COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

Reference: Australian Crime Commission Establishment Bill 2002

TUESDAY, 8 OCTOBER 2002

SYDNEY

BY AUTHORITY OF THE PARLIAMENT

JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

Tuesday, 8 October 2002

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

Senators and members in attendance: Senators Hutchins and McGauran and Mr Dutton, Mr Kerr, Mr Sercombe and Mr Cameron Thompson

Terms of reference for the inquiry:

Australian Crime Commission Establishment Bill 2002

WITNESSES

Committee met at 9.14 a.m.

BRADLEY, Mr Phillip Alexander, Acting Chair, National Crime Authority

CHAIR—I call the committee to order and declare open this public meeting of the Parliamentary Joint Committee on the National Crime Authority. The committee is examining the Australian Crime Commission Establishment Bill 2002, which is the culmination of negotiations between the Commonwealth and state governments about changes to the national framework for dealing with organised crime. The new body will incorporate the functions of the NCA; the Australian Bureau of Criminal Intelligence, the ABCI; and the Office of Strategic Crime Assessments, the OSCA. We have focused on criminal intelligence collection and establishment of national intelligence priorities.

I welcome Mr Phillip Bradley, the Acting Chair of the National Crime Authority. I congratulate you on your position as acting chair. As you are probably aware, the committee prefers all evidence to be given in public, but should you at any time wish to give your evidence or part of your evidence or answers to specific questions in camera, you may make application to do so and the committee will give consideration to your application. I would point out, however, that evidence taken in camera may be subsequently made public by order of the Senate. I invite you to make some opening remarks about the committee's inquiry into the Australian Crime Commission Establishment Bill 2002. At the conclusion of your remarks, I will invite members of the committee to submit questions to you.

Mr Bradley—Thank you. I do not have much by way of opening remarks. The committee commenced its deliberations fairly soon after the introduction of the legislation and there has not been much of an opportunity to prepare anything. I have been involved in discussions with Commonwealth and state officials which led to the development of a draft bill. I am generally familiar with the current form of it. I am happy to answer questions on anything you wish to raise.

CHAIR—There are two issues that we have been asked about in relation to the establishment of the new organisation in particular. I am sure there are many others. The first relates to the powers of coercion which will pass from the NCA to the ACC. The new organisational structure will give de facto power to various police commissioners around Australia. It will enable them to exercise their powers of coercion to bring people to the table, to bring them before the ACC. That is the first issue that I would like your comments on.

Mr Bradley—I do not think that it is quite correct to say that the powers of coercion are vested in police commissioners as such. The commissioners come together as a board and identify matters for the ACC to pursue and in some cases make determinations about whether the coercive powers are appropriate to those matters. The actual exercise of the coercive powers is left to the examiners who conduct hearings and issue notices, which are the main forms of coercive powers.

The board, which comprises mainly police commissioners—a decision about coercive powers cannot be made exclusively by them; it has to involve two Commonwealth officials—decides that a subject matter is appropriate for work by the ACC and that coercive powers are appropriate to that subject matter. An official who is an independent person within the ACC applies those powers; in other words, he determines who will be required to produce documents

and other things and who will be required to attend and answer questions. That person has to be a lawyer. It is assumed that the normal prudence of lawyers would apply to that practice.

CHAIR—So the actual mechanism is that there are two commissioners of the ACC, or are you talking about two police commissioners?

Mr Bradley—No. As I understand it, the authority to confer coercive powers on the ACC is exercised by the board by a majority of nine; it needs nine votes. Two of those must be Commonwealth officials; therefore, one of them at least cannot be a police commissioner.

Mr SERCOMBE—But he can be, because one of the Commonwealth officials is, in fact, the Commissioner of the AFP?

Mr Bradley—Yes, but that does not get you to nine, though, does it?

Mr SERCOMBE—Yes, there are eight states and territories and the Commissioner of the AFP. So that is the nine.

Mr Bradley—So, you have to have another Commonwealth official?

Mr SERCOMBE—I am sorry, yes you do.

Mr KERR—Will you take us to the provisions you were speaking of.

Mr Bradley—It is the voting arrangements of board members, which you will find at 7G(4). It says:

The Board cannot determine that an intelligence operation is a special operation,—

and a special operation carries coercive powers—

or that an investigation into matters relating to federally relevant criminal activity is a special investigation, unless at least 9 Board members (including at least 2 eligible Commonwealth Board members) vote in favour of making the determination.

CHAIR—Do you feel that provides a sufficient safeguard?

Mr Bradley—I think that the place for safeguards is in the way that these powers are exercised more than in the way that they are granted. The scope of the legislation applies to 'serious and organised crime', I think the definition is—we can go to that in a minute—and it will be the case that in most of those areas there will be scope for use of coercive powers. The fact that the ACC has coercive powers attached to the matter to be investigated or the intelligence operation to be conducted does not mean that they will be exercised or that they will be exercised in every case. I would have thought that, as has been the case with such organisations for the last almost 20 years, most of the gathering of information, whether it be part of an intelligence operation or part of a criminal investigation, would be done through the normal mechanisms—speaking to people, examining records, doing that sort of thing—and the

coercive powers would only be invoked where it is necessary and, in this case, only invoked by an independent examiner.

CHAIR—Do any members of the committee have questions on that point before we proceed? There is another point that I wish to move to.

Mr KERR—There are a couple of ancillary matters that I wanted clarified. In respect of state offences, how do the provisions operate?

Mr Bradley—There are some detailed provisions in the back, which, as I understand it, are to deal with what is known as the 'Hughes problem' so that this body can exercise its authority in relation to state offences. As I understand it—I am not the expert on this; there is at least one person in the room who probably is—the authority of the ACC to investigate state offences can only be exercised with the authority of the board and, when that authority is granted, the coercive powers can be applied.

Mr KERR—Without Commonwealth approval?

Mr Bradley—No, by the same mechanism that applies under 7G(4), as I understand it.

Mr KERR—No. If you have a look at those sections, plainly not. The requirement for Commonwealth participation is not there.

Mr Bradley—Which section are you referring to?

Mr KERR—The two sections you referred me to before.

Mr Bradley—7G(4)?

CHAIR—It depends on whether 7G(4) is the criteria in which the coercive powers are invoked for everything.

Mr Bradley—That is as I understand it.

Mr KERR—No, because it refers to an 'intelligence operation' or a 'federally relevant criminal activity'—not a state offence. If we go back to the definition of 'federally relevant', it is not a state offence, if I am correct.

Mr Bradley—I think it deals with that somewhere around section 58.

Mr KERR—I am quite happy for this to be taken on notice. It is a complex piece of legislation and I am trying to get over it, so I do not expect others to be over it instantly either. Plainly this bill is intended to cover the investigation of state matters of significance as well as intelligence operations and Commonwealth offences. I would just like an identification of the authorising provisions and the terms of majorities that are required for the authorisation of those proceedings.

Mr Bradley—I am happy to take that on notice.

Mr KERR—I have two other points to get the picture correct in my head. The powers that can be exercised by the large board can also be delegated to a smaller committee of the commissioners, which, as long as it has two Commonwealth officials on it, can be as small as three, presumably.

Mr Bradley—Yes, I think that is right.

Mr KERR—And the large board is required to meet twice a year.

Mr Bradley—As a minimum.

Mr KERR—You put that as if it were an objection to what I am saying—

Mr Bradley—No, I did not—

Mr KERR—Let us test this. How many times a year do you anticipate you would bring together all those persons as a full board? How many times is it expected, planned and anticipated that this would occur?

Mr Bradley—I cannot speak for the board members, because I have nothing to do with the ACC, nor will I next year if it is established. This issue was discussed in the course of the negotiations over these provisions, and concern was expressed that it needed to be the case that board members, rather than just the convenor, could initiate meetings. You will note now that that is possible. There is also provision that the board, early in its life, shall determine its program of board meetings—or words to that effect. Clause 7D states that there must be a minimum of two meetings held, 'in accordance with the schedule of Board meetings determined by the Board'. As I said, it is none of my business in a sense, but I would have thought that the board would meet around monthly, as is the case with the organisation which I chair, the New South Wales Crime Commission. The intention there is that the board meet monthly. The difficulty with this board is that it is quite large, and it will be hard to get them all together; but there is provision for electronic meetings and other forms of meetings. I would hope that it would be an active board, given the powers that it has, and would take a large interest in—

Mr KERR—I accept what you are saying, but equally isn't it possible to speculate that, once this thing settles down, the natural inertia of bureaucracy will take over and the cost of meetings and the irrelevance of this process to many other than a few is likely to mean that many of its functions are exercised by subcommittees, for which provision is made in the bill? The board will meet its minimum time and will give the fine attention that ministers used to give to these matters but, in practice, the operational management will devolve to a very small number of active members of the board. Isn't that equally as possible, hypothetically?

Mr Bradley—Yes.

Mr KERR—The other question I have is about the appointment of heads of operation. On what basis does the board make such a determination?

Mr Bradley—That is an issue which I grappled with when I read this legislation in its present form. There was a previous version of the bill which I think had the board appointing task forces to do things. It was suggested that that was not a very logical way of attacking subjects—in other words, to organise your priorities around people rather than around the subject matter.

There is now a provision that says the board shall determine the 'head' of the operation—I think that is the word used. I have a bit of difficulty with that on a number of bases. Firstly, does the board have to do that in every case? If it does, is the head going to be a person from within the ACC or a third party? I suppose the third party probably could be dealt with by the fact that most third parties likely to be contributing ahead would be police type agencies, and they would all be represented there. It is also a bit inconsistent with the principle which, in my view, has proven to be so successful in these areas—that is, the ACC should go to subject matters under its investigation as a partner rather than as a leader or a subordinate to some other agency. In a number of environments that has proven to be a very successful formula and it eliminates all of the problems associated with disciplined forces giving up sovereignty over their own personnel and things like that.

Mr KERR—The other issue is: how do you deal with overlapping issues of accountability? Again, please take it on notice if you need to, because it is complex and it requires a complex answer. If a person is appointed by the board to head an inquiry, and some want of confidence or some conflict between the CEO and that head of an operation occurs, how are these issues resolved? How can such a person be removed? How can they be disciplined? What is the accountability regime between them and the general accountability and management regime that the act provides for?

Mr Bradley—I suppose the answer to that is that I do not know. The reason I do not know is that I do not know what 'head' means. If 'head' means disciplinary head, overseer or supervisor, then obviously there will be issues of competing discipline regimes. If it means coordinator or liaison officer with the board, then it might be less of a problem. I certainly favour the partnership model in light of the likely constituents of these sorts of task forces.

Mr KERR—Perhaps you could take it on notice and, in consultation with such others as you wish, provide us with a more substantial response. Obviously, that is one of the issues that stands immediately to attention.

CHAIR—Mr Kerr, as you may remember, we started by talking about the coercive powers.

Mr KERR—I am sorry, I was thinking about the board.

CHAIR—Press on if you wish.

Mr KERR—I was going to ask about the board. How do the accountability obligations to the parliament, to the ministerial council—which is now removed of any direct responsibility but still has the obligation to receive reports and information—and to the ombudsman, who is supposed to oversee this, sit with the participation of ASIO? I have no in-principle objection to the participation of ASIO, but that brings with it a secrecy regime which is different from and equally as complex as that which applies to the existing NCA legislation but which applies in

different ways. How do these two regimes of secrecy and different processes of accountability mesh?

Mr Bradley—I have not specifically looked at the complexity which would arise from the inclusion of ASIO. I would have thought that ASIO would come to the party and would be subject to whatever secrecy provisions applied to the board as the board of the ACC. It is the case that, in normal criminal investigation and intelligence work, there is often some overlap with national security agencies and that different rules apply, but they are not so different that they cannot be understood within the law enforcement environment. I would be surprised if the inclusion of ASIO in this particular legislation would create a special problem. It is the case that ASIO would bring to the board meetings intelligence about activities which it picks up in its national security operations. When it does that, the normal principles as to confidentiality would apply.

Mr KERR—I am asking about the question of accountability as opposed to confidentiality. ASIO has accountability through certain mechanisms. The ACC is supposed to have accountability through certain mechanisms. But can the ACC's accountability mechanisms operate consistently with the enmeshing of the participation of ASIO in its management?

Mr Bradley—I have not specifically looked at that. I will take that on notice.

Senator McGAURAN—Mr Bradley, prior to being made acting chair, what was your role in the NCA?

Mr Bradley—I did not have one except as a collaborator in New South Wales in my role as the Commissioner of the New South Wales Crime Commission.

Senator McGAURAN—And you will not be going on to the ACC?

Mr Bradley—No.

Senator McGAURAN— I want that point noted. It is very difficult to get a follow-through answer such as Duncan Kerr has been asking for. I know you have been acting as chair but you have neither been with the NCA nor are you going on to the ACC.

Mr Bradley—It is not true that I have never been with the NCA. For a very short period, in 1980 something, I was there as the solicitor to the NCA or something like that.

CHAIR—There were some interesting questions there so I think we all gained from that, Mr Kerr. The second issue relates to Mr Kerr's last question, which is about access to intelligence information. You have state government bodies that will, by virtue of sitting on the board of the ACC, have access to the range of intelligence capabilities of the ACC and of ASIO, as mentioned, plus the other organisations that are brought together. Some would suggest that not only the coercive powers but also the access to the full range of intelligence that the Commonwealth has available to it has been the wish of the state police commissioners for some time. Do you see this as a problem or an issue?

Mr Bradley—It is a big subject matter. Firstly, there is no compulsion on the part of board members to unburden themselves of all of their intelligence. If, for example, there was a topic which ASIO was working on to deal with some group of organised criminals who happen to also be a threat to national security, I do not think it would be compelled to share everything it had on that subject with the ACC or the state members of the board. Secondly, it is true that the state commissioners and indeed the Commonwealth heads of law enforcement agencies have sought greater access to intelligence and we have never really reached an optimal level. It is not true, as your question implies, with respect, that there is this great body of Commonwealth intelligence which is of some benefit to the states because of its volume or the fact that it has not previously been accessible. Most of the criminal intelligence resides in the state agencies and it is a shame, in my view, that there has not been more Commonwealth access to this wide range of state intelligence databases. In fact, one of the first things that I raised with the steering committee was having greater integration of intelligence, in particular state intelligence databases for the ACC.

Currently, the NCA does not have full access to, for example, the New South Wales COPS system, which is an invaluable database accessed by the New South Wales Crime Commission, which is an equivalent state body, on a daily basis. I think that the ACC, the AFP and some other Commonwealth agencies would greatly benefit from access to that, as would state agencies from better access to databases like the NCA's PROMISe system, the AFP's PROMISe system and a number of other databases around the place. The ABCI is about the only body that has been able to initiate greater sharing of intelligence in an automated way—and that, as I said earlier, is far from optimal. It is hoped that through the inclusion of the ABCI in the ACC and through the membership of the board of the ACC—that is, commissioners of state and territory police forces—some of those problems will be overcome. It is a very big problem, and it continues to diminish our capacity to investigate organised crime throughout the country.

CHAIR—Do you think there are sufficient safeguards being proposed in terms of full access to the information that you are talking about?

Mr Bradley—I think that full access suggests that it is just going to be open slather. It will never be that. It will never be the case that the New South Wales Police Service will have access to everything that ASIO knows, that the AFP knows or whatever. I hope that it will be done in a sensible way and that the legislative provisions as to secrecy will be brought to bear in the event that there are any problems. There is not much else you can do. It is important that law enforcement agencies with very similar objectives have access to relevant information about the subject matters that they are working on.

Senator HUTCHINS—When you talk about objectives, Mr Bradley, who would make a decision about priorities in this new set-up?

Mr Bradley—It is the obligation of the board to determine national priorities. You will have seen from the outcomes of the leaders summit deliberations that there are a number of items there that are identified as priorities; I think the first priority is trafficking in hand guns. It is the board's obligation to determine which matters are priorities and to communicate those priorities to the ACC. Then, within the ACC, again it will be a matter of how those priorities are addressed and how resources are allocated. I would have thought that, if the board says, for example, 'Hand guns are the primary responsibility, and apply your resources accordingly,' it

could be the case that hand guns do not require a lot of resources and that something that is No. 2 or No. 3 is a more resource intensive exercise. That is, as I see it, the way the priorities will be assigned. I am a little concerned that the chief executive has limited authority within the organisation, but certainly it is the primary responsibility of the board to best determine priorities.

CHAIR—Please explain what you mean by 'limited authority'.

Mr Bradley—The CEO, as the name suggests, is the chief executive. The core work of the organisation is described as intelligence collection and investigation. In relation to those things which distinguish the ACC from the other investigative agencies, such as police agencies—that is, the coercive powers—the CEO cannot exercise those powers as he can in the NCA environment, nor can he compel an examiner to exercise that authority. He can allocate examiners to matters. For example, he can say to a particular examiner, 'You are allocated to the exercise of coercive powers in relation to matter A.' Then it is really a matter for the examiner as to whether he exercises coercive powers at all, and then how he goes about it. I would have thought it would be a better scheme, if the 'E' in CEO is to have much meaning, for the chief executive to determine that coercive powers would be exercised in relation to specific matters—

CHAIR—In terms of his own coercive powers; you would not have the reference as you have outlined under 7G(4)?

Mr Bradley—No, I am happy enough with 7G(4), in the sense that it is the board which makes the determination about the what and that it is the CEO who should make the determination about the who. I think that the examiner should make a determination about the how. In other words, in the hearing room he says, 'I'll allow that question' or, 'I won't allow that question.' But not, 'There'll be no hearing in relation to Mr A.' Based on my own experience at the Crime Commission and, more recently, at the NCA, I think that chief executives have to be able to execute something. I think that the role of the CEO in the ACC bill is reduced to one of an allocater, not to one of a person who executes the authority conferred by the board.

Senator HUTCHINS—Do you think that there are too many steps between, say, a chief executive being able to say, 'I'd like to exercise this authority to coerce this person or instruct someone,' and his ability to exercise that decision?

Mr Bradley—I do not think that there are too many steps. Much of my experience in this area is as the crime commissioner. I am a single commissioner. I am the only person who exercises coercive powers in this state. And it is a very slick system, in the sense that, having been granted the power by my board equivalent, I make a determination that Mr A shall be called to give evidence. I issue the summons, I preside at the hearing and I determine what questions will and will not be asked.

Mr KERR—That is the existing NCA model, really.

Mr Bradley—It is a bit like that, yes. But the NCA is a bigger organisation; it is all over the country. There can be an argument made out for the CEO to be removed from the 'how'

process, but I think that if I were driving the organisation I would want to be determining the 'who' at least.

Senator HUTCHINS—Do you think that might impede operations?

Mr Bradley—I would not think so. I think it would advance operations.

Senator HUTCHINS—No, what has been proposed will impede operations?

Mr Bradley—In practice it would probably work okay, I suggest. If examiner A will not examine the witness identified, then you get yourself another examiner, I suppose, because the authority of the CEO is to choose the examiner; it is not to allocate the work. The thinking behind it is that an examiner will be identified. So, if you are working on South-East Asian organised drug trafficking or something, someone will be appointed to attend to that matter and exercise coercive powers in relation to that matter, and as a matter of practice he or she would probably get on with it. It is just that, as an internal mechanism, the CEO of any agency, I would have thought, should be able to say, 'I want you to do it, and I want you to do that specifically. As to how you do it, that's another matter.' And because of the fact that you are depriving people of a substantial body of rights in the hearing and production processes, it is not inappropriate that there be a degree of independence exercised by the presiding officer or the person authorising the issue of a notice.

Mr SERCOMBE—Mr Bradley, what is your understanding of the reasons for the considerably greater emphasis placed in these proposed new arrangements on the intelligence aspects of functions rather than on the criminal investigation aspect which currently is the focus of NCA activity? Do you have an understanding as to what is driving that particular approach and what the implications of it might be?

Mr Bradley—Matters relating to criminal intelligence are very complex and we do not have the time, I suggest, to explore them fully today, but in essence it is like this. Criminal intelligence has historically been the responsibility of police and police are best at investigation, apprehension, giving evidence and that sort of thing. Intelligence has been historically, not so much today, regarded as a secondary priority of policing agencies. In New South Wales it is understandable because of the overwhelmingly reactive nature of the work that is done. It is not the case that we have the time or the resources to sit back and contemplate what is coming over the horizon. There is some of that going on, of course, but there is an enormous demand on police resources in terms of violence, drugs and things going on every day.

On the gathering and assembling of intelligence, the seeking out of intelligence and the collating of it so that you can turn it into good advice, I cannot emphasise strongly enough that all intelligence, in my view, is advice as to the allocation of resources. The processes which lead to that have usually been left to people not so much in the mainstream. I think the ABCI suffered from that historically over a long period of time. So I think it is appropriate that more emphasis be given to it. We really need to know what the criminal environment is, what the landscape is like and where the criminal enterprises are vulnerable so that we can best assign the finite resources to have the greatest impact upon the enterprises and individuals within it.

I think there is a level of frustration at government level that there has not been the quality of the advice produced over the years which enables them to make sound decisions about the allocation of criminal investigation resources. I am told—I do not know whether it is true—that there is a high regard for national security type intelligence in terms of quality and that what is intended by this is to bring the standards of criminal intelligence advice up to the national security standards. I do not know whether that is true, but I do know that it is true that it has not been given enough emphasis in the past. It is very important, and the matters that have been identified by the leaders' summit for attention I would suggest could have been identified earlier had we had better quality advice and a greater capacity to respond to that advice, perhaps a greater willingness to respond to pure intelligence advice. Hand guns, cyber crime, car rebirthing, identity fraud—there are a range of things which are at the moment very difficult to grasp, let alone bring back under control. If we had had better advice we might have been further down the track.

Mr SERCOMBE—You just made some observations a moment ago about the ABCI perhaps being a little peripheral but I think in response to an earlier question you made some fairly positive remarks about the ABCI. As I understand it, it operates at the moment as very much a common police service.

Mr Bradley—Yes.

Mr SERCOMBE—A model of operation exclusively managed by the state commissioners, although I think the AFP Commissioner may be there.

Mr Bradley—Yes, he is.

Mr SERCOMBE—In terms of absorbing the ABCI within this new framework, do you see any downsides to the level of cooperation the new organisation will receive from state police services as compared to the current position? I must say that in Victoria, for example, just from private conversation from time to time with state police officers they are very sceptical about the ABCI and its utility.

Mr Bradley—You mean in the ACC context or up until—

Mr SERCOMBE—They are particularly sceptical about the way in which the ABCI operates at the present time in terms of its utility.

Mr Bradley—I have heard that.

Mr SERCOMBE—I am wondering what observation you might have for us about those remarks. Secondly, is the new framework likely to produce some more positive outcomes? Are there any down sides to it?

Mr Bradley—I understand the question. The ABCI has the great advantage, in my view, that it is the servant of everyone and the property of no-one so you would expect that there would be a greater degree of cooperation with it and a more generous contribution of data to it than there has been. In the past—and I do not want to sound too critical—the ABCI has not been well

served by integrated data systems, by the sorts of people that it was able to recruit to carry out intelligence work.

Mr SERCOMBE—Not a good career move you mean?

Mr Bradley—Something like that. In the very early days there was a story that if you had more than two or three prangs in a highway patrol car then the ABCI was a good place for you. I do not think that is true today. There is a much higher degree of professionalism in the ABCI today than there was previously. But it is still the case that the ABCI does not get timely information and does not get all of what it should get. I think a lot of people are working on ensuring that ultimately that will occur. I am hopeful that it will. If the ABCI is in the ACC environment the prospects are probably better than they were before.

It will have a statutory position rather than a contractual position. It will be the responsibility of these board members as directors to, in effect, make this happen. In the past there has been perhaps less activism on the part of board members in relation to the NCA than there could have been, and perhaps even in relation to the ABCI. I have not had a lot of direct contact with the government's arrangements for the ABCI. I just know that it did not get as much as it should have and it did have a lot to offer. In some specific subjects it did extremely well. After we cast about the countryside looking for someone to look after the identity fraud problem, which is overrunning all of us, the ABCI was the only agency to put up its hand and it did a very good job. Currently, it has a pilot which is proving all of the things which we suspected and will give us a sound empirical basis to advance an argument to the government or the board of the ACC or whoever that this topic has to be picked up and done seriously. I think it will probably be an advantage. It is a bit hard to tell at the moment and the history has not been great but it has been improving.

Mr DUTTON—I am curious to know what condition you found the NCA in when you first arrived. What was the morale or the view of the staff, in particular the senior management or members that are still there, towards the new ACC?

Mr Bradley—I would prefer not to go into too much detail, certainly not in public. I think it is fair to say that for an agency with people in it working hard towards particular goals and regarding the work as worth while, it did not help to have someone say that one of the options is to abolish the NCA. I think I found an agency that was demoralised by a sequence of events that occurred from that public announcement, an agency which had been on a bit of a roller-coaster ride, ups and downs, through the negotiation process over the ACC and an agency which was suspicious about the motives of other agencies in the negotiation process.

To overcome that, as a very first step—indeed, on the second day—we got together all of the senior managers, including the national directors housed in the various states, and formulated a plan to give us some goals and directions for the next three months. The way we did that was to address the prospective board members and say to them, 'What do you think the ACC should be doing and how do you think it should do it? Here are our suggestions. If you can communicate your views to us, we will get about making sure that the last couple of days of the NCA will look very much like the first couple of days of the ACC, and you will have a flying start at your first meeting in January.' We are in the process of ascertaining their views now. It is nice to be able to generate some internal views. It gives them some control over the future, or at least a

part in it, to move towards something meaningful, rather than working on things which, on 1 January, might terminate.

Mr KERR—I have one question and I would appreciate your understanding. I have one specific point—that I think is correct—to follow up with. The general question is this: can you set out what you understand to be the location of effective decision making authority? The act is largely ambiguous about some of these issues, or it seems to be on my first reading. You have said essentially that your understanding is that the determination whether or not to proceed to exercise the coercive powers would be effectively in the hands of the examiners. I would have thought another possible reading would be that the board, by making the determination that an area of inquiry would be opened up, in fact mandates broadly that an examiner shall exercise those powers, save if there are some proper reasons for them not to do so. You have also addressed the issue of the CEO and the fact that they do not appear to have any specific role in relation either to the appointment of the head of an investigation or to the determination as to whether or not the coercive powers should be exercised in any particular case. I just wonder whether it is your view that the location ought to be clarified—where the location is best or where it should be—because, it seems to me at least, all of these issues at the moment are quite open and are quite arguable to any of those alternatives.

Mr Bradley—I agree with that. Just before I answer that question, I omitted one thing in relation to the ABCI; that is, the general police services offered by the ABCI, which would not normally fall within the charter of the ACC, are to be carried forward in the ACC context, so those things that they currently do they will continue to do. I am sorry; I should have mentioned that if that was a concern.

As to where the decision making process resides, I think that the examiners should work for the CEO, essentially, to put it in lay terms, and I think that it should be open to the CEO to say, 'Get Mr A in and ask him these things' or 'Get Mr A's accountant in and ask him these things'—in general terms—and that the 'how' should be left to the examiner. In other words, he presides at the hearing, Mr A is asked material questions about the subject matter of the investigation, and to the extent to which the examination strays from that course then the examiner pulls it up. But I do not think that the examiner should be able to decline to examine a particular individual or decline to issue a notice in relation to a particular body of material. I think the CEO should be able to say, 'I want that person to respond to these questions in general terms. In general terms, I would like this dealt with'—and that the examiner deals with the how.

Mr KERR—If you were to take that course—and I see it as perfectly proper that you put it—wouldn't you then vest in the CEO accountability for matters in a more direct way? Secondly, wouldn't you, in a sense, require them to have the management of all the investigations? In the same way that NCA members presently have it collectively, you would have it in a single person. This is a royal commission, isn't it, in practice? It is a diffuse royal commission. The identification of the royal commissioners in this provision is very difficult to locate, I am suggesting. You are saying that it should be located in the CEO, as the 'royal commissioner' of the process. Is that correct?

Mr Bradley—Yes. If I had my preference, this CEO would, from time to time, be able to exercise the coercive powers himself, if only for reasons of efficiency. I can understand there is sensitivity about having a board dominated by police commissioners, on the one hand, and

coercive powers being exercised at the other end of the chain and therefore seeking to break the nexus a bit by the CEO not being a voting member of the board and by the CEO having to act through independent officers. But I do not think the chain should have a missing link. I think the CEO should be able to make sure that those hearings proceed, and there are some accountability mechanisms in there as well. In a lot of this work, especially in things like money laundering, these matters need to be driven. You need to be able to identify a person who is responsible for the outcome. If, as an examiner, you are only responsible for the fair conduct of a hearing and not for the outcome, who is? If, as an examiner, you can decline to have a hearing then the CEO can say to those who ask, 'Why haven't you got a result in this area?' that he asked for some examinations to be conducted but the examiner declined.

Mr KERR—Could I test this a little further: you say that an examiner should not be able to decline. I am not disagreeing with the fundamental proposition you put, but surely they would have to be satisfied that a certain menu of preconditions has been met—that the reference has been given and that the matter comes before them properly?

Mr Bradley—The usual expression is 'to comply with a reasonable direction'. Yes, the reasonable direction would firstly have to be lawful. In other words, it would have to be within the authority granted by the board, and it would have to meet other sorts of principles about fairness—that is, if you call in someone's accountant or doctor or wife, it must not be done in a willy-nilly way but for a genuine purpose and with due notice and all those sorts of things. But, otherwise, I think the CEO should be able to direct hearings.

Mr KERR—To me, the advantage of the NCA format is that the location of responsibility for the management of the investigation and for the responsibility of determining whether or not the special powers of a royal commission ought to be exercised were located in the same person, or in the same body of persons, so that the issue of giving a reasonable direction never arose. I understand what you are saying, but it always does sound offensive, I think, to those with a civil liberties bent to say that a CEO can give a direction that the powers, in the nature of a special royal commission, could be made subject to direction—unless you actually constitute the royal commissioner as the CEO and then have some delegated powers so that ultimately the person who makes the determination actually accepts the responsibility for the outcome of the process. I do not like the separation unless you actually have accountability also.

Mr Bradley—I agree that there needs to be accountability. The mechanism is—and I speak from my experience in the Crime Commission mainly, as I have not conducted a single hearing since I have been at the NCA over the last couple of weeks—that the Supreme Court is the body that determines whether you are doing it properly, fairly, reasonably and lawfully, and I think that is where it should be. If someone thinks they have been dealt with unfairly or unlawfully, that is where they should go. The royal commission analogy is a good one, but in my experience royal commissioners are CEOs. They are responsible for the outcomes and they are also answerable to the Supreme Court in certain limited circumstances.

Mr KERR—I understand what you are saying. Insofar as an individual coming before an inquiry that is being conducted alleges some impropriety, the Supreme Court is the right place to go, plainly. But there also has to be an exercise of self-restraint in an organisation of this nature, and you have to locate somebody who will take the responsibility of saying, 'We will not trawl too widely; we will not use these powers that are extraordinary, save in certain

circumstances.' And those circumstances may well be properly more limited than the remit of the legal grant of power.

Mr Bradley—Yes; I understand the point.

Mr KERR—So I am not certain that it is answered entirely by saying, 'It is up to the supreme courts to hold us to our lawful bounds,' because that still does not answer the question about whether or not there ought to be some reflection upon the use of those powers before they are exercised.

Mr Bradley—I think the legislation—not the current legislation but the NCA legislation, the Crime Commission legislation—seeks to deal with that by qualifying the person who exercises the powers. You have to be qualified to be a judge or have, I think, five years admission as a legal practitioner. That is not a requirement of the CEO under the ACC arrangement. I think the position description says he or she needs to have extensive law enforcement experience, or something like that. I agree with what you say, that it is one thing to be given the authority and to be required to exercise it with prudence; it is another to ensure that the scope of its application and the method of its application is done fairly when it is your responsibility (a) to conduct the investigation and (b) to exercise the prudence. I think the only way that anyone has sought to address that in the past is to formally qualify the exerciser of the authority. That, of course, is based on an assumption that lawyers bring some prudence to the process—and you could get at least two views about that.

Mr KERR—Is that the reason for the inference that this point of decision is supposed to be with the examiner because they are still required to have five years qualification et cetera and that the CEO is not given those powers? Is that why you draw the inference that that is a point at which an examiner could say, 'This is not a proper matter for me to exercise my hearing powers'?

Mr Bradley—Yes; in general terms that is the point.

Mr KERR—I want to raise a technical point on the authorisation of investigations under state laws. On a quick look at section 55A, it seems to me that it provides that you have supplementary provisions that confer powers or that you allow states to invest similar powers in the ACC as those which have been invested by the federal parliament. Whether they are to be exercised is then determined simply by a majority decision of the board, which presumably can be a majority decision of a subcommittee of the board.

Mr Bradley—You are looking at 55A(3)?

Mr KERR—Yes.

Mr Bradley—That refers to 'investigate a matter' or 'undertake an intelligence operation'. Neither of those carry coercive powers because there has to be a determination that it is special. So it has to be a special investigation or a special operation in order to carry—

Mr KERR—No, if you look at 55A, that is the provision that gets over the Corporations Law separation of powers problem and says that a law of a state may confer on the ACC all these

powers of the same nature and kind, which would presumably include the power to conduct special operations.

Mr Bradley—I see your point.

Mr KERR—Then (2) picks that up and (3) defines the circumstances in which it can be exercised.

Mr Bradley—I have got that one on notice. It probably needs a bit more thought than I can give it at the moment before I would respond.

Mr KERR—I accept that. It just seemed that that appeared to be the provision.

Mr SERCOMBE—Mr Chairman, given that Mr Bradley has agreed to take a number of matters on notice, can I seek some clarification from him as to what he thinks is a reasonable time to get back to us, given the very compressed time lines involved with this matter?

Mr Bradley—I would have thought about a week.

CHAIR—Okay. As there are no further questions, thank you very much, Mr Bradley, for giving evidence, particularly at short notice, and taking on the role as acting CEO of the organisation. We appreciate it. We look forward to your response in due course to some of the questions that were raised.

Mr Bradley—Thank you.

Proceedings suspended from 10.15 a.m. to 10.23 a.m.

BOTTOM, Mr Robert (Private capacity)

BALLANTINE-JONES, Reverend Bruce (Private capacity)

CHAIR—Welcome. The committee is examining the Australian Crime Commission Establishment Bill 2002, which is the culmination of negotiations between the Commonwealth and state governments about changes to the national framework for dealing with organised crime. The new body will incorporate the functions of the NCA, the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments. It will be focused on criminal intelligence collection and the establishment of national intelligence priorities.

The committee prefers all evidence to be given in public, but should you at any time wish to give your evidence or part of your evidence or answers to specific questions in camera you may make 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 Australian Crime Commission Establishment Bill 2002. At the conclusion of your remarks, I will invite members of the committee to submit questions to you.

Mr Bottom—Thank you very much, Mr Chairman. I say at the outset that we come along today to welcome this bill as presented to the parliament. As a matter of record, I point out that earlier this year we were not all that happy with what was then proposed, and our remarks today perhaps ought to be considered in that context. Earlier in the year when plans were first mooted to reform the NCA they were not acceptable and I was on the public record saying that. I did special articles around Australia and took other action. In the process that followed I, in particular, and then Bruce in concert, had the benefit of some liaison not only with Commonwealth stakeholders but also directly with the states, in particular New South Wales. For my part, I might say that I have a letter of commendation from the New South Wales police minister for my contribution to that state's part in the negotiations that led to the outcome we are looking at in this legislation now.

In brief, we welcome the restructure. There are some remarks in the submission which underpin a belief, which I think I expounded the last time I appeared before this committee in 1997, that the NCA was never well served by lawyers. In the submission we quote a paper delivered in 1995 at a joint NCA-Victorian Council of Civil Liberties conference. Two principals from the Office of the Director of Public Prosecutions enunciated the fact that lawyers were not the best people to run organisations such as the NCA and, in fact, advocated as far back as then that it ought to be put more in law enforcement hands.

Without reading from the submission, we really support that. Therefore, we welcome the new board structure, which has two aspects to it. One is that it puts it more on a law enforcement plane and has representatives of Commonwealth agencies sitting on the board who would not necessarily have had a direct role with the NCA in the past but will hopefully have one with the ACC in the future. In particular we welcome the inclusion of the Director of Security. We make reference in this submission to the fact that when the Commonwealth looked at reforming the NCA I know that the Blunn report drew a parallel with Britain and their National Crime

Intelligence Service set up in 1997, way after Australian authorities acted. It was backed up by a national crime squad in 1998. At that time, the United Kingdom government decreed that its MI5 ought to contribute to the fight against organised crime. Likewise, this legislation will now mean that ASIO and other agencies will be required to contribute their intelligence to this operation.

Tragically for Australia, I can tell you that in the 1960s and 1970s I was aware that ASIO and other security agencies had phone tap material—that is at a time when the police did not have those facilities—on the involvement of people in Australia as well as criminal gangs running major drug operations particularly from the Middle East to Australia and raising money for militia and armies over there that was never touched because the security service in those days, for their own reasons, never passed it on to law enforcement agencies. That is really welcomed and it is the trend throughout the world.

Without going into all the other aspects of the changes, we particularly welcome the fact that the ACC will be run by a CEO with what is described as a strong law enforcement background. I might say for our part that when we were unhappy with what was proposed Bruce Ballantine-Jones and I sought a special meeting with the Prime Minister. That meeting lasted two hours. That was one of the main points we submitted, which is outlined here. The last time I appeared here I did an analysis of the NCA's figures. Whilst I have always been a supporter of the NCA, the graphs tell the story. We have had an unfortunate past where even fine lawyers, one of whom is now Chief Justice of Victoria, did not serve the NCA well. He was so hopeless as chairman of the NCA that they could not even produce a graph in their annual report because they did not have enough arrests to justify it. Another chairman had an unfortunate experience outside premises in Victoria. Since then we have had various lawyers of standing running the NCA. In the 1920s and 1930s we had a drug trade in Australia that was the worst in the world. The governments acted at the time and they had a constable and a sergeant who in the 1930s arrested more people than the NCA has ever arrested and wiped out not only the razor gangs but also the drug trade in Australia, which did not return to this country for 30 years.

In that context, we believe that it is more appropriate that law enforcement runs it and is accountable. I noticed that Mr Duncan Kerr mentioned the fears. I remember the debates in the past over the use of the coercive powers. We welcome the change that they will be exercised by examiners. We make the point that that is symbolic for Australia. We have an adversarial system of law in Australia. The use of the term 'examiner' equates with the European system of examining magistrates who seek the truth rather than anything. In Australian terms, it equates with the Australian Securities and Investment Commission. Civil liberties people and other vested interests jump up and down about coercive powers. The reality is that today while we are sitting here there are sundry inspectors for the Australian Securities and Investment Commission out there bailing up greengrocers, accountants and all sorts of people and using coercive powers on a day-to-day basis. If anyone was unfortunate enough to have Argentine ants in their backyard or too many chooks, you could have the chook board, which can exercise far greater powers, hunt you down.

Mr KERR—Having sat on the body that conferred those powers on ASIC, it was done against a background of absolute assurance at the time that it would never be extended into ordinary law enforcement and that it was unthinkable to do so. Understand that this may be regarded as an example of legislative creep rather than something that founds a good precedent.

Mr Bottom—I realise all that. Bruce has been on an committee of the ICAC overseeing the use or sometimes the misuse of these powers. You have to ask yourselves: why are we prepared to extend these powers to deal with bankrupts or company transgressions and we will not allow authorities to use them to track down drug traffickers, murderers, rapists and the like? I do not think the use of coercive powers—

Mr KERR—Understand that this would not cover murderers and rapists because they will not come under the terms of the National Crime Authority because they cannot be, unless you are into serial murder—

Mr Bottom—Organised crime murders are. I must say that many of the disturbing murders in Australia are committed—

Mr KERR—The vast majority of murders are committed in domestic circumstances.

Mr Bottom—With all due respect, in the past lack of action to pursue murders in connection with organised crime and corruption that affect a community has brought down governments. It is the paramount reason. The NCA has used its coercive powers to pursue the last gang murders of Sydney. It was the major reference it pursued and it used coercive powers almost on a daily basis to try to sort out those murders. I must tell you that if you study the annual reports of the New South Wales Crime Commission you will find that in more recent times New South Wales has led Australia in clearing up gang murders by using the coercive powers of that commission. It is quite an innovation. I agree with Mr Duncan Kerr that there ought to be appropriate oversight, but I do not believe anymore that it is like it was in the 1970s or 1980s. This debate on coercive power becomes something of a nonsense. Australians have become used to it over two decades. They expect us to use all the powers necessary to come to grips with organised crime. History shows that when tough laws were introduced in the 1920s we led the world and wiped out the drug trade in this country for 30 years. The drug trade only came back when we wiped those particular laws out. I will leave it there. We are quite happy to answer questions.

Rev. Ballantine-Jones—I would like to endorse the support we are giving to the proposal in this legislation. We think it is a good build on the 18 years of experience of the NCA, to see where the NCA model has been deficient and how it can be improved. I believe, and Bob agrees, that the proposal to institute a board made up of police commissioners and other key people—in effect like a board of directors in a company—gives a streamlined capacity and, with the requirement of the CEO to have had operational and investigative experience, will allow this new body to function more efficiently and in a more focused way. My view is that this body that is being proposed is, like the old one, a trade-off between state and federal powers, the rights of citizens and the coercive powers. With regard to the state and federal thing, the special majorities required in the board to grant special powers is a good move. After all, most crime comes under the jurisdiction of the state governments and laws. In a federal system like ours, we have to have what is effectively a trade-off, and I think this is a good one.

I hope that, when the new body gets going, your committee will perhaps take a very active role in the supervision or surveillance of the operations of the ACC. We indicate in our submission here that we believe your committee should be given access to operational information, not just the general functionings of the body in an organisational way. I was on the operational review committee of the ICAC for about five years. The ICAC supervision system

was that the parliamentary committee looked after what you might call the more general procedural matters but was prohibited from getting into the actual operational matters, whereas the operational review committee, which was made up of certain community people, the police commissioner and various others, was given access unfettered access to anything operational. The purpose of that was to satisfy the community that the ICAC was not sitting on things and was not failing to do its work at that level.

Under the model that we have here, your committee fulfils a similar function to the New South Wales parliamentary committee. However, unless your committee was to be given access to operational matters, in a sense there is no way the community which you represent would ever know that the body was functioning as well as it ought to at the actual level of operation. I think some of the dissatisfaction of the NCA has arisen out of the fact that so much of its activities are cloaked from any surveillance by anybody. It cannot report in great detail. Who knows what it is getting into?

Whilst it is not in the legislation as presently tabled or published, I would want to urge—and we did this when we were talking with the Prime Minister a couple of months ago—that your committee be given access, with the appropriate safeguards that existed, say, for the ICAC operations review committee. As with that committee, any information of an operational nature that is given to you could not be divulged, obviously. Who else is going to represent the community at large to ensure that this powerful body is doing its job, if it is not going to be your committee? That is one area where I think this legislation could be improved, by upgrading the role of the parliamentary committee to keep it on its toes. But generally speaking I agree with everything that Bob said.

Mr CAMERON THOMPSON—I note your comments in support of Mr Schuberg. What is your connection with him?

Mr Bottom—I have been dealing with organised crime in this state since 1963. I was the first witness for the Moffitt royal commission. He set up the original CIU. So we have been dealing with him and some of his people for many years. In fact, I was partly responsible for getting him appointed in 1989 to set up Operation Asset. So I know him. He is listed in there only in the context that he was in the submission to the Prime Minister.

Mr SERCOMBE—What were the circumstances of his departure from the New South Wales Police Service?

Mr Bottom—I wrote a full-page article for the *Daily Telegraph* at the time it happened, and I think the headline was 'Ryan will be haunted by the ghost of an honest cop'. In his own book, Ryan acknowledged that the biggest mistake he ever made was to get rid of Schuberg. Of course, Ryan got rid of Schuberg because he probably saw him as a rival. But I have to tell you that Schuberg has the confidence of governments not just in this state. He is the special adviser to the New South Wales Minister for Police, Michael Costa. Most of the reforms that have been introduced in the New South Wales police have come through Geoff Schuberg advising the current minister, in concert with the current commissioner. So the unfortunate episode that happened under Ryan is something of the past.

Mr CAMERON THOMPSON—So your connection with him is that you have known him and that you had him appointed to some inquiry. I am after your connection.

Mr Bottom—I first ran into Schuberg at the time I set up the first non-police organised crime unit in Australia, in 1978, for the then Labor government. That became a pivotal point for the Williams and the Woodward royal commissions, and Schuberg was at that time with the crime intelligence unit in New South Wales and started to liase with that office, as did the Federal Police and everyone around the nation.

Mr CAMERON THOMPSON—What about you, Reverend Ballantine-Jones?

Rev. Ballantine-Jones—I do not know him well. I have known him on and off over the years. For example, when I was at the ICAC operations review committee he was on secondment to that body, and I had a little bit to do with him at that point. I know him as a friend, but not as a close friend. His reputation, as Bob has indicated, is about as high as it is going to get for such a person. His experience is very wide, both administratively and operationally.

Mr CAMERON THOMPSON—I am interested in why you should proceed with a submission like this to the Prime Minister on this issue. Is it only that you support Schuberg or is it that you dislike some of the other potential applicants?

Mr Bottom—There are no other applicants, I must tell you. Let me put this into context. We went to the Prime Minister because we were not happy with what the Commonwealth government was doing and we believed that we had some influence. We were very happy with the Prime Minister and things were put back on track, in concert with the states. At that time, yes, there were various things running around about how it might operate. But we were particularly concerned because—let's put the cards on the table—there was a move at A-G level to put in someone from the Attorney-General's office. The names of various people did appear in the press, in the *Australian*, the *Age* and other papers. We did not even know the people involved.

You must remember the background of some of our people. I lived for 11 years under police guard in this state bringing these things about, or helping to. We were not going to stand back, and we will not in the future either, if someone was going to put in some bureaucrat from Canberra to run the National Crime Authority or the ACC. We opposed it and said, 'We are fed up with lawyers who have not done the job exploiting the NCA.' This is not the day but I will come back another day and give you the real research on what has been going on. The reality is this: you have been lucky—all of you people; some of you are new. You are lucky that you have not had to have some royal commissions, so let us get this right. Let me put this into context. We were not going to wear another lawyer, or someone from A-G's, on a revamped body that we were not happy with at the time under the thing which said, 'Let's put someone in and do the job.' So what we suggested was to put in Schuberg. The other person that we suggested at the time was Tim Carmody, the head of the Queensland Crime Commission. I wrote the cabinet report that set it up.

Mr CAMERON THOMPSON—But he's a lawyer isn't he?

Mr Bottom—Yes, but at that stage we were not sure how to do it or if it had to be a lawyer. The position then was split. Tim Carmody did fill the criteria. He ran the Queensland Crime Commission—he is a former policeman, by the way. His hit rate was 20 times greater than the NCA in his first two years. He made a mockery of what the NCA did with 450 people. He had a budget of $5 million. We wanted the right people to go in there and do the job that Australia expects. That is where we have great optimism. Although we were critical—or I was, especially earlier this year, very critical and upset with the Prime Minister and everyone—I am now utterly convinced there is an absolute need for the revamp. At the last committee hearing that I attended a lot of things were foreshadowed then that have since occurred. The reality is that it is time—and the Australian people expect it—for someone to do the job.

Rev. Ballantine-Jones—To clarify, when we made our submission to the Prime Minister the broad context was that we believed an operational person should be in charge of the new body. We argued for that and put some of the documentation here. Of course, we could not think of a better name, but it was not as if we were expecting that no other name might be looked at. From our personal experience and knowledge, Schuberg would have fitted the position very well. That was the context in which we brought his name up back in July or whenever it was.

CHAIR—As we are not the interviewing panel for the CEO, perhaps we had better return to the question of the legislation.

Mr KERR—I would like to clarify a few points.

Mr SERCOMBE—You should apologise for being a lawyer first!

Mr KERR—I should.

Rev. Ballantine-Jones—They are all right in their place, that is our point!

Mr KERR—A disclaimer. I notice that Reverend Ballantine-Jones mentioned the special majority for the exercise of powers as being one of the trade-offs. It does not seem to be the case that, in relation to state conferral of power on the ACC, a special majority be required. The provisions in the act under section 55—I have had a further look at it—seem to be quite explicit that a reference emerging from a conferral of power under state legislation will simply be an ordinary majority which can be exercised by a committee of the ACC. So you would actually have a two-stage system whereby for Commonwealth investigations there must be an absolute majority in which the Commonwealth must participate through at least one of its two members but for state references no such Commonwealth participation is required. What are the restraints that prevent these extraordinary powers being used as routine components of state based law enforcement in a way which significantly changes the nature of state police operational approaches to matters which might fall within the definition of serious and organised crime?

Rev. Ballantine-Jones—To clarify your question, are you saying that because states have these powers themselves and can exercise them in their own jurisdictions—

Mr KERR—No. If I can put it this way, the act sets up a framework which gives to the ACC certain Commonwealth-conferred powers, but under 55A it says an act of the state parliament can also confer certain powers on the ACC. When it comes to the powers to be exercised for

Commonwealth purposes there are special majorities required. The act does not provide that in relation to powers which are conferred under state legislation. So, under 55A, a state parliament could, for example, say that in respect of a whole menu of serious and organised crime that they define the ACC can exercise the coercive powers that are under this act, but there is no requirement of the special majority that you mentioned. I suppose in the back of my head is a sense that this significantly expands the use of these powers into state jurisdictions where hitherto they had been exercised in relation to federal offences. Also, I suppose the requirement of that special majority is not there for the establishment of an investigation. So I am asking, essentially, whenever the police are investigating some matter at a state level if they do use those powers, what prevents them using this as a matter of ordinary police routine rather than as something, as it has usually been conceived of, which requires reflection as to whether or not ordinary policing is inadequate and that these extraordinary powers should be used?

Rev. Ballantine-Jones—I would presume that that particular provision was part of the discussions between the state and federal authorities in drawing up this proposal, and I would imagine that the initiative for that came from the states, not from the Commonwealth. From my personal point of view, if the states have those powers now in their own jurisdiction, and were willing to expand or pass on those powers to the federal body for the purposes of cooperative activity, I would not have any problem with that. I take it that the states do not have any problem with it either.

Mr KERR—I suppose all I can say to you is that I know that very few states have managed to persuade their parliaments to give such powers to their own bodies. Presumably, as part of mirror legislation, every state will pass such legislation now, therefore massively expanding the circumstances under which law enforcement, in your terms, will be given the capacity to routinely use powers which hitherto have been only conferred on royal commissions.

Rev. Ballantine-Jones—I do not have a great personal problem with that. In the end I think it is in the operation of it that we will discover whether it is a real problem or not. I hope your committee will keep an eye on that. I do not have a problem with it.

Mr KERR—The other point I will ask Mr Bottom about. I think there is a serious philosophical point here and I think people of goodwill can differ. Commissioner Keelty of the Australian Federal Police in submissions to this committee previously has said that in his view no police force should be able to exercise the powers of a kind which are under the National Crime Authority Act, that there should be a structural separation. Some see this as blurring that structural separation, and more, I would imagine, would see it as blurring it if you conceptualise it, as Mr Bottom has, as a law enforcement driven agency. I am wondering how you deal with these philosophical questions.

Mr Bottom—As I mentioned, I do have a view on that. I must say I am deficient in my examination of the act. I always believed that there would be no reference in the terms of an investigation unless there is a very clear majority. You are saying, if it is a state based matter, as long as there is a majority at some sort of level that is all right. No, I do not believe that should have been the true intention. I have to agree with you on that.

After having seen all that happened in the seventies and eighties, there is no way any government anywhere in Australia is going to be able to give coercive powers to police—no

matter what I say on this simplistic fact, that is the reality. If you give it to them indirectly, I do not think it is acceptable. In the state terms, whether it is Queensland with the Crime and Misconduct Commission now, the crime commission here, the police integrity commission or the ICAC, there is a procedure whereby it is a formal reference. The one thing we welcome about this revamp and on which the states and Commonwealth are as one on—because I have been involved with the states as well as the Commonwealth on this; very much so—

Mr KERR—You have played an heroic role over the years.

Mr Bottom—No, I am just saying this year, in fact—

Mr KERR—You have.

Mr Bottom—I have been advising premiers and others—

Mr KERR—I do not always agree with you but I would say you have played an heroic role.

Mr Bottom—Thank you. But on this one, I must say I have to agree. If someone can go to the Australian Crime Commission and get a reference, so to speak, and it does not go before that board and get a majority, then no way. I have to say I have to agree with you.

I will give another little insight on our meeting with the Prime Minister. The Prime Minister was rather good on this, because we had to bargain hard a bit and the Prime Minister gave away the majority of that board. To satisfy the matter that Mr Cameron Thompson raised, the Prime Minister—and I am not talking out of school too much—was prepared to give away the Commonwealth majority to make this board an acceptable model, and, by the way, in consultation that night with Michael Costa, the New South Wales Police Minister. So it is a very important point you raised.

It was then envisaged that the majority would be as it is and that the decisions would be a majority of that board, which would be acceptable, as against the present system where Western Australia and other governments have complained about the delay with getting references and whatnot. This was a streamlined operation. But I would say that any special investigation must be at the majority of that board. As it stands on that board, the states actually have the majority. So although it is a multijurisdictional one, have a look at the line-up. You will see the states have the majority. So there cannot be anything go wrong, hopefully.

Also, if you look at our submission, we go further again. I did actually last time I gave evidence say that you should have access to operational matters. I can access many things in Australia, and I find it extraordinary. In the old days we did have crooked politicians and we had various politicians who were mischief makers apart from being shonks, and that poisoned the whole debate in the seventies and eighties. Today, universally in Australia you might think people distrust politicians. They might distrust them on politics but they no longer distrust them in dealing with crime, and that is pretty well across the board. I can say that having been involved since the sixties. So why shouldn't you have the power? Why would you give it to some lawyer who has been out defending drug traffickers? Is he any better than a politician who has faced the whole community? Of course parliamentarians should have access.

The crime commission concept, which I put to the New South Wales government in 1978, arose from committees in America run by politicians. Out of that procedure of using parliamentary powers the crime commission concept emerged and we have now got an adaptation of it. But I think it should be imperative, as Bruce has particularly advocated, that you should have those powers. But you will notice that we say that if you are going to get the real thing maybe you need not just a majority decision of your committee but a unanimous decision of your committee. If you are going to say, 'We want to know, produce the lot,' make it unanimous. But you should do it.

I will go back. Just in simple terms, yes, I believe that that board as a majority should make a decision on those things. There is only one thing about that. Technically, I do not know how often that board is going to meet, and I think this is where you may be leading to the committee structure.

Mr SERCOMBE—It is laid down in the act. Twice a year.

Mr Bottom—After the evolution of what went through the crime commissions, the ICAC Act and all these sorts of things, I know where you are coming from. If something is mucked up in this and there is not proper accountability it will blow up in everyone's face. So I think there is some validity for someone to have a look to make sure that is accountable but still effective.

Rev. Ballantine-Jones—Can I comment having had a chance to think further? It would not worry me that if a reference came from the states it still had to pass through the special majorities of the board, because the principle is the same. When you exercise the special powers, it has to be on a more broadly based basis than the ordinary powers. Having not thought about the thing in detail like you had—

Mr KERR—I have not thought about it in detail either, I regret.

Rev. Ballantine-Jones—I got the papers only on Friday afternoon. Nevertheless, I would have thought the special majorities of the board would be one way to address that issue.

Mr KERR—I want to raise a question about accountability. You said that we should have access to operational detail—

Mr Bottom—Very much so.

Mr KERR—I am tempted to agree with you, but I also know the arguments that have been advanced against that. Those arguments are equally strong ones, and they are not issues that we will ultimately resolve. The present accountability mechanism that is built into the system is the ombudsman and, insofar as ASIO is involved, the Inspector-General of Intelligence. I do not know whether you have given any thought to that. I have two questions: one is whether or not the involvement of ASIO might lead to conflicting obligations of secrecy—that is, because of the participation of ASIO, the normal accountability mechanisms to this committee, the ministerial council and the ombudsman are somehow limited because of secrecy obligations under the ASIO Act. The second point is: insofar as state investigations are concerned, what would the jurisdiction of the ombudsman be over those extended powers that come under 55A? I can understand how the ombudsman would be able to supervise the conduct of the ACC

insofar as exercising federal jurisdiction and I can understand how this committee can require some accountability insofar as it is exercising federal jurisdiction. But insofar as we authorise the states to confer jurisdiction from a state, how can the ombudsman require state officials, and how can we require state officials, to be accountable to us as federal parliamentarians and federal agencies?

Rev. Ballantine-Jones—I am not necessarily thinking that they would be accountable to your committee for operations; but rather that you would have access to what they are doing so you can draw your conclusions.

Mr KERR—I understand that. How can we require people to provide information either to the ombudsman or to us if they are state officials exercising state powers, albeit authorised under federal legislation?

Rev. Ballantine-Jones—I might be wrong, but, if you take the ICAC area, the role of the ombudsman operated at a 'how did you function?' level rather than 'what was the substance of the issues that you were investigating?' level. In advocating a stronger role for your committee, technically I do not know how they would sort out the legislative parameters—

Mr KERR—The Chair may know more, but I think the way this is intended to work in this instance is that the ombudsman is supposed to be the safeguard against wrongdoing.

Rev. Ballantine-Jones—But what I am talking about is the effectiveness of the body in doing the primary job it is set up to do; namely—

Mr KERR—They are two different issues.

Rev. Ballantine-Jones—Yes. I am really focusing on that side rather than the bureaucratic side.

CHAIR—It is more the abuses of power, isn't it?

Mr Bottom—The first time the two got together was the joint task forces. They came together in 1979 for the Woodward royal commission and the Williams royal commission and actually drew up a memorandum of understanding. I remember this rather well, although I cannot recall the terms of it. One of the basics of it was that once you went across to, for example, New South Wales, your loyalty had to be to the task force. They were formal task forces—they actually produced reports and all that. Out of that process came the ABCI and then the NCA. I think you will find that in the past, under the NCA, once you were seconded—and, of course, originally the states paid their share, and that is in there too; they should again pay their share—you were treated as one. I do not think there were any limitations. If you were doing an operation or a joint thing under the NCA, you were just as liable to be examined or investigated as anyone, even if they were Commonwealth. I think there was just an assumption that the Commonwealth Ombudsman had the power to do it—unless I am wrong. I do not think there has been any bar in the past.

Mr KERR—I have no doubt that you are right, insofar as our law currently operates. What I am concerned about is that this takes a federalised agency—which essentially currently

exercises power only when there is a Commonwealth component—and says the states now can also invest in that body state powers. I do not know the nature of them, but presumably they would be exercised under state authority.

Mr Bottom—The organisation then has the ability to exercise the state power—

Mr KERR—That is right.

Mr Bottom—while that special operation goes on. This may be unnecessary on this basis. Other people have always been intrigued about the oversight body. Having had access like he did under the ICAC, Bruce has reinforced to me that if you really have troubles with something at the ACC you ought to be told what is really going on. But, coming to the next one, you have got to ask yourself this: how come the states—and there are eight other jurisdictions—have always accepted that you people represent one parliament, so to speak? You are oversighting a body which involves nine jurisdictions. Why should Bob Carr or Steve Bracks or whoever have the confidence that you will do the job for them? Do you know what I mean? All I am saying is that I think that the Commonwealth Ombudsman ought to play a role not dissimilar to that of your committee, and I think he will have the power. I just have a feeling about the other part—your committee's role. Have a think about it, because it is a very reassuring thing. In simple terms, you have an evaluation every several years. There have been some good ones by the parliamentary joint committee. They have done a pretty good job. But it has always been what is provided to you. It is often out of date.

CHAIR—You do not know what you do not know.

Mr Bottom—Your current examination of the annual report, for example. Who on this committee would have known, for instance that, as I am told, Garry Crook—and you are talking about coercive powers—has held three hearings since he has been chairman. What a mockery of the whole process in Australia that the chairman, having been given those powers, has held only three hearings since becoming chairman.

As you know, I put in a complaint to your committee recently about the lack of cooperation with the New South Wales authorities in pursuing a Mafia murder at Griffith. The problem was then fixed. But one of the results of me sending a complaint to your committee was mentioned. Do you know what has been happening in recent weeks in Melbourne, for instance, with the painters and dockers and you name it they have got down there—triads and everything? The NCA has held two coercive hearings in Melbourne in a year. Since the report went in to your committee recently, they have been sending a bloke down from New South Wales to hold hearings on Saturdays and Sundays. What a mockery! You have got to get the information and find out what is going on.

CHAIR—We need to put in a new tape, so we need to stop it there—not that it is not of great interest. Also, we have run out of time.

Mr KERR—I think that the greatest fear is the fear that if there is some leak in an operational matter—

Mr SERCOMBE—We would be blamed.

Mr KERR—that it expands the range of suspects.

Mr SERCOMBE—You have a problem; if an MP does not want to abuse it under parliamentary privilege, you cannot send them to jail.

Mr KERR—But on balance they do not.

CHAIR—There is also the problem of being a local member and having somebody who comes on a different reason suddenly being in your office.

Rev. Ballantine-Jones—There are big issues, but we are saying that it is not that you should be—

CHAIR—No, I understand. It is something that we are quite sympathetic to.

Mr KERR—Our parties would have to be very careful about the people they appoint.

CHAIR—That is right. We may not be on it. As there are no further questions, thank you very much. I thank you for giving evidence today at such short notice.

[11.12 a.m.]

COAD, Mr William John (Private capacity)

CHAIR—I welcome Mr Bill Coad. As you know, the committee prefers that all evidence be given in public, but should you at any time wish to give answers to specific questions in camera, you may make application to do so and the committee will consider your request. I point out that evidence taken in camera may be subsequently made public by order of the Senate. I invite you to make some opening remarks about the committee's inquiry into the Australian Crime Commission Establishment Bill 2002. At the conclusion of your remarks, I will invite members of the committee to question you further.

Mr Coad—Thank you. I have no formal submission. I was effectively invited to come. I have some points to make. At the end, if the committee secretariat want my notes, they are welcome to them. By way of background, I worked for a long period in Commonwealth law enforcement and regulation. I was the Deputy Chairman of the Trade Practices Commission in the 1980s. I established AUSTRAC in the late eighties and was the director until the mid-nineties. I was New South Wales Regional Commissioner of ASIC from 1996 to 1999 and I chaired the Commonwealth law enforcement review in the early 1990s. Since 1999, I have been a consultant in regulatory enforcement practice, undertaking work in criminal law and corruption fields in Australia and advising government agencies. More recently, I have been working in New Zealand and in Indonesia in the same sort of area. I work in Australia for Deloittes as an anti money laundering expert for the financial sector. If it is useful, I would like to very briefly give you some short perceptions of the NCA and how the new law might change those perceptions, then give you some positives, cautions and suggestions.

CHAIR—That would be very useful.

Mr Coad—Briefly, the NCA in the late eighties, when I first moved into the criminal law field, was involved in major drug trafficking work as a stand-alone body. It was perceived to be fairly secretive. The police services were not really happy with that. At one stage, it started to move into other non-defined areas, such as white-collar crime et cetera. By the mid-1990s there were better relationships with the police stakeholders after the NCA had set up coordination mechanisms, although those mechanisms were cumbersome. The menu of work was largely set following the Commonwealth law enforcement review so there was more focus on known areas and organised crime. The NCA worked effectively on issues such as money laundering. In my opinion, it fulfilled its role better and defined the landscape on organised crime. In the middle of the 1990s, I regarded it as reasonably successful within its framework. By the late 1990s, when I had started to do consulting work, some of which was in the general area, even though it still seemed to me to be successful in its work there was a great deal of stakeholder dissatisfaction, particularly in Sydney and Melbourne at the very highest level. The NCA was thought to be cherry picking—reverting to what I call 'heads on sticks' which I can clarify later—and, therefore, in competition with mainstream police.

Some of the task force operations, say in Sydney, seemed to be working around the NCA, such as one on Asian crime. Everyone was seen to be trying to claim success in the area and I

thought there were big egos all around, not just in the NCA. It seemed clear to me that unless the stakeholders—the police and others—could be accommodated, there would be continuing instability. At that stage, I think the whole criminal landscape was much clearer. The original driver for the NCA may have been less but the special powers remained of significant utility. Under the old law you had an authority, comprising statutory members, that was governed by overriding references and consultation. It had powers to investigate and refer to prosecution; it had powers to recommend reform; it had statutory powers to examine and obtain information. Those powers derived from the authority as such.

The new law has a 'commission'—I will come back to that—with similar powers but the control and governance structure is different. The authority is replaced by a board made up of mostly law enforcement stakeholders and a CEO. It is really more of a commercial governance model than what I would call a traditional commission model. A CEO is appointed by the Governor-General on nomination from the board and so are the examiners who will now exercise these special powers. The commission itself comprises the CEO, the examiners and the staff. The two centres—ABCI and OSCA—are swept in and the IGC and PJC, as I understand it, still remain. The net result of that is that the menu of work is no longer governed by independent members of an authority, although they had to operate within a reference and consultation framework; the menu of work is governed more by the stakeholders—the police and some others.

The use of special powers by examiners is within an operational framework, but the operational framework is not determined by those who use them. I am not criticising this; I am making an observation. The general operational framework is not determined by those who use them; the examiners, nonetheless, still control the actual use of the power. Later on, in questions, you might want to ask me about that, because I was in ASIC and I could give you a contrast. The rest remain similar to what was before. I do not see this new agency as an independent agency or commission. It is more like what you would call a black box attached to mainstream law enforcement for special purposes. Again, I am not criticising it, I am just trying to characterise it. In practice, it is likely to operate within the aegis, rather than the control, of the AFP.

So there are some positives here, and I do not want to sound negative about this, because I am not recommending anything. There are positives. The removal of independent members of the authority might see peace with the heads of law enforcement stakeholders. That was not there in some places when I last looked in the late nineties. It was not there in Sydney or Canberra, but it was there in Melbourne. There is more scope for cooperation and less scope for crossovers and there is real scope for consolidation of intelligence. These are positives because, in my little scenario, the fate of the NCA had waxed and waned with stakeholder support. Now you have got the stakeholders effectively in the triggering mechanism—the board. There is some caution needed, and the positives need to be tempered by that caution. As I said, the ACC, in my view, is only perceived as an independent commission, and the use of the special powers is less independently governed. It is done within a predetermined framework. You might want to ask me about that later.

In my personal view, commercial governance models like this, where you have got a board and a CEO, are all right for service delivery bodies but less so for law enforcement regulatory bodies, for two main reasons. Firstly, law enforcement regulatory bodies affect the rights of

civilians and should be governed accordingly; this body may be governed towards the needs of its law enforcement stakeholders. Secondly, in my opinion, bodies like the ACCC and ASIC, which are both traditional commissioner hands-on governance bodies, can be argued to be more effectively governed as regulators than, for example, APRA, which is a more commercial model, as I understand it, with a relatively hands-off board.

This type of commercial model has been used in the case of police common services, not always with success. As in the commercial world, you can see a strong and wilful CEO who can call the shots, particularly as the board is very large and the membership very part time and with other major preoccupations. Board committees may mitigate this problem, and the act does provide for board committees, but the model still has risks. In the past, it was my observation that the police common services board have had a time-consuming panoply above them that was much the same as the NCA arrangements. Nonetheless, what I am really saying is that there are many people involved in trying to deliver a law enforcement outcome, and so this commercial model, where you have a relatively hands-off board and a CEO and operatives, in some respects is not as capable of delivering a public interest result as a hands-on board. That is my opinion.

The final point I want to make in that bracket is that if the AFP chairs this board and the ACC is actually physically operated within the aegis of the AFP—I know that is not said, but it may—then there is the risk or at least the perception that the AFP will become too powerful. If that was a perception, you might have to consider making the AFP more accountable, such as to a parliamentary committee like this or a board.

I would like to touch briefly on suggestions about the ACC operations. In my opinion a body like this, dealing with organised crime, should make more use than I understand the NCA did of controls, deterrents and remedies that are of a preventative nature and not just criminal sanctions or 'heads on sticks'—as I called it earlier—arrests, prosecutions et cetera. I think I heard a little of that earlier today. For example, who really ensures that major criminal groups do not get control of power companies, water companies and transport systems? I am saying that the intelligence part of an agency like this should not just assess; it ought to ensure that regulatory frameworks prevent those sorts of outcomes.

Similarly, do we properly fulfil our outcomes under the Basle conventions or the Financial Action Task Force rules to ensure that criminal groups do not infiltrate our financial sector? I would query whether we actually do that in a completely satisfactory way. In particular matters, and generally, I think this agency should play a much greater role in ensuring regulatory deterrents—for example, in securing the removal of licences to trade if some organisation is involved in organised crime. The NCA did do that in some cases, but I think that it should be done more.

When this agency is set up, if that be the parliament's will, in my view it should not be performance assessed by reference only to 'heads on sticks', arrests, prosecutions et cetera. This is an unfortunate Australian fashion at present. The committee should establish its own benchmarks for this agency, which would include stakeholder satisfaction, prevention and exposure of threats. I realise that 'heads on sticks' may be the stuff of the media, and it is important, but sometimes it can be just an indicator of regulatory failure rather than success. In a body like the NCA, which is working with police stakeholders, the more it is reverting to

'heads on sticks', the more it is likely to be seen as being in competition with the other stakeholders whose duties turn more on arrests and prosecutions.

Finally—and this is the wonderful bit of being a civilian; I can say these sorts of things now—in the longer term, I am sceptical that yet another model based on jurisdictional and agency cooperation will achieve the deterrence that the Commonwealth might wish. This is not an FBI. The risk is that, with so many people involved, the result will become the lowest common denominator. I am not suggesting that you should not form the ACC, but I do not think it should be the end of present considerations by parliament, rather it should be another step forward.

I think the Commonwealth needs to continue to think in a novel way. It could, for example—and I know lawyers will debate this ad nauseam but this is as we were advised many years ago in CLER—write its own serious transnational crime laws and it could put in place its own administration. It could collect those laws in one place, covering things like organised transportation of women and children into Australia for the purposes of vice; illegal importation of guns, which is probably already a crime; organised crime groups' misuse of Australian financial corporations; and organised invasion of territory for criminal purposes such as illegal fishing. You could collect that in one place and you could lift the level of seriousness and consequences and draw international support on that. What I am saying is, yes, make an ACC, but I give you some cautions. Do not close the book. This is not an FBI. I welcome the opportunity to answer questions or help you.

CHAIR—Thank you very much, that was very interesting. Do you have that typed out?

Mr Coad—Yes.

CHAIR—Is it okay with you if we have that tabled?

Mr Coad—Yes.

CHAIR—Thank you.

Senator McGAURAN—You say that this is not an FBI. Do you want an FBI?

Mr Coad—Eventually, I think that something like that would come. I was always a supporter of the NCA model. I guess that I am still a supporter of the NCA model—whether it is an NCA or an ACC—of trying to get everyone to work together. The federal system is very cumbersome, as we know. The more that crime is of a transnational type, where people outside Australia are doing things to people inside Australia or bringing in things that we do not want, the more the Commonwealth should gradually extend its influence, in my opinion. This might be another step forward, but sooner or later I think that the Commonwealth will really have to do its own thing.

Mr SERCOMBE—Could you perhaps outline the features of the FBI, as you understand it, that are desirable and that this model does not pick up?

Mr Coad—I am not a great admirer of the FBI either, quite frankly.

Mr SERCOMBE—That is why I was a bit surprised. It has some obvious deficiencies.

Mr Coad—I have been there a few times. Perhaps I should just delete the word 'FBI'. What I am saying is that, if you really wanted to have a dedicated effort against the sorts of things that I listed, you could set up a body to do that. It may not be an FBI.

CHAIR—What we are interested in, given all of your experience, is: what form would you have such an organisation take?

Mr Coad—I really have not thought about that over the weekend in the short time that I have had. All I know is that I have worked in three major Commonwealth agencies. One was the TPC—now the ACCC—which at that stage was based solely on Commonwealth jurisdiction. It was a delight to work in; you could just do it. One was AUSTRAC, which I set up. It was a Commonwealth jurisdiction, helping the states. It was a delight to work in; you could just do it. I worked in ASIC, which was sort of winding back the state role, but the small states were still very possessive of it. That was much harder; it was very slow. I watched the NCA and it was much harder to get through all of that state stuff. I watched the Commonwealth police—

CHAIR—Do you think that the changes that are made are going to make it easier or more difficult?

Mr Coad—Here?

CHAIR—Yes.

Mr Coad—I honestly think that it will end up much the same when you get into the committee structures that operate.

Mr CAMERON THOMPSON—You were here when we heard evidence earlier and you would have heard calls for this committee to be more powerful and to be able to look at operational matters and those sorts of things. You talked about the need to avoid a 'heads on sticks' way of assessing the performance of the ACC. How do you see that kind of assessment process? Do you intend to go down the line that Mr Bottom wanted to go down? Or do you see another way in which we can assess the performance of the ACC without purely defining it back to how many heads there are out there?

Mr Coad—A couple of years ago, with some others, I undertook a review of ICAC in Sydney and I also did similar work in Brisbane with the CJC. I think that you can get to a middle ground where you can go in—you may do this to some degree already with the NCA—and you can study the whole tenor of their activity. You can look at particular things without actually getting names, addresses and serial numbers of who they are looking at. You can get the colour and light of what they are doing, I think, without actually going over the edge into looking at Bill Coad or Bob Bottom or whoever it is. I have done it twice, but the one we did on ICAC was actually presented to a parliamentary committee in New South Wales. I do not know because I did not go there, but I believe that they were satisfied with that. I think that you can get the whole character of what they are doing without saying, 'We are looking at Bloggs.' I can give an example. When I was looking at the CJC I would know that they were looking at three

police sergeants in a middle range suburb in Brisbane, but I would not know who they were and I might not know the exact police station.

Mr CAMERON THOMPSON—But you were saying that, in operating its affairs, you would like to see the ACC, for example, look at legislation and its effectiveness in stopping crime moving into areas—you talked about the transport industry or the finance sector, those sorts of things.

Mr Coad—Yes.

Mr CAMERON THOMPSON—In terms of 'heads on sticks', that might not be a very productive area, so all the impetus on the ACC may be to avoid those areas altogether and go out and get the heads and put them on the sticks. How do you structure some kind of culture in which that becomes an effective part of its responsibilities? How do you then assess it to provide value to the community?

Mr Coad—An agency like that has to set up its own business plan which says, 'We have this amount of dedication to these projects, which are preventative projects.' The CJC, ICAC and other agencies do this and they say, 'This is the amount of resource we're going to put into the 'heads on sticks' part.' Most organisations do this. When you come to assess them, you look at what they have done in the different categories of work and you say, 'That is really valuable ...'

Mr CAMERON THOMPSON—For example, the CJC has been continually criticised for doing too much of that and for not having enough 'heads on sticks'.

Mr Coad—It waxes and wanes. You see this between the ACCC and ASIC. The ACCC is always the one up front, with 'heads on sticks'—or looks to be—and ASIC always looks like the limp dog. But when you get behind it and see what is actually going on—

Mr SERCOMBE—Perhaps Allan Fels can move to ASIC!

Mr Coad—When you get behind it and you step outside the media, a more intelligent body like this can sit down and make that sort of assessment. I do not think you are ever going to get the media to think that anything but 'heads on sticks' is the answer, but a parliamentary committee does not have to be entirely governed by that view. I am not knocking 'heads on sticks'; you have to have 'heads on sticks'. The credibility of a regulator partly depends on it, but that should not be all of your game.

Mr SERCOMBE—Mr Coad, when you were talking about the special powers during your presentation, you invited us to come back to get some amplification if we wished. I made a note that you were talking about the special powers under this proposal in a predetermined framework, or words to that effect. I invite you now to expand on what you meant.

Mr Coad—What I was really saying was that the examiners, as I read it—and bear in mind that I have not spent hours over this law—are qualified people who make proper choices about how to go about it. For example, ASIC is a commission which had state commissioners as well. By my recollection, the powers to examine came to the commission, and then the commission delegated those powers. In fact, it delegated them fairly widely but then wound that delegation

back in administrative ways. It was a legal way of making sure that it did not get challenged too much. The commission itself controlled the work that was being done, so when it came to actually exercising the powers it was being done in a way that the commission had some real grapple on. In this case, the board gives them the references or the jobs to do and the CEO controls all that work. Down in there are the examiners. It does not seem to me that the status of what was there under the NCA, of lawyers controlling the powers, is quite the same. I am not saying that is wrong; I am just saying it is not quite the same.

Mr KERR—How many commissioners are there in ASIC? These are actually working commissioners that you are talking about, aren't they?

Mr Coad—When I was there, there were three national commissioners. I was a New South Wales commissioner, which is a sort of leftover from the old days; nevertheless, it retained much of the powers of the central commission. So you had three national ones and one in every state. That group had all the powers. In New South Wales, I might have had, say, 20 people beneath me who could do those examinations. They were always done with a lawyer as well. So there would be an investigator and a lawyer, and they were always done with a trigger of certain special agreed powers. There had to be triggers of the types of investigation. The regional commissioners knew where it was being used; it is just a little bit different.

Mr KERR—The acting chair of the NCA raised exactly the same point earlier this morning, saying that he felt that the CEO did not have adequate command or management of the system. I also raised with him the power of the board to appoint the heads of particular investigations and task forces, which is in this act, and how accountability mechanisms internally would operate with this sort of board appointment of investigation agents—who presumably are not subject to the CEO, otherwise they would not be appointed by the board. I wondered how that would work. Have you got any reflections on those issues?

Mr Coad—If you are going to have what I call a commercial model, I do not think you can really have the board running people down inside the organisation—that is putting aside the issue of powers and whatnot. If the CEO is the boss, he has to call the shots down the line, not the board. In a body like the ACCC, Fels is the boss and the commissioners are the joint bosses. I think they do have a CEO. Nonetheless, they are very hands-on in the actual operations, whereas this board is not. It is more like a company board.

CHAIR—You have referred to this perception of independence. Do you feel that in reality it is not independent, that it is too closely aligned to the AFP or to the stakeholders?

Mr Coad—I am a bit old-fashioned here. I was brought up in the era of commissioners—a commission from the Crown and all that sort of stuff. I guess it is worth a shot. That is what I said: the AFP could become too powerful or could be perceived to be too powerful. If the AFP commissioner is a chairman, part of the body is in the same building and the police are with both bodies, who pays the rent and all that sort of thing? You start to build up that sort of feeling. I do not know if it is enough to condemn it; it is just something that is there. I would have thought that if the Victorian Council of Civil Liberties—who used to give me a heck of a time in AUSTRAC—or a group like that were around, they would be thinking about those sorts of things.

Mr KERR—I would like to raise some language you used. You said that it did not appear to be an independent body, more a black box attached to ordinary law enforcement. I suppose that was a re-articulation of a concern that a number of us have expressed. Assuming that nobody is going to wilfully prevent a government restructuring an organisation in a manner that it determines is better than the one that exists now but is wanting to preserve some of those more old-fashioned ideas—that is, powers of this extraordinary kind should not normally be vested in police—so that it is not a black box simply attached to law enforcement where you plug in the routine utilisation of extraordinary powers to ordinary law enforcement, how would they put those restraints into the system, given that some model of this nature is probably going to continue to be preferred by the government?

Mr Coad—If this model were to go ahead—and all along the line I have not said that it should not—it might come down to individuals. Phillip Bradley, the Crime Commission boss in Sydney who was here today, has done an extraordinarily good job there over the years, even though he gets criticised a bit. He is what I would call the black box model. He would not like that description but he is close to the black box model. He has found his synergy with the New South Wales Police Service and yet he has maintained his independence; he runs a clever organisation. I think it is him, really. So it is how you choose the person.

Mr KERR—Given, Mr Coad, that I always shy away from ad hominem solutions to public policy questions—I prefer to have institutional solutions—what kind of institutional alternatives are there?

Mr Coad—I have not really thought about that.

Mr KERR—Maybe you could get back to us.

Mr Coad—I can think more about it but I am not going to promise that I will be able offer any enlightenment. On the one hand you have the NCA model where you had three lawyers controlling the use of the power, and that brought this friction with the police. On the other hand, you are now going to have the police and other stakeholders as the board. Maybe your safeguard is in the appointee. Maybe there is no middle ground.

Mr KERR—Can you reflect on that, because that is the struggle that I am having in my own thinking around these issues. You have been around in the hot seat more than I have and any wisdom that you have I would appreciate.

Mr Coad—I will continue to think but I am not making any promises.

Senator HUTCHINS—Mr Coad, if I have got it right, you think that 'heads on sticks' is going to become a priority for the proposed board rather than the preventative programs. When you say the 'importation of children and women' for—I cannot recall if you said for prostitution—

Mr Coad—It was vice.

Senator HUTCHINS—do you think that sometimes you would call it vice and other people would call it people-smuggling? Sometimes it is just difference in terminology. You also

mentioned financial institutions, and I do not know whether you particularly singled out transport companies or power companies. Is there any particular reason why you nominated those as difficulties? Can you expand on your earlier comments.

Mr Coad—With the latter one, I just sat down and thought: what is the essential infrastructure that we are privatising? I am not criticising that, but we are. How do we ensure that organised crime or terrorists are not involved in that? That is all I was saying. Maybe there are 200 public servants in Canberra already doing that, but I used to always berate some of my former colleagues in the NCA saying, 'You should do more of this.' The NCA seemed to me to be set on a path down the criminal justice system. Occasionally I think they tidied up the rules in the Melbourne fruit markets when there were some problems there—those sorts of things. I would like to see more of that done with a body like this. Just remind me of the second question was.

Senator HUTCHINS—The second one was the terminology, like vice or people-smuggling.

Mr Coad—I try to avoid that term because it tracks over to one issue all the time. I suppose it is because I have been working in Indonesia, where you do not use that phrase. If you want to talk about people-smuggling, you talk about women and children because they do not like that, whereas fellas can look after themselves. It is what you are talking about; I just used a different phrase because I was trying to link it to crime.

Senator HUTCHINS—I am trying to remember my other question now, but I cannot.

CHAIR—From your point of view, what do you consider is the single biggest issue in relation to the proposed ACC as we have it?

Mr Coad—My concern still is what I would call the panoply issue. You have 13 members of a board. It is probably worth looking at the CrimTrac model, which I think has fewer members, and then you have the CEO model. Having seen the history of some other police common services—for example, NEPI, which has now gone—I wonder whether it will turn out in the longer term to be cumbersome. That is really what I am getting at. Perhaps it could be chaired in the way that CrimTrac is—and you would probably never get the states to agree to this—with a smaller number, a more focused group. Maybe you could do it through committees. There is provision for committees. A lot of that police commissioner stuff is very burdensome.

Mr KERR—Can I raise an accountability question. One of the things that this act is designed to do is to make the black box operate not merely with respect to Commonwealth offences but also with respect to state offences. If it becomes a matter of routine that the powers available under the present NCA law and investigations of a similar nature using those special powers are authorised by that ancillary legislation passed by states but authorised by this legislation, how effective do you believe the oversight mechanisms and complaints mechanisms would be? In this framework, I think the oversight mechanism is this parliamentary committee and the complaints mechanism is the Commonwealth Ombudsman. When it comes to areas of investigation conducted solely and exclusively in the state jurisdiction, do you think there will be problems in having the Commonwealth Ombudsman and the federal parliamentary committee examining the conduct and role of state officials exercising state jurisdiction? Do you think that adds a layer of complexity; and, if it does, what is the solution?

Mr Coad—To be frank, I do not know what the law is here. I am not an expert in that. All I could usefully say is that, in a body like ASIC, those sorts of powers would not routinely be used for minor offences under state corporations laws. They were reserved for higher issue things. I would not have thought that it was beyond the ability of this committee to ensure that the ACC only used these powers for higher order things.

Mr KERR—I do not think that is an issue. They would be higher order state jurisdictional matters. The question is: is there an accountability issue with respect to what is not a federalised component but a state component? Let us assume the states pass mirror legislation and there is an investigation authorised into, say, Western Australian theft or some issue that is exclusively state jurisdictional based. It is conducted by a task force in which the board establishes a Western Australian police officer as its head but also with the ability to be able to plug into the black box of extraordinary powers. In those circumstances, do you think there are jurisdictional problems around Commonwealth officials then exercising oversight of what is essentially a state conducted process?

Mr Coad—I think you would have to ask the Attorney-General's Department about the law. My lay feeling is that this is your agency, that you can make it accountable for whatever you like.

Mr SERCOMBE—An ASIC type comparison might be if the Commonwealth parliament's Corporations and Securities Committee tried to take a role in relation to activities under the Victorian Fair Trading Act. It is going to be hit with a whole series of problems, I would have thought.

Mr Coad—I am sorry, but I do not think I can help you any more with that.

CHAIR—Thank you very much for your comments today.

[11.56 a.m.]

PRIEST, Mr Michael Timothy (Private capacity)

CHAIR—The committee is examining the Australian Crime Commission Establishment Bill 2002, which is a culmination of negotiations between the Commonwealth and the state governments about changes to the national framework for dealing with organised crime.

I welcome Mr Tim Priest. Do you have any comment to make on the capacity in which you appear?

Mr Priest—I was formerly a police officer.

CHAIR—We appreciate you coming today. As you know, we prefer to have this as a public inquiry, but if at some stage you prefer to go into camera then please let us know, the only proviso being that, at some stage in the future, the Senate may require that the documents be made public. If you would like to make an opening statement, then we will proceed with questions.

Mr Priest—Firstly, as the committee may be aware, both Dr Richard Basham and I were involved in the initial planning of the new Australian Crime Commission. I might also point out that the New South Wales Police Minister, Michael Costa, is a passionate supporter of the ACC and a great believer of what the ACC can achieve on a bipartisan level. I believe that if the ACC is allowed to fulfil its function of tackling organised crime in this country without unnecessary interference, it will be one of the greatest achievements of law enforcement in our history. Sadly, so many joint federal-state ventures have been let down by internal politics and mutual suspicion. A lack of trust existed between different law enforcement bodies. I urge you to examine those police who still entertain the old notions of state versus federal and vice versa and remove them from the new ACC. If we don't, the Australian Crime Commission will be doomed from the outset.

My background as a detective included many years in specialist areas such as the New South Wales Drug Squad, the Drug Law Enforcement Bureau, the National Crime Authority—shortly after its conception—and lately investigating Asian related organised crime, including homicide investigations. Let me talk first about the NCA as I knew it. In 1986, under Justice Donald Stewart, the NCA had two main references: Iliad, the Chinese task force, and Romeo, the Italian task force. Both these references were highly successful. Little did we realise back in the 1980s how little we as a national law enforcement community knew about the future impact that ethnic related organised crime would have on police resources in the future, nor did we anticipate the level and complexity of ethnic based crime on our nation. The old saying of 'If only we knew then what we know now' is only too true.

It is my opinion that the NCA lost its way many years ago, particularly when control was handed to the Australian Federal Police. I say that not as a criticism of the AFP generally but in the sense that many state police believe that the NCA was just another arm of the AFP. It is important that the states as well as the Commonwealth have equal ownership of the new body.

The NCA was meant to be a national crime fighting body free of personal agendas. Sadly, it lost its original charter and became agenda driven and was riddled with internal politics. It also developed a very secretive and selfish attitude to state law enforcement bodies. Like many other law enforcement bodies, it judged its success on the amount of media coverage it could generate. Its real success was something far less than the media reports suggested.

One only had to be stationed at Cabramatta to experience first-hand the complete lack of cooperation and non-existent exchange of intelligence information between state and federal law enforcement bodies. During the late 1990s, while the NCA was operating on Cabramatta based criminals, they were in possession of vast amounts of local intelligence that would have assisted New South Wales detectives in solving Cabramatta based crimes. They shared nothing, except for a small amount of information during Strike Force Pitten in late 1999. The opportunities that existed then to make major inroads into organised crime in Cabramatta were lost and were compounded even further with the disastrous New South Wales Police Service's crime agencies model. There had been a highly successful Task Force Colesfoot comprising NCA and New South Wales police, run by former New South Wales detective Michael Drury. It had stunning success in its short life, but was inexplicably closed down by former Assistant Commissioner Clive Small. In many ways, the Task Force Colesfoot model was the most successful I can see in modern law enforcement and it is the type of model that I would hope the new Australian Crime Commission uses within its charter.

Having looked at the past and the shortcomings of the NCA, we must take great care to never allow a body that promised so much and delivered so little to re-emerge. We all have an interest in seeing the dreadful monster of organised crime stopped in its tracks and reduced to manageable levels. I believe that in the near future we will see record levels of heroin and other drugs reach Australia. It was only 12 months ago that some leading law enforcement officers in this country were claiming success in reducing heroin traffic by law enforcement methods when in fact a heroin drought in Myanmar and the war in Afghanistan were the main factors. We have all seen in New South Wales where fantastic claims of success were in fact nothing more than massive deception. Present interdiction levels cannot support even the faint notion that the heroin shortage was due to any other reasons than the climatic conditions in the Golden Triangle and the war in Afghanistan. Both as a government and as a community we can no longer tolerate expensive, well resourced and semiaccountable law enforcement bodies to operate without proper audit functions and public scrutiny. The ACC, if properly managed, has the capacity to achieve enormous inroads into organised crime—firstly, through what is at the moment, in New South Wales at least, an almost unregulated organised crime feast.

There would appear to be three main organised criminal networks currently operating in New South Wales. They have up until recently operated at will and with very little fear of police detection. They have now spread to the rest of Australia and require urgent attention. The Lebanese criminal networks are involved in murder, drug importation and distribution, illegal hand gun supply, large-scale motor vehicle theft, rebirthing, armed robbery, extortion, sexual assault and fraud—the likes of which we have never seen before in this country. They are a clear and present danger. Their networks are spreading rapidly and they will begin to impact in other states in the near future. We cannot allow social commentators to prevent law enforcement and indeed the government from attacking what is clearly ethnic community based crime. Lebanese organised crime is exactly that: it is Lebanese, it is organised and it is criminal. As

such, an ACC task force is needed urgently to investigate the Lebanese criminal networks in exactly the same way as the Romeo reference targeted Italian based crime in the mid-1980s.

The second network is South-East Asian organised crime, which mainly involves drug importation and distribution, firearms trafficking, extortion, murder and money laundering. Because of the situation that developed in Cabramatta through the nineties, we have allowed what was essentially a Sydney based criminal organisation to spread firstly to the ACT and Victoria, then to Queensland and South Australia, and now to Western Australia. The opportunity to stop that spread was missed and we are now playing catch-up. What is needed to be done is to attack the Vietnamese problem at a community level—that is, an ACC task force that would operate in relation to Cabramatta, and in relation to Brisbane, Melbourne, Adelaide and Perth. The task force should be linked through each of the states by the one reference. It needs to be dynamic and one needs to think outside the square. In that vein, it would need the best police available—those who are specialists in Asian crime or who have at least spent years working in Vietnamese communities—to be drawn from each state.

It is my opinion that the Blade reference currently undertaken by the NCA has not delivered the results one would expect in the current climate. It has massively underachieved and is little more than a cargo cult, as is the present Commonwealth-New South Wales Joint Task Force into Drug Trafficking. Success is not measured in a target rich environment unless you eliminate all the targets, not just those that stick their heads up. That is why law enforcement must work at the community level as well as the higher echelons if it is to achieve permanent success. It must change the way ethnic communities view criminality and give those communities the opportunity to live in a crime-free environment.

The third reference should be outlaw motorcycle gangs Australia wide. Recently, the Western Australian police have made major inroads into bikie gangs by intelligent and fearless policing—something that was obviously lacking during the NCA's Panzer reference into outlaw motorcycle groups. It was apparent to many operational police that Panzer was a complete failure and little damage was done to the outlaw motorcycle community generally. We should look to the Western Australian police and the New South Wales police and their efforts against outlaw motorcycle gangs, and use their techniques on a large scale. Indeed, many of the major gangs are spread nationwide and require a reference similar to the Asian task force model. I sincerely hope that adequate funding, beyond present levels, is available if the need arises. There must be a mechanism in place to ensure additional funds over and above the allocated budget should a reference open up; and there is a need for urgent resources to broaden and supplement the task force. We cannot miss opportunities when investigating organised crime, as we have seen in New South Wales over the past six years. These opportunities rarely come twice. With the elimination, if that is the word, of lawyers from the operational policing side of the ACC, there should be substantial savings on salaries and other expenses that have dogged the NCA for most of its existence.

The use of lawyers in operational policing should now be regarded as a complete disaster. It has done more to hinder operations than to support them. Where lawyers are vital to the ACC is in the role of examiner. The use of coercive questioning is absolutely vital to the functions and successes of the new ACC. There must be constant use of this function where required, unlike the almost non-use of the function by the present NCA. For the life of me I am unable to grasp any reason why the NCA fell down so badly in this regard. There can be no reasonable

explanation other than incompetence or laziness—or both. The New South Wales Crime Commission is a fine example of how this critical function can be used to great success. The New South Wales Crime Commission should be consulted on the setting up of the examiner's role in the new ACC. I urge this committee to put a broom through the present NCA and keep only those staff who have performed in the recent past, that is, those police who can show they have worked tirelessly and who have the runs on the board in terms of criminals arrested, charged and convicted. The selection of top-rate, suitable staff will be the key initial factor as to whether the ACC achieves its potential.

I believe that the ACC should be looked upon by detectives throughout Australia as the pinnacle of their careers. As such, it should attract only the very best. It is vital that any recruiting be done with an open field for all positions, otherwise the ACC is doomed to fail, and those who have allowed it to fail will be held accountable in the public arena. The Australian public is looking for an organisation that can at last deliver solutions to organised crime, which has affected vast numbers of innocent Australians. If we do not succeed in tackling organised crime in this country once and for all, the future for our children is very bleak. We will leave them a world where safety and security means living behind fortified walls.

Finally, I ask you not to underestimate the potential for terrorism and criminality to cross over in the shape of organised crime, in a way not seen before in this country. There is a fine line between terrorism and organised crime, and there are numerous examples of that throughout the world, including the IRA and numerous Eastern bloc organisations. It will not, in my opinion, take much for some of those involved in Lebanese organised crime in Sydney to cross over into terrorism should the opportunity arise. Since September 11 the world has changed forevermore, and we must not be distracted from looking at the future and how best to protect this country. The biggest single threat to this community in terms of organised crime will come from the Lebanese. That is a fact. How we deal with it and allow ordinary Australians, including Lebanese Australians, to live in peace and safety, will be determined by how effective the new ACC becomes. I welcome the news of the new ACC, as many Australians do. It is an opportunity we cannot miss.

CHAIR—Thank you, Mr Priest. You have certainly made your views quite clear on a few things. One of the statements you made was about Commonwealth-state cooperation, that we have missed opportunities in the past because of lack of cooperation. Some would suggest that there is also the danger that, with the way that the organisation is proposed to be set up, because of interrelationships among such a large grouping we may miss opportunities while trying to get everyone's agreement et cetera. Do you think that is a reality, or do you think that can be overcome?

Mr Priest—I think it can be overcome. The ACC is not going to be such a big body that it cannot be controlled. Take the example of Michael Costa's commitment to this new ACC. I think it is reflected through to the other states as well: they genuinely want to see something that is going to work. The NCA promised so much and delivered so little; I think everyone now realises that bipartisan cooperation may see something really good come out of this.

CHAIR—What of your comments about it being an arm of the AFP? Now that we have the chairman coming from the AFP and being in the same locale et cetera in Canberra, do you think

that is a danger? Some have suggested already today that there is a danger that it will be seen as a subsidiary of the AFP.

Mr Priest—No, I think they are entirely different. When the AFP took over the administrative role of running the NCA, it very much became part of the AFP. I know Michael Keelty—I worked with him in the NCA in the eighties—and he is part of a board, as I understand it. But the actual field running of the organisation would be for the chief executive officer, if I am correct. I think there is enough experience from the old NCA going to this new organisation that I do not think any one of the states is going to allow the AFP to completely take over. I am sure that, with an oversight committee, that will not be allowed either.

Mr DUTTON—The role of the CEO becomes very pertinent at this point in time, when applications are being considered at the moment. What skills should that person possess, and what background do you believe they should have?

Mr Priest—Having been an operational policeman, I think they must be an operational policeman at some stage of their career. I think they need a lot of experience in criminal intelligence and in, say, internal affairs—the whole gamut of police experience is what you need to run an organisation. I would have a preference for a state based policeman, seeing that they cover all crimes in their career—from murder to money laundering to drug importation. They possess the core capabilities of a police officer, and it is really what you need to run this organisation. You need a cop in charge who knows all the lurks and all the intelligence functions. My opinion is that it should be a state policeman.

Mr DUTTON—I would like to ask a second question, then. I would like to draw a little bit on your experience from Cabramatta and in particular in relation to the obvious problems that, as you alluded to before, Australia is facing at the moment with the Lebanese community and the organised crime within sections of that community, particularly in New South Wales. Where did the government of the day fail in Cabramatta? Why did it get to the dreadful state that it got to, how was it resurrected from there and has the problem now been resolved? What lessons can we learn out of that in the organisation of this body in its investigation of organised crime?

Mr Priest—First, looking back on Cabramatta, one of most astonishing aspects is that the first political assassination in this country occurred in Cabramatta. You would expect that we would never allow something like that to happen again and that we would at least make an example of an area that entertained such a horrendous crime. But, for some reason, the government did not go after Cabramatta, did not quieten it down and did not bring it under control. Then you had a situation where a totally incompetent police commissioner came to New South Wales, and the police minister just took his eye off the ball; he was asleep at the wheel. So you had, as I mentioned in my statement, fantastic claims of successes that were being launched in New South Wales through Peter Ryan, which were just a smokescreen for indescribable failure and incompetence. So we hit a problem. You can hide most problems for only so long. Sooner or later, they just burst out, and that is exactly what happened in 1999-2000. Everyone had taken their eye off the ball; gangs got out of control. The gangs got out of control for no other reason other than that they had nothing to fear from law enforcement, so it became a free market. With the free market forces, they were fighting each other to control the biggest share of drug distribution, money laundering and so forth. So you had inactive police, you had a government that did not really want to know about the problems in Cabramatta and

then you had gang warfare break out. All of a sudden, everyone realised just what a sewer Cabramatta had become.

An area that is out of control for 10 or 11 years does not come back under control within two or three years. Certainly there has been an improvement in Cabramatta, but my belief is that the improvement has been because of the heroin drought. If drugs start to freely flow through Australia again in the next 12 months, you will see a return to the problems in Cabramatta very quickly. The New South Wales Police have not put any long-term strategies in place. If you look to America, places like Fairfax County, Virginia, New York and San Francisco are great examples where specialist police just police Asian communities for years on end. They never leave. As such, they know everybody in the area. They know all the tricks and the different idiosyncrasies of the community. They have their finger right on the button. We have not done that. At the moment we are just shifting them off the main street and keeping them away from the railway stations, but we have still not fixed the underlying problem of criminality within the community.

Mr DUTTON—I asked that question because there was this head-in-the-sand approach by the police minister in New South Wales at the time and by the Carr government. I saw the same approach in relation to the gang rapes that we have seen reported recently in New South Wales.

Senator HUTCHINS—Just a moment, we are here about the ACC legislation not about some political inquiry into the Carr government. Mr Priest has already made his points.

Mr DUTTON—I understand that. I am just trying to—

Senator HUTCHINS—Could you make your point relevant to the ACC?

Mr DUTTON—Certainly, Senator. I am trying to draw out a lesson that we can take to the ACC in relation to both gang related and, in particular, ethnic related crime because, for whatever reason, in this country, particularly in New South Wales, we did have our heads in the sand over that problem. We did have our heads in the sand over the problem of the ethnic gang related rapes.

Senator HUTCHINS—Mr Priest made that point because he thought the NCA was there.

Mr DUTTON—What I am asking is: what lesson can we draw from that in dealing now with the problem of Lebanese crime within Australian society?

Mr Priest—We need a thorough reference like we had with Romeo with the Italians back in the 1980s. It is a tribute to that reference that we do not see much of Italian organised crime these days. The Honored Society are very passive. Most of their main players are either in jail or dead or both—a lot of them get killed when they get out of jail. We saw a really concerted effort to get to the bottom of families involved in the Italian community. We put a lot of pressure on them, and they found alternative ways to make a living. I think that is what we have to do with the Lebanese too.

Mr DUTTON—We first need to recognise that there is problem.

Mr Priest—We have to recognise that there is a problem.

Mr DUTTON—Without it being politically incorrect.

Mr Priest—Exactly.

CHAIR—Let us return more specifically to our role here today, which is looking at the legislation for the proposed establishment of the ACC, although I have found your comments interesting.

Senator HUTCHINS—Mr Priest, were you here earlier when Mr Coad was here?

Mr Priest—I was here towards the end of his evidence.

Senator HUTCHINS—You have outlined a number of areas where you feel that the NCA has fallen down and what you feel the ACC should do in the future. I do not know if you were here when Mr Coad talked about preventive programs. He talked about a 'heads on sticks' approach or a black box approach as opposed to preventive programs, about financial institutions and power companies potentially being infiltrated by organised crime, and about vice and the importation of children and women.

Mr Priest—No, I did not hear that.

Senator HUTCHINS—Do you have a view about the role of the ACC in these preventive programs in relation to what you were just very passionate about—that is, ethnic based organised crime?

Mr Priest—That is a hard question to answer. With the Lebanese problem, if you take the criminality away, there is also this perception amongst their young people that they are just totally disenfranchised from Australian society. I do not know how you fix that. You have to fix the problems that causes. As a police officer, you attack the criminality; you cannot be a psychologist and tell these kids, 'You really are a part of Australian society.' The ACC would concentrate on locking up the criminals and taking the criminals out of the community. One of the best things that I have seen in Cabramatta is the effect of local people being taken off in the back of police paddy wagons, convicted and given lengthy sentences. That sends a clear message to the community. These people at times do not have an understanding of the damage they do. The only thing that really stands out to them is when someone gets 40 years in jail for a gang rape. That sends a chill right through the community. If you cannot change the reasons why they do it, you can stop them from doing it. One way is police interdiction of serious offences.

Senator HUTCHINS—I was referring more to expanding the nature of crimes, in addition to—

Mr Priest—In addition to policing?

Senator HUTCHINS—Yes.

Mr Priest—There are programs that I suggested two years ago in New South Wales. One of those was the American DARE program, a police in schools program which has had stunning success. It has reduced all sorts of crime, not the least of which is ethnic-based crime in New York, Chicago and places like that. They are the sorts of things that the states are more responsible for in terms of education and local law enforcement. My view is that the ACC should stick to its role of investigating organised crime, cross-national crime, drug importation and firearms importation. It is a pretty long bow to draw when you start to solve all the problems that cause crime.

Mr CAMERON THOMPSON—In light of what you have been saying about Cabramatta and these other issues, I wonder if you might from your experience give us some comment about the way in which these various police strategies go about media management. If you take the case of the Cabramatta issue, the allegation that people had their heads in the sand and no-one acknowledged that it existed, it seems to have now gone completely the other way in terms of media reporting of the whole issue. To some extent, all of this is being manipulated by the way in which the police service liaises with the media. Do you have any comment about the contribution that the media is making in that regard and whether there needs to be better management of that issue by not only the ACC but other police forces? How important is that in the scheme of things?

Mr Priest—It is very important. What occurred for Cabramatta for probably four to five years was that Peter Ryan had a very clever way of handling the media. At the completion of a night shift, around seven or eight o'clock in the morning, every police station had to send in information about serious crimes that occurred in their patrol overnight. It was done through the COPS system and it was more or less a short critique of things that had occurred at the police station—whether it was a murder, an armed robbery et cetera. From there, the media got a media release from police public relations and police media relations.

It is strange that virtually no information on crimes in Cabramatta was given to the media unless they asked for it. Many journalists have spoken about ringing police media and asking, 'What occurred in Sydney last night?' The journalists were told there had been a hijacking at Concord or a plane crash at Bankstown, although they knew full well that something had occurred at Cabramatta the night before. They then had to ask, 'Did a murder take place in Cabramatta last night?' The police asked, 'How did you know about that?' And the journalists answered, 'We were told.' The police would then give them vague details. It was virtually censorship on Cabramatta; it was keeping everything quiet.

Another way of handling the media was the way that crimes were reported under Peter Ryan. Drugs, firearms, murders and those types of organised crime did not really rate on his scale. As such, they were not given any sort of credence, so the media did not find out about it unless they had personal knowledge. What eventually started to happen was that a Channel 7 reporter, Morgan Ogg, was probably the first who started to realise that things were getting out of control in Cabramatta and spent nearly a month there. In that month he covered murders, gang shootings and massive drug dealing, and then the rest of the media caught on that there was a problem in Cabramatta. That is how it virtually blew up.

Mr CAMERON THOMPSON—My question was about the way they managed the media. Are you saying that the Police Commissioner at the time was very effective at organising the media?

Mr Priest—Very effective. I think he was well known for that.

Mr CAMERON THOMPSON—So, in this exercise, in terms of management by police forces—particularly the ACC—what kind of strategy do they need to adopt to be more effective?

Mr Priest—Without risking obviously sensitive operations, they need to be very up-front. One of the great things that you can get from the media is public assistance. But if you are going to, on the one hand, have censorship and say this is a top secret organisation and we are only going to let you know what you want you to know, the media will play you off a break. Obviously what you need to do is have a media operator within the ACC who takes care of those problems, but you must be up-front with the media and you must tell them what is going on. People have a right to know whether your organisation is on top of it and whether there are problems in certain areas. Is that the answer you were looking for?

Mr CAMERON THOMPSON—I am interested in juxtaposing that against what you are saying about the Lebanese networks. There would be people out there who would claim that by addressing it in the way that you have that you are overstating it or that it is a sensationalised presentation. So we have gone from the sublime to the ridiculous. You stick your head in the sand on the one hand and, on the other hand, you have this almighty tank slapper, go the other way, and say, 'No, what we have got is crime running out of control.' Isn't there a better way of presenting it?

Mr Priest—I believe that you have to be honest. You have to show it as it is. Peter Ryan came out during the height of the gang wars in Cabramatta and said that Cabramatta was safer than Roseville. Meanwhile, police stations, police cars and police were getting shot at. People were getting murdered in record numbers—and it was safer. On one hand you have an absolutely ridiculous situation there about being honest with the media. As far as the Lebanese go, there are too many people who say that by identifying the problems that the Lebanese have it is almost as if we are racist or xenophobic, that we are beating up an area that does not need beating up.

If you go out unannounced to places like Bankstown and Punchbowl and some of the western suburbs, you will quickly find out that there is a massive problem there. We have to be brave enough to say, 'We have already seen problems like Cabramatta affect the rest of Australia; we are not going to allow the Lebanese in western Sydney to start to affect the rest of Australia.' Enough is enough. We can be politically correct and say that not all Lebanese are bad. I am the first one to say that too. But the difference between the Asian community and the Lebanese community is that you never once hear the Asian community say, 'You're picking on us.' When we talk about Asian organised crime, you never hear an Asian say that it is racist because it identifies Asians. They want the problems fixed. They want to be able to live in their community without getting shot, extorted or anything else. It is an entirely different proposition with the Lebanese. As soon as you mention Lebanese based crime, someone from the mosque says, 'This is racist; this is vilification.' It is not and it should not be.

Mr KERR—Historically you have to recognise that when the first reference into Italian organised crime occurred there was a lot of sensitivity about racism and the Italian community expressed similar sentiments. It is true that it does not affect the whole community. I wonder sometimes about speaking about Lebanese in broad terms rather than recognising that gang warfare and bad behaviour has not been unique to ethnic communities. New South Wales had a reputation as a criminal sewer for a very long time, including large components of its police force. If you read about Askin and his involvement in organised crime and his involvement at the highest level as premier of this state in corruption, if you look at the way in which royal commissions have exposed institutional corruption, and if you look at the way in which Kings Cross has been the source of uncontrolled illegal activity with the involvement and participation of the police, to then say that somehow a particular community is responsible for an upsurge of crime seems to me to be drawing a pretty long bow. I think people do sometimes take the view that this is an expression that could be bordering on defamatory of a group, but I will let that pass.

Senator McGAURAN—The accusations, let alone convictions, against Askin were no more and no less because they were nothing compared to Neville Wran's. They were just accusations, weren't they?

CHAIR—I think we might get back to the issue at hand.

Senator McGAURAN—My question is a direct follow-up. That is why I am interrupting.

Mr KERR—I have two specific points about the way that we need to structure this. Here are the two questions. The first is that there seems to be a directly inconsistent set of propositions being put to us. The one by Bill Coad is essentially that we need to establish an organisation that does not have as its principal operational objective what he called 'heads on sticks'. By contrast, you said that we should rid the organisation of everybody who does not—

Mr CAMERON THOMPSON—He did say the heads were important.

Mr KERR—Indeed. But your proposition is that we should rid the organisation of everybody who cannot measure up to things on a basis of those arrested, charged or convicted. Particularly given that, since the NCA has taken an organisational approach, its task is not to follow a 'heads on sticks' approach but rather to do the long-term structural work that is necessary to develop intelligence to pass on to state police forces and to work with federal authorities, it does seem a fairly hard remit to say that you would sack everybody who was followed the direction of the authority.

Mr Priest—I can tell you first hand just how much intelligence I did pass on. I have already said that Cabramatta was a total disaster. I will give you a perfect example: outside the Stardust Hotel in 1999—

Mr KERR—Sorry, can I ask you the question: doesn't it seem inconsistent to say you would sack everybody in an organisation who has followed the direction of the head of the organisation and acted loyally in accordance with whatever directions had been given?

Mr Priest—I said that you need a new broom through the place. That is my view. My view is you make it the best—

Mr KERR—So you sack staff who followed the lawful directions of the NCA—the three members of the NCA—given to them? They should have disobeyed the lawful commands of the NCA and they could have kept their jobs; is that what you are saying to us?

Mr Priest—I am not going to say that anyone should be sacked.

Mr KERR—You have said it.

Mr Priest—All right. I will say that there should be performance measures in place so that you have the best. If these people blindly followed people knowing that they were doing damage to—

Mr KERR—I take you back to another point. You said that you are concerned that cooperation did not always occur between state and federal police forces. As justice minister at the time I remember being briefed in relation to a number of operations where for quite deliberate and strategic reasons information was not passed on because of the belief that, were it to be passed on, it would go directly to the targets of that criminal investigation because of the then circumstances of the corrupt role that was being played by New South Wales police at all levels.

Mr Priest—I do not agree with that. You talk about me drawing the long bow. We have had a royal commission since then and a lot of police have been sacked. You might remember that quite a lot of Australian Federal Police were shameful as well.

Mr KERR—But you say the management of the New South Wales Police Service has been in the hands of an incompetent for the past five years.

Mr Priest—But I did not say corrupt; I said incompetent.

Mr KERR—I said incompetent.

Mr Priest—Yes, but I did not say corrupt. Is the point you are making that the information could not be passed on to New South Wales because they were corrupt or because they were incompetent?

Mr KERR—No, I am saying that before the royal commission there was a circumstance where decisions were being taken strategically by federal law enforcement officials on occasion for what seemed to me to be quite a plausible reason: that there was corruption within some state police forces. And it proved to be the case when the royal commission occurred.

Mr Priest—That was eight years ago.

Mr KERR—That is right. That is when I was the minister. That was the period that you describe after your involvement with Justice Stewart.

Mr Priest—No, I spoke about the period that I was with the NCA and then I spoke about Cabramatta, which was more recent—in the last four years. A lot has occurred since the time that you are talking about and I think it is pretty unfair to continually reflect on New South Wales police as being corrupt.

Mr KERR—No, I am not continually reflecting. I am simply saying that you are making an assertion that the failure of law enforcement across Australia is to do with the National Crime Authority, a body with trivial resources compared to any state police force or indeed the Australian Federal Police force. It seems to me that claims you make for both the advantages of any restructuring of what is essentially a very limited organisation with limited resources—which can of course be used to its maximum advantage or not—are extravagant. You are not going to have a capacity to turn all these things around simply because of the way you restructure one small component of Commonwealth law enforcement apparatus. You can do it well or you can do it badly; but the claims that you make seem to be extraordinarily extravagant, both ways.

Mr Priest—I do not think so. I have been a policeman. I take it you have not, Mr Kerr?

Mr KERR—No, I have been a justice minister, I have been on this committee for the whole of the period before and since, and I was chairman of the ministerial council.

Mr Priest—Policing is not rocket science.

Mr KERR—There have certainly been many instances when I have been aware of deficiencies both in Commonwealth and state policing, and I wanted to be approached in a commonsense way and in a way which is not subject to hysterical claims for the advantage of a particular structure or for the disadvantage of it. It strikes me that we are now working in an area where we need to put together the best and most effective way, given the government's decision, of restructuring this agency. I am just asking you a simple set of questions. If we are going to do this, let us not be distracted by an argument that somehow organised crime, gangs and what have you will suddenly be knocked over as a result of this. They have been in existence in Australia since the First Fleet. The Rum Corps was corrupt.

Mr Priest—Now we are going a long way back.

Mr KERR—Crime is not going to disappear. Let us get real about this.

Mr Priest—We can do much better than we have been doing. Ethnic based crime is something very particular; it requires extensive specialist levels.

Mr KERR—I agree with you.

Mr Priest—I am saying that we do not have that at the NCA.

Mr KERR—I agree with you. Indeed, we do not have a sufficiently trained federal police with backgrounds in any of those ethnic groups. Our recruitment strategies have not been effective. I am certain there is a whole range of things we can do to improve the way in which we do policing at both state and federal levels and with the National Crime Authority. All I am

saying is that we should not pretend that gang warfare will end. Squizzy Taylor had machine guns in Kings Cross.

Mr Priest—They were not shooting politicians, though.

Mr SERCOMBE—They were shooting policemen.

CHAIR—I think we have probably come to the end of our deliberations. Thank you very much, Mr Priest, for a very interesting and provocative contribution. We appreciate the input of somebody who has had a long experience in this area.

Proceedings suspended from 12.37 p.m. to 1.33 p.m.

CROMPTON, Mr Malcolm Woodhouse, Federal Privacy Commissioner, Office of the Federal Privacy Commissioner

PILGRIM, Mr Timothy Hugh, Deputy Federal Privacy Commissioner, Office of the Federal Privacy Commissioner

CHAIR—Welcome. The Parliamentary Joint Committee on the National Crime Authority is examining the Australian Crime Commission Establishment Bill 2002, which is the culmination of negotiations between the Commonwealth and state governments about changes to the national framework for dealing with organised crime. The committee prefers all evidence to be given in public, but should you at some stage prefer go in camera then please request that and the committee will consider it. However, it may be that at some stage the Senate requires that it be made public. I invite you to make some opening remarks and we will follow that up with questions.

Mr Crompton—Thank you very much for inviting us to appear. We received the invitation late last week.

CHAIR—Apologies for the late notice. We are under a time frame that we wish was a bit longer.

Mr Crompton—Indeed. We accepted that invitation. We do not have a great deal that we wish to offer by way of a set of opening remarks, other than to say that we observe that this bill appears to be mostly about bringing together existing functions in a more integrated and effective way. We have a framework by which we attempt to analyse law enforcement and national security proposals. We can discuss that with the committee because that has a bearing on a couple of points we might make about this piece of legislation, if the committee would like to proceed in that direction.

Mr SERCOMBE—Yes, we would—that would be helpful.

CHAIR—Do you have written submission for us?

Mr Crompton—We do not have a written submission. We do have a one-page table that we first tabled with our submission on the antiterrorism legislation some months ago. I think the same framework still bears use in analysis of this kind of proposal as well. I have some copies of that one-page table with me if you would like us to table that.

CHAIR—Yes. We need a motion to adopt that.

Resolved (on motion by **Mr Sercombe**, seconded by **Senator Hutchins**):

That the committee accepts as evidence the document from the Federal Privacy Commissioner tabled at public hearing this day.

Mr Crompton—If you look at the table, it is very interesting to note that the Canadian federal privacy commissioner has adopted a very similar framework in how he thinks about analysing law enforcement, national security and antiterrorism legislation, particularly as it pertains to the first half of that table. I would summarise that as having three groups to it, which are: conduct the analysis properly against a number of criteria; implement it well in law, with clear transparency and accountability arrangements in place; and, as should be the case whenever you confer new coercive or intrusive powers, those powers and their operation should be periodically reviewed.

CHAIR—Did you want to say more?

Mr Crompton—I was just summarising for you what is on that piece of paper. When you look at the current bill, as we understand it from fairly modest analysis, it would appear that what we are doing is bringing together existing functions, as I said before, and that therefore we are not seeing a lot of new law enforcement proposals in front of us. But if the intent of the proposals is to bring existing functions together so that they operate more effectively then we also need to make sure that the balance is in place to make sure that the transparency and accountability arrangements work correspondingly. I would certainly suggest that the end of that framework, which is about periodic review, be taken up by a committee such as this one.

Senator HUTCHINS—In attachment A you refer to the terrorism bill. Are there differences between the coercive powers in that and those being foreshadowed for the ACC? I know that they stronger in the terrorism one, but can you give us a comment, if you would not mind?

Mr Crompton—I would like to start with the observation that we have historically had more of a separation between national security functions and law enforcement functions. It may be that what the recent acts of terrorism have done is to discover the weakness that comes from that separation and that what we are watching is a merging, so that we are actually seeing a continuum between what might be purely a national security consideration and what might be purely criminal law enforcement, and a spectrum in between where there may be other motives, including political motives, but they are fundamentally close to criminal activity. And as we look at the structure of this ACC, where we have, for example, ASIO on the proposed board, we are seeing the two parts of the process being drawn together. We need to think very carefully about how that is done in terms of the accountability and transparency arrangements so that at any time it is possible for people who are outside of the law enforcement community or the national security community to see that the process is running well. For example, the Inspector-General of Intelligence and Security, IGIS, does that in the national security arena.

Senator HUTCHINS—We had a statement this morning that there is now a fine line between terrorism and organised crime. Mr Priest referred to some of the activities of the IRA. Do you have any concerns about the coercive powers that are being foreshadowed for the ACC? I suppose that was where I was coming from.

Mr Crompton—With respect, Senator, I think I should probably stick to my brief, which is to be performing as the Privacy Commissioner. The coercive powers under this piece of legislation are outside of the normal remit which I operate to.

Senator HUTCHINS—Fair enough. Thank you.

Mr SERCOMBE—I understand that they may be outside your remit but, from a privacy point of view, perhaps there is no potentially greater intrusion on privacy than being compelled to answer particular questions, for example. As you indicated, in some respects this bill packages together present features, but there are two issues that concern me at this relatively preliminary stage of our consideration of the bill that I am sure have privacy implications. One is the adequacy of the administrative and related processes by which those powers will be utilised within the ACC. At the present time within the NCA there are relatively established process in that respect where there is no suggestion of any external interference in the utilisation because the member of the NCA is the person who exercises the special powers. Whereas, in relation to the new proposal, the chief executive officer, who will not necessarily have a legal background at all but may be a person with a purely law enforcement background—in other words, a policeman—will ultimately have administrative control of the process that leads to the utilisation of the special powers.

The second area of concern for some of us is the extent to which this legislation allows, by essentially a backdoor mechanism, state police forces access to the use of these powers where they have not been specifically granted by statute in those states. They have been in Queensland and New South Wales but, to the best of my knowledge, the law enforcement communities in the other states do not have access to these powers. Noting your observation that you do not want to trespass outside your remit, nonetheless I wondered from the point of view of principles of privacy and the basis on which privacy laws operate whether the scenarios I am painting for you cause you any pause for reflection and whether you have any comments about safeguards in those respects.

Mr Crompton—Certainly you have touched upon a point that we have made clear in the expanded version of this framework. There is an original paper that we released in about July of last year to a criminology conference. That paper was attached to our antiterrorism bill submission.

Mr SERCOMBE—Are you able to provide this committee with a copy of that paper?

Mr Crompton—Most certainly. We were observing that powers ought to be clearly and expressly conferred in law. Therefore, I would certainly make that observation from our framework on the points that you were making.

Mr SERCOMBE—So you would concede that it is possible to have an administrative structure, for example, which inadvertently delivers outcomes that are less than desirable?

Mr Crompton—I have not looked at the bill sufficiently to observe whether or not that is happening with this bill. I am certainly concerned that we do not confer privacy intrusive powers and that they be able to be exercised in a way that is transparent and accountable. Certainly one of the issues that I think this country as a federation will have to think about probably continuously in a number of forums is where activity is taking place between jurisdictions. In order to have sound and effective law enforcement in this country we do need to have strong cooperation between the various law enforcement bodies, between the different state and federal jurisdictions. In my view, we need corresponding arrangements for the transparency and accountability of the way they work, whether it is the national forensic DNA database being set up with CrimTrac at the centre or whether it is these arrangements. Certainly

a question that runs through my mind is that with any of the privacy issues that that brings up have correspondingly effective transparency and accountability arrangements been put in place? Unfortunately, I cannot answer my own question. When I hear of interjurisdictional activity going on it is one of the first questions that comes up in my mind.

Mr SERCOMBE—One of the features of this particular legislation is to bring the ABCI into the same framework. One of issues that apparently the ABCI has been giving considerable attention to is the objective of establishing a register of child sex offenders. Obviously there is extraordinarily powerful community concern about giving whatever tools are needed to address that issue, but, very importantly, the capacity for abuse and fairly draconian impacts on people's privacy is implicit as well. Can you take that as a real life example of something that might be relevant to this organisation?

Mr Crompton—I would agree with you that a powerful system has equal power to go off the rails, either advertently or inadvertently. An individual needs to be able (a) to know that it is happening under the appropriate circumstances and (b) to seek to clear their name if that is what they think needs to be done. How you do this in a set of circumstances where part of the criminal intelligence process is about being ahead of some of the people that you are observing and doing so covertly is very difficult. The way it has been resolved in the national security arena has been to have the inspector-general, who is able to see classified information and be the person outside of the national security framework, see that things are going right. Whether that is needed in this instance, I simply do not know. It may be one of the questions that could be reviewed after a few years of operation of the ACC, should it proceed.

Mr KERR—Is it possible for you to look at the proposed accountability and complaints handling mechanism that is proposed here and come back to us with a submission that actually relates to the actual mechanisms rather than deals with the broad principles. That might be of greater assistance to us. We accept as a basic principle the substance of the proposition you put. It is good.

CHAIR—You have the chance in looking at the legislation beforehand of raising your concerns. It is right to lay down some general principles, but you have actually been presented with some firm proposals. Other people outside of your area are raising questions about access by the various police forces to intelligence information that perhaps they certainly were not privy to in some cases. Now thinking through what those implications are is a challenge for us. I would have thought there is nobody quite as well qualified as you guys to actually make a direct statement on this rather than a general principle.

Mr Crompton—One of the reasons I hesitate is that the office is extremely resource constrained. The office has had to undertake a new jurisdiction this year which has literally quadrupled our workload in some areas. The workload is vastly in excess of the resources that were provided to us for that workload. There have been areas where we have been unable to do the kind of analysis that we would have liked to have done at the time. I will certainly take the question on notice. I will see what we can do.

CHAIR—If in a year's time people are screaming and saying, 'Why didn't the Privacy Commissioner say something about this,' then here is your chance.

Mr SERCOMBE—They will blame you guys.

CHAIR—There is a specific question. Apparently the ABCI is currently under the terms of the Privacy Act and the NCA is not. Therefore, we might like to think what the implications would be. Touching on the elements Mr Sercombe said we would assume that if it is subsumed then the ABCI would not be covered by the Privacy Act.

Mr Crompton—We could check this again. As I understand it, the ABCI is now not covered by the Privacy Act. That is the point I was making before. As I understand it, the different elements being brought together into the ACC are elements which are basically outside of the Privacy Act. If you look at it element by element not much is changing in terms of the coverage by the Privacy Act. It is really whether, as you bring the elements together, that creates a more capable entity than any of the elements kept separately and that must be one of the reasons for making the ACC in the first place. That raises the questions of transparency and accountability that I mentioned before.

CHAIR—Is there a chance that you may get someone to specifically look at the legislation to see whether there is anything that worries you. We are on a fairly tight time frame. The legislation will go into the House and then it makes it much more difficult. In terms of bringing together all of these key intelligence agencies and the widening out of the involvement of the various state groups then there are, to our minds, some privacy implications. If there are no concerns that is fine.

Mr Crompton—Working through the issues may not be a long analytical task but a long negotiating task. A very similar set of questions arose with regard to the forensic procedures bill as it was put through the parliament early last year. In those circumstances the minister for justice raised with his colleagues how to establish an appropriate accountability framework. That resulted in some extra provisions being put into part 1D of the Crimes Act to cause reviews to be undertaken at the one-year point and the three-year point to make sure that appropriate accountability arrangements had been put in place. That review has been established. I am part of the review. The review is currently under way. The only lesson I draw from that is the difficulty of working these things through. We will try to see what we can do for the committee, but in the time available it may still unfortunately be superficial analysis.

CHAIR—Fine. Thank you for your contribution. If you have any further submission to us please let us know fairly promptly.

Mr Crompton—May I ask what the time frame is?

CHAIR—Two weeks.

[1.54 p.m.]

HUNT-SHARMAN, Mr Jon, National President, Australian Federal Police Association

SHANNON, Mr Craig, Principal Industrial Officer, Australian Federal Police Association

TORR, Mr James Peter, Project Officer, Australian Federal Police Association

CHAIR—The committee is examining the Australian Crime Commission Establishment Bill 2002, which is the culmination of negotiations between the Commonwealth and state governments about changes to the national framework for dealing with organised crime. I welcome the representatives from the Australian Federal Police Association. I understand that we have a formal submission from you. Do you wish to amend it in any way?

Mr Hunt-Sharman—No.

CHAIR—As you may be aware, the committee prefers all evidence to be given in public, but should you at some stage wish to go in camera, you may make an application to do so and the committee will give consideration to your request. However, evidence taken in camera may be subsequently made public by order of the Senate. Would you like to make an opening statement?

Mr Hunt-Sharman—I thank the committee for giving us the opportunity to speak before you today. Our submission centres on some key salient points. The first point is that there is an opportunity for the Commonwealth to commence consistent integrity standards of the highest level for law enforcement personnel, in regards to what are called sworn and non-sworn personnel. As background information, in the Australian Federal Police all staff are employees of the Australian Federal Police and there is no differentiation with regards to police versus staff member. The sworn powers relate to the role being performed, not the individual. The second point is that Australian Bureau of Criminal Intelligence employees, when translated to the Australian Crime Commission as it stands under the current bill, will be subjected to a lower integrity regime under the ACC bill than they are currently subject to. The third point is that the Australian Crime Commission bill is lowering the integrity bar to the lowest common denominator—being the employees who are coming across from the National Crime Authority and the Office of Strategic Crime Assessment who are employed under the Public Service Act—rather than raising the integrity bar to the Australian Bureau of Criminal Intelligence standards, where the AFP Act is the vehicle of employment and employees are therefore subject to the AFP Act itself and also the AFP complaints act. Those integrity amendments in particular that were brought—

CHAIR—Is this about integrity or is it a bit of turf warfare?

Mr Hunt-Sharman—No, not at all. This is clearly a situation where we are striving as an association to put forward to this committee that the important issue here is about raising the standards to the highest level that is available. At the time that the NCA was formed—I think back in 1984—the environment was not as stringent, and it has not kept pace with the

movement that has happened in general law enforcement. That stands by the fact that only recent amendments of the NCA Act have brought the ombudsman into the picture, compared to other Commonwealth agencies and so forth.

What we as an association are proposing in our recommendations is a short-term solution and a long-term solution in relation to the Australian Crime Commission employees. We are saying that, in the short term, by amending the act you could use the AFP Act as the vehicle for employment of those staff. Alternatively, you could use a secondment arrangement, similar to the model that currently exists with the Australian Bureau of Criminal Intelligence. In the long term, we believe that the Australian Federal Police complaints act—which is out of date now and needs general revision, which was recommended in a Senate inquiry into the AFP and the NCA last year—should be reviewed and broadened to cover all federal law enforcement personnel and personnel performing law enforcement functions within Commonwealth agencies, so that we put these people into a higher integrity regime. That will obviously take time and it is a medium- to long-term solution, but we are putting forward a quick solution so that we can move forward with the Australian Crime Commission, which we fully support as a model. In fact, we made recommendations last year to the Senate inquiry into the AFP and the NCA suggesting the merging of the Office of Strategic Criminal Assessment, the National Crime Authority and the Australian Bureau of Criminal Intelligence. We are thoroughly behind the move.

Although we thought best practice would have been new legislation so that there is not the confusion with amending the NCA Act and so that there is a clear, if you like, start in the year 2002 with a new entity, we can understand the logistics involved. Although that is one of our recommendations, we have moved on beyond that. We are now saying, 'This is how we could adjust the bill that has been put forward to achieve the same outcomes.' The AFP is likely to continue to supply the vast majority of the seconded police to the ACC, as they do with the NCA. Again, our position is that we would like to see everyone in that organisation under a similar, if not the same, integrity regime. I will finish there. I just want to stress that our main aim here today is to try and bring some national consistency to the integrity regime of law enforcement personnel.

CHAIR—Do you have anything further to add, Mr Shannon and Mr Torr?

Mr Shannon—Not at this stage.

CHAIR—I will try to be as objective as I can. It seems to me—obviously I come from the conservative side of politics—as if you are just trying to widen your base to ensure that you have an increased number of members over whom you have jurisdiction, and that the question of integrity is not really the principal purpose, but that it is really about enlarging the number of members for whom you have jurisdiction. Isn't that at the core of what you are about? I understand why you would want to do that, but let us call a spade a shovel while we are at it.

Mr Shannon—In some respects, with the amendments to the Workplace Relations Act introduced by this government, turf wars and coverage are wholly irrelevant issues as far as signing people up to become members of organisations such as ours. To that extent the imperative is not necessarily there in that traditional context.

CHAIR—Does it make it more difficult, though, for you to sign them up? Under your proposals, they would naturally be under your aegis.

Mr Shannon—I must admit that, since the Workplace Relations Act was introduced, we have been doing it anyway. Generally speaking, we have not had any great difficulty because of the sort of organisation that we are within our environment. But the association has been on record for some years now on this matter of integrity, well before this model came forward. As has been mentioned by our president previously, that is why our best practice policy is that all public service employees with law enforcement functions under whichever head of employment should be accountable under a version of the complaints act that applies across the Commonwealth. That has always been our preferred position.

We have only put forward this current position, which in a sense adds fuel to the turf war perception you are talking about, because the Commonwealth has actually set forward this deadline for December on its own terms at this stage and the AFP Act as an employment vehicle is the only short-term remedy to that broader solution, from our point of view. While I would not deny that you could sniff the motive there to some extent if you were willing to do that, from the association's point of view we have put a lot of time and effort over the last couple of years into talking about the Commonwealth law enforcement framework in a very broad context. It is about best practice public policy in regard to law enforcement activities.

CHAIR—How many members would you have in the ABCI?

Mr Shannon—We have about 97 per cent of the unsworn staff and, unless I mistaken, 100 per cent of the seconded sworn staff. As we are now part of the Police Federation of Australia, the state seconded police employees are generally members of their state police associations. So to that extent, across both the ABCI and the NCA, we represent the vast majority of all employees.

Mr SERCOMBE—I have to confess a bit of ignorance of the AFP Act, I am sorry. Are there other features of the act that you can point us to, other than the integrity regime, that might flow into the new organisation from your proposal? I suppose that specifically I am thinking not so much about what the chairman referred to but about other perceptions of the new organisation, given that the commissioner of the AFP is going to the chairman of the board, for example. There is perhaps a broad perception, as one of our earlier witnessed today said, that your organisation might be perceived by state police forces and others as just an outpost of the AFP rather than as a model which genuinely brings together law enforcement agencies across the nation. So I am just wondering whether we run the risk of compounding that sort of perception problem, if you agree that it is potentially a problem, by utilising the AFP Act for this purpose. Are there other features of the act, for example, that will flow through to the way the organisation operates that we need to be aware of?

Mr Hunt-Sharman—The Police Federation of Australia actually supports our position. They represent all of the 43,000 police around the country. We are not talking about seconded police being put under this regime as such. We are talking about, if you like, the core staff of the Australian Crime Commission and the non-sworn personnel. We are saying that they should be put under a higher integrity regime than is currently in existence with the old NCA structure. A vehicle for doing it is to use the AFP Act. Of course, again, if we move to changing the

complaints act to a broader legislation then those personnel would be picked up under that. That is a longer process. We are talking about a short-term solution and then a long-term one.

It is not about getting more members, it is about getting this right. A classic example is that we could have a joint operation under the ACC or the NCA where we have got an AFP intelligence analyst—a staff member—and a corporate support person working with an NCA analyst and an NCA corporate support person with a public service investigator with the NCA and a federal agent from the AFP working together. If there is an allegation of disclosure of information, straight away we are in two totally different regimes. The people who are subject to the AFP Act and the complaints act can be directed to answer questions, can go to jail for misleading an inquiry, are subjected to 24-hour scrutiny—so it is not just whilst you are on duty, it is your behaviour off duty as well; that is under the AFP Act and the commission order 6 in regard to allegations—whereas, back over here, other people on the same job cannot be directed to do anything.

CHAIR—Are you aware of any questions of integrity regarding the current NCA operations?

Mr Hunt-Sharman—There has certainly been, in the annual reports, reference to some individual matters. The parliamentary joint committee looked into this in the third review, I believe. The Australian Law Reform Commission had some recommendations then but they do not seem to have been picked up from your committee. The ombudsman has been brought in but certainly has not been given the extensive powers that the ombudsman has as a result of the AFP complaints act, and that is where it is wrong. If there was an NCA complaints act, that would solve the problem you are concerned about. This is about picking up the standards.

CHAIR—Are you recommending that there should be a complaints mechanism? You have got the ombudsman.

Mr Hunt-Sharman—Yes, but the ombudsman has far greater power through the AFP complaints act and, because that needs to be updated anyway, that would be a good vehicle to amend it and broaden it to cover the NCA or the Australian Crimes Commission.

Mr KERR—Could that be picked up by way of amendments to this act? One of the issues that this committee is concerned about is to ensure, in passage of this legislation, that we do actually have an effective complaints regime in place. Have you given any thought as to the manner in which you could do that? One mechanism you are suggesting is subjecting everyone to the employment regime. Have you given any thought to legislative provisions that would bring in a parallel complaints mechanism scheme of the same rigour that applies to the AFP personnel to this act?

Mr Shannon—Part of the problem in the short term, and it is a component of the submission that we forwarded to the committee, is that we want uniformity across the Commonwealth framework. It does not matter whether it is in regards to the ACC in isolation or, in the future, other agencies. To purely have an ACC complaints act or an ACC complaints component would potentially have the AFP secondees, and others with the AFP employment regime applied to them, working side by side with employees potentially under a different complaints model. We would prefer to see the complaints act, as it is, amended by parliament to become a broader Commonwealth complaints act applying to tax officers, customs officers, immigration

officers—anyone who plays a role within that fabric of Commonwealth law enforcement responsibility. Because of areas like people-smuggling and other things, we have got multiagency task forces happening every day of the week in a number of areas with completely variable accountability and integrity regimes applicable to those employees. To an extent, your question would lead us to compounding an existing problem by creating yet another separate regime for this agency rather than saying, 'Can we get back to a broader uniform Commonwealth standard.'

Mr KERR—I am sorry; maybe we are at cross-purposes. I was asking whether it might be possible, by some not too complex legislative drafting device, to apply to staff of the ACC the same complaints regime that applies to AFP personnel. In other words, not trying to invent a different scheme but to apply the same scheme—in a sense an extension of what you are saying. I have not discussed this with other members and they may not be at all impressed about the idea of applying the AFP conditions of employment. But, whether they are or not, is there any technical difficulty in simply saying that staff of the ACC would be subject to the same complaints regime?

Mr Shannon—We were led to understand that might require amendment to the actual AFP complaints act, which was the second stage of our general position anyway, that that act does need to be updated and amended in a more comprehensive manner. We understood it was difficult within the context of this vehicle to reference that act without amending that act in itself.

Mr Hunt-Sharman—The other issue is not the AFP complaints act but that the AFP Act in 2000 that had a number of amendments made to it with regard to improving the integrity regime—for example, drug testing, alcohol testing and the commissioner being able to terminate employment without access to the Industrial Relations Commission with respect to unfair dismissal for serious misconduct. They included a number of safety mechanisms such as financial disclosure and so forth. I have a document here that lists a number of those amendments in the act under those sections. But if you combine them with the complaints act, you would probably be able to do exactly what you say. The difficulty is that the current complaints act is out of date. It talks about fixed term appointment and issues that do not exist now. So we see a fair bit of work in amending that legislation and, because we want to see the ACC up and running as quickly as possible as well, we see a two-stage solution.

Mr KERR—I am a person who has seen the difficulty in getting things through the parliamentary process, and sometimes people can take advantage of pressing urgency to achieve long-term strategic results. If governments see some urgency, they might be able to come up with answers fairly quickly.

Mr Shannon—We have encouraged the view but we did not necessarily assume that things were possible that may not be.

Mr KERR—I do not know. I have no idea, but I understand what you are saying.

Mr Hunt-Sharman—The AFP and the association have worked jointly on a review of the integrity program that currently exists.

Mr KERR—This committee has identified time and time again a failure to have proper and adequate complaints mechanisms and to address the issues you have raised, so it is not new to us.

Mr Torr—In this case it is inviting people— that is, the ABCI staff—to step back from a professional standards regime that they currently embrace. How do you tell them, in effect, 'You are working currently in a high order professional standards regime in an important intelligence role. We are moving you to, if anything, an even more important intelligence role, but step back a little from the high order standards that the current legislation enforces.'

CHAIR—It is not outside of our brief to make recommendations that the legislation should include that provision, because there are other examples as to why that would be appropriate.

Mr Hunt-Sharman—We certainly will be supportive of that.

CHAIR—I do not want to pre-empt my colleagues, however.

Mr Hunt-Sharman—The other issue I want to raise which might be of assistance to the committee is for you to ask the AFP and the Ombudsman to provide the number and types of results of complaints, or the results of allegations, with regard to public servants employed using the AFP Act and the ones that have led to separations from the organisation where they may work, whether it is the ABCI, the AFP or even the Australian Institute of Police Management. I think that would be valuable in that we want to dispel the view that corruption is just sitting around the investigators of an organisation, Clearly, the filing clerk, the secretary, the intelligence analyst or even the data collector has access sometimes to more sensitive material than the actual investigator has.

Mr Torr—We have previously encountered an expression of criminals trying to access that by engaging people in illegal drug use, making them vulnerable to blackmail or pressure. That is why the AFP professional standards regime provides the organisation with a vehicle to maintain some sort of control and policing over those vulnerabilities.

Mr KERR—I have heard some significant complaints from people who have been serving members of the AFP and from the public that the complaints mechanism does not always work as it should and that sometimes there are too close relationships between staff employed by the Ombudsman and those that they are investigating. I suppose that is a different order of issue, but obviously if we are putting any weight on an independent complaints mechanism operated by the Ombudsman—and that itself is frail—it raises some issues. I put that to you because I have had some very serious allegations put to me about misuse of the Ombudsman's role and an unwillingness to exercise full, frank and independent examination of the conduct of complaint against officers.

Mr Torr—That could be potentially something to capture in the phase 2 process or in any future review of the complaints act. That is very outdated. It has really just caught up to 1990 in terms of the AFP employment environment and has gone no further. It envisages only disciplinary outcomes; whereas now the commissioner can terminate an individual's employment without further ado, essentially after a procedural fairness process is followed. That might be something that is valuable to capture at that phase.

Mr Shannon—We have acknowledged the problem in the context of our general submission but we have put forward to the committee at this time that the AFP combination of its complaints act and its general act provide the best the Commonwealth has that could be applicable to this new agency. But it is certainly not where it should stop, from our point of view.

Mr KERR—Just to take the chair's scepticism—if we are going to pursue this, we have to be realistic—are there any significant industrial consequences with the course that you are recommending to be followed? I ask that so that I do not blunder off and say naively that this is a wonderful thing but has huge cost consequences. What are the other implications?

Mr Shannon—I am sure that if you had the CPSU sitting here today they would say yes; and, to some extent, we would say yes. But it is very difficult to quantify that without a demographic breakdown of the work force. My understanding anecdotally is that a large component of the NCA's existing work force are employed under Australian workplace agreements, which obviously provide a lack of capacity for us to contemplate what impact any translation to a new agency would have. If you look at the existing work force and the components that are being merged into the new organisation, there is obviously no impact on seconded police employees because they will be protected under their secondment arrangements. The ABCI employees are not a large component but are still probably the most significant component outside of the NCA pure employment group. There will obviously be no impact there because they are already employed under the Australian Federal Police Act and its regime. It would really come down to some extent to what component of the existing NCA staff employed under the Public Service Act translated under, say, the certified agreement regime to the new ACC.

Mr KERR—Is there any significant financial consequence, one way or the other?

Mr Shannon—It is very difficult anecdotally for me to say. I know they have just entered into a new certified agreement with the NCA. Depending on the way this legislation goes through translation consequences—I am not apprised of the full detail of that—and given that our general environment is still within the Commonwealth public sector, it is still within the ballpark as far as terms and conditions and entitlement go, although there have been different structural balances brought into the way our rec leave might work or whatever within the AFP compared to the NCA. I would not dismiss the view that any new agency would at some point translate to a new certified agreement, even as part of the AFP or under its own terms and conditions. Those matters would be resolved post translation, I would assume, and there would certainly be nothing more complex than what is going on at the moment. At the moment, there are industrial consequences whichever way you turn. Amongst the police federation coverage, we represent the significant component of the overall ACC model, and we have got a fairly strong concern about the way they all get translated one way or another.

Mr KERR—I am just thinking of the people who are not. Obviously not the seconded AFP personnel, but the accountants and lawyers and what have you; all the people who make up the equivalent of the unsworn in the AFP.

Mr Shannon—I am not sure how many of them there are.

Mr KERR—I think our experience is that they are covered by a certified agreement now.

Mr Shannon—Yes.

Mr KERR—A couple of the employees are dealt with under special statutory provisions that the NCA was able to make. I think there are only a handful of such employees, but I assume that, if we did do such a transition, you would have to have some kind of protection for anybody who would suffer a financial diminution.

Mr Shannon—Anecdotally, at the moment our members in the ABCI potentially face a reduction in their entitlements against what I understand the old NCA certified agreement might have provided. For example, we rebundled rec leave conditions in order to move them to the common standard of six weeks, whereas I assume the NCA is working on the four-week Public Service model. Without knowledge of their most recent certified agreement with the NCA—which I think was only ticked off on in the last month—I do not know how that scrubs up against the AFP's certified agreement in general terms, but you could say at the moment that our membership could potentially suffer a reduction in their standards unless they go over as seconded employees.

Mr KERR—Could I ask you to apply your mind as a devil's advocate. If we need to get information pursuing what you are saying, I assume we should try through the Department of Finance. Would they be the right people?

Mr Shannon—As an example, I know that Chris Honen in the NCA has been putting some work into reviewing entitlements within the NCA generally, trying to arrive at a common set of conditions across all the state police jurisdiction secondees. So I suggest that the NCA has probably got some knowledge of this issue. I am not sure what OSCA employees' conditions are. I gather they are a small group under 10. I assume someone has done some comparison across those groups. It really comes over to the size of the groups that are potentially translated to the new group as well: if they were AWA employees they would be offlined from a certified agreement outcome anyway.

Mr KERR—Can I ask you to be a devil's advocate on another question. What are the problems with your proposal? There must be some; otherwise it would have been picked up and done.

Mr Shannon—The problems would be no different to some extent to what the AFP went through in 1991, when our work force extracted itself from coverage of the Public Service Act and brought in unsworn members under the AFP Act. I think you might have been around at the time. Obviously, depending on your attitude as an employee who does not see themself as a law enforcement type employee, you may not want to be accountable to the regimes that we are talking about with regard to drug and alcohol testing. There is no doubt that the AFP has very onerous expectations of its staff and a fairly proactive investigative culture over its staff. If I were in the NCA as a public servant I would possibly have a problem with going into that environment. That would be quite reasonable to expect from a lot of people and, depending on which side of the fence you are on, I suppose you might see that as a problem. At the moment, our existing ABCI members do not want to translate to the ACC on the premise that they believe they might suffer a diminution of their perceived standing of themselves, having

developed into the culture of seeing themselves as AFP employees and having embraced the integrity environment and, I suppose, a different cultural perspective.

Mr CAMERON THOMPSON—This is a bit of a change of subject. In your submission you said that very few people that the AFPA had discussed actually had a view of what the ABCI was or does. You said that this would explain much of the failure to grasp the need for the ACC to be an effective intelligence agency rather than purely an investigative one. There has been a fair bit of discussion this morning about the need for there to be arrests and effective policing—for all that to be seen to have been occurring. Bill Coad said that there was a need for research. I think he was speaking about the potential for criminal elements to get into the finance and electricity industry. He was talking about things like that. That is just the investigative role. How do we balance that? You seem to be concerned that the ABCI and its intelligence responsibilities are going to get swallowed up in this process. How do you ensure that that is protected and how do you balance one against the other, given that in the past research and intelligence have been presented as a waste of effort when really what we should be doing is catching the crooks?

Mr Hunt-Sharman—Certainly we have said in our submission that we want the organisation to be concentrating as a national criminal intelligence agency and the secondary function to be investigations. The main area that is lacking at the moment with regard to criminal intelligence is having it centralised. If you go back to the discussions in relation to the creation of the Australian Bureau of Criminal Intelligence, they wanted to give it coercive powers. They wanted to give it, if you like, a lot of the aspects that you are now talking about for the Australian Crime Commission. We do not want to see the NCA problem that has existed for some time, where it has got a little bit into the grassroots with regard to investigations; rather we should be concentrating on high-level intelligence and therefore high-level investigations.

Mr Torr—I think there is a recognition that there is a broader strategic investment in a high order intelligence product directing law enforcement outcomes.

Mr Hunt-Sharman—One of the difficulties with the NCA as it is currently structured is that it can do only a certain number of investigations because it has only a certain number of investigators. Our model was saying that it should be a central criminal intelligence agency which builds up data and hands it to the appropriate law enforcement agency to follow up with regard to investigations. Whether you bring the police officers in on secondment to do that function or whether you hand it out to that police force is a matter of which model you choose. The main thing is that, if the NCA and then the ACC follow the model of doing their own investigations and therefore limit the amount of work they can do, not concentrating on intelligence analysis, producing intelligence targeting and saying, 'You should be looking at this group of people,' we are missing the whole benefit of putting together national, state and Commonwealth information.

Mr CAMERON THOMPSON—Do you see this type of intelligence gathering as a prime role and more important than the investigation side of it? Where do you see the balance?

Mr Hunt-Sharman—It is always hard to say where it sits. The fact is that there have been attempts over the years with the Office of Strategic Criminal Assessment looking at the strategic level. You have the operational level of intelligence and the tactical level of intelligence. It

should not be dismissed, because all three levels bring together high-level results that can be followed up with investigations. At the moment police forces have their own fairly small intelligence functions because a lot of police forces are focused on a lot of reactionary issues. The Federal Police is fairly fortunate in that it has the ability to be more proactive in that target development area, but it is not enough. We need some organisation to be doing that across the whole of Australia, and that is where we see the ACC coming in.

Mr CAMERON THOMPSON—You have said in your submission that police commissioners out there think that the Bureau of Criminal Intelligence just sits around, grabs everybody's statistics, puts them in a glossary brochure and sends them back to them.

Mr Shannon—That is what we were told.

Mr CAMERON THOMPSON—If you are saying that this intelligence thing is such an important part of the role, how do you get over that kind of attitude towards it? Is that sort of commissioner ever going to give it that kind of credence?

Mr Hunt-Sharman—The issue is: if you have a war, you can have soldiers anywhere, but really it is the intelligence leading the military operation that makes it a success or not.

Mr CAMERON THOMPSON—But I am saying that you do not seem to have the support of some of the key generals on the field.

Mr Shannon—Part of that may be resolved structurally by the new governance arrangement of this organisation with the parties involved in it compared to say what the NCA is in current terms. Obviously, this submission was written from the point of view that the states and the Commonwealth were in discussions about what sort of agency to set up. You might realise that the NCA was winning, in a sense, the propaganda war because it is very easy for people to conceptualise what it did. But the ABCI, largely because, from our experience, of a lack of communication between some of the state commissioners and their state minister counterparts, did not actually understand the functions of the ABCI. Certainly some states and their commissioners use the ABCI a lot more proactively than others might. Generational change always comes through the policing environment and obviously different commissioners have different views about the credence or currency of different investigative models.

There is no doubt with the expansion of the globalisation of criminal activity that there will be an expansion of technology allowing the data collection of intelligence information to be increased manifestly every year. I suppose the FBI have been through this most recently in the United States with September 11. There is no doubt that they were collecting vast quantities of information and did not do anything with it or integrate that intelligence into a model that was useful and might be applicable for preventing an incident like that at the World Trade Centre. Part of our concern is that, unless these matters are contemplated in the construct of an agency like the ACC, we will not learn anything from the experiences overseas even though it has a very direct relationship with what goes on in Australia. We are no longer fortress Australia in a criminal context.

Mr Torr—Or in the FBI scenario doing it too late, in which case it was not timely intelligence so it is no longer intelligence.

Mr CAMERON THOMPSON—Since you have produced this submission and seeing the way that discussion on the ACC has proceeded, are you satisfied that there is sufficient unanimity of view among the various commissioners on what they are expecting in terms of intelligence? Is there a fine view there? Are we going to have great conflicts in regard to the expectations of the various forces?

Mr Shannon—At this stage there is not even unanimity between what the Commonwealth and the states perceive the draft legislation is intended to achieve. I do not believe that anyone will have an answer to that question until the legislation is in place, the states have implemented their equivalent legislation and the agency is given some opportunity to develop. We might come back to you in two years time and say, 'This is a disaster and we really need to do something about it.' But we are not in a position to say that at this point. Certainly you can count on us coming back if it is a problem.

Mr Hunt-Sharman—Certainly the structure of having coercive powers and to be able to utilise that for the gathering of criminal intelligence rather than investigation is highly worth while for the Australian Crime Commission to have as a model. We believe that putting the structures together that currently exist with the NCA and getting them to also focus on the high-level intelligence through the ACC structure will give the results that everyone is looking for. Having the board made up of each of the commissioners is obviously going to bring some coordination one would imagine in regard to the structure of the ACC and how it performs.

Mr SERCOMBE—Given the importance of coordination in the intelligence world and given the importance you guys place on integrity within your own organisation, what additional steps are needed across Australia to provide the levels of confidence and integrity across the whole law enforcement community? I come from a state where there has been plenty in the newspapers about the state drug squad being fairly open. You can walk in and take stuff out of the safe areas with relative ease, apparently. There is not a huge level of confidence in the uniformity of integrity standards across the whole law enforcement community in Australia. I do not want to categorise particular state police forces as worse than others. I think it is probably more accurate to say that there are isolated problems in a lot of areas in particular forces rather than whole police forces. What are your views about the degree of confidence people can have in the integrity standards across the whole system?

Mr Torr—To an extent, I think it is up to each jurisdiction to establish that through its own—

Mr SERCOMBE—Not if you are coordinating. If you want to create a high level of confidence in coordination, you have to be sure that the standards are rising uniformly, don't you?

Mr Torr—Yes, but I understood your question to include state jurisdictions and how their own police and drug squads and things like that were perceived. I suppose, contrasting that with the AFP, it has really been a process of evolution and constant focus at the most demonstrably probative and open complaints mechanisms regimes. But that is only a part of it. There is a very high focus on the educative process before you get to dealing with an identified or alleged issue of misconduct and that same educative process, with what is essentially happening here, looking carefully at the legislation that underpins it, has really got the AFP to where it is and hence, obviously, the invitation that the ACC include that sort of framework.

Mr Shannon—If you look at it in a layered response context, I suppose our position as an association is that the Commonwealth, which is obviously our most direct interest, has to lead the standards as far as these matters go before we can arrive somewhere towards the point that I think you are identifying there. Whether it is rail gauges, road traffic laws or whatever, we know uniformity is a traditional problem in a legislative context across Australia—not just in our backyard.

As an association, we are probably historically the most proactive about the introduction and embracement of integrity standards in a policing context. I am sure every association would say the same thing if they were here today, but the AFP's reputation seems pretty intact internationally and nationally for the reforms that went through over, say, the last 15 years to arrive at the point it is today in integrity terms. If we could get at least Commonwealth consistency, which underpins our argument about the broader Commonwealth framework for law enforcement employees, that then hopefully provides a platform to move to a greater basis of national uniformity in relation to the states.

Within the industrial context, we are now part of the police federation of Australia, which is only an occurrence of the last five to six years. All state police associations and federal police association now coexist under one banner. We are collectively working on issues like police professional standards and certification of those standards—all these issues are being dealt with within our industrial environment. We are hoping to arrive in the next couple of years to an enhancement nationally of a common standard across all the jurisdictions on a range of fronts. Like any other industry, it is a slow process. If the Commonwealth can set the benchmarks on a range of levels, we think that will help.

Mr SERCOMBE—I do not want to stray off our terms of reference. I accept what you say about the reputation of the AFP. But, in terms of this integrity issue, is there any sense that the AFP are taking a bit of flak over the recent *Sunday* program type of material? I know it does not directly bear at all on what we are doing here but, given that integrity is one of the issues—and I accept what you are saying—do you have any comments as an association on where that sort of stuff is at?

Mr Shannon—Within the context of that allegation, at least the best framework nationally is in place at the moment—not the best potential, but certainly the best that exists—to investigate those matters that have been raised with regard to those issues. We have confidence that the internal mechanisms of the AFP will, if they have not already, address any such allegations in that context. But if it were another agency at the moment, those sorts of allegations would not likely be dealt with to a level of confidence for either the parliament or the broader community.

Mr Hunt-Sharman—Or independent transparency in regard to the investigation of the individual that currently exists for AFP employees. One of the important issues is that, if you lined up the functions that the NCA perform in regard to investigations into organised crime and narcotics and so forth and you lined up the functions of the AFP, there is very little difference with regard to what they are doing. One focuses on internal boundaries, to some extent, and one focuses on transnational crime, but even that overlaps now. If you look at their functions, responsibilities and powers, the AFP and the NCA are almost identical, except, of course, that the NCA has coercive powers. The Crimes Act 1914 has been amended to include the NCA as a law enforcement agency consistent with the AFP. The Measures to Combat Serious and

Organised Crime Act also identifies the NCA and the AFP as one in regard to their powers. It is the same situation with the Telecommunications Interception Act. It merges the two organisations together with regard to law enforcement powers. But one has those powers, plus extra, and a lower level of integrity regime than the other. It really does not make sense. That is the issue.

Mr Shannon—As an additional component to your question, we have been on the public record for some time—and I think it is also in this submission—calling for the AFP to be under parliamentary scrutiny to the same level as the NCA. This is the bizarreness of the environment. On one level you have a very good parliamentary oversight model but no capacity to actually deal with the internal integrity regime of the employees; whereas the AFP is the other way around. Some hybridisation of that for the whole Commonwealth force, whether you are a tax officer, a customs officer or whatever, really should be in place. Particularly since post September 11, there is an expansion of the Commonwealth's interests and activities in criminal law enforcement, whether it is nationally or transnationally. The public expect, consistent with that, from our point of view, the greatest level of general accountability for both the organisation and the individual employee, and we would like to move this process along in that direction as best we can. As we keep saying, the AFP is the best of the environment at the moment. It can and should be better, as every agency should be, and we are hoping with this first bite of the cherry to question how we can move things forward to at least fix the ACC now and then deal with the complaints regime with the AFP Act and make that even better practice than it is in the medium to short term.

Mr Hunt-Sharman—It is all about public confidence. Obviously, you want the complaints to be investigated. It is of benefit to the individuals within the organisation that there is a transparent process that clears them. But the real issue is about getting public confidence into it. If you look at the AFP and put together the independent structure that exists and the extra powers that the Ombudsman gets because of the complaints act that the Ombudsman does not have for any other Commonwealth agency, the public can be confident with our model.

Mr Torr—It is about the people of the ACC as well and the ability to have confidence that you are working in an environment in which you will be free of being compromised. The best chance you have of having that sort of confidence within your own workplace is to know that there are these sorts of vehicles and mechanisms available.

Mr KERR—There are only two substantive objections that I can put. One is that it may have some additional costs, and that is obviously something that I have to tease out. The second is that there has also been a historical problem of cooperation between agencies at a federal and state level, and plainly this is designed to try to bring it under a board of management where state and federal agencies have a greater cross-fertilisation. I am just worried about the optics of this; that this now makes the organisation look more like part of the AFP and that that might almost sit counter to the philosophic objective of gaining this greater cooperation.

Mr Shannon—We encountered that issue very early on in this exercise. You are probably aware that the debate has now been running for some months, and I suppose the association has been on the hustings both in the Commonwealth spectrum and in the state spectrum for that whole time. We have spoken to state ministers and we have certainly spoken to representatives of state police services. This is a rare moment in time when all the state police unions have said,

in allegiance and in support of our position, that that is not a real issue to be concerned about. Certainly, we would be more concerned about that issue you have just raised if the state police associations were speaking in unison with that same concern. In fact, they do not see it as a relevant matter to this debate.

Mr KERR—They support you?

Mr Shannon—Absolutely. In fact, we have a unanimous position in regard to these issues at the moment. While operationally that is a real concern at the best of times, we think, because of the general governance arrangements in the ACC legislation that brings together the board as it does representing all the jurisdictions, actually in a sense that eradicates the generality of that concern. The ABCI, as it exists currently, is structured around the model that we are talking about, and it does not seem to suffer from the perception—and I am sure you have a greater understanding of the ABCI than many people do—that it is a tool of the AFP by definition of the fact that its employees work as AFP Act employees. It is seen, I think, to be quite independent within its own marketplace. Whether the perceptions are as heightened as they should be about what its functionality is, I think is a different issue to some extent. We are talking about nothing different from a model that exists quite happily in the marketplace now, and we certainly would not want to see the operational culture in the ACC develop to the point where that issue that you have just raised becomes a concern. We do not think, under the governance structure, that that is possible.

Mr KERR—You say that the state associations are happy about that. What about the state police commissioners?

Mr Shannon—We are not aware of any concerns. I suppose they would have been fed back to us at this stage by our state counterparts, because we understand they are lobbying on their own state level for the same model. Underpinning a lot of our position is this integrity matter. I think the state police commissioners should have more confidence in an organisation where they know the coercive powers will be handled by individuals who are at least accountable under a regime applicable to the marketplace that applies to law enforcement employees. In a sense, the concern about whether or not they are AFP is only the same as the concern—

Mr KERR—I was just worried about the optics.

Mr Shannon—If they are public servants under the Commonwealth Public Service Act, they are still employees of the Commonwealth. I suppose the state versus Commonwealth perception could retain itself on that level as well.

Mr SERCOMBE—The ABCI has a rotating chair, but it is not the Commissioner of the AFP; it is usually a state police commissioner. So the match between the AFP and the ACC becomes even closer in perception terms than the ABCI, for example.

Mr Shannon—But we understand that at the last intergovernmental committee a lot of the issues relating to the way those structures will interrelate was resolved to the satisfaction of the states and certainly the state commissioners. As I said, we have been talking fairly exhaustively to the state level, and we are not aware that that is an ongoing concern at the moment.

Mr KERR—And you anticipate that if this were done, that the actual employer would not be the Commissioner of the AFP but a CEO?

Mr Shannon—That is right. They would be employed only under the AFP Act for these purposes, but they would certainly be under the jurisdiction of the CEO for hire and fire purposes.

Mr KERR—So that any power that would be exercisable would not be exercisable by the commissioner, as such?

Mr Shannon—No.

Mr Hunt-Sharman—In fact, the CEO would have deemed the powers of the Commissioner of the Australian Federal Police for that agency.

Mr KERR—That is what I assumed.

CHAIR—Thank you very much for appearing today.

Committee adjourned at 2.53 p.m.