
COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

**Reference: Public briefing**

THURSDAY, 26 AUGUST 1999

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## JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

### Thursday, 26 August 1999

**Members:** Mr Nugent *(Chair)*, Senator George Campbell *(Deputy Chair)*, Senators Denman, Ferris, McGauran and Stott Despoja and Mr Edwards, Mr Hardgrave, Mr Kerr and Mr Somlyay

**Senators and members in attendance:** Senators Ferris and Stott Despoja and Mr Edwards, Mr Kerr, Mr Nugent and Mr Somlyay

**Terms of reference for the inquiry:**

Public briefing

### WITNESSES

**Committee met at 6.07 p.m.**

**BROOME, Mr John, Chairperson, National Crime Authority**

**CHAIR**—I declare open this public hearing of the Parliamentary Joint Committee on the National Crime Authority. We welcome today the Chairman of the National Crime Authority, Mr John Broome. Mr Broome's four-year term with the NCA expires, I believe, in a couple of weeks and, under the provisions of the NCA act, he is unable to have his term extended. So we are taking the opportunity today to have a discussion with Mr Broome about his time with the NCA, and we look forward to his observations about the operations of the organisation and the reforms that he believes may need to be made.

Mr Broome, even though this is intended to be a relatively informal exchange, I am obliged under Senate procedures to advise you that the committee prefers all evidence to be given in public. But you may at any time request that your evidence, part of your evidence or answers to specific questions be given in camera, and the committee will consider any such request. I might add on a practical note, if there are any of those matters, I suggest that we save them until the end and have an in-camera session then rather than switching back and forth. I invite you to make an opening statement before committee members put their questions to you.

**Mr Broome**—Thank you. As I approach my 'statutory senility' dictated by the parliament, I would like to thank the committee for the opportunity to provide some comments on what I see to be the major issues affecting the National Crime Authority and some views I have on the challenges which we face, not only at the NCA but more broadly in Australian law enforcement, as we go into the new century.

I look back on the past four years with a mixture of emotions: appreciation for the support and professionalism of our staff and for the assistance provided by partner agencies; a sense of achievement that, given challenges such as the government's proposal to fund us to undertake specific work with the proviso to produce $80 million in revenue over three years, we have responded and will achieve those targets; concern that more can be done to achieve a unanimity of purpose in Commonwealth and Commonwealth-state-territory relations in the areas of law enforcement; pride in the achievements of the NCA during my period of appointment; a sense of frustration at the time taken to address even basic legislative change and to respond to the PJC's own reports which have followed its reviews of the NCA—not only to the report tabled last year but even going back to its report in 1991; and, finally, a mild sense of relief. I want to touch on these issues in the comments that I make but also deal with some other matters which I think it is perhaps important to place on record with the committee.

When I was appointed as chair of the NCA, bearing in mind that I had been appointed shortly before that as a member, I wanted to achieve a number of outcomes during my term in office. The first of those was to ensure a continuity of direction. The authority had been through a number of chairs over a period of time. But Tom Sherman had served a full four-year term and had been, in my view, instrumental in ensuring that the NCA had a future. He had done a great deal of work with the states and the territories to build up the partnership relationships which I think are essential to our long-term effectiveness and which I have

sought to build on. He provided a continuity which had not been there for some time before his appointment. He began those arrangements with partners and he put in place relationships that needed to be built upon. He got back to basics in addressing what I saw to be the fundamental areas of organised crime that was the NCA's role. This was appreciated by partner agencies in the territories and the states, and that is why they were giving us support. I saw that foundation as being something which was important and worth building on and that really meant, as I say, ensuring a continuity of direction. That was the first thing I set out to do.

The second thing I set out to do was to have us work, as I saw it, in a better way with government and to get the government's commitment to the NCA in the long term. We had been cut in the last Labor budget, and it was pretty apparent that we would be cut in the first coalition budget in the event there was a change of government. With the change of government, those budget reductions became a reality—and I have to say that they occurred not as a result of any analysis of what we did or how we did it. There had been a major review, the Commonwealth Law Enforcement Review, in 1994. But that review's recommendations were not fully implemented then nor have they been since. The financial position, therefore, created enormous challenges. We had to put in place major staff cuts. Two offices, Adelaide and Perth, were reduced to levels which were not consistent with effective operational capacity.

However, we went to government and explained over the next few months the kind of work we were doing and, more importantly, the opportunities which were being lost because of lack of resources. We also explained those difficulties to this committee—at least, to the members of the committee in place at that time. The government did respond and, since that time, we have seen increasing resources being allocated to the NCA in each of the three subsequent budgets. I have to say that it was very pleasing to me that a government, which had cut us very substantially in 1996, was prepared in the next budget to substantially reverse those decisions based on an opportunity to put to it an argued case for resources.

The third thing I saw as important was the need to build better relationships with the parliament and, in particular, with this committee. There had been a history of difficulties with this committee. Those difficulties were due to many factors, including what I believe to be undesirable and unrealistic legislative constraints on the PJC's statutory role. I think there were problems that might have been attributable to personalities on both sides. Also, at least on some occasions, there was a lack of trust—and again I stress—on both sides. I was particularly fortunate because, at the time I became chair of the NCA, there was also an almost total change in the membership of committee. That meant that history could be put behind us and we could establish a new relationship. A positive relationship with the PJC is critical to the NCA's wellbeing and to its support within the parliament.

The fourth thing which I thought needed to be addressed was the need to establish a vision for the NCA that would take us into the next century. Without changing the fundamental activities we needed to address, we also had to identify and seek ways to deal with emerging problems—problems such as electronic commerce; the greater entrepreneurial nature of organised crime in Australia, its changing structure and activities; and, in particular, the interrelationships between criminal groups which were quite different from the expectations and, indeed, the established activities of some of those groups in the past.

I believe that in each of these areas we have made some significant progress. Our partnership relationships are stronger than ever, and we have been particularly well served by the support we have received from the state police services. South Australia and Western Australia, in particular, helped us to maintain a viable presence in their respective states. In the last 12 months in particular, we have seen excellent work being achieved because we maintained a presence in those states which has now been rebuilt into an effective and active operational capacity which has shown significant operational results this year. So what was at one stage almost economically untenable but organisationally essential has now proved its worth.

We are, I believe, achieving consistent results of a high order. We can now say with confidence that we are disrupting and dismantling major drug importation syndicates. We are learning more about methodologies and techniques. We have achieved financial targets that have been set for us. I have to say that, at the time they were set, I had some reservations that they could be achieved. But it is a particular reflection on the professionalism of our staff that, literally, heads went down and tails went up and we got on with the job, and we have demonstrated that we can perform.

As I mentioned earlier, we have received increased funding in the last three budgets and, from where I sit, there is no better measure of a government's support. I believe that internally we are much better focused on results. I believe that the organisation understands the need for performance as a measure of success. We, like any other part of government, cannot just sit back and say, 'What we do is important; we have a right to exist.' We have to demonstrate continually that we do perform, and that is why we should have the support of government.

We have developed new approaches to emerging criminal threats and we have built new partnerships, particularly in the area of the Swordfish work. We are working very closely with the Australian Taxation Office in dealing with major organised fraud and major fraud related to other forms of organised criminal activity. We are addressing issues such as money laundering and the emerging problems in electronic commerce. There is a great deal more to do, but I believe that all of these have been positive developments. Finally, I believe that our relationship with the PJC has reflected the benefits of a more open relationship and the trust that has been developed between the NCA and the committee.

In terms of resources, the fact is that our present level of resources is, in real terms, the best the NCA has ever enjoyed. But it must be recognised that in the past, particularly in the period up until 1994, the NCA did not pay the costs associated with seconded police officers. Today we have about 136 seconded police officers on our strength. We are effectively, therefore, currently meeting the costs of salaries and allowances for those 136 police officers which our earlier budgets did not need to meet. That gives some appreciation of the effective cut in the authority's budget over recent years. While I believe that the present arrangements are appropriate—that is, the arrangements by which we meet the costs of seconded police—it is important that, if people start to make comparisons between absolute levels of expenditure, they actually bother to find out what was paid for out of a particular level of financial appropriation.

The kind of budgetary roller-coaster on which the NCA has been for the last five years is, in my view, no way to run an efficient and effective organisation. While in recent times there has been growth in our budget, we have spent far too much time and energy—and not a little heartache—in losing staff only to be in a position to recruit again in the following budget. There needs to be an understanding that we work on long-term activities and that continuity of people and experience is critical to our success. That is not to say that the NCA should be immune from general government economic policy or have some kind of cocooned existence; obviously, it should not. But there needs to be an appreciation of the consequences of the kind of budgetary processes that have been put in place over the last few years where we have seen substantial cuts and funding allocations made which do make planning decidedly difficult.

I certainly have no difficulty with funding being allocated for specific activities. In the last three budgets we have received specific funding for our work in relation to South-East Asian organised crime, in relation to the so-called Swordfish initiative and, in the last budget, some enhanced operational capacity. I believe that is entirely consistent with accountable budgetary processes. It is certainly consistent with the idea of achieving outputs and outcomes agreed with the government. But on the other side of that 'ledger'—I guess that is the best way to put it—there should be an expectation that, if the results are achieved, the funding will be maintained, unless the government of the day is prepared to say that it no longer wishes to see the particular outcomes in question achieved. That is, if you cut our budget or any other agency's, there will be a necessary reduction in the outcomes which those funds have been able to deliver.

The legal framework in which we operate has been a particular concern of mine. As effective as the NCA has been, there is no doubt that it could be significantly more effective if provided with some of the basic legal tools available to virtually all of the investigative and regulatory agencies now established in Australia. This was recognised by this committee in its report last year and by many others in our discussions with the states and territories. But we simply get less value for money while we work with antiquated legislation that reflects perceptions and policies of the early 1980s rather than those which should take us into the next century.

What is encouraging is that, in my discussions with state and territory ministers, there has been strong support for the changes that are needed. I look forward to the passage of appropriate amendments to the National Crime Authority Act, not only through the Commonwealth parliament but also through amendments to each of the state and territory acts. It is perhaps that daunting process which operates as an inhibitor to change. Few are prepared to take on what will be a long-term process, I suspect.

The committee, I think, is very well aware of the areas where I believe the states, territories and the Commonwealth need to legislate to provide a better legal framework for Australian law enforcement; I have discussed that with the committee on previous occasions. I do not argue that we need changes which are not, quite frankly, commonplace. I am seeking, in relation to our powers and functions, comparable arrangements to ASIC, the ACCC, the state crime commissions and so on.

I also argue for much more consistent legal frameworks, both in the Commonwealth and in the states, that remove the potential for technical legal challenges. Most jurisdictions, for example, have readily accepted that the use of listening devices is an appropriate activity in law enforcement. Yet different rules apply and different consequences flow from whether or not the legal i's and t's are respectively dotted and crossed. That is not an argument for non-compliance, nor is there any excuse for non-compliance. We must always fully comply with the law, and I would stress that as much as it is possible to do so. What I do argue for is the need, as we increasingly work with partner agencies, for a recognition that, if we all work on different sets of rules in relation to the same kind of investigative techniques, there is simply a greater possibility that, at the end of what may be a very expensive, very complex and very important investigation, the evidence will be found to be inadmissible because somebody slipped up on the technicalities. That is not in the interests of the Australian community.

Australia is one country, and I have to say I find it difficult to understand that the use of many basic investigative techniques that operate in most of the country are found to be inappropriate in one or other parts of the country. That is not to recognise that the states do have their responsibilities. But, in areas such as telephone interception, I simply do not understand the objections which seem to appear in some jurisdictions but not in others, particularly in the day of mobile phones, when a legal intercept warrant can be obtained in Victoria in relation to a telephone service which is mobile and that phone can be used in, say, Queensland, and yet Queensland agencies cannot get an intercept warrant in respect of the same service. Whatever happened to 'one country'?

**Mr KERR**—But that is nothing to do with Commonwealth legislation though.

**Mr Broome**—No, it is not in the sense that the Commonwealth facilitates the states to do that. What I am arguing for is that the states as well as the Commonwealth have responsibilities to try to get some degree of consistency, and I think that is being increasingly recognised by the state and territory police ministers.

As far as the criminal justice system itself is concerned, I believe that the time has come for us to examine the way the system operates and in particularly the way many litigants in both civil and criminal proceedings, in my view, misuse and abuse the procedures. I think there is much to be learned from some of the investigative civil law processes found in overseas jurisdictions. It is essential that our judicial system not be limited to the very rich and the very poor.

There have been numerous examples during my time at the National Crime Authority where challenges of absolutely no legal merit whatsoever have been maintained, sometimes all the way to the High Court; they have achieved their tactical purposes. That is the very kind of litigation that has been criticised by Mr Justice Goldberg in a rather well publicised matter arising in Queensland. It has to be said that such tactics are commonplace. It can be difficult to separate out those cases where genuine issues are to be determined by the courts from those where the processes are simply abused. But my own view is that the judges must exercise a much greater responsibility in this area.

A recent case will highlight the potential the courts have to take a lead. The National Crime Authority has been in dispute for more than two years with the representative office of an offshore bank. In this case they claim to have a 'reasonable excuse'—which, as the committee would know, is the language of the NCA act to prevent witnesses from answering questions or to prevent people from responding to a request for documents—not to deliver certain documents because they say it would involve a breach of domestic law in their home country. There were some doubts, to say the least, that those claims were being genuinely made, but they persisted. They refused to provide documents to the authority and then brought proceedings in the Federal Court. That, of course, is recognised by the act as a perfectly appropriate process.

However, at first instance the court—wrongly, in my view—allowed them to bring the proceedings in a way which was quite contrary to the statutory procedures in the NCA act for challenging decisions. This was because under the act, if there is a challenge to the delivery of documents, the party which wishes to challenge the notice has to deliver the documents to the court before the challenge is heard. By constructing their challenge in a different way, by using administrative law procedures rather than those laid down in the act, they were able to avoid the need to produce the documents to the court in the first place. We argued at that time that this was inappropriate. The judge disagreed and let them bring their action in a different way.

In any event, the matter went to a substantive hearing at first instance and the court found in our favour. The bank appealed. Throughout this time, the bank had sought from us an undertaking not to make a final decision in relation to whether or not the bank had a reasonable excuse, and they sought to maintain this voluntary injunction while the matter went on appeal. We had agreed at first instance because, quite frankly, there was no way in the world that we would not have had that injunction made mandatory by the judge on any application that the other side made.

However, once the matter was on appeal, they sought to continue it. We took the view that, having won at first instance, we would not meekly submit to the request that we forebear from making decisions which we believed we were entitled to make under the act. The bank went before the Federal Court to seek a formal order against us. Justice Wilcox heard the application. He, I think, fully appreciated what was being done here and why it was being done. He actually suggested that, if the bank wanted to proceed with its application, he would make it a condition of the injunction that the documents be brought into the jurisdiction. Remarkably, the bank immediately withdrew its application.

Wilcox J—with respect, showing great perspicacity—decided to set the appeal down within two weeks. It was heard and, in what I have to say is a fairly usual circumstance, the Full Bench rejected the appeal on the day and said that it would publish written reasons later. It did so within about seven days—again, not a matter of common practice. The Full Bench clearly appreciated that the litigation was being used as an attempt to delay an investigation, and it responded accordingly. That, one has to say, is not our common experience in the Federal Court. I think there is an obligation on the judiciary to think about the way in which the court's processes are being used. There is not an argument that people should not be able to challenge us if we do something which they believe to be wrong. But the courts need to show a modicum of commonsense and understanding of the environment

in which the court's processes are used. It often is the case that one seems to feel that that is missing.

I suppose the committee would be disappointed if I did not make some mention about the Elliott matter. I do not want to disappoint you.

**CHAIR**—You will notice that the chairman was deliberately silent.

**Mr Broome**—Yes. I can assure the committee that I will not say any anything untoward. But I believe that this prosecution has demonstrated, in a very high profile way, many of the problems which our criminal justice system faces. It raises questions of how the community's interest is best served when an expensive and long-running investigation can be brought to nought because a trial judge simply gets the law wrong. It also shows the way in which those with resources can and do delay judicial proceedings and prevent the basic issues being determined by a court.

The committee will understand that, through its own consideration of the issues in this matter and the review which was conducted by the Attorney-General's Department, our investigation was found to have been conducted properly and with professionalism. The errors of the trial judge have been well reported. His critical decisions on so many major aspects of the evidence which he had thrown out were in themselves thrown out by the Court of Appeal in Victoria. The High Court refused to intervene to review the Court of Appeal's decision. The evidence should have gone to a jury—no more, no less.

The taxpayers' funds are still being expended on civil litigation related to this matter which commenced more than six years ago. A person who would style himself the '$200 million' man is now the sole plaintiff in these proceedings. All of the other plaintiffs have withdrawn and, I say with some sense of appreciation, paid the NCA's costs. That is, they have paid the taxpayers' costs.

I had hoped this matter would have been finally revolved before I left the NCA. I am going to be proven wrong again. I had certainly hoped that, with Mr Elliott's attempt to amend his statement of claim for the sixth time, we may have seen the end of the matter. But the Federal Court has given him until 3 September—that is next Friday—to file a further amended statement of claim. The Federal Court has, of course, thrown out a number of aspects of the claim lodged to date in their entirety and it has given Mr Elliott an opportunity to file by 3 September amended statements of claim to disclose a cause of action by next Friday. I will await with great interest to see what is filed in the Federal Court on 3 September. The matter will then go before the Federal Court on 27 September. Perhaps by then, 10 days too late, we will see the end of the matter.

Finally, I want to thank the staff of the authority for their support and efforts. What many of them do is dangerous and difficult work. It is not recognised enough; in some cases it is very difficult for it to be recognised at all. They put up with criticism, much of which is ill-informed, and they put up with comment about an organisation for which they work which has no place in terms of its application to them personally but which, because they are dedicated people, they nonetheless sometimes take to heart. I have been particularly impressed by their dedication and their work in the public interest. My best way of saying

thank you to them is to say so publicly in a forum such as this. I have been personally very appreciative of their support for me. The same can be said of our senior management who have certainly given me a great deal of support in trying to bring about the development of the authority, which we have sought to achieve and the changes which had been effected in the last four years. I thank them for all of that.

We are not a perfect organisation; we have a long way to go; but I believe we have demonstrated that we can perform very important and effective work for the community. We have done it with professionalism. We are not above making mistakes, and I am happy to acknowledge them when they occur. But, equally, I think some of the things that have been said about the organisation have been obviously quite incorrect and quite unfair. But the staff have stuck through all of that and they have done a great job. I want to thank them very much.

I just say again to the committee: I have thoroughly enjoyed my relationship with this committee. It has been one of the much more pleasant parts of my role. As I said at the outset of my comments tonight, I set out to try to build a relationship with this committee and I think that has been successful. I believe very strongly that organisations such as ours will get community support when we have parliamentary support. Not just because you represent the community but because, given the nature of our work and the difficulties of exposing a lot of what we do to great public scrutiny—for very good reason—we need to have the confidence which you have in us then reflected in the broader community. Your support is very important and, to get that, I believe we have to tell you—as we have sought to do over my time in office—what we do, how we do it and why we do it. I think that has proven to be a very successful formula. Obviously, with somebody taking my place, whomever that may be, different dynamics will operate. But I hope that that part of the relationship will continue because it is very important.

Obviously, I am happy to answer the committee's questions to expand on some of the things I have said. But certainly I have found these to be a very interesting and challenging four years. They happen to be the longest time I have ever spent in any job in my career. I have been very fortunate to have many opportunities. This has just been another one which has had its ups and downs, but I am very glad that I was given the opportunity. I would say in this context to Duncan Kerr, who had either the foolishness or the great vision to appoint me: it has been interesting, but thank you very much indeed—and thank you to the committee.

**CHAIR**—Thank you very much.

**Senator FERRIS**—I was very interested to hear that overview, but I was somewhat surprised to notice that you did not comment on the reference system. I have often wondered whether the reference system was the most efficient way for the NCA to operate on its inquiries. Do you have any comments to make on the reference system?

**Mr Broome**—A number of points can be made. I personally believe that there are more efficient ways to operate. As I have said to the committee before, I think that the Trade Practices Act model—with which I have some familiarity as a former deputy chair of what is now the ACCC—is certainly another option. The ACCC basically works on the assumption

that, where a member of the commission believes that a breach of the Trade Practices Act is occurring, that is the relevant trigger for an investigation and the use of what are—not comparable—greater special powers than we have to investigate breaches of the Trade Practices Act.

Having said that, I do not argue that that is what should happen in the case of the NCA, and I do not do so for a very practical reason. We do not need the diversionary public debate which would be engendered if we sought to move it in that direction. While I think it is curious that Allan Fels has more power to investigate deceptive advertising than I have to investigate heroin importation, I do not think we improve our lot and our role in the community by having a debate about whether the removal of references would take away control by ministers over the NCA.

The reference process, particularly as it has now been interpreted by the Full Federal Court, is a practical and workable process. The Federal Court has recognised that we are an investigative agency. It has recognised that we are entitled, within broad limitations, to fish for information. It has said explicitly that, if we knew all of the answers, we would not have an investigation to carry out. So, by definition, we have to have some flexibility to investigate what may be behind a certain set of observed facts or circumstances. So long as that remains the legal position, I think it provides a reasonable framework in which the references can operate.

The references also serve a very important political function. They give state and territory ministers, as well as the Commonwealth minister, the specific responsibility of allocating an area of criminal activity to be investigated. In that sense, it recognises the states' and territories' ownership of the NCA as a truly national body; given that their parliaments legislate to give us powers, that is appropriate. So, while I do not believe it is the best model in an objective analytical sense, I think it is the best model we are going to have in the practical political context in which we operate. So for my part: leave that alone, although I think we can improve things around the process.

**Senator STOTT DESPOJA**—I am just curious to get your views on the inquest in South Australia—which is predictable, coming from me—and the issue of the difficulties surrounding the ability of former employees to provide evidence. So I am asking less about the actual nature of the inquiry and more to do with some of these issues which, no doubt, we will encounter in the future.

**Mr Broome**—The inquest has been very difficult; it has been difficult for the staff on the ground. It has raised a number of issues which have had to be addressed. For obvious reasons, I do not wish to canvass the questions which the Coroner will have to address specifically in exercising his statutory responsibilities. What the inquest did show up was a difficulty with the provisions of the National Crime Authority Act which I think do need to be revisited.

Section 51 is a provision which has, I believe, quite clear policy behind it. It seeks to preserve in a very, very rigorous way the confidentiality of information obtained by the authority during its investigations. It does that by seeking to restrict that material to be used only in prosecutions which arise out of investigations conducted by the authority. It

specifically prevents such information from being subject to subpoena—although there are many courts in this country that seem to have difficulty reading the simple language of section 51 because we have to continually fight applications which the statute quite clearly says should be dismissed—in some cases, for as long as three weeks. But it has quite clear policy.

The difficulty arises where former staff members—which the section quite clearly covers, saying that they are not to disclose information obtained in the course of their employment—are compelled to give evidence in a proceedings such as a coronial inquiry where the evidence does not relate to any of the substance of an investigation which they carried out but in a sense to things which just occurred in the workplace. The coroner, faced with that dilemma, took what I guess was in one sense understandable but what I still believe to be the wrong view of the law and said that he believed that he was entitled to compel witnesses to answer questions, and that the only basis on which they could refuse to answer questions or be prevented from answering questions was where a public interest immunity claim was made in respect of the subject matter of their evidence.

I have some sympathy for the practicalities of what the coroner was trying to address but, at the same time, the difficulty with provisions such as section 51 is that they either work or they do not. If you leave it to individual magistrates or judges to determine whether they are sufficiently important and their work is sufficiently important that they can determine that in this particular case there should be some sort of exception to the statutory rule, then you will often not know that the problem has even arisen until after it has occurred. You cannot put the genie back in the bottle, once the information has been released.

**CHAIR**—No pun intended.

**Mr Broome**—No pun intended. That is the difficulty—that, if you set out to draw a very, very effective brick wall around the information, you will run into these kinds of problems. What we saw in that case was the Attorney-General instructed the Solicitor-General to go before the coroner and argue what I believe was the correct interpretation of section 51. The coroner said, 'I'm sorry, Mr Solicitor, I disagree. I'm going to require people to answer questions.' The government's response was to say, 'Well, we're not going to take this matter on appeal.' As it turned out, there was no evidence given in that inquest which I can say caused any breach of security or saw the inappropriate disclosure of information.

**Senator FERRIS**—But there easily could have been.

**Mr Broome**—But I would have been in a situation at any stage where there could have been. The reasons why that provision is in there go back to a very strong concern expressed in the early 1980s when the NCA act was being developed as to the kind of information the NCA might acquire and how it might be used in the future.

Just think about a scenario like this: the NCA is investigating a heroin importation. In the course of an investigation a search warrant is executed on a brothel, because it is believed that drug dealing is going on in that brothel. To use the vernacular, some doors are kicked in, and one never knows what or who might be found behind one of those doors.

**Mr KERR**—In some cases perhaps a former chairman of the NCA.

**Mr Broome**—I make no comment on that; certainly not this chair of the NCA. Having done so, staff will be in a position to know information about a person who may have been nothing more than a legitimate client of that brothel. There is a subsequent defamation case where that information has somehow been released—not by NCA officers at all but, say, one of the staff of the brothel—to the press. This gives rise to a defamation action, names are being bandied about and the staff members are subpoenaed to give evidence about what they saw.

That was the kind of thing that the section set out to prevent from happening—that, in unrelated proceedings that had nothing to do with the criminal prosecution, information obtained using special powers, such as information from a hearing or information obtained in that way, could be released. Once you let section 51 have a series of unspecified but sort of 'it seemed like a good idea at the time' exceptions, I am not sure where you will end up.

One of the challenges, I think, that the government has to address in reviewing the act—and which I suspect the committee will have to think about—is where it wants to see section 51 take us. Do we want to go to a situation where, essentially, normal rules apply; that is, you have to run a public interest immunity claim every time? We get subpoenas every week from people, the subject of investigations, seeking to get information prematurely about the nature of the investigation. We have had a court case in the Federal Court decided last week where, in the Federal Court, a number of people who believe they are the subject of an investigation—and I make no comment about that—have sought to find out through the Federal Court and its discovery procedures what information, if any, we might have about them.

We have had, essentially, a satisfactory result from that judge. The action has been running for six months. It has been expensive, and it has obviously taken a great deal of resources. Yet it is clearly designed for an alternative purpose. The fact that we were made parties to that proceeding—which the court allowed—was itself an attempt to overcome the prohibition in section 51 which says that you cannot subpoena us unless we are a party to the proceedings. This was, in fact, a challenge to a taxation assessment, but we were tacked on to it so that discovery could be sought. They are the sorts of challenges that are involved.

As I say, it is very difficult to get a piece of legislation which works perfectly; it is almost impossible. In this area, some degree of judicial discretion is perhaps necessary to sort the proverbial wheat from the chaff—although winnowing wheat from chaff is not perhaps a well honed judicial skill on occasions. So I do not know what we do with 51. I have various ideas about it. But the inquest, I think, has highlighted the problem yet again and, really, it does have to be addressed. Either that protection is sought to be given to information or it is not. But, once you start to have a halfway house, you really have to identify the alternatives or the exceptions with great particularity.

**Senator STOTT DESPOJA**—It has been problematic for obviously for the organisation. But I think this reflects on what you were saying earlier about intimating the need for public faith in the institution of the NCA and, obviously, this body. I realise that it is a particularly difficult position to be in where you are being berated for not sharing information—

**Mr KERR**—Isn't the answer in this instance to give to the minister, this committee or somebody a power to release?

**Mr Broome**—That was the suggestion that was made in 1994, I think.

**Mr KERR**—Manifestly, the magistrate made the right commonsense decision if not the right legal decision in the particular circumstances.

**Mr Broome**—But you know as well as I do that next time—

**Mr KERR**—It is hard cases making bad law.

**Mr Broome**—there will be a trial and it will be a different issue entirely. There will not be the public interest considerations that relate to the inquest. But that will be seen to be a precedent and we will go down that track.

I have mixed feelings for one very simple reason: I know how important it is to engender public confidence in what we do and how we do it. I think I have tried more than some of my predecessors to be much more open about what we do for that very reason. When you have to defend what is seen to be secrecy but what is in many cases nothing more than an attempt at privacy for those who are involved in hearings and so on, you often find that you are being accused of something which you are not even trying to achieve. But there is a policy task there which needs to be thought about by the government. Yes, there are some solutions, but some of those involve shifting responsibility from, say, me to the Attorney-General or the Minister for Justice and Customs, a responsibility which some ministers may not wish to take on board.

**Mr EDWARDS**—Earlier when talking about budgets, you said that, if you cut budgets, you have to cut outcomes. What outcomes did you have to cut?

**Mr Broome**—No. What I am saying is that at present we have a very substantial proportion of our budget which is on a three- or four-year specific time frame. I do not have a problem with that; quite frankly, I think it is quite sensible government financing. But I am saying that, when this money which was allocated in the so-called Swordfish project runs out, as it does on 30 June next year, if there is no extension or renewal of that funding for a specific period, there has to be an understanding that we will not produce in 2000-2001 the outcomes we produced in 1999-2000 because we will be $6 million down in resources—and 'you get what you pay for'.

All I am saying is that there is this tendency to say, 'Well, we can just cut the budget, but you can still deliver.' I am not arguing this thing about whether you can sort of marginally reduce budgets and still keep outcomes. I am saying that, if you take out of an organisation of our size budget cuts of the order of, say, $5 million or $10 million out of a $50-odd million base, do not expect that you will get the same outcomes. If the government does not want the outcomes, it can cut the budget. That is a perfectly appropriate function for government to achieve. If it says, 'We don't want to catch the heroin importers that you've caught in the last year and we're going to take that part of your budget off you,' that is fine. I just say: let us see the link between cause and effect. We now have such a

substantial part of our budget funded in that way that it is an issue that needs to be addressed.

The other thing which needs to be addressed in that context is: we put a significant proportion of our staff onto term contracts because we had term funding; there is no other responsible thing that you can do. However, I have people who in early 2000 will be coming to the end of, say, a one- or a two-year contract. Whoever is to be the new chairman will not know until the budget of May 2000 whether or not that money is to be applied again. By that stage, our staff may have walked or we will have let them go. If we keep them on the off-chance, then we may find ourselves paying redundancies or additional costs.

All I argue is that, in this sort of context, if you are performing, there should be an expectation that you will continue to have those levels maintained. If you are not performing, no question. That is what outputs and outcomes are about. You do not deliver, you do not get the dollars. There can be no objection to that. I am just arguing that you have to see that, with this kind of funding process, the continuity is important.

**CHAIR**—We have come from a position, as I understand it or as I recall it, where state jurisdictions would second officers to the NCA and they would meet the cost of their wages to a situation where the NCA now meets the cost of those wages. Has that been an improvement?

**Mr Broome**—Yes. When we pay, we have a much greater say in who we get; that is the reality of life. It helps the states to release people to us if they can backfill, and they can backfill if I am paying the salaries of the people who have come to us. So, obviously, there is that share of their budget which can be used. To take Western Australia, Bob Falconer could give me 15 people, I would pay him for the 15 salaries and he then could put 15 people in behind. There is some fairly inescapable logic in all of that. Probably more than any other single factor, that has helped to see us have a much better working relationship with the states. That does not prove infallible because they are under their own pressures at various times, and so we always have this difficulty of getting people. But I think it is the right way to go.

There are others who say, 'Well, the states should be meeting their share of the costs,' and so on. We are a very small organisation and, while I believe what we do is very important, in the state political perspective our outcomes are not the centre of focus for police commissioners or even for police ministers; as much as I would like to think they were, I am a realist. So I have to be able to help encourage their cooperation, and that is a practical way of doing it.

**Mr EDWARDS**—Just to take that a step further: what would your view be about the NCA employing those people whom you now have on a long-term basis, given your comments about continuity?

**Mr Broome**—Fundamentally I am opposed to it. I am opposed to it because our organisation is too small to provide career prospects for the kind of people I would like to see working for us. That is, I want bright, enthusiastic people with long-term career prospects. Coming to our place on a long-term basis is almost antithetical to that outcome. I

would like to see very capable people come in, learn from us and contribute—give something to us as well—and then go on to further careers in law enforcement. Police officers basically have one organisation in which they can work. They can transfer across to other services but, essentially, they are working within that environment. I cannot give them, in an organisation of our size, the sort of career prospects I would like to.

The second thing is that, as an anti-corruption strategy, having people for two, three or four years maximum and ensuring a rotation of staff is, in our experience, an exceptionally good anti-corruption strategy. I want to see people coming and going all the time, because new people in the team is the best way of making sure that people do not get up to familiarity breeding contempt with the legal process.

**Mr EDWARDS**—What would your view be about an FBI style agency in Australia?

**Mr Broome**—What do you mean by 'FBI style'?

**Mr EDWARDS**—It just seems to me that there is a fair degree of fragmentation in our activities in Australia. You have the state jurisdictions, and within those jurisdictions you have some fragmentation. Federally, there seems to me to be a fair degree of fragmentation with various agencies. Could our processes and our fight against crime be enhanced with a body that brought all of those things under one umbrella—say, with the establishment of a federal enforcement agency on a comparable basis to that which we see in the various states?

**Senator FERRIS**—John, didn't you say in our other inquiry that there were 23 different law enforcement agencies in Australia? I am sure that was the figure you gave.

**Mr Broome**—There are about 23. If you take the state police services, customs, tax, state crime commissions and the NCA, you will end up with—

**Senator FERRIS**—It is frightening.

**Mr EDWARDS**—AUSTRAC.

**Mr Broome**—AUSTRAC is a special case, ASIC and so on. But let us look at America: with 50 states I think there are 24,000 police services. We don't have a coordination problem that comes within—

**CHAIR**—A bull's roar.

**Mr Broome**—A bull's roar, cooee or any other description of the American problem. Why I asked the question what you meant by 'FBI style' is that if you mean an agency that is not limited by jurisdiction, then you have got that—it is called the NCA—but only in respect of what the act defines as 'relevant criminal activity'. We have a mechanism that bolts together federal and state jurisdictions. The FBI has none of the powers that we have in the sense of a hearing power or a capacity to gather documents through our section 29 powers. It can facilitate grand jury functions and so, but they are a little different. While the FBI has great PR, in terms of functionality, I am not sure that we would gain much from it.

People talk about there being 23-odd agencies in Australia. If you go to the UK, a unitary system, you have still got Inland Revenue, Customs, the Met and I think 43 regional constabularies. You now have NCIS as the national intelligence gathering agency. On top of that you used to have six regional crime squads. Now you have a national crime squad which, together with NCIS, is almost an NCA type body, although it does not have the same functions.

I do not knock the FBI model in the sense that I think we have to have a capacity to move across state, territory and federal jurisdictions just as the crooks do. But I am not sure that it is politically attainable and I am not sure it is even desirable to have a super national police force. You will not be able to give the AFP capacity to investigate the majority of state offences, and the federal government will never want you to do that because it will cost them a fortune. At the end of the day, the states pick up the tab for about 90 per cent of Australian law enforcement.

What you are talking about here is how you facilitate, for those criminal activities which are broader than community policing, an effective functional way to do it. I think that the NCA model is actually a pretty good model. It needs to be updated, upgraded and we need to overcome the problems of the High Court's decision in relation to cross-vesting, which is a challenge. But I do not think an FBI per se is the solution to that problem.

**CHAIR**—Isn't the difficulty with an FBI type of organisation that you run the risk of effectively having too much power in one organisation? If that gets off the rails in some shape or form—and it certainly did in the States—then you have a problem. However, if you have a number of agencies, although it has its deficiencies—on the other hand, you are trying to deal with those by working together—if you find that you have a problem in one area, the whole barrel is infected and you may bring it to life a bit quicker.

**Mr Broome**—As somebody who is the beneficiary of the so-called 'J. Edgar Hoover' clause in the NCA act, although 30 years before it affected Hoover because I think he lasted 34 years. So I have three decades to catch up. I think there is that possibility—

**CHAIR**—But it is not just your job. I am not talking about your job; I am talking about people perhaps a bit further down the chain who potentially could be there for years.

**Mr Broome**—That is true. But in any agency which is going to have broad jurisdictional powers—whether it is a single large state police service which covers all of the crime in the jurisdiction, or whether it is an AFP that has a national coverage but in respect of a smaller stratum of criminal activities—that potential is there. What we have seen in Australia over the last decade is an enormous attempt across the country to clean out the police service. I think there are very widely held views that, while it has not been perfect, we have gone an enormous way to achieve a positive result.

In the four years I have been in this job, with the level of appreciation at senior police levels—not just commissioners but assistant commissioner crime level and so on—there is a much greater sense of the need to deal with issues nationally than was the case five or 10 years ago. We have made enormous steps forward. Of course we can go further. I get to the

stage where I say that we should be going further now. But we should not underestimate how much progress has been made.

We do have police and other agencies coming together and sitting down at a roundtable with national management plans under our coordination arrangements to deal with national criminal problems. That simply was not the case even five years ago, let alone 10 or 15 years ago. We really have made a lot of progress. We just have to work on those models and overcome some of the jealousies between agencies and so on, much of which is driven by very practical and understandable human reactions and by pressures that come from budgets and so on. But that is going to afflict any organisation you put in place to do the job.

**Mr KERR**—I was wondering if you could flesh out a bit whether you have any practical suggestions for us as to what the Commonwealth parliament might do about developing a national approach towards the use of telephone interception, listening devices and the ancillary investigative tools that you say should have a more common approach. Is it simply that we should advocate commonality? Are there some legislative steps to facilitate that? Is there some administrative action that could facilitate it?

**Mr Broome**—I think all of the above. When we are dealing with legislative issues, it is important to try to keep the focus on whether we are doing something which is a one-off or which is part of some sort of greater consistent whole. The parliament may well be asking of a government—any government over time—how this fits into a national approach to law enforcement. Some questions will be asked at committee stages and so on, and that will inevitably put pressure on the system.

I have advocated for some time—we put it in our submission to the inquiry—that I saw a potential for this committee to become an environment in which the parliament could look at national law enforcement issues. The statutory function of the committee is quite focused on our areas of activity. The committee has over the years been prepared to be a little adventurous. Who am I to criticise its adventurism? But I think it would be useful if there were a recognition that said, 'The parliament has an interest in national law enforcement.'

That is not to derogate from the basic constitutional split of responsibilities. But it is one country, and national perspectives are important. I think there is a role for the parliament to address law enforcement as an issue. It is not a major issue from the parliament's perspective. It comes up as a side issue in a whole range of things that come before the parliament, but there is no focus on the broader law enforcement issues. It is not just the NCA; it is tax, Customs and the AFP. There is a range of federal agencies which have interests in these areas and which the parliament, in my view, has a legitimate interest in. That can perhaps be expanded even more. So I think there is a legislative focus there.

There is that sort of policy focus where a committee of the parliament can put on the table considerations about how things might go. Part of that is perhaps identifying, through inquiry processes and so on, what might be needed and what might be regarded as acceptable. It is always interesting to see that, when you propose changes, you are often met within the bureaucratic processes of government with the sort of 'Oh well, the Senate will never wear this.' You will never know until you try. I think running some of the ideas up to

Senate committees and getting them involved in considering the practical issues is a very important way to find out what may well be acceptable to the parliament or not.

New South Wales has recently enacted controlled operations legislation, and tomorrow we will come back to the committee and talk more about that. That was a situation where the New South Wales parliament—I just use it as an example—approached a problem in a very bipartisan way. There was discussion between the government and the opposition. Proposals were put forward and were thought about. They went through the parliament and there was, as we all know is the case, a substantial amount of discussion not just in the chamber but in the corridors about what was an appropriate solution to a problem.

I think that issues like law enforcement are sufficiently important to warrant that very special treatment of bipartisan consideration. We all know that, when that happens, we often find there is a huge amount of common ground. What is more central to the wellbeing of the Australian community than dealing with issues like law enforcement? That does not mean there is not a genuine difference of opinion about how much interference with civil liberties is appropriate or is too draconian or whatever. But let us at least tease out the issues. Let us do it in a way which is informed rather than saying, 'We cannot have this because it involves a change.'

One of the issues which will come out of the Australian Law Reform Commission report on proceeds of crime is the question about whether we move to some form of civil forfeiture for proceeds of crime. A decade ago in the parliament, it was obvious that all that the community and indeed the parliament would accept was a post conviction based forfeiture regime.

**Mr EDWARDS**—Things have changed.

**Mr Broome**—That is precisely right, things have changed. That does not mean you go in there and have some sort of arbitrary collection power but what it does mean is that we need to look at our experience, work out what are the appropriate checks and balances, how you might modify and expand that framework and to see what is appropriate for the next century. The law does not stand still in a whole range of areas. I think there is an enormous opportunity for these discussions to occur in a much more positive framework than debates over bills at the time when the die is cast.

What I said to the committee when the question of the controlled operations inquiry was proposed was that that seemed to us to be a very important way to have a discussion about the issues. We can talk to you in a confidential session about some of the practical difficulties, the nuts and bolts. We can talk to you in public sessions about the broad policy considerations. But at least we can have a sensible debate, a discussion, some information can be passed around and then you can decide what you think is appropriate and put it up. If the committee takes a common view about that, then we are 90 per cent of the way towards getting an effective parliamentary solution. There is not enough of that in this particular area of activity.

Certainly in my experience around government—what will be just short of 25 years—the fact is that a great deal of common purpose is possible through the parliament and is

achieved much more often than the average member of the public has any inkling whatsoever. This happens to be a subject area where that has been achieved, in my experience over the last 15 years, much more often than not.

**Mr KERR**—Can I ask two questions about complaints and accountability. Clearly, it is unsatisfactory that there is no complaints mechanism. I do not know whether it is formally on our record because I have not been to all the hearings, but I understand that you do not prefer the model that has been advanced by the Law Reform Commission. I understand you have alternative model as to dealing with complaints. I would like to hear a bit more about that.

Secondly, apart from complaints, there is the general issue of accountability. There is a parliamentary committee but we do not have the capacity to look at operational matters as they are currently under way. I am wondering whether you have some ideas as to an appropriate form of accountability, given that ministers, despite their best wills, have limited capacity—firstly, out of propriety but also simply because of the nature of the relationship. There was the code review at one stage. Maybe there should be some regular process that is set up, not to damage the agency but to make certain there is a process of positive feedback—perhaps sometimes some critical feedback—but feedback in terms of the work and organisation of the NCA.

**Mr Broome**—I will do the complaints part first and come back to accountability. I have argued, certainly all the time I have been here, and the authority has argued I think formally since 1991 that it wants an external complaint handling process. If I can just say for the record: I wish that Terry O'Gorman would get his facts straight. He knows that is our policy. He has been at conferences where I have expressed it. He gave evidence before you last week where he said diametrically opposed things which he knows to be wrong. Given that you all know what my policy is and what the NCA's policy was, I was a little disappointed that nobody actually took him up on the point. Nonetheless, I will make the point now myself.

I think it is essential that the NCA has an external complaint handling body properly empowered to fully investigate complaints of impropriety, illegality and so on. The Commonwealth Ombudsman should have been given jurisdiction over the NCA when the NCA was established, in my view. The Ombudsman was not given jurisdiction, because at the time the issue was being considered it was believed inappropriate because, if a judge was to head up the NCA, there was some concern of how appropriate it would be to have the Ombudsman looking over the judge's shoulder. My response to that is in very blunt terms—cobblers.

**CHAIR**—I was about to say, what is different from?

**Mr Broome**—Precisely. There is nothing that the chairman of the NCA does which involves the exercise of judicial power. It is a fundamental misconception to suggest that, because we exercise certain compulsory powers, they are in some way judicial. They are not. There was no reason in principle why that should not have been put in place at the outset. It was not. That is history.

We have argued for it to be done for the best part of a decade. We have certainly argued that it should be done when the ALRC was examining the issue, although that was not given I think fair recognition in the report. The proposal we have always argued is that either the Inspector-General of Intelligence and Security could be given a special role in relation to the NCA, which was the PJC's preferred solution back in the early 1990s, or the Ombudsman. I have no difficulty with that.

It should not be the ALRC's proposed solution for one very practical reason: I do not believe the government is going to create a new body just to oversight the NCA and to do some work in relation to the AFP. The best way not to have an external complaint handling body is to argue for a new body to do it. We have consistently argued that it should be either the Inspector-General or the Ombudsman, with little concern about which one it might be.

The practical consideration has always been that our seconded police legally remain within the disciplinary constraints of their home police service. They are seconded to us but they remain officers of each service. They are subject to their disciplinary regulations. It is the commissioners, not me or somebody in my office, who can exercise disciplinary control over them.

I argued before the ALRC that that was not a problem which was insurmountable and that, just as public servants whose conduct might be the subject of disciplinary consideration go down a particular track in the Public Service Act context, that does not prevent the Ombudsman having jurisdiction over the organisation. You separate out organisational responsibility and accountability from personal responsibility and accountability for the actions of the individual officer. If there is a complaint that a member of staff has acted inappropriately in respect of a member of the public, the organisation answers for that. Whether or not action is taken against the staff member is a separate and distinct issue. There is nothing conceptually difficult about that, it seems to me.

Three years ago, I had discussed that framework with each of the then police commissioners and said, 'This will leave you as commissioners to deal with the actions or the allegation about your seconded police. But I have to be able to answer for the NCA's activities as an organisation. If I think we have done the wrong thing, I will say so. If that has an implication for your particular officers, so be it. You can promote them, exonerate them, demote them, I do not care, but I have to be able to take the rap or argue that we have done nothing wrong.' That was acceptable. Four years after we have been pushing this attempt, we are still waiting for a response to the ALRC report. I think the response is simple—I do not care which one it is but that can be solved.

When you do that, you then deal in large part with a lot of the arguments about accountability. I do not accept that we are not an accountable organisation. I certainly feel accountable. I feel accountable to ministers—not just one or two but one in every jurisdiction—and there are not too many agency heads in that situation. But, equally, there are a whole range of issues that then come up in terms of the accountability argument. It is not appropriate for this committee to be a complaint handler of individual complaints. You do not have the resources, with great respect to the secretary, to do a proper investigation.

**Mr EDWARDS**—Or the will.

**Mr Broome**—Or the will. Nor is it appropriate. The parliament is ill-prepared, ill-empowered and ill-served to do individual complaint handing, and we ought to recognise that up front. It is well served and well placed to be able to do perhaps five-yearly reviews which look at how is an organisation going. You have done that three times in respect of the NCA. I think that is a perfectly appropriate function. There the parliament can be sort of taking the organisation's temperature, if you like—a health check. If we have a complaints process that solves most of the issues.

When people talk about a lack of accountability, all I say is: think about estimates committees, the PJC and the internal processes of government in terms of all the funding processes that go on. In addition, every single decision that I make or that members make in the exercise of our statutory responsibilities is reviewable specifically under the NCA act but also under ADJR, 39B of the Judiciary Act, 75(v) of the Constitution and then usually in relevant state court processes where we are exercising state powers.

One of our dilemmas is how do we deal with challenges to our powers in the exercise of hearing processes where there is both a state reference and a federal reference. For example, 'Mr Kerr, would you please tell me where you were on a certain day?' Is this a question under the state reference, the federal reference or both? If you object to answering it, which court has jurisdiction to hear the challenge? It is a jurisdictional nightmare. That is one of the things we need to have addressed in the wash-up to Re Wakim. But lack of accountability? No. Are there better methods of achieving it? Yes, there are and I think a straightforward complaint handling process is the first major step, and then a lot of the other things will fall into place.

I think that the committee scheduling a regular five-year review would be perfectly appropriate. Then if something comes up which the committee thinks raises a conceptual issue or a broad policy problem, then obviously the committee can look at it—as you are doing in relation to an issue like controlled operations. It is hardly an unaccountable framework in which we operate.

**Mr KERR**—Could I raise one matter: you raised the Elliott inquiry and, of course, there has been very substantial comment in the press. One of the incidents that I understand has happened in the not distant past was the release of an amount of documents that you were pursuing in Switzerland; is that right?

**Mr Broome**—You may know more than I do.

**Mr KERR**—I don't know. What is the story?

**Mr Broome**—Paul Barry seems to have the most information in this area.

**Senator FERRIS**—Should we be in camera for this?

**Mr Broome**—All I am going to say is on the public record but we may pursue this a bit later. Paul Barry has written a story that says the Swiss courts have made decisions and they

are subject to further appeal by certain parties that Barry names—and he says that Elliott is one of the parties—in the Swiss High Court which is the last court from the magistrate's decision. That is in response to a mutual assistance request which was made by the Attorney-General, all of which is a matter of public record.

Whether documents actually come to Australia or not, when they come where they will go to and how they will be dealt with are obviously matters for others to worry about, because it was Australia's request—not, as it is commonly reported, the NCA's request. As you know, a mutual assistance request is made by the Attorney-General or the Minister for Justice and Customs. It is not made by individual agencies. That request has been outstanding since 1991. But if and when documents come from Switzerland, someone will need to examine them to see whether they are evidence of anything and, if they are, what should be done with them. That is all I want to say publicly.

**Mr KERR**—I do not want you to say more privately, to be honest. I just thought it was appropriate, given that you raised that, to at least identify where publicly the matter stood. It has been asserted in the media as being back in your hands. That was not my understanding—

**Mr Broome**—No. All I can say that matter is certainly not back in our hands, because the Swiss courts have not completed their consideration of it. That, as I understand it, is quite public. The Paul Barry article seems to be the most informed because I understand that Mr Barry actually went to Switzerland to research it.

**CHAIR**—Mr Somlyay has had to withdraw because he has an 8 o'clock flight with a commitment up in Brisbane the first thing in the morning. His question was: when you get a funding cut, that obviously affects your capacity, and he was interested know what, if any, flow-on in terms of effectiveness that might have with the agencies you work with?

**Mr Broome**—I guess it could be significant; it might be less so.

**CHAIR**—You ought to be in politics.

**Mr Broome**—What we try to do is to make sure that our priorities are determined in consultation with our partners. We have at a senior operational level a national advisory group made up of our senior operational people and senior operational people from all the major partner agencies. They provide advice to the senior officer group, which is the police commissioners and other agency heads who provide advice in an intergovernmental committee. Their normal role to do that in the context of giving references to the NCA. There is very much a national perspective as to what preferences should be given and what should be the subject matter of them. The state references reflect a state focus and the national references pick up national issues and so on.

If we were to have a significant reduction in resources, what we would be saying in those contexts would be: we now have X rather than Y funds available. We would try to work out some sort of consensus about where the priorities should be and that would be reflected. So obviously we would do less of the lower priority work and try to reduce the effect. But it is not as if we are working in a situation where even small cuts in the budget

would not have a significant impact, as I think the 1996 exercise demonstrated. When your major single expenditure is people, if you cut dollars, you cut people. In a job which is not entirely but largely driven by human resources, it affects what you can put on the ground. That is the dynamic that is inevitably there.

We are trying to work a little smarter and so on, but it is still very much a very high human resource intense activity. The other problem is that our big costs in other areas tend to be fixed and not capable of short-term reduction. Rent is the classic example. You cannot just take your tenancy agreement with your landlord and rip it up and say, 'I am sorry, the government cut our funding, we can't pay you rent.' You have long-term obligations. While you may have less than fully occupied space, which is a problem we do not have these days but we did have a couple of years ago when we were paying for buildings that were not fully occupied. But we could not just walk out of our leases. There seems to be a failure to appreciate that, in small agencies in particular, issues like rent can be disproportionately high. In an agency that has 450 people but five locations, rent is a cost factor which is disproportionate to having, say, 450 people in one location. Simple maths tell you that. You end up paying more for five different buildings than you are ever going to pay for the same people in one place. You lose a whole lot of efficiencies in that differentiation. They are the sorts of things which mean that, when cuts are made, you need to think about what the implications are.

**CHAIR**—Why do you have to be in the Sydney CBD?

**Mr Broome**—For some practical reasons: the AFP is two blocks down the road; the DPP is 33 floors above us; the New South Wales Police Service is the other side of Hyde Park; and the courts are to the north or south of us.

**CHAIR**—So it is a clustering imperative?

**Mr Broome**—That is right.

**CHAIR**—I want to ask my question now. You have been there for four years, what would be your assessment—not just the effectiveness of your organisation but also looking at things like drugs, people smuggling or other criminal activity—of where those things stand today compared with four years ago? Is there more of everything? Is it worse? Are we being more successful in detection? I am trying to really get a feel as to whether we are keeping pace or getting on top of the job or are we, in spite of increased resources, working smarter and some successes, actually going backwards?

**Mr Broome**—If I can break up in a couple of areas. In relation to things like drugs, a lot of people talk about a war on drugs, but we are not engaged in a war on drugs. We are engaged in counteracting criminal behaviour, and in that activity I think we are better than we were four years ago. I think we work smarter, we work more effectively, our partnership relations are better, and the results are there. We have done better this year, in dealing with what I believe to be some quite significant importation groups and so on, that show me that we understand some more of the dynamics, We understand more of the methodologies and so on. So in that sense we are doing quite well, and I think law enforcement generally is.

There is, however, a fair amount of evidence that suggests there is an increased quantity of drugs coming into Australia. We saw an AFP-Customs-New South Wales police operation last year that saw 389 kilos of heroin seized with only marginal impact on the market in Sydney. In some parts of the country, much, much smaller seizures have had—at least in some measurable time frames—some greater impacts. It is not a uniform distribution process and all the rest of it, but I think there have been substantial successes.

**CHAIR**—Are there fewer drugs on the street in Australia today than there were five years?

**Mr Broome**—No.

**CHAIR**—There are more?

**Mr Broome**—I believe there are.

**CHAIR**—But without your operations there would be dramatically more.

**Mr Broome**—There would be more still. Let me give you an example of the way in which it is very difficult to categorise how much we have taken off the streets. We did an operation about three years ago where all of the principals have now been through the court system and convicted are serving very substantial terms. This is off the top of my head but I think the figures are pretty close to being right.

At the time of the arrests, they were in possession of about nine kilos of heroin in one location and about seven in another, so about 16 kilos. The evidence that we had suggested they had brought in six or seven previous shipments. So it was possible that up to 100 kilos had been brought in. In arresting those people with their 16 kilos, my argument would be we did not just take 16 kilos off the street, we stopped a group that would have imported another 100 kilos in the next year if they had not been stopped. Because that is what they did in the last 12 months. In that sense we can say that that operation probably reduced the available supply. We have had some more recent jobs where, while the seizures may have been four, five, eight or 10 kilos, they are people for which there is substantial evidence that they were involved in a continuing operation.

**CHAIR**—But if you take those people out of circulation, do others not step into their place?

**Mr Broome**—Yes, they do. But one of the reasons for taking them out and the obvious one—

**CHAIR**—I am not advocating not taking them out.

**Mr Broome**—No. One of the reasons I think it is important to take them out is that somebody new coming in to fill the gap may not be as established, may not be as organised, may make mistakes and so on. One of the things that we tried to do is to focus on establishing some of the methodologies, the processes and so on.

There is no doubt we have been much more successful as we have used money trail type investigative techniques. You cannot stop those techniques being disclosed in the course of criminal prosecutions but, to some extent, you provide others with a bit of 'how-to' guide. The court system is not good—and for good reason, I am not critical in this area—at preventing in the course of a public prosecution disclosure of methodologies.

If I take something that is nothing to do with the NCA, anybody who has read in the newspapers over the last four or five weeks the prosecution of Mr Hannes would have got a very detailed explanation of how he conducted what the court found to be insider trading. And dare I suggest that, in so doing, anybody who followed the detail with some precision may well have been able to identify ways to reduce the risks in future. That is the inevitable consequence of the kinds of processes we go through. We learn; the opposition learns; and it is a continuing process.

In areas like fraud and tax avoidance linked back to criminal behaviour, I think we have been extremely successful. We are starting to see some impacts there, which I do not want to talk about publicly. But I am certainly happy to say on the public record that we will well and truly meet the targets that we were set, and $80 million in revenue outcomes is not a bad result from an organisation that is not and should not be seen to be in the bounty hunter business. I think we have to be careful about giving agencies such as ours revenue targets in our own right. Revenue as a consequence of dealing with criminal activity is a different thing. We should not be out there as part of the government's fiscal effort. But there is no doubt that, if you can produce a fiscal dividend, it helps to get the resources for the related activities. In those areas, I think we have uncovered some techniques and methodologies which not only we but also other agencies can use.

The third point I would make in this area is that, with the kind of people who are our clients, we are one of those agencies that does not look for repeat business. We do not really want to have a client service charter because we are not looking for repeat custom. Given that situation, we have to ask ourselves the question: if the people were not doing what they are doing now that we are investigating, would they be working in a nine to five job, paying their PAYE tax and going home every evening to hearth and home? Of course most would not be.

One of the difficulties for us to be thinking about what are the new criminal environments, what are the new opportunities and trying to take some preventative strategies in that area—e-commerce is the classic example. People rob banks because that is where they discovered it was the easiest way to get the most amount of money in one hit. We created a bank and we created an obvious target for criminal behaviour.

We are now creating all sorts of electronic transactions which create the same opportunities and we will have to react to that. Our long-term prospects are to be much more focused on the technology and how we can deal with that and a global jurisdiction. It will not be an FBI in a national sense. We are going to think about how we can deal with international investigations and so on. A lot of what we have done—not only us but other agencies, the AFP in particular—in international related investigations is setting frameworks for that kind of work. But I think that is where the challenge is enormously difficult, because we simply do not have legal arrangements in place to enable us to deal with international

criminal activity. Where on the Internet when the fraud takes place did the crime actually occur?

**CHAIR**—You serve on some international bodies. How is that international liaison cooperation developing?

**Mr Broome**—It is going well but it is horrendously slow. We have seen some fantastic results. In the Asia-Pacific region, in two years we have gone from no regional anti-money laundering body of any kind to, two weeks ago, the second meeting of the Asia-Pacific Group on Money Laundering. We had 25 countries, 10 international organisations plus the APG itself. Everybody from the World Bank, the IMF, the Asian Development Bank, Interpol, the Customs Organisation and 25 countries in the region sitting down for three days and talking about practical ways to deal with money laundering. Countries like Indonesia are joining that group because they see it as a major part of giving credence to their financial reforms, and so on. That is, in international terms, rapid progress.

But have we got to the stage where we can exchanges information, where we can have common investigations we have, where we have a legal framework for all of that? No, we do not. Mutual assistance, as important as it is, is still a very slow process. You do not think in terms of days; you think in terms of months and years. So in electronic crime, the crime will be over literally in the space of seconds and the investigation is going to take years. There are enormous challenges in all of that.

**CHAIR**—The second part of my question was: where do we stand with people smuggling and that sort of thing?

**Mr Broome**—That is not an area where we have had a principal focus. It has very much been an AFP-Customs type issue. We have been conscious of looking to see whether, in areas like drug importation, they are linked with people smuggling. There is virtually no evidence that suggests that the kind of people that we are focusing on are involved in those activities. That is not say that those in people smuggling may not be involved in drug issues, but certainly our focus has been on a different side of that. That is much more a Customs-AFP area of responsibility

**CHAIR**—Before I go to Senator Ferris whom I know has another question, can I just ask on a logistical front: does anybody want to go into an in camera session?

**Mr KERR**—Yes, just a couple things.

**CHAIR**—We will do Senator Ferris's question and then we will go into an in camera session.

**Senator FERRIS**—In the last week or so we have had evidence in relation to the managed operations, and one of the things that has come up a couple of times has been the difficulty of bringing together the NCA operatives from a number of jurisdictions and the difficulties that brings in terms of framework. You yourself during our major inquiry talked about the problem of people coming to the NCA and still having loyalty to the police force they have come from and other issues related to that, including turfdom. Do you think it is

still the best way to staff the NCA by using people from the state police forces? Are those jurisdictional issues interfering with the efficiency of crime fighting in the NCA? How are you going with turfdom, which was a big issue during the inquiry?

**Mr Broome**—We have to get investigators from the state police services and the AFP because, quite simply, there is nowhere else to get them from.

**Senator FERRIS**—Other than tax officers and maybe accountants and so on.

**Mr Broome**—Yes, but we do that. We have analysts; we have accountants or financial investigators as we call them; we have lawyers and support staff working with investigators. But when it comes to people with basic training as law enforcement investigators, particularly if you have people who have to literally be on the street doing the kind of work we are involved with, that is a different skill from those who work in the Taxation Office who may be used to desk based auditing—I do not use that term in any negative sense whatsoever. But they are not used to going out there on the street and doing the law enforcement that is involved in, say, drug trafficking.

What I think we have done is brought those skills together. Where we have been successful is to take tax skills, police skills, lawyers and so on and put them together and say, 'Let's get a different mix of ability.' I do not think we have an option in terms of that. I think it is very important in any event that, by having state police, we build those partnerships with the state police services.

Of course there is turfdom in Australian law enforcement. It seems to be one of those features that is a constant international issue. Every time I go and talk to the Americans about the relationship between the FBI, the Drug Enforcement Agency, Inland Revenue and the law enforcement elements of the Treasury Department because in the US there is a significant amount of law enforcement—including the Secret Service, which is actually part of Treasury and not part of justice or anything of that kind—you will have the same discussions. If you go to the UK and talk to people there—customs, the police—there are the same tensions. They exist in Australia. They are managed much better than they used to be.

I said in the evidence that I gave to the committee's inquiry into the NCA that my experience has been that managing the relationships is itself a full-time job. That is a bit of a problem because there are other things that I need to spend my time on. But managing relationships is itself almost a full-time job. We have been incredibly well served to have people like Peter Lamb, who is an incredibly experienced senior police officer and respected across the country. People like Peter are far more important to the relationships we have with the police services than I am. I have no pretensions about how important I am to that process. He and the senior police who are on secondment are the people that bring the organisations together. That is the way it is always going to be.

I think that we have some room to go. There is certainly scope for further improvement. I have spoken to all the commissioners, and their unanimous view is that it is so much better now than it was five years ago, and light years ahead of what it was 10 years ago. Part of the reason for that is we are now seeing a greater movement between police services. The commissioners are consciously adopting policies—some would call it poaching; others would

call it lateral recruitment—but the result is that people are moving, and they are moving at senior levels. The more that happens from my perspective the better. We need to get a culture of Australian policing, and that is the way we will do it. Now you have a number of commissioners who have worked in a number of police services. People like Chief Commissioner Comrie in Victoria, went to Queensland and came back as chief commissioner. Mal Hyde has gone from Victoria to South Australia. Falconer went across—

**Mr EDWARDS**—Sid Atherton has come from Queensland to WA.

**Mr Broome**—Yes. We now have Matthews coming from New Zealand across to Western Australia, and so on. That is inevitable. It has to happen. It is part of the challenges that are there, but you just have to manage them through. You are not going to wave a magic wand and change them—I wish you could.

**Mr KERR**—Two things before we go off the record: one to correct something that I may have misstated. I tried to make a joke, probably in bad taste, about a former chair of the NCA. I think it was a former DPP I earlier pointed to who was detected outside a brothel.

**Senator FERRIS**—It was Peter Farris.

**Mr KERR**—It was Peter Farris, the former NCA chair, so I got it right. I was not trying to suggest that anyone should pursue some dark rumour about anyone's conduct or past. I was not trying to set hares running; I was trying to make a reference to a publicly known occasion. Later I thought it was in bad taste.

Secondly, the issue of collateral attack on your determinations and decisions through your investigative processes, you expressed concern about that both in terms of growing numbers and sources of authority to make those attacks and the way in which the courts handled them. Have you done any work or given any advice about what legal measures would be open to the parliament were it disposed to seek to regulate, restrict or adjust some of those? Complaining about something is fine but—

**CHAIR**—What is the solution?

**Mr KERR**—is there a solution? Are you proposing anything for us?

**Mr Broome**—My recollection is that we did raise some suggestions in our main submission to the committee in relation to the third review. I may be wrong about that but I am pretty sure we addressed the issue and said there were some things that could be done, one of which was this duplication issue. I think the recent case involving the bank was a classic example. Here was a clear statutory framework that the parliament put in place, one of the critical features of which was that the application has to be made within five days of the decision. So there is obviously a parliamentary recognition that a little alacrity is desirable. What do they do? They use ADJR and they get 28 days to apply, they get extensions of time and so we go on.

The parliament has already dealt with the issue. The problem is that, instead of the courts saying to the lawyers concerned, 'I am sorry, I think your application is badly framed. I will

entertain application under section 32 of the NCA act but I am going to throw the other one out.' It simply is not an appropriate way to proceed. But the difficulty is that if a judge does that there will be an appeal, and the Full Federal Court will take certain time to resolve it. It is very difficult for the parliament to legislate to get the court system to take control of its own affairs.

It is a problem we have tried to deal with in a whole range of contexts and it comes back to the judges running the jurisdiction. I can sit up here and make general comments about they do not understand the wood for the trees, and people can rightly say, 'I am just looking at it from a particular perspective. I just don't want anybody getting in our way. I am opposed to review'—all of which is wrong. What I am saying is that it should be possible when these applications are brought before courts to see whether they have merit or not.

This is a simple example, which shows how the courts have to take this on board. We had a case where a person refused to answer a question in a hearing. The question was: are you a member of an outlaw motor cycle gang? The lawyers representing that person took the view that that was a question to which the witness had a reasonable excuse to answer, because to answer might be incriminating. The member who presided took the view there was no reasonable excuse.

The matter went before the Federal Court, and I think it took about 10 months for the matter to be heard. The hearing was conducted and then the decision was reserved. When about a 16-page judgment was delivered, which I think gave much greater substance to the arguments than they deserved, it reached the spectacularly obvious conclusion that the answer to that question at least was not self-incriminatory.

The witness was called back into the NCA, now about 12 months after the first hearing, and the same question was posed. The witness refused to answer the question. We said, 'Hang on, you have been all the way to the Federal Court and you have lost. We won; you lost.' He says, 'I don't accept the judge's decision.' We asked, 'Did you appeal?' Answer: 'No, but I don't accept it. I am not going to answer this question.' We then sent the file to the DPP who, after due and proper consideration, is deciding whether to prosecute. If and when a prosecution occurs, on past performance—even if the offence is found proven—the witness will presumably be given a fine of $400 or $500. The hearing has effectively been stalled for what will then be well over two years.

**Senator FERRIS**—That is a disgrace.

**Mr Broome**—How ridiculous has this become. Why could not the judge in that case say at the end of the hearing, 'I am going to find against you. I expect the NCA to reconvene the hearing within 48 hours. If you do not either appeal or go and answer the question, you will be in contempt of the Federal Court,' because that is effectively what the conduct amounted to. But I would not like to be waiting for a contempt action to be brought in those circumstances—for a whole range of reasons that may well make it impossible to technically do it.

**Senator FERRIS**—But that basically undermines the whole structure of your organisation potentially, doesn't it?

**Mr KERR**—Of course it does.

**Mr Broome**—That is the kind of problem. How do you legislate to overcome that? How do you legislate for commonsense?

**Mr KERR**—One is obviously the penalties in relation to that—

**Mr Broome**—Yes, and they are being addressed.

**Mr KERR**—Secondly, the question about incrimination in relation to your investigative powers is an issue on which the opposition has expressed a view.

**Mr Broome**—I think that will solve the problem.

**Mr KERR**—Thirdly, I ask you again whether there is anything that you have thought about that is within our legislative capacity to do in terms of structuring the way in which these things are responded to. For example, is it within the legislative power of the Commonwealth to give guidance to the courts on the allocation of their internal priorities and case management? I don't know. I have not thought about it; have you?

**Mr Broome**—I guess I have thought about it. The difficulty I do have is that I do know—I do not want to be see as being unfairly critical of the Federal Court—that the Federal Court has a huge volume of work in front of it, and there is a real difficulty in saying that our work is more important than many of the other matters which come before them. That is always a dilemma that you have to rely on. That is why I think the judges do have some sort of control over the process.

The parliament could perhaps say, 'An application made under 32 not only should be made within five days but the Federal Court should hear it within 28 days.' Whether that is going to be found by the High Court to be some sort of improper interference with the judicial power in chapter 3 is a nice question. There has been great reluctance to ever provide that degree of direction to the courts—and for good policy reasons. It does frustrate me that a footballer's appeal that goes into the courts can be heard before the next Saturday round, but a case such as the one I am talking about might take two years to get through.

**Mr EDWARDS**—Some would argue that we have got our priorities right.

**Mr Broome**—It depends whether he plays for your team, I guess. But that is the sort of dilemma. I really believe it comes down to the courts showing some capacity to make some of these judgments. I think it is very difficult to legislate to tell them.

**CHAIR**—Perhaps we need a training course for judges. It is an appropriate time for us to go in camera, so I will ask those who should not be here to leave. Sorry about that.

*Evidence was then taken in camera—*

**Committee adjourned at 8.25 p.m.**