an expert about how we ought to deal with the matter.

What I do say is that I observed the behaviour of a body that behaved so badly, and it was not as though it was just one incident of unlawful behaviour. The whole H fee matter was outside the reference, but they did not dare go back to get a new reference. They probably thought they may not have got it because the political ambience of the various governments and things had changed.

If you are going to have a body that is beholden to no-one—you are saying, ‘Make them beholden to someone,’ but I do not know how you would handle that or how you would do it. Today it is a disaster. It can go after anybody in the country. It can chase

vendettas. In my case, Deloitte said there was no grand conspiracy at all, yet they then went off on another frolic.

CHAIR—I think we have covered that. I am going to hand over to the deputy chairman because he has some questions.

Mr SERCOMBE—Your submission is based on claims that, based on your experience, the NCA is politically motivated in its dealings with you, and that there were a variety of abuses of process involved through your dealings with the NCA. I go back to the question of the prosecution, and I think you would acknowledge that it was the Victorian Director of Public Prosecutions that handled the prosecution rather than the NCA. Are you suggesting that the Victorian DPP's office was also involved in some sort of political conspiracy directed at you and others?

Mr Elliott—I do not know what happened. It was very odd that the inquiry that was conducted by the NCA ended in terms of our visiting it. It was another two years before we even knew anything about it, which is very odd. That must have been what happened in that instance, as we have surmised. In fact, we did not get that far in the trial to discover documents. We did not need to. But it took them two years to conjure up a charge of theft, although they said, 'You didn't get any of the money.' That was really wonderful stuff.

Mr SERCOMBE—It was the Victorian DPP that prosecuted you, not the NCA.

Mr Elliott—It was very interesting, Mr Sercombe, that in fact the police officer who charged us had been attached to the NCA throughout the whole matter. They stuffed it up, to put it mildly, and had not had him properly registered, I think, as a federal officer. He was the one charging us. He was not from the DPP or the state police force; he was from the NCA.

Mr SERCOMBE—Nonetheless, the brief of evidence from the NCA had to be scrutinised by the Director of Public Prosecutions in Victoria prior to action being taken.

Mr Elliott—I have just been advised by Mr Richter that in the Federal Court my action is against both the NCA and the Victorian DPP.

Mr SERCOMBE—Do you believe that the Victorian DPP's office was similarly politically motivated to the NCA?

Mr Elliott—I have no idea, to tell you the truth. We have never seen any documentary evidence of how, after the NCA had investigated me, they came to the position of charging us. So I do not know. I have no idea, but we will discover those documents in the Federal Court, make no mistake.

Mr SERCOMBE—Subsequent to the charges, the matter went to committal proceedings in the Melbourne Magistrate's Court, and one presumes that the magistrate in those circumstances satisfied himself that there was a prima facie case in existence for the matter to then proceed. I come back to your point that this process is politically motivated. At that stage, the NCA had gone through two levels: it had satisfied the DPP that there was a case, and it had satisfied the Melbourne Magistrate's Court that there was a case. Where does that leave your claims about the matter being politically motivated?

Mr Elliott—The magistrate was not prepared to look at the illegalities of the NCA or how it had behaved. I had gone as far as the High Court in that matter prior to our being charged. Basically, I was told that a criminal charge supersedes or has precedence over a civil action, and that the only thing we can do is take a civil action against the NCA. So the magistrate was not even prepared to look at it.

Then it did go to trial and the judge found there was wholesale, unlawful conduct. After the trial, Mr Scanlon explained very fully to the press and the media that everything that was done was legal and proper. We did not even get around to getting into the witness box to defend ourselves.

You have to go and read the transcript of the trial. You have to read all of this to understand the sorts of things they did, colluding with a foreign company to assist them in getting money back from creditors in New Zealand. I am just amazed the NCA would be doing things like that.

Mr SERCOMBE—I guess the committee has to look at the reasonableness at various stages of the way the NCA acted in terms of its brief of evidence. I am suggesting that it has been through the DPP and that it has been through the Melbourne Magistrate's Court in a prima facie way. If one goes back a little further—

Mr Elliott—But I am saying to you, sir, that part of the problem is that everybody expects the NCA to act within the law. The magistrate would. When we accused them of unlawful behaviour we went to the Federal Court and, in effect, they were not prepared to look at it. It was only when we were standing trial that the judge decided he would look at it, and then he uncovered a hornet's nest.

Mr SERCOMBE—With respect, sir, we are talking about different time scales. I am wanting to explore the genesis of this matter. The origin of the matter, as I understand it, was when Mr Bosch wrote to the then chairman of the NCA, Mr Faris, in the following terms:

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.

Mr Elliott—I do not think that was the case. It is our understanding that Mr Faris

went to Mr Bosch looking for business, because Mr Faris had decided that he was going to take the NCA off into a new frolic of 'white-collar crime'.

Mr SERCOMBE—What I am wanting to test, through you, Mr Chairman, is Mr Elliott's response to the reasonableness of the matters that the NCA had before it at various times in terms of what it then did. I am quoting from the transcript of the court proceedings. Mr Bosch's letter to Mr Faris states:

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. The matters we have been investigating occurred over at least three years . . . Prior to your visit 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 . . .

Following on from that, Faris went to the Attorney-General. His conclusions in his report to the Attorney-General include the following:

The circumstances revealed by the information concerning these matters suggests substantial planning and organisation 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—

and I note these words—

calculated to defeat ordinary police methods of investigation.

What I am putting to you, Mr Elliott, is that the NCA, faced with those allegations, had no choice but to initiate a serious investigation against you and others.

Mr Elliott—Let us go through the rest of the transcript. The deputy to Mr Bosch, Mr Schoer, said in evidence that there was no reason at all to investigate the Harlin matter and that they had been through it absolutely fully—he said this in the trial. You have to go back to Mr Bosch, when I was involved in that year in probably one of the NCSC's biggest inquiries, which was the BHP matter, where in effect the committee found nothing had happened at all and nothing was wrong. Bosch was smarting over the fact that we took him to court and the judge in the Supreme Court, Mr Justice Marks, castigated the NCSC for bringing such stupid matters to the court.

Mr Bosch did not like me, still does not like me and still goes on the television and gets stuck into me. Mr Bosch was an exceptionally, as I have said here, incompetent head of the NCSC. Despite that, Mr Bosch did say also in the trial that he was staggered at the speed with which the NCA brought the matter on. He was told by Mr Faris that it might take two or three months to in fact get the reference done. The reference was done very quickly, because of course it was in preparation for the 1990 federal election. In my annexure 1, it shows that Mr Hawke, Mr Walsh, Mr Keating and others were all spruiking

the fact that they were going to go after John Elliott and I was one of the obnoxious people in capitalism, et cetera. It was a great set-up.

Mr SERCOMBE—Mr Elliott, with respect, it seems to me that you are a fairly likeable sort of bloke, but there are an awful lot of people you are presenting to us this morning who had an axe to grind against you. That seems to me to not be an adequate explanation as to why things occurred.

Mr Elliott—I am sorry to say they then investigated the whole Harlin matter and found nothing.

Mr SERCOMBE—If we move on to the H fee matter, according to the transcript, the report from consultant accountant Duesberrys, amongst other things, says:

On the basis of a brief outline of the transaction this firm is 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, is the transaction most likely on its face to show evidence of impropriety.

What I am coming to is that there was a series of propositions put before the NCA. Why should they not pursue those allegations? That is their charter.

Mr Elliott—Excuse me, let me answer. The first thing is that they were there to investigate the Harlin matter. Duesberrys, which is Deloitte, found nothing at all—no grand conspiracy at all. This matter arose, was not even in the reference, and subsequently Mr Scanlon outlined that it was perfectly legal. They did not have a reference to even investigate this matter. They were out squandering public moneys trying to get John Elliott—absolutely clear. And then they had the audacity to charge us with theft when we had stolen nothing. Have you read the transcript?

Mr SERCOMBE—I have read the judge's rulings and what I am putting to you is that the NCA, faced with the allegations that were being made, acted quite properly. I do not believe there is evidence of them not acting properly when they are faced with a series of very substantial allegations.

Mr Elliott—They were outside the reference. You obviously have not read my annexure 2 which actually goes up to (t). That is 20 cases where they did act illegally.

Mr SERCOMBE—Mr Justice Vincent, in ruling 9, made the following observations. He was not persuaded that there had been a deliberate abuse of power. Justice Vincent himself, who excluded the evidence and therefore created the circumstances where you were able to walk, according to ruling 9, found that he was not persuaded there was a deliberate abuse of these powers.

Mr Elliott—He did not have to do that. He was able, in fact, to throw it out without having to rule it. We did not get a chance, nor did we need, nor am I am here to defend myself, because you obviously did not read what Mr Scanlon said afterwards where he explained all the transactions in full. The whole thing was a farce and a scandalous waste of public money. You are telling me the chairman is now saying that we have to fight drugs and here you are still wanting to fight matters like this. It was a political witch-hunt, make no mistake, and all you have to do is read the document carefully to understand that.

CHAIR—Mr Elliott, obviously, in getting to the bottom of this—we appreciate that you are making those sorts of comments, but you will have to expect that some committee members are going to want to ask those sorts of questions—because we as a committee are trying to establish where the NCA acted improperly and correct it. You are really going to have to expect those questions to be asked.

Mr TRUSS—I wonder, Mr Elliott, whether you could suggest to us if you would regard the NCA as an inappropriate body to investigate corporate crime, white-collar crime, whatever it may be called. Who should do that?

Mr Elliott—I think that should be done by the ASC which has expanded powers. I have appeared in front of some of their inquiries. They investigate a lot of things—share price movements and various things—and they have a proper system whereby they question people. The problem here is this star chamber, and you have to go and read Mr Mott when he said that what they are investigating was not in reference and you read the response by Mr Livermore which is just disgraceful. I think any corporate crime ought to be investigated by the ASC.

Mr TRUSS—Are there occasions when there is a crossover between corporate crime and organised crime where it would be more appropriate for a single body to have the responsibility? In other words, should the NCA be reformed so that it acts in the same way that the ASC does?

Mr Elliott—I know my friend Mr Richter is more knowledgeable than me on what you should do to fight what we call organised crime, which is I suppose mainly drugs. I cannot say I am an expert on what should happen. But what I am insisting that you understand is that you cannot let a body like this exist, because of the things it does. The ends justify the means, in effect. They are scurrilous.

I stress, as it sounds like you want to contemplate the continuation of it, that its structures have to be dramatically changed. Its administration is appalling. Why you would have bureaucrats heading up the NCA! The last two have been bureaucrats. The current one is Mr Broome. Mr Broome was on the personal staff of Mr Bowen and recommended a political person. The previous man, who I think also came out of the Public Service, was Mr Sherman. Justice Phillips was before him and Mr Faris was before him.

There are no checks and balances in the NCA. The minutes of the NCA did not talk about investigating people; they talk about targets. They are out to get you. It is a very insidious organisation that behaves that way. As I say in my submission, my barrister said, 'They are out to get you. Go down and answer no questions.'

I went down basically saying, 'No, this is a proper body established by the parliament. I have nothing to fear.' I went down and answered all the questions. I would advise anybody going to the NCA today never to answer one question. The Fifth Amendment, or whatever it is, allows you to say, 'I won't answer this question because I might incriminate myself.' I was not prepared to go in and say that. But I would have to say to anybody today, 'If you have to go to the NCA, don't answer a question.' Therefore, you are going to negate the star chamber anyway.

Mr TRUSS—I think the most important allegation in your evidence, which takes something like eight to 10 pages, is that the NCA were actually party to a political vendetta against you. That, I believe, is a very serious charge. I would like you to expand on that in particular. You identified, and have already named today, former ministers Walsh and Bowen and former prime ministers Hawke and Keating. I think the committee would appreciate any evidence that you have that they were personally involved in instigating the inquiry against you.

Mr Elliott—I think I have set this out as part of my—

Mr TRUSS—You certainly describe some circumstantial facts that just so happened to occur at the beginning of an election campaign, that there was gossip around the place beforehand, but is there any further evidence that might strengthen that link?

Mr Elliott—We do know Mr Crabb leaked the whole matter to the ABC. I cannot get my date right, but it was one or two days after the election had been announced. He was the police commissioner in Victoria.

Mr FILING—Police minister.

Mr Elliott—Police minister, sorry. He had knowledge of the matter. We found all this out in the court case. He leaked it to the ABC and admitted it. We presented that to the NCA and said, 'What are you going to do about these leaks?' They said, 'Nothing.' My annexure 1 goes through all of the press prior to the election where Messrs Keating, Hawke and Walsh were all spruiking the fact that they were going to go after John Elliott. The day after the election, this matter was leaked to the ABC by Mr Crabb, which I think was an illegal thing to do. I issued writs on Mr Hawke and Mr Keating, and they therefore stopped.

When the election was over, I negotiated with both of them to settle the matter. Both of them at that time told me, 'John, you've got to understand politics. It gets a bit

hot in the kitchen sometimes,' which I accept. I was told by both of them individually, not together, that the whole matter will die. But it was initially politically inspired. Even Mr Bosch was totally surprised at the speed with which Mr Bowen, the then Attorney-General, referred the matter.

Mr TRUSS—Do you believe that the then head of the NCA, Mr Broome, was a part of this vendetta?

Mr Elliott—Absolutely. He was on Mr Bowen's staff and was one of the people recommending that the thing go forward. I have to say also that the Attorney-General's Department, which put their own investigation into place on my particular case, is an entirely inappropriate body because in fact they technically supervise the NCA. They are the people who review the laws and make amendments through the parliament to the act of the NCA. I think it is very important that your committee has taken the opportunity to do this review because it is just not appropriate for an internal review to be done by the Attorney-General.

Mr TRUSS—Do you think the NCA is still following political vendettas?

Mr Elliott—I do not know and how would you know? I do not think any of us know. That is the problem. It is a real problem.

Senator CONROY—Mr Elliott, you indicated in your submission that the NCA had a paranoid world view and a deluded 'grand conspiracy' theory. On page 5 of your submission, you state:

It was not in response to a complaint by any "victim" because there wasn't one as anyone who cared to consider and try to understand what happened would have concluded.

Mr Elliott, is it correct that on 29 July 1988 Elders IXL subscribed \$52 million for shares in VicInvest?

Mr Elliott—I have no idea.

Senator CONROY—You were chairman at the time.

Mr Elliott—I have no idea. 1988? Do you know what you were doing on that day in July 1988?

Senator CONROY—Is it correct that, on 30 June 1990, the majority of investments held by VicInvest had been sold and the proceeds passed on to other companies in the Pratt group?

Mr Elliott—Sorry, I missed your question.

Senator CONROY—Is it correct that, on 30 June 1990, the majority of investments held by VicInvest had been sold and the proceeds passed on to other companies in the Pratt group?

Mr Elliott—I have no idea. What is the purpose of this questioning?

Senator CONROY—Is it correct that, effectively, the whole of the investment by Elders in VicInvest—

Mr Elliott—Sorry, what is the purpose—

Senator CONROY—If you let me finish my questions.

Mr Elliott—I have no idea.

Senator CONROY—Is it correct that, effectively, the whole of the investment by Elders in VicInvest was lost?

Mr Elliott—I have no idea. What is the purpose—

Senator CONROY—Isn't this a transaction the NCA should be investigating?

Mr Elliott—What? I have no idea.

Senator CONROY—Is it correct that at a meeting with your auditors, Price Waterhouse, on 20 September 1988 you confirmed that the investment in VicInvest was properly authorised and represented a valid preference share loan?

Mr Elliott—I do not know what the purpose of your questioning is. It sounds to me like you are doing the bidding of the NCA here. I am not the person under—

Senator CONROY—Is it correct that you approved—

Mr Elliott—Excuse me! I am not the person being accused of anything here.

Senator CONROY—I am referring to your evidence—

Mr Elliott—What is the purpose of your questioning in terms of the applicability of your terms of reference?

Senator CONROY—I am testing the reasonableness of the NCA's actions and trying to decide whether there was a victim. You say there was no victim.

Mr Elliott—I have just been advised by my counsel that this matter may be under

investigation, which I did not know. It has nothing to do with me. Therefore, I am very surprised that you are asking such questions.

Mr TRUSS—I think also it is important to tie questioning to the terms of reference.

Senator CONROY—I am tying my questions to the evidence Mr Elliott put to us in his submission.

Mr TRUSS—Yes, but the evidence and the questions have to be appropriate to the terms of reference of the inquiry, which is the role of the NCA.

Senator CONROY—Is it correct that you approved the VicInvest transaction with Pratt, as detailed in the minutes of a meeting with auditors on 20 September 1988?

Mr Elliott—You sound like your mates—Mr Walsh, Mr Keating and others—at the moment, I am sorry to say.

Senator CONROY—It is far more serious than that. I am a Collingwood fan—

Mr Elliott—Are you? I can understand you are rather disappointed.

Senator CONROY—and I would like to get the NCA to investigate 1970 and 1979 as well. If there was nothing untoward in the VicInvest transaction, why did Fosters commence proceedings in the Supreme Court of Victoria in 1993?

Mr Elliott—I was not on the board of Fosters in 1993—

Senator CONROY—If there was nothing untoward—

Mr Elliott—Excuse me. 1993?

Senator CONROY—Yes.

Mr Elliott—Against us? That was obvious. They were advised—

Senator CONROY—No, against the Pratt group.

Mr Elliott—I do not know.

Senator CONROY—If there was nothing untoward in the VicInvest transaction, why did Pratt settle with Fosters in 1995?

Mr Elliott—What has that got to do with me? I was not even on the board.

Mr TRUSS—And what has it got to do with the inquiry?

Senator CONROY—What was the nature of the settlement? Was it \$25 million, plus an agreement to provide cardboard boxes—

Mr Elliott—You are on a political vendetta, Senator Conroy!

Senator CONROY—as listed by Elders accounts, titled ‘Recoveries of investments previously written off’?

Mr Elliott—Your behaviour is very, very similar to that of your mates in 1990.

Senator CONROY—If I could finish my question, thank you.

Mr SERCOMBE—Mr Chair, the terms of reference of this committee are to evaluate evidence. Mr Elliott has made a very strong submission to this committee in relation to the failings of the NCA. I think Senator Conroy is perfectly entitled to test the reasonableness of some of the claims that Mr Elliott has made.

Mr Elliott—What has this got to do with us?

Senator CONROY—Mr Elliott has claimed in his evidence that there is no victim. The actions of VicInvest and Fosters show that Fosters lost \$52 million in a transaction while Mr Elliott was their chair, and there is no suitable explanation yet as to what happened. So in testing whether the NCA were reasonable in conducting their investigation, it is fair to ask if there was a victim, as Mr Elliott denies there was.

Mr Elliott—We are talking about the inquiry that I was involved in. It was about Harlin, who was certainly no victim. I think your questions are just totally out of order, and I do not know the answers anyway. It is interesting to note, as I have just been told, that Fosters and Pratt settled their issues commercially. They are commercial matters.

Senator CONROY—That is on a transaction conducted while you were chairman?

Mr Elliott—Yes. I can tell you there were probably millions of transactions done while I was chairman. It is a very big organisation. It only had \$20 billion in sales.

Senator CONROY—And Mr Pratt paid back \$25 million.

Mr Elliott—Did he? That’s good.

Senator CONROY—Mr Elliott—

CHAIR—Just a moment. Senator Conroy, I have let your line of questioning go, but I am not able to see yet that this is actually within the terms of reference. Perhaps you could restrict your questions to something that is directly related to the terms of reference.

Senator CONROY—I am just moving on to a different issue. Mr Elliott, would you agree that there is a need for a nationally coordinated body to fight organised money laundering?

Mr Elliott—I am saying to you that it is my view that this particular body should be disbanded because of its behaviour, because of the manner in which it has operated, and because of its culture. In effect, it has to be thrown out.

Senator CONROY—On page 13 of your submission, you say:

. . . it is clear that Mr Livermore, on behalf of the NCA, drafted a letter for the NCSC to send to the Chairman of the New Zealand Securities Commission asking the NZSC to co-operate in providing information about a supposed purchase of convertible bonds.

Mr Elliott—They found nothing. It was a waste of time.

Senator CONROY—Let me put a case to you and invite you to comment when I finish. It is fairly lengthy, so it might take me a moment.

The chairman of a major Australian public company sets up or arranges to have set up on his behalf three companies—West Finn Co, Bartext and Amst. The companies, registered in the Bahamas, purchase convertible bonds in the Australian company using three banks—Credit Agricole, Hong Kong and Shanghai Bank and Bankers Trust. The transaction was organised by a Monaco based businessman.

Through BT, a series of interest rate swaps are arranged for West Finn, Bartext and Amst and for the Australian public company. These interest rate swaps have the effect that the interest payable on the funds borrowed to obtain the bonds was paid by the Australian public company.

The directors of the Australian company give a commitment to their shareholders that they are not involved and are not the beneficiaries of the transaction. BHP purchases the bonds. The \$78 million of profits are held in 23 bank accounts in the Swiss bank, Cantrade.

Through a complex set of transactions, the money flows into discretionary trust accounts where the nominal beneficiary is the International Red Cross. The trustee for the discretionary trust accounts is a Mr Gerrit van Riemsdyke, Chairman of Cantrade. Mr Peter Stussy, a Cantrade officer, required the beneficial owners of the discretionary trust accounts to sign a document stating who the real beneficiaries were to be. The Swiss bank

Cantrade transfers money into the Australian businessman's account in Singapore, in the Hong Kong and Shanghai Bank Singapore branch. Do you think a transaction like this merits scrutiny and investigation by a federal authority?

Mr Elliott—I do not know anything about what you are talking about. It has nothing to do with me, and I do not see, Mr Chairman, what it has to do with this inquiry.

CHAIR—Is this a hypothetical question?

Senator CONROY—It is an example of a transaction, and I am asking Mr Elliott whether he feels that the NCA or a federal body should investigate a transaction like this.

CHAIR—It is hypothetical—

Mr SERCOMBE—It is clearly within the terms of reference, Mr Chairman. Mr Elliott is being asked to comment on whether he thinks this is the sort of matter that the NCA ought to look at.

Mr Elliott—I am saying to you quite clearly the NCA should not be in existence, sir. You obviously have not read my submission.

Mr SERCOMBE—I have, Mr Elliott.

CHAIR—I think that is the answer to the question, Senator. Will you move on.

Senator CONROY—No; I am happy to finish my line of questioning. Mr Elliott, were you party to a court action in Switzerland that sought to oppose an MAA application in 1991 known as the first request between the department and the Swiss bank Cantrade? Were you party to any legal action in 1991?

Mr Elliott—Excuse me; I am not here under trial. I have never heard such nonsense. You are just showing political bias.

Senator CONROY—Mr Elliott, I repeat the question: were you party to legal action in 1991—

Mr Elliott—What has it got to do with your terms of reference—

Senator CONROY—in which you sought—

Mr Elliott—Why are you asking these questions?

Senator CONROY—to oppose an application under the MAA, the Mutual Assistance Act, with the Swiss authorities which was seeking to establish the beneficial

ownership of a parcel of convertible bonds?

Mr Elliott—If you are now talking about the Mutual Assistance Act, yes, I did in the course of our trial come across a letter sent by the Attorney-General's Department which told absolute lies and misrepresented the position to the Swiss authorities. Yes, I do remember that.

Senator CONROY—This is the first MAA request, not the second? There were two.

Mr Elliott—I do not know which is which. Absolute lies. Again, the NCA lying. Disgraceful stuff.

Senator CONROY—I repeat: there were two MAA requests. I understand you were party to the second request and matters before the Swiss court. I repeat: were you party to the first legal action in Switzerland?

Mr Elliott—The first what?

Senator CONROY—The first legal action to stop the MAA request in the Swiss courts?

Senator McGAURAN—Mr Chairman, I raise a point of order: I think the line of questioning now may have gone beyond the bounds of the references, given we are talking about Swiss transactions, so I ask you to rule on that.

Mr Elliott—I would like an assurance from you—

CHAIR—Mr Elliott, just a moment, please.

Mr SERCOMBE—Mr Chairman, on the point of order: out of Mr Elliott's own mouth we have heard that the NCA acted disgracefully in this matter. Surely that bears quite directly on this committee's task. If the NCA acted disgracefully, it is clearly within the purview of this committee.

CHAIR—Mr Elliott, the difficulty I foreshadowed a moment ago was that, because your submission is couched in the terms that it is, it will be difficult to judge this line of questioning as being outside of the terms of reference in a broad sense. It would be helpful if you could answer the question in whatever terms you see fit and we will move on.

Senator CONROY—Mr Elliott, are you a co-director of any companies with Mr van Riemsdyke?

Mr Elliott—I do not know why I should answer these questions.

CHAIR—Senator Conroy, I am prepared, as I say, because of the breadth of the—

Mr SERCOMBE—Mr Chairman—

CHAIR—Just a moment.

Senator McGAURAN—Mr Chairman, I raise a point of order. Officially, we must now go through the standing orders, given that we have this rambling situation here. Senator Conroy seems to be trying to establish, in his own mind, the innocence or guilt of Mr Elliott in relation to the court case that Mr Elliott went through.

Senator CONROY—No, that is not right.

Senator McGAURAN—It seems to me that that is what you are doing. That is certainly not in the terms of reference. We have given him great latitude. He does not seem to be concluding or coming to any real point other than, in his own mind, trying to establish guilt or innocence. We are here to investigate the NCA. I understand that, initially, he was trying to get to a point but I think he has really crossed the line now. We are not here to establish the guilt or innocence of Mr Elliott.

Mr SERCOMBE—Mr Chairman, on the point of order: it is clearly not within the purview of this committee to deal with the guilt or innocence of Mr Elliott. Mr Elliott is entitled to the presumption of innocence, based upon Justice Vincent's decision. We are testing Mr Elliott's claims about the actions of the NCA. Senator Conroy is testing whether Mr Elliott's claims are in fact supportable. That is clearly within the terms of reference of this committee.

Senator McGAURAN—He seems to be turning this into another court case. This is not a court case.

CHAIR—We are discussing the points of relevance.

Mr FILING—Before we go on, let me make a suggestion. If we are to debate whether these questions should be allowed, we should adjourn the hearing, and have a meeting of the committee in private so that we can sort it out quickly and then resume the hearing.

CHAIR—Senator Conroy, that is the point. I am at a bit of a loss to see exactly where you are headed with this line of questioning. If you wish to pursue it—

Senator CONROY—I would like to.

CHAIR—If Mr Elliott is unable to answer the questions, we will need to resolve it in a private session. I am asking you to get back to a line of questioning that is specifically within the terms of reference.

Senator CONROY—As Mr Elliott has indicated, and given evidence on a moment ago, there was an MAA request in 1991 which Mr Elliott has described as a disgrace, and a number of other things. He told a pack of lies—

CHAIR—No. If you are going to pursue this, I will have to determine that we will resolve into a private session to sort it out. You will either take a line of questioning that I judge to be within the terms of reference or we will resolve to sort the matter out in private session. Which will it be?

Senator CONROY—I intend to continue to ask questions about the NCA's actions and Mr Elliott's opinions of them, and whether it was reasonable for the NCA to pursue its investigation, as Mr Elliott alleges it was not.

Mr FILING—Chairman, I move that the meeting now adjourn and that we have a private meeting.

CHAIR—I declare the public hearing closed for the time being.

Short adjournment

CHAIR—Mr Elliott, the committee has met and I have determined that Senator Conroy's questioning should proceed. I have asked that he ensures that his questions are directed towards our terms of reference and are in terms of evidence that has already been presented to the committee. In my judgment, the questions do that. If you object to answering a question on any ground, including on the ground that—and I am referring to the standing orders of the Senate—'the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which the objection to answering the question is asked'. At that point in time the committee will deal with the matter as it arises, otherwise I invite you to answer the questions as you see fit and as best you are able.

Mr Elliott—I think the questioning of Senator Conroy further explains very clearly why your committee cannot supervise this body. The questioning is politically motivated. The two Labor members here are going after me when they are supposed to be supervising the NCA. It continues the political vendetta. All that Senator Conroy is doing is doing the bidding of the NCA, when you are supposed to be the authority supervising them. I think his behaviour is disgraceful. In my view, this the whole reasoning. John Elliott is not on trial, John Elliott is innocent, and here are members of your committee doing the bidding of the NCA. I find it quite amazing.

CHAIR—Mr Elliott, I appreciate that point of view. Nevertheless, my ruling remains that Senator Conroy's questions are in order.

Mr SERCOMBE—Just by way of preamble, Mr Chairman, I find Mr Elliott's

comments to be quite offensive. He has come to this committee making a range of assertions. This committee is perfectly entitled to test the reasonableness of his assertions. That is precisely what is occurring. No-one is trying Mr Elliott, as I have indicated. He is entitled to the presumption of innocence.

CHAIR—And I made the ruling on that basis.

Mr Elliott—It is not a presumption of innocence. I was found not guilty.

CHAIR—Mr Elliott, excuse me; that is my ruling on the matter. We will deal with it on a question by question basis if we need to, but we will proceed.

Senator CONROY—Mr Elliott, before the break you described the NCA's activities in pursuing the MAAs as disgraceful and a number of other things. I would like to test the veracity of the NCA's—

Mr Elliott—I am very happy, Senator Conroy, for my counsel to provide a full, informed detail on that. They are letters that were written a long time ago, so I am happy to submit those to the committee properly.

CHAIR—So you are taking that question on notice and you will provide an answer in due course?

Mr Elliott—Absolutely.

Senator CONROY—Which question was he taking on notice?

Mr Elliott—I asserted that they told lies in one of the letters that I read.

Senator CONROY—A serious allegation.

Mr Elliott—They told lies. I do assert that and I will get my counsel to go through the letter that I recall and give you a written submission on what the untruths were.

CHAIR—Thank you.

Senator CONROY—I would like to test the reasonableness of the NCA in pursuing the MAAs by asking Mr Elliott some questions in relation to the first MAA request. Mr Elliott, were you party to a legal action in the Swiss courts with Cantrade to oppose handing documents over to the Australian Attorney-General's Department?

Mr Elliott—I am not going to sit here and answer your questions. You are doing the bidding—that is what I have said in my remarks—of the NCA.

CHAIR—Mr Elliott, you are refusing to answer the question, or objecting to answering, and that is your right. I need to clarify, for the purpose of the record, the basis for your objection to answering the question.

Mr Elliott—My objection is, firstly, that I have no idea what he is referring to. I am just surprised that this committee, which is here today to review the activities of the NCA, is going down this side track. I am saying to you that Senator Conroy is trying to continue the political vendetta and he is doing the bidding of the NCA, which is a disgraceful way to use this committee.

CHAIR—The committee will need to deal with that matter and it is required under standing orders to do so immediately. I ask for a motion along the lines that the question not be pressed.

Senator CONROY—I am not seeking to press the question. I have accepted his answer.

CHAIR—We will take that as the answer to the question and we will move on.

Mr FILING—Is Mr Elliott asserting that there is a conspiracy on this committee to press a vendetta? I am interested in hearing your response, Mr Elliott, because that reflects on me. I would be interested to know what you think of my involvement on this committee.

Mr Elliott—Certainly. I have said it is Senator Conroy. I named the two ALP members.

Mr FILING—Good.

Senator CONROY—Mr Elliott, is it correct that Mr Peter Stussy testified before a Swiss magistrate, Mr Cosandey, that he knew that Mr Elliott, Mr Scanlon, Mr Jarrett et cetera—

Mr Elliott—I will give you the same answer.

CHAIR—Just wait till he finishes the question.

Senator CONROY—were the beneficial controllers of bank accounts at Bank Cantrade in Switzerland?

Mr Elliott—I give you the same answer as the last time.

CHAIR—Which is?

Mr Elliott—The ALP started this vendetta on me and this man is trying to do the bidding of the NCA. I would like to ask the question: are they still investigating me?

CHAIR—That is your answer. Proceed, Senator Conroy.

Senator CONROY—Mr Elliott, are you prepared to state that you—

Mr Elliott—I would like a response to my question. I have asked a question of Senator Conroy.

CHAIR—I am sorry, you could refer to that in your closing statement. I am not in a position to answer questions. I am just not. I do not think the committee can answer that question.

Mr SERCOMBE—We ask the questions, Mr Chairman.

CHAIR—Go ahead, Senator Conroy.

Senator CONROY—Mr Elliott, did you receive any financial benefit from the sale of the Elders convertible bonds to BHP?

Mr Elliott—I give you the same answer. You are doing the bidding of the NCA, again. The vendetta continues.

Senator CONROY—Mr Elliott, did you receive any part of the \$78 million profit that Mr Jarrett, yourself and Scanlon are alleged to have gained from the sale of the convertible bonds from BHP—

Mr Elliott—I will give you the same answer. Mr Chairman, I find this quite obnoxious. This man is asking questions which the NCA have never asked me, ever. What is he asking them for?

CHAIR—The record will show that as your answer to the question. Senator Conroy.

Senator CONROY—Mr Jarrett has testified that he received a financial benefit from that transaction. Do you have any comment?

Mr Elliott—Mr Jarrett was found guilty and went to gaol.

Senator CONROY—That is all on this issue.

Mr FILING—I want to turn to the question of the supervision or the accountability of the NCA because that is central to your submission. Are you aware that

there are a range of institutions or bodies that the NCA has a degree of accountability to in relation to its activities?

Mr Elliott—Yes. I presume your committee is one.

Mr FILING—Amongst those is the intergovernmental committee of the states and Commonwealth ministers, the federal Attorney-General to the federal parliament and, of course, wherever it may be applicable, the DPP to their own particular state parliament and the state parliaments themselves. We spoke earlier when we first opened about the fact that you had not complained to this committee. Had you complained or made any form of complaint to, for instance, the Victorian government through your local state member in relation to the actions of the NCA or, for that matter, the DPP?

Mr Elliott—What you have to understand is that, when I went down and was interviewed by the NCA, I knew I was not guilty of anything and I was under the view that they were conducting an investigation into the matters relating to the Elders takeover. We were perfectly happy to give them all the information we could and provide assistance to them. It is when I saw leaks and those sorts of things coming out that we questioned the bona fides. Under the act, as my then QC, Mr Sher—who was a top QC—said, our forum is that you go back to the NCA and question them. You see, they were judge and jury.

You have to remember that, during that whole time, it was supposed to have been secret that there was any investigation going on. So the last person you would go to is your local member or those people. I did not see that as the useful place to go. In effect, we went back to the NCA. In fact, there were a lot of questions asked. Mr Mott asked questions about the relevance under the reference to a number of the investigations that were taking place. The reply regarding the options that were suggested by the member of the NCA is in there and it is appalling.

Mr FILING—The reason I asked that is obviously of the oversight of the NCA. You have made a submission that the NCA should be abolished in the first instance. I suppose your second position is that, should the NCA continue to exist, there ought to be some substantial changes. I am interested in pursuing those particular views of yours.

In the first case, I would like to touch on the process that was applicable during the period of the investigation by the NCA. Amongst the people who have come out very strongly in support of your contention that the NCA should be abolished is the Victorian Premier, Mr Kennett. Since Mr Kennett was elected in 1992, his government has had a representative on the IGC in relation to the NCA's activities, and I am wondering whether at any stage any complaint was made to the Premier or his representatives to investigate or to have the NCA's actions looked at with a view to establishing whether they were acting outside the law or not.

Mr Elliott—Mr Richter has told me that, while the Labor Party were still in power, we wrote to the federal Attorney-General at the time and complained. I was not free—as I read the NCA Act—to discuss the matter with anybody. That is part of the conundrum. I could not go and tell Mr Kennett that I was even being investigated. That is the way the law is constructed.

Mr FILING—You would recollect, for instance, and certainly it is in your submission, and I recollect having spoken on the matter in 1990 in the parliament, about the leak of the Harlin investigation at the time of the federal election in 1990. I commented that I thought it was a political leak.

Mr Elliott—And we have subsequently learned that was true.

Mr FILING—Given that, as far back as 1990, it was being alleged widely that there was leaking going on in relation to the investigation into your affairs, I presume that anybody who had any wherewithal—and that, presumably, would include members of the Victorian state parliament or those associated with the IGC—would have asked the question: what on earth is going on in relation to your particular investigation?

Mr Elliott—You have to remember that, at the time our investigation started, there were Labor governments in every state, except New South Wales. I subsequently learned from Mr Greiner directly that he had no knowledge of the matter, which I found most interesting.

Mr FILING—Had you complained either to this committee or, for that matter, to your local member of the Victorian state parliament and, through him, to the Victorian state Minister for Police and Emergency Services to the IGC, do you think you could have made your complaints known at an earlier stage about the behaviour, illegal or otherwise, of the NCA? That is what I am asking.

Mr Elliott—I do not know, because I was always under the impression, rightly or wrongly, that I was not able to talk about it to anybody; that is part of the problem. In fact, my solicitors wrote to the Attorney-General about it. I think under the NCA Act it was quite clear that you complained to them; they were the judge and jury. Mr Leckie was like a little Hitler in the Star Chamber. He looked very different when he got into the court, and then it was, ‘Look, I wasn’t responsible, it was a collective decision.’

Mr FILING—From my experience, a lot of people look different when they get into court.

Mr Elliott—Exactly.

Mr FILING—Amongst the commentary about this matter, one of the comments has been that it was indeed fortunate that the judge hearing your case, Justice Vincent,

was a prominent civil libertarian who had very strong views about the powers of the NCA. Were you and your team pleased to learn that Justice Vincent was going to hear the case?

Mr Elliott—This is a little aside but, when I heard Justice Vincent was hearing it, I did ask a number of people about him. They told me that his father had been a wharf labourer, that he had come from the Labor side, that he was a man of great integrity, but that of all the people he might despise on this earth it would be businessmen like Peter Scanlan and John Elliott—it made me very comfortable.

Mr FILING—Were you aware of his submissions to this committee's inquiry in 1990 on the powers of the NCA?

Mr Elliott—No, I was not.

Mr FILING—You have never been made aware of those?

Mr Elliott—Subsequently, I have. But I think you are sort of defending their actions. What I want to—

Mr FILING—I will just make an observation to you: you do not reflect on my motivations and I will not reflect on yours; okay? Is that settled?

Mr Elliott—Right.

Mr FILING—I am asking questions about the NCA's accountability process, because that is central to our inquiry. How would you, given the experiences that you have had, amend the way in which the NCA is administered? Given that it may not be abolished, as you wish, and that it then goes to the next position of making it more accountable, how would you make it more accountable, and how would you see that accountability process protecting the rights of a citizen who believes that they have been hounded or targeted, as you have alleged?

Mr Elliott—I do believe that it is very difficult to look over their activities. The first thing is, therefore, that you need somebody in charge of the NCA who has very strong administrative skills and who administers the NCA Act to the letter of the law.

What is quite clear is that the four chairmen during the period of my investigation—and they had four of them—did not do that. The administrative process was exceptionally weak. Without trying to denigrate the people who sat on the committee—I do refer to them: Mr Cusack and Mr Grey—they knew nothing about it. If you read the court transcript, they looked foolish, to say the least.

In the end you have to have people who have had good managerial experience to make sure that the act is administered correctly. The problem I have with just amending it

today is that the culture in that place is ‘Go out and get ‘em. Forget about the law. Nobody can control what we do: we’ve got all these very excessive powers’. That is why I think you are better off to do away with them totally and maybe give some additional powers to other bodies.

Mr FILING—Just if I may—without going into great detail over the differences between the NCA and, say, the Victorian police or any other police agency in relation to an investigation—specifically, going back to that period when the investigation was first under way, are you saying, for instance, that John Phillips as chairman was not able to properly administer the NCA in some way?

Mr Elliott—Absolutely. There is a minute here that has been attached into one of the attachments where he said, ‘Well, look, we have to be very careful here because we may not be acting within the law but get on with the investigation anyway.’ That is the problem with the culture. Without criticising judges, judges are people who weigh up situations and make decisions. I do not think in my life they are the people who manage and organise things well—and that is what this job is.

Many of the people they use are QCs and lawyers, and they go inside the NCA as executives. They are people who are not experienced in actually uncovering criminal behaviour. In my instance, they saw it as a way to win brownie points for their organisation if they could get a tall poppy. That is what it was about.

Mr FILING—Just returning to 1990, I think you mentioned in your submission—without going back to it—that you had a contact with Mr Hawke.

Mr Elliott—Yes. I said today that I issued writs, I think a couple of days after the election was announced, to stop them spruiking on this matter, because at that point in time I had absolutely no knowledge that there was any investigation going on—and I did not learn about it until October 1990. But both Mr Hawke and Mr Keating, when we settled our differences—we do not like to pay lawyers unnecessarily—independently told me, ‘Look, John, if you’re in the kitchen, you have to suffer the heat.’ They both told me that, to the best of their knowledge, nothing was going on.

Mr FILING—What was your response when, after having called you a brigand, Mr Keating said, ‘You’ve got to put up with the heat if you’re in the kitchen’?

Mr Elliott—I understand politics, and I was President of the Liberal Party at the time. Apart from the damage it did to Elders and IBH—which was quite substantial, as will be shown in the courts in the future—in the end, if you are involved in politics, I do understand that you have to cop it sweet. But to use a body like the NCA, as I was going to say to Mr Truss, I felt once the election was over, the politicians could not have cared less about it. It had been used to try to throw a bit of mud, which happens in elections. And both Keating and Hawke assured me that the matter was dead. I was

staggered six months later when I was given a subpoena.

Mr FILING—Can I just press you on that? You say that Mr Hawke and Mr Keating, but in particular Mr Hawke, as Prime Minister, assured you that the matter was dead.

Mr Elliott—Yes.

Mr FILING—Were they referring to their personal attacks on you, or were they referring to the actual inquiry?

Mr Elliott—They were saying, ‘There is no inquiry.’

Mr FILING—They told you that there was no inquiry?

Mr Elliott—They did.

Mr FILING—Can you recollect exactly when that took place?

Mr Elliott—I cannot remember the time, but I did meet Mr Hawke at Kirribilli House and I settled my matter with him. I had put writs on both of them, and this—I am trying to remember; it was a long time ago—must have been about mid-year. Then he told me that I should go and talk to Mr Keating, which I did. I met Mr Keating in his office; he was still Treasurer at the time. We had a very amicable discussion. We settled the matter and had a very amicable discussion about how the country ought to be run and how he could get the economy going, and all those things.

Mr FILING—Let us just leave that aside for a moment and, if we may, just deal with this specific matter of what happened there. Having spoken on the matter in the House, perhaps I would be more interested in this than one or two others. I am interested in knowing precisely what was understood when you had spoken to Messrs Hawke and Keating in relation to the inquiry, given that they had attacked you personally—Mr Keating in a very colourful way—during the run-up to the election campaign and in the election campaign. Following the election campaign, they were saying, ‘Look, it’s all politics; let’s all be friends again, or let’s all be political acquaintances.’ But, in essence, you have said that Mr Hawke has, in fact, told you that the investigation had ceased.

Mr Elliott—Mr Hawke told me as part of the settlement, because I asked him. I said, ‘Look, is there any inquiry going on?’ And he said, ‘No, not to my knowledge; there is nothing going on.’ Mr Keating told me the same thing.

Mr FILING—Presumably you would have had legal advice at the time, particularly as this was a sensitive matter. Did you seek legal advice on that particular statement from Hawke and Keating?

Mr Elliott—No, the only thing I had to do was get my lawyers just to do the settlement of the writs that were outstanding. Both of them were very amicable discussions. They had won the election. I have always had a high regard for both men in terms of their sense of duty to the country.

Mr FILING—Even though you felt that they were using the NCA to personally attack you?

Mr Elliott—I didn't know; I thought the whole thing was gone. Okay, they have won the election. I did not know there was any inquiry on. I did not learn, having settled my writs with both of those gentlemen, until October because you have to remember that it took the NCA about four shots at getting their references right, and they never got them right.

Mr FILING—Prior to the election campaign—I cannot recollect the exact statement you made in your submission—there was press commentary about the NCA investigating the Harlin matter, wasn't there?

Mr Elliott—Yes.

Mr FILING—And that became an issue prior to the election and during the election? It was actually used as a means of attacking the Liberal Party through you.

Mr Elliott—It was leaked by Mr Crabb to the ABC, either the day after or the second day after the election, and it was all over the ABC. As a result, to stop Mr Hawke and Mr Keating talking about it, I issued writs.

Mr FILING—Yes.

Mr Elliott—So they then stopped talking about it. They were talking about it. That is what makes me certain it was a political conspiracy because they were talking about it in December through to February. They were talking about it before Mr Faris had reported to Mr Bowen and any reference was made. They were talking about it then. If anybody can find any correspondence between Mr Faris and Mr Bowen, we have got the biggest political conspiracy in this country.

Mr FILING—Given that in your view there was a conspiracy to use the NCA to pursue you for political purposes and that there had been this commentary before the election and during the election campaign that the NCA was investigating the Harlin matter, were you aware that there was an investigation prior to or during the election campaign by the NCA into the matters?

Mr Elliott—No. In fact, not at all.

Mr FILING—Did you make any efforts to find out if there was one?

Mr Elliott—I think we did ask. Yes, I think I did.

Mr FILING—Whom did you ask?

Mr Elliott—I really cannot recall, but I am certain I would have discussed it with Mr Peacock, who was then leader of the party.

Mr FILING—Did you ask Mr Peacock to make any inquiries for you?

Mr Elliott—I do not want to misrepresent the situation. It is a long time ago. All I know is I went through that election campaign thinking, ‘This is a furphy to discredit the Liberal Party.’ The election was won by the Labor Party. At the behest of a couple of people—they said, ‘You had better go and sort this out with Hawke and Keating’, which I then did. They said, ‘It is all over, John. Forget it. We’ve won.’ To my great surprise, I have to say, almost the day after the Japanese invested in Elders and I had got that approval by talking personally to the Treasurer and sought the FIRB—

Mr FILING—The FIRB approval, yes.

Mr Elliott—And all of a sudden I am sitting in my office and down came the subpoena to go to the NCA. That was October. As we now learn, subsequently, of course, they could not get their references right. They were all over the place, and their administrative mechanism was a disaster. The references were quite specific, and they found nothing, so they went on tangents outside their references. Did your committee know about all the things they were doing?

Mr FILING—We certainly knew about what was in the media and what we responsively got, but let us stick to that particular period of time, because I am just anxious to establish this. Firstly, when did you become aware that the then chairman of the NCA, Mr Faris, sought—as you have put it—a reference into your business affairs; and, secondly, when did you become aware that an investigation was under way?

Mr Elliott—The first time I became aware that an investigation was under way was when I received the notice to appear, which was—without holding me to a date—some time, I think, in October 1990.

Mr FILING—So up until that point, October—this is between, say—

Mr Elliott—December 1989, and we subsequently learnt what happened as a result of the disclosure of documents in the court.

Mr FILING—Mr O’Keefe, a former member of this committee, gave a statement

in the House that he believed that Mr Bosch had leaked that story about the investigation at a party at some stage early in 1990, and it was not the NCA. Have you been made aware of that?

Mr Elliott—I have read so many things a long time ago, but what we did learn is—it is quite clear—that there is an affidavit, signed by Mr Crabb, that he leaked it to the ABC. He has admitted to it.

Mr FILING—Right.

Mr Elliott—We are not allowed to produce the affidavit because it was brought under discovery, but it is quite clear that he was the one: he leaked it to John Jost and the ABC as the election started.

Mr FILING—So in that particular period of time, without rehashing what you have already said, in relation to the political conspiracy, which is the area of most note in your submission, within three months of the election or so you have met with Keating and Hawke. In both cases both men, who had attacked you personally—in the case of Keating, he called you a corporate brigand, and I do not know what Hawke called you but it was something similar in gentler words no doubt—had used what was, in your case, an unknown inquiry and something that you did not even know about to attack you as a citizen and because of your position in the Liberal Party. They tell you that the investigations had ceased. Did it not occur to you—

Mr Elliott—No, they did not ever tell me they had started. They basically told me, ‘Don’t worry about it. There is no investigation going on.’

Mr FILING—On page 7 of your submission, you say:

I further note that during the months immediately following the election, both Mr Hawke and Mr Keating assured me that the investigations had ceased.

Mr Elliott—I think that is probably an error. I think that they basically said there was nothing happening—no investigation.

Mr FILING—In other words, that part of the submission is not strictly correct?

Mr Elliott—I think we have learnt subsequently that the investigation started in December 1989, so I think it is a bit of hindsight there.

Mr FILING—Okay. You say in the next sentence:
Their political use of the investigations had come to an end.

Mr Elliott—That is right. In other words, what we are saying there was that Mr

Crabb leaked this thing to the ABC. They used it for about a week in every radio and newspaper. I issued the writs. They did not say anything more about it. I know then I was talking to Mr Peacock as to what we could do to stop this very unnecessary attack, and we decided that I issue writs as a result. So then they stopped, and they got on to the important things in the election.

Mr FILING—Then you say in the submission:

The interesting question is whether they were lying to me or were themselves the victims of a deception.

Mr Elliott—I have no idea.

Mr FILING—In your discussions with them you were convinced, firstly, that the investigations had stopped or that there was no investigation; you were not sure there was one in the first place.

Mr Elliott—I did not know that there had been one in the first place.

Mr FILING—And, secondly, you had no reason to doubt that Keating or Hawke were pulling your leg.

Mr Elliott—You would expect them to know, wouldn't you? They were fairly relaxed. They had just won an election and they were Prime Minister and Treasurer. They wanted the matter sorted out. We wanted to fix up the writs, which we did.

Mr FILING—But you would have to deal with them as businessman to government?

Mr Elliott—Oh, yes. I would have to say that throughout the period of the Labor government I had senior jobs in business. Despite the fact that I had senior positions in the Liberal Party, I was able to deal with the government quite adequately.

Mr FILING—I am somewhat unsure. In your submission, you are saying that the NCA was used as the instrument of a political conspiracy and therefore was party to a conspiracy in which, presumably, the Prime Minister and the Treasurer were involved, seeing as they had a reasonable motive and the opportunity, as you say. Why is it that all of a sudden, given these ferocious attacks on you during the election campaign, you were so readily satisfied that nothing was happening?

Mr Elliott—I heard nothing. I think, if I go back, the election was held in March that year. The time I met with Mr Hawke, I think it must have been June or July, three or four months had gone by and nothing had happened. I go and settle the matter with him and I ask him obviously, 'Is there any inquiry?' He says, 'There's no inquiry, John. It's all

politics. You've got to put up with that.'

CHAIR—Mr Filing, I think we have covered that. I would like to move on—

Mr Elliott—I would like to make one point about the reason I do think it was a political conspiracy, and Mr Bosch said it in the court. Mr Faris visited Mr Bosch. We do not know whether Mr Bowen asked him to visit him; we cannot prove anything there. But what was staggering was how quickly the reference was granted. Even Mr Bosch said that he was most surprised that they came back so quickly with the reference. You have to remember that they were getting ready for the election in March.

Mr FILING—I can understand the circumstances. I am just looking back at that particular period which is the sort of launching—let us say the flowering—of this inquiry into your affairs. Given that these two people, Keating and Hawke, would appear, in your submission, to be significant figures in this conspiracy—and you have mentioned others like Walsh, Bowen, Mr Crabb and personnel from the NCA, Mr Faris, Mr Bosch and co—would you consider, for instance, that Justice Phillips was involved in the conspiracy?

Mr Elliott—No. He had not been appointed.

Mr FILING—But, say, later he had become a party to this conspiracy?

Mr Elliott—I want to go on to say that, once the election was over, I do not think Mr Hawke or Mr Keating could have cared less about it.

Mr FILING—Who was after you then after that?

Mr Elliott—The problem was that they had set in train the references. The references had been set in train, so the NCA now had them.

Mr FILING—But, given that Mr Bosch was not a member of the NCA, Faris had resigned under unfortunate circumstances as far as he was concerned, Justice Phillips was not involved, as you say, and that Hawke and Keating had obviously, in your view, backed off, who exactly was propelling the conspiracy to bring you down?

Mr Elliott—What I am trying to explain, Mr Filing, is that by that stage a reference had been granted in December, I think, 1989. The matter was put in train to this body, the NCA. They said, 'Okay, we've got a reference now to investigate the affairs of Elders.' So, as far as they were concerned, that was what they were going to do.

Mr FILING—You are alleging in your particular submission that people acted illegally, they may have breached the law. They would need a motive. What was the motive in breaking the law to convict you?

Mr Elliott—We have given you specific examples in annexure 2—20 of them. But I think basically the NCA had a chance to get a tall poppy. They were now investigating a tall poppy. So they were going to go out of their way. If they could find something wrong that John Elliott had done, they could come back to your committee and say, ‘Look, we’ve even found something that this man’s done’—the old tall poppy syndrome. It would have been a great feather in their cap and the NCA would have been regarded as having done a wonderful thing, in their minds. That is why, in my view, the ends justify the means. That is why they went outside the reference. They went through all the Harlin stuff, found nothing, investigated all sorts of things and then got sidetracked into something which they did not understand. They would never ask us the questions. Had they asked me the questions, I could have explained the matter quite clearly at the time. They did not.

Mr FILING—I want to be absolutely sure. You are saying that by this stage—this is by about October 1990—it was no longer a political conspiracy; it had become, in your view, a straight-out vendetta by officers of the NCA?

Mr Elliott—What I am saying to you is that by December 1989, despite the fact the politics still had not been used yet coming into the election, they had set in train references. I learned about them in October 1990, because by then they thought they had them right. They still did not get them right. So the period just passed before some lawyers decided the references were okay and then they went and interviewed people. So the political thing to get John Elliott, I think, was the conspiracy. But, by giving a reference to some body like the NCA, they then went off on their own tangent and decided, ‘Okay, we’ve got a job to investigate it.’

Senator STOTT DESPOJA—I would like to pick up a couple of specific allegations you have made against the NCA. Mr Filing referred to possible leaks and you have evidence of one case where a leak came about. I notice in your submission you have referred to the experiences of two employees of the Bank of New Zealand. You actually attribute blame or you allege that the NCA was responsible for orchestrating that particular media scrum, as you put it. Do you have any evidence or proof that the NCA was responsible for leaking to the media in that instance?

Mr Elliott—I think the interesting thing there was that we were in the Federal Court and the whole matter was under suppression. The court had said, ‘You’re not allowed to talk about this matter.’ The press finally got it unsuppressed. During that suppression order those men were charged. The press turned up at 7 or 7.30 in the morning, the guy was in his pyjamas, they dragged him out of his house and put him into a paddy wagon. In the end, who else could have leaked that? That is my question. Who else could have done that? The motive was not, in my view, to show up those poor fellows in their pyjamas; it was to expose—as happened—my name and others and in fact to breach the suppression order that the court had issued.

Senator STOTT DESPOJA—So you would lay the blame fairly and squarely at the door of the NCA?

Mr Elliott—Absolutely. You have to remember that the officer who laid the charges everywhere worked for the NCA. He did not work for the state police. They are supposed to be an investigating body. The man who came and laid the charges had been seconded for a couple of years to work for the NCA.

Senator STOTT DESPOJA—On page 26 of your submission you refer to the ‘no copies authority’, obviously a reference to documents that you allege were destroyed before the trial. Do you have any evidence that those documents were indeed destroyed deliberately by the NCA?

Mr Elliott—It is not alleged that they were destroyed. The NCA admitted that they had been destroyed. That all went in front of the court—I suppose I have to recollect it. It was odd that the originals were destroyed by the secretary to Mr Leckie. She was cleaning out her files because she was going off to university, or something. She just happened to inadvertently destroy them. They were the basis for the reference. There were no other copies around anywhere, although people had received copies of them in the past. There was nothing. That was after the magistrate had asked the NCA to hand over those documents to the defence.

Senator STOTT DESPOJA—In relation to references, I know you have said many times today, and in your submission, that you want to see the disbandment of the authority but, failing that, you have mentioned radical surgery. What changes, legislative or any other, would you make to the references arrangement? For example, do you think it is appropriate for the references arrangement to be clarified in law to remove a degree of uncertainty? Would you target entities or individuals? Do you have any suggestions as to how they should be changed?

Mr Elliott—I am not a lawyer. What I am saying is that you people are responsible. You have to ensure that any body which supersedes the NCA does not behave in the manner or have the culture that this organisation has now. For the life of me, I do not know how you are ever going to do it. I think they are impossible to supervise. That’s the problem. They are not accountable to anybody. I suppose the only thing that I think would help substantially is that there has to be a proper and full disclosure to the courts of the basis of their investigation when you go to court, whichever body it is. One of the real failings is that the courts—as I did when I went down to the NCA, and as we all would—believe that they are acting honourably and within the law. The courts have done that and they have just accepted, ‘We can’t ask the NCA because it’s secret.’

The problem is that my court case has uncovered illegality after illegality. It is this culture. That is why I think you have got to disband it. When you look at the administrators—the people on the committee supervising—they were not supervising at all. There were no checks and balances in the organisation to say to somebody, ‘Hey, you’re not allowed to do that.’ The culture was ‘Get them.’ ‘You’ve got a reference, get him.’

Senator STOTT DESPOJA—You mentioned earlier about some necessary qualifications for the administrators of the NCA. Are legal qualifications essential or appropriate in the case of the head of the NCA?

Mr Elliott—I do not think they are because I think you can use the top QCs to advise you. What is necessary is good managerial and administrative skills to make sure the place functions as it should. I think you have got to go and find an Elliot Ness. He is about the only guy that I remember watching on the TV. You are telling me that you are going to concentrate on drug busting and those sorts of matters. I think, whoever you bring in to run it, it would have to be someone who has successfully been involved in tracking down criminals. That is why I believe you are better off to use the existing police forces, both state and federal, and give them some extra powers to be able to do the necessary things of listening in to people's telephones and all that sort of stuff. I cannot see how this body will ever change its culture. I would hate to think of the many Australians whom it has done over, who have been innocent. That is the worry I have got.

Mr SERCOMBE—There are a few it has done over who are not innocent.

Senator STOTT DESPOJA—Some might suggest that Elliot Ness broke the law, but still!

Mr Elliott—That is good, too, but I suppose what I am saying to you is that the police get a lot of people as well.

Senator STOTT DESPOJA—You mentioned in your submission that there was a role for a royal commission as opposed to a body such as the NCA. Do you not find the secrecy provisions or the private hearing processes of the NCA perhaps preferable to those of the public hearing type of processes we see in a royal commission? Is there any advantage or preference that you see in the private hearing process?

Mr Elliott—The way the private hearing process worked in our case was that it was just a star chamber. Whenever we asked a question—as we did; we took up the fact of all these leaks—nothing was done about it because they are judge and jury. They are sitting there. They did not ask the direct questions, which would have explained the whole H fee matter to us. They deliberately did not ask them. You can see that. That came out very clearly once we understood what happened. I just find that having this not being accountable to anybody and being able to do what they damn well like is a real problem.

Senator STOTT DESPOJA—Were you aware at any stage or did you have any suspicions that there may have been a third party in the private hearings that you were involved in—a third party, say, from another investigative or law enforcement agency?

Mr Elliott—Yes, we learned that: it was that man from New Zealand.

Senator STOTT DESPOJA—Were you aware of that person's identity during the hearing?

Mr Elliott—No, when I was there, I was not aware at the time, except somebody asked, 'Who was that guy?' and we found out.

Senator STOTT DESPOJA—When did you find out, roughly? Was it afterwards?

Mr Elliott—It was after we had been there once or twice. I think I went there about five times on five different subjects. It was after we had been interviewed. He was there for commercial purposes in New Zealand. It was very bad stuff.

Senator STOTT DESPOJA—Are you aware of any other cases where that may have occurred?

Mr Elliott—No, that is the only one that I know of.

Senator STOTT DESPOJA—And you allege that at no time were you told why you were there?

Mr Elliott—I would like to ask Mr Richter because he did attend. Somebody asked about the relevance of this man being there and the NCA said, 'We're not here to answer questions.'

Senator STOTT DESPOJA—In relation to your comments about civil liberties, I take on board that there is not necessarily a review mechanism or some kind of grievance mechanism that you believe people can complain to. Would that, in your mind, be part of radical surgery on the NCA—that is, do you believe that, apart from a parliamentary body, a review mechanism should be set up?

Mr Elliott—I do not want you to put words in my mouth. I do not think any radical surgery will change the culture of this organisation. That is why I think you have to pass on the powers that are necessary to fight the drugs and whatever is needed to someone else. I think the culture is insidious in this place, and people come in and become part of it, to the point where Mr Justice Phillips, who is now a senior person—I mean, they are writing minutes about targets. They are not investigating. That is the problem. I think mine was politically inspired, but they are still dealing with you as though you are a terrible crook.

Senator STOTT DESPOJA—Rather than perhaps talking about changes that need to take place, I would ask you for your comment. In your submission you referred to the self-incrimination provisions or powers, and you mentioned that they were found to be, as you state yourself, 'illusory'. Would you like to elaborate on that? Do you have any comment on the idea of legal professional privilege being written into the NCA Act?

Mr Elliott—Again, you should ask Mr Richter these points, but he is only here as my counsel. He would be better able to advise you.

Senator STOTT DESPOJA—Would he like to comment?

Mr Elliott—Are you happy to say anything, Mr Richter, on that?

Mr Richter—I do not mind answering those sorts of technical questions. If the committee desires my assistance on technical matters like that, I am quite happy to give assistance to the committee, but I am not making myself available as a witness generally in the matter, if that is acceptable.

CHAIR—I think that is acceptable. If it presents a problem, we will deal with it when it arises.

Senator STOTT DESPOJA—Mr Richter, would you be happy to comment on the issue of the self-incrimination and also legal professional privilege?

Mr Richter—Yes, I would. As Mr Justice Vincent found, although on the face of it there is a right to refuse to answer questions on the grounds that the answers may incriminate, the way that the NCA conducted its investigation and conducts its investigations is that a person who is the subject of questions does not know what it is they are inquiring after. It is one thing for an investigator to say, ‘We’re not going to show our cards to you because we’re not going to let you head us off at the pass,’ and so on. It is another matter to actually spell out what their actual agenda is. The terms of reference never disclose a proper agenda. They are so vague and general that questions can be asked to which no reasonable person would imagine an answer might incriminate, wittingly or unwittingly.

There are offences the NCA investigates—for example, some money laundering offences—where there is no need to prove actual criminality in a subjective sense. One can be guilty of money laundering if one knew or ought to have known certain things. A person before the NCA, not having known anything but by giving a particular answer may be incriminating themselves of something of which the law might say they ought to have known.

Under these circumstances, to say you have a right to refuse to answer on self-incrimination grounds places the witness in an appalling situation. Why should an innocent person say, ‘I refuse to answer on the grounds of self-incrimination,’ even if it is done privately, if that person does not believe he is incriminating himself or herself of anything? The point is that Justice Vincent found the right to be illusory because the NCA never disclosed what it was it was after. It never asked, for example, Mr Elliott, ‘Was there an arrangement with Mr Hawkins about anything?’

Had it asked the question, he may well have chosen to answer it and answer it fully in a way that disclosed no criminality. Someone else—not Mr Elliott—had he been a criminal, might have said, ‘I refuse to answer on self-incrimination grounds.’ But the point is that, unless the witness is made aware of what the question is actually getting at, what it is seeking to elicit, the witness cannot form an appropriate judgment about how to exercise his or her rights.

Effectively, what Justice Vincent found in this particular instance in the way the inquiry was conducted was that really it was an ambush situation—he did not use that term—where what was sought was an answer to a question which could then be used by saying it is false, without ever asking what the actual truthful situation was supposed to have been.

In those circumstances, to say, ‘You have got the right to refuse to answer,’ is completely illusory. It is completely illusory, especially to innocent witnesses who say, ‘I’ve got nothing to hide; I’ve done no wrong.’ They do not know that a coercive body like the NCA—and the NCA is not the only one—is setting them up because it is constructing a case rather than investigating the truth. Most investigatory bodies set out to construct cases on hypotheses to try and back them in, rather than to investigate the truth. That is the real problem. That is why that right was illusory.

Senator STOTT DESPOJA—Thank you. I appreciate that.

Mr Elliott—He certainly answered it better than I could.

Senator STOTT DESPOJA—Mr Elliott, is it the case that you have rejected \$28 million from the NCA in the form of compensation?

Mr Elliott—No.

Senator STOTT DESPOJA—That is not the case?

Mr Elliott—I have not been offered anything.

Senator STOTT DESPOJA—It is okay; I do not believe everything I read in the media, but reports that you have been offered and have rejected compensation by the NCA are false?

Mr Elliott—They are false.

Senator STOTT DESPOJA—Are you seeking damages from the NCA?

Mr Elliott—Yes. I have a court case pending in the Federal Court. It should be brought on, I suppose, some time shortly. Again, it is where both the NCA and the

Victorian DPP are joined.

Senator STOTT DESPOJA—Are you seeking damages of between \$70 million and \$200 million from the NCA?

Mr Elliott—I think it will be higher than that.

Senator STOTT DESPOJA—You will be seeking damages higher than \$200 million from the NCA?

Mr Elliott—I think it will be. We have not finalised the amount yet, I have to say.

Senator STOTT DESPOJA—Why would you seek damages of more than \$200 million—or seek damages at all?

Mr Elliott—I think it is an important question. One of the consequences of the action that happened when Mr Crabb leaked the whole matter was, in effect, I had reached agreement with Grand Metropolitan. I had come back from America and we had reached agreement—and I am not after the money—for IBH or Harlin to sell down its interest in Elders. That would have been done to the betterment of all the Elders shareholders and the existing shareholders. So it cost people billions by that matter being announced.

Naturally, the board of Grand Metropolitan, when it was all over the Australian press that the chairman of Elders was being investigated by the NCA, did not take the decision to proceed. I am not interested in the money in a sense, other than I think that there has been a lot of personal damage. But I will go to the courts and fight very hard. I suppose during that court case we will uncover, hopefully, more information.

Senator CONROY—Mr Elliott, I would just like to return very briefly to what we were discussing before I finished previously. In 1986, you appeared before the National Companies and Securities Commission inquiry into the BHP battle and you testified as follows: ‘Question to John Elliott from his counsel, Jeffrey Sher, "Do you know who those people were who bought the Elders bonds?" Answer: "No, I still don't."’ That is on the public record.

In 1991, the NCA sought documents from Cantrade using the MAA—which was not in existence at the time of the 1986 hearings—to ascertain the beneficial ownership of \$105 million worth of convertible bonds. You and your financial records were not the subject of that MAA. Is it not a fact that you funded Cantrade’s legal case opposing the release of those relevant documents to Australian authorities?

Mr Elliott—Are you asking me whether or not I stand by my remarks to BHP? I am telling you, I do.

Senator CONROY—I am asking you: is it not a fact that you funded Cantrade's legal case in 1991 opposing the release of relevant documents to Australian authorities?

Mr Elliott—I am not going to have you doing the bidding of the NCA in this forum.

Senator CONROY—I would like to move on. I return to the evidence you have given in your submission. You say on page 2 of your submission:

I was charged with theft when it was at all times obvious to the Crown and all other parties that no money had been stolen by me or anyone associated with me.

And on page 17 of your submission:

Had they been fair and asked, they would have been told and it would have become apparent that not only were we not criminals, but that no crime which they imagined was committed.

Mr Scanlon does concede, in his 15-page press release, at the end of the trial, that the foreign exchange transactions involving Hawkins were a sham and that Jarrett committed a criminal offence. He says in his press release of 22 August 1996, 'The true position is to discharge a legal obligation to Elders in relation to a legal indemnity agreement with Equity Corp in relation to its holding in BHP.' In an earlier press conference you gave, I think on 12 October 1993, you stated 'foreign exchange transactions which were totally commercial and above board in all respects'. Given Mr Jarrett's evidence, would you agree that an offence was committed?

Mr Elliott—At the time I made the statement, in 1993, that is exactly what I believed. Obviously, when the court case opened up and we saw what had happened—Well, it took us two years to figure it all out. We figured it out better than the NCA, but we had to figure it out ourselves. I think what Mr Scanlon said after the case was over was exactly right.

Senator CONROY—Given that it is agreed that an offence occurred, can I take you through some of Mr Scanlon's evidence, and perhaps your own, before the NCA. I am reading from a transcript dated 'Melbourne 10.08 a.m. Thursday, 10 January 1991', continued from 19 December 1990, of an interview between Mr Rozenes and Mr Scanlon.

[Material expunged]

Mr Richter—May I raise a point of order.

Senator CONROY—No. He is not a witness; he has no standing.

Mr Richter—I would like to raise an objection because I feel that the law is being flouted here.

CHAIR—Just a moment, Mr Richter.

Senator McGAURAN—I would ask Senator Conroy to draw himself to a

question. He is just now subscribing—

Senator CONROY—I am going through some evidence.

Mr Richter—The act prohibits him from doing that.

Senator CONROY—I am under parliamentary privilege—

CHAIR—I am concerned about the duties of the committee as they are outlined in section 55 of the act. I am aware, Senator Conroy, that the questions that you are asking may go beyond our authority in the sense that we are not authorised to investigate a matter relating to relevant criminal activity. I am asking you to ask your questions in terms of the terms of reference directly.

Mr Richter—The complaint is that it is worse than that, Mr Chairman. May I indicate that this a committee of the parliament—

Senator CONROY—Can you rule him out of order, Mr Chairman?

CHAIR—No, I am happy to hear what Mr Richter has to say.

Mr Richter—Thank you. This is a committee of the parliament. Above all, this committee should see that the law is not flouted. Senator Conroy is purporting to read from a transcript of evidence which was given in confidence. That confidentiality was never lifted. His Honour Mr Justice Vincent ruled that it was illegally obtained and excluded the evidence.

Unless Senator Conroy has some agenda from the NCA—this is all privileged—he would be breaking the law by reading confidential evidence. I know he can hide behind privilege, but he is flouting the spirit and the letter of the NCA Act. For a supervisory committee to permit that to happen is wrong.

CHAIR—Senator Conroy, can you describe for the committee what the document is you are reading from?

Senator CONROY—I read out what it was.

CHAIR—Can you just run that by us again?

Senator CONROY—It is a transcript of proceedings dated Thursday, 10 January, 10.08 a.m.—

Mr Elliott—Of the NCA in private session.

Senator CONROY—Yes, that is what I said at the beginning.

CHAIR—I do not think it is appropriate for you to quote from that document.

Senator CONROY—You are entitled to have any opinion you want. I am under parliamentary privilege and you cannot just stop me quoting from a document.

CHAIR—I am ruling that that particular document is of such a nature that it is inappropriate for you to quote from it. I would ask the committee to give consideration to expunging what you read from that document from the transcript of evidence. I seek the committee's resolution on that matter.

Senator CONROY—I think we ought to adjourn.

CHAIR—If you are not prepared to withdraw from that line of questioning and your referring to that document, we will deal with the matter in private session. It is moved that we suspend. I declare the meeting suspended.

Short adjournment

CHAIR—It has been decided that matters that have been referred to by Mr Conroy should be expunged from the record. As I have done that, I also direct that there should be no publication of anything that has been referred to by Mr Conroy in reading from that document that he read from earlier. I have some concerns about the nature of that document and, in the absence of getting advice from the Clerk of the Senate under standing orders—

Senator CONROY—In the absence of your seeking advice.

CHAIR—I am not able to seek advice from the Clerk of the Senate at this point in time—

Senator CONROY—You made no attempt, Mr Chair, to even contact the Clerk of the Senate.

CHAIR—Excuse me, Senator. In view of the time constraints that are upon us, it is clearly impractical for me to get advice today on that matter. Mr Elliott, there has been a suggestion that we could deal with this matter in camera, if you are prepared to accede to that.

Mr Richter—If I may make a point of law on behalf of Mr Elliott, firstly, the matter went a fair way with Senator Conroy. The committee would need to look at whether it, as a committee, got a transcript from the NCA. This is a matter of law. If it did not and Senator Conroy got it, then the law has been broken yet again—in the 21st

instance there has been a breach of the NCA Act. That is the first one.

Secondly, Senator Conroy, if he purports to be overseeing the NCA, ought to be aware of the provisions of section 55(2), which prohibits his line of questioning altogether. He ought to know it, and if he, as an overseer of the NCA, is not aware of it, then God help us in terms of oversight.

CHAIR—Thank you for that advice. I had already referred to section 55 as being fundamentally the basis of my concern about the way this matter was proceeding. Senator Conroy—

Senator STOTT DESPOJA—Mr Chair, I think that we should record that your ruling has been dissented from—the fact that there is concern with your ruling. I know that we have settled that, but I think it is important to have that on the record, and that some committee members would appreciate it if this committee sought advice from the clerks before proceeding.

CHAIR—I am happy for that to be recorded.

Senator CONROY—I would just indicate that it was a tied vote at four-all and the chair used his casting vote to gag the discussion.

CHAIR—I am happy for that to be recorded.

Mr TRUSS—But it is not in order for Senator Conroy to report on what happens in a private meeting of the committee.

CHAIR—I am happy for it to be announced that this committee dealt with the matter along those lines on the basis I explained very clearly: that I need to take further advice. It is obviously impractical for me to take that advice in the time frame that is available to me. Senator Conroy, Mr Elliott has indicated his preparedness to wait a little longer. I appreciate his patience and apologise for the fact that we have interrupted the hearing on a couple of occasions. If you want to resume a line of questioning now that does not make any reference to that document—

Mr Elliott—Mr Richter did pose a very important question, and I trust you are going back—

CHAIR—I understand that, and that is part of the basis of my seeking clarification of what the situation is in respect of the way this—

Mr Elliott—In fact, unless all members have received that same copy, he is in breach.

CHAIR—I understand that Senator Conroy has received these documents in some way, and that needs—

Senator CONROY—I would be happy to table it so all members can have a copy.

CHAIR—The committee would not be prepared to accede to your request. Have you got any other questions?

Senator CONROY—Mr Elliott, is it correct that, at an audit meeting between Price Waterhouse and yourself and other directors, you told the auditors that the H fee was a legitimate transaction and that you authorised it?

Mr Richter—I object to that question. He is in breach of section 55(2), which prohibits this committee from investigating a matter relating to—

CHAIR—Senator Conroy, I brought to your attention before my concerns about that particular section. I think there is sufficient doubt in my mind for me to ask you to take another line of questioning or we will either move on to somebody else or we will close the public hearing.

Senator CONROY—Is it correct that at an audit meeting with Price Waterhouse you agreed that the documentation supporting the H fee was weak?

Mr Richter—Objection! The senator is breaking the law by asking that question.

CHAIR—Senator Conroy, let me hear the question again.

Senator CONROY—I asked whether or not it was true that in the meeting with Price Waterhouse—the auditors of Elders—Mr Elliott conceded that the documentation supporting the H fee was weak.

Mr Elliott—I am not on trial; you are. You have failed—
Senator Conroy interjecting—

CHAIR—Order!

Mr Elliott—Excuse me. You have failed to supervise this body. You are doing its political bidding, and the political conspiracy I have talked about you are continuing here today, my friend. You are a disgrace to your party and to the parliament.

CHAIR—Mr Elliott, you are not entitled to reflect in that way. I would ask you to withdraw the reflection you have placed upon Senator Conroy. You have got the answer to the question. Proceed.

Senator CONROY—Are you ruling on Mr Richter's?

CHAIR—No, I was not. Mr Elliott has answered the question.

Mr SERCOMBE—By withdrawing; he has withdrawn it.

CHAIR—No, he has withdrawn a reflection, but he has answered the question. Have you got any further questions?

Senator CONROY—Is it true that Mr Scanlon initiated and tied up, to use his words, the contract between Elders and Hawkins?

Mr Richter—I object on behalf of my client. The senator is in breach of section 55(2).

CHAIR—Mr Richter, I am sorry, but you have already clarified the basis on which you might appear as a witness, and that does not include such an intervention. Mr Elliott can answer the question as he sees fit.

Mr Elliott—Senator Conroy is in breach of section 55A(2) and is acting illegally and is clearly trying to do the NCA's bidding. As far as I am concerned, he is trying to run a retrial here, which is an absolute disgrace.

Senator CONROY—I am trying to establish that there was no theft, as you keep trying to assert. I will repeat from your own evidence on page 2 where you state: I was charged with theft when it was at all times obvious to the Crown and all other parties that no money had been stolen by me or anyone associated with me.

Mr Elliott—I was acquitted.

Senator CONROY—The NCA has uncovered the single largest money launderer of \$66 million going across the Tasman in Australian history, and you want to close \$66 million which you accept—

Mr Elliott—You are wrong. You ought to read the transcript, my friend—

Senator CONROY—That a share finance—

Mr Elliott—Excuse me, I am answering the question—

Senator CONROY—I am trying to ask the question.

CHAIR—Mr Elliott, just a moment; wait until he finishes the question please.

Senator CONROY—Earlier I put to you that a criminal offence had occurred.

Mr Elliott—You are joking.

Senator CONROY—Mr Jarrett—

Mr Elliott—By Mr Jarrett? Well, yes.

Senator CONROY—I put to you earlier that a criminal offence had occurred: that \$66 million went through the so-called Yeoman loop—and any other fancy thing—across to New Zealand, and that is the single largest money launder in this country's history.

Mr Elliott—Excuse me, it is not a money launder. You are in breach of section 55(a)(2).

CHAIR—Is that the end of your question, Senator Conroy?

Mr Elliott—Read the transcript.

CHAIR—The answer is on the record. Mr Elliott has referred to that section of the act.

Mr FILING—We were talking earlier about that point in 1990 with the political conspiracy allegation involving Messrs Hawke, Keating and Bowen and others. In your submission on page 15—it is the addendum to the submission, annexure A, section (c)—

Mr Elliott—It starts off 'In "The Age"'—is that it?

Mr FILING—Yes, 'In "The Age"'. By the look of this article, it would have been published on 22 February, in the middle of the election campaign. The election was on 2 March 1990, from memory.

Mr Elliott—It was prior to the election being announced.

Mr FILING—I am interested in the circumstances of that particular report. I would not expect you to know how that report came to pass, because it was written by four or five people, by the look of it. It reports Mr Peacock has having said:

Mr Alan Griffiths, Victorian backbench Federal Labor MP, had said earlier that something like this would come out and would be an issue during the election campaign.

It was reported that Mr Griffiths would not comment on Mr Peacock's allegations. It was also reported that Mr Greiner had said that Mr. Bowen's office had been "circulating a theory" about Mr. Elliott to the Canberra press gallery and was guilty of the "grossest politicisation" of the NCA.

You mentioned that you spoke to Mr Peacock at one stage during that election campaign. What did Mr Peacock tell you—because this is critical—about that?

Mr Elliott—Let me just say that this came out before Mr Crabb leaked it to the ABC—before we knew anything. It was already being floated. They were already floating it around the traps. That is the concern we had here all along.

Mr FILING—Just refresh my memory. You mentioned speaking to Mr Peacock during the election campaign.

Mr Elliott—I spoke to him often.

Mr FILING—I appreciate that.

Mr Elliott—The matter I discussed was that, when Hawke and Keating started to use it, they were putting the flak on me. I—as Federal President—had to minimise that. I did discuss with Mr Peacock whether the best way to solve the problem was to issue the writs—which I did.

Mr FILING—Yes. And then you lifted them subsequently.

Mr Elliott—No, we did not lift them.

Mr FILING—You settled them, I am sorry.

Mr Elliott—We settled them, yes—but long after the election was over.

Mr FILING—Yes. Just for my satisfaction, was Mr Peacock able to assist you with information in relation to what was being touted by these people during the election campaign? As the Leader of the Opposition at that stage, he would have been fairly close to the action.

Mr Elliott—No, no-one was. The first inkling I had was a couple of days before the ABC reported it, when I was still in America with Prince Charles at one of these conferences to help young people. I was rung by my then assistant, who told me that the ABC was going to run this story. I was quite shocked. I could see that it was good old politics being played. That is what I thought it was. It was run the night before I arrived home. I arrived home that morning to a mass of press.

Mr FILING—What was the settlement between yourself and Mr Hawke and Mr Keating?

Mr Elliott—It had to be kept confidential. We signed a confidentiality contract.

Mr FILING—Can we ask you to reveal that in camera, because it is critical to the point of there being a political conspiracy.

Mr Elliott—My learned gentleman next-door said I might be in breach of the

contract, if I do that.

Mr FILING—But, if we require you to answer the question in camera, you are protected.

Mr Elliott—I am in the hands of my barrister.

CHAIR—He should advise you and you should deal with the matter.

Mr Elliott—He is just telling me I would be in breach of the contract that I have signed. Both of them were kept confidential but, if am directed to, I would be in contempt of parliament if I did not answer.

CHAIR—Have you finished, Mr Filing?

Mr FILING—Not yet. I would like to know the answer, in camera.

Mr Elliott—It is a matter for the committee to determine whether I must answer that.

CHAIR—I am just a little concerned about the time now. We may resolve to go into a brief in camera session. Otherwise, it was my intention to clarify a number of unresolved matters relating to your appearance this morning. Once I have clarified a number of issues, we may invite you to appear again either at a public session or at an in camera session, if necessary. Mr Filing, do you have any other questions you wanted to ask in public?

Mr FILING—I just want to clarify one other aspect of some serious matters that have been raised in the past by other witnesses, and Senator Stott Despoja raised it with you. That is, the presence of a member of the New Zealand serious fraud squad at the NCA hearing is a matter that is permitted under the act, but we have heard evidence from other witnesses that they feel it is a very serious source of infringement of the rights of a citizen, particularly where a person might be appearing before a confidential inquiry. If a person from, say, a body like the New Zealand serious fraud squad is present, they may return to their home country and not be bound by the confidentiality agreement. We heard yesterday from the Law Society from Victoria that that is considered to be a serious problem.

In your experience, let us say, would you have any particular specific restrictions on that that you would like to see part of the act—for instance, the opportunity for the witness to be able to object themselves, or through counsel, to the presence of that witness there and for that objection to be made a part of the hearings proceedings? Alternatively, do you think the NCA ought to be prohibited from having a person attend who does not have some meaningful undertaking—that is, in case of the New Zealand fraud squad, an

international agreement—that the confidentiality requirements would in fact be maintained?

Mr Elliott—I do not think they should be there because in fact a lot of the leaks that came out in this matter came out in New Zealand. They were reported in the New Zealand press, which is outside the gamut of the NCA law. There were a number of articles to that effect. In that particular instance, it was even worse because there was a court case going on. We thought afterwards maybe we were being asked questions inadvertently to help the Crown.

Mr FILING—You mentioned also particular individuals being woken up in their pyjamas and marched off to the lockup in a paddy wagon. There has been some discussion in the committee's hearings in relation to what is called 'walking the gauntlet'—the process where a leak is made and then the person concerned is literally paraded in front of the media as they go through what can be quite embarrassing or sometimes distressing circumstances of being processed in a lockup.

You have alleged that there was a deliberate leaking of that information by the NCA. Could you just clarify exactly whether that is based on your personal knowledge of somebody actually telling you they had leaked it or whether it is just from the circumstances that there was nobody else who could have leaked it?

Mr Elliott—No, it is the latter. But the officer that was doing the charging was, in fact, working for the NCA. I do not know whether you quite understood the point. As I understand the legislation, they are supposed to be an investigating body that hands over their investigation to the DPP in whichever state it is in. They do not do that at all. They second police and make them Victorian policemen and they go off and charge them.

Mr SERCOMBE—Mr Chairman, I put to Mr Elliott that that is simply not correct. The facts are that the Victorian DPP is the body which received the brief of evidence from the NCA in relation to the matters that you were charged with and handled it. In terms of political conspiracies, can I—

Mr Elliott—Let me answer that question. The day I was charged, I was taken to the NCA. I was not taken down to the DPP to go to court to be charged; I was taken down to the NCA.

Senator CONROY—Was that by arrangement?

Mr Elliott—It was by arrangement in the end, yes. We did not know why we were going.

Mr SERCOMBE—Nonetheless, Mr Elliott, if this is a political conspiracy, for the theory to hold together the Victorian DPP would have to have been a part of it.

Mr Elliott—No, you have missed my point. I am saying the actual referral was the political conspiracy. Once it was referred, the NCA grabbed hold of it. I did not see that part of it as being a conspiracy. They, basically, then wanted to try to get a tall poppy. Political conspiracy was putting me there in the first place.

CHAIR—I am concerned that we really have covered that on half a dozen occasions and in half a dozen different directions.

Mr SERCOMBE—There is another element of this that has not yet been covered. I understand, Mr Elliott, that you did write letters to the then Victorian Minister for Police, Mr McNamara, and the Attorney-General, Mrs Wade, in which you called for action against the Victorian DPP. I would have thought a political conspiracy would be along the lines of the actions then taken by the Victorian government to strip Mr Bongiorno of his independence. Would you care to comment on that?

Mr Elliott—Can I suggest to you that we are going to have a court case about that.

CHAIR—I have some housekeeping matters. I understand Mr Elliott wanted to make a brief closing statement. We will come to that. I just want to clarify for the record something in relation to the remarks I made earlier.

Because of the conflict of a number of areas in relation to the secrecy provisions, the section 55 duties of the committee and the question of parliamentary privilege, I need to seek further advice. As I think I indicated—but let me make it perfectly clear—subject to that advice, Mr Elliott, Senator Conroy's line of questioning may prove to be in order, in which case we would seek to meet with you again either in public or private session, whichever the committee deems appropriate, to follow that line of questioning. I have now made that perfectly clear.

Senator McGAURAN—Mr Elliott, you probably have touched on this or answered it before, but I just wanted it for the record, for me and the committee too. Given that society demands and, indeed, deserves a drug fighting body, all the evidence before us shows us that a national body is what is needed. Even the state police would endorse that, as the Victorian police did yesterday. The NCA to that end, I believe, have been good at their job. They have had some big heroin busts and some big arrests, if you look at their annual report. There are some big family names in gaol and convicted, of course. Some of their unknown work is that they have supported many international bodies in the fight against organised crime, particularly heroin trading.

Given that and given that the NCA's single mission should be organised crime and drug fighting—I think this is what society now wants them to properly focus on—the NCA should be supported financially and morally and their existing powers kept intact. My question is: given that that should be their mission, aren't you throwing the baby out

with the bathwater?

Mr Elliott—Let me just say, they attacked me for seven years. If you are now saying that you are going to limit them to fighting drugs and doing that sort of work, I still have a real problem—and I think, Senator, you have missed it. The culture in that place today is terrible. They have answered to no-one. You would be better off to establish a new body. They do not know how to manage themselves; they do not manage themselves within the law. The sorts of people who are hired are lawyers rather than crime fighters, which I think have to come from police forces or from around the world. So the whole thing is a mess.

You might say that it has done some good work; I do not know. What I am saying to you is that from the experience I have had there is a risk that a lot of Australians will be very badly done by. They have constructed evidence; they shred documents. This is the culture of the place. If you are saying to me that you want to continue that sort of culture, I am sorry, I disagree.

I do agree with you—you are the committee that has to determine it—that you need a strong body in some shape or form to fight drugs. I could not agree with you more. But I would not be starting with the basis of the NCA as it is currently constructed, the types of people you have running it, the types of people you have had running the committee, and the hiring of lawyers—these guys work for the NCA for two or three years and then leave. In other words, there is no hierarchy of development through the organisation. They are not breeding their own people. It has all the faults of a very badly run organisation. I am just worried that you want to change the law to maybe fix up a few civil liberties. I do not think that will fix anything because the culture of the place is so bad.

CHAIR—Thank you, Mr Elliott. Do you now want to proceed to your statement?

Mr Elliott—I am going to change what I was going to say. In answering Senator McGauran, I have summed up my views of the NCA. I am very concerned about the political intervention of Senator Conroy. I am concerned that he is using documents that have not been provided to all the committee members, in which case he is perpetuating the illegality of the NCA. Committee members doing the NCA's bidding is exactly what I am complaining about. Senator Conroy is the shining light today of why the NCA should be disbanded.

You people are there to supervise and watch over them, but they have to do the work. He is pulling out documents that he has obviously got from the NCA. You cannot have a committee and a body behaving in this manner. The only real solution—whatever the body might be that continues—is that it has to disclose fully, in my view, its actions and activities to the courts. Unless that is done, I think we are going to have all the same problems in whatever you set up in place or however you modify it.

There is no doubt that up until now everybody has thought that these bodies behaved properly. This body clearly does not, has not and, therefore, you have to make it accountable to someone. The only place is the courts because there are times when investigations have to be done where you want security and secrecy. The courts have to question the behaviour of these bodies and I do not believe—with all respect to your committee or to any other people that supervise them—that a political committee can supervise a body such as this in its day-to-day workings.

CHAIR—Thank you very much, Mr Elliott. There was just one other housekeeping matter. There was one matter in which you applied to answer the question in camera. The committee will give consideration to that application at a later date in view of the time today.

People have seen here this morning a committee of the parliament of Australia. It is part of our democracy. Senator Conroy may differ, but I think we have seen some cut and thrust both within the committee and between the committee and the witnesses. In the end, my belief is that democracy has prevailed. I have sought, where I was in doubt, to prevent Mr Elliott being in any way damaged. You are after all, Mr Elliott, completely innocent, in view of the judge's findings. I do not think the committee ought to seek to retry you on the basis of that. Your overall appearance this morning has contributed to our inquiry. We appreciate your submission and the fact that both you and Mr Richter have been prepared to appear before us this morning for a very long time. Thank you very much. I declare the public hearing closed.

Committee adjourned at 12.35 p.m.