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JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

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**JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY**

**Wednesday, 28 February 2001**

**Members:** Mr Nugent (*Chair*), Senators George Campbell, Denman, Ferris, Greig and McGauran and Mr Edwards, Mr Hardgrave, Mr Kerr and Mr Schultz

**Senators and members in attendance:** Senators George Campbell, Denman and Ferris and Mr Edwards, Kerr, Nugent and Schultz

**Terms of reference for the inquiry:**

National Crime Authority annual report 1999-2000.

**WITNESSES**

**CLARK, Mrs Deborah Annette, General Manager Corporate Services and Planning, National Crime Authority ..... 1**

**CROOKE, Mr Gary, QC, Chairperson, National Crime Authority ..... 1**

**IRWIN, Mr Marshall Philip, Member, National Crime Authority ..... 1**



**Committee met at 6.08 p.m.****CLARK, Mrs Deborah Annette, General Manager Corporate Services and Planning, National Crime Authority****CROOKE, Mr Gary, QC, Chairperson, National Crime Authority****IRWIN, Mr Marshall Philip, Member, National Crime Authority**

**CHAIR**—I declare open this public hearing of the Parliamentary Joint Committee on the National Crime Authority. We are here to discuss with representatives of the NCA its annual report for 1999-2000, which was tabled in the parliament late last year. Paragraph 55(1)(c) of the NCA Act requires the committee to examine the NCA's annual report and, given that it was Mr Crooke's first as the NCA chairman, we thought it would be a good idea to have this public hearing to enable us to discuss with you and your senior staff the matters raised in the report. I welcome Mr Crooke and his colleagues—the authority member, Mr Marshall Irwin, and general manager service delivery and governance, Mrs Deborah Clark.

The committee prefers all evidence to be given in public, but you may at any time request that your evidence, part of your evidence or answers to specific questions be given in camera and the committee will consider any such request. Was there anything you wanted to say at the outset, Mr Crooke? I am sure you would love to know what is in the committee's report tomorrow. Unfortunately, we cannot tell you that, because it is embargoed and releasing it in advance is a hanging offence in this place. Did you want to make any opening comments?

**Mr Crooke**—Only to say that I hope the report has been of assistance to you. We made earnest attempts to make it informative. If there is a hub to it, it is the Future Directions document that appears prominently in the report. That is the guiding star at the moment for the NCA. We are working hard in moving towards it. There are a number of aspects in that that keep us very busy in trying to transform ourselves from what was essentially a regionally based and regionally managed and operated organisation to an organisation that is national both in its corporate support and in its focus upon operations in the husbanding of its resources.

**CHAIR**—One of the things that have frustrated us for some time is that it seems that you or your predecessor sign off on your report usually in September—in the last three years it has been on the 14th, the 17th and the 27th successively—and it is finally tabled in both the House of Representatives and the Senate in December, usually right at the death knock. That means that for this committee to then pursue anything realistically you are waiting until the start of the new sitting year, which means effectively we are talking about something that is already eight months old, given that the reporting date was at the end of last June. In a lot of other areas reports of statutory authorities have to be tabled by 31 October. Given that once you have signed it off it has to go through the minister and I understand the intergovernmental committee, I wonder whether you would see any difficulty in that getting signed off a bit earlier.

**Mr Crooke**—It is a question of what is within your power or what is within your cajoling ability. What worries me about the concept is that I would be very reluctant to do anything that genuinely offended the states. I do not think we could understate the importance in the whole scheme of the ownership of the states in the NCA and their participation in it. I would be very reluctant—and perhaps it might be seen to be officious for somebody in my position to do

this—to go to a state minister and say, ‘Could you kindly put this on the top of your pile because we regard it as important?’ I must say that I am only too willing to try to do anything that can facilitate the accountability process and to make this committee’s life easier. I think it is an obvious concern and it is an obvious difficulty.

**CHAIR**—I do not think it is a question of making it easier for us; it is a question of making it timely.

**Mr Crooke**—Sure. That is where I sit. I am more than happy to try to expedite the process, but history seems to show that, when you circulate it to the states, there is a varied response as far as time is concerned. The aggregation of that is the aggregation of the delay that we see. I am prepared to do anything I can to help, but I wonder whether it is going to be to the common good if I am seen to be officious or presumptuous in trying to twist arms in that regard.

**CHAIR**—You do not want to get offside the people whom you require cooperation from.

**Mr Crooke**—Yes.

**CHAIR**—I understand that. Could you tell us how you would want the community at large to judge your performance over a year? What do you believe, for example, were your achievements in the year that we are talking about?

**Mr Crooke**—I guess the main thing is that you would like to wean them away from a simplistic assessment of the performance of the NCA. You would like to wean them away from a focus on the first-line economic rationalism of saying that you have not done well if you seized fewer kilograms of cocaine or heroin than you did last year, or if you had fewer convictions this year than you did last year, or that the total number of years of imprisonment as a result of your investigations was less this year than it was last year. All these things are quantitative and are very much to the fore of a lot of approaches and examinations.

With respect to the community, as well as others that are more directly involved with the funding and assessment of the NCA—hopefully, we are talking about a more sophisticated level there—if there could be an understanding that what the NCA has to do is complex and takes time, and if there could be an appreciation of the fact that sometimes the arrest of one person could be more disruptive to the supply of heroin in Australia than the arrest of 500 people who run down the street with a balloon in their mouth, that sort of understanding—

**CHAIR**—You are talking about qualitative reporting?

**Mr Crooke**—Absolutely.

**CHAIR**—How do you get independent qualitative reporting of what you do? I am sure you would not do it, but one can foresee that there might be bodies who, if they are doing their own assessment, might gild the lily, so to speak. Therefore, that independent qualitative assessment is important and you have got to have it against some sort of benchmark, I would have thought.

**Mr Crooke**—You do, and I think this is a very big difficulty, Mr Chairman, because we searched world wide for a model to try to come up with something that is meaningful. It is a

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waste of everybody's time if you have some philosophical claptrap that means different things to different people and is not truly a measure. Nevertheless, we are struggling. We have got a core of people who are working very hard on trying to produce something meaningful in this regard. In fact, they are in discussions that are beyond their infancy with the Department of Finance and Administration, bemoaning our lot where we thought we had been put in the same category as many other organisations who are more able, through their core business, to measure their performance than we, with the obligations we have under our act, are able to do so. Those discussions are ongoing. I think this committee would be aware that the Department of Finance and Administration, in relation to the spending of money, the measurement of how it is spent and performances, is fairly astute and demanding. It is not as though you can go to them with something that is empty and unsophisticated. We are moving along that path, but it is not proving to be easy. It does not fall into place. Unless we can get something meaningful, we cannot expect to be entertained because we could be wishy-washy about any explanation and not be accountable.

**CHAIR**—This committee is charged with looking at your annual report. I think in the life of this committee there have been 16 of them. We have actually held inquiries into a handful of them, certainly not all of them. But in the current situation, given that you are in the throes of restructuring, setting new directions and so on, when you give us your report next year, how do we start to judge whether what you have done in your new directions and your new structure is actually more effective than what was being done before?

**Mr Crooke**—The answer to that is we will have to give you a very thorough explanation and by that time we will purport to have guidelines as to how we are measuring our performance. The guidelines will be in one column and what we say we have done will be in another. That all sounds very desirable but the devil is in the detail. We have got to get those guidelines meaningful so that they are measuring sticks rather than something that is philosophically theorising about what should be happening.

**CHAIR**—Could you outline two things for us, perhaps as a base position today against which we could look next year. Firstly what do you think were the achievements of the year covered by this report? Secondly, what major advantages do you expect to get out of the changes that you are going to make?

**Mr Crooke**—We start from the point where it seemed to me that, to an uncomfortable extent, the NCA was not an accepted participant in the law enforcement process. It seemed to me that a lot of our partners in law enforcement had misgivings that the NCA was likely—to them unexpectedly—to trespass into areas where some of them, as individual agencies, thought they would be better left to do the work. There seemed to be an uneasiness about where the NCA was going to come from next. As you are aware, I spent some time and concentrated a lot on trying to talk to as many people as possible at the highest level of law enforcement agencies, as well as other persons, as to how the NCA was being accepted. The product of all of this was the Future Directions document which I have already mentioned and which I keep coming back to as being our guiding rationale at present. We are moving towards trying to fit in with that.

Associated with this is the question of making what is a concept translate into what is performance. This carries with it its own difficulties. The NCA is an unusual organisation because it is an admixture of people from different backgrounds and there is a tendency for

those backgrounds in themselves to produce particular attitudes or cultures. In trying to implement a change and, in particular, something that is as profound a difference as appears from that Future Directions, not least a transition from a regionally based focus on business to a nationally based focus on business, and also in relation to deployment of resources, you have got difficulties in taking people along with you. This is a chestnut as far as the NCA is concerned, and this committee has dealt with it many times over. We have this revolving wheel in the seconded police officers—they are there for two or three years and, once you get them on board and attuned to the way you want things to happen, you have then got a new crop that you have got to deal with. The turnover is very significant.

On the other hand, a surprising number of other people in the NCA have been there for the whole of its life and, as such, have seen many changes. With change there are some core deep-seated and longstanding attitudes—some of them are not really consistent with a change which they feel is a jolt to the old ways and the old methodologies. As far as the past year is concerned, it has been very much an approach towards consolidation. We have started with what might be regarded as fairly small things especially in the corporate area where, because of our fragmented approach to dealing with things, there were very many different procedures, attitudes and methods adopted to deal with day-to-day things and a lot of things fell between two stools.

All too often one would hear that this is a matter for the national part of the NCA—whatever that might have been. When the buck was passed down, as it seemed to be in Melbourne, there was a return of service to say this is a regional matter. There were many instances where a lot of things became confounded and so it was in relation to the way particular things were addressed when there was not much similarity between the way a particular situation was dealt with in office A and how it was dealt with in office B. We have attacked that very vigorously to try to instil a national awareness that you cannot do things in a vacuum in the NCA, that what you do by way of a management decision or what you do by way of introducing a practice or methodology does have repercussions throughout the organisation.

We had a telephone system that was not state-of-the-art, it was the state-of-the-ark. It was about 15 years old. Everything would drop out. That was a minor thing. It just did not work. It was pretty hard if in a national organisation to get hold of somebody. There was no facility for a message bank to tell you where they were and the phone would ring out. As far as communication was concerned we addressed things like that and we have now got a modern telephone system. People can now speed dial somebody on another extension, whether they are in the next room or in Perth if you are sitting in Brisbane. That gives a sense of belonging and being part of an organisation. They are able to communicate.

Perhaps more particularly, the introduction of a national video conferencing system has brought a sense of belonging to each of the officers. We have made it our business to have regular meetings in various levels of the NCA as far as management is concerned and in various disciplines of the NCA as far as our multidisciplinary teams are concerned. I will depart from the corporate thing here because a lot of work is being done in that and we are still in the throes of doing a major exercise about how economies of scale or deployment of resources can result in a national approach to all sorts of corporate support things.



On the operational side of the coin, again we go to the Future Directions document to see what we are focusing on. This has been a pretty demanding learning curve. Again we face the fundamental situation that I perceive obtains in any organisation. It is one thing to talk about change and it is one thing to put forward a philosophy or a credo about change and where you are going to go. It seems to me it is not hard, provided that the thing is not off the planet, to get people to embrace it and to say they are behind you and they think it is a good idea. The hard part, in real life, is to get somebody to do something differently to what in many cases they have been doing for 14 years.

In the operational field, there has had to be a very determined effort to migrate down the concept that the NCA is not there to do Parkes Street police station stuff. It was not created for that. If it is the ninth police force, the act, the founding fathers and everything about it says that it is wrong. It is the fifth wheel on the carriage, or the ninth wheel on an eight-wheel carriage, if you like, if the NCA could be justifiably dubbed as doing things that should be done out of a police station. It has got this specific role. This might be too simplistic but it is certainly my analysis of it: with respect to constraints or pressures, such as being given specific funding by the government to investigate certain matters, we can take Operation Swordfish as an example. The government was concerned about particular criminality in relation to fraud against the Commonwealth, but the basis of the first tranche of funding was, 'Here's \$20 million. We expect to see \$70 million in return.'

That carries with it certain imperatives about bulk performance and not being able to keep your eye on the big, hard stuff but trying to get the myriad of bulk that will move you towards this sort of thing. It also lends itself to fairly creative descriptions or attribution of who the agency was that could say that they brought in this particular acquisition when, in many cases, we might be in operations involving six or seven agencies. So the challenge that we had to address was that, in the investigative sphere, our people very largely consisted of seconded police officers. Before they came to the NCA they were told by those who commanded them that their duty was to catch as many criminals as they possibly could as quickly as they could and to react immediately any time they suspected an offence. They were coming into the NCA as an organisation that was, to an extent, constrained to trying to pursue bulk matters.

When the new Future Directions document came out, it did produce something different from their day-to-day expectations and their day-to-day work. In fact, they had, for the first time in their career, perhaps, to confront a situation where somebody said, 'No, we can't do that and you have to hand it over to somebody else.' I think everybody sitting at the table would know that the stock-in-trade of police and a lot of satisfaction that comes from pursuing their particular role is the information they get, the working up of the wherewithal to proceed to investigate something to a successful conclusion. When you have to step in to say, 'Sorry. We've got to set our sights higher than what is happening now and the inevitable consequence is that all your good work has to be bundled up,' and that work is going to go across to somebody who, to their perception, is going to pick up the ball, meet it before the try line, walk over and do a lap of honour, you do get these difficulties that you have to confront. That type of thing is being pursued and such explanations are being given.

We are just getting into the phase now—and, as you will appreciate, this is not the place to talk about detail in these matters—where we have national operations infrastructure. There is a national operations committee that assesses material that is put before it from different sections

of the NCA and measures it against criteria as to whether it fits the bill in relation to this focus upon complex national organised crime that is at the heart of these Future Directions. And so the process goes through in relation to other procedures that relate to assessment of priorities as to the funding that will be necessary in that regard, as to what assistance is necessary from partner agencies—in short, a very thorough examination of what is necessary. This is being appreciated by those within the organisation and is of vital importance, not only in relation to the NCA doing its job properly but also in relation to our people feeling as though they are doing something meaningful and not on a wild goose chase.

**CHAIR**—We accept that getting new equipment—new telephone systems, new computers or whatever—is obviously intrinsically good value, but you have a new direction. Yes, you are not going to pursue the minor things that the state police forces or the AFP can pursue; you are going to concentrate on the bigger, more complex cases. At the end of the day, if you have arrested X number of criminals this year or you have had so much in a haul in laundered money, drugs or other quantitative measures, how does one assess when we talk in 12 months time whether all the changes you have brought about in the organisation, direction and equipment that that is actually being more effective?

**Mr EDWARDS**—I have a question that flows on the issue of new directions. I hear what you are saying about the NCA not being an accepted participant in the law enforcement field and that there is this uneasiness out there about the NCA and specifically about your future directions. I wanted to ask you whether those future directions are as a result of choice or whether they are as a result of the limited options left over for you.

**Mr Crooke**—Mr Edwards, I should really answer that by saying the main driving force behind it was looking at the act and at the debates that led to the setting up of the NCA and as to why there should be a NCA. That was the foundation. The concept comes from that interpretation and as to whether with the passage of time the role of the NCA as defined by the act and as very interestingly debated at the time it was set up had been, because of practical considerations, somewhat misted over in relation to what it should do. It really comes back to something I said before—if it is another police force, what is it doing and why should it be there? It was a quest to see why it was set up, why it should be there and what its role should be.

Three years ago this committee looked very closely at what it was doing and asked itself the question, ‘Is there a need for an NCA?’ My interpretation of what the committee wrote then was very clearly that there was a need for the NCA. It fortified me in my conclusion that there is a need for the NCA if it does something different, if it is not just one more of the same. That was the foundation. That was an idea that was taken to each police commissioner throughout Australia and it was discussed, person to person, as to whether that sat with their day-to-day operations, whether the NCA doing that sort of thing was something that was acceptable to them, something that would irritate them or something that would be better done in some different way. It was a combination of those things that brought about the Future Directions. It was not as though there was some worst option that had to be taken at the end of the line. Rather, it was going back to basics that brought it about.

**Mr EDWARDS**—Will that going back to basics mean that you will become better accepted by other law enforcement agencies and jurisdictions? Will that mean that there is a greater sense of ease about the NCA?

**Mr Crooke**—I would like to think so. That was very much behind the crafting of the Future Directions—that it would make the NCA accepted and acceptable, and law enforcement in Australia would become more harmonious. We come immediately to a very core issue: there are limitations in what police services can do, even the Australian Federal Police. Certainly, with state police forces, we are still, as we all know around this table, at the stage, as I said in the report, where the sheriff has to stop his horse at the border if the crook goes across. It is in these areas that the NCA can bring this national focus to bear.

It seems to me that, however much there might be a tendency, however perverse, to think that the NCA is not necessary or that they can do it all themselves, there is this very real factor that every day impacts in very serious ways on the essential limitation in a federal system of a state law enforcement jurisdiction. They need the NCA to do their job properly or assist in the common cause where there has to be some national overview; hence the NCA. We have got to keep our eye firmly on that and concentrate on that sort of thing. We have got to think again and again, if we are looking at something and everything that springs out of our analysis of it talks about state things, you have to say, ‘What on earth are we doing this for? Why aren’t the state police doing this?’ You have to keep asking: where is the national element in this? Where is this interstate thing that would make it very difficult for a state police service to do it? It is when you concentrate on that that you hope you will be appreciated—not only because you try to do it properly, not only because you try to recruit good people and not only because they give you good people, but because there is an appreciation that they just cannot do it and you are not treading on their patch. You are doing something that needs to be done because of the national nature of this thing. It is a very trite observation to say that serious crime, in the areas that the NCA looks at, is very unlikely to be confined to a state.

**CHAIR**—I am going to stop you there because I think we have talked before at some length about the philosophical approach relating to a change of direction. I know a number of committee members have got some specific questions on the report. I know Mr Kerr and Senator Ferris have.

**Mr KERR**—I would be interested to hear your answer to the chair’s question.

**CHAIR**—The question that I asked originally was: you are doing all these wonderful things; how are you going to convince yourself, apart from anybody else, in 12 months or two years time, that all these wonderful things you are doing represent an improvement on what you were achieving before?

**Mr Crooke**—We have to get these guidelines in place, and that is not proving easy. They have got to be meaningful. Again, I cannot sit here and tell you that we are satisfied that we have arrived at convincing guidelines. We are in the process of working that through.

**Mr SCHULTZ**—How long is that going to take?

**Mr Crooke**—It is imperative that we have got to get to the bottom of an issue concerning funding. We are talking to the Department of Finance and Administration about that. Part of that is getting these guidelines in place. The sooner we can get this issue of funding sorted out—it is becoming very urgent—the sooner we can get on with some fairly important things.

**Mr SCHULTZ**—You must have some idea of when you are going to get your funding, for a start. If you are going to get your funding, when are you going to get it?

**Mr Crooke**—No, because life is not like that.

**Mr SCHULTZ**—So we could be asking you this same question 12 months down the track?

**Mr Crooke**—Yes.

**CHAIR**—Can I draw this particular question to a close. When you have got an idea of how you are going to measure the effectiveness of your new structure, systems, organisation compared with what occurred before, rather than waiting until we get to next year's annual report, could you let us know so that we can have a particular session on it?

**Mr Crooke**—Yes, I am only too happy to do so.

**Mr KERR**—I wonder whether I can ask a leading question flowing from the chair's approach. Certainly, you need to have an annual report, but in terms of measurement of outcomes, it might be better to move away from an annual listing of specific, narrow outcomes to having some institutionalised process, perhaps through the Auditor-General—some performance audit process that occurs perhaps every four years, or in some phased period, which is a much more detailed assessment of broad strategic directions and longer term outcomes rather than a focus on a year to year? Certainly, we do not want to get away from a proper accounting for each year of parliament. I am just wondering whether, in our thinking in terms of how we might respond to government in relation to your report, we might start to think about something of that nature, although not necessarily that specific measure.

**Mr Crooke**—It was very interesting, Mr Kerr, because the discussions we are having with the Department of Finance and Administration have centred around the possibility—I do not think I can put it any higher than that; as I say, it is further than its infancy—of moving to what they choose to call triennial funding instead of annual bids for a budget. It would give us the opportunity to be more strategic and over the horizon with our planning if we had some assurance or comfort that, in the next three years, you have got this. Much of what we are doing now involves this top-up to our funding for specific things, such as the national drug strategy, and we are left uncertain about whether it is going to be renewed after the period for which it is granted. I do not think I have to expand about the difficulties that causes in funding, not least because you have got people on contracts that you do not know whether you can renew. A lot of times you do not get any comfort until the 11th hour. So that is very much on our wish list, Mr Kerr, if we could move to something that was more long term and strategic in planning, because that is the very nature of the things that we want to get into. We must not shrink, as Future Directions says, from doing some pretty hard stuff.

**CHAIR**—You agree with the proposition that you may have to do it on a longer term basis, but what about an audit of the nature that Mr Kerr suggested?

**Mr Crooke**—Yes, anything.

**CHAIR**—Would there be inhibitions involved in doing that from an operational point of view, having regard to the sort of information that could be released?

**Mr Crooke**—Yes. It is not just inhibitions in the sense of some sort of personal anxiety; it is a question of some very solemn restrictions under the act. Possibly that is what you meant.

**CHAIR**—That is right. I was not worried about your sensitivity.

**Mr Crooke**—There are inhibitions there, but I wonder whether it would interfere with the validity of the process that has been suggested. There are probably examples where people who know what they are doing can do an effective audit without having to know names and pack drill, by looking at the procedures and methodologies, how long it takes, whether people are sitting idle and whether they are productively engaged.

**Mr KERR**—I think that is something we need to follow up. I would certainly appreciate any suggestions that you might have in due course, and I am sure that others would. I understand that in the course of the year you have implemented the Future Directions document with a number of general instructions to all staff and that this has been quite a detailed process that you have gone through. Subject, again, to any sensitivity that might go to operational issues, it may be useful to have it made available to us.

**Mr Crooke**—I am only too happy to do that. I cannot see any sensitivity in relation to non-operational matters. I can have a folder made up of what we choose to call all staff minutes about this process and make it available to the committee.

**Mr KERR**—We all hear talk from time to time about how people are responding to these new initiatives. How do you deal internally with some of the expressions of unease that must happen from time to time within any organisation? Have you developed a protocol or a mechanism for addressing, as you say, those difficulties where you are seeking to get institutional change in behaviour for people who may have been doing something else for some period of time?

**Mr Crooke**—We have various fora at which these issues are discussed. There are standing meetings which happen regularly where people can come forward and voice any anxiety or put matters on an agenda for discussion if they feel that there are issues that need to be brought out into the open and discussed. One of the worst things about a process such as this is that rumour is your worst enemy. Some people, rather than talking about it with anybody in the structure, choose to circulate a rumour that usually is distinguished by its inaccuracy. They do not even seek to make any inquiries to determine whether what they are circulating is accurate. Usually, either deliberately or in fact, it results in uneasiness. This thing has to be dispelled.

When I give you the all staff minutes, you will see it deals with issues such as, ‘Some people will choose to think that such and such is the case; in fact, such and such is not the case and this is the case. If you have any concerns about it, please speak in the management process,’ et cetera. I have tried to stress again and again that constructive criticism is the lifeblood of an organisation such as ours. It has to be welcomed and, to the extent that it is not welcomed, this is a grave managerial defect. We try to walk that philosophy through the whole organisation.

I think, Mr Kerr, with any change you are going to get people who are apprehensive about it, but their apprehension is magnified if they are not properly informed as to what is happening and you have an atmosphere in which there is room for plausible rumours to circulate. You have to try to keep a communication and an openness as to what is happening so that there is an instinctive reaction when a rumour is circulated as to whether it is likely to be correct or not. One of the tools to which resort is had is to tell them: 'If anybody is telling you something is going to happen, take a look at the Future Directions document and see whether it is consistent with that. That will give you a pretty good idea about whether it is likely to be accurate or not. If it is very different from the Future Directions document, for goodness sake, pause before you accept its accuracy and start making some inquiries.'

**Senator FERRIS**—I have a lot of questions. I may have to put some of them on notice because I may not be able to stay till 8 o'clock. I am interested in the role of the CLEB. I see in the annual report you say that the CLEB last met in May 2000. Has it met since then?

**Mr Crooke**—It has not. There was a submission put forward in May 1999—I am just estimating this, Senator; it might not be entirely accurate. A very detailed submission about the future of the CLEB was put forward to the minister at that time. I took my office in September 1999 and raised this issue many times with the minister's staff. There has not been any answer to what was put forward by the then members of the CLEB. The meeting of the CLEB that you have just mentioned in May 2000 endorsed the submission that was previously made, which was a request for some direction from the government about the future of the CLEB. So the situation is that that has been the degree to which it has met. Its capability perhaps has changed very much from the vision of its founders—

**Mr KERR**—Founder.

**Mr Crooke**—very well—because it never got statutory recognition. Although at first it was set up with support and an independent secretariat, with the passage of time the Attorney-General's Department provided support. The chief executive officer, who had some seniority, was taken away from the support staff of the CLEB. So it was left in this situation where its own separate independent existence was subsumed for it would seem—and this was before my time—for efficiency reasons within the Attorney-General's Department and then a multitude of committees grew that dealt with many things in relation to coordination.

**Senator FERRIS**—So, if it has not met, has it been abolished?

**Mr Crooke**—No.

**Senator FERRIS**—How many staff are attached to the CLEB who have got no—

**Mr Crooke**—Zero.

**Senator FERRIS**—So it is being starved of staff and funds. So, although it exists, it is not really in existence?

**Mr Crooke**—Yes. The passage of time had it, from being an independent group with its own resourcing—and it was not minor resourcing; Mr Kerr would probably remember that there was

a fairly senior person with significant experience in law enforcement called the chief executive officer—

**CHAIR**—So people who have had other jobs have been allocated to that but then they have just worked on their other jobs and it is gradually dying by the sound of it.

**Mr Crooke**—It was all subsumed within the Attorney-General's Department.

**Mr KERR**—It was initially established as a direct line of advice to the minister. Of course, very early on, well before your time, that role was taken from it. One of its key functions was stripped away from it.

**Senator FERRIS**—On page 28, the question of mutual recognition of investigative warrants is something that has been around for quite a long time. I am wondering whether you have made any progress, or whether you have made any specific recommendations to government on this. This is an issue that has been in a few annual reports.

**Mr Crooke**—Not yet, but hopefully soon, and hopefully within the next couple of months.

**Senator FERRIS**—SES officers is another issue that I generally ask about. Has the number of SES officers increased over the past year?

**Mr Crooke**—Does it suit you if we take it right up to today or would you rather go to the reporting period?

**Senator FERRIS**—I would like it up to today, if that is possible.

**Mr Crooke**—Can I ask Deborah to answer that. Yesterday there was a decision made that impacts on that.

**Mrs Clark**—Although there was an interim rise in the number of SES positions, there has been an amalgamation of positions and others have been taken out of the structure as part of the new national corporate model and national operational model. That has seen the SES numbers decrease—and by another three yesterday.

**Senator FERRIS**—What happened? Did three people resign yesterday or was there an amalgamation of positions?

**Mrs Clark**—No. It was an amalgamation of some positions. People have retired and various other things have caused this.

**Senator FERRIS**—Overall, there is a decrease in the number of SES positions from the reporting period here to today?

**Mrs Clark**—That is right.

**Senator FERRIS**—Are all staff receiving a salary above the base of band 1 SES or are there some on AWAs with other salaries? Have you got AWAs in the NCA?

**Mr Crooke**—AWAs apply to a lot of our SES.

**Mrs Clark**—For SES staff particularly?

**Senator FERRIS**—Not necessarily. All staff.

**Mrs Clark**—We do have a number of AWAs in place now, predominantly with our SES staff. There are a few now being scattered through the rest of the organisation.

**Senator FERRIS**—I guess it is more difficult with people transferring from state police forces.

**Mr Crooke**—They are on secondment.

**Mrs Clark**—This is for our permanent and APS staff. The types of positions that may have an AWA are more the short-term positions that are there for a period of time for a specific task, as with Public Service guidelines. We have 80 per cent of ongoing APS staff in full Public Service arrangements at this time.

**Senator FERRIS**—I always ask this question: has the proportion of female officers working at a senior level increased?

**Mr Crooke**—There is one.

**Senator FERRIS**—I am pleased to see it.

**Mr Crooke**—In fact, it does not get any bigger.

**Senator FERRIS**—It is a start. This is a question I have always been interested to ask. The only other area I would like to pursue is the use of former members and consultants. I note that Greg Melick was paid \$27,500 between late February 1999 and the end of June to advise on investigations. I see that Mr Bennett also received just over \$10,000 before his appointment. Since neither of them appear to have been engaged as counsel, exactly what were they doing?

**Mr Crooke**—We were very conscious of past history. Prior to Mr Irwin's appointment it took 16 months to get a third member. The place was almost paralysed. It almost killed Mr Melick. We wanted to avoid a repetition of this.

**CHAIR**—I would have to challenge that comment about it almost killing Mr Melick—he always seemed to me to be a very resilient person.

**Mr Crooke**—There you go! Some nine months before the termination of Mr Melick's appointment, which would have expired by statute, we set in train a process for the appointment of a substitute. We persistently requested that something be done about this. To cut a long story



short, at the end of the day some papers were not sent to somewhere in the pipeline by a particular day and there was some argument about whether you count a public holiday or not. The net result was that the appointment of our new member was delayed for six weeks. Mr Bennett had made arrangements with his employment to move and had been replaced by an acting person, et cetera. So as far as Mr Bennett was concerned, we were in the situation of having a lot of work to be done, needing handovers and everything else. The answer was that I made the decision to engage Mr Bennett as a consultant, pending this catchment process.

As far as Mr Melick was concerned, some very complex investigations were being done and we always have difficulty in getting the briefs finalised. It sometimes happens with the secondment process that the police involved in the investigations finish their term, go back to their parent force and it is very hard to get them to come back, especially to do paperwork like the preparation of briefs. We had a couple of very longstanding investigations that were being supervised by Mr Melick and he did his very best to bring them to fruition before his statutory term expired. It was all in his head. If we were to get somebody else in to retrace the steps—we are talking about 20 arch lever files of 1,000 pages, or whatever you get in a big arch lever file—I made a decision that, as far as efficiency in the NCA was concerned, it would be better to have this completed by a person who was aware of the complexities and to bring it to fruition so that it could be sent on to the DPP in the usual course. That is why you see Mr Melick's name there as a consultant.

**Senator FERRIS**—I now see he is doing some very interesting work for the Cricket Board. What about Dr Peter Crawford? What was his role?

**Mr Crooke**—Dr Peter Crawford was a person who I knew in my past life as a senior counsel assisting the New South Wales royal commission which reported extensively on reform of the New South Wales Police Service. He is an expert on organisational change. He has written books on the topic, and was very instrumental in a lot of the work and research behind the recommendations in that New South Wales police royal commission report which I must say were rather dear to my philosophical heart about desirability, ethical standards, et cetera. He is a consultant who I brought on board in relation to the way to approach change in an organisation where I was a newcomer.

**Senator FERRIS**—Is he still working with you?

**Mr Crooke**—He is, but the time that he now works is limited to a couple of hours a month.

**Senator FERRIS**—The only other question I had is really close to an operational matter, so I will understand if you are not able to go into too much detail about it. Are you aware of some intelligence that is around that suggests that there are now a number of major crime groups as distinct from those smaller entrepreneurial groups that we have been briefed on in the past? All members of the committee get odd phone calls and odd pieces of paper. This one has come into my office, so I am asking you about it in as tactful a way as possible. My information suggests that there has been quite a change in the structure and size of some of the crime groups so that they are now much larger and amalgamated in a common purpose rather than small and almost competitive against each other.

**Mr Crooke**—Yes. I would rather not answer that as a general matter. It might be embarrassing to your source of information if you yourself were more specific. I wonder whether we each have a difficulty in this regard. Because of the way you have phrased the question, at the present time I do not think I can give you a responsive answer because it is fairly broadly based.

**Mr KERR**—I have a couple of general questions and one or two that I wanted to ask in camera anyway, so perhaps we could come back to that.

**Senator FERRIS**—Maybe you would like to take it on notice. Unfortunately, I have another meeting I need to go to.

**CHAIR**—I think, to be able to take it on notice, he wants more information from you.

**Senator FERRIS**—It is difficult because my contacts are related to the motorcycle gang incidents in South Australia, of which there have been a number recently. The information I have got has come from somebody who has been part of one of those organisations. It is more or less inside information. I thought all you would probably do is confirm that you are looking at it or not looking at it. I did not expect you to go into any detail.

**Mr Crooke**—We are always very alert to pursue any credible intelligence that relates to organised crime.

**Senator FERRIS**—I am conscious of that.

**CHAIR**—You should have been in the diplomatic service.

**Mr SCHULTZ**—The CPSU submission claims that a majority of appointments to the NCA over the last 12 months have been of a temporary nature and, in fact, 23 per cent of staff are now temporary. It also says there is an attrition rate of 24 per cent per annum and that the proposed amendments would accentuate this trend, obviously resulting in a loss of corporate memory and expertise. I have also noted that there was an advert in the *Weekend Australian* of 24 and 25 February offering an EL2 position with the head of telecommunications interception only on a five-year contract. One would expect this position to be a key permanent position of the senior management team. Can you explain why the composition of the NCA staffing appears to be changing towards one with less permanent staff, relatively static numbers of investigators and more highly paid desk jockeys? Have the extra chiefs been appointed at the cost of a much larger number of Indians?

**Mr Crooke**—If I can take your question on notice, because I do not know whether we have all the data here. I can certainly provide you with the data because our thrust in the move towards the future direction is to abhor any concept of an inverted pyramid. We want the workers and we want as few chiefs as possible and we are moving towards that. At this moment, we are in the process of undertaking a very major review of the whole organisation that is based upon relativity and flattening of the structure so that any move that is being made is not to try to put people at the top end, it is to try to put people in at the worker bee level with a flattened structure and as few 'senior management' types that fly a desk as possible. That is a very deliberate policy of our way forward. It is a misapprehension to feel that the figures are

showing otherwise. When we are able to give you these—and we do have some here, but I want to make sure that we give you them in their entirety—

**CHAIR**—Take it on notice.

**Mr SCHULTZ**—I do not have any problem with that. Can you outline the recruitment practices in general, especially for SES vacancies? Have any SES officers been appointed without their vacancy being advertised?

**Mr Crooke**—You could only appoint an SES officer in accordance with guidelines from the Public Service Management Commission. They take a very keen interest in it. This includes some very indispensable things, such as advertising, having a person on the selection panel that has no connection with your own agency and having criteria for selection that are approved by the Public Service Management Commission, so that you are not in a position to appoint an SES officer unless you do it in a way that is government-wide.

**CHAIR**—So your answer is no?

**Mr Crooke**—Yes.

**Mr SCHULTZ**—Why has it been necessary to appoint a general counsel? As part of the question, Mr Boulton is not listed on page 108 under ‘Consultants and counsel engaged’. Under what terms and conditions has he been employed? Was that position publicly advertised? Has he been appointed for a specific matter or term?

**Mr Crooke**—Section 50 of the NCA Act says the chairperson may appoint a general counsel. The history of the NCA in years gone by was that there was a general counsel. The position was not filled for some time. I filled it because I perceived there to be a need to have an experienced legal person who was versatile in his range of skills. I refer not only to criminal law, but I thought Mr Boulton was well qualified for the position because, after 25 years at the bar, he spent some years on the bench of the Commonwealth Industrial Court, so he was very familiar with the industrial situation.

To do this in-house creates great savings for the NCA. There was a hiccup a little while ago when the Attorney-General’s guidelines as to representation in matters in dispute in the industrial area were interpreted as saying that we had to get an outside person or firm to represent us. For something that was resolved rather speedily and with minimal time before the court, we received a bill for \$11,000. It does not take many of those things to justify the engagement of a person proficient in handling these things without having to outsource it in the current market.

Mr Boulton’s long experience at the private bar in the area of civil, industrial and criminal litigation makes him a singular asset to the NCA. As far as conditions are concerned, he is on an AWA. I took advice about how he should be employed. As you can see, the foundation is an appointment under the act rather than advertising or creating a position as part of a management structure. His AWA was negotiated in accordance with other competing opportunities that he had. I think the figures are disclosed in the report, or if you want me to give you the details, I

can do so. There is a sensitivity about the making public of people's conditions if it is not entirely necessary, but in no way am I attempting to deprive you of information that you require.

**CHAIR**—Mrs Clark is shaking her head vigorously.

**Mrs Clark**—We cannot make them available—the conditions of employment—because he is employed under an AWA.

**Mr EDWARDS**—What about the term?

**Mr Crooke**—The term is three years. I did not answer the question about the—

**Mr KERR**—I understand there are some sensitivities but I cannot believe that an organisation cannot account to a parliamentary committee in relation to the terms of appointment of one of the most senior members of its staff. It seems to me absurd.

**Mrs Clark**—Not the financial conditions of the appointment.

**Mr KERR**—It seems to me absurd. Under what proposition do you assert that? Our legal obligations override any agreement you enter into.

**Senator GEORGE CAMPBELL**—What is the difference between Mr Boulton and the head of the ABC? His terms and conditions of employment were publicly disclosed at an estimates committee hearing last week.

**Mrs Clark**—I think it is because he does not have the arrangements with anyone external to the organisation, it is within the organisation. I think there has to be a specific process that goes through. Mr Crooke's conditions may be able to be made available, too.

**Mr KERR**—They are part of the statute.

**Senator GEORGE CAMPBELL**—Mr Boulton is on the public payroll, isn't he?

**Mrs Clark**—Yes. He is an SES 3.

**Mr Crooke**—That is not necessarily so. That is an ex post facto thing. Somebody once said to me it had something to do with privacy legislation, but I do not know what, and I am very conscious of the fact that the parliamentary committee—

**CHAIR**—I think we are going around in small circles here. I must admit my personal view would be much the same as Mr Kerr's and others—I am a bit surprised that somebody is on the public payroll and the parliamentary committee cannot find out what their conditions are, quite frankly.

**Mr Crooke**—I have got no instinctive wish to keep it from you, it is just that I have got some vague understanding that there is some inhibition about it.

**CHAIR**—To resolve the matter for the moment, perhaps you can take on notice that the committee would be interested to find out. You might like to go away and have a look at that. If you feel you are not able to supply the required information, you should let us know the basis on which you feel you cannot do that, and then we can deal with that situation. Otherwise we are going to go around in small circles.

**Mr Crooke**—Very well.

**Mr KERR**—Perhaps we could deal with it, if we thought it appropriate, by receiving information in confidence.

**CHAIR**—That is distinctly possible.

**Senator GEORGE CAMPBELL**—With respect to the issue of performance pay, when you are looking at the issue of Mr Boulton's figures, can you provide us—if you have not got them here, and I presume you do not—with the amount of performance pay paid, whether or not all employees receive performance pay, how many employees receive performance pay, at what level within the organisation those employees are employed who receive that performance pay, and the average payment?

**Mr Crooke**—Yes. That is an issue for us. It is something that I have flagged in relation to discussions concerning future certified agreements, because we have got a certified agreement in place at the moment that goes for two years. But what we are finding is that the certified agreement is such that this performance pay is not by way of a bonus that is a once-off for your performance for the year; the way the agreement has been fashioned is that it is by way of salary increase. Therefore, you get a compounding effect. If somebody does well enough to get a performance increase, it increases their salary by a certain percentage. So the next year there is a compounding effect. We are finding that, as the years go by, people, through this process, find themselves way above the level of remuneration for the job and even the sort of level that the job is pitched at. We have got to address that.

In recent AWAs, I have taken the view, because the contract is between me and the employee, that this sort of performance pay is not something we will agree to. The employees have, with the involvement of the Employment Advocate, agreed to terms in the AWA so that salary is renegotiated at periodic intervals but there is a CPI increase in their basic salary, provided they are still there. That is a much more moderate impost than the other approach. It is surprising how this compounding effect can increase a particular salary.

**Senator GEORGE CAMPBELL**—Could we have the details of the criteria from which performance pay is measured?

**Mr Crooke**—Yes.

**Mr EDWARDS**—Mr Crooke, under the subheading 'Internal and external scrutiny', you note that the PJC monitors and reviews the performance of the NCA. As chairman of the NCA how would you rate the effectiveness of the PJC as a monitor and reviewer of the performance of the NCA?

**Mr Crooke**—I would regard it as very helpful and very effective because, when I come to any discussion with the PJC and I put something on the table, I am able to benefit from the fact that people tell me how it is. I have a wide spectrum of elected representatives of the community. The process itself has great merit and potential. The practicalities of it working out, where I regard it as being a forum where frankness is the keynote, give me in my position a lot of assistance.

**Mr EDWARDS**—How then do you see the PJC? What do you think its strengths are as a vehicle of public accountability for the performance of the NCA?

**Mr Crooke**—Its limitations would seem to be that it is not in any position to be a fly on the wall as to minutiae of what happens on a day-to-day basis at the NCA. Its ability to get to the core of anything that might be a problem will have to depend not on its own knowledge. I guess that is only natural. People have other things to do than poke their heads in the door of a NCA office. Having said that, I hope I am able to float ideas before the committee at regular meetings. I try to keep the committee informed of the directions in which we are going. I try to highlight to the committee problems which I perceive. An example is the question I did not get to address from Mr Schultz about this short-term employment. I would like to come to that because it is a very deep management issue as far as the future of the NCA is concerned, but I do not want to cut short a thorough dealing with Mr Edwards.

**Mr EDWARDS**—Perhaps I could put it more bluntly. Is it not the case that the ability of the PJC to oversee the activities of the NCA is based almost entirely on the degree of frankness between yourself and this committee?

**Mr Crooke**—To a great extent, yes. But, if there were any scandal brought up in the media or public by reason of some parliamentary question, that would perhaps take it further than the frankness of anything that I might choose—that is, beyond what is going on in my head, as it were. There are these other processes that perhaps highlight things. People are not averse to writing letters to the chairman of the PJC from time to time, who sometimes is seen to be the cure of all ills in certain people's minds. That process is such that directly some communication might come that could excite the committee's interests, and so it might be from other areas beyond what might fall between us across the table here.

**CHAIR**—We will come back to Mr Schultz and his temporary appointments question.

**Mr Crooke**—What the NCA needs to be able to do in its management is to be, above all, flexible in its approach. We do not get any choice in relation to this short-term secondment of police. That is another issue that I am dealing with in a different way and hoping to bring about particular change. A question always arises as to how you are going to be flexible if you have people on very long-term appointments that are possessed of conditions that make it very difficult to move elsewhere or even to say that their use-by date has passed. The business that we are in needs us to be able to deploy resources to cope with contingencies and vicissitudes. A particular operation that we are doing nationally might call for a certain focus on core skills and abilities in a particular area. As you move forward to another phase of the operation, those same core skills and abilities are not needed. Similarly, you may also need a concentration of people in one business office in one state rather than another, and it is no simple matter to have a permanent person there who has family and commitments in a particular state, and say to them,

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‘Excuse me, I’m tapping you on the shoulder, will you now move from Adelaide to Perth?’ or wherever it might be.

You are constrained in relation to flexibility if you are dealing with people with long-term appointments. The history of law enforcement seems to be moving towards acknowledging the fact that it is not so much a lifetime career that you are looking for, it is something where there is a degree of flexibility to pause, on both sides of the equation, and look at where this is going to take you. It seems to me that the NCA is not necessarily the place for somebody to have a lifetime career. It is a very intense focus on some fairly hard, complex stuff. You would hope that young people, such as financial analysts, et cetera, would see this as a stepping stone in their career. We try to make the organisation something that would redound to their credit on any CV. You are looking at a situation where you get people in and you maintain their enthusiasm. I have got to say that you expect more from them than what would be expected from them if they chose to go to another area in the community, whether it be in the public or the private sector. We demand a lot of them. We expect a lot of them because in the blue corner you have got those people who are mentioned as the perpetrators of organised crime.

**Mr SCHULTZ**—With due respect, you have that sort of situation in the policing area. Some of the people in the AFP operate under that system, and they operate under it for all of their policing lives. To me, that is not an argument.

**Mr Crooke**—They are employed under the AFP Act, and you have got a very significant factor there, and that is, if the commissioner loses confidence in them, he can ask them to leave. That is something that is foreign to any sort of consideration that obtains under the Public Service Act. You have got these people and you do not have the ability to rethink as to whether they should be there for so long.

There is another fundamental consideration, Mr Schultz, that the writings on corruption tell you as a matter of collective wisdom: it is not a good thing to have people who are investigating heavy criminal activity to be too long in the one place.

**Mr SCHULTZ**—I would agree with that. It is part of the problem of corruption in our police forces around this country.

**Mr Crooke**—Yes. This is a bother because, whatever might be said about the flexibility of the Public Service Act, and sometimes one hears quoted the second reading speech in relation to the introduction of the new Public Service Act in 1999, that second reading speech, of course, took place before amendments were introduced. At the end of the day, the result of amendments to that act was such that flexibility really is very much constrained by the requirements of the act. I find it very hard and ponder a lot about getting the necessary legal foundation to bring people into the organisation on other than what they call an ongoing—to me, the interpretation is more or less permanent—basis. That is a worry because I do not think it is for the good of the organisation that it has people there that have the expectation and almost the legal right to remain there as long as they want to, because I think there has to be a capacity to review things at, say, five-yearly periods to see whether that is the balance—

**Mr SCHULTZ**—I think I have got the message, Mr Crooke. Finally, on that specific point, what is the length of time that a temporary position attracts? Is it six months, nine months, three years, five years?

**Mr Crooke**—The bottom line in relation to the Public Service Act is a couple of regulations that codify the circumstances in which you can employ people other than on an ongoing basis. Essentially, if there is a specific task that can be specified and that task has a finite period, which again you can estimate, that is one thing. That can be a period of up to a maximum five years, but it depends on what you can estimate is the length of the task.

**Mr SCHULTZ**—So it can be anything from zero months to five years?

**Mr Crooke**—Yes.

**Mr SCHULTZ**—I find that astounding.

**CHAIR**—That is not his fault.

**Mr SCHULTZ**—No. The final point I want to make is how can you have efficiency in a system of temporary employment and how do you expect that temporary employment to operate in your organisation when you are filling it up with you beaut equipment and replacing outmoded systems? I just find that puzzling; I really do.

**Mr Crooke**—I would like to answer that because I have got a particular view about this. I think corporate memory is as good as the next council bus. If you rely on something being in somebody's head and not in your systematically kept holdings, you take a colossal risk because you imperil yourself and you place all your eggs in the basket—that is, the memory of that person. You cannot run an organisation like that. You have to have corporate memory as part of your management structure and part of information sharing, which is the lifeblood of an organisation such as this.

The minute I see a person who appropriates stuff to his own head and it is not there for other people to be able to access given the need to know, I recoil and try to do something about it, because I do not think you can run an organisation such as this on any premise that says, 'If you want to know anything about this, go and speak to Fred.' Fred is there in his cave and he is the only repository of that information. To my mind, you cannot do this job with that system. So the argument about corporate memory does not carry enormous sway with me and the argument about flexibility has the balance in favour of it. Having said that, I am sure I will be talking to you in more detail of the problem we have got with the short-term secondment for police officers. That is a multifaceted problem. It speaks for itself. Often they are there for only two years and then they are gone. A lot of the two years that they are there, there is an issue about whether they can be clawed back to go on courses to be trained for when they go back to their home force.

**Mr SCHULTZ**—I understand the difficulty.

**CHAIR**—Two years is sometimes the only life expectancy of a member of parliament, in the House of Reps anyway.

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**Mr SCHULTZ**—Not in the upper house.

**CHAIR**—Mr Kerr has some questions which he thinks are appropriate for an in camera session. He has told me the nature of those questions and I agree with him. If the committee is agreeable, we will conclude the public hearing. I would like to thank *Hansard* staff, witnesses and committee members.

*Evidence was then taken in camera—*

**Committee adjourned at 8.04 p.m.**