



COMMONWEALTH OF AUSTRALIA

on

JOINT COMMITTEE

THE NATIONAL CRIME AUTHORITY

Reference: Public briefing

CANBERRA

Tuesday, 22 October 1996

OFFICIAL HANSARD REPORT

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JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

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MELBOURNE

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Present

Mr Bradford (Chair)

Mr Filing

Mr Sercombe

Mr Truss

Mrs West

The committee met at 9.08 a.m.

Mr Bradford took the chair.

Mr John Broome, Chairperson
Mr Dene Hawke, General Manager Corporate
Mr Peter Lamb, General Manager Operations
Mr Aziz Melick, Member

CHAIR—Welcome. Section 55 of the National Crime Authority Act establishes the authority whereby this committee is given the responsibility and duty to monitor and review the performance of the National Crime Authority in its activities and functions. As I said last night when we met with Ms King, this is a duty that this particular committee takes very seriously. There has in the past been some criticism of the committee. I am not sure whether it is entirely warranted but, in any case, I assure the public that the committee, since the election in March, as it is constituted, takes its responsibilities very seriously. This morning's public hearing forms part of that process.

I apologise for the absence of our four Senate colleagues. It probably improves the tone of our meeting a bit—that is off the record or I will never live it down! Unfortunately they were called back to Canberra for their Senate estimates hearings, which have been reconvened today. Their absence certainly does not indicate any lack of interest in the deliberations of this committee.

I congratulate the NCA for its recent outstanding successes both here in Victoria with a considerable success in that heroin haul, and also the gold crash and drugs seized in the amphetamine lab raid in Toowoomba, which is not too far from where I live. I do not know whether that is a worry. At least it is good to have on the record some good news about the success of the authority.

This is the first public hearing of the committee with the authority since the March election. I should note that the committee has met privately with the authority on a few occasions. That is all part of the familiarisation process that we have undergone in the time since we were appointed or elected to this committee. This morning's briefing will be in two parts. The first session, which we have commenced, will be held in public and that will be followed by a private session at which matters of a sensitive or confidential nature may be raised.

At this stage, I will hand over to the chairperson of the authority, Mr Broome. Could you spend a little time running through what has happened since this committee and the NCA last met and also bring us up to date on the matters that you think are pertinent. We will then embark on some questioning.

Mr Broome—Thank you. I welcome the opportunity to make some observations about the authority and its workings in more recent times. As the committee is aware, I succeeded Mr Tom Sherman as chairperson of the authority in February 1996. I think it is fair to say that the first few months of my tenure have involved some interesting and significant challenges, most of which had their genesis long before I came to the

organisation and some had their genesis long before my predecessor came to the organisation.

It is clear to me that, after some 12 years of the existence of the authority, there is still widespread misunderstanding of our work, and some misinformation about it and about the role that we perform in Australian law enforcement. It is something that we need to address at the authority and we are seeking to do so. I think much of the recent media attention which has been visited upon the authority has, at least in part, suffered from problems of misunderstanding.

The authority has a unique role on Australian law enforcement: it is not a Commonwealth body, nor is it controlled by the states and territories, but it is a truly national agency. It is not limited by narrow jurisdictional boundaries; indeed, it was created to overcome those very jurisdictional problems. The authority is a law enforcement agency, but it is not another police force. Its staff include public servants who are accountants, lawyers, intelligence analysts and support staff, and police investigators seconded from almost all of the Australian police forces. Over time that composition changes, of course.

I think the authority's best contribution to the national effort in law enforcement will continue to be achieved by using our multi-disciplinary team approach to target organised criminal activity of national importance, using our special powers. I believe that what the authority has done in recent years and what it is doing now is what it must continue to do. But we have to be selective, we have to use our resources in the best way, we have to be efficient and we have to maintain the effectiveness of the organisation.

The close relationships that we now enjoy with other law enforcement agencies in Australia are absolutely critical to our continued success and to maximising a national response to organised crime.

The authority, as with other agencies funded out of the federal budget, has suffered some reductions this year. It also suffered reductions in the previous budget. I have said something about that publicly in the past. As far as I am concerned, we have made the point about our concerns about the level of resources and it is now our task to get on with the job and produce results with the resources we have available to us, and that is what we are in the process of doing. But it needs to be remembered that in the last two years the authority has effectively lost about 20 per cent in real terms of its resources and the challenge for us is to try to maintain our success rate, notwithstanding those reductions in resources.

As the committee is aware from other briefings that it has had, we have had to lose about 15 per cent of our staff since June this year and that does have a significant impact on our operational capacity. Because of those resource reductions and because of the nature of the work we are involved in, I reiterate how important it is that we are working

in close cooperation and partnership with other agencies, both state and federal. The two recent matters to which you referred, Mr Chairman, over the last fortnight are absolute testimony to the effectiveness of that approach. In each case we were working with other agencies: in the case in Melbourne it was Vicpol; with the Australian Federal Police and Customs as well as ourselves; and in Queensland we were working closely with the Queensland police. Those cooperative arrangements are the way of the future and they are the way the authority must proceed.

One of the other things which is perhaps not widely recognised is that, over recent years, the authority has effectively absorbed substantial amounts of police salaries which under previous arrangements were met by the states and territories. I think that was the right thing for the authority to do; it has certain advantages to us in our capacity to be selective about the staff that work with us, but it also must be remembered that it is another factor which has affected the available amount of resources which we use.

There has been, and one would be hard pressed to have missed it, some publicity recently in relation to a particular prosecution. I do not want to dwell on that matter, other than to say that, as I have said in other places, the authority of course accepts the judge's decision in that case. We do not believe that a number of the legal rulings were correct and we look forward to those matters being reconsidered in the Court of Criminal Appeal in Victoria.

That said, a lot of the comments about the authority have concerned the way in which the investigation was carried out and, indeed, a lot of the comments have focused on the prosecution. The authority is more than willing to answer for the way it conducts its own investigations. There is, unfortunately, a substantial misunderstanding in the public mind about the fundamentals of our judicial system. The fact is that whether it is the NCA or police or other law enforcement agencies, our task is to investigate, to produce a brief of evidence and to provide it to independent prosecutorial services who will decide whether charges proceed, and, if they will, what the charges should be. Over that they have, and properly have, absolute control.

That is the system we have and it is a proper system in my view. But it is unfortunate that often events which take place during the prosecutorial phase, over which we have no control, seem nonetheless to be matters which are the subject of criticism of the authority. In making those comments, I want to make it abundantly clear that I am making not a jot of criticism about the more recent prosecution that has received some publicity in this state. I have no complaint about that prosecution at all. I am merely making the point that one needs to understand the judicial system that operates and separate out the investigative and prosecutorial functions.

The committee would also be aware that the Federal Court, in a recent decision, dealt with the question of the validity of a number of references. These were the references given to the authority by, in this particular case, the Commonwealth and

Victoria. The judge in that case decided that the references were invalid and that they did not comply with the provisions of the act. That decision is subject to appeal and, in fact, the appeal has been heard. We expect and hope that we will have an answer in that matter perhaps by the end of the year. That has had an impact on our operational capacity but that is perhaps a matter best left to be discussed in our private session.

There has inevitably been some criticism of the authority in recent times. Indeed, if one looks at the history of the authority, it seems that there has been comment over the years concerning the fact of the powers that we have, how we exercise them, whether they are appropriate and so on. As I have said previously to the committee, and said it publicly, certainly, from where I sit, I have no problem whatsoever with a debate about the appropriateness of our powers, of the way we exercise them, of arguments about the extent of our accountability and so on. We are an organisation which has been established not only by the Commonwealth parliament but by state and territory governments and parliaments to do a job. We do it as well as we can. We are certainly not above making mistakes and we are certainly not above being the subject of justifiable and accurate criticism. We welcome the opportunity to meet that criticism if and when it comes.

As you said at the outset, Mr Chairman, we have had some recent successes and I think what needs to be said is that those events have to be put into some sort of context. In recent years the authority has had a considerable number of successes. Its working arrangements with state police forces have proved themselves time and time again. The authority, in 1996 and beyond, is not the organisation that it may have been five or 10 years ago. All that I would ask is that people judge us on our performance now rather than on history. I think if people judge us on our performance now then we have a record which is a testimony to the quality, the professionalism and the objectivity of our staff.

You will be aware that the Attorney announced a review of the authority's involvement in the Elliott prosecution after the charges were dismissed by the trial judge. His intention, as I understand it, is to provide a report to the inter-governmental committee established by the act and that committee is to meet in the middle of November. The authority has, of course, cooperated with the preparation of that report by the department and will continue to do so as it is being finalised. Equally, I have noted the committee's intention to conduct a review and that is something with which we will, of course, also cooperate fully. We welcome, in fact, the opportunity to explain, through the committee's evaluation, what it is we are doing, why we are doing it and how we do it. That seems to us to be an essential part of the accountability mechanisms which are in place, although they are often not recognised. It needs to be said for the record that we report not only to a federal minister but we are certainly answerable to this committee in its parliamentary oversight function, the inter-governmental committee of ministers, the Senate estimates committees, ad hoc committees of the parliament and, of course, the courts.

There is nothing that a member of the authority can do which is not reviewable by the courts, the exercise of our powers under the NCA Act or, in my case, exercising

powers under other legislation such as, for example, the Public Service Act. That is as it should be, and there is meant to be no criticism at all. It is meant to reflect reality. So I think the arguments about lack of accountability are somewhat wide of the mark.

We look forward to a very constructive relationship with the committee. Our experience to date has demonstrated our preparedness to work with the committee. We have been very happy to work with the new committee and appreciate its interest in what we are doing. We think that is the start of a very useful relationship which, again, will only benefit the public interest because we believe it will enhance public confidence in what we are doing.

There are other matters which may well come up in the course of the questions and discussion. There have been some recent comments about what we have or have not done in certain respects, including in relation to making matters known to the parliament.

I would make one passing reference at this stage. Mr Chairman, you would be well aware, having become aware myself of some problems in relation to last year's annual report, that I took what I believe was the appropriate action to raise the matter with the people concerned. I do not want to name those involved in a public session for obvious reasons. I took action to discuss it with the company concerned. I have kept the committee informed of what has happened in that regard. That seems to me to be a perfectly appropriate way to handle the question involved.

As to other criticisms which have been made, I think it is perhaps better to leave it to the committee to raise them with us. We will happily answer questions as well as we can.

CHAIR—Mr Broome, there are a large number of questions that I am sure my colleagues have to ask you. I thought maybe I ought to raise with you first off the story that appeared in the *Melbourne Age* yesterday, with the headline 'Plot to abolish NCA'. That suggestion is attributed to you. I notice that the story is running again today. It seems to have arisen from a speech made in the parliament by the member for Kooyong, which says in part:

I should say that I have known John Elliott personally and worked with him politically for a significant number of years but this has no bearing on my consideration of whether, on the evidence that is available to the parliament, the expenditure on the NCA can be justified.

Mr Georgiou does acknowledge in the last paragraph of his speech that the fight against organised crime is of basic importance to Australia and to this government and that it is a complex and difficult fight. So I am pleased that he did at least acknowledge that, even if it was at the end of his speech.

Maybe in the nature of things, I might be the last to know if there is such a plot,

seeing that the parliamentary committee might subsequently be disbanded as well. I am not aware of such a plot, and I do not think any other member of the committee is. I realise that you have written to Mr Georgiou and indicated you would furnish me with a copy of your response to the allegations he made. You did touch on one of them in your opening remarks. I think we should perhaps deal with that issue first because the timing of that story yesterday was a little unfortunate, and I think we should put it in some context.

Mr Broome—I make the opening observation that I am more than happy to be responsible for what I say, but I am not going to be responsible for the subeditor of the *Melbourne Age*. I never used the language in the headline. I did not say that there was a plot. I was asked whether I was aware of criticism of the authority. The journalist suggested a campaign. I said, ‘One would have had to have been absent from Australia for the last three months not to be aware of a number of calls for the abolition of the authority and of people suggesting that the authority should be closely examined and, indeed, questioning its role and functions.’

That said, I went on to point out that in my experience we have received substantial and wide ranging support from members of the inter-governmental committee in recent times. We certainly believe we have received support from the PJC. We have received it from the public and we have certainly received it from the federal Attorney-General—all of which was accurately quoted in the newspaper article. The sort of language which was used, I think, is unfortunate. It is not the language that I used.

There have clearly been—it is a matter of public record—a number of people who have suggested that the authority should be abolished. There are also a number of people who have suggested that there should be wide ranging reviews. I have said on every single occasion I have been asked, publicly and privately, that I have no problem with a review of the National Crime Authority.

I believe that any review of what we are doing now will support the role and the functions of the authority and will support the way we are doing it. We are not afraid of an inquiry or of a review. It may get a little difficult if there are three or four or five running simultaneously, but nonetheless it seems to us—if I can say so with great respect—that the appropriate body to conduct such a review is the parliamentary joint committee and you have decided, in fact, to conduct such an evaluation. That seems to me to be entirely appropriate.

I think it is fair to say that I have made that view clear to members of the committee in previous meetings. We do not have a problem with that. So I certainly reject the suggestion that we are afraid of being looked at—that is not true at all. Equally, all I ever said is that it is clear that some people have questioned our existence but, quite frankly, that is the way it has always been in relation to the authority for the last 12 years.

Mr FILING—Are you saying that Mr Greene has misquoted you or misconstrued

the story?

Mr Broome—No, I am saying that the person who wrote the headline did not get it right. I am not saying he has misquoted me at all. I think you will find the body of the story is not inaccurate. It is—and you people would understand this better than most—the subbie who writes the headline that one has no control over. I never used the word ‘plot’.

Mr FILING—Okay. What about a campaign? Do you think there is a campaign, as is said in the story?

Mr Broome—I do not think there is a campaign, except to say that there have been a number of people separately calling for either the abolition of the authority or a fundamental review of it. I am not going to use the word ‘campaign’ to describe what have been comments made by a number of individuals.

Mr FILING—Can I just clarify this because the timing of this story is obviously more than a coincidence. Are you saying the *Age* story has no substance in relation to the question of there being a plot or a campaign?

Mr Broome—I am saying I am unaware of any plot to abolish the NCA, but I have read newspaper stories and I have seen interviews in which people have called for the abolition of the authority. They are the facts and, quite frankly, I am much more concerned about getting on with the job than worrying about whether some people or other people might think we should or should not exist. I have said right from the outset while I have been chairperson of this authority that the best way for us to justify our existence and to demonstrate our effectiveness is to get on with the job and get results.

Mr FILING—If I can just press on this one. I am interested in this because in the story it talks about it being an extraordinarily frank interview with you, and it also mentions—

Mr Broome—I am often accused of that, Mr Filing.

Mr FILING—Sorry?

Mr Broome—I am often accused of being extraordinarily frank.

Mr FILING—If you have been extraordinarily frank to the reporter and you believe there is a campaign or a concert to undermine the NCA’s standing, the first thing I would like to know is who you believe is behind it, because that is obviously the inference from this story.

This story suggests to me—and as a member of the committee, I am very, very interested in this—that you believe that there is a campaign to undermine the standing of

the NCA and to have it abolished. That is a very serious allegation. If this allegation is not true, then please state so and make it absolutely clear because, if it is not, then that is an extraordinary inference or reflection on people who have been critical of the NCA.

Mr Broome—Mr Filing, the best way I can answer that question is to just look at the facts. It is a fact that a number of people have publicly called for the authority's abolition. That is incontestable. Whether that amounts to a campaign or a plot is for others to judge, not for me.

Mr SERCOMBE—Mr Broome, you quoted in the story as a direct quote—so I presume it is accurate:

It's interesting to note that only a small number of people have publicly called for us to be abolished, and to see where those attacks are coming from.

Now that infers, at least to me, that you have a slightly broader view of the matter and I am just wondering what, in fact, you found interesting. Why are you saying it is interesting to see where these attacks are coming from? There seems to be a slightly broader implication in those remarks, if they are actually reported.

Mr Broome—It is interesting to note that anybody who is aware of the authority's current activities has not been critical of us. I think that it is fair to say that much of the criticism has been ill-informed. What I think is important is that members of this committee who have been very supportive—and we appreciate that—have done so on the basis of their appreciation of what it is we are doing, how we are doing it and why we are doing it. We have enjoyed support from police commissioners around Australia and from heads of other law enforcement agencies based on informed knowledge of our contribution to law enforcement. The support we enjoy from the inter-governmental committee is based on the same thing, that is, its informed judgment of the authority's worth in the system.

What I think has been the case is that some of those who have criticised us may well have done so without the benefit of that kind of knowledge. If one looks at those who are in a position in state and federal governments to be aware of activities, the nature of our work is such that we cannot discuss much of it publicly and in a sense defend ourselves in that way.

Mr SERCOMBE—So you are suggesting that the Premier of Victoria, for example, is not adequately aware of the work and role of the NCA?

Mr Broome—My relationship with Victoria has been through police ministers who are members of the IGC and I have had a very constructive relationship with the last two police ministers. I am not going to make comments about the people with whom I have not met and have not discussed the issue.

Mr FILING—I am sorry to press this again. For the chairperson of the NCA to make an interview from which this particular reflection or inference can be drawn is quite extraordinary. I think it is unprecedented, certainly in my experience. I ask you again: how is it that a reporter is able to write a story mentioning campaign on five or six occasions when all you are saying you have said is that there were people who were ill-informed? For instance, are you saying that Mr Georgiou is ill-informed?

Mr Broome—There were comments in Mr Georgiou's speech to the parliament which I believe were ill-informed. They were inaccurate. I do not know the level of his knowledge about the work of the authority, but certainly I think it would be a fair assumption to draw that, because of the nature of our work, he and many other members of the parliament would not be aware of the detail with which, for example, members of the committee are informed. As to the reference to campaign, that was the journalist's language, not mine.

Mr FILING—But the journalist and you would have confidence in each other, I am sure.

Mr Broome—I deal with a lot of journalists and over the years I have learnt that one can never make assumptions about what will in fact end up in print.

Mr FILING—But you and he have a working relationship from the past.

Mr Broome—Yes, we worked together 10 years ago.

Mr FILING—In the A-G's office?

Mr Broome—Yes.

Mr FILING—Then, why is it that a story like this could have been drawn from what you consider to be unrelated remarks about a small group of people making ill-informed comments?

Mr Broome—I cannot answer for that. What I can answer for is to say that it was put to me that there was a campaign to abolish the NCA. I think it is a fair assessment that a lot of people would make over the comments that have been made in the public domain over the last few months that there are people who have called for the abolition of the authority. I do not believe those views are wide ranging or held by most informed people who deal with the authority, but I do not think there is any great doubt that there are some people who would wish that the authority should not exist.

Mr FILING—Do you believe they are acting in concert?

Mr Broome—I do not know.

CHAIR—You have put to bed, I suppose, the controversy that raged about the NCA's budget. You said you had accepted the situation and that you are getting on with the job. We would like some assurances that budget cuts have not affected your overall effectiveness or impacted on it.

Mr Broome—I certainly cannot give you that assurance. Indeed, the Attorney-General has said publicly on a number of occasions that he accepts that the budget cuts have affected our operational capacity. They have substantially affected our capacity in Western Australia and South Australia. They have reduced our numbers in the other three offices. What I have said consistently about the budget cuts is this: first and foremost, I have always accepted that the government has every right to draw up a budget as it sees fit. What I have done is to point out the implications of that decision. The implications of losing 65 people from an organisation of around 400 are not insignificant. Certainly, Mr Filing, for example, is aware of the fact that in Western Australia we have had to substantially reduce our office. We had to do the same thing in South Australia.

I am not going to stand before the committee and say that they have not had an impact; they have had a considerable impact. But, those decisions having properly been made by the government because that is what they are entitled to do, our task as an organisation is to live with the budget we have, to get on with the job and keep producing results. That is what I think recent history shows we have been doing.

CHAIR—In overall terms, do you believe that the fight against drugs is being won? That is obviously what the public are interested in. Have street prices gone up in response to the diminishing of supplies? Is there evidence on that sort of level that you are being successful?

Mr Broome—I think Peter Lamb ought to answer that question.

Mr Lamb—The short answer is no.

Mr FILING—Your predecessor made it quite clear that you were losing the fight against drugs. He was quite strident in that view when he made his speech to the Press Club, I think the year before last.

Mr Broome—It is indisputable, if you have products like heroin where the profit margin is of the order of magnitude that it is, that there will be people who will try whatever they can to import those products and to sell them when there is a local market. It is raw economics, if you want to put it in those terms. I think we are having significant successes. Whether we are winning the overall fight is something which involves global questions and a whole range of issues. Yes, we get some substantial successes. Last week in Victoria was a good example of that. But as one organisation—and that is why I think it is so important we work together with other agencies—as Peter says, we are not winning in the overall sense that there are huge reductions.

One has to ask the question, though, if we and all the others involved in the activities were not doing it, how much worse the situation might be. To some extent, I think we are attempting to deal with these issues and to control the problem.

Mr FILING—Do you think, for instance, people calling for the abolition of the NCA understand how that would have a detrimental effect on the fight against drugs?

Mr Broome—My sense is no. It seems to me that if people had an appreciation of what we are doing they would unquestionably decide that it was worth doing. It is worthwhile work which does have an impact.

Mr FILING—Can I just pursue that? In the case of Western Australia, it is estimated that \$1 billion of illicit drugs enter Australia via Western Australian borders each year and, of course, in particular on a more serious note in recent times is the explosion of designer drugs, or ecstasy and other derivatives. Are you concerned that the budgetary restrictions in relation to Western Australia are hampering the fight against the drug trafficking within Western Australia via Western Australia?

Mr Broome—It is inevitable that our contribution in Western Australia is less than it otherwise would have been without the budget cuts. We simply have got less people on the ground doing less work.

Mr FILING—So that is a yes?

Mr Broome—I can only speak for our own operations. I am not speaking for Customs or the AFP or the Western Australian police.

Mr FILING—Customs are cutting back as well.

Mr Broome—I am happy enough to answer for the NCA, but I am not going to start answering for the rest of the federal government.

Mr SERCOMBE—Mr Chairman, whilst the chairman of the NCA can only properly in detail refer to his own organisation, there is a fairly close interrelationship in terms of counteracting contraband, generally, with Customs. Are you able to comment from the point of view of your operations on whether budgetary cutbacks, particularly in the Customs area, in your judgment are impacting on overall success in relation to the fight against drugs?

Mr Broome—How particular organisations react to changes in their budgetary position is very much a matter for those agencies. Customs, while it has suffered some reductions, has a number of functions which it performs. Unlike ourselves who are basically performing one single function, Customs has a whole range of activities. I am not in a position to be able to give a detailed critique of whether Customs activities in

particular areas are going up or down. I think that really is something that is better answered by Customs. I do not pretend to have the detailed knowledge of their activities.

Certainly we are continuing to work with Customs in those areas where we are active and where importations are involved. Last weekend's exercise is a classic example of that.

Mr SERCOMBE—With your permission, I was wondering if Mr Lamb might be able to talk about that from an operational point of view.

Mr Lamb—I was having a mini-meeting. Can I have the question again, please?

Mr SERCOMBE—I was inquiring about the impact of reductions in the Customs budget on operations against narcotics.

Mr Lamb—I do not think I could offer any more than the chairman has. I am not terribly au fait with the Customs budget or their strategies for interdiction.

Mr SERCOMBE—But you must work closely with them.

Mr Lamb—Yes, we do. But I think Customs themselves would be the best place to answer that question. I do not really have the facts.

Mr FILING—Two years ago, there was a conference in Sydney, as Peter would know. It was a combined conference organised by the AFP and the NCA. During the conference there were a large number of complaints registered; comments came from representatives of law enforcement agencies from the Asian region in relation to the problems experienced by them with Australia in the exchange of information, particularly in the area of drug trafficking. Amongst the things they were upset about or felt was an impediment to an effective fight against the drug trade was Australia's restriction on exchanging information in the cases of people who are arrested for offences involving a capital offence. Are you aware of this complaint?

Mr Broome—I am certainly aware that there have been concerns of that kind expressed in relation to a number of matters over the years. That is a consequence of what has been Australian government policy for a number of years in relation to providing assistance where offenders would face the death penalty. It is reflected in our legislation in relation to mutual assistance and extradition. Assistance is not given in the case of offenders who may face the death penalty unless an assurance is given that that will not occur.

There are legislative prohibitions on providing mutual assistance in criminal matters, where a death penalty may be involved in the same way as there are restrictions on extradition.

Mr FILING—Does that mean, for instance, that, if there was another Oklahoma bombing and there was an Australian interest that the NCA was aware of, the Australian government would prohibit Australian law enforcement agencies from exchanging information with the United States?

Mr Broome—That is a matter you should put to the Attorney-General because he would be the person providing the assistance, formally, under the terms of the mutual assistance legislation.

Mr FILING—I am asking for your comment as the chairman.

Mr Broome—I am saying that there is a legislative policy in place agreed to by the parliament. As to the handling of individual requests, they are made by and through the Attorney. It is certainly my understanding there have been occasions when assistance has been refused in circumstances where a person may face the death penalty and, indeed, in the case of the United States—this is speaking basically from general knowledge of it and I may not be correct about this—my understanding is that we have on occasions refused assistance where the person may face the death penalty unless and until the relevant assurances have been provided.

Mr FILING—And in most cases they do not come; in fact I am not aware of them having come.

Mr Broome—They do some in some cases.

Mr FILING—They do?

Mr Broome—Yes.

Mr FILING—But are you aware that Australia is called a NATO country by some of our law enforcement neighbours—no action, talk only?

Mr Broome—I am not going to get into a debate about foreign policy, if you will pardon me, because they are decisions made by the government—and, indeed, because they are reflected in the legislation that has been endorsed by the parliament.

Mr FILING—But do they impede Australia's participation in the fight against organised drug trafficking, bearing in mind our proximity to Asian neighbours?

Mr Broome—I have not seen, since I have been at the authority, any evidence that assistance has been sought and not provided in a particular case. Therefore, I would not want to make a judgment based on a hypothetical of that kind. I just do not know because it certainly has not arisen since I have been there that those issues have occurred.

CHAIR—Just to wrap up the budget side of things, the authority did not have a presence in Western Australia or South Australia when it was established. Obviously a decision was taken. So you are back to the status quo, more or less, aren't you, in terms of where you are located?

Mr Broome—It is true that when the authority was established 12 years ago it did not have offices in Western Australia or South Australia. Decisions were made some years ago, as I recall, and funding was provided in the budget at the time, to open up those offices. It seems to me that if one is involved in a national operation where the idea is to work across jurisdictions, it is important that one has a representation in those major jurisdictions. What we did in deciding how to handle the cuts was decide that, as a matter of principle, it was essential we maintained a capacity in both of those states.

One option, clearly, was to close both offices down and to have focused resources on the east coast. That seemed to us as an authority to be inappropriate and inconsistent with our basic legislative charter. It would have been quite counterproductive not to have ensured that we could work closely with the state police in those two jurisdictions and ensure that national information is passed around, that they are part of national task forces dealing with various areas of criminality and that, indeed, our special powers could be used in those jurisdictions working with state police forces and the AFP. So it was a decision that we made to maintain a presence which we thought was viable although it is very much at the low end of what can work. That was our judgment, nobody else's. Having been given the overall allocation we certainly accept the responsibility for the way in which the resources have been allocated internally.

Mr FILING—You do not think, for instance, that budget cuts or reductions in resources have affected the opportunity of identifying and prosecuting the Adelaide bomber after 2½ years?

Mr Broome—They have had no impact because we have had no role investigating what is a matter for the South Australian police.

Mr FILING—Are you confident in the investigation by South Australia?

Mr Broome—I am very confident that South Australia has a very professional police force and that at an appropriate time they will be able to take the matter forward.

CHAIR—The overall fight is a two-pronged attack on domestic production and importation. The heroin haul here in Victoria was a success against importation. In Toowoomba the amphetamine lab was a domestic production. Is that the case?

Mr Lamb—That is correct.

CHAIR—Locating the lab obviously was the key to that. Was it in a private

house, a factory or under the guise of some legitimate activity?

Mr Lamb—That was one part of a more comprehensive investigation and it was in a private house, quite a well established laboratory.

CHAIR—So locating the house was a key element. I suppose there are lots of houses around the place.

Mr Lamb—Yes, of course. As you are aware, the matter is currently before the court so we have some difficulty in describing how we learnt of it and things of that nature.

CHAIR—We will not speculate too much. Maybe the neighbours smelt some strange smoke coming out of the chimney or something.

Mr Lamb—No, it is a long, hard slog.

Mrs WEST—Who or what body determines the general menu or direction of investigation of the NCA?

Mr Broome—Effectively, our general directions are determined by the inter-governmental committee of ministers. The so-called menu was the result of the Commonwealth law enforcement review in 1994 which identified a number of areas of investigation. We have been conducting both strategic intelligence assessments of those areas of activity and then, with the agreement of the IGC, focusing on particular areas which, it is agreed by that committee of ministers, are the appropriate areas of priority.

So the authority very much responds to the combined views of state and federal law enforcement ministers. Our priorities are, in large part, determined by that committee which itself is advised by a committee of agency heads—state and federal again—which brings to that ministerial meeting usually a consensus of where the national priorities lie. So it is very much a national response and it is determined in consultation between police commissioners, police ministers, the federal Attorney-General and so on.

Mrs WEST—So did they, in effect, change the direction of the NCA investigations from organised drug trafficking or drug criminal elements to white-collar crime?

Mr Broome—No. I think it is fair to say they changed the direction, or confirmed the direction very much towards major drug matters, significant tax evasion and money laundering. The kind of activity we are doing now was very much a result of the inter-governmental committee determining those appropriate areas.

The so-called white-collar areas of activity were really ones which were pursued in

the late 1980s and early 1990s. Since the review there has been a return to the kind of focus on organised criminality that, I think it is fair to say, was in the public and the political mind at the time the authority was established back in the mid-1980s.

Mrs WEST—In hindsight, we can say we have spent a lot of money on those investigations for nix?

Mr Broome—I do not accept the last part of the question. One of the reasons why the authority got involved with so-called white-collar crime in the early 1990s—and it looked at that in the late 1980s—was that the Australian Securities Commission had not yet become established. There was widespread parliamentary and public concern about a number of corporate matters during the late 1980s. There was certainly a belief, I think generally held, that a number of things had gone significantly wrong with corporate regulatory approaches and that was the genesis of the Australian Securities Commission.

The authority got itself involved in some of these matters because there was simply no other agency, at that time, with the resources and with the powers to conduct those investigations. In fact, the ASC has exactly the same kinds of powers that we have. It is a body which can conduct hearings and demand documents and so on. It has all of the coercive powers that we have and then some, because it can require answers which are self-incriminatory, something we cannot do.

We really fitted into, at that time, a gap in the capacity which Australian corporate regulatory capacity had. Some of you may remember that during the late 1980s Mr Henry Bosch, who was then the chairman of the NCSC—the National Companies and Securities Commission—was very critical of the fact that he had very few resources to deal with these major corporate issues, and that the corporate affairs offices around the states were, essentially, run as a registration and regulatory function, but they were, largely, revenue generating areas. That is what led to a substantial restructuring of corporate regulatory work. It was not really until about 1991 that the ASC really started to function, even though it may have been established a little earlier than that. That was really why the authority was given some of this work to do.

What has happened in the latter half of this decade is that the direction has been returned to that area of organised criminality, which was the background to its creation if one looks at the Costigan and Stewart royal commissions and so on. In a sense, we have gone back to that kind of work, only now we are doing it in partnership with people, and I think that the results are there to be seen.

Mr TRUSS—Earlier we were talking about a newspaper article, and I would like to refer you to a couple of others. The first one is an article by Ben Hills in the *Sydney Morning Herald* of 31 August 1996 about the operations of the authority. This matter was also dealt with in the evidence we received last night, and that is the attitude of the authority towards this committee. Does the authority believe that this committee has any

realistic capacity to act as a watchdog on behalf of the public?

Mr Broome—I certainly think so.

Mr TRUSS—But are you able to give us sufficient information to enable us to make a reasonable assessment about the effectiveness of your operations?

Mr Broome—Certainly not in the public sessions. We have already demonstrated in some earlier discussions with the committee our preparedness to ensure that the committee is aware of the kind of work that we are doing and why we are doing it. We are obviously very circumscribed in what we can say publicly—and perhaps when we get into the private session we can explore this a little more—but I am quite relaxed about the fact that I think the committee has the capacity without going past its statutory limitations; we are all conscious of those. One can focus on how we do things and the kinds of things we are doing without getting into that prohibited area of direct operational information, but where you can be satisfied that what we are doing is proper and well controlled.

That is the case, and, at the end of the day, we very much look to public support and understanding, in a sense, coming out of the committee's work. Your reports and your conclusions do provide an independent assessment of what we are doing and how well we are doing it. We have demonstrated to date a preparedness to be, in confidential sessions, open with the committee about the kinds of things that are being carried out, and I will leave it to your good judgment whether what we are doing is appropriate and whether we are doing it well.

Mr TRUSS—All the same, it is often difficult for the committee to come to an assessment about whether the information being withheld is for sound reasons or whether it is to cover up something that the NCA would not like us to know about.

Mr Broome—I accept that, and that is always going to be a difficulty. I guess, in a sense, time has to tell. The committee has only been recently re-established. There is a new authority in terms of different people. That is, again, not meant to make any comments about what has happened in the past. It is just to say that as far as we are concerned—certainly Mr Melick and I—we are more than happy to explain what we do and how we do things to the committee. We believe it is important that you understand the kind of work we are doing and that we feel confident that, when that occurs, there will be continuing support in the same way that the intergovernmental committee, which is aware of the sorts of things that are going on, has given us that kind of support.

What is obviously not appreciated by many people is that we do provide written material to the committee, as we did to the IGC, and that a lot of that material does demonstrate fairly clearly exactly what we are doing and where it is being done and so on.

Mr TRUSS—So the current management does not support the view of one of the

previous directors that the committee was pretty dopey.

Mr Broome—I have to say after this morning it is not a view that I would subscribe to.

Mr TRUSS—That was the former committee too, no doubt, rather than the current one.

Mr Broome—Mr Melick would like to make a comment about that.

Mr Melick—I would regard any suggestion that the current membership of the authority was withholding information from this committee—deliberately hiding things—a personal slur on my integrity. I have a long history in the criminal law and it has never been suggested in the past. I am not about to compromise that to cover up some sort of mistake. I believe in openness: if we have made a mistake, we own up to it and take the punishment.

Mr TRUSS—The second item I would like to refer to is an article in the *Courier-Mail*—again, it is several months old—from 1 March 1996 in which it was suggested that the NCA had lost \$194,000 as a result of payments to an informer. Was that a normal part of NCA's operations? Has any of the money been recovered or is it an example of an unsuccessful operation?

Mr Lamb—At the end of the day, it was a very highly successful investigation that resulted in the arrest of significant players in the drug scene on the east coast. There were purchases made of drugs to go up the chain of command through the organisation and that amount was the amount paid to get us to the level that we did get to. So the word 'lost' is basically incorrect.

Mr TRUSS—So it was an investment.

Mr Lamb—Yes, exactly. The results obtained and the proceeds of crime that came out of that investigation far exceed the amount expended.

CHAIR—Just on that point, you normally would expect if the operation was successful that you would recoup your money. You would get your money back, wouldn't you?

Mr Lamb—Not necessarily. Ideally, in law enforcement terms, if you are dealing with a buy bust situation, yes. But if we are paying to get to, as the end result, establish credibility in the organisation, then you must be prepared to let some money run.

Mr TRUSS—Is \$194,000 the sort of amount of money that might be allowed to run on occasions?

Mr Lamb—Yes, dependent upon the organisation that you are attempting to penetrate.

Mr TRUSS—It has been suggested that the earnings, if you like, from the proceeds of crime are comparatively small compared with the budget of the NCA.

Mr Broome—Yes, that has certainly been suggested. It is not as low as it has been suggested but there are couple of points that need to be made. While it is important that confiscation of assets takes place and wherever possible criminal proceeds are recovered, I think it is the wrong judgment of the success of this organisation, the AFP or others, if one merely wants them to somehow or other become a cost recovery operation. I could take the 360-odd people left in the NCA and stick them around the highways of Australia with radar guns and probably generate more than our budget but we would not be doing what we are set up to do.

It is certainly the case that we do place a high priority on getting proceeds. In recent cases we have had significant success in doing that. The problem with the proceeds in debate is that, while it is useful and important, in many of the cases we are dealing with you are finding people involved in activity in which they have been involved for a great deal of time. You catch them at a particular time involved in a particular transaction. The profits from earlier transactions may well be not just out of the particular state but probably out of the country. Your success or otherwise in getting that money back can be quite limited.

However, I think it is useful to look at the extent to which some of the people involved may have been generating substantial sums of money over time—at least to get some measure of the value of the organisation which you may have adversely affected. That said, I think we still have had some fairly significant successes in relation to proceeds. It is a bit like the debate about tax recoveries. There has been some criticism because we have published figures about the amount of tax assessments issued by the ATO without publishing the figures in relation to the amount of collections by the ATO.

There are two answers to that. The first is—and this has been made clear previously—the Australian Taxation Office does not tell us what its individual recoveries are. Indeed, that is appropriate having regard to the proper concerns about confidentiality in relation to tax matters. The second thing is that, whether those funds are recovered or not, they may not be recovered because they have been dissipated or they may not be recovered because they have been moved out of the jurisdiction. It is not necessarily any adverse reflection on tax or, indeed, on us for dealing with the issue. What tax is really saying is, ‘We think this is the kind of level of income that is being generated on which tax should have been paid.’ Whether they can recover it is a different question.

Both the proceeds question and the taxation question are important issues. They are certainly something we place a great deal of emphasis on because dealing with the

profitability of criminal behaviour is clearly a very significant way to deal with it. But how successful it will be over time very much depends on what people are doing with their money.

One of the things we have tended to put a lot of emphasis on in recent years is concern about money laundering techniques and processes. That is an area where we are seeing very significant sums of money, we believe, leaving the country through a large number of sophisticated techniques. For obvious reasons I do not want to detail it all in a public session—we do not want this to become a ‘how to’ guide. But there are large sums of money going out of the country. Those proceeds, if that is what they are, are going to be very hard to get back, if at all. But I think if we get some sense of the values involved it does show us the sorts of organisations with which we are dealing. So it is a measure of the importance of some of the groups we are dealing with, but we will never get full recovery.

I would be most concerned if people started to think that a law enforcement agency should become some kind of profit centre. That simply totally misconceives the nature of the task we are in.

CHAIR—The government is providing a further disincentive to that with its latest legislation in relation to the proceeds of crime. Just to pick up Mr Truss’s figure, you did get your fingers burned in speculating about this in the 1995 report. That was one of the main planks of Mr Georgiou’s criticism. In matter 10 you claimed that income tax assessments were amended by approximately \$26 million. For the record, you subsequently offered to correct that. That was wrong but you have just told us now that that was speculation anyway because the tax department does not give you the facilities to make such a statement.

Mr Broome—They tell us, as a general rule, when they have issued a revised assessment as a result of information provided by the authority. What they do not tell us is individual collection. So they tell us that they have issued a revised assessment; they do not tell us about recoveries. The particular paragraph to which you refer in last year’s report was not accurate because it talked about an assessment. In that particular case it was not an assessment that was involved. It was the tax office making a decision to disallow a claimed loss.

Without getting too much into the detail, the end result may be very similar in terms of determining the taxation liability, but it was inaccurate. I have admitted this to the people concerned. I have admitted it to the committee and written to the committee and explained what we have done. It was wrong to say that there had been an assessment; there had not been an assessment. It is correct, however, to say that at some stage—and I do not know enough about the taxation affairs, and I do not want to know about the taxation affairs, of the company concerned—because of the actions taken, their tax position will be such that they will have to pay a substantially greater amount of tax than

they would have paid if that loss had been allowed to be claimed.

The real problem was that we were wrong to say the assessment had been issued last year and to imply that perhaps the funds had been recovered last year. The amount of money involved will be, as I understand it, recovered at some stage. I do not know when and without a detailed analysis of the company's affairs you would not know. When we became aware of the error we discussed it with the company, as I have said to the committee in correspondence. We thought the matter had been resolved.

I became aware that the company still had some concerns. I took it up with the company direct. They were concerned that the matter not be given additional publicity. I explained that to you in a letter that I wrote to the chairman on behalf of the committee. I explained what we had done and that we had, in fact, offered to correct it. So I think we have very much sought to account to your committee because we believe that is the appropriate mechanism to deal with this and to explain that there was an error and we have sought to correct it.

CHAIR—Thanks for that.

Mr TRUSS—Have you applied your mind to what could be done in relation to stopping the movement of the proceeds of crime overseas? I think that is an extremely important issue. Are we able to do something in relation to agreements with other countries that would help us to bring money back to Australia that might well be the proceeds of crime by way of similar extradition treaties? Have you looked at other ways of intercepting the proceeds of crime before they move overseas? You have raised it as a significant issue. Obviously, the legislators of the nation should seek to address it.

Mr Broome—Mr Truss, there are a number of things. For some time now we have had provisions in the mutual assistance legislation and Australia's mutual assistance treaties to provide for recovery of proceeds in the event that they can be located in foreign jurisdictions and relevant proceedings can be taken in those countries.

Mr TRUSS—What have they been used for, to buy a hotel somewhere?

Mr Broome—All sorts of things. If you can locate the assets and they are in a jurisdiction with which we have an appropriate treaty arrangement, it is possible to bring recovery action to see if we can recover those funds. That is part of the problem. As the global market expands, as electronic commerce increases, as the capacity of people to move money perfectly legitimately around the globe in seconds exists and is improved, the simple fact is that those who have earned funds illegitimately will seek to use the same kinds of techniques.

One of the great difficulties is how one can seek to control the movement of proceeds of crime without interfering unnecessarily with legitimate commerce. That is the

great dilemma, and, of course, the vast majority of funds which are moving are legitimate funds. There is an inevitable trade-off. The more that one reduces the regulatory framework in order to enhance international trade, even enhance domestic movement of funds and reduce the regulatory framework locally, then you simply provide some better opportunities for people. That is a real dilemma that has to be faced.

It seems to me that when one talks about the levels of regulation, for example, in relation to the movement of currency or other funds, there is a trade-off that has to be struck. The difficulty, I think, is that in a proper attempt to facilitate honest commerce there are people around who will take the opportunity to move funds very quickly. The reality is now that you can move money internationally on the Internet through a whole range of devices and tracking that is going to become extremely difficult. When we find it we try to stop it, but that is not something which I think we are going to be particularly successful at, though I think we need to keep going.

One point I should mention is that there is a major international recognition of the problem in terms of the financial action task force which operates out of Paris. It consists of 40-odd countries, of which Australia is a member, with a number of Asian countries. The financial action task force has encouraged governments to adopt the relevant legislative means to deal with money laundering as best they can. In fact, I think many of those means are very successful and we have bodies like Austrac in Australia which effectively, although I think Austrac was established before the FATF, reflect that kind of thinking.

Austrac provides a very important facility to keep track of movements around the financial system, and that is happening increasingly on an international scale. Many countries now see the need to control money laundering through mainstream financial institutions as an important measure of the economies involved, that it is about confidence in the financial markets and so on, and bodies like the IMF and the World Bank actually now are taking substantial initiatives in terms of trying to deal with money laundering. But while ever there are jurisdictions whose rules are virtually non-existent about what transfers through their jurisdiction, you are going to have a huge problem.

CHAIR—I want to pick up on a point Mr Melick made, which I think was an important one. I do not think there is any reflection on you that you would mislead the committee, but the reflection has been on this committee that was referred to that it was not up to the task, and I suppose in fairness it is up to us to ask the right questions. I am not sure that we expect the authority to come and tell us everything. I think we are defending ourselves in that respect. After all, as Mr Truss said, the previous committee was described by someone—I think one of the members of the authority—subsequently, wasn't it, as being pretty dopey.

Mr FILING—One of the former committee, now the minister for employment.

CHAIR—I do not think we should dwell on that. I am having trouble with one of my colleagues here at the moment. Ms King told the committee last night, or confirmed statements she had made recently, that:

If the authority is to survive its legislative mandate the act will have to be radically redrafted. The act is one of the most tortured pieces of legislation I have seen. Reference might as well be written in Hindustani, and that is the problem.

To what extent do the Vincent and Merkel rulings reflect flaws in the NCA's act or operations, and to what extent do those findings or criticisms have ongoing significance?

Mr Broome—I think that it is fair to say that whether one agrees or disagrees with His Honour, the Vincent ruling does not actually reflect in any way on the act at all. What has been found there is that a particular inquiry was not within the terms of a reference, and that simply comes down to a view about whether the words cover the particular transaction.

But there is a much more fundamental question which is: do you have a reference based process? None of the other agencies which have similar powers to the authority have on top of their legislative remit the need for a second tier which is a reference granted by a minister saying, 'This is the sort of area that you should investigate within the broad statutory charter.' So the National Crime Authority Act, for example, defines relevant criminal activity because it does not refer to organised crime, as such. It defines relevant criminal activity and then we have a reference in relation to some part of relevant criminal activity, so that you immediately put this extra layer on.

The Australian Competition Consumer Commission does not have to go through a reference process before it exercises the same powers. The ASC does not. The Insurance and Superannuation Commission, the Taxation Office, and so on, all have similar powers and do not have a reference. The Australian Broadcasting Authority is another one that comes to mind. If you have a reference process, then you will inevitably get into debates of the kind that the Merkel decision highlights. And what you have got is one judge in one case saying, 'The authority had a reference which was too wide, too general and which did not cover the specifics.' And in the other case, you have got a judge saying, 'It was too narrow. It did not cover the action being investigated.' So one can certainly ask the question whether the reference process is the best way to go.

Let me hasten to add that these are decisions which then are going to be made, not only by the federal parliament but by the state parliaments, because of the need to underpin the legislation agreement. The reference process reflected a strong parliamentary concern at the time as to how one balanced the civil liberties considerations with the authority's powers. It may well be that if one were making the judgment again today, one might make a slightly different judgment and put different checks and balances in place. But, for my part, I would agree with Ms King, I think that the legislation is very tortured. I think it seeks to compromise a whole range of competing interests and, in doing so, it

creates some difficulties.

CHAIR—I think that is an adequate answer.

Mr FILING—Amongst the lines that were pursued by the former committee was this question of the conflict of interest, or the infringement of the independence of the NCA by the fact that the chairman is also the chairman of the Commonwealth Law Enforcement Board. Do you agree that that dual chairmanship in fact represents a conflict of interest?

Mr Broome—I do not think it represents a conflict of interest. It is a function which has been endorsed by both the former and current governments and, as I have been asked by the present minister to chair the board, I will continue to do so. I do not believe that a body such as the board really involves a conflict of interest. The agencies are trying to get the best result for the Commonwealth agencies which are involved. That is what we are trying to do and we work together very cooperatively. I just do not think that the conflict argument arises.

Mr FILING—Ms King certainly does, and she was obviously on the authority during that period when Mr Sherman became the chairman of the CLEB. She believes that it has, in fact, infringed on the independence of the NCA.

Mr Broome—I can only speak from my own experience and say that I do not believe that is so. We obviously will agree to disagree on that. If there were a particular example that could help me to respond, I would, but in general terms, I would say that I do not believe that there is a conflict.

Mr FILING—Can I pursue one other aspect in relation to the intergovernmental committee? You mentioned earlier the intergovernmental committee providing support for your role. The intergovernmental committee also has a role as an oversight committee on behalf of the states and the Commonwealth. Are you aware at any time of any concerns being raised by any of the members of the intergovernmental committee during your period as member or chairman in relation to Operation Albert?

Mr Broome—No.

Mr FILING—Did anybody ask any questions about it?

Mr Broome—Not that I can recall.

Mr FILING—Can you recall whether the Minister for Police for Victoria, who I presume is the continuing member of the intergovernmental committee, ever asked or voiced any concerns about Operation Albert to the intergovernmental committee?

Mr Broome—Not that I can recall.

Mr FILING—Did you ever volunteer any concerns to the intergovernmental committee about the matter?

Mr Broome—No—that is me, personally.

Mr FILING—I meant the authority and during the time of your stewardship.

Mr Broome—During my time, no.

Mr FILING—Were any concerns ever brought to the attention of the IGC about the DPP's prosecution of the matter?

Mr Broome—Not that I am aware of.

Mr SERCOMBE—Mr Chairman, can I take Mr Broome back to the recent unhappy experiences of the authority with the courts. What impact is that now having in terms of the way the authority is conducting its inquiries? For example, what impact has it had in relation to matters of procedural fairness in advising witnesses of the scope of the inquiries that have been made and the scope of a case against them perhaps and, similarly, in relation to decisions on the use of the coercive powers as distinct from not using coercive powers in inquiries that the authority is now dealing with? Can you describe to us what is occurring in relation to the sorts of matters that their Honours commented on with respect to the way the authority conducts itself?

Mr Broome—I am happy to answer the question but I have somewhat of a difficulty. Both of those decisions—

Mr SERCOMBE—I was not asking you to refer to the particular matters—

Mr Broome—No, but part of the problem is that there are some assumptions in your questions which I think it is fair to say are the substance of the appeal in relation to the decision of Mr Justice Merkel, for example. That raises some questions there.

In relation to the natural justice point, it is fair to say that there is nothing in the rulings of any of the judges, in any of the cases of which I am aware, which has overturned the fundamental law in Australia in relation to investigative activities, that is, that one does not, as a matter of law, have to afford natural justice in the course of an investigation. It is, to put it bluntly, an oxymoron.

There is authority in *Ross v Costigan*, which has been on the books for years, which says that you investigate, and in investigating you do not have to tell the person who was the subject of the investigation what you may or may not suspect in the course

of the investigative process. It is at the trial stage, it is at the judicial process end of the investigative continuum, that you have certain obligations of disclosure.

It would be a strange result indeed if, in any investigation, you had to tell any suspect all of the things that you may or may not be aware of as a prerequisite to asking a particular question. That is simply not what our act requires and it is not what any investigative body that I know of is required to do. While there was some observations about that process, it is true—and Mr Melick can correct me if I am wrong—that there was no finding in relation to any of those recent decisions that overturned that kind of law.

Mr SERCOMBE—There were certainly comments from the bench.

Mr Broome—Yes, there were, but it has never been suggested, for example, in trade practices cases that when one is investigating whether a breach of the act has occurred and you are conducting a section 155 hearing—and I have conducted a number of those in my time—that I was supposed to tell the other side precisely what it was the commission in that case was aware of. It is simply not the legal position in relation to these kinds of bodies.

CHAIR—What about procedural fairness? Is that not an issue?

Mr Broome—Not at the stage of an investigation. That is the distinction between the prosecutorial stage and the investigative stage. You do not have to provide people with procedural fairness, in the sense that that term is used, as part of the investigation.

Mr SERCOMBE—How, then, do you avoid the issue of self-incrimination?

Mr Broome—Because under our act a person is entitled to refuse to answer any question the answer to which may be self-incriminatory.

Mr SERCOMBE—But if they do not know the matter on which they are being subject to inquiry?

Mr Broome—With great respect, that is not true. They are given a copy of the reference and, despite what some have said about references, they do identify the kind of criminal behaviour which is being investigated. They are also given a summons and the summons must also set out the general nature of the matters which are being investigated. In those cases it is invariably my practice—and I know it is Mr Melick's practice—if a person is unrepresented in a hearing, to explain to them what the parameters of the act are, their entitlement not to answer questions, and so on.

If they are represented, it has certainly been my invariable practice to ask the lawyers concerned if they have advised their clients of their clients' rights under the act.

And when a question arises it is then a matter, if a person is represented, for consideration by the witness as to whether the answers will be given or not. If they ask for an adjournment they will get an adjournment to consider that question, and those processes proceed.

The interesting thing is that in all of the other cases that I am aware of, in the other bodies I have worked on, there is simply no protection afforded at all. You just have to answer the questions. In the ASC you have to answer the question; in the ACCC you have to answer the question. We have a situation where that is not the case. That is part of the trade-off that has been made between the coercive powers and the fact of having the hearing. My experience, I have to say, is that witnesses do not seem to have a great deal of difficulty in identifying when they want to refuse to answer a question.

CHAIR—The menu at the moment does not make any reference to any white-collar crime. Does that indicate, and is it your view, that you are under some pressure not to get involved in white-collar crime?

Mr Broome—No—we are under enough pressure doing the other things.

CHAIR—Different chairmen have bought different emphases to the authority. Apart from the question of the workload, are you saying that you do not feel the authority should be involved in investigating white-collar crime?

Mr Broome—Certainly there has been no shift in the emphasis of the authority since I took over from Tom Sherman. The direction which was set by the intergovernmental committee during his chairmanship has been continued. I think it is the right one; I think it is what the authority was set up to do. I am very relaxed about it. And we are more than occupied in doing the things which the IGC is aware that we are doing and has asked us to do.

CHAIR—On the composition of the authority, the turnover of members and so on that has occurred has obviously affected to some extent its capacity to be effective. I assume that that would be the case. There is a vacancy at the moment. Are you anxious to see that vacancy filled?

Mr Broome—We said to the Attorney some time ago that, as far as Mr Melick and I were concerned, because of the situation in relation to the budget we were certainly prepared to work for some period with a membership of two rather than three. However, the simple reality is that we need two as a quorum, and you get to the stage eventually where that creates some difficulties. It is, of course, a matter for the government to make appointments and I do not want to get into that at all. But, yes, there have been some difficulties over the years in attracting members. Sometimes I cannot imagine why that difficulty has occurred, then on other occasions perhaps I do.

CHAIR—What about Mr Lamb? As general manager operations, you are dealing with the coalface and the troops. Do you have a view about the turnover of members? Is that affecting morale in the organisation or has it in the past, or is it just a non-issue as far as you are concerned?

Mr Lamb—It takes us a while to train them.

CHAIR—Yes, Minister!

Mr Lamb—I think it has accelerated in the last few years. That has caused some uncertainty. Members themselves take some time to adjust. It puts the burden on the current authority members to the extent that I think it is impacting on their personal health and welfare. We would like the positions to be filled. We would like the references up and running. From an operational point of view, that is part of the tool kit that we have that is essential. The short answer is yes, I would like it filled.

CHAIR—We are going to take a break in just a moment, but before we do, while I have got Mr Lamb warmed up, I would like to ask a question about something that affects me personally. With the recent instance on the Gold Coast with the designer drug, are you aware of what the drug was? Is there a widespread problem with that particular type of drug?

Mr Lamb—I have no knowledge of that, but perhaps in the private session we can talk more about the other matter that may take us down that road.

CHAIR—You are aware of the instance I am referring to at the Gold Coast nightclub where there was a drug distributed that almost killed a number of people?

Mr Lamb—Yes.

Mr FILING—Given that there were allegations that the parliamentary committee did not scrutinise the Operation Albert matter closely enough, given that the IGC did not ask a single question about it, and given that the authority did not volunteer any information to either of those bodies indicating concerns, could you tell me exactly who was overseeing the Operation Albert investigation?

Mr Broome—Can I qualify something there. You asked me whether questions had been asked. The IGC meetings which I have attended were in November last year and July. By November last year, the Elliott matter was before the Victorian Supreme Court. It is highly unlikely in those circumstances, it seems to me, that it would have been the subject of debate at the IGC, it long having been investigated and it long having been in the prosecutorial process.

But, as you would be aware, both the PJC and the IGC did receive regular updates

on what was happening with that particular matter through the reporting processes in place. I do not have personal knowledge of this, but I assume that that had been the case over the last four or five years as there had been a continual reporting of what was going on and what stage that matter had reached.

Whether or not there were questions, I simply cannot answer because I was not in attendance, but certainly at the two meetings I have attended of the IGC, what I have said is correct. I think it is also worth saying that by that stage the matter was actually before the courts.

Mr FILING—Perhaps Mr Lamb may comment on the other questions in relation to the matters that may have preceded Mr Broome’s chairmanship.

Mr Lamb—Can I have the question again?

Mr FILING—It relates to the earlier question in relation to the IGC. I am interested in the role which this committee can play vis-a-vis the IGC in relation to specific concerns like the matter of Operation Albert. What I am trying to ascertain is to what extent the IGC indicated concerns or questioned the way in which the Operation Albert matter was being prosecuted, given that in the public arena there were a number of quite strident concerns about the way in which the authority had acted.

Mr Melick—When you say public arena strident concerns, that is from one judge and the defendants.

Mr FILING—No, I am talking about, at various times, concerns about the way in which the authority had acted. Given also, I might add, that Mr Pratt on another occasion had indicated he thought the NCA was acting like a gestapo or worse than in a nazi state, what I am interested in knowing is to what extent were those concerns reflected in discussions with the IGC. The IGC has a far closer and more thoroughgoing opportunity to look into references that it has given the authority in the first place.

Mr Lamb—The actual investigation was completed prior to my arrival at the National Crime Authority and I do not recall at any IGC hearing either the IGC or the NCA raising any of those concerns.

Mr FILING—Did the NCA raise any concerns at the IGC, for instance, in relation to the question of Justice Vincent’s previous comments about the authority’s powers?

Mr Lamb—Not that I recall.

Mr FILING—But the authority did have a view on that?

Mr Lamb—I do not know.

Mr FILING—Mr Broome, did the authority have a view on that?

Mr Broome—Part of the problem of answering that question is that I do not want to stray into areas which may bring me a choice between some rather unfortunate consequences. I will just leave it at that.

Mr FILING—I am sorry. I did not want you to voice what the concerns were. What matters is whether you voiced any.

Mr Broome—No. The authority would not have known until it was a matter of public record in the same way as any trial who the trial judge would be. My recollection is that the matter first came before His Honour in about September last year, but I can find out precisely when that happened. That would have been the first opportunity which the authority would have had to know who the judge was.

But can I say that we are not in the business of worrying about which judge we get for a particular case. We are not parties to the proceedings; we were not parties to this prosecution; we are never parties to the prosecution in the sense of being the prosecutorial agency. They are matters for the directors of public prosecutions to deal with. We may be a party in proceedings because we may be the recipient of subpoenas or something of that kind. But, it is simply something which is none of our business, in one sense. We are not disinterested observers but, nonetheless, we are not parties to those proceedings. That is why we have an independent prosecutorial approach.

Mr FILING—Was any discussion held between the DPP's office in Victoria and the NCA over the question of Mr Vincent's taking the case?

Mr Broome—I would rather answer that later on, simply because I do not want to get into a debate about it—I do not want any assumption to be drawn about it either; that is the problem. We will have in the course of any prosecution a series of discussions with the prosecutors. Those discussions are matters which are appropriately privileged and so on. I know that this is a public session and it seems to me that for a variety of reasons, which I am happy to explain, it is not the time to get into the debate.

Mr FILING—No, I did not want to know the detail other than the fact that the IGC and the NCA had IGC meetings. I wanted to know whether in fact any of this was discussed.

Mr Broome—It certainly was not discussed at IGC meetings that I have attended.

Mr FILING—And obviously not in the PJC?

Mr Broome—It certainly was not because of the relevant time frame.

Mr Hawke—Mr Filing, I think it gets to the demarcation between the role of the authority and the role of the OPP. The role of the authority is to provide admissible evidence and once the authority does that it is then the job of the prosecutorial agency to prosecute the case. I think that is something that we must bear in mind all the time when we talk about these issues.

Short adjournment

CHAIR—We will just carry on in open session for a little longer until we have exhausted a few other areas of questioning and then we will go into an in camera session. I am interested to know the current status of your strategic intelligence assessment on organised paedophile activity.

Mr Broome—It is nearing completion. I think the last time we talked about this a substantial amount of the report had been drafted—about half of it at that stage. Subsequently further work has been done in relation to finalising the report. It is in the process of various stages of it being circulated for further discussion, and I think in the letter that I wrote to the committee in July I made it clear that we expected that the report would be finished before the royal commission reports. I still think that is about the time frame. I would expect it to be completed probably early next year. We have still got to resolve finally the question of whether there will be, as well as the confidential report for law enforcement purposes, a public version.

CHAIR—And what about an ongoing role in that area? Have you made any assessment about that yet?

Mr Broome—At this stage I think it is fair to say that one of the fundamental questions is whether the conduct which is the basis of the paedophilia allegations are matters which the authority is in a position to investigate. That involves, first, whether it is relevant criminal activity in terms of the act, and it is not to say it is not serious and abhorrent behaviour but there is a question about whether we could actually have an investigate reference as distinct from an intelligence producing function. It is then a question for the IGC, I suspect, in terms of whether they think it is an area which we should become involved in, which would inevitably be at the expense of some other activities; it is one of those trade-offs. That may well be given some sort of impetus, depending on what the royal commission comes out with and findings across different jurisdictions. I just do not want to pre-empt the results at this stage because they are still subject to a lot of consultation.

CHAIR—Do you have any input into the royal commission, or any involvement in it at all?

Mr Broome—Perhaps Peter is in a better position to explain it. We have had ongoing contact with the royal commission.

Mr Lamb—Yes, we have exchanged information.

CHAIR—Formally?

Mr Lamb—Yes, formally.

CHAIR—So that is on the record, then, the information that you have passed on?

Mr Lamb—It is.

CHAIR—Right, okay.

Mr Broome—Can I just clarify that. We passed it on formally under the act. It is not necessarily on the record in a public sense because it has been part of their investigative work that they have been carrying out in a number of areas.

Mrs WEST—We have been briefed by various persons and associations who perceive the need for an independent complaints tribunal for the NCA, and this tribunal will handle referred complaints about the procedures or perceived inadequacies of the authority to resolve internal conflict and external complaints about the operations of the NCA. Is this independent complaints tribunal necessary?

Mr Broome—Yes.

Mrs WEST—Would you like to enlarge, elaborate?

Mr Broome—The sooner the better. It seems to be one of the ways in which public confidence can properly be established, as distinct from ill-founded concerns, is if there is an independent, external complaint handling body that people who have a belief, rightly or wrongly, that they have been the subject of some inappropriate activity by the authority can go to, know they will have an independent investigation and that can be done quickly, efficiently, independently and so on. I believe that, in the vast majority of cases, we will be found to have acted properly. In those cases where there has been some kind of inappropriate behaviour, I know that both Greg and I would take the view that we want to find out about it as soon as possible and take corrective action. The authority has been calling, I think since 1991, for such an independent complaint handling body. It would have, quite frankly, greatly assisted us if it had been in place.

Mr SERCOMBE—How about the situation of seconded officers, though?

Mr Broome—That was one of the questions which the Law Reform Commission was asked to investigate as part of its terms of reference. We, of course, have not seen the report yet, but it is one of the difficulties. There is no doubt that, by having staff seconded from other jurisdictions, there are difficulties in handling that issue. We have suggested in

the submission which we made to the Law Reform Commission that the way to deal with that is to separate out the question of a complaint about the authority from one about the conduct of individual staff members. That is to say, we could be asked to explain, and we should explain, what we had done in a particular matter. If it were found that that conduct was inappropriate, that would be something which the authority would, in a sense, then answer for, acknowledge and deal with. If we were vindicated, so be it.

If it turned out that, in the course of that inquiry, suggestions were raised that any staff member—be they a seconded police officer or somebody else—had acted unlawfully or inappropriately, then what one does about that is effectively a disciplinary matter to be dealt with in terms of the internal processes, whether they be under the Public Service Act for our own full-time staff or whether it be under the relevant rules and procedures of the home police force of the seconded officer. That is to say, you deal with the disciplinary consequences of inappropriate conduct as a separate part of the exercise from the authority's accountability for what happens under its aegis. That seemed to us to be one way of dealing with the problem. I do not say it is the only one, and we are certainly looking forward to what the Law Reform Commission will recommend. As I said, our only concern is that a solution is determined sooner rather than later.

Mrs WEST—Do you the commissioners will support the ideas?

Mr Broome—The proposal I just outlined is something which I did discuss with the commissioners before I put it forward as a solution. Whether they will support the kind of recommendations, I do not know, because I have not seen the report. But, on the basis of the draft report which the ALRC is suggesting, it is really a matter for them to deal with. It will be one of the issues that has to be resolved by government in determining the final legislative structure that they decide to put in place. From where I sit, I just wish we had somebody external. So long as they have got all of the powers and the resources necessary—and I think that is essential—to resolve these matters quickly, then it will be in everybody's interest: the public's and the authority's. What you do not want is a situation where these things drag out forever and are never resolved. That is unsatisfactory.

Mrs WEST—Who do you feel would be appropriate to man this independent complaints tribunal?

Mr Broome—We have made it clear that we do not have any particular preferences. I am quite relaxed about it being the Ombudsman and I am quite relaxed about it being the Inspector-General of Security. I am relaxed about it being a new body which the government may wish to establish. The important things are its powers and functions.

CHAIR—And the way it is funded. Part of the recommendation was that you would partially fund the NIIC.

Mr Broome—Yes; I am getting used to those kinds of recommendations. I should not be facetious about it: it was rather unfortunate that initially the Law Reform Commission seemed to have very little idea of how much a complaint handling process might actually cost us. Their more recent suggestions were that, because they thought we probably did or should—they were not sure which—spend a certain amount of money dealing with complaints, that should be transferred to the funding base of the new body. If you transfer that funding out, you immediately take away the capacity of the authority to deal with those complaints in that way. My own view, of course, is that if there is going to be a new body, with new functions, it requires new funding.

Mrs WEST—Could we re-channel or recycle proceeds of crime from your investigations through the courts and back into the system? Just a bit of lateral thinking there!

Mr Broome—That is one possibility.

Mrs WEST—It wouldn't make them work harder.

Mr Broome—That is one possibility. It depends whether the trust fund still exists, I suppose.

CHAIR—This committee in the past has not particularly wanted to get involved in investigating complaints, mainly because of its workload. When I say 'this committee', I mean the previous committee. This particular committee has in fact dipped its toe in the water in respect of two or three with which you are cooperating at the moment. I take it that you would not be satisfied, or that you do not think this committee is adequately constituted to deal full-scale with complaints.

Mr Broome—I have spent a great deal of my career dealing with administrative law and having fairly close involvement with bodies like the Ombudsman's Office and the Administrative Appeals Tribunal and so on. The investigation of complaints requires specialist bodies with appropriate powers and appropriate resources. It is no criticism of this committee to say that it is not legislatively established to do the job and does not have the resources. It seems to me that it is a very unsatisfactory process to expect parliamentarians, with enormous other demands on their time, to become full-time complaints investigators. What you need is people who are in fact established to do that very function. I do not think it works particularly well. We have models around Australia which can work very well and which, if they are put in place, will remove a great deal of the concern that people justifiably have when they find out that there is no adequately resourced and properly functioned complaint handling body.

CHAIR—We are almost finished the public part of the hearing, but on the matter of the supply of cannabis, Operation Cerberus was a very successful operation for the NCA. In the wash-up of that, what is your assessment of whether you have actually had a

major impact on the supply of cannabis?

Mr Lamb—At the time that Cerberus was running, it did have an impact on the production and availability. I cannot make any comment on now, though.

Mr TRUSS—Were you satisfied with the penalties that were imposed? They were hardly the sort of penalties that one would expect Mr Big to get. Or didn't you get Mr Big?

Mr Broome—I think you will find that, even in our soon-to-be-tabled report for last year, there are still cases coming through the system where there have been some more substantial penalties. It is one of the facts of life that often the early matters which are resolved tend to be those where there are guilty pleas and where there are no major issues involved, and that some of the more significant offenders may well take some time to run through the judicial system. So there are some more significant penalties.

But I have to say that the level of penalties imposed around Australia varies very substantially. As a measure of our effectiveness, it is a very imprecise measure at best. There are judges who will hand out a 10-year sentence and give a one-year non-parole period. There are others who will give a five-year sentence and maybe a two-year non-parole period. There are others who give suspended sentences. The reality is that there are vast differences in sentencing practices between jurisdictions. Even within jurisdictions, it is fair to say that we are all aware of cases where you wonder what the particular circumstances were. Our task is to basically investigate the criminality and present the evidence, and it is a matter for the courts as to what they impose. But I certainly think it is the case that sometimes we wish the penalties were higher.

One of the areas where the penalties have been, in my view, fairly low has been in relation to some of the money laundering offences. It seems to me that the courts perhaps do not fully appreciate the importance of dealing significantly with money laundering if they are going to deal with antecedent criminality. There was one recent case where—if I can get the facts right—the amount of money involved was something of the order of \$17 million that was laundered out of Australia, and the penalty imposed was weekend detention.

CHAIR—Where was that?

Mr Melick—It was in Sydney. There was \$22 million stolen from the Bank of China of which \$11 million was laundered back out of Australia.

Mr FILING—Is this the People's Army fraud?

Mr Melick—It was the Bank of China fraud. The judge thought he was bound by the low penalties imposed by other judges and actually made the comment, 'I think this is

ridiculous but it seems that the range is this.' We would disagree with that because there have been so few cases that there is not really a proper range established yet. What is happening is we are having an artificially low range established for money laundering.

Mr SERCOMBE—On money laundering, is the electronic commerce task force on schedule to produce a report next month?

Mr Broome—Yes.

Mrs WEST—Is there any link between money laundering and drug trafficking?

Mr Broome—Yes.

Mr Melick—It is inextricably intertwined.

Mr FILING—Is it fair to say that regional criminals view Australia's penalties as being far below other relative jurisdictions?

Mr Broome—I have certainly heard that view expressed.

CHAIR—What can be done about that? Is it our role? There is a perception in the community that penalties are not adequate in a lot of areas but what you have just said now concerns me greatly, that there is such inconsistency. I was aware of that but that is surely a huge problem.

Mr Broome—Part of the difficulty is that the legislation in different jurisdictions is quite different as to the way in which penalties are imposed. Some states have moved in different directions over the last few years and so you find arguments about whether the head sentence should be large with lower non-parole periods and so on. It depends on the local legislation.

CHAIR—Your implied criticism, Mr Broome, was of the judges, not of the actual penalty. I assume that what you said before was the penalty is there, the maximum for this is 14 years and instead they are giving 10 years with a one year parole period, to use your example.

Mr Broome—It is more than that. The legislative framework in which they work is a significant factor that one has to have regard to. What I am saying is that you can look at conduct across jurisdictions and sometimes find inconsistencies between what may be a sentence in one state and what appears to be comparable behaviour and get a different sentence in another state. But it is a very complex issue. It goes to questions of judicial discretion. It goes to what the particular circumstances in a particular case may be. It may not just be the quantity of drugs, there may be other circumstances. There are a whole range of factors. All I am saying is that there are inconsistencies across the board.

Mr FILING—Given that in our discussions this morning you have agreed that the penalties are seen to be low, and given that our regional neighbours involved in drug law enforcement are complaining about Australia's reticence to exchange information in the fight against drug trafficking, and also given that there have been some quite significant cutbacks in funding for Customs, the Australian Federal Police and the NCA, to what extent should the Australian community be confident that they have a full-blown effort against drug trafficking by the Australian authorities?

Mr Broome—I do not necessarily accept a number of the premises in the question. For example, the extent to which overseas jurisdictions have complained or otherwise about our processes I am simply not aware of.

Mr FILING—Can I say it is significant. At your own conference they said it was significant.

Mr Broome—What I am saying is that I believe that there is a very concerted effort in Australia. I do not want the comments I have made about penalties in money laundering in particular to necessarily apply to all drug offences. There are some very substantial penalties handed out but it is an observable fact that there are some variations across jurisdictions. But there are many factors that have to be analysed. You cannot reduce this down to some sort of simple thing that says the penalties are too low because there are a whole lot of factors in each case to take into account. Are Australian authorities working in a dedicated fashion to deal with the problem? Yes, they are. We certainly are.

Mr FILING—I am just concerned that it appears that Australia has one hand tied behind its back in the fight against organised drug trafficking.

Mr Broome—I just do not think that is the logical consequence of the observation I was making, that there are some inconsistencies in the levels of penalties.

Mr FILING—But on the totality of all those circumstances—cutbacks, lack of full-scale mutual assistance and, of course, the perceived problems with penalties—these are problems that obviously are perceived also by the offenders; they see them as pluses.

Mr Broome—I am not prepared to say that one can reduce the whole thing to a lowest common denominator. I do not think that it is correct to say that the effort is less than substantial. Each of those other factors have their own considerations. One of the reasons why we do not have mutual assistance treaties with all of the countries in the region is that successive governments have taken the view that there are certain preconditions necessary before they will want to enter into those kinds of arrangements. It is much more complex than saying that if we had arrangements with everybody, if the penalties were higher, then it would be a different situation. It is a much more complex problem.

Mr FILING—But it has been said, as I am sure you would have heard, that the inspection rate for, for instance, containers coming into Australia is so low that it would be almost a wonder why people would bother to carry, personally, drugs on themselves to bring them into Australia rather than ship them in containers. Is that a fair comment?

Mr Broome—They obviously still do carry them personally. The problem about the container volumes is that if you look at the level of trade that we have, you simply cannot expect to do anything other than have targeted inspection of those kinds of movements of freight. There are millions and millions of containers coming backwards and forwards to Australia every year and judgments have to be made about whether one tries to inspect them all or whether you use a targeted approach. That is, as I understand it, what basically happens. People try to make some educated, informed judgments about where to put the exercise and effort. We do the same thing in relation to all the tasking that we undertake internally.

Mr FILING—But could this be, for instance, why heroin is relatively cheap now compared to, say, marijuana?

Mr Melick—There are several problems with heroin and one is that there are some enormous supplies coming in from Colombia to the United States and Canada, who have traditionally got their heroin from South-East Asia. Peter can confirm that the crop sizes in South-East Asia are growing, so there is a lot of pressure to get rid of the drugs elsewhere, which is, of course, Australia. That is why you also probably notice that a lot of the quality of the heroin that is being released in the streets is going up and you are getting deaths by overdoses because people are getting 70 per cent pure instead of the 11 to 12 per cent that they are used to. There are international pressures on the amount of heroin coming into Australia, as well as some of the matters you are talking about.

Mr FILING—But would you say that the heroin problem in the first instance, the ecstasy designer drugs in the second instance, and, of course, the continuing problem of marijuana and cocaine, represent a crisis for Australian authorities?

Mr Melick—I do not see it as a crisis. We are doing reasonably well, bearing in mind that there is increased pressure for these materials to come into Australia, and we are more or less holding our own at a level which was there before.

Mr FILING—Mr Sherman said you were losing the battle; that was on the levels before.

Mr Melick—I am sorry; I was not here then.

Mr FILING—He was the chairman and he said that they were losing the battle.

Mr Melick—In law enforcement, or in anything, the more money you put into it

the better your results are going to be, but you sooner or later get to the law of diminishing returns and you can get to 90 per cent on X million and 2X million only gets you to 92 per cent, or whatever. The fact is in Australia we just do not have enough resources to put a man in every port or on every 10 metres around the coastline to stand there and be on alert for drugs coming in. We have to rely on our intelligence and our cooperation with other agencies, and specifically target suspect areas or areas we happen to know about.

CHAIR—I do not know whether you would see this committee necessarily as being a conduit for that purpose but if at some point of time in our interaction you want to express a view that there are inadequate funds to carry on a particular activity, I assume you would make us aware of that concern.

Mr Broome—I made it as clear as one can reasonably make it that I believe that we could do a significantly better job with more resources. On the other hand, I actually believe very strongly that at the end of the day these are judgments which governments have to make and are entitled to make and which, quite frankly, the parliament makes. It is the parliament which votes the appropriation bills. If somebody gave me \$10 million tomorrow, could I use it? You just watch me!

Mr FILING—In fairness, though, Mr Sherman was quite frank. He said, ‘We are losing the battle against drugs and organised crime.’ That, to me, was a seminal statement that there is a very serious problem in Australia. It is my view that, given the other circumstances, there is nothing to indicate that that has changed. In fact, the major drug arrests you have made recently to my way of thinking confirm that they are possibly scratching the surface of a very large problem within Australia.

It is a problem that state police forces find extraordinarily difficult to cope with because of their resource problems and cross-jurisdictional problems. As I mentioned earlier, there are significant complaints from our neighbours and the people who collaborate with us overseas that we are not playing the full game in relation to the exchange of information which is absolutely critical to fighting drugs.

CHAIR—You have made that statement a few times and I think it has been answered. This committee is one of the NCA’s major conduits to the parliament. That is the point I was making. I do not want it to be lost on you or on the public that that is what I think one of our roles is.

Mr Broome—I am well aware of that.

CHAIR—You made the general statement—which I accept—that you can always do with more money. But if at some point in time there is a major problem developing—despite what Mr Filing says, I say developing—then you should make us aware of it. Funding may be the solution to it. So you should do that.

Just on the targeting of containers—obviously, in terms of understanding how these things work—the heroin haul here in Victoria was detected in wooden wall-hangings. I take it somebody did not say, ‘Those wooden wall-hangings look like they might contain drugs.’ Were these detected by dogs?

Mr Lamb—Perhaps we can answer that in the private session. The matters are before the courts and I do not think it is appropriate to mention the operational methodology that might be exposed in a public forum.

Mr FILING—But just on the earlier subject in relation to the Thais, the Thais have a number of offences involving capital punishment and obviously Australia would not be able to give information to cooperate with Thailand if somebody had been arrested in Thailand and charged with an offence that had one of these penalties.

Mr Lamb—It is dependent upon the circumstances. There is regular exchange in a very formal way of intelligence with Thailand. Are you saying that there may be some backdoor intelligence?

Mr FILING—No, not backdoor, it is very formal.

Mrs WEST—Has the increase in heroin use been noticed over a period of time? Five years ago, how bad was heroin use in the community? Has it escalated over a period of time?

Mr Lamb—I do not have those statistics available now. They are available and we could get back to you with those.

CHAIR—Maybe you could provide them to the committee.

Mrs WEST—Five years ago, you had plenty of money to look at white-collar crime, and that is what I would like to draw a comparison with.

CHAIR—Before we move into the in camera session, could I say on the public record how much we appreciate the authority’s cooperation with us this morning. I re-emphasise this committee’s determination to do the job which the parliament has given us to do. I think our frank exchange this morning should underline for the public that we are not coming here to pay lip-service to that task, that we are serious about making sure that there is proper accountability for the NCA and by the NCA, and that we intend to pursue that vigorously.

Evidence was then taken in camera—

Committee adjourned at 12.34 p.m.