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JOINT COMMITTEE ON THE AUSTRALIAN CRIME
COMMISSION

Reference: Review of the Australian Crime Commission Act 2002

THURSDAY, 13 OCTOBER 2005

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**JOINT STATUTORY COMMITTEE ON THE
AUSTRALIAN CRIME COMMISSION**

Thursday, 13 October 2005

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

Members in attendance: Senators Ludwig, Polley and Santoro and Mr Hayes, Mr Kerr and Mr Richardson

Terms of reference for the inquiry:

To inquire into and report on:

The operation of the *Australian Crime Commission Act 2002*, with particular reference to:

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

- the Australian Crime Commission;
- the Chief Executive Officer;
- the Examiners;
- the Australian Crime Commission Board;
- the Intergovernmental Committee; and
- the Parliamentary Joint Committee on the Australian Crime Commission.

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.

The need for amendment of the Act.

Any other related matter.

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Committee met at 9.46 am**STANIFORTH, Mr Christopher James, Chief Executive Officer, Legal Aid Office (ACT)**

CHAIR (Senator Santoro)—I declare open this public hearing of the Parliamentary Joint Committee on the Australian Crime Commission. I welcome everyone here today. I apologise that we have had to start late because of the requirements of the Senate. This is the fifth hearing in 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 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 the effectiveness of the investigative, management and accountability structures under the act; 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; the need for amendment of the act; and any other related matters.

Welcome, Mr Staniforth. As you are a public servant, you are reminded that you are not required to answer questions relating to policy matters and will be given the opportunity to refer such questions to either the minister or superior officers. 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 a general discussion.

Mr Staniforth—I will be very short, and you will not hear this very often from a lawyer, but I do not know what I am going to talk about. That is the problem: that someone like me does not know what is going on when someone comes to seek legal advice or legal help generally. I suppose this is going to a conversation about the fact that I do not know what I am talking about. But if you give me the opportunity I will give you an instance of why that might be a problem and perhaps a solution as to how we can sort it out quite easily, I think.

CHAIR—In your submission you note:

... Legal Aid Commissions of Australia are not able to grant legal assistance to any person requested to attend for interview at the ACC.

Do you think that aid should be available to such persons and, if so, why particularly, in the light of the theoretical availability of assistance from the Attorney-General under section 27?

Mr Staniforth—The act was clearly drafted—and, I might say, given the effect of 29B—in a way which would make you think that legal aid would be available through a legal aid commission. There is a distinction made allowing a person working for a legal aid commission to come to know material which would not otherwise be allowed. I think any citizen in any democracy should have access to legal advice in the most accessible form we can achieve it.

What I understand happened in June this year—but again I cannot assert it because we do not know the outcome of the matter we became aware of—was that two residents of Canberra received summonses, were required to attend the ACC and came to obtain legal advice. We thought we could give them legal aid and so I personally looked at their application. They met

most of the many tests that are imposed on legal aid applicants but I was told that it is simply not allowed that a legal aid commission can deliver legal assistance and that a person must go to the department.

CHAIR—Is that assistance not readily forthcoming when application is made under section 27?

Mr Staniforth—I do not know. I understand, but I certainly do not know, that these people did not end up with legal advice or legal representation. Whether we are critical or not, I think it is the case that many people simply give up the bureaucratic hurdle. They say, ‘We’ve come to get legal advice; you’—meaning my office—‘did not really deliver because you only got us a bit of the way.’ As I understand it, neither of the two people about whom I have written went to the next stage even though we told them who they could ring and who they could talk to.

I think if legal aid offices do anything okay it is that they are present on the street and are accessible and available. With great respect to our colleagues in the department, they are not. People balk at going that extra distance. I know that that is utterly available to criticism—that if you are that worried about this then you should do the extra bit—but people do not do the extra bit, and I think we just have to accept that that is the case.

CHAIR—Could legal aid assist people to go to the Attorney-General and seek the assistance that is available to them? Do you stop because of an issue of resources in terms of going that extra bit for people who come to see you?

Mr Staniforth—Again, we offered to do that. The time frame which was made available to these people did not make that very easy. Effectively, by the time they came to us we had 36 hours. We offered to do it. We got information from the department about what was needed—which, by the way, was different to the stuff we would ask for—and we started them on the process. But after that they went off.

CHAIR—In your view, was there a reason why you were given short notice? Was it just that the circumstances of the particular cases necessitated short notice or do you think it is a deliberate tactic by the ACC to give as short a time as possible to people whom it is interviewing?

Mr Staniforth—I certainly would not say that it was the second; I make no assertion at all like that. Maybe this case is different. My impression before I came across these two people was that the ACC dealt with very seriously naughty people—big-time people who have access to a lot of resources and would not have these difficulties. When you work at legal aid you understand that there is another part of the marketplace which is made up of people who see going to a lawyer as akin to treatment by a dentist without anaesthetic. It is not something they do out of preferences so they tend to delay the agony of doing it. By the looks of the information they had given us they had waited quite a few days—days, not weeks—before they came and saw us.

CHAIR—There is another division. I will just leave you with a comment, and invite you to comment on my comment. There are small fish that assist big fish further up the food chain to commit some fairly serious crime. I suppose the small fish—if you put it in that analogous

manner—should not be precluded from appearing before the ACC. I will hand the chair over to Mr Richardson.

ACTING CHAIR (Mr Richardson)—Further to what the chair said, not only are there small fish and big fish but there are big fish forcing small fish to commit offences for them. We will certainly look at whether there should be a legislative availability of legal services.

Mr Staniforth—What I gained from the experience was the belief that we could be a helpful part of the process. I thought that clearly the act had been drafted with that in mind. When you are dealing with small fish who have this way of dealing with the world, legal aid plays a vital role in allowing people to exercise not only rights but responsibilities in a society.

ACTING CHAIR—You expressed concern at the lack of particularity in the ACC summonses, in particular at the lack of connection with a Commonwealth criminal offence. Can you explain to the committee the significance of this for the person who is summonsed?

Mr Staniforth—Again, I have been a lawyer for 24 years, and reading that summons is heavy weather. It is a densely drafted, highly technical legal document, which I understand it has to be, but the punters out in the street do not read them. That is meaningless to most of the 15,000 Canberrans I deal with every year. I wonder if there could be two things: a plaining of the English so that the guts of what is required is made clear to the recipient, and also—this is the stronger of the two points I would make—something like that which a police officer drafts when she or he is seeking a warrant. Let us take, as an example, an ordinary search warrant. The warrant says pretty much what you are after. ‘We wish to go to a house in Vaucluse where we wish to look for CDs of Chinese origin.’

In the two cases we looked at, I wondered what was wrong with saying to these people, ‘We want to talk to you about such and such.’ I am not saying that the gaff should be blown and that there should be a divulgence of where the investigation is leading. But every search warrant that has been issued for 300 years by an ordinary police officer does it admirably well. It is clear; people understand what is required. Without being at all inflammatory, I would simply defy anyone to read in these documents what is needed.

ACTING CHAIR—As you aware, the ACC has special coercive powers. Are these powers sufficiently protective of civil rights and privacy in your opinion?

Mr Staniforth—That is very topical, isn't it? Everything is a balance, and I would be the first to respect the need for powers of a more intrusive nature to deal with activities that are immune to ordinary processes. My personal view is that if someone is legally represented at these hearings, if all else is correct, the balance is appropriate. If they are on their own, I think there are problems. As an example—stop me if you think this is not helpful—a colleague was telling me about an appearance he did in a crime commission in a state; it was not an ACC matter. The opening over consisted of a quite solid inducement to do in someone else a result of which the client could be assured of an immunity. Sitting on your own, that is a fairly difficult proposition to deal with, I think.

Again I stress: I am not saying that that happened in any of the cases I am aware of; I am simply using it as an example. Given that those coercive powers exist, and those not-quite-the-

ordinary rules of engagement in the criminal investigative process exist, then you have really got to make sure that you secure your balance as best you can. I think having people on their own does not secure it.

ACTING CHAIR—I have one more question and then I will let Mr Hayes and the chair take over. Do you have any views on the operation of the secrecy notations system under section 29A? Is there a danger that they may limit the capacity for public discussion of the operation of key elements of the ACC Act?

Mr Staniforth—I was so worried about that that you would not believe the hours that went into my modest letter to you. I did not think I could tell you—and I am still not 100 per cent sure that I can talk to you—about the material that I was told about. I certainly did not feel that I would be able to ring up the contact officer and talk to them about why the client was in talking to me. The secrecy is too tight. If it is operationally necessary then one would have thought that special arrangements could be made to make that secrecy tight. But at the moment it seems to be a blanket arrangement. It seems to stop ordinary discussion about when and where and what we need to talk about it and what we need to prepare. That to me is unfortunate.

Mr HAYES—Following on from that point, I understand what you are saying about the secrecy provisions. But I have to say that they do not seem any more onerous than the secrecy provisions mandated, for instance, in the integrity regime of the New South Wales police—which I have some familiarity with—or of ICAC or of any of those bodies which would be considered standing royal commissions. I am not familiar with what may exist in other jurisdictions at the moment. But I know that those two New South Wales organisation I have raised—the police and ICAC—have very stringent and enforceable secrecy provisions. From your perspective, is that uncommon for a body which is akin to a standing royal commission?

Mr Staniforth—My answer to that would be based on looking at the purpose of the investigation. We were just talking informally about this. I spend my day with a very heavy secrecy load on my head, which is my client secrecy. So I do not come here to say we should not have secrets. I would be the strongest upholder of them.

Mr HAYES—But you are upholding that ethically, as opposed to having some punitive response if you breach secrecy.

Mr Staniforth—It is called ‘losing the ticket’, so it is a fairly brutal one.

Mr HAYES—I have probably overplayed ethics in that regard.

Mr Staniforth—Ethics are important. Everyone concedes that the people involved in these functions are good people acting bona fide. Some flexibility would give this process greater credibility. There should be a flexibility, which would mean that the ACC would not need to be quite so tight about this. The ACC provisions should say that there is a need for people to know why they are coming to see them; they need to be able to say that they have been talking about A, B and C and they want the person to come and talk to them about that. They would invite their lawyers or anyone else to have a look around and go and ask some questions.

Let me think of a crude example: the chap I am speaking to might have a bank account which would be of interest to the ACC investigators and perhaps they do not know about it. Wouldn't it be useful if he could come and say, 'I've got to go to the ACC and I need to show them this information'? That information could be exculpatory; it could be stuff which would show that it was not him importing the CDs. Flexibility can be helpful as well as a hindrance.

Mr HAYES—I take your point. Looking at the ACC, it is probably worthwhile you commenting on this: how do you see the ACC distinguishing itself from for instance a standing royal commission? These are not ordinary police operations that would have been performed under the respective law and order powers of state or territory. These are things which have obviously been elevated to such a level that they are to be dealt with by a board including each of the police commissioners. These do not seem to be akin to normal police investigations. That goes back to the issue about the fish they are attempting to identify or run surveillance on in the process.

Mr Staniforth—With respect, I think they are ordinary criminal offences. They happen to have been categorised in the act as different, but I would suggest that the organised distribution of amphetamines is forensically the same as a trafficking offence under a state or territory law. The difference is the need to increase one's powers to get behind the shield of surreptitious organisation. As distinct from, say, police integrity commissions and the more secret royal commissions, you deal here with actions that are in the ordinary range of criminality. When you look through the list, almost all of those are things that we provide legal aid for. We are funding people today who, I am sure, are said to have prepared amphetamines in an organised sense.

Mr HAYES—You said there were some issues around the time constraints with people receiving summonses and trying to organise solicitors. Do you see that as a major problem?

Mr Staniforth—When I began my evidence, I said I was going to tell you that I do not know anything today, I am sorry. I know only of two direct cases with which my office was involved. Two cases is a ridiculously small number on which to make any bold assertions, so I will not. In the case I referred to, yes, it was too tight. If they do not mind me saying it behind their backs, these people were not quite in the top five per cent of the Australian intelligence quotient either. It all led to pressure with time, and it is even worse when they are in the 95 per cent, by the way, because they go to these things not knowing what the heck they should be doing.

Mr HAYES—A criticism was expressed to the committee—I think by the Law Council of Australia in their submission to the inquiry—of the court-like and inquisitorial process that has been adopted. Has that been an issue of concern for Legal Aid?

Mr Staniforth—Again, I modestly say that our experience is far too limited for you to rely very much on what I say, but I am a huge fan of court processes. I think that is the glorious freedom of being an Australian—we do things in a structured, dispassionate way. I understood the Law Council's submission to suggest more that the processes tend to obscure what they are seeking.

Mr HAYES—I think it becomes more inquisitorial in approach as opposed to prosecutorial.

Mr Staniforth—Absolutely. In the state and territory local magistrates courts you do not get the luxury of doing that. As a defence lawyer, you jump up, ask your question and get straight to it. You do not have a long, winding process. Again, it seems to me that it is all part of getting the best results by telling the people you are dealing with what you want.

Mr HAYES—Thank you.

ACTING CHAIR—All witnesses who have come before the committee have been giving us a direct link to our terms of reference. Thank you for your submission and for your appearance today.

[10.09 am]

BURGESS, Mr Mark, Chief Executive Officer, Police Federation of Australia

ACTING CHAIR—Welcome. 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 general discussion.

Mr Burgess—The PFA appears today based on a submission that we made to the current inquiry on a matter that has probably been ongoing for some time between ourselves and the former NCA, which is now the ACC, with respect to the terms and conditions of employment that our members work under at the ACC, and formerly at the NCA, and some of the problems that had occurred as a result of that arrangement. It is pleasing to say that, with the advent of the ACC, a number of those issues are now not as evident. Under the former management of the NCA it appeared that the different terms and conditions that members worked under were perhaps sometimes exploited. That does not appear to be the case with the ACC, we are pleased to say.

Having said that, we still think that there is an ability to streamline the process by which our members are working at the ACC to give them some sort of surety and also to assist the ACC in the administration of different terms and conditions of employment of officers from every jurisdiction around Australia. I note that in some of the other submissions there are other issues that have been raised that are probably relevant to PFA policy or submissions that we have made previously, and if any of those questions were asked I would be happy to answer them to the best of my ability as well.

ACTING CHAIR—Thank you. You are right: it has come up. As a former police officer, I am well aware of my other colleagues who entered the NCA from South Australia and quite often spoke in relation to the inequity of pay and conditions that some of the officers were getting. Can you outline the nature of the main discrepancies that occur between the conditions of seconded officers? What are the practical issues associated with achieving a national secondment package?

Mr Burgess—There are a few issues. When we went back and asked, ‘What brought this about in the first place when we were back in the NCA days?’ we found that members working together in an office were on various terms and conditions attached to their home jurisdiction. Decisions would be made on who would work overtime, who would be on call and who would work weekends, based obviously on the terms and conditions in their home jurisdiction to minimise any cost to the NCA, which meant that some officers in some jurisdictions found themselves doing all those sorts of tasks whereas others who perhaps had better terms and conditions were not being called on as much to do those tasks. That is what brought it to a head in the first place. There were a number of difficulties as we worked through the process and, as I think we point out in our short submission, perhaps the one that still has not been overcome is: who is the employer of the police officers attached to the ACC?

In our view at the moment, we would still consider the ones who are on secondment to be employed by their home jurisdictions. If there were a move to change the arrangement by which they currently work at the ACC, that may change. So the difficulty for us is, in fact: who do we negotiate the process with, in trying to strike a balance that is not going to cause any undue concern in home jurisdictions, and ensure that none of our members are disadvantaged by a process that we undertake as well? It has not been a very easy task. I brought a folder with me that has a bit of the history of it, where we have tried to work out various rates of pay and graphs of scales. We have had a number of meetings with officials from the NCA and now the ACC. I recall the last one we had from my correspondence. I think we wrote to them in May 2004 and said basically, 'Explain to us who you believe the employer is,' and we have not progressed past that.

ACTING CHAIR—I must say that Mr Milroy and others that have provided evidence are all aware of that, and are trying to work towards a common agreement. Do you think that it will be achieved?

Mr Burgess—We would like to think that it will. It is not a simple task and we understand the difficulties of it, but we do think there are advantages for both the employees and the employer. The advantages for the employees are that they know that there is certainty about what their terms and conditions are, albeit they know that now because of their state terms and conditions, but there would not be a likelihood of what we have experienced some time ago as the potential exploitation of various groups. From the employer's perspective, it would be far simpler administratively. They would not be dealing with potentially eight different awards or enterprise agreements across the country; they would be dealing with one common set of terms and conditions.

The position of the PFA is that we are still happy to undertake the process. We have had discussions with the ACC. We have a very good relationship with the ACC and its management, I am proud to say. We would like to, and would be happy to, re-enter into those negotiations to try to reach an amicable arrangement.

ACTING CHAIR—The integrity and testing regime varies somewhat between each state police force and the ACC. The Victorian police association in its submission was critical of the fact that their integrity testing was not enough for the ACC. In your role as the federation president, do you have a comment about how the ACC should do it, or an across-the-board comment?

Mr Burgess—Again, I think it is not a simplistic issue, any more than the terms and conditions are. It is somewhat difficult when you are dealing with a number of jurisdictions. If I read correctly the transcript of the hearing where the Victorian police association representatives were present, then considering the issue of the common terms and conditions and how we would build an integrity regime into that process would probably show the way forward. If you were an officer, you would know that these are the terms and conditions that apply if you decide to seek a secondment to the ACC and, underpinning that, you would know that this is the integrity regime that operates as well. At the moment, as you say, there are a number of different jurisdictions, with a number of different terms and conditions of employment, and a number of different integrity regimes. Those, and other matters that flow from them, do make it somewhat

cumbersome. That was one of the issues that I thought would have been picked up in the negotiation process around all those issues.

ACTING CHAIR—In your opinion, are any of those over-regulative, or veering into character assassination?

Mr Burgess—I think there is always potential for that, there is no doubt, particularly when it involves the families of officers as well. As I said, it is difficult. We would be prepared to enter into negotiations through a package process—that is, the terms and conditions of employment and those other issues that underpin them—to make sure that we look after the rights and entitlements of our members and that they do not feel any more burden of oversight than anyone else that we think should.

ACTING CHAIR—Would you not agree, however, that a police officer going in as a recruit or even a couple of years in would be a different case from the same officer after 10 or 12 years within the fraternity, if you like, when his or her associates may have changed? Would you not agree that, in the latter case, the level of checking would need to go that little bit further, particularly going into an organisation such as the ACC?

Mr Burgess—It is interesting, I suppose. There are a number of jurisdictions, as you know, in Australia that have what are basically standing royal commissions, where the oversight of those jurisdictions is significant for police officers. And there are a number of jurisdictions where, when people move into certain areas of policing, the integrity regime becomes all the more stringent, particularly in respect of declaration of assets et cetera. So I would be happy to argue that, in policing, the integrity regimes and the oversight are far in advance of those in any other occupation that I can think of. But, having said that, I think you need to have a process that is in some ways equitable, and we intended to do that through a process of negotiation around all of those sorts of conditions when someone went to the ACC. At this stage, we have not been able to do that, but hopefully somewhere down the track that will be achieved.

Mr HAYES—Before I ask my questions, I firstly need to make a declaration that the Police Federation of Australia is a former client of mine and that Mr Burgess remains a very close personal friend. But having said that—

Mr KERR—Now get stuck into him!

Mr HAYES—Well, let us start where Kym just left it, as it is something that does seem to need to be a little developed in terms of the integrity regimes that police run. As I understand it from our discussions with Mr Milroy and from what he has indicated, police that are seconded to the ACC from the various jurisdictions, apart from being subject to the ACC's code of conduct, are still all subject to their home state integrity regimes—for instance, the Police Integrity Commission of New South Wales and a whole host of other things that flow from it. It seems to get lost in the process a little that, quite frankly, under the powers that are associated with those particular regimes—particularly the ones that I have an understanding of; PIC, for instance—there is, for instance, no right to silence for a police officer in many instances not only when they are before the actual inquiry but also in relation to issues under the act put to a police officer; they cannot avail themselves of a right to silence. Is that something that is reasonably common in each of the other jurisdictions?

Mr Burgess—Yes. As many of you may know, when a police officer gets questioned, even in a departmental sense, they are compelled to answer, even though there would be an argument that those answers might not necessarily be able to be given in evidence in any other proceedings at a later date. The other issue that I suppose is relevant at the moment—and I am sure you would all be aware of it—is that the government is moving to implement a corruption body at a federal level which would oversee—from my understanding at this stage—the AFP and the ACC. We made a submission on that process some time ago. We support that process, provided that it is a body that is there for corruption and corruption only and does not delve down into managerial issues et cetera, which they have a habit of doing if they cannot find anything else with which to occupy their time.

Mr HAYES—In terms of disciplinary audits or administration?

Mr Burgess—Yes, exactly, so those are the sorts of things. That body will oversee the ACC including, I understand, any seconded officer to the ACC—and others here would probably know more than me. I believe the announcement of that body's creation is not very far away. You would potentially have a person at the ACC from—and I use my own jurisdiction here—New South Wales who would have the ACC integrity regime, the oversight of the federal corruption watchdog, their own integrity regime in their own state—say, their own Police Integrity Commission in New South Wales—and you could keep going to the Ombudsman and wherever else you want to go. Policing is an enormously regulated and overseen industry. As I said, I challenge anyone to find one that is more overseen than policing. Getting back to what your question maybe was, there are so many differences. One might suggest that if someone went to the ACC they would be concerned about the integrity regimes there. However, some of the other jurisdictions would probably have more severe integrity regimes than those that exist at the ACC. I think that there needs to be some coordination as to how this all operates so that every time you turn a corner there is not someone else waiting to ask you a question.

Mr HAYES—I think one of the difficulties at the moment is that, while the ACC does certainly have a code of conduct, effectively employees of the ACC are employees under the Commonwealth Public Service Act, as opposed to being under a particular police act which imposes a particular integrity regime.

Mr Burgess—When you take the oath of office as a police officer when you join the police, you understand that there is significant oversight of everything you do. We do not argue about that; we do not argue about how rigid some of that is from time to time. But the fact is people give us, as police officers, a lot of powers that are not bestowed on anyone else in the community. As a result of that, you expect that there will be specific oversight. But I think we need to be realistic as to how that operates across the country. As I say, with the implementation of the federal body in the not-too-distant future you are likely to have layer upon layer upon layer of oversight. The other issue is, of course: what liaison will there be between all of those oversight bodies? That is another concern.

Mr KERR—In developing the national industry, one of the things that I think has been an aspiration of the Police Federation of Australia is transferability so that you can move at a particular level across jurisdictions, that your qualifications are recognised and the like. How realistic is it, do you think, to establish some kind of protocol that would establish a common standard for security clearance—common protocols to get around some of these things? As long

as the systems are so different, these kinds of difficulties are inherent. But if there was some way we could establish a national uniform set of clearances that would require police officers undertaking certain kinds of tasks to be cleared to a particular level and then clearance to a higher level having another level of security clearance on a standard basis, that would, firstly, go towards being able to more readily move to a national professional, and, secondly, get around these kinds of problems when you have interjurisdictional operations.

Mr Burgess—I think you have hit on a point that underpins a whole range of other issues that I noticed in some of the other submissions and in some of the other discussions that perhaps this committee has had—that is, the whole notion of the move towards policing as a profession, the discussion that has been taking place around that for quite some consideration time and particularly the move to an interjurisdictional mobility model. Many on the committee would probably be aware that we are actually bringing police in from overseas to South Australia and that is now planned for Western Australia. The New Zealand police have recruited quite a number of overseas recruits from the UK.

The Police Federation of Australia has been one of the advocates—probably the key advocate—for some time of the recognition of standards across the country in respect of interjurisdictional mobility. The argument is: ‘I’m a sergeant and used to doing my job as a sergeant in Newcastle in New South Wales. What different skills do I need to be a sergeant in Adelaide in South Australia, apart from understanding the legislation and some of the processes?’ The answer is: probably not a lot. We are working very much towards that. We have developed policing and competency standards, as many of you might know, which have allowed us now to say that a recruit that comes out of pretty much any police academy or police college in Australia comes out at the same level, with the same quality and at the same standard. That assists in that process about interjurisdictional mobility.

As you move to that process, of course, you then start to bring into play all these other issues about the ethical standards et cetera. At the moment, we are working on—we are part of this process with the commissioners—the inherent requirements of a police officer, which talks about physical skills, medical and ethical requirements et cetera. So these sorts of things become inevitable. The debate then moves to another level—that is, whether you become a full profession and you have a registration arrangement for police officers across Australia, which again is something that the PFA, for many years, has supported. But when you do that you actually start to expose some of the other things that I have picked up in some of the other submissions about the ability to swear someone in today and take their powers off them tomorrow. When you talk about full professional status of police officers, I would suggest to you that that sort of thing would not apply.

Mr HAYES—That is happening now.

Mr Burgess—That is right.

Mr HAYES—I understand this came out in the AFP’s submission. They have officers of the ACC who are not sworn police at the moment but are being sworn in as special members of the AFP for the purposes of using force, carrying a weapon as protection, and having the power of arrest. They are swearing people in who may have been a former police officers, granted but at this particular juncture are not sworn police officers. Do you have a view about that?

Mr Burgess—I think that that is of great concern. As we talk about the move, ultimately, to policing as a profession and potentially a registration authority et cetera, I think that raises some serious concerns. Again, we talk about the integrity regimes. I am not privy to the exact process of how that all takes place. I know that they bring in special members of the AFP using AFP provisions et cetera but if we wanted to really take this right to the end, as our discussions were going a minute ago about full professional policing or having a police force with a professional registration authority, I would think that those sorts of things would certainly come into question.

Senator LUDWIG—I was interested in your comments about the integrity commission. There has been no exposure draft as yet. We are waiting for that, so I will not go to any detail. I was interested to hear your comments about the integrity commission and maintaining the AFP's commission orders and those types of disciplinary procedures. Would you envisage that the AFP commissioner would maintain that regime?

Mr Burgess—Again, I am not really sure how this is all going to unfold. Our submission to the federal corruption body was primarily based upon justice and equity for police officers—the fact that if it was going to be for corruption it should be for corruption and not for delving into managerial issues when they cannot find anything else to do with their time et cetera. We have not been privy to any further discussions about how that would ultimately work in respect of the current commissioner's powers as opposed to the federal corruption body, so I could not really say.

Senator LUDWIG—I see. I was just interested because my recollection is, and correct me if I am wrong, that your organisation did have some issues with the way the commission orders do in fact work in part.

Mr Burgess—That may have been the AFPA. One of our branches might have raised some of those issues. I am not privy to those at the moment, so I probably could not comment.

Senator LUDWIG—The Australian Crime Commission, as you are aware, is under the Public Service Act for disciplinary procedures. Should they be looking at something like the commission orders and the commission disciplinary process for lower level misdemeanours and that type of thing?

Mr Burgess—Again, it is not an issue that I can confidently speak about right now. Going back to what I said earlier on, our submission was based around the industrial common terms and conditions arrangements for police officers all around Australia working together with the problems historically that that caused. As I said, when you start to work through that processes you talk about all those sorts of issues to determine a full regime of terms and conditions of employment, ethical standards et cetera in the organisation called the ACC. At the moment, there are potentially police there from every jurisdiction in Australia working under a whole range of different ethical arrangements and terms and conditions of employment, which I think makes it difficult.

Senator LUDWIG—They would also then be working under the various disciplinary procedures and industrial relations that go back to their own jurisdictions. The breaches that might occur, misdemeanours or minor matters, would then have to go back to the relevant jurisdictions. Is that how it operates?

Mr Burgess—The threshold issues that we have at the moment with respect to how we move this issue forward about developing common terms and conditions and a range of other things, is identifying who in fact is the employer of people at the ACC who are police officers. We asked that question over 12 months ago and no-one has answered it yet. Our view of the world at the moment is that officers that come from various jurisdictions on secondment are still employed by their home state jurisdictions. Until somebody tells us any different, that is how we see it. That therefore makes it somewhat difficult at the moment to work out who we negotiate with to work through all these processes. That is where we are at the moment. As I said, I think the last correspondence or discussions we had, apart from some minor issues that I think may have been raised with you about performance and development systems and those sorts of things, which we still have ongoing discussions about. But in respect of the overall issue of terms and conditions, and all of those other things that underpin it, we are still, I suppose, at loggerheads as to determining who the employers of these people are.

Mr HAYES—Following on from one of Senator Ludwig's questions about a submission from the AFP, could you quickly give the committee a snapshot which puts in place who it is that the PFA represent?

Mr Burgess—The PFA is a nationally registered union that represents all police across Australia in every jurisdiction—all 50,000 officers. Various state, territory and federal police associations and unions make up the branches of the Police Federation of Australia and come together in that capacity. So the AFP, the Australian Federal Police Association, are a branch of the Police Federation of Australia, as are the Victorians, New South Wales, Tasmania, South Australia et cetera. So that is the process. They are autonomous bodies in their own right as well. Hence you have had one of them here before you, and you have had submissions from another one.

Mr KERR—I want to follow-up one of the issues that emerged from the Ombudsman's evidence to us—that is, the complaints jurisdiction, by which I do not mean the anticorruption. He gave evidence that there are difficulties when the trail runs cold. When the seconded officer whose conduct may have been the subject of a complaint has moved back to a home jurisdiction the question therefore is, 'Can the Ombudsman, exercising the complaints jurisdiction under federal legislation effectively pursue or examine that complaint once those circumstances have happened?'

I think the answer we got was that in practice he cannot, and it has to basically be wound up. That suggested to me that there may be a need to have either interlocking state and federal legislation or that perhaps federal legislation would be sufficient to cover it to ensure that there was a statutory capacity and responsibility of officers once they have gone back to their original jurisdiction, or even left the police, to still cooperate with an inquiry that is in the complaints jurisdiction. Would you have any difficulty with that?

Mr Burgess—I would have to see what it means in detail. I was not aware of those issues being raised in this forum.

Mr KERR—It was raised on Tuesday.

Mr Burgess—I would have to see what was proposed.

CHAIR—Would you like to take that on notice?

Mr Burgess—Yes. Again, as I said, I think there is a whole range of these issues that you are talking about that come back to the threshold issue that we want to talk about: how we develop a package for police officers to work at the ACC. I am sure there is a raft of issues that flow from that that would be part of those discussions, but at the moment we are locked in a situation and have not progressed for some considerable time. Going back to what I said at the start, a number of those problems have been overcome because of the managerial processes in the ACC as opposed to the old NCA which have meant that our members are not being as disadvantaged as they were in the first instance.

Mr KERR—Perhaps it would all be solved when you are all on individual contracts.

Mr Burgess—I somehow doubt that.

CHAIR—On that very positive and insightful note—

Mr Burgess—I can only totally agree.

CHAIR—You are happy to go on the record with that, aren't you.

Mr Burgess—I am happy to give my answer on the record too.

CHAIR—Mr Burgess, thank you for your attendance and for your advice and assistance to the committee. You may wish to review the transcript of evidence already tendered to the committee. If you wish to make a further supplementary submission, we would be pleased to receive that. Thank you for joining us and apologies for my absence due to divisions in the Senate.

[10.37 am]

BUSH, Mr William Murdoch, Member, Families and Friends for Drug Law Reform

LEY, Mr John Francis, Vice-President, Families and Friends for Drug Law Reform

McCONNELL, Mr Brian Peter, President, Families and Friends for Drug Law Reform

CHAIR—Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. Before I invite you to make a short introductory statement, let me congratulate you and thank you for the comprehensiveness and quality of your submission to the committee. I now invite you to make a short introductory statement, after which we will move to some general discussion and questions.

Mr McConnell—The comprehensive submission is in large part due to Mr Ley and Mr Bush. The ACC has one big advantage over its predecessor, the National Crime Authority, and that is that it has rolled into it the key national crime intelligence capacity of the Office of Strategic Crime Assessments and the Australian Bureau of Criminal Intelligence. In the words of this committee's terms of reference, maintaining and developing this capacity is essential to the ACC being relevant to meeting the challenge of organised crime in the 21st century.

A well-resourced and rigorous intelligence capacity is at the heart of many issues, as earlier witnesses have put to you. In particular, an excellent intelligence capacity is essential to (a) the effective deployment of Australian law enforcement resources to meet current threats; (b) the identification of law enforcement threats that are likely to develop in the medium term; (c) the longer term or the over-the-horizon capacity that the AFP commissioner, Mr Keelty, emphasised; and, (d) the measurement of the effectiveness of law enforcement effort, which is emphasised in our submission. On the ACC's web site is the following statement:

The ACC aims to reduce the incidence and impact of serious and organised criminal activity.

This is the test: is the ACC reducing the incidence and impact of criminal activity in respect of drugs? That is our focus. At the present time, much of the published data identifies mere activity, not the effectiveness of that activity. The report on a year of record drug busts in the ACT on page 7 of today's *Canberra Times* and the AFP's Drug Harm Index merely reflect activity, even though the latter is dressed up as a dollar amount and presented as something else. The reality is that it is merely reflective of the size of the drug market, and let me illustrate this by drawing on the fish stock example that we used in our submission.

In a given area of water we do not know how many fish are present, and this is not unlike the drug market and the quantum of drugs being consumed in the market. If we were to cast a net into the sea and capture a lot of fish, we would rightly assume that there were many fish in those waters. Of course we would not catch all the fish, because our net would not be big enough, and thus we are taking only a sample. But that sample can tell us a lot about whether or not we have a lot of fish. If we cast our law enforcement net about and capture a lot of drugs then it is reasonable to assume, like our fishing expedition, that there are a lot of drugs on the street. No

matter whether one reports the kilos seized or the dollar value of the kilos seized or the dollars of drug harm averted—this latter being little more than the dollar value of kilos seized—it simply indicates the size of the drug market.

If we wanted to effectively manage our fish stock then we should know what proportion of the fish stock we are capturing in our net, thus we would know if the stock is stable or declining—and there are statistical methods for making just that estimate. If we want to know at supply side the effect that law enforcement is having on the drug market, we need to know what proportion is being captured and whether the size of the market is declining or increasing. The data to measure effectiveness has been published a few times, but the next logical step has not been taken.

That data is in the AFP's research paper, the Drug Harm Index, which you now have. It shows that drug captures in 1998 averted only about four to 10 per cent of the harm that was caused by drugs—that is, only four to 10 per cent of the drugs on the market were captured. The data for years immediately following 1998 and even the report in the *Canberra Times* suggest that the market was growing, not declining. That supply side control is not working and is certainly a long way from being as effective as we would want it to be is also evident from other data such as price, purity and availability data which is currently published. If the supply side were working, price would increase, purity would decrease and availability would reduce. With the exception of heroin purity immediately following the heroin drought, published data demonstrates that this is not happening. Now that the heroin drought is over, its purity is gradually increasing.

Finally, we believe that the ACC should look to more rigorous, objective and effective measures of performance for drug supply control activities. It should also take a wider perspective and, for example, involve other players such as those from health and education and from various non-government organisations. It needs independence from short-term institutional and political interest of the many stakeholders of the ACC to make it more accountable and responsive in meeting the challenges of this section of organised crime in the 21st century.

CHAIR—Thank you for your statement. There is a division in the House of Representatives, so our House of Representatives members needed to absent themselves.

Mr McConnell—I looked up and everyone was gone.

CHAIR—I am sure that your submission was listened to very attentively and appreciatively. In your submission you note the difficulties in devising meaningful performance measures for an organisation such as the ACC. Your suggestion—even on a casual reading of it—would involve a great deal of detailed research, measurement and monitoring. Do you think that the ACC has the resources to meet the extra demand that your recommendations would entail if implemented?

Mr McConnell—Yes, I am sure they do have the resources. They have spent some considerable time on developing a drug harm index. They have gathered research from various places. Some of the data that is needed to look at the results of supply control is in the data that they have already captured. The National Crime Authority undertook a similar exercise in its 2000 commentary report, so the data can be calculated. I have calculated the data myself, based on information that I got from various public sources and from interviewing people who use

drugs and so on. It is not a major exercise and it will give a clear example of the effectiveness of that particular activity.

Mr Bush—I think the drug harm indicator is put together by the AFP, but it uses regularly gathered data on price security that is obtained from various sources under current arrangements. It is simply a case of putting these things together and drawing lessons from them—that is not done.

CHAIR—Going back to the activity that you have mentioned in your submission, in your statement and also in your answer to that first question, you argue that the focus of performance measures should be on the effects on the criminal market rather than simply on activity levels. Whilst important for policy consideration purposes, do you really believe that this is viable as a performance measure, given that many of the variables you discuss are beyond the ACC's control?

Mr McConnell—If the ACC are intending to reduce crime they need to know whether or not they are being effective and simply reporting on seizures of drugs in a growing market does not indicate whether or not they are being effective. I think it is important that they do that. Taking it to its next step, if, as is reported in the data, they are seizing only four to 10 per cent of the drugs that are on the streets then having a look at that exercise, looking at the results of that, would lead to the next question: 'What can we do better?' If you do not know what the effectiveness is of what you are doing now then you are never going to ask that question and you are never going to do better; you are just going to keep doing the same thing over and over.

CHAIR—Do you think it would be wise for the ACC to promulgate a statement—other than a general one—or an indication of effectiveness, given that there could be some quite strategic issues that would be involved in releasing a detailed assessment of whether or not the ACC believe they have been effective in breaking up criminal rings?

Mr McConnell—There would be a certain amount of honesty in there, but I guess it would be a matter for the ACC whether they actually reported that or whether they knew internally about how well or not so well they were doing.

Mr Bush—Added to that, breaking up a ring is a means to an end. It is a degree of abstraction from that that is the test—namely, what is available on the streets in terms of drugs. It is the availability of them to our kids. It is that data, and it is impossible to see that that has any operational sensitivity. Another aspect of the matter is that the government has a number of different pillars to its drug policy. There is the supply reduction one, and that is the subject of our submission. The assertion has been that law enforcement is essential to reduce supply. But there are these other elements, including demand reduction, that also operate. That is illustrated well in the case of cannabis, which is covered in our submission, where the market indicators are of declining law enforcement effort and declining price and yet declining use, which suggests that it is not law enforcement—it is not supply reduction—that is bringing this about. But it could well be other elements of the government's policy that are bringing it about. It is all part and parcel of the sensible deployment of resources.

Senator LUDWIG—What other parts of government policy would be bringing about a supply reduction? Is that targeted and what data are they using to then target it to ensure that

there is supply reduction? What I am trying to understand concerns you saying that the ACC should develop key performance indicators which are more relevant to understanding their effectiveness in supply reduction. Are these other government programs doing it or are they doing it accidentally in your view?

Mr Bush—These other government programs are directed at demand reduction. There are the advertising programs.

Senator LUDWIG—Sorry, I misunderstood you. I thought you were talking about the supply side.

Mr Bush—Law enforcement, as far as I know, is the only element of supply side policy—the policy lever—that is used.

Senator LUDWIG—I see. You are differentiating in the sense that in terms of the supply side there is a requirement for the ACC and others to have available more internal key performance indicators to work out how effective their work is tied to supply side reduction, but in terms of reducing demand you say that there is work that is partially effective or effective. What key indicators are they then operating on?

Mr Bush—To go back, these are in fact referred to on page 5 of our submission.

Senator LUDWIG—That is what I am reading from.

Mr Bush—Things like age of initiation, the number of new users, the frequency of drug use among users, the quantity of drug use per day among users and the number of dependent users entering treatment. There are annual surveys that are principally done by the National Drug and Alcohol Research Centre that actually do give this sort of data.

Senator LUDWIG—Yes, and in that way they can then tie those together. For example—and it may not be a particularly good example—a community advertising campaign targeted at demand side reduction, if it is targeted at a particular age and type of user and those sorts of issues, might then create a downward pressure.

Mr Bush—And a particular treatment, which takes users from—

Senator LUDWIG—A diversion program.

Mr Bush—the market. There is lots of data that shows that methadone and having people on abstinence programs removes them from the market and there is less demand. There is lots of data and lots of research on that. These are the sorts of indicators.

Senator LUDWIG—So your premise is that there is work on the demand side but it should now be pushed across to the supply side as well? You are saying that they should take a more holistic view of reducing supply, using some of the data and methodologies that are well developed in demand reduction?

Mr Bush—There has already been work done on the supply side issues.

Senator LUDWIG—It is already out there, but it is an issue of translating it into effective use?

Mr Bush—Yes. That is what the predecessor of this committee recommended back in 1990 or so. It led to this very thorough research. This is not an original idea on our part.

Senator LUDWIG—I have been around for long enough to know that. I was there when the NCA was reviewed and we brought in the ACC.

CHAIR—The ACC has a particular structure which heavily involves police. Do you consider that this is the best structure to achieve the results which in your submissions you have indicated are desirable?

Mr McConnell—We do not have any evidence or any particular view to say otherwise, although we did express some concerns that the structure of the organisation did not necessarily have the same independence as the National Crime Authority had. That was in a submission we put in on a previous occasion. At this stage it is a watching brief for us. The police force obviously has a vested interest in this particular organisation. There is no doubt it needs to be involved.

Mr Bush—To add to that: all of us know that drugs and drug policy represent an extremely vexed political issue and a sensitive one for law enforcement agencies around the country. So it is essential that there be institutional space provided for telling the truth for what it is—that is, a space for rigorous analysis. That bears upon the organisational structure that is required for this agency.

CHAIR—In your submission you focused on drugs. It is quite natural that you did so, given the angle and perspective from which you are coming. But drugs are often part of a bigger picture that includes other offences. Do you think it would be more appropriate to allow the AFP to manage drug related crime while the ACC deals with the wider picture of serious and organised crime? I hasten to add here that I am not suggesting that drug crime is not serious.

Mr McConnell—My answer to that would be no, because you would not then get the space that Mr Bush is talking about in being able to rigorously assess and objectively evaluate performance in these particular areas. There is a great deal of money involved in drugs and the money from drugs can buy lots of other things: other crime and other corruption—even terrorism, as has been reported in some of the world reports. So I think it is important that it stays within this organisation.

Mr Bush—As numerous reports show, including the good annual drug reports put out by the Australian Crime Commission, there is big integration in criminal activity. Drugs are probably the biggest money spinner, but criminals are involved in taxation evasion, people-smuggling and the white slave trade. It is an integrated business, so I cannot see that your suggestion would be useful.

The other thing that, in a sense, is coming home to roost is the issue of corruption. Corruption was not on ours or on anyone else's radar when the decision to abolish the NCA was made. Yet, since that time, the issue of corruption in the police forces—for instance, in Victoria—has blown

up, and it is in the ACC itself. Evidence has been put before you about the status of the independent royal commission dealing with this. To cope with it, the government is now having to establish a body to perform a task that the NCA was able to do. I am just saying this to show the integrated nature of the thing, and I do not think you can separate out any one criminal activity from another.

CHAIR—I hasten to say that I was not putting it forward as a suggestion. We just wanted to appreciate your views on it. Gentlemen, thank you very much for your appearance before the committee and for your assistance and advice to it. We look forward to reviewing your evidence. I thank everyone for their cooperation and attendance here today.

Committee adjourned at 11.01 am