



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

Reference: National Crime Authority annual report 2000-01

MONDAY, 24 JUNE 2002

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

Monday, 24 June 2002

Members: Mr Baird (*Chair*), Mr Sercombe (*Deputy Chair*) Senators Denman, Ferris, Greig Hutchins and McGauran and Mr Dutton, Mr Kerr and Mr Thompson

Senators and members in attendance: Senators Denman, Ferris and Hutchins and Mr Baird, Mr Dutton, Mr Kerr, Mr Sercombe and Mr Thompson

Terms of reference for the inquiry:

National Crime Authority annual report 2000-01.

WITNESSES

BENNETT, Mr James, Acting Chairman, National Crime Authority.....1

CROOKE, Mr Gary, Chairman, National Crime Authority1

HICKMAN, Mr Jon Meredith, National Director, Corporate Services, National Crime Authority1

WHIDDETT, Mr Adrien, General Manager, National Crime Authority1

Committee met at 8.04 p.m.

BENNETT, Mr James, Acting Chairman, National Crime Authority

CROOKE, Mr Gary, Chairman, National Crime Authority

HICKMAN, Mr Jon Meredith, National Director, Corporate Services, National Crime Authority

WHIDDETT, Mr Adrien, General Manager, National Crime Authority

CHAIR—I declare open this public meeting of the parliamentary Joint Committee on the National Crime Authority. I welcome Mr Gary Crooke QC, who is overseas but he will give his evidence via telephone conference. I also welcome Mr Jim Bennett, Mr Adrien Whiddett and Mr Jon Hickman who are present in person.

The committee prefers all evidence to be given in public, but should you at any time wish to give your evidence, part of your evidence or answers to specific questions in camera you may make an application to do so, and the committee will give consideration to your application. I point out, however, that evidence taken in camera may subsequently be made public by order of the Senate. I invite you to make some opening remarks about the committee's inquiry into the *National Crime Authority Annual Report 2000-2001*. At the conclusion of your remarks I will invite members of the committee to submit questions to you. Gary, would you like to start the batting?

Mr Crooke—If it is all right with you, Mr Chair, I have spoken to Jim Bennett, and he is prepared to make some opening remarks which we have both discussed. I just thought it might be better if the committee heard that in person, and then I am obviously available straight thereafter.

CHAIR—Okay. We might just press on, and where appropriate we will flick across to you.

Mr Crooke—Thank you. I can hear you quite clearly.

CHAIR—Jim, would you like to kick off?

Mr Bennett—Yes, thank you, Mr Chair. The report that is the subject of the evidence here this evening is almost 12 months old. Much has occurred in the course of events following this reporting period. Those events have had enormous significance for the National Crime Authority and for the members of staff of the authority. We are here tonight to do our best to answer the questions that the committee has, and I am joined by our general manager, who can speak essentially to the operational aspects, and our national director of corporate services, who can speak to the matters of corporate significance. If called upon, we would also be in a position to speak about the progress of the authority since the reporting period expired.

As I said, the events that followed the reporting period have been significant, including the government's stated intention to review the National Crime Authority that was announced during the most recent election campaign. There followed the Palmer-Blunn review and the Commonwealth-state summit, to each of which the National Crime Authority and its members

of staff sought to make as meaningful a contribution as possible to assist in that review process. These events have had an impact upon the organisation and the time of our members of staff. In my assessment, that impact has not in any way detracted from the commitment of staff to their task of pursuing the core business of the organisation.

We have made significant progress in our work since the reporting period, including the use of the enhanced powers given to us in the amendments to the National Crime Authority Act that came into law in October last year. The annual report for this period was tabled on 21 March 2002. This involved some delay, but the details behind that can be addressed in due course. It was, in essence, as a consequence of the need to have all jurisdictions sign off on the report before it could be tendered. The final response from an IGC minister was received on 11 February 2002. Throughout the period of the report and continuing up until the present time, the chairman's future directions strategy announced in May 2000 has continued, with the National Crime Authority pursuing complex national organised crime and nationally significant criminal syndicates, rather than regionally focused organisations and operations.

We have seen the development of a more sophisticated approach to our intelligence gathering. The details of that should, with respect, be examined—if necessary—in closed session because of the sensitive nature of the features of that information. We have also implemented and pursued a program to increase our ability to detect and counteract cybercrime in the period through and since the report. We have continued to devote resources to law reform issues not only towards the amendment of our own act to facilitate our work but also towards law reform measures generally to facilitate the investigation of crime across the nation, by all law enforcement agencies.

Most importantly—I will finish the opening upon this point—the successes that we have had and the achievements that we have been able to demonstrate have not been through the work of the National Crime Authority alone but in conjunction with its partners in the pursuit of organised crime. Without them we could not have achieved as much as we have. Thank you, Chairman.

CHAIR—Thanks very much. Mr Crooke, did you want to add anything to that?

Mr Crooke—No, thank you, Chairman.

CHAIR—Perhaps for ease in terms of the way we handle this, it might be worth while if we break it down into the various sections which the secretary of the committee has suggested, talking generally about the work of the authority first. To head off the batting I will ask you: what do you believe is the most significant achievement that you made during the 12 months of this report?

Mr Crooke—It is what is between the lines. There are a couple of major figures that were the subject of protracted NCA investigations, and those investigations culminated in their arrest. These figures were at the forefront of organised crime and had escaped detection, in one case for 20 years and in another case for almost as long. It is one of these situations where law enforcement knows that these people are heavily involved in organised crime but yet they are so cunning, so careful and so aware of law enforcement methodologies that it is very difficult

indeed to be able to get cogent evidence. In these cases, the operations were successful and, in fact, convictions followed the closure of the operation.

The other thing is bringing about a change in the philosophy and the focus of the NCA. The NCA has been in existence since 1984. In 2000, as Mr Bennett said in the opening, the chairman's future directions were announced, and these related to changing the focus of the NCA. It was a concentration upon fewer operations and operations that were truly sophisticated, national and, for that matter, long term. To change an organisation and the culture of an organisation is no small undertaking, whatever the organisation might be. One of the challenges that were faced was that there was, to some degree, a perception that the NCA was doing work that could and should have been done by state or territory police forces or, for that matter, the Australian Federal Police.

Each of these law enforcement entities possesses resources, skills and great experience. There really is no place in the Australian law enforcement scene for duplication of what they do—and what they do well. The thrust of Future Directions was to ensure that the NCA would play a role that was complementary to these law enforcement bodies while not treading on their patch and focusing on matters that would bring with them limitations to the ability of either the AFP or a state or territory law enforcement agency to see them through. On one hand I think everybody appreciates that state jurisdictions have limitations—they can only go to the state border. For that matter, the Commonwealth legislative jurisdiction intrudes very little into criminal law. Much of the criminal law in Australia is the subject of state legislation. In these areas there is a crossing between state and Commonwealth legislation. In interstate criminal activity—or activity that stretches across state or even national borders—the NCA can play a very real role.

Coming back to your question about achievement, we have turned the corner. For a start, we set up an entirely different organisational structure in the National Crime Authority. Beforehand, there was a series of regional offices that because of the management structure focused upon things that were happening within their own states. That was changed. We moved towards conducting only national operations. We spoke no longer of state offices but of national offices. For the planning, organisation, command and control of operations, this moved to a national basis. Operations would not be centred in one state office but would have a national team likely to include members from every office throughout Australia. So too in the corporate area. Corporate responsibility in each state office became nationally devolved; everything emanated from a national control at the one point.

All this helped to bring about a change in culture. One of the most heartening things has been in the course of more recent discussions on the NCA's future. At meetings, the police commissioners of the states and territories have made it absolutely crystal clear that they do not regard the NCA as interfering with their line of work. In other words, they have disavowed completely a pejorative epithet that was previously attributed to the NCA—it was described as a ninth police force. I think it is a very important part of the progress of the NCA that the police commissioners in the states and territories have completely disavowed this. It is heartening to see that this comes not from the NCA stating its own perception but from the people whom we serve. That has proved, it seems to me, that corners have been turned.

CHAIR—You mentioned that some of the NCA's overall objectives are qualitative. But in other areas they are very much quantitative measures. An example of this is table 3.1 on page

48. It compares a number of charges resulting from the NCA's investigation over the last three reporting periods. The reduction in charges and persons charged is noted as being due to the new focus in May 2000 on complex national organised crime. However, the problem is that the numbers of charges have dropped by around two-thirds and the number of persons charged has also dropped, though not so dramatically. If we accept that these measures are not the only methods of assessing the effectiveness of the authority, it seems there has been a dramatic decrease in results, even allowing for the shift in focus to large-scale criminal activity. How do you propose to report the results of the authority's activities in terms of the qualitative measures you outline on page 48?

Mr Crooke—That is a very interesting question because it is a challenge that the NCA has accepted and taken up as part of this new direction. We have searched for best practice overseas as well as throughout Australia and this sort of reporting and criteria or outcomes is not easily determined and discerned in a way that is meaningful. We are trying to light upon a reporting mechanism that encompasses the flow-on effect and the disruptive effect of what happens. For example, if one of these persons was involved in a particular syndicate we would strive to report that fact and to incorporate a description of the operations of that syndicate in order to relate the relevance and the significance of it. I can sympathise completely with your inquiry as to it being, on the face of it, different from what it used to be. This has to be explained so that the accountability of the NCA and the effectiveness of what it is doing can be demonstrated. But it is something that goes well behind the façade of the particular investigation.

One of the things that possibly raised the statistics for particular charges is that some of our tied funding has been related to the pecuniary returns on the money that has been advanced. For example, a very important part of the work the NCA has been doing has been in an area called Swordfish which has been funded by what we call tied funding over and above the ordinary funding in the budget. Some years ago \$20 million was given to the NCA with an expectation that some \$70 million in returns—either in confiscated property or in tax assessments—would follow. That has been more than exceeded but this is an example of there being a premium on creating a multiplicity of investigations in order to have these quantitative statistics. Before the change, in many of the cases the statistics related not to people at the top of the food chain in organised crime but, for example, to people closer to the dealer level. They were fleshed out in the course of operations and there was no hesitation in making the arrest. The change means that this sort of information relating to the lower levels of operation—provided that it does not compromise the major effort of putting the net around the whole syndicate and the links that that syndicate has—is now given to the state or territory police so that these statistics go onto their sheet rather than the NCA's sheet.

CHAIR—Because we have a number of people here on the panel it might be useful if you could try to restrict your answers a little, without taking away the quality of the answers. I have several colleagues who want to ask questions.

Mr SERCOMBE—I would be interested in turning to a more detailed understanding of some aspects of the NCA's operation. From the figures that are given on page 48, there was obviously a very heavy concentration on drug related charges. On the next page we have got a situation which demonstrates the nature of the seizures of drugs. I am just wondering how this predominance of drug related offences fits into the concept of national-state delineation of functions. Are the charges reflected here largely charges of a Commonwealth nature? Where do

we draw the boundaries here between Commonwealth and state offences, given the importance of drug related charges?

Mr Crooke—There is a mixture. Indeed, there is a table that I believe shows the difference between the two. I might ask Mr Whiddett to take you to that in a moment. As to the concentration on drug related activity, this is very much the product of priority setting by the IGC. There are priorities set by the IGC and they can be changed if the IGC wishes at each meeting. But South-East Asian organised crime is the chief priority and, sadly, the area of organised crime under this definition is very much drug related. So that is the explanation as to why the NCA has to husband its scarce resources to do the best it can to give such priority as it can to this. If you are interested, Mr Deputy Chair, there is a table which I cannot directly turn up in the papers that I have in front of me, but perhaps Mr Whiddett might be able to help you with the numbers of Commonwealth as opposed to state charges.

Mr Whiddett—The state charges certainly exceed the Commonwealth charges in this chart that I have before me—91 Commonwealth matters against 334 state. The reason for that is that a lot of the work that we do is with the state law enforcement agencies and through the task forces, so a lot of that relates to the possession and the distribution of drugs internally, whereas the Commonwealth offences, generally speaking, relate to drugs that are being imported into the country. So a lot of those are Commonwealth offences. Certainly in the task force arrangements and in some of the work that we are attempting to do in getting under the skin, if you like, of organised crime, there is a need to deal with more street style offences. Particularly in relation to some gang related activities, it is important to understand the anatomy of how they work, and it is important to be involved in that street level type offence.

Mr SERCOMBE—On page 49, which has the table I referred to of numbers of seizures, there is a reference at the top to the following table indicating the quantity of drug seizures ‘associated with NCA operations’. What do you mean there by ‘associated’ with NCA operations? Are you saying here that this is an ancillary—

Mr Whiddett—No. Some work is done by the NCA in its own right, but a lot of work is also done by the NCA with other organisations, whether it is with the AFP and/or state and territory police or with the state and territory police. So there is often a combination of work done there. For example, because of the size of the organisation, because we are quite small and spread fairly thinly, it is crucial in major cases to involve other law enforcement agencies, particularly in peaks and troughs of activity. In cases where, for example, there are importations and perhaps anticipated other work, we would certainly be involved with the AFP and perhaps pass it over to the AFP.

Mr DUTTON—I will start by acknowledging the work the NCA has conducted during the period 2000-01 and by congratulating you and in particular those investigators and members of the multidisciplinary teams that have brought great results. On that note, on touching on the multidisciplinary approach, could you comment perhaps on the success or otherwise of that approach and could you make any suggestions as to how, as you go forward, that process could be enhanced, particularly in an operational sense, in assisting those people on the ground investigating these offences?

Mr Crooke—It goes to what police investigators become used to. We have struggled with this, because there is a revolving door in relation to secondments. Many of those secondments are only for two years, and the enculturation of good police investigators into our ways is something of a challenge. By the time they are becoming used to it, back they go to their home force. I have spoken to the police commissioners about this, and one of the hallmarks of my time in the NCA, and it is something that we gratefully acknowledge and appreciate, is the degree of cooperation and support we get from all the other law enforcement agencies—in particular, the various police forces—but they have their problems. They give us very good people as far as the seconded police are concerned. The usual period is about two years. As I have said, I have spoken to them about this and there is a general preparedness to allow secondments to go a little longer—but only for three years. But even that, although better, still has its difficulties for people in becoming accustomed to the different way that things are done.

The other thing as far as improvement is concerned is state-of-the-art resources, computer programs and the like. The NCA runs on the smell of an oily rag, really. I said to another parliamentary inquiry that we do not have state-of-the-art resources; we have state-of-the-ark resources. We have so many things that the budget has to cope with that we are a bit behind the eight ball in relation to state-of-the-art electronic activity by criminals and office people alike in this day and age. So up-to-date resources would be a big thing in relation to improvement and working on this question of continuity in relation to seconded police.

We have started the ball rolling by getting contract investigators. We have a pilot program going, engaging people who are not seconded but who have a background in law enforcement. They may have retired or resigned from the police for whatever good reason. We have a small core of people we are experimenting with to try to overcome this question of continuity and of fitting in to the new way—the NCA way—of doing things.

Mr DUTTON—Thank you for that answer, but I might take you to task on one issue. With 395 staff members employed by the authority as at 30 June 2001 and a budget of almost \$53 million, I think there are other law enforcement agencies across the country that would be quite envious of the NCA's level of funding. But I would like to go on to ask you a second question, following on from the issue of the multidisciplinary approach that the NCA adopts, looking in particular at the involvement of the Australian Taxation Office in Operation Swordfish and at the number of changes that were preferred of a tax nature. I can see, by your report, your success; in particular where, on page 43, you write of voluntary tax compliance and the like. What sorts of charges were preferred and forfeiture orders obtained by the ATO's involvement in Operation Swordfish in particular? Perhaps that is best directed to Mr Whiddett.

Mr Crooke—Yes, he might be able to help you more directly.

Mr Whiddett—There were over 40 persons charged; tax assessments for over \$191 million were issued against 1,100 individuals and companies; and more than \$52 million was recovered directly by the ATO. There was an estimated gain of additional revenue through tax compliance of about \$100 million. The confiscated proceeds of crime amounted to just under \$10 million, and about \$8.5 million in assets is currently restrained.

Mr DUTTON—What was the number of convictions?

Mr Whiddett—There were over 40 persons charged, and tax assessments for over \$191 million were issued against 1,100 individuals and companies. A lot of this was exemplary work—in other words, there was a higher degree of compliance—so that is considered to be part of the success of Swordfish as well.

Senator DENMAN—When there is a request from a state or territory government for the involvement of the NCA, who foots the bill? Is it a shared cost or does the NCA foot the bill entirely?

Mr Crooke—If it is an NCA exclusive operation, as it may be, the NCA foots the bill entirely. If it is something that is a matter for an existing task force, or even if there is a new task force created, the states foot the bill for the involvement of their people who are part of the task force but not the bill for other states which might be a part of it.

Senator DENMAN—You have reciprocal arrangements with the police, with police officers coming into the NCA and so on—I think you said for two years. Do those police lose any advantages from their home state by doing that?

Mr Crooke—That is a very good question. On paper they do not, but the culture or the perception is that, when you go away from home to a job like this, you come back and they say, ‘Constable who?’ or ‘Sergeant who?’ This is something that we hear from our people and it is something that I have discussed with the police commissioners, who have great sympathy. The last thing they want to happen is for anybody to be disadvantaged by coming to work at the NCA. Reality or practicality seems to have it that there is an apprehension amongst those who come to us because when they go back they are somewhat overlooked, and they might have lost a little bit of ground.

Senator DENMAN—I just want to make a comment, but I do not expect you to comment. It seems to me to be a waste to be using resources to pick up cannabis. In 2000-01, you certainly got a lot more than you did in 1999-2000. To me, it is a waste of resources, but I will leave it at that.

Mr KERR—Obviously the working through of the strategy that now is at the core of the work of the National Crime Authority challenges the way in which you report to this committee and how your work is understood because, if you compare columns of figures against columns of figures, you would appear to have a declining effectiveness rather than an increasing effectiveness. I wonder whether we need to recognise this in some way and get some greater descriptive value of the nature of the work that is being undertaken or at least the thrust of some of the work that is being undertaken. I think it is possible to understand your strategic view. For example, there is an argument that getting a conviction against Al Capone for tax evasion ultimately brought him down, whereas a series of smaller convictions against his loyal lieutenants never did. Nonetheless, I think it is a point that you might reflect on in terms of the way in which the report is put together, to give some greater emphasis to the way in which this new direction will ultimately have an effect to the community benefit.

Mr Crooke—I am very grateful you have raised that point, Mr Kerr. It is something that we are most interested in and something that I think may perhaps productively be taken up in closed session discussions with this committee. The NCA has tried very hard to get this right.

We have gone to great extent to obtain a report from a consultancy firm as to how best we can embark upon this in the context of a move towards a repricing of the NCA, which related to it doing this type of work or with this type of approach. This followed discussions with the department of finance, who were not discouraging us moving in this direction. We have a number of initiatives that are on the drawing board as a result of a comprehensive report from these consultants, but events of more recent times have caused these to be somewhat put on hold.

Mr KERR—Can I take you to that because, if I am correct, the end of your next reporting period is looming at the end of this month. On the last occasion, perhaps because you were moving to a different approach, you did not get the report to the minister until the end of November, which in itself was late. The delay in getting the IGC tick-offs means that we are looking at a report pretty out of date in terms of some of the issues that the parliament is going to have to address and this committee is going to presumably be set to consider in the not too distant future. Is there any possibility of getting a report from the NCA rather more rapidly; in other words, to address these matters and get the report into the minister's hands quickly so that, if we are pressed to formulate a view regarding alternative models for a crime commission, your report will be of value and it may even be useful in the debate as to whether that direction should be adopted.

Mr Crooke—I think there is every possibility of that and I think there is everything to be said in favour of it, and I will make every effort to get that report completed and delivered as soon as possible.

Mr KERR—Is there anything that you could usefully provide to the committee about what occurred during this reporting period that you think might go to the necessity for the kind of broad reform approach that the government is proposing? Is there anything that you think could not be done adequately under the arrangements that were then in place that you ought to draw our attention to?

Mr Crooke—We are looking at a pretty big contrast here with the present exercise. When the NCA was set up in the early 1980s, as you are well aware, it seems—from reading the papers, debates and discussions—that there were some three years of careful thought before a final product emerged and there was deep consultation between the states and the Commonwealth. I must say that the more one looks—and I am speaking from a personal perception—

Mr KERR—and from Paris, which always puts you at a disadvantage in these forums.

Mr Crooke—Exactly. The more one looks at the detail and the synergy and the coming together of the various aspects of what the current statute calls upon the NCA to do in a federal system—and here I am trying to be objective and I invite anyone who thinks otherwise and is not convinced to continue this—the more one sees the wisdom in the consultation that went into that process.

What we are looking at now is something that has emerged rather suddenly and, as far as reports or scoping the problem are concerned, the NCA has always found difficulty in determining just what is the problem that has to be addressed. It is one thing to say that there is a problem with references. The answer to that is yes, the reference system is complex. Then, it seems to me, there are ways that this can be addressed and should be addressed. Anything that can

streamline the reference system will be an improvement in relation to the NCA, but I wonder very much whether this cannot be done by some underpinned by statute approach rather than having a large committee determine the nature of references or their successors. That is perhaps another issue. I could talk for a very long time about this, but—coming back to your question—the NCA has always found a difficulty in discerning for its own part what the problem is, apart from the fact that any improvement or expediting of the reference system would be a consummation devoutly to be wished.

Mr KERR—I was really seeking of you whether there was anything that you drew to the government's attention or, in turn, that was drawn to your attention by way of dissatisfaction with the way in which the system was operating by any IGC member—or, indeed, by any of your partner law enforcement agencies—that you think is relevant to the reporting period that we are presently considering?

Mr Crooke—The answer to that is no, there was nothing that was drawn to my or the authority's attention.

Mr KERR—The issues you drew to the government's attention, I assume, are the issues that you note in that report, although falling outside the reporting period, which were the subject of amendment in the parliament, and those changes are now in operation?

Mr Crooke—Indeed, we spoke of shortcomings that could be improved by legislation, and there was a government response and ultimately a parliamentary response.

Senator HUTCHINS—I have just joined the committee. What does RGC stand for?

Mr KERR—IGC.

Mr Crooke—RGC?

Senator HUTCHINS—Sorry, IGC.

Mr Crooke—The IGC is the intergovernmental committee, which is a committee set up by the NCA Act. It is a committee that, ultimately, gives the NCA its special work. It is made up of the Commonwealth Minister for Justice and Customs and by nominated ministers from each and every state and territory—usually, but not necessarily, the police minister. They come together to consider requests for references by the NCA. The NCA uses its special powers only in cases where it has been granted a reference, and the IGC is the body that does that. It also has other monitoring and like functions.

Senator HUTCHINS—On page 51 in the section called 'Proceeds of crime', it does not seem that there is more than \$20 million in proceeds of crime. It hardly seems worth it unless there is a bit more than that. You note in it that there is currently \$8.5 million in restrained assets. What proportion of the authority's work results in the confiscation of assets, what kinds of assets are involved—are they mainly real property, cash or more mobile assets such as antiques, valuables or shares—how are the valuations arrived at and what happens to the money?

Mr Crooke—Let me answer part of that and then I will ask Mr Whiddett to delve a little bit more into the detail. Perhaps the first thing to note is that, at the moment, there is no Commonwealth law enabling civil based confiscation of proceeds of crime. There is a bill before the parliament that will, if passed, introduce legislation that will make a great difference to this because, at the moment, any confiscation or freezing of proceeds of crime relates to criminal based proceedings. These have proved to be very ineffectual in the Commonwealth sphere, because effectually they have to be based upon a predicate offence and the conviction of a predicate offence. That means in effect that, if you have got a master criminal, you have to say, ‘You have got a yacht and we are going to seize that, because you have got that from the proceeds of a drug deal on 14 February 1984 for which you were convicted.’ You cannot just say ‘from the proceeds of crime’, and the legislation has so many gaps in it. The master criminal can say, ‘You cannot prove that it was the drug deal I did on 14 February for which I was convicted, because I am a pretty regular drug dealer and I could have got it from another deal,’ or even, ‘Listen, you have got it wrong—it wasn’t a Commonwealth offence I got this from; it was a pretty smart and big drug deal that was a state offence. Go away and leave my property alone.’ So, not unnaturally, there has been a lot of movement to try to introduce civil based proceeds of crime legislation, which many of our states now have. In particular, New South Wales has had it for some time.

On occasions, the NCA has been able to use state proceeds of crime legislation because the NCA is underpinned by state as well as Commonwealth legislation. Much of the confiscation or associated recovery that the NCA has done has been by the use of state legislation, in particular the New South Wales civil based legislation. Adrien may be able to give you answers to some of the statistical questions that you asked.

Mr Whiddett—The question of valuation gets down to the market value of products. For example, there was a case some time back where a horse stud was seized and, of course, the people who were involved in the seizure had no idea how that needed to be valued. So it was a question of going to the market and finding out what the stud, the property and the accoutrements were worth.

Senator HUTCHINS—Is it mainly property and bank accounts?

Mr Whiddett—It can be a variety of things. As the chairman said, it can be vessels and so forth. What we tend to find is that a lot of proceeds of crime that you would like to restrain are not really on these shores—they are offshore. We are more downstream and we tend to perhaps seize a lot more property that is available to be seized, but it is true to say that many major crime syndicates have their funds offshore and it makes the thing much more difficult.

Senator HUTCHINS—In relation to the horse stud, what happens to those horses or, say, a Lindsay? Is that somewhere in the National Museum basement, waiting to be flogged? Is that figuratively how it works?

Mr Whiddett—We have got a reasonable duty of care in that regard. We have to take reasonable steps to ensure that any property that is seized is kept in reasonable condition. There have been some cases in relation to that over the years—not from my experience in the NCA but from other experiences. But by and large, all you need to do is to take reasonable steps. We

cannot be expected to be a great judge of horse flesh and so forth. So it is just a question of keeping the asset in reasonable shape until it is sold.

Mr CAMERON THOMPSON—There is a section that refers to changes in the legislation covering telecommunications interceptions. There are two changes there, one to enable you and other agencies to work for each other and another to enable the people with multiple phones to be pursued by way of warrants. I want to standardise the figures across the board to take out the differences there. For example, on page 57, in 2000-01 there were 284 compared to 259 in 1999-2000. How many of the 284 were done on behalf of other agencies? Is it a case of a different warrant for every phone, so that you have one for the fixed line and one for the mobile, or is it just a warrant per person? Also, how many of those were multiple phones?

Mr Crooke—It might be best if Adrien deals with that, if that is all right with you.

Mr Whiddett—We now take out warrants on the person because we find that most people have multiple phones and multiple SIM cards. It is not unusual for one offender to have, say, 20 or 30 SIM cards or 20 or 30 phones or more. That is the first thing. I would have to take on notice the question of a breakdown for other agencies, but we do work for other agencies. In major investigations, where there are numerous targets, they will have a number of phones and faxes and there may other areas that need to be looked at. They might have multiple premises, for example, so that is not an unusual event. But I do not have in front of me the actual breakdown for states and other jurisdictions that we work for.

Mr CAMERON THOMPSON—Before the legislation enabled you to pursue all those different things, was there a problem where you could only do one phone per warrant?

Mr Whiddett—The warrant was issued for the phone number. Of course they just change numbers as regularly as they change addresses, or even more regularly. That was a major issue. It was a huge relief to have it on the individual.

Mr CAMERON THOMPSON—What I am trying to get is a comparable figure, from one year to the next. Would the 259 figure in that previous year, 1999-2000, be inflated by containing multiple numbers for the same person?

Mr Whiddett—I would have to take that on notice, I am afraid.

Mr CAMERON THOMPSON—Basically what I want to know is: can you give me figures that apply individual to individual, so that it is just on the individuals per year?

Mr Whiddett—I think it is true to say that a lot of the questions asked of us go to the fact that we seem to have an increase in the number of interceptions. That is true. That is the first thing to take into account: there are more interceptions. In our own case, without going into the details of that here, our capacity to do that is greater than it was a year or more ago. So that does also contribute.

CHAIR—Despite all that there is still a drop in the number of persons charged.

Mr Whiddett—Again, if you have long-term operations, you might have a lot of preparatory work done for weeks, months or years before you actually get a result. One of the things that we are actually working towards—and more could be said in camera—is that we are consciously moving from what might be described as fairly quick hits to long-range activities. Mr Kerr asked previously how we measure that. At one level in law enforcement the measure of your success or otherwise was basically on body count. We are trying to move away from that. Another point was made by Senator Denman that some of the drugs seized, for example, might be lowly rated—like cannabis. Sometimes these things are means to an end, to get to a group. That cannot be discounted in the scheme of things.

CHAIR—I know we are verging into operational matters. You are suggesting that there are several cases that have lasted over several years.

Mr Whiddett—That is exactly the case. In fact, increasingly one of the difficulties we have with seconded people—a revolving door of personnel—is the fact that many cases now will go two, three or four years from the time the matter is reported or investigated to the disposition of the case. That time frame is extending greatly, so that is an issue. One of the things we have moved to is to have more key areas with more permanent staff so that there is not this huge amount of rotation and thus disruption.

Mr CAMERON THOMPSON—In terms of the practice of using mobile phones to locate people, are there any restrictions on that—for a start—in the way you operate?

Mr Whiddett—We are getting close to operational detail, which I am happy to go into in camera. There are techniques for using telephones to locate people.

CHAIR—Our responsibility is not operational. There are Chinese walls that need to go up. We can do it in camera but I do not think tonight is the time. There will be an opportunity for you to ask those questions.

Mr KERR—We could go in camera afterwards.

CHAIR—If you wish. Can I ask a couple of questions while others may be considering other questions. We probably need to move on soon to the general corporate services area, which I would like to ask a couple of questions on. You say on page 51:

... there was less concentration during the year on relatively opportunistic investigations into large and suspect fund movements, unless they were linked to approved national operations.

Does that mean that the large and suspect fund movements would not get much attention unless they had that linkage?

Mr Crooke—I am sorry; I did not hear the last part.

CHAIR—There is a qualification. It would appear that investigation is occurring only when large fund movements are linked to approved national operations. If it is large and suspect, wouldn't that qualify regardless of whether it is linked on a national basis?

Mr Crooke—The answer to that is, prima facie, no. The way we do things now is that we have a national operations committee where a template has to be prepared by those responsible for investigation. This template is very critically focused upon: what is national about it; what is complex about it; what is organised about it? If something like what you have just mentioned cropped up it would not be forgotten; it would be given to the appropriate state or federal police agency to investigate.

CHAIR—I understand. On page 54, you talk about the special powers—powers similar to those exercised by the royal commissions: the power to compel any officer of a Commonwealth agency to appear before the authority and the power to summon any person to appear before the authority. Are you having problems, nevertheless, with some people who ignore these requests?

Mr Crooke—Not so much with the requests to heads of Commonwealth agencies. We did have a very real problem in people not coming to hearings or coming to hearings and being quite off-hand about their obligations. We had examples of people, when asked their names, refusing to answer on the grounds that it might incriminate them. That avenue could have been taken until October last year when there was a very significant amendment to the NCA act to make the obligation to answer a question absolute and not dependent upon the taking of a claim of privilege against self-incrimination. Since October last year there has been a very real difference and hearings undertaken by the NCA have produced some quite significant and even surprising results.

CHAIR—That is encouraging.

Mr SERCOMBE—I was inquiring earlier about the significance of drug related offences in the NCA's operation. Obviously, it is an area which the NCA would have considerable knowledge of. Quite unrelated to that, in response to some discussion with Mr Kerr, you were indicating, in effect, that the organisation was having some difficulty coming to grips with what might be motivating the present reform agenda—or whatever one wants to call it—in relation to the organisation. There has been media speculation, possibly misinformed, that the two things may have some linkage and that certain significant, highly placed people in the government may have got their knickers in a twist—to use a colloquialism—over interventions in drug law reform debate. I wonder whether you have a view on that and whether you care to comment on those matters?

Mr Crooke—It is probably too much of a subjective view for me to be of any assistance to the committee. I think the objective facts that attend the matter have to be taken into account by people of goodwill and objectivity and for them to make a decision on that basis.

Mr KERR—You mentioned the decision in Hughes and the legislation that was passed to try to cure any defects. Has the working through of that issue created any difficulties for the organisation and does it have any ongoing implications for the way in which an organisation of this nature, however composed, would be structured?

Mr Crooke—The answer to the first part of your question is, touch wood, no. As the report says, as I think collective wisdom has it, there is a lot of fleshing out still to be done as to where the Hughes decision starts and finishes. It really opens the door for different fact situations to be tested against the principle, so that remains to be seen. The legislation goes a long way, and per-

haps as far as any legislation may be able to go, to address the issue, but it remains an area of some difficulty, and it still could present problems in the future.

CHAIR—We will move on to the corporate services area, although there is no reason why we could not return later to some other questions regarding the modus operandi of the NCA. I note that staffing levels have been reduced from 450 to 395. The greatest reductions were at APS level 3, which went from 85 to 66 positions; at APS level 2, from 22 to 13; and at SES band 1, from 12 to 9. There were some increases in staff levels at executive levels 1 and 2 from 32 to 37 and at APS level 6 from 28 to 36. With an overall reduction in personnel, how did the increase in employee costs occur?

Mr Crooke—If it is all right with you, Mr Chair, Mr Hickman can deal with that.

CHAIR—Sure.

Mr Hickman—Progression through the bands accounts for a part of it. Also, salary increases under our certified agreement would account for a significant part of the increase.

CHAIR—It is a little odd to reduce staff from 450 to 395—that is, 55 reductions—and have an increase your salary bill.

Mr Hickman—I think another factor was some relatively large payments to individuals who left the organisation.

CHAIR—Were these redundancy payments?

Mr Hickman—They were redundancy, long service leave payments and accumulated benefits.

CHAIR—How many received redundancy payments?

Mr Hickman—I have in mind it was two relatively senior officers, but I would need to come back to you in relation to the total number.

CHAIR—So two out of 55 staff received redundancy payments?

Mr Hickman—I would need to come back and advise you as to whether there were more than two out of 55.

CHAIR—It still seems a little curious. You also note that 70 per cent of the staff were assessed as eligible to receive salary increases as a result of performance assessment. Why were the remaining 30 per cent ineligible to receive the increase?

Mr Hickman—It may have been that they were relatively recent appointees to the organisation. You will see that there is a substantial number of non-ongoing employees in the organisation. I suspect that many of those employees were not eligible for increases because they had not been there for the requisite period.

CHAIR—My final question is in relation to the organisational structure, which to me seems a little strange. You have these strange one on one relationships. For example, the National Director of Corporate Services has seven people reporting to him, the National Director of Cyber Crime is out there by himself and the Manager of Investigations reports to him, and then there are team leaders. In organisational terms, one of the positions would be regarded as unnecessary. Why have you got it structured that way, with these one on one or one on two type relationships?

Mr Crooke—It may be best if Adrien dealt with that, Mr Chair.

Mr Whiddett—As was pointed out by the chairman, one of the things that we have tried to do in the last couple of years is to move away from regional based operations. My own observation of the organisation was that, in order to make it more nationally focused, there was a need, if you like, to wean officers off doing work which was strictly the work of the jurisdictions and move more to what would be described as corporate priorities—that is, national matters.

What we did in that regard was to say that the person who had previously headed an office in a jurisdiction, while they would be responsible for some of the things that occurred in that jurisdiction, would have a portfolio responsibility as well. For example, in the case of the national director in Sydney, his corporate responsibility is Blade, which is South East Asian organised crime. It does not matter where that occurs but it is predominantly, as it happens, on the eastern seaboard, and that is the person responsible for that. The national director who has cybercrime also has portfolio responsibilities for professional development and ethical programs within the organisation, and for running the office in Perth. So what we have attempted to do, rather than to say that a person in a particular site is responsible purely for the work of that site, has been to mix it so that they have a portfolio responsibility over and above what appears to be their geographical responsibility. The purpose of that—

CHAIR—In organisational structure terms, that is pretty messy. Anyway, I will move on to my colleagues.

Mr KERR—I was very interested in this additional responsibility for cybercrime. I have two questions. Firstly, is there a reference that flows out of that? Secondly, what about your capacity to effectively address that reference, if one does exist? I certainly know that within the Australian Federal Police the number of agents with specialised training in computer skills of a high level was much reduced over the last couple of years as they were poached by the private sector. I would be surprised if your organisation was immune from that problem, and I would be surprised if it had anything like adequate human resources, as opposed to physical resources, to address these things. I am just wondering whether my apprehension is correct, and, if it is, what strategic approach has been taken to build that expertise into the organisation. Or are you drawing it in on a contract basis?

Mr Crooke—I will deal with that for a start, and then hand over to Adrien. You are right, there is a big problem in law enforcement being able to train and retain expertise in this field, because there is a very wide market in the private sector and generally speaking they are paid about three times as much as law enforcement can afford to pay them. There is a real problem in retention in this regard. What we are trying to do to strategically deal with it is that we have

adopted a philosophy supporting the creation of a sophisticated national laboratory or repository—call it what you will—that can deal with the higher end of sophistication and technology, and this sort of challenge is given to it. It does not seem feasible that an organisation such as the NCA could hope to have in house that sort of facility.

What we are embarking on doing is, first, to train field investigators in something a bit more than the rudiments of what has to be done, but nothing too advanced. It is basically to ensure that they will know enough about the electronics and the like that if they go into a situation they will not destroy available material or evidence. Then there will be further training for those within the organisation, more sophisticated than what I have just mentioned but still not to the stage of their being able to deal with the sort of ultra-sophisticated thing that I have mentioned in relation to some sort of national entity that would be available to receive requests. That is envisioned to be available to law enforcement agencies and perhaps other agencies on the periphery of law enforcement.

Mr KERR—Is there a reference that you are pursuing?

Mr Crooke—We find that if we come across anything where criminal activity is perpetrated by reason of the use of technology—for example, with fraud against the Commonwealth or even with other references—we have not struck a situation where we have been impeded at the present time. I guess it is possible to envisage that something is a brick wall that we might hit but, generally speaking, the references and the incidental powers to the references that we have enable us to delve into this sort of thing.

Mr KERR—I have a question about staffing. I do not think there is any great discussion about morale in the report. Certainly I do not recall having seen it when I read it, but I imagine that all the circumstances regarding the present situation of the organisation and its uncertainty might have some impact in terms of staff retention, people making different career moves in view of that uncertainty and the like. Could you address the morale issues, both as they were in relation to the report and the ongoing issues, and I suppose the viability of the organisation in the medium and short term—the long term not being known to us.

Mr Crooke—In the reporting period, morale was quite satisfactory. I guess because there was a change process in train there were some who thought the old ways were better and found it hard to bring themselves to the new direction, but that did not seem to have any significant impact. More recently, since the announcement during the course of the election campaign of re-positioning, abolition or replacement—I think the terms were—as possibilities for the NCA, there has been a very significant effect. I spoke of those within the last month at the Senate estimates hearings when similar questions were asked. In summary, there are great difficulties at the present time. It is almost as though the good people at the NCA are dying a death by a thousand cuts. There are cheap shots. For example, some time ago the AFP association, effectively the staff union—nothing to do with the management or control of the AFP—presumed to write directly to all members of the NCA saying that they would offer them a discount to become members of the AFP association, because the NCA was going to be taken over by the AFP. This was quite gratuitous and eventually was conclusively put to rest as a furphy. But things like this happen to our staff every day: rumours abound and are circulated, and it is very difficult for us as management of the NCA to tell the staff anything that is of comfort, because the worst thing that one can do in any situation such as this is to give people a hope that turns out to be false. The answer is that nobody yet knows precisely what is going to

out to be false. The answer is that nobody yet knows precisely what is going to happen. They compare and contrast their situation with people such as those from the ABCI, who have had a different expectation altogether as to their future—they are much more certain, for whatever reason, as to their security—and there is a real difficulty vis-a-vis retention.

We are working very hard on a policy at the moment that will do something to address the difficulty that is no less than a reality. The 31st of December, which is the proposed date for the NCA to cease and the new organisation to commence thereafter, is only a short time ahead. If you are a dedicated member of the staff of the NCA, as most of them are, and very skilled, as most of them are, and you have a mortgage and two children, the 31st of December and trying to find a job at that time of the year is (a) not far off and (b) a very daunting prospect.

I have raised this at a Senate estimates hearing, and I have raised this with the steering committee that has just come into being in relation to the transition of the NCA. It is a very complex area. Advice is being taken by this steering committee, but as yet nothing is forthcoming that can tell members of NCA staff what it is going to be like for them individually when the time comes. At the other end of the scale, we are still undertaking very important operations. We are making it our business not to let criminals get off the hook because this process is going on. We have to keep our eye on the ball.

The difficulty occurs when you start to get erosion in these areas, especially in multidisciplinary teams. It is one thing to replace a seconded police officer—and we are used to doing that because of the revolving door we have spoken about—but, if you lose other people who have experience and try to get somebody to replace them from the outside community, time just flies and then expires and you have a very real difficulty with continuity. This is a problem that we are facing at the moment. We have not had significant erosion as yet, and that is a tribute to the good people's dedication, because it is a pretty uncertain situation for them. Once it starts, it is one of these things that can become exponential, and our operations could suffer irretrievably.

Mr CAMERON THOMPSON—Under 'Consultants and counsel engaged', there is a large proportion of specialised translating and interpreting services. I noticed also that you have two hotlines: one in English and one in Chinese. Is there any reason why one hotline is in Chinese rather than, say, in Vietnamese? There are a lot of people I would presume to be from a Vietnamese background in—

Mr Whiddett—One hotline is certainly in Chinese, but we do encourage other nationalities to provide information. The cost of translation is high because a lot of the areas we work in tend to be in Asian communities. Again, I do not want to get into the operational details, but in many areas of activity the Chinese groups still dominate. Given the nature of our focus, it is not inappropriate to have that line. Translation—the time it takes, the accuracy of it and the volume of it—is certainly a hidden cost of long-term, major operations.

Mr CAMERON THOMPSON—I suppose I am just asking whether that Chinese dominance is such that you would have a Chinese hotline and not another language group. Out of the total of \$438,000 for specialised translating, obviously a large proportion would be for Chinese.

Mr Whiddett—I guess so. I would have to look at the breakdown, but it would be pretty high.

Mr CAMERON THOMPSON—And there would not be areas of other languages that would be—

Mr Whiddett—There would be, certainly.

Mr CAMERON THOMPSON—What would they be?

Mr Whiddett—I guess Arabic would come up. There would be other languages as well, but the Asian languages tend to dominate in a lot of the areas that we look at, particularly drugs.

Mr CAMERON THOMPSON—Has consideration been given to creating another hotline in another language?

Mr Whiddett—Not at this point, I do not think.

CHAIR—We were hoping to finish by 9.30. Mr Dutton, do you have any questions?

Mr DUTTON—I just have a quick question for Mr Hickman. Mine also goes to the area of ‘Consultants and counsel engaged’. A study was done in relation to accommodation, and costs were just shy of \$21,000. What did that relate to?

Mr Hickman—It related to the prospect of the NCA relocating in Melbourne. The NCA have now relocated. The lease on our premises in Albert Street in East Melbourne expires at the end of this month. We have relocated to 383 Latrobe Street, where we now share premises with the Australian Federal Police.

CHAIR—Senator Ferris, do you have any questions?

Senator FERRIS—No, Chair. Unfortunately, I have had whip’s duty in the Senate tonight, so I am sorry that I have had to rush in and out. I will read the *Hansard*.

CHAIR—We have not really gone into the finances question. One fact that I was interested in was that the net operating deficit is almost 10 times that of the figure for the last reporting year. The contributing factor appears to be an increase of almost 50 per cent in depreciation and amortisation—a write-down of assets. What do you see as being the significant reasons for this?

Mr Crooke—I will ask Mr Hickman to reply.

Mr Hickman—There has been a write-down of fixed assets. We also made some provisions in the accounts for accelerated depreciation on computer equipment. We brought the depreciation period back from five to three years. We have also brought to account provisions for employee liabilities. Certainly, the write-down of fixed assets was the principal reason.

CHAIR—There are a few figures in this that give me concern. I understand that the organisation has been working under some degree of difficulty, but when you see that the number of persons charged has gone down significantly, that the number of staff has gone down but the salary bill has gone up, that the net operating deficit is almost 10 times that of the last reporting year, obviously a bit of tightening up in some areas is needed. Some trends are going in the wrong direction.

Mr Hickman—Chair, to give you some comfort, if you look at the cash in the balance sheet at page 79, you will see that the authority maintained a healthy level of cash reserves of about \$5 million in 2000-01.

CHAIR—Cash flow is one thing; the operating deficit is another.

Mr Hickman—Yes.

CHAIR—There being no further questions, thank you very much for giving evidence. I would like to thank you, Mr Chairman. I am sorry to have interrupted your holiday. I believe it was very useful. I would also like to thank Mr Bennett, Mr Whiddett and Mr Hickman. The committee will now hear evidence in camera.

Evidence was then taken in camera—

Committee adjourned at 9.40 p.m.