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JOINT COMMITTEE ON THE AUSTRALIAN CRIME COMMISSION

Reference: Review of the Australian Crime Commission Act 2002

FRIDAY, 9 SEPTEMBER 2005

SYDNEY

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JOINT STATUTORY COMMITTEE ON THE

AUSTRALIAN CRIME COMMISSION

Friday, 9 September 2005

Members: Senator Santoro *(Chair)*, Mr Kerr *(Deputy Chair)*, Senators Ferris, Ludwig and Polley and Mr Byrne, Mrs Gash, Mr Richardson and Mr Wood

Members in attendance: Senators Polley and Santoro and Mr Kerr

Terms of reference for the inquiry:

Pursuant to Section 61A, the Committee will review the operation of the Australian Crime Commission Act 2002, with particular reference to:

1. the effectiveness of the investigative, management and accountability structures established under the Act, including:

a. the Australian Crime Commission;

b. the Chief Executive Officer;

c. the Examiners;

d. the Australian Crime Commission Board;

e. the Intergovernmental Committee; and

f. the Parliamentary Joint Committee on the Australian Crime Commission

2. whether the roles, powers and structure granted to the Australian Crime Commission under the Act and associated legislation remain appropriate and relevant to meeting the challenge of organised crime in the 21st century.

3. The need for amendment of the Act.

4. Any other related matter.

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CRIPPS, The Hon. Jerrold QC, Commissioner, Independent Commission Against Corruption 2

JENSEN, Mr Neil James, Director, Australian Transaction Reports and Analysis Centre 15

MELICK, Mr Aziz Gregory, SC, Private capacity 24

PRITCHARD, Mr John William, Deputy Commissioner, Independent Commission Against Corruption 2

WARD, Ms Wendy, Acting National Manager, Partner Liaison and Support, Australian Transaction Reports and Analysis Centre 15

Committee met at 9.33 am

CHAIR (Senator Santoro)—I declare open this public hearing of the parliamentary Joint Committee on the Australian Crime Commission, and I welcome all of you here today. This is the second hearing of the committee's review of the Australian Crime Commission Act 2002. The review is being conducted under section 61A of the Australian Crime Commission Act 2002, which provides for a review of the operation of the ACC Act by either the minister or a parliamentary committee. The terms of reference call for the committee to review the operation of the Australian Crime Commission Act 2002 with particular reference to:

1. the effectiveness of the investigative, management and accountability structures established under the Act ...

… … …

2. whether the roles, powers and structure granted to the Australian Crime Commission under the Act and associated legislation remain appropriate and relevant to meeting the challenge of organised crime in the 21st century.

3. The need for amendment of the Act.

4. Any other related matter.

The ACC Act has been in operation for almost three years. This inquiry is an opportunity to examine the appropriateness of the legislation and management structures to the ACC's task. It is also an opportunity for the committee to hear from associated agencies and to obtain feedback about the work of the ACC and its interaction with them. Criminal activity is growing in sophistication at an alarming rate. The opportunities for large-scale crime committed with the aid of technology are growing daily and our criminal intelligence agency must be equipped not only physically but also legislatively to meet this challenge. This inquiry will, we hope, support the provision of such an environment.

[9.35 am]

CRIPPS, The Hon. Jerrold QC, Commissioner, Independent Commission Against Corruption

PRITCHARD, Mr John William, Deputy Commissioner, Independent Commission Against Corruption

CHAIR—Welcome. Thank you very much for accepting our invitation. It is a pleasure to have you here. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I now invite you to make a short introductory statement, after which we will move to some general discussion.

Mr Cripps—When I received your letter and information on procedures it was not entirely clear to me why I was being called here, except that I knew you wished to ask me questions concerning the operations of the Independent Commission Against Corruption, ICAC. So I did not prepare a preliminary statement because I did not know what you wanted to ask me. But I will make my preliminary statement as follows: I will answer all questions I can as best I can.

CHAIR—Thanks, Mr Cripps. The ICAC is, in a peripheral way, involved in some of the matters that are of interest to the Australian Crime Commission and to the committee. I will kick off with some general questions. The ICAC has a strategic operations division which conducts investigations and operations and has a surveillance function as well. What powers does the ICAC have to enable it to investigate complaints?

Mr Pritchard—We have quite extensive powers, which are contained in the act. For example, we can serve notices for documents and information to be produced and we can serve those notices on any individual or organisation—it is not restricted to public authorities or public agencies. We can conduct public inquiries, which used to be known as public hearings, and compulsory examinations, which were previously known as private hearings. The names were changed as of 1 July this year after some amendments to the act.

We also have the power to ask for search warrants. Under our act, the commissioner has a power to issue his own search warrant if he wishes but in the 15- or 16-year history of the commission that power has never been exercised. All search warrants are obtained under the relevant New South Wales legislation from a justice of the local court to ensure some third-party review and independence of the decision to seek a search warrant.

We also have a power under our own act to enter any public authority's premises to inspect and take copies of documents if that is relevant to an inquiry or an investigation that we are conducting. That is to be distinguished from a search warrant. It can only be exercised on the premises of a public authority or a public agency, not on any private premises. We can also obtain listening devices under the New South Wales legislation—the Listening Devices Act—to record conversations and so on in relation to an investigation. They are issued by a Supreme Court judge. There is a certain evidentiary threshold that has to be satisfied before those warrants

can be obtained. Similar to telephone intercept warrants, they are done on an affidavit and information and belief.

We can also obtain telephone intercepts under the relevant Commonwealth legislation from members of the AAT where it relates to a specific offence of bribery or corruption of a public official under the New South Wales Crimes Act. We can also conduct controlled operations under the relevant New South Wales legislation to allow officers of the commission to participate in criminal offences as part of investigating an allegation of corrupt conduct. We also conduct the normal physical surveillance—I suppose that is the best way of putting it—without the need for any warrants et cetera. We have a broad range of powers and we tend to call on all of those aspects of the armoury when we are conducting a formal investigation. I suppose that is a potted overview of the powers that we have.

CHAIR—Does ICAC have any difficulty in balancing the investigations role and the complaints management role?

Mr Pritchard—No. We have said a number of times in our annual reports that we formally investigate less than five per cent of the total complaints that we receive in any one year. So over 90 per cent of the complaints we get go no further than being assessed and then being assessed on the basis that it is not a matter that requires investigation by the commission. We have an operations review committee, an external body, which reviews those decisions. We must refer all decisions not to investigate a complaint to that committee for its advice to the commissioner.

We have an assessments panel that meets twice a week, which consists of senior officers of the commission, including me. That body meets and considers all complaints that are received during the week or the period leading up to that week. A report is prepared and an assessment is made as to whether it will be the subject of any further formal investigation. If it is, then it is normally referred to the strategic operations division or the investigations division or the legal division for some inquiries to be made. A very small percentage of complaints are referred for further investigation such that powers of the act would be called upon to investigate.

CHAIR—It has been put to the committee that the coercive powers of ICAC are similar to those of a standing royal commission. How does ICAC manage the balance between effective powers and the protection of civil and personal rights?

Mr Pritchard—You are right: there are checks and balances. Whilst there are onerous and coercive powers under the act, there are balances. For example, in private hearings or compulsory examinations and even in public inquiries, whilst the privilege against self-incrimination is overwritten specifically by statute in that act, any evidence, answer or document that is produced by a person in response to a summons at a hearing cannot be used against that person in any later criminal or civil proceedings.

Mr KERR—Is that a use or a full transaction—

Mr Pritchard—It is probably more just a use. It is not immunity; it is just protection. There is nothing to stop the person being charged for an offence in relation to what they may tell the commission if investigating authorities come up with evidence independent of what may be said or produced before our hearing. So it is more of a use as opposed to—

Mr KERR—And derivative use?

Mr Pritchard—It is unclear. Some of the cases suggest that a person may be open to being cross-examined on a statement they have made before an ICAC body, albeit under objection, if it goes to credit and all those rules that are associated with that. It is unclear, but the courts in New South Wales generally take a pretty robust view that, to a large extent, anything that is produced or said before a commission of inquiry under compulsion is generally off limits.

Mr Cripps—The use derivative privilege that people talk about is extremely hard, as you would appreciate, to enforce because the prosecuting authorities may very well know, as a result of what has been said, what the true facts are and then go off and investigate and find evidence that supports those facts. Is that use derivative? I think it is a very tricky area. The other thing that I should perhaps mention—and John has not yet mentioned it—is that legal professional privilege is also abrogated insofar as the public hearings are concerned. In my limited experience—having been the commissioner for only a few months—I have not raised the issue. But ordinarily I would think that, if a serious question of legal professional privilege arose, we would probably exercise the power to hear that in private if we needed the information but we did not want to broadcast it to the world.

Mr Pritchard—In relation to the notice provision that we have to produce, legal professional privilege still applies in that a person can object to producing material if they wish to claim that privilege. The privilege against self-incrimination does not. The material still has to be produced but the fact of that objection and anything that is produced that tends to be incriminating cannot be used beyond the commission's investigations. That is just a bit of a summary overview. There are checks and balances. It is the same with listening devices and telephone intercepts. As the committee is probably aware from the TI legislation, there are severe checks and balances and restrictions on the use that can be made of material that is obtained pursuant to those warrants.

CHAIR—How active has the civil liberties movement been in voicing any opposition against the existing checks and balances that are in place at the moment within the act?

Mr Cripps—Before I took on this position, I was conducting an inquiry into ICAC as part of a standard inquiry that had to be done. I did not finish it. I was inviting people to make submissions as to what was wrong with ICAC, how it should be changed and the like and we really did not get any on this issue from the Bar Association, the Law Society or any civil liberties group. There were no complaints. That is all I can say.

CHAIR—Have civil liberties groups made contributions at any other time in a positive sense—that they thought that the act was fair in terms of its protections?

Mr Cripps—John may be able to answer this better than I, but there have been certain civil liberty concerns about whether the definition of 'corrupt conduct' is too wide—that is, that it can sweep in almost any conduct if it is stretched to its logical conclusion. I have not heard, but I will ask John. He has been at the commission for four years. I think you could probably conclude that a civil liberty group may at first blush say that they do not want anything to be removed—like privilege against self-incrimination or legal professional privilege. I think you could assume that civil liberty groups would not like that, but I do not know of complaints that have been made as to the way ICAC has handled that. Are you aware of any, John?

Mr Pritchard—No. I suppose the most recent activity by them was in relation to the contempt provisions of the act, which have now been removed. Last year there were proceedings threatened against the former premier in relation to hearings that we were conducting and there was a suggestion of contempt proceedings against the former premier. The civil liberties movement was quite vocal in criticism of the commission's response to that by threatening contempt on the basis of it being an attack on freedom of speech and so on. But those actual provisions were removed from the act as of 1 July, so the contempt provisions no longer apply. It is probably in the area of public hearings that the commission generates most comment or criticism of its powers from a civil liberties point of view because of the attention and media interest that public hearings attract.

CHAIR—The commission has the power to conduct a compulsory examination in private. The act says that it is to be conducted with as little emphasis on an adversarial approach as possible. What are the mechanics of examinations? For example, what circumstances would lead to an examination being conducted?

Mr Cripps—Do you mean an examination as opposed to an interview?

CHAIR—That is correct.

Mr Cripps—I suppose it depends on the stage the investigation has reached. This may occur, for example, when people decide they will not cooperate with us in an investigation in the sense that when they are asked to be interviewed they will not be interviewed. We would then have an examination or a private hearing. Whether that then becomes public depends on whether we think that, in all the circumstances, it is fair and reasonable to do so. In that regard, we consider certain things like the public interest in the very nature of the inquiry that is being undertaken, the fact that people's reputations can be smeared or very much damaged even though they are eventually cleared. So we take that into account before we decide whether or not to go public.

The reason that a private investigation or a private examination happens is that it is considered by the investigators that it is appropriate—that is, we are not getting the information that we want from voluntary interviews, even with inducements. So we have a private hearing to start off with and, once we have that, we then decide whether we will go public and to what extent we will go public.

Mr KERR—One of the issues that is material to our inquiry is how to address the witness who is reluctant to cooperate with the ACC's investigations. You mentioned that the contempt procedures have been removed. What mechanism currently applies to the witness who essentially comes forward saying 'I am not going to cooperate'?

Mr Cripps—They are obliged to answer questions and the failure to answer questions constitutes an offence. It has to be understood—and I was involved in this partly when I was doing my inquiry—that the reason the contempt proceedings went was that it was thought those contempt proceedings are appropriate to courts of law but they should not be very readily transposed to administrative tribunals. However, much of what amounted to contempt is simply an offence under the act. It is an offence under the act not to answer a question; it is an offence to tell lies—and they are enforced by prosecutions. We have had a number of prosecutions for the doing of those.

Mr KERR—I understand that one of the points being pressed—because I read about it in the press rather than because I am aware of it as a first-hand critique from reports—is that consideration is being given to strengthening the processes that exist within the ACC to address the problem of the reluctant witness. The witness might say: 'The worst that can happen to me if I refuse is a first conviction for an offence of refusing. However, if I submit to the questioning regime and tell falsehoods, or I tell the truth, I may be exposed to considerably greater consequences.' Have you experienced that kind of problem yourself? Is there an optimal way of addressing that that we ought to reflect on? I am sorry to have made the question very long.

In the last examination of the transition from the National Crime Authority to the ACC it was initially proposed that there be a contempt power. This committee recommended against that for precisely the same reason that I assume the parliament has removed the contempt powers—that it is an appropriate power, if at all, to vest in a court rather than a tribunal or a royal commission. So I wonder whether, firstly, it is a substantial problem for you and, secondly, whether you have had any thoughts about it that could assist us.

Mr Cripps—I do not think I can, personally. I am aware that there were occasions when people were very reluctant to assist and told lies, and those people have been prosecuted—but we seem to get the information eventually. As to whether these things should be translated into the Australian Crime Commission, I am not sure. You understand of course that we are primarily concerned with making findings as to whether people have engaged in corrupt conduct. It is a secondary function of ours to consider whether there is evidence that should go before prosecuting authorities and for us to make recommendations that consideration should be given to prosecuting et cetera.

It always seems to me that when one talks about what coercive powers you have and how they should be exercised you have to keep fairly and squarely in mind what the prime purpose is of the investigation itself. Ours is, as I said, to expose corrupt conduct and we do not seem to have a problem in this regard, although I have not been here very long and maybe John is aware of something that he could help you with.

Mr Pritchard—Perhaps the one in Jamali where the witness would not answer the questions?

Mr Cripps—Yes, as John reminds me, I was acting commissioner in a case where a person kept saying he did not remember in circumstances where it seemed to me that meant he was not going to answer the questions. He thought that, by mouthing the words 'I don't remember', he could not be charged with the offence. I recommended that consideration be given to prosecuting him for that, and for a reason that to this day escapes me he was not prosecuted. I do not know why, because to my way of thinking he plainly was not answering the question. But in that case it did not really matter, I have to say. It was a bit peripheral to the inquiry because it was an inquiry into corruption in the RTA about what they call the rebirthing of motor vehicles—where vehicles are stolen and have new plates put on—and he was one of the stealers of motor cars. So we were more concerned not with the people who stole the cars but with the way the RTA had processes that allowed people to corrupt the system. But that is the only one I can think of. Can you remember any more, John?

Mr Pritchard—No. I know the Australian Crime Commission has had that problem. We generally do not have witnesses who simply will not cooperate. As the commissioner said, they

may not tell us the truth, but they will not actively refuse to be sworn, refuse to give their name or actively refuse the basics. We do not generally have experience with that sort of problem. As the commissioner said, it is an offence not to be sworn and not to answer. I do not know whether that has always acted as a deterrent or not, but it is not a problem that we have encountered a great deal.

Senator POLLEY—If you prosecute for contempt, doesn't that prolong the whole process?

Mr Cripps—We do not have contempt any more. Do you mean if we prosecute someone who does not answer the question?

Senator POLLEY—Yes.

Mr Cripps—It has only occurred to me once. My view at the time in the circumstances then facing me was that it seemed better to just keep on with and conclude the inquiry, and then send that material off to the appropriate authority. It is a good point you are making: if you start inquiries and then keep flying off to do all sorts of ancillary or tangential things you will lose sight of what you are ultimately aiming to do. That is what I would do ordinarily with these things.

Mr KERR—I seek your reaction to this proposition: I imagine that many of the imagined difficulties could be overcome with good cooperation between the prosecution authorities and yourselves. If there were a recalcitrant witness, they could be dealt with quickly procedurally and then returned and dealt with again if necessary, if that were still a matter material to your inquiry.

Mr Cripps—That was one of the reasons against removing the contempt proceedings. As you know, the courts exercise contempt powers for the purpose of coercing, not for punishing. It was said that if you get a witness like that the court will probably put them in jail until they come forward and start speaking.

Mr KERR—I think they are reflecting on that in the case of two journalists in Melbourne at the very moment.

Mr Cripps—Yes, I know. But that was one of the balancing arguments. The other balancing argument was, as John has pointed out, that free speech and contempt proceedings should be confined to courts of law and not extended to us.

Mr KERR—You act basically as a standing royal commission.

Mr Cripps—Yes.

Mr KERR—In other words, the management and direction of your investigations are ultimately the responsibility of the commissioners. Is that correct?

Mr Cripps—Yes. Or commissioner.

Mr KERR—So there is no separation between the targeting of particular inquiries, the identification of witnesses, the conduct of hearings and the conduct of the examinations?

Mr Cripps—Yes. It is just like a royal commission.

Mr KERR—One of the criticisms that is beginning to be advanced against the Australian Crime Commission is that, with the separation between the management of the ACC and the hearing officers, the process can evolve into something that is almost a plug-on extra to sophisticated police investigations. Instead of the responsibility of the commission driving its focus, it becomes a means which is used by law enforcement to acquire powers that would not ordinarily be available. I wonder whether, in your experience, you would have anything that would be relevant to our reflection on that submission to us by way of a critique of how the organisation has evolved or whether or not there are any in-principle objections to that kind of process.

Mr Cripps—I do not think so. Of course, when one is conducting a public inquiry, as you would appreciate, it is an investigation from beginning to end before ICAC. It is an investigation from the moment the complaint comes in until the report goes out to parliament. It is all an investigation. But in the course of undertaking part of that investigation we may have public hearings or public inquiries and, as you know, we consider the evidence. We have an informal way of ensuring that there is a counsel assisting who, one would expect, would independently and objectively present material to the commissioner who is hearing the inquiry. Then submissions are put and the commission starts writing its report. No part of the writing of that report comes from the counsel assisting the commissioner. They just make submissions and then we write the report on those submissions.

Mr KERR—So you operate, in a sense, in a chinese wall situation.

Mr Cripps—The reason for doing that is, in a sense, to try to present, as far as one can in an investigation, fairness to everybody involved in it. We do not want people who are going to be the subject of adverse findings thinking that everyone is ganging up on them in the commission. They are entitled to an expectation that they will get a fair, independent hearing and that it will be adjudicated on in that way. Having said that, I do not know of any problems that have arisen in this regard or at least of any complaints that have been made.

Mr Pritchard—The commissioner tends not to be involved in the day-to-day operational decision making in relation to an investigation, certainly in the early stage, because a lot of the investigations will not necessarily require either compulsory examinations or public inquiries. But, once we identify a matter as having the potential for public inquiries in it, it therefore gears up a bit and the commissioner tends to play a much more active role in the direction of that investigation, most particularly during the hearings. I would have to say, and the commissioner might well agree, that I appreciate the model that the ACC has in which its examiners are somewhat separate and removed from the operational aspect of the investigation that they may be presiding over that the hearing relates to.

It is always an issue to some extent in our matters of a transition where it moves from the investigation side to the hearing side. Investigators take a back seat and lawyers take over, but the bridge between the two is that the commissioner generally tends to play, at that stage, a much

more active role in the direction and the progress of the matter. Managing that can always be a bit problematical, but I must say I personally find the model of the ACC interesting. I get the impression that the examiners visit matters, as opposed to actually knowing. Having said that, I suppose the commissioner identified a point that witnesses or people may well think, 'There's someone sitting on the bench up there, but they're not really distant or removed from the investigation,' as their appearance on the bench might suggest.

Mr KERR—From an outsider's point of view, it is a very complex set of jurisdictions. You have the Police Integrity Commission, the New South Wales Crime Commission, law enforcement itself—the police—and two other commissions with, I think, overlapping jurisdictions. Is that more or less a correct assessment? Do you conceptualise yourself as the oversight body? How do you deal with those intersections? To put it in context, one of the concerns that has been raised many times is who oversights anticorruption allegations in the federal scene. There has been for a long time a call to have some kind of oversight body extending across Commonwealth law enforcement, and including the ACC. The Ombudsman plays that role to a substantial degree. There have been other processes put in place which reflect that concern. Is that the role you conceptualise yourself playing? Or is there a sense that there are three organisations and you do not conceive of yourself as the oversight body but merely one with a specific jurisdictional task?

Mr Cripps—So far as the Police Integrity Commission and ICAC are concerned, it is probably fair to say as a generality that the Police Integrity Commission does everything that ICAC does except it is confined solely to serving police officers and members of the police department. It is exactly the same. So far as the Crime Commission is concerned, we communicate with them but I do not think we see ourselves as any sort of oversighting body—

Mr Pritchard—To the extent they are public officials.

Mr Cripps—to the extent they are public officials, also, you see. We do not really see that. It is an independent role we play. I was not sure whether you were leading into what supervision there was of ICAC itself that might have relevance to a possible form of supervision for the ACC.

Mr KERR—I would go there but I was wondering whether you were in effect the kind of supervisory body that some might imagine would be appropriate for the oversight of Commonwealth law enforcement. The argument that we need some oversight body has been advanced many times and it is still an open question as to how that is best to be effected. I was wondering whether in New South Wales you actually play that role. Perhaps you have a much broader role so it is not conceptualised in that way.

Mr Pritchard—I would say no. When it was set up in 1989 it probably was envisaged as having that role because it covered police and public officials. The Police Integrity Commission was set up after the royal commission in New South Wales. It would take great umbrage if it thought it was on anything other than an equal footing with us in terms of its jurisdiction and powers. There is overlap. The Police Integrity Commission Act has a provision that says that we can deal with misconduct of police officers so long as it involves public officials and it can deal with misconduct in relation to public officials so long as it involves police officers. Having said that, the Shaw matter in New South Wales has demonstrated that there is still a gap in covering

specific conduct that may fall between the cracks of the two agencies. I think all of us would probably say that we each have our own domain and we are all on an equal footing as regards that domain.

Mr KERR—You mentioned your own oversight.

Mr Cripps—In the recent amendments to the legislation the office of inspectorate was created. Until then ICAC's supervision had been by the parliamentary joint committee and also, as John has mentioned, the operations review committee. The parliament produced the inspectorate model—modelled, I think, on the inspectorate that is in existence for the Police Integrity Commission—and the reason why I thought that was necessary—and I think it is a good thing—is that, because we investigate parliamentarians, our act provides that we cannot be asked any questions by the parliamentary joint committee concerning how we undertake any investigations.

CHAIR—Of parliamentarians?

Mr Cripps—Of anybody. It just says that we attend the parliamentary committee and we are asked questions but that they may not ask—if they do we are not to answer—any questions that relate to the particulars of any investigation. Consequently, it appeared that there ought to be some body that had the ability to come in over the top and say, for example, 'How are you handling your coercive powers?'

CHAIR—In relation to a specific investigation?

Mr Cripps—Any investigation or a specific one on complaint or just if the inspector wishes to do a spot check.

CHAIR—So, and this is one of the questions that one of the committee members would have asked you later on, in terms of operational information that is made available to the PJC, you are really saying that you are bound not to make that available to the PJC. Is that right?

Mr Cripps—No, we can make information available to the PJC.

CHAIR—Of an operational nature?

Mr Pritchard—No, not in relation to that. If they were to ask us why we took a decision in relation to a particular investigation, we would say, 'You're not entitled to ask that question.' There have been occasions when we have appeared before a parliamentary committee and they have attempted to ask questions about specific reports or investigations and we have indicated we cannot answer those questions. It generally draws a distinction here. They can ask generally about policies and procedures, as to how we might go about, say, issuing a search warrant or something, but if they were to ask in relation to a specific investigation then we would object to answering.

Mr Cripps—We have to: the legislation says nothing 'authorises the Joint Committee to investigate a matter relating to particular conduct'. However, that does not apply to the inspector.

However, if the inspector reported to the parliamentary committee, the inspector would not be allowed to talk about this matter either because of section 64.

CHAIR—And the inspector reports to the parliamentary committee also?

Mr Cripps—Yes.

Mr KERR—But there is a difference also in that ultimately many of your matters do become the subject of public report—isn't that correct?

Mr Cripps—Yes, many of the ones we decide to investigate, as has been pointed out to you; 95 per cent are.

Mr KERR—Whereas with the Australian Crime Commission, the report of much of their matters—almost everything—is carefully edited to remove matters which might be operationally sensitive, so the public does not have access, in a sense, to the range of information that would be available to the community through your reports, I imagine.

Mr Cripps—Yes, I think that would be a fair enough comment.

Mr KERR—An issue we have had to grapple with is the degree to which operational information in relation to the ACC and its predecessor, the National Crime Authority, should be available to parliamentary scrutiny. That has been coloured by the fact that in the 1980s there were significant and quite disgraceful breaches of parliamentary responsibility in terms of leaking some material which was disclosed amid conflict within the committee. I think that in a sense created the cast of legislation which might not have otherwise emerged.

Mr Cripps—I do not think we have really had a problem about that but, as I say, the inspector has only just come on board so I do not know what—

Mr KERR—Does the inspector report to the parliament? How does the inspector report?

Mr Cripps—To the parliament.

Mr KERR—What, if any, intersection do you have with the Australian Crime Commission? Do you work cooperatively in any regard? Has that been the experience of your commission?

Mr Pritchard—We have limited association and involvement with them. We might disseminate material to them that we have collected that might not be relevant to our investigation or that might be of relevance to the Australian Crime Commission. I think you might find, too, as I think it is a practice of law enforcement agencies generally, that we might draw on their resources, such as surveillance. I think we have used the Australian Crime Commission physical surveillance unit a few times. We have a surveillance capacity, but it is not huge, and if you need a bit of intensity in the investigation then there is often an informal understanding with other agencies that we will draw on others, and the Australian Crime Commission surveillance unit has helped us out a few times—I think even in the technical area. The Australian Crime Commission has also helped us out with some investigations with regard

to accessing properties pursuant to listening device warrants and things of that nature. It is not an agency with which we have tremendous amounts of dealings.

Mr KERR—Another issue that has been flagged—again, in the media—is arming members of the Australian Crime Commission. Do you have investigators that operate in certain circumstances where that might be material? Obviously, some of the issues that involve corruption are potentially done by people who would not hesitate to harm if they could advance their interests. Has that issue been addressed?

Mr Pritchard—Commission investigators were armed until about three or four years ago. As a result of some OH&S issues that arose, a review was undertaken and it was decided to disarm investigators within the ICAC. You must understand that our investigators, while we have one or two who may be on secondment from the New South Wales Police and, therefore, are subject to the New South Wales Police regulations and requirements in being armed, most commission investigators are employees of the commission, although they may have a law enforcement background. The decision was taken to disarm investigators. That has been slightly amended recently, in that the surveillance unit has recently had its arms restored because of the nature of the work they carry out. There is a strong case that there is a greater need for them to have some personal protection in the way they operate. That has created some issues for us where we might make a risk assessment of a particular investigation, such as a search warrant that suggests the occupants could be dangerous or so on, in which case we have a memorandum of understanding with the New South Wales Police in that we can draw on their resources and their personnel to assist us with that warrant, as they are armed. But generally, other than the surveillance unit, commission investigators are no longer armed.

Senator POLLEY—Where do you recruit your investigators from?

Mr Pritchard—As I said, they generally have a law enforcement background. A couple are on secondment from the New South Wales Police. When their secondment ends, a lot of them like to stay, and they will often resign from the police. Some have Federal Police backgrounds. We have quite a few financial investigators who have mixed backgrounds of law enforcement and accounting or qualifications of that kind. There are a few who have come from other police services across Australia, from other states and so on. It is a broad mix.

CHAIR—What were the OH&S considerations that led to the decision to disarm your investigators?

Mr Pritchard—It was a training issue. While some of the investigators have a law enforcement background, they may not have been in a traditional law enforcement background for some time, so their training in handling firearms had perhaps lapsed. It therefore became necessary to constantly review and reassess training in handling firearms. I think, over time, the need to use firearms had declined, particularly with the loss of the police jurisdiction. Police corruption tends to be a bit more a part of the criminal milieu, as opposed to the common, garden variety corrupt public official.

So that was really the issue. It was actually the WorkCover Authority of New South Wales that raised the issue with us that training perhaps had not been up to the level that it needed to be to handle firearms. An assessment was made that the circumstances in which we use them are

somewhat limited given what we would be involved in. We have a turnaround in personnel, so training was becoming an issue. Constantly keeping people up-to-date with using firearms when there are 40-odd investigators became a cost issue as well. An assessment was made of the times we use them compared to the cost involved. In those circumstances where it is needed, we can call on the New South Wales Police—

CHAIR—You can access it elsewhere?

Mr Pritchard—Yes, that is right.

CHAIR—Just getting back to the information that is made available to the PJC, in your dealings with the parliamentary joint committee, does the committee put forward to you requests for information? Do you sense any frustration or any desire on the part of the committee to have operational information or do you think they have just gotten used to the act, which says—

Mr Cripps—That they cannot inquire into it?

CHAIR—Yes.

Mr Cripps—I have only been to one of the public ones and they did not express any hostility to that provision. It seemed to be accepted, as far as I was aware, and it was stated by some of them that they recognise that, because parliamentarians were subject to ICAC, they really should not have a role in investigating particular conduct or investigating ICAC's particular investigations.

Mr Pritchard—Relations between the commission and the parliamentary committee, I suppose, wax and wane. In my time in the last four or so years, I have to say that relations have been generally very good between the commission and the committee. I think that, as the commissioner has said, probably in the last three or four years the committee members have come to accept that they just cannot ask those questions and they generally do not ask them now. It is generally very well understood.

Mr Cripps—I think it was the parliamentary committee that also supported the idea of an inspectorate so that some independent body could ask, even though the parliamentary joint committee might not find out the result.

CHAIR—So the existence of the inspectorate and the requirement to publish findings after an investigation, which occurs, as you put it before, in 95 per cent of all investigations, satisfies any perceived need or real need for operational information?

Mr Cripps—From the parliamentary joint committee, you mean?

CHAIR—That is correct.

Mr Cripps—I think you would probably have to ask them that. It has not been communicated to me at all. As I said, the parliamentary joint committee was in favour of this independent supervision by the inspector.

CHAIR—Broadly speaking, New South Wales has four law enforcement bodies—the New South Wales Police, ICAC, the New South Wales Crime Commission and PIC. How are jurisdictional issues managed between these agencies when matters overlap?

Mr Cripps—The only one I know of is one that was recently done by PIC. The offices communicate with each other as to who will take on a particular investigation.

CHAIR—Is there any coordinating committee?

Mr Pritchard—We have memorandums of understanding between each of the relevant agencies, but in terms of there being a standing regular committee, no, there is not. You do tend to find that complainants send their complaint to everybody anyway, so it tends to make its way to where they think it should be or where it should end up.

CHAIR—Sometimes they send them to politicians and we send them on to you!

Mr Pritchard—Yes. We have contact points. In fact, I think it tends to work very well that everybody seems to know each other's jurisdiction. I think I can say that in my experience there have never really been any jealousies expressed about someone going onto the turf of somebody else. As much as there is scope for overlap, it generally is that we work these things out once it becomes apparent that there is a need to consult another agency that may have another jurisdiction. Generally it works pretty cooperatively.

We have a much closer relationship with the Crime Commission in terms of services, particularly of an electronic nature. They are very well resourced with the latest technology and so on. We draw on that very heavily. Generally, everybody seems to have a clear understanding of what their particular area is. If there is any doubt, there are always contact points where we can liaise and meet. We manage to work out an arrangement about who will do what, and generally cooperate with one another.

CHAIR—In terms of relationships, how would you describe the formal relationship between ICAC and, say, the ministers for justice and police in New South Wales?

Mr Cripps—We really do not have a great deal to do with them. If you look at our structure, ICAC was established as an independent, separate body. If it comes under any form of governmental department, it would be the Premier's Department, not Attorney General's—although I have to say that one of the members of the Operation Review Committee is the Director General of the Attorney General's Department. The Operation Review Committee gives us advice as to whether we should discontinue an investigation or whether we should not investigate. That is what its role is—it is not to, as it were, try to rein us in; it is to egg us on, really. The membership of that committee includes the Commissioner of Police and also the Director General of the Attorney General's Department. They are the only sorts of dealings we have.

CHAIR—I think we have asked all the questions that we wanted to ask. Thank you for appearing before the committee. Your evidence and responses to us have been most helpful.

Proceedings suspended from 10.27 am to 10.42 am

JENSEN, Mr Neil James, Director, Australian Transaction Reports and Analysis Centre

WARD, Ms Wendy, Acting National Manager, Partner Liaison and Support, Australian Transaction Reports and Analysis Centre

CHAIR—Welcome, Mr Jensen and Ms Ward. As you are public servants, you are reminded that you are not required to answer questions relating to policy matters and you will be given the opportunity to refer such questions to either the minister or to superior officers. Information on parliamentary privilege and the protection of witnesses in evidence has also been provided to you. I invite you now to make a short introductory statement, after which we will move to a more general discussion.

Mr Jensen—We have provided a short written submission to the committee. Generally speaking AUSTRAC is different to a lot of other organisations that have dealings with the Australian Crime Commission in that we are a provider of information to the Crime Commission rather than necessarily a receiver of information from them. Our main role is assisting special investigations and task forces in two ways. One is in a proactive way and the second is in a reactive way. Proactively, we provide information that we find through analysis in our database—things that the special investigations or task forces may find useful to them in terms of new information that they were not previously aware of. We are reactive in the sense that they will ask us to inquire of the database and provide information in that way.

We have staff who are members of the various investigations and task forces and they operate effectively as staff of the Australian Crime Commission in that role, so they have access to our database and can provide inquiries on site to the ACC. We also have on-site liaison officers in a number of the offices and they perform ongoing liaison and also assist in intelligence gathering from our database as required. From our perspective, the major issues that we have with the Australian Crime Commission are generally to ensure that under the Midas special investigation and in the FIAT working group, if I can call it that loosely—

Mr KERR—That is anti tax avoidance?

Mr Jensen—Yes. That is a major area of our work. FIAT in particular takes our data into that group and evaluates it, and it will either refer it on to other places within the ACC or refer it out to other agencies. Our issue there is to ensure that the data we are putting in is adequately considered and that all other members of the group—a range of different organisations are members—have the ability to be able to add value to the data we are providing, bearing in mind that our data is only from financial transactions. So it is important that the appropriate skills and resources are put into that group. I understand that the Australian Crime Commission is reviewing the focus of that group and we are helping them with that review.

The other thing that has come to our attention recently is a case in the Federal Court where Justice Finkelstein made some determinations that gave us cause to have a look at the legislation more closely. I think there may need to be some clarification on terms that are used in the legislation that relate to a body such as AUSTRAC and how AUSTRAC relates to the ACC. Terms such as ‘law enforcement’, ‘agency or body of the Commonwealth’, ‘authorities’ and

'instrumentality' are all referred to. Trying to identify the niche that we fit into there is sometimes a little confusing. Apart from that, generally speaking our relationship with the ACC is very strong. They use our data, they take it online and also we provide assessments.

CHAIR—Thank you, Mr Jensen, for that informative opening statement. Would you be able to comment on the evolving role of financial transactions, money laundering operations and organised crime? Is AUSTRAC observing changes in the money laundering environment, which is associated with the increasing level of transnational organised crime? As a result of any conclusions that you are coming to in relation to that, is the role of AUSTRAC changing? You can take those questions one at a time!

Mr Jensen—I think I can probably give a general answer that will hopefully cover the range of issues there. We continue to monitor our data. We have the ability through technology solutions to look proactively at the data. In looking at that data, we have not had great cause to change the way we look at it. We have, perhaps, tightened the parameters a little bit over a period of time, but over a long period of time we have seen information that may assist investigations of transnational crime. So I do not think there has been a lot of change over that period. What has become important is that the volume of information we extract from our database is, in many respects, too large for the resourcing of law enforcement. When I say 'law enforcement,' I refer to law enforcement, revenue, national security and social justice agencies. There are 28 agencies we provide the data to, including the ACC. The volume of information is high, so what we have had to do is get better technology, such as data mining tools—which are basically off-the-shelf or can be picked up at a pretty reasonable price—and apply them on top of the systems that we already have to refine the data to get the higher quality and higher priority matters and then refer them on. That is important, particularly for the FIAT task force, where we can put that data in and they can evaluate it. We have not seen a lot of change. I guess an area of change has been, in particular, with drugs and the type of drug related activity that we are able to find intelligence on. There is a lot more on amphetamines and ecstasy, in particular, and that sort of thing. I think that is evident from information that comes out of law enforcement generally. We continue to look at all aspects and provide that information. Perhaps Ms Ward might wish to make a further comment.

Ms Ward—I do not think there is much that I can add. As Mr Jensen mentioned, it is across the board. Money-laundering trails are still there. The criminals are still using the same types of methods to move their money in and out of Australia. It is just a matter of finessing our systems with the help of law enforcement and the Australian Crime Commission, for example, to give them the information that they require. There are not a lot of changes; it is really just finessing and looking at the strategic priorities that the various law enforcement agencies have.

Mr Jensen—An important point on that is that we rely on the feedback to us, in terms of the investigations that are being conducted, so that we can adjust our systems to look for something. Equally, we go to law enforcement and we seek from them a footprint of the conduct that they have seen and investigated. To give you an example, if we were to see ecstasy coming into Australia we would ask what the process of the investigation was and what information and evidence they found. Then we would follow the money trail back out the other way, using our domestic and international contacts. We would then make an assessment. Then we can apply those parameters back into our database, to look for other activity that we have not previously found. So it is important to get information back even after investigations have been completed.

CHAIR—In your submission, you refer to 'the new and complex technical issues arising in financial and other crimes'. Would you be able to expand on that?

Mr Jensen—We are finding that quite a lot of the money is going offshore. But we also need to focus on other areas, such as the use of credit and debit cards and the internet, and how these all relate to each other. In Australia, which has a robust financial sector, almost invariably the money moves through the financial sector. If it is transnational organised crime then the money is going offshore and in a lot of cases this is what we see. We do get reports of all of that information, so it is likely to be in our database. But we have to be very conscious of the fact that there are other systems and abilities around the world, and we try to keep a close eye on that and make sure that our legislation is relevant to the current financial environment.

CHAIR—You mentioned in your answer to my first set of questions that you enjoy a good relationship with the ACC. They use your information; they take it in more traditional forms and also online. How much do you rely on intelligence from the ACC to pursue your work?

Mr Jensen—A large amount of the information that we are putting to them is the proactive type of information—that is, things we find and provide to them. The ACC, through their ability to bring other organisations into a joint task force, are able to then look at that information and add value to our information from those other sources. So it is not necessarily feeding back to us—

CHAIR—Does the information they provide you from other intelligence sources enable you to value add? In other words, do they put you on different trails and scents, in terms of enhancing the information originally provided?

Mr Jensen—On occasion, yes. But I think to a large degree—in that situation—it is our data—

CHAIR—You have done the job.

Mr Jensen—that is providing the new leads for them.

CHAIR—Do you think that your relationship is of sufficient importance that you should be represented on the ACC board?

Mr Jensen—We are one intelligence source to them. We are not a law enforcement agency as such, so our role is perhaps not dissimilar to Crimtrack, for example, which is a source of intelligence. We are just one source. We are not a member of the board and I would not like to comment any further as to whether we should be or not. I think you need to consider us as a vital component of the intelligence source, but we are one component of the intelligence source. Our relationship is such that we have a very good hearing through the CEO, for example, and through the organisation itself.

CHAIR—Thank you.

Mr KERR—With your staff who are integrated into taskforces or working permanently on site with the ACC, how do you deal with the accountability issues? Who is ultimately in a position of supervision and management?

Mr Jensen—They are primarily AUSTRAC staff. Those that are on site are directly responsible to Wendy and through her to me, if you like. Those that are on site as members of the task force would have a responsibility as members of the staff of the ACC through to the CEO of the ACC. However, that is all controlled by memorandum of understanding. All the procedures and requirements are set out in the MOU. At any point in time I can say, 'We can't put that person into that role.' Generally speaking we try to, but I still have that sort of control over the process. When it comes to use of the data and how we provide it to them, that will always come back through me as well.

Mr KERR—Have there ever been any difficulties in terms of the management relationships?

Mr Jensen—No. Not so much difficulties but more to the point of trying to ensure, in an area of law enforcement where it is difficult to get enough resources to do the job in any organisation, we have the right skills and the appropriate level of resources. This is an issue that our discussions have related to and I have put in the submission. If we have an issue with that we go to the Australian Crime Commission and talk to them about it. They have been very reactive to anything we have put forward. As I mentioned they are having a look at the FIAT working group at the moment to see how that can be better managed, and they have taken our wishes on board. So I have no difficulty with that whatsoever. We work closely together on those sorts of issues.

Mr KERR—You mentioned that Federal Court decision and I saw a short note on it the other day in a brief from the ACC. I understand that the issue was whether or not the Australian tax office is a law enforcement agency for the purposes of transmission of materials that are generated by the ACC. Has that decision in any way affected your relationships and operations with the ACC currently?

Mr Jensen—I do not believe it does. But I think there needs to be clarification of some of the terminology that is used in there to make sure that—

Mr KERR—But it has not in relation to you?

Mr Jensen—No, because we are the service provider, rather than the ACC providing us with information. They do not need to provide us with much information at all; we are providing it to them. The area where it may have some effect on is if they were to find through their inquiries that a cash dealer which is a reporting institution to AUSTRAC under our legislation had been engaging in criminal conduct or conduct contrary to the Financial Transaction Reports Act. My question is on that particular issue, and we are seeking further information from them to make sure that we are covered appropriately in that situation. I think we are. My reading of the provisions in the act is that it does provide for that.

Mr KERR—I would be surprised if you were not covered. As somebody who was keen to make sure that particular piece of drafting was sufficient to cover you I would be deeply disappointed if it did not. You also sit on HOCOLEA. Is that still operational?

Mr Jensen—Yes, it certainly is.

Mr KERR—So that is another point at which you interchange information across the law enforcement environment?

Mr Jensen—Most definitely. Not so much on operational type matters but on issues affecting law enforcement generally and the group of heads that come to that meeting.

CHAIR—For the benefit of the public record and the many readers of this transcript, what is HOCOLEA?

Mr Jensen—Heads of Commonwealth Operational Law Enforcement Agencies.

CHAIR—We do not want to be flooded by questions about what that acronym stands for!

Mr KERR—It picks up the Australian tax office, Customs—

Mr Jensen—Federal Police, Australian Crime Commission, the Attorney-General's Department, ASIC, APRA, DIMIA and the Commonwealth Director of Public Prosecutions. It is an informal group, if you like. We get together two or three times a year and discuss a range of issues.

Mr KERR—What about the Financial Actions Task Force, FATF? As I understand it, there is a new international benchmark that is to be established. What impact, if any, will that have on your operations?

Mr Jensen—It is likely to have quite a large impact on us, particularly on the regulatory side. No decisions have been made by government at this time on what will result from the current review and consequent draft bill that will come out in the near future, so it is difficult to say what effect it will have. But to meet the standards there will need to be a range of new organisations that have to report to AUSTRAC and there will be a range of factors within our regulatory role which will have to be changed, and that will enhance our role somewhat.

Mr KERR—Is Australia still playing a significant role in the Financial Action Task Force? At one stage we were the leaders—we certainly chaired the region—

Mr Jensen—Yes.

Mr KERR—and had a very significant part in it.

Mr Jensen—There is a range of different international organisations that specifically focus on this area. The Financial Action Task Force is the umbrella organisation. They set the global standards for anti-money laundering and countering the financing of terrorism through their 40 recommendations and nine special recommendations on terrorist financing. We are a member of that. We were a founding member. I think the membership is around 30 countries at this stage.

What was found in the mid 1990s was that to get out to everyone globally there needed to be FATF style regional bodies set up to cover particular regions. There are about eight of those now.

One of the first of those was the Asia-Pacific Group on Money Laundering, which looks at this region, obviously. The FATF chair changes every year. Some years ago—about 1993 or thereabouts—Tom Sherman, who was the chair of the Australian Crime Commission at that time, was the president of the Financial Action Task Force. We will not become president again for many years because it would fall to others who have not had the presidency.

We have a significant role in the Asia-Pacific Group on Money Laundering. Commissioner Mick Keelty from the Australian Federal Police, and chairman of the board of the ACC, is the co-chair of the Asia-Pacific Group on Money Laundering. In that role he is not part of the Australian delegation, if you like. I am the head of the Australian delegation to that group as well. So we have a very close relationship with that group. The Asia-Pacific group goes out to other countries in the region that are not Financial Action Task Force members and promotes, through a range of things such as technical assistance and training, the global standards to get them into place in those countries.

There is a third group that is specifically related to the work that AUSTRAC does and that is the group of financial intelligence units. It is called the Egmont Group of Financial Intelligence Units and it has been operating since 1995. I am the co-vice-chair of the committee of that group, which comprises 101 countries, and I also have a responsibility for the training working group. Bringing that all together, from Australia's perspective we have a very high level role in the very specific organisations that relate to anti-money laundering and countering terrorist financing through executive positions in the APG and the Egmont Group of Financial Intelligence Units and a role as one of the member countries of the Financial Action Task Force.

Mr KERR—Excuse me if I am out of date here, but I remember that two of the issues that were material to the development of the financial intelligence units were, firstly, Vanuatu in our region which was seen as a point at which there were weaknesses. I visited Vanuatu a while back to discuss this and I was assured that those issues have been addressed—and I would appreciate your comment on that. The other is tax evasion, which there was resistance to reporting. As tax avoidance is inextricably linked to serious and organised crime it was a glaring absence from the obligations. I wonder whether you will update us on each of those points.

Mr Jensen—I will take the second one first. The global standards have certainly changed in terms of tax evasion and organised crime relating to that. There is a provision in there—and I cannot quote the exact recommendation—to say that the recommendations need to consider tax evasion related matters. Not every country in the world supports that position but you will find now it is supported by a lot more countries.

Mr KERR—Is it supported by the United States? That was one of the stumbling blocks.

Mr Jensen—Yes. On the other matter, Vanuatu are a member of Asia-Pacific Group on Money Laundering. They are also a member of the Egmont Group of Financial Intelligence Units. Like many of the other small jurisdictions—and not just in this region but around the world—there have been difficulties in trying to get the legislation appropriately into place and trying to resource the organisations that they need to establish.

Mr KERR—I felt a mix of feelings, almost an arrogance in coming into a jurisdiction that was really trying to do everything still on paper and to say to them that this one particular sector

of their law enforcement and regulatory framework had to meet international standards when everything else is down on a much lesser level. It is very difficult to explain the rationale for it. But as I understand it, I think our aid program assists in relation to these obligations.

Mr Jensen—And we certainly do as well in whatever ways we can help in the region. There is no doubt that the global standards are there and most countries in their way are working towards getting into place what they need to. That is very important. We talk about Vanuatu but we can mention Nauru as well and places like the Solomon Islands where we have had relationships in recent times. They are trying to put in place the legislation as well. The Financial Action Task Force on Money Laundering Non-Cooperative Countries and Territories action, which was a black list that they put a range of countries onto, might not have been agreed to by all but it certainly had the momentum to get the global standards put in place in a lot of other countries. Vanuatu was not put onto that list—

Mr KERR—No, it never was.

Mr Jensen—and it was strongly supported by Australia not to go onto the list and we helped them through the process.

Mr KERR—I assume these are public issues: are there any countries in our region for which we take lead responsibility which are on the black list, if I can put that way?

Mr Jensen—I cannot recall from memory whether Nauru is off that list now so I will not comment. They were on the list but I would need to check my records on that one. There are other countries—Myanmar in this region is on the list. AUSTRAC in particular and the Attorney-General's Department and the AFP in their work through the liaison officers and other things are doing a lot of work in this region to help law enforcement to help the regulators and to help the financial intelligence units in developing their own protocols and the legislation to meet those global standards. I think that we are being very successful as a group in doing that in South-East Asia and also in the Pacific, but also in working together with international organisations in other countries in terms of aid, technical assistance and training. The benefit to Australia is that, if these countries do put these things in place, intelligence exchange is going to be at a much higher level, which means that we are going to get the benefit out of it as much as they will get the benefit out of it.

Mr KERR—I don't think they will get any benefit from it, frankly, except that they won't be punished. For that reason I think there is a national interest. I support it, given that it is all in our favour and none in theirs—or marginally in theirs.

Mr Jensen—I think there is great benefit to them. We have worked very closely with Indonesia, for example.

Mr KERR—With a country the size of Indonesia, I agree with you. I remember making the case to people in Vanuatu that they needed to do this—I went as part of a delegation. Truthfully, they needed to do it because they would have been excluded from many things had they not. I am very appreciative of the technical assistance and aid assistance that have been provided, but I do think it is our national interest that has been promoted overwhelmingly, or the global international interest, rather than their specific local interest.

Mr Jensen—I would differ slightly because I think the economic consequences of money laundering and transnational organised crime are very high, and these countries are now seeing that if they are being abused for the purposes of tax evasion or through drug related activity or whatever, the money that is coming into their countries generally does not stay there and does not support their economies. The IMF in particular have very strong views about that, and particularly for the smaller countries. That is why it is important to bring them up to global standards, or else they will be abused. Sure, we get the benefit from it, and that is great for us, but we try to assist them with the benefits as well. I think that is working pretty well. It is a two-way process.

Mr KERR—We are probably in great agreement, really.

Mr Jensen—Yes.

Senator POLLEY—Does AUSTRAC have access to all the information streams necessary to perform its role? Do you have any other comments to make on the effectiveness of the legislation? Do you have access to areas of industry and other areas that state governments have jurisdiction over or are there some restrictions because of privacy?

Mr Jensen—With respect to private sector organisations that are regulated by state governments, if they are cash dealers under the Financial Transaction Reports Act, they have an obligation to report transactions to us. So from that perspective we work with them. The same is the case with the state agencies. We have state agencies that access our information or to whom we provide information—all the state law enforcement agencies, ICAC, who you heard from this morning, the crime commissions and revenue offices. So in terms of getting the information in, the Commonwealth legislation requires it to be provided to us. With regard to suspicious transaction reports, each of the states has their own act to enable the information to be provided to us and for us to be able to provide it back to the states. So that system works very well. I have forgotten your first question.

Senator POLLEY—Do you have any other general comments on the legislation and the effectiveness of it?

Mr Jensen—Not in terms of the ACC's legislation. It is working okay. In terms of our legislation, it is currently under review through the AMLR process. Certainly, from what we are getting at this stage, the value of the intelligence that is coming out of our data is significant and I think everybody who is using it recognises that. From that perspective, it is okay.

CHAIR—Are there any further questions?

Mr KERR—It would be worth visiting your fortress.

Mr Jensen—Yes, you are welcome at any time. I am sure that can be arranged through the office of the Minister for Justice and Customs.

CHAIR—Thank you, Mr Jensen and Ms Ward, for making yourselves available and for the interesting evidence and feedback that you provided to the committee.

Proceedings suspended from 11.14 am to 11.38 am

MELICK, Mr Aziz Gregory, SC, Private capacity

CHAIR—I would like to welcome Mr Aziz Gregory Melick, SC. Information on parliamentary privilege and protection of witnesses and evidence has been provided to you. I now invite you to make a short introductory statement, after which we will move to a more general discussion.

Mr Melick—I am not quite sure how much I can help you with your inquiries; I think it is more a matter of you asking me questions. I tend to hear how the ACC is going precariously. As an ex-member, people ring you up and say, 'How're you going,' et cetera. I do not like interfering in an organisation of which I am not longer a part or passing judgments on the basis of what I have heard, which may or may not be factually correct.

I was always concerned that the organisation changed its nature and structure, because I think it lost, when we did that, the ability to have an organisation that is proactive and acting independently of police forces, although in conjunction with them, and dealing with matters that may not be strictly policing in such a way that its operational effectiveness would not be impeded by the exigencies of police forces having the necessity of being reactive to whatever political hot potato is going on at any particular time. There have been some advantages. CLEB and SCOCCI never really worked, because the police commissioners did not trust lawyers and they were not happy about having a lawyer as chairman of those organisations. All the feedback I get is that Commissioner Keelty is doing a fantastic job—

CHAIR—Can you explain those terms for members?

Mr Melick—CLEB was the old Commonwealth Law Enforcement Board and SCOCCI was the Standing Committee on Organised Crime and Criminal Intelligence, from memory. It would appear that all members of that board are talking to each other and it is getting on very well in a manner that it never seemed to before. That seems to have been a positive outcome of where we are going. It is unfortunate that policing tends to be parochial and reactive in nature and often tends to have to answer to the political expediency of the time. That is what the NCA was usually able to get above.

I would think that the current organisation will still have those sorts of problems in that it seems to be an intelligence gathering organisation with restricted investigative powers. In my experience, it was always the case that the best intelligence came from your own investigations. People tended to close-hold matters they found out themselves because of being possessive or suspicious. It was quite bizarre. Barristers and police are probably the two worst groups of gossips I have ever known. They tend to leak like sieves on all sorts of matters. But, often, significant matters of intelligence just did not get passed on because of either concerns about security or parochial issues. That is my opening statement. I think if you asked me questions it would be the best way to go.

CHAIR—Thank you. I note that you left politicians out of your shortlist of chronic gossipers. I suppose just to place your appearance here into perspective as a former member of the National Crime Authority, you have a very good working knowledge of that model compared to the

current model that is in operation, so we will value, I am sure, your historical perspective and whatever other insights from your experience you can provide to us. Thank you again for coming. Talking about lawyers, while the NCA was a lawyer dominated body, the ACC quite plainly has a very strong police focus. In your view, in the work that these bodies do, is one model preferable over the other?

Mr Melick—It depends what you want the model to achieve. I think the current model is actually achieving extremely good results for police forces. Therefore, it is useful for gathering intelligence and using the coercive powers to further police investigations. I do not have a problem with that because the checks and balances are with the examiners. But I really think that, if you want a model that is going to be truly independent, able to think outside the box and deal with matters which may not necessarily be part of what is occurring in the criminal milieu vis-a-vis police forces, the current model will not work. Maybe there is room for two models or a split model—I just do not know.

You say that the NCA was dominated by lawyers. It was, but it was effectively in its day-to-day operations controlled by the police forces, who could deny you resources in more ways than one. We had a fairly good working relationship. There were some torrid times. Unfortunately, it was personality driven. I would like to think that the time that I was there was one of the highlights of the period of cooperation. I certainly had a very strong relationship with the police commissioners of the time—they were a very fine bunch of people—except for one. There was one police commissioner at that time who caused all sorts of problems because he operated independently. That was a New South Wales police commissioner who took a different view to other police commissioners about certain aspects of where we were going and what we should be doing. I do not say that in a critical manner. He is entitled to his own views. But the collegiality of the other police commissioners was fantastic. It worked really well. So it was not necessarily lawyer dominated. Bear in mind that our general manager of operations, Peter Lamb, was a very senior police officer and a very good one.

What the lawyers did was provide the appropriate checks and balances. When I arrived I was presented with search warrants in a certain form and they wanted to make application to the Federal Court. I was concerned about the form of the warrant and I refused to sign them. I had quite a long argument with a lawyer about it. He said, 'We've been using these warrants in the police royal commission for quite some time and there is nothing wrong with them.' I had a different view about it and I insisted we change the form of the warrants. Acting Justice Temby in the New South Wales Supreme Court set aside the former warrants that I had been complaining about.

If you do not have that significant level of lawyer involvement—and you have to have a senior lawyer who is prepared to take the system on—you can undermine an investigation or the credibility of an organisation. There were quite a few other matters where I had to direct people not to continue investigations in a certain manner and to do things a certain way. The only reason I could do that was because of my innate understanding of the criminal law, having been around for a long time in it and knowing what view a court would take. Some matters were technically correct but I thought that morally they were on the wrong side of the line. When you have coercive powers, you have to be very careful how you use them and not cross that line. You are better off letting the occasional person go and preserving the powers and the integrity of the organisation.

If you do not have proper checks and balances, a police run organisation will have problems with that. Hopefully, examiners are providing those checks and balances—I assume they are. But when an organisation has these sorts of powers the organisation should be controlled by lawyers and not police officers—or a board that is a mixture. I would have had no problems if the old NCA had a senior police officer as a statutory member. That would not have caused me any problems at all, so long as it was an appropriate person—someone who was receptive to the idea.

Some of the lawyers the NCA had were, quite frankly, probably inappropriate because of the way in which they conducted themselves in their investigations. They went too far across the line. They were quite hardworking people and had a genuine desire to bring people to justice. But you have to be very careful about it. It takes a special sort of policeman to be able to get out of the weeds and take that objective view.

CHAIR—You mentioned at the beginning of your answer that maybe there could be a split model approach adopted. Do you have any more defined thoughts on how—

Mr Melick—Not really. It would probably have to be two separate organisations. I do not know how you would do it. I note the Australian Crime Commission has a budget of about $62 million, which is more than we ever had. It is good to see that the government has realised the importance of such organisations.

We got involved in some interesting investigations, which were conducted despite the reluctance of the police to get involved in any way. There was a tax scheme in Western Australia involving the setting up of an internet company, and the ATO were only interested in taking the deductions off the people, because they said the scheme was not a genuine scheme. We wanted to do the investigation.

If it had not been for the lawyer in the Perth office and the financial analyst, who were determined to keep it going—the ATO were not interested; the Federal Police were not interested; the Western Australian Police were not interested—the investigation would have gone nowhere. That matter was resolved a few months ago in the Western Australian Court of Appeal, which upheld sentences of five years for three of the promoters of the scheme. It is apparently the first time in Australia any of the promoters of these dodgy schemes have actually been taken to task and sent to jail for it.

That was the sort of matter that the old NCA would get involved in and investigate of its own volition. I would be surprised if the ACC would do that. Although I know they are doing some tax schemes at the moment, I do not know how they got involved in them. There were a few other matters. It is a bit hard to go into details, but there were a few interesting investigations that really were outside the box.

CHAIR—We are inquiring into the way the ACC undertakes its duties. Are you able to comment on the ACC legislation generally? Are you aware of any particular defects or problems that you think the committee should be addressing?

Mr Melick—I have not looked at the legislation. I made some submissions when the draft bill first came out. I understand there were some changes made as a result of concerns raised by me and other people. On the current legislation, I cannot assist. I have not had the time to analyse it

or prepare in relation to that. If there are any particular issues any member of the committee wants to look at, I am happy to research them when I return from overseas.

I want to make the point that I am not being critical of the way in which the current organisation is being run. I am concerned about the philosophical basis on which it is run and whether or not it is the best possible model for what we need, especially now. There are genuine concerns about terror in this country. Perhaps a model similar to the old NCA could deal with that matter and the long range, proactive type of inquisitorial matters.

CHAIR—Are you saying that because of the heavy police emphasis within the structure that organisation may not be as appropriately equipped, mentally or psychologically, as it could be to deal with issues such as those related to terrorism?

Mr Melick—I do not want to get myself into strife with the Federal Police, who I know are doing a fantastic job in this area.

CHAIR—That is what we are trying to—

Mr Melick—I understand where you are coming from. The ACC services the police forces very well, because, as I understand, it gathers intelligence for their investigations or matters which they come across and they want to further. That is fine. But, as a general rule, policing work tends to be, as I have said many times, reactive rather than proactive—and that is just a political fact of life. They get a certain budget, and if there is a premier screaming about bikie gangs, gang rapes in the south-west or wherever, or parliamentary travel rorts, they are the things that get done and your mind gets taken off the main game. If you have a body which is independent—but cooperating of course with police forces—it can actually take the strategic view and look along other lines.

Part of the problem we had in the NCA was that we kept being pressured for instant results and instant gratification—'we want convictions, we want seizure of assets' and all the rest of it, which at times caused us major problems for trying to look at the strategic overview. If you really want an organisation—and I am not saying to do away with the ACC—to cover the field you probably need a separate organisation, along similar lines to the old NCA, with the power to look at the terrorist type questions and some of the long-term or potential problems such as large-scale tax frauds. You have to bear in mind that the NCA under the Swordfish reference was the first body to seriously start looking at these tax matters. That was our own initiative. I must admit it was driven by a desire to get more money out of the government after we had significant cutbacks three years in a row. The government said, 'We want return for our money,' so we developed the Swordfish reference and actually gave them a very good return for their money.

I do not think a member of the general public would be happy—I might be because I know the police commissioners and I have respect for all of them; they are a particularly strong group of people—about a body with coercive powers intruding into the terrorism areas run by police. I think you really do need people who understand the criminal law, who understand the rights of people and who understand the way in which courts are going to react to certain things because at the end of the day if you are not careful you will undermine the very body you have set up to give the nation the security it may think it needs from time to time. It obviously needs something now, there is no doubt about that.

CHAIR—Is there any particular area where you feel the ACC is not performing to scratch or not fulfilling its charter that would indicate to you that it does not adopt a strategic approach to its duties as defined in the act?

Mr Melick—It seems to me that the ACC has a far greater administrative overload than we ever had. It does not seem to have as many investigators on the ground. At the end of the day one of the major ways you really get genuine intelligence is being on the ground with a mindset of what you are looking for. You tend to see in an investigation what you are looking for because of the nature of the investigation you are doing. If you are looking for drugs on a cargo ship and you are searching for those, you are not going to be looking at bills of lading to see if they have properly declared their tax or such matters.

If you are walking around a street doing a surveillance operation, you tend to look for the things that that particular operation has got you attuned to looking for. It was quite interesting the number of times our NCA surveillance teams picked up matters on another investigation because of their knowledge from the hearing process about that investigation even though it was not one of their investigations. To me it just accentuates the fact you have got to be on the ground yourself gathering the intelligence as well as using other people. I do not know whether the resources—the actual getting out and doing the police work resources—are sufficient or not. That is a question that you would have to ask somebody else. I get the feeling that there is less getting down in the weeds and doing the hard work being done by the ACC now. It has been left by the police forces and the police forces see the ACC as their intelligence gatherer by use of the coercive powers.

When I was at the NCA, we often had requests from police forces to use our coercive powers on matters that were inappropriate or barely appropriate to a reference. I bent over backwards to make sure they fitted, because you always want to help the police; we had a very good relationship with them. But there were several matters which we just could not do and would not do, and that led to tensions. I am wondering now where that line gets drawn. Quite frankly, the ACC charter actually makes it more flexible than the old reference system we had, which was quite restrictive, did. Quite frankly, I do not think it is a bad thing to make it more flexible.

CHAIR—You raised some interesting questions that I am sure we could put to the ACC and other agencies that will appear before us.

Mr KERR—I suppose the starting point for the establishment of the National Crime Authority was the parliamentary understanding at that time that the coercive powers that were granted to what was effectively a standing royal commission were extraordinary measures not appropriate to be granted routinely to law enforcement and that it would be inappropriate to vest them in state or federal police. The implication of what you are saying now is that law enforcement largely sees the ACC as a resource that simply supplements ordinary policing. In other words, you bolt on the capacity to compel persons to speak to matters on which you require information—powers which you would not ordinarily have—and you utilise the ACC for that purpose. Is that the framework of your suggestion?

Mr Melick—You would have to speak to individual commissioners as to what their view is. I know a lot of middle-level police officers see it that way, and that may or may not be the way that their commissioners see it. I understand of course that the examiners are there to provide the

checks and balances to make sure the processes are not abused. There were some very well qualified examiners there. The perception I have, and it may be wrong, is that it has become more of a bolt-on to traditional policing. I am not necessarily saying it is a bad thing. It is not for me to say how the powers should be granted; it is a matter for parliament. If parliament thinks that is appropriate, I am not going to argue about it, because it becomes very effective in dealing with crime. What I do get concerned about is people saying that the ACC is far more effective than the NCA was because it is getting more out of the hearings, bearing in mind that we at the NCA fought very hard to get the power to compel answers to self-incriminating questions. That came in at the time of the handover. There is obviously going to be a significant boosting to the effectiveness of the hearings because of that power, which caused us so much grief for so long that it was not funny.

Mr KERR—What about the focus on serious and organised crime, which was again the underlying rationale for the establishment of the NCA?

Mr Melick—I cannot comment as to where the focus is, bearing in mind that most of our results showed that we do not have large national organised crime groups in Australia. There were at the time of the setting up of the NCA: you had your mafia and your Italian influences and all the rest of it. But now a lot of the organised crime seems to be done by loose-knit Asian groups—often very small groups—who operate independently of each other. I am not quite sure where we are at with the triad and Russian mafia aspects. That may be a factor as to large-scale organised crime. I am not current with it. It is on a need-to-know basis as far as I am concerned and I just do not make inquiries about that sort of thing.

Mr KERR—One of the issues that has been raised regarding coercive powers is the circumstance in which a person simply refuses to assist. I have read in the press that there are likely to be legislative proposals or that there is some thought being given to advancing a proposal that would effectively install a contempt power. Have you given any thought to that issue? Could the issue be resolved by proper and appropriate arrangements with the Director of Public Prosecutions so that any instance where there was a refusal to cooperate was dealt with promptly so that there were not long delays, thereby rendering the work of the organisation less effective?

Mr Melick—We had this issue time and time again. The case of Tom Domican is a classic example. By the time they got around to prosecuting, it was well down the track. The fundamental thing I said to make sure they did in the prosecution they didn't do, and that, in turn, resulted in the conviction being overturned, which was most unfortunate. I was always very keen to have the contempt power unless we could get guaranteed cooperation in getting people before the courts almost straightaway. The problem is that, if you are doing a serious investigation into matters that you need to find out about in a timely manner, the current system does not work, and that is why I lean in favour of the contempt power. You need to be able to pin somebody down and say, 'Right, you're going to have these sanctions against you until you purge your contempt.' Of course, you have to be very careful how you use it.

Mr KERR—That is the other side of these issues. We are currently seeing contempt or similar proceedings—I do not know whether they are formal contempt proceedings—of two journalists in Melbourne, the subject of some considerable controversy. Such proceedings are often held in camera, as are the ACC proceedings. How would you effectively restrain the ACC from

imposing indefinite imprisonment on people for exercising what has normally been a right to silence? Obviously, we have removed the right to silence, but we have made it punishable by a criminal offence. We have not said, 'You can remain in jail until you die.' How do we resolve this tension?

Mr Melick—The contempt powers would have to be limited. In other words, you would have to get somebody before a court of superior jurisdiction very quickly after the person was committed for contempt and let the court take over the matter and decide where it should be going from there. There is then always a problem as to how much information you disclose about the importance of the matter on which you require answers without compromising the investigation—the old public interest immunity type problems. I do not know whether there is an easy answer to it. But I would be particularly concerned in terrorist type matters if there were not a mechanism for forcing people to answer questions—whether or not they be self-incriminating—or appropriately punishing them if they decide not to answer questions. I am not talking about Guantanamo Bay. It became very frustrating for people to always be able to take the fifth—

Mr KERR—They cannot now. We have removed the entitlement.

Mr Melick—It was even frustrating when people such as Domican refused to cooperate in any way, shape or form. There has to be a balance and you have to be able to trust the people who you put in the position of exercising those powers. If the wrong person is exercising the powers, a lot of damage can be done.

Mr KERR—But courts themselves are now very reluctant to exercise contempt in the face of the court, because they recognise that self-restraint is not even given to those people who exercise high judicial office, and often that has been misused. Judges—

Mr Melick—That is a different sort of contempt, though. That is where the court accuses the judge of wearing a Collingwood jumper and matters such as that or calling him a stupid old goat.

Mr KERR—But it is the same thing. It is contempt; it is refusal to answer a question or being abusive. There are various ways of disrupting and defeating the objects of justice, whether they be in the ACC or before a court proper. I suppose I am testing out this area because of the experience that even impartial and cool minded judicial officers have been the subject, ultimately, of very legitimate criticism when they have exercised powers of contempt—often because it is their own dignity that has been affronted. When we feel our own dignity affronted, we tend to be less dispassionate about processes and more inclined to be—

Mr Melick—My answer to that is twofold. Firstly, one would hope that the sort of person you appoint to exercise those powers would not want to stand on dignity. Bear in mind that the hearings are in camera, so nobody, other than the people in the room, is going to know about their dignity being affronted. It is not as though it is going to be a public hearing like in a court, where there is freedom of reporting and all the rest of it. Hopefully, the affront aspect would be less. There may even be a situation where you have a certification of an investigation to be of such significance—in other words, an investigation of great significance or whatever you want to call it—that the contempt powers attach to that and the ordinary processes go through the

DPP. I can envisage some matters where the contempt power would not only be useful but appropriate.

Mr KERR—One of the issues that arose in the course of the changes were allegations, or a widely held belief, that, as a result of various chairs and members of the organisation shifting focus from some areas to other areas, the NCA had lacked coherence over time. That is to be set against your proposition that there is an advantage in having an organisation that can stand aloof from day-to-day policing and select out matters of strategic national importance, if I can summarise it that way. If we were minded to look at something that picks up your idea of allowing some greater distance between police commissioners and the strategic framework and investigation work of the ACC, how would you address this continuity over time problem? Plainly, from what the public understands—and I think that is accurate—there were difficulties because as each chair changed the focus of the organisation changed. Often, there would be two or three changes at around about the same time, so the continuity was never there.

Mr Melick—The problem was not so much the chair. Bear in mind that there was a group of three. The problem was that the average life of an authority when I joined the NCA was 18 months, and then the composition of that authority would change. I made very strong representation to the government about the fact that they should be overlapping. I am not sure what the new act says, but for the old act we recommended at least six years. My recommendation was that people could be appointed for a second term to give them either seven or eight years if they were an appropriate person. That would allow continuity. The recommendation came out at six years. You would still have to do that. You should appoint people initially for a period of time, and then you see how they go.

People say that there is a real problem about that, because the people looking for reappointment are going to do the government's will rather than be truly independent. You have to balance it. But I think there were a few of us at the NCA who remained pretty independent in one way or another, and it would not have made a difference whether we were going to be reappointed or not. The other problem is finding somebody who is appropriate and who is prepared to give up the necessary amount of time.

Mr KERR—And the appropriate amount of money in some cases.

Mr Melick—I suffered financially and with regard to my family and health. Part of the problem was that for 2½ years there were—

Mr KERR—You are looking pretty robust at the moment, Mr Melick.

Mr Melick—Yes, I am okay now. I can afford more decent red wine, you see! But for 2½ years we only had two members. John was extremely effective as chairman and handling the administrative and government interaction matters. He did not have time to do as many hearings, although he was very effective at it, so I was doing twice as many hearings. It will become difficult to find somebody prepared to take on that extra responsibility. As to whether you get a retired judge, or take somebody from the bench who already has their pension assured, and put them into positions, I do not think that would hurt. I do not think it is the sort of organisation where you promote somebody to be a judge to run it. I do not think an organisation like that should have a current sitting judge running it. I really think they should be independent. But if

you have somebody who has done sufficient time on a supreme or federal court bench and is looking for a change, they would be an appropriate person to deal with it.

Mr KERR—Before the changes you made some very critical remarks about the morale of the NCA in the period leading up to these transitions, in both your submissions to us and in your oral evidence in Melbourne. You said that the morale of the organisation had hit rock bottom as a result of the uncertainty over its future. I cannot recall your precise words. Have you any insight into whether that has improved?

Mr Melick—I get conflicting reports. Some of the people who liked the way it was before are not happy with the way it is now. Other people think it is going well. I have heard that they have closed the library, which I think is an interesting step because if you have an organisation that is not using its library I just wonder how outward looking it really is, rather than just being driven by reactive aspects. I think some people are unhappy about the fact that they do not seem to be doing as many of the 'sexy' investigations that they used to do before. But I do not have that much contact and I really do not want to get involved because I think there is nothing worse than someone who has been in an organisation, or a similar organisation, going back and meddling or commenting. One thing I have heard from several sources, though, as I said before, is that the board seems to be working extremely well. That seems to be a very positive outcome of the new organisation as opposed to what we had before.

Mr KERR—Can I just tease out this business. Tensions always existed between the National Crime Authority and various jurisdictions. It was resolved in various creative or sometimes quite destructive ways, but it was inherent. The suggestion you are making now is that there is no tension there.

Mr Melick—There is certainly far less tension. It was seen by some people as a takeover of the NCA by police forces. That is a fairly simplistic way of looking at it. The police always wanted significant access to our coercive powers on their terms. As to how much of that they have, I do not know. But, in speaking to various police commissioners, the tension certainly seems to have gone and they seem happy with the model they have.

Mr KERR—If one were to draw the logical inference from that, it would be that the takeover has been effective.

Mr Melick—Yes and no. I actually have a higher opinion of the integrity and vision of some of the police commissioners I have been talking to than to think it is as simplistic as that. They do not see it as a complete takeover because of the independence of the examiners, who they see as being truly independent, and I gather that they are doing it that way. I just think it is a pity that there is no organisation in the country at the moment which has its strategic direction being delivered by somebody other than a group of police commissioners and heads of Commonwealth government agencies who all have their own particular concerns.

Mr KERR—So your essential critique is that this is no longer an autonomous, self-directed agency capable of making different strategic judgments than the law enforcement community.

Mr Melick—Yes, that is right. It does not give a point of difference. I am not saying to get rid of it. From speaking to the police commissioners, it seems to be doing a very good job and

making life in very complex investigations a lot easier and the investigations more effective. I suppose that at the end of the day that is a good thing, so long as the rights of the individual members of the public have not been trammelled. There appears to have been no criticism or comments by courts to that effect, which means the checks and balances must be working, one would hope.

Mr KERR—Going back to these contempt issues, as a lawyer, do you think there may be some chapter III issues about separation of powers if the tribunal purports to be able to imprison?

Mr Melick—Yes. I always had that concern. That is why I thought the contempt power may have to be done in conjunction with a superior court, either the Federal Court or the Supreme Court, depending on whether you are looking at, in our old terms, a state reference or a Commonwealth reference. So what you did was you immediately referred it to the court to deal with rather than dealing with it yourself to overcome a chapter III problem. That would also give the additional protection of looking after the rights of the people. Then you have the other problem: if court proceedings are going to be open proceedings, which I think they probably could not be, you have the problem of compromising an investigation.

Mr KERR—There are now—and I am not sure of the degree to which they would apply to these proceedings, but they would certainly overlap many of them—some changes that have occurred in the evidence act relating to matters that involve claims of national security interests that would allow those matters to be heard and determined in a way which is consistent with protecting the information.

Mr Melick—To protect informants, we had to actually stop the prosecutions on two matters while I was at the NCA.

Mr KERR—But that may arise under any circumstance, no doubt.

Mr Melick—Yes.

Mr KERR—Because ultimately trial must be by jury.

Mr Melick—Especially for federal offences.

CHAIR—Without asking you to go into operational details, are you able to describe the process of ACC examinations? How do they differ from those that were adopted by the NCA?

Mr Melick—I really cannot help you there, because I did not analyse the final new act. I have not had occasion to appear before the ACC. I do not want to set myself up as a quasi-expert. There is nothing worse than someone who has been with an organisation and then sets himself up as an expert on everything to do with that organisation.

CHAIR—I asked you that question on the assumption that you might have in fact appeared within the ACC.

Mr Melick—No. Ironically, I have not been asked to appear either for the ACC or against the ACC.

CHAIR—I appreciate your response in the light of that. Does the joining of intelligence and investigatory functions create the risk that the protections on the use of information derived from examinations are not effective? Could this be managed in other ways, particularly compared to the NCA and the ABCI?

Mr Melick—There is always a risk that, once you disseminate a certain amount of certain sensitive intelligence down to the investigator level, that intelligence is going to be compromised. You have to be very careful how you use it. Sometimes when an investigator gets too gung-ho about a small end in the investigation he can compromise the intelligence source because it becomes obvious from which direction or source it came. But I do not see how the most appropriate or greatest benefit can be gained without combining intelligence and investigative functions. You just cannot have them in isolation. They are just too inextricably intertwined and it is artificial to try to separate them. That was the comment I made before: you really need people on the ground doing the investigations.

CHAIR—Mr Melick, thank you for making time available in what we know and appreciate is a very busy schedule. We have appreciated your insightful and informative contribution.

Mr Melick—Thank you.

CHAIR—That concludes today's hearing. I thank everyone for their attendance and cooperation today and declare the hearing closed. The committee will reconvene to take further evidence on Friday, 16 September in Melbourne.

Committee adjourned at 12.19 pm