



COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE

on

THE NATIONAL CRIME AUTHORITY

Reference: Evaluation of the National Crime Authority

BRISBANE

Wednesday, 21 May 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT COMMITTEE
ON
THE NATIONAL CRIME AUTHORITY

Members:

Mr Bradford (Chair)

Senator Conroy
Senator Ferris
Senator Gibbs
Senator McGauran
Senator Stott Despoja

Mr Filing
Mr Sercombe
Mr Truss
Mrs West

The Parliamentary Joint Committee on the National Crime Authority has resolved that it will conduct a comprehensive evaluation of the operations of the National Crime Authority.

The committee will examine in particular:

- (1) the constitution, role, functions and powers of the authority, and the need for a body such as the authority, having regard to the activities of other Commonwealth and state law enforcement agencies;
- (2) the efficiency and effectiveness of the authority;
- (3) accountability and parliamentary supervision of the authority; and
- (4) the need for amendment of the National Crime Authority Act 1984.

WITNESSES

BEVAN, Mr David John, Deputy Director, Official Misconduct Division, Criminal Justice Commission, 557 Coronation Drive, Toowong, Queensland 4066	83
BOTTOM, Mr Robert	18
CLAIR, Mr Francis Joseph, Chairperson, Criminal Justice Commission, 557 Coronation Drive, Toowong, Queensland 4066	83
DEARDEN, Mr Ian Francis, President, Queensland Council for Civil Liberties, GPO Box 2281, Brisbane Queensland 4001	67
IRWIN, Mr Marshall Philip, Member, Bar Association of Queensland, Level 5, Inns of Court, 107 North Quay, Brisbane, Queensland 4000	3
McHUGH, Inspector Dominic Gerard, Staff Officer to Assistant Commissioner, State Crime Operations, Queensland Police Service, 100 Roma Street, Brisbane, Queensland	116
ROGER, Mr Paul, Director, Intelligence, Criminal Justice Commission, 557 Coronation Drive, Toowong, Queensland 4066	83
RUTLEDGE, Mr Paul Francis, Consultant Crown Prosecutor, Office of Director of Public Prosecutions, GPO Box 2403, Brisbane, Queensland ...	56

JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

Evaluation of the National Crime Authority

BRISBANE

Wednesday, 21 May 1997

Present

Mr Bradford (Chair)

Senator Conroy

Mr Filing

Senator Ferris

Senator Gibbs

Senator McGauran

The committee met at 9.04 a.m.

Mr Bradford took the chair.

CHAIR—I declare open this public hearing into the evaluation of the National Crime Authority by the Joint Parliamentary Committee. I would like to make a few brief opening remarks. I am happy to make these opening remarks available to the press if they do not already have them.

The committee is required by section 55 of the National Crime Authority Act 1984 to monitor and review the performance by the authority of its functions. It has been performing this task for the past 13 years with mixed success. The committee last undertook a comprehensive evaluation of the authority in 1990-91, which led to the committee tabling a report in November 1991 entitled, *Who is to guard the guards?*

The current committee was established in May last year in the new parliament and has since found the operations of the NCA to be even more embroiled in controversy than usual. In particular, Mr Justice Merkel in the Federal Court of Australia in June 1996, and Mr Justice Vincent in the Victorian Supreme Court in August 1996, made adverse findings which went very much to the heart of the NCA's operations.

While both cases are being appealed, and the outcomes of the appeals will go a long way towards clarifying the authority's continuing statutory basis, the committee felt that in all the circumstances it was timely for it to conduct another comprehensive evaluation. The proposed legislative reforms of 1992, which had been intended to implement the committee's 1991 findings, were laid aside by the then Attorney-General because of fundamental differences with the Senate. Now, some five years later, those reforms still remain to be implemented. Much has also happened in the interim, of course, with the reforms arising from the 1994 report on Commonwealth law enforcement arrangements and the budget cuts implemented by both the former and current governments.

Today's hearing is the first of a program of hearings which the committee proposes to conduct around Australia to get an in-depth feel for the issues and to hear what the experts in the community think that the NCA should be doing in the future.

IRWIN, Mr Marshall Philip, Member, Bar Association of Queensland, Level 5, Inns of Court, 107 North Quay, Brisbane, Queensland 4000

CHAIR—Welcome. I thank Mr Irwin for making himself available despite the pressure I am sure he must have with his court commitments.

Mr Irwin, before asking you to make an opening statement, I am required to state that, if during the hearing you consider that information you might wish to give or a comment requested by a committee member is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application at that time. I understand that you want to make a statement and that, ultimately, members of the committee will have that statement.

Mr Irwin—Thank you, Mr Chairman and members of the committee. The Bar Association has prepared a submission in written form for the purposes of this inquiry, and I will be able to make that submission available to you within the next few days. At this stage, I will just talk to and summarise the Bar Association's submission. I will do that under the various terms of reference—firstly, in relation to the constitution, role, functions and powers of the authority and perhaps, more particularly, the need for the National Crime Authority.

I preface these comments by saying that, in addressing these issues, the association has been conscious of the tension between civil liberties on the one hand and the need for effective law enforcement on the other. The association accepts that there is a delicate balance to be struck between those two competing interests. Having said that, the association supports the need for a body such as the National Crime Authority, subject to the existence of appropriate safeguards and also subject to it being properly accountable so that it is not able to abuse its powers.

The association accepts that there is a growing threat of organised crime and official corruption and that those things do not stop at state borders and that, if that type of conduct is to be effectively dealt with, an organisation such as the authority is essential. Police services in Australia do not have immediate access to the multidisciplinary skills that are available to organisations like the National Crime Authority, and it is considered that they are unlikely to obtain the resources to enable them to have access to the full extent of those skills in the foreseeable future.

In addition, traditional police services have enormous demands on them in meeting the everyday needs of the community. Furthermore, they do not have coercive powers. It does not consider that police services should have those coercive powers available to them; it considers that there is unlikely, particularly in the present climate in states such as Queensland—even 10 years after the Fitzgerald inquiry—and currently in New South Wales, to be any public support for the giving of such powers to police services.

It also considers that, while ad hoc royal commissions and commissions of inquiry can play a role, they necessarily have a finite existence and they are expensive to operate, whereas a permanent standing royal commission, which is one way of looking at what the National Crime Authority is, has an infrastructure which is readily available to commence investigations and hearings should there be an issue or an investigation requiring that. In addition, a permanent body is able to do so in a much more cost-effective manner than a royal commission.

It is in those circumstances that the association accepts the need for a National Crime Authority in the investigation of relevant criminal activities, provided that that activity is multijurisdictional and it cannot effectively be examined and investigated by normal police methods and powers. The association, in its submission, recommends consideration of an amendment to the National Crime Authority Act to add to the definition of relevant criminal activity the requirements that the conduct be multijurisdictional and of a nature that cannot effectively be investigated by normal police methods and powers.

Senator McGAURAN—Cannot or when it cannot?

Mr Irwin—It would suggest that the authority would only have jurisdiction in relevant criminal activity if both of those criteria were met.

Senator McGAURAN—That just about cuts it out completely. Most state jurisdictions can cover investigations.

Mr Irwin—That is not really what the association is saying.

Senator McGAURAN—It is not what you are saying; I am just trying to clarify what you are saying.

Mr Irwin—What we are saying is that it has to relate to a matter that crosses state boundaries—if I did not make that clear—and also that it must not be able to be investigated by normal police methods and powers. That is really to say that coercive powers are necessary to properly and effectively investigate the matter. The association accepts that there are many cases where police officers simply using their normal powers of investigation, conducting records of interview and so forth, without the ability to compel information to be provided to them, are hamstrung from effectively investigating those sorts of activities.

Senator McGAURAN—I just wanted clarification.

Mr Irwin—I apologise if that was not made entirely clear. It is also considered that those are matters which should be taken into account by the Inter-Governmental Committee in deciding whether to grant a reference to the National Crime Authority. The

association considers it is important that the authority not enter into competition with other law enforcement agencies but that it acts in cooperation with them, in some cases coordinating investigations in conjunction with other law enforcement agencies and, in other cases, playing a supportive role to those agencies in matters within the authority's jurisdiction.

So far as the issue of efficiency and effectiveness of the authority is concerned, the association has found it difficult to be able to comment on that specifically except to observe that, from the experience of a number of its members—and I am sure this will be echoed today by the representative of the Director of Public Prosecutions—the quality of the briefs put together by the authority, as a result of their investigation, is extremely high.

On the issue of accountability and parliamentary supervision of the authority, the association considers that the authority's accountability would be enhanced by establishing an office similar to that of the Inspector-General under the Inspector-General of Intelligence and Security Act. It considers that that person would have to have powers equivalent to those of the National Crime Authority to compel the production of information and documents and to require the attendance of persons to answer questions so that it can properly investigate complaints against the National Crime Authority. It sees that such a person could fulfil the role of an independent overseer who would be accessible to the general public.

This committee, in the association's view, would be able to refer complaints it receives to such a person and in addition to that, officers of the National Crime Authority should be able to confidentially refer allegations of what they consider to be improper conduct within the authority, by other staff members, to that person for investigation.

The association takes the view that if necessary to ensure confidentiality an anonymous complaint could be made provided that complaint appears to the independent overseer to have substance and not to be frivolous or vexatious.

The association also makes the point that there may be some value in amending the legislation to enable this committee, as is the case with the committee in Queensland that oversees the Criminal Justice Commission, to be able to hold an investigation or a review into the conduct of the authority during the course of the term of each committee, that is during each period of appointment, which would effectively mean that such a review would take place on a regular basis every three years towards the end of the committee's term of office. As I have indicated, that is equivalent to a power that is given to the Criminal Justice Commission in Queensland.

So far as the amendment of the National Crime Authority Act is concerned, which is term of reference four, I have already referred to the proposed amendment to add further criteria to the definition of relevant criminal activity and also to making those criteria relevant to the decision by the Inter-Governmental Committee as to whether or not

to grant a reference.

As the association reads the act, there does not appear to be a specific requirement that all members of the authority be legal practitioners. The act seems to specifically provide for the chairman be a legal practitioner and there certainly has been some discussion and perhaps some recommendations in the past that persons other than legal practitioners could fill the role of a member. It is the association's view that because of the significant intrusive powers that the authority has, it is important that those intrusive powers, including the conduct of hearings, decisions made to require witnesses to attend and answer questions, decisions made to require people to produce documents and the need to determine issues such as privilege against self-incrimination and legal professional privilege, are matters which really require a legal oversight.

The association's view is that while these amendments should be made to the act, the authority does already have sufficient coercive powers and the act does not need to be amended to provide them with any greater powers. The association also takes the view that the act should not be amended in any way which will weaken the current protections which it provides. In particular, it is of the view that the present entitlement of witnesses and other people compelled to produce documents to the authority to claim privilege against self-incrimination should not be removed.

It also takes the view that those who preside at authority hearings should ensure that witnesses, whether they are represented or unrepresented, are made aware of their rights to claim privilege on the grounds of self-incrimination from answering questions or producing documents and that the authority must be particularly careful if a person is unrepresented to ensure that they are reminded of their right to claim this privilege when they are asked individual questions which are likely to expose the witness to self-incrimination. All of that, of course, is said subject to the existence of any appropriate immunity or indemnity that has been provided under the terms of the act by one of the directors of public prosecution.

In short, those are the association's submissions. If you would like to follow up any of those matters in more detail or raise any other matters with the association that it may not have considered in providing the submission, I would certainly be happy to answer those questions.

CHAIR—Thank you very much, Mr Irwin. That is obviously a very comprehensive submission. We look forward to getting that and a number of things you said will obviously be of interest to us. There are a number of matters you have raised which I am sure we will have questions on. You refer to the constitution of the authority. It is constituted by a chairman and two other members. There has been a vacancy for some time. The government is obviously having some difficulties filling the vacancy. There are some reasons suggested for that. Do you have any views on why the government might be having difficulty filling that vacancy?

Mr Irwin—I presume that one of the reasons might be that the people who are being approached to fill the vacancy are weighing up—as quite often lawyers do when they are approached to be judicial officers—whether it is in their interests to leave their practice for a period of maybe three or up to four years to be a member and then have to go back to their practice and try to re-establish it again after that period of time. I am sure that must be a matter that weighs heavily with persons who are being approached.

CHAIR—In that respect, are there limitations imposed on members serving a maximum of four years? Is that a problem or is that a strength of the authority?

Mr Irwin—It can be looked at in two ways. I think that is always a difficult question to address. I am on record, in appearing before the Connolly-Ryan inquiry in Queensland, as expressing a personal view that people in senior positions within the Criminal Justice Commission at directors level should turn over every five years. So what I say should be consistent with that.

There is a benefit for organisations and individuals in ensuring that they do not become too entrenched in organisations. There is obviously a benefit also for the organisation in getting fresh ideas after a period of time. There has to be a balance established. Four years might be too short; five or six years might be a reasonable period. The terms must be structured in such a way that there is an overlap between the terms of the members and of the chairman, so that you do not have the situation, which I think has occurred on some occasions with the authority in the past, where you have the chairman and one of the members leaving at the same time. There needs to be a proper structuring of the appointments so that there will be some continuity.

My answer to the question has to be that I think that there is some benefit in ensuring that people do not make a life-time career out of being a member or a chairperson of the National Crime Authority. There would be some scope to perhaps increase the term of the appointment from what it is at present.

CHAIR—But that would be, I assume, especially so that when the chairman retired, it would be desirable that someone who was a member of the authority for maybe three years were qualified to become chairman. Obviously, they would have only a year to go under the present arrangements. I assume you would then say that obviously there needs to be flexibility to allow them to serve a reasonable term as chairman.

Mr Irwin—I think that there would be a benefit if one of the authority members was able to go into that role if they had the appropriate qualifications for it.

CHAIR—The Queensland government's submission, which was given to us by the Minister for Police and Corrective Services, actually makes the point that this committee's report in 1991 recommended that consideration be given to appointing a senior police officer, either serving or retired, as a member of the authority. I was not of course

involved in that committee. That of course has not been implemented, as far as I am aware. What would be your view of that?

Mr Irwin—Consistently, with the submission that I have already made to you, it would be the association's position that, given the sort of powers that the authority has, they should be exercised under the ultimate control of the person who has legal qualifications. That is not to say that police officers and senior police officers do not have a role to play at high echelons of the National Crime Authority.

For example, I understand that the person in charge of the Brisbane office of the National Crime Authority, who is a former senior AFP police officer, by all accounts is running an excellent office in Queensland. There is no reason why senior police officers cannot play a role in the authority at that level, which is perhaps more hands-on on a day-to-day basis than what I would understand a member's role to be. But I do believe, on behalf of the association, that there is an important role for a legally qualified member to oversee the use of the authority's powers.

CHAIR—Thank you. Some of my colleagues might have questions. I have a number of others, but I will back off for a moment.

Senator McGAURAN—I have just one quick question. Taking into account your submission, could I say that you have got a glowing report on the NCA? It seems that you have spoken of them striking the right balance between the civil liberties and the law enforcement, and that you do not think there should be any change to the act to further empower them or not so. Is it a glowing report?

Mr Irwin—I am not commenting on individual cases. There are obviously documented cases which, as the chairman has indicated, are subject to appeal at the present time, where on one view the authority has gone wrong. But the association would take the view that the structure of the act at the present time, provided the act is properly used, does strike the appropriate balance and, subject to the proposals for amendment that the association suggested, it does not see any need for change to the legislation.

Senator McGAURAN—In general, they have been doing a good job?

Mr Irwin—In general, they appear to be doing a good job. As I say, from time to time there are obviously issues that come up before the courts, where the courts have decided that powers have been exercised incorrectly or that they have been exercised outside the terms of the references. Obviously, those things have to be taken into account when the authority conducts its business. But overall, as far as the association can gather, it appears that the authority is making a useful contribution, particularly over perhaps the last five years or so, where there certainly seems to be a view that it has been working more closely in partnership with other law enforcement agencies rather than in competition with them.

Mr FILING—Mr Irwin, at the recent conference held here into corruption, the view was expressed that the police commissioners, other police agencies, perhaps now view the NCA as a convenient way of—in what is called its new role of liaison—being able to access its extraordinary powers, which are not obviously generally available to them. Do you have a particular view on that?

Mr Irwin—I do not see, speaking on behalf of the association, that that is truly the role of the authority. Those powers should only be available, in the association's view, when the authority is working with a particular agency in partnership during one of its investigations under one of its references, and the use of coercive power should be limited to that.

Mr FILING—Just going back to the references again, do you think the reference process limits the authority's opportunities to be able to work in conjunction with their state and other police agency counterparts?

Mr Irwin—I do not see that it does. The references, as I understand them, normally involve matters that overlap with the work of state agencies. There will always have to be a close partnership, as I understand it, between the authority and the agency and the particular state where the authority might be working so that it can achieve its objects.

Mr FILING—And what about in the assessments of some of the prosecutions the NCA undertakes? Does the Bar Association, for instance, have a view about the type of legal consultation that ought to take place in the process of perhaps assembling a prosecution brief? I am thinking of the Elliott matter where there was obviously a fairly substantial difference in point of view as to whether or not that prosecution should have gone ahead.

Mr Irwin—I think the consultation has to be with the established body that is going to prosecute it, and that will either be the Commonwealth DPP or the state DPP. In Australia, of course, we do not have the system of the district attorney where the director of prosecutions is directly involved in investigations. It is appropriate, I think, that the director of prosecutions, or public prosecutions, maintains an independent role. But I do believe that the consultation should be something along these lines, that the director of public prosecutions should be available to at least provide general responses to the National Crime Authority about its views on matters when legal issues arise in the preparation of the brief, and of course at the end of the day it is for the director of prosecutions to view that brief and to make a decision whether or not it constitutes a prima facie case and whether or not the discretion to prosecute should be exercised in favour of the prosecution. I think that is appropriately the role of the director of public prosecutions.

You might find some differences in view, I suppose, from some directors of public prosecution as to just what should be the extent of their role during the investigative

process. I am not sure what the view of the current director of public prosecutions in Queensland might be—and I suppose I have got to say that this is probably more a personal view; I have not had a chance to really consult anybody at the association about it—but I do believe that directors of public prosecution should be available to at least give some guidance to the authorities of a general and legal nature during the course of investigations if issues arise which might cause the authority concern about whether something they are doing is legal or otherwise or is going to stand up in court.

Mr FILING—Obviously, given the debate that arose following the rulings in relation to the Elliott matter that somehow the NCA was acting in almost an unfettered way, do you see, in the general process of prosecutions and the way in which the references are framed, that there are sufficient checks and balances on the NCA's powers to provide the citizen with adequate protection against what may be an over-weaning use of powers?

Mr Irwin—My view is that there are sufficient checks and balances. The only possible addition that perhaps could be made that immediately occurs to me is a provision such as exists in the Criminal Justice Act of Queensland that allows for persons during the course of an investigation, who consider that the investigation is not warranted or consider they are not receiving natural justice, to be able to approach a court during the investigation to obtain an injunction. Now that is something that could be looked at, although even that is criticised in Queensland because, obviously, not everybody who is the subject of an investigation or is a potential witness in an investigation has the resources to seek that sort of remedy. But that might be something that could be looked at.

I find it a little difficult, really, to comment on the Elliott matter for the reason that the matter is still before the courts, and it may be ultimately that the National Crime Authority's approach will be vindicated. So, to a large extent, I suppose it is a hypothetical matter.

Mr FILING—It was a procedural thing more than anything else. The other part is, given that in the earlier matter and in other matters there was some leaking of information which obviously could be highly prejudicial in any case, do you believe that there are sufficient sanctions in the case of leaking of that type of information that may severely damage the reputation of somebody to be a sufficient deterrent to those that might want to do that to damage their target?

Mr Irwin—As I understand it, at the present time there is a criminal offence created under the legislation to disclose confidential information. There may well be other offences committed under other criminal laws as well. That should be a sufficient safeguard. What often seems to be the difficulty, and it is probably being demonstrated in Queensland at the present time with the alleged leaking of information, is actually identifying the person or persons responsible and being able to effectively bring a prosecution against those persons. That is perhaps where an independent inspector-

general's role with sufficient compulsory powers to conduct an investigation may be effective.

I think at the end of the day the question of deterring people from leaking information really goes back more to the significant possibility of being caught than as to what the sanctions will be, because I am sure that if they were caught the sanctions would be the loss of a career and no doubt some significant period of time in prison if convicted.

Senator FERRIS—Mr Irwin, I would be interested in any comments that you might have about the level of staff expertise that the NCA has, given that most of the staff are seconded from state police forces. Do you have any comments to make on whether the level of staff expertise is sufficiently high, whether it should be broadened, whether those people should be drawn from state police forces or from outside specialty jurisdictions?

Mr Irwin—It is perhaps a little difficult to look inside the authority and know exactly what its level of expertise or level of staff expertise is at the present time, although I do have some background in it because there was a period of time, for the committee's benefit, when I worked in the Melbourne office of the National Crime Authority, so I have got some idea of how it is structured as a result of that. That was for two years in the late 1980s.

It did seem to me at the time that there was a broad range of skills available. One of the benefits, I think, or one of the strengths the authority has is the fact that, more so than traditional police services, it is able to bring together these multidisciplinary teams and certainly—I am not sure if this is still the case—there seemed to be an ability to, I think under the act, second people, say from the tax department, to work with the authority on particular cases from time to time. By using those powers they could bring in the people who had the requisite skills.

I think the most positive thing I can say in answer to your question is this: I do not think that the authority should restrict itself to simply members from one particular police service. I think there is a benefit in having both federal police, who can bring their federal police powers into the authority, and state police, who also have their powers in particular jurisdictions, to work in the authority. I think it is important to have a mix of policing backgrounds in the National Crime Authority.

It is a little difficult, as I say, to comment beyond that simply because I am not working within the authority. I have not had any close, internal contact with people in the authority for a number of years. Certainly the contact with people that I have had within the authority has always shown that they are people who act professionally, and they certainly seem to have a dedication to what they are doing.

Senator FERRIS—Do you have any view, or does the association have any view on the sort of performance indicators that the NCA should be expected to meet?

Mr Irwin—That is not something the association has really thought through in any detail. It is always very difficult to judge the performance of a body like the National Crime Authority and I suppose that is why we have not really said very much on the question of efficiency and effectiveness. It is difficult to use what is often used as a performance indicator, and that is statistics; in fact, it is said in our submission that statistics obviously can be used in many ways. It is difficult to really determine whether the authority is working properly depending on how many arrests it has, because that may not be the appropriate way to look at it.

Provided those people who are assessing the authority are prepared to consider that it is conducting long-term investigations and is not able to achieve success overnight, I think the best performance indicator is perhaps the level of person who is being investigated and being brought to justice. It would be, I think, contrary to the NCA's charter if all they were doing was, for example, arresting low-level drug dealers, because that is something that really is the function of other police services in Australia. Therefore, one mechanism of evaluating the authority can be to look at just how significant the people are that they are investigating and what success they are having there.

I think it is also possible to look at other things that the authority might be achieving, for example: whether it is realistically receiving significant pecuniary penalty orders or significant taxation assessments; and whether or not it is not just looking at the question of whether somebody might be involved in drug activities, but whether it is really achieving looking at the whole picture by also pursuing those people successfully in relation to the profits of crime.

Senator FERRIS—I am interested in your response because the annual report details various people who have been charged, and the overwhelming nature of the charges is drug related and many of the results of those charges are very low fines, good behaviour bonds, and so on. It has been suggested that the National Crime Authority has been judged by the cost of each of those convictions. When the annual report was evaluated by this committee we asked a number of questions related to that matter. I am interested in your response on that. I just heard—

Mr Irwin—Could I just follow on from that?

Senator FERRIS—Please do.

Mr Irwin—It has to be accepted, I think, if you are targeting high profile, significant criminals, that in the course of doing that you are also going to pick up the underlings who might be a bit lower down the scale. Investigative agencies, as you are no doubt aware, work by perhaps sometimes starting at the bottom and trying to turn people over and then working their way up through the organisation in that way. So it may be that in the course of the authority's work it will of necessity also pick up people who are lower down the scale. But, at the end of the day, the proof of the authority's success has

to be whether, over a period of time—because these things, it must be accepted, cannot be done overnight—the authority is getting to people who are clearly high up in the hierarchy of criminal activity, whether it be drugs, fraud, conspiracy to defraud the Commonwealth of funds, or whatever the offence might be.

Senator FERRIS—Nevertheless, I would like to ask you whether your association believes that it is beyond the ability of other law enforcement bodies to carry out the work that the National Crime Authority currently performs?

Mr Irwin—I think I can say that on behalf of the association; I can certainly say that from my own point of view. Firstly, I think there is enough criminal activity existing in Australia at the present time so that all of the current law enforcement bodies put together probably would not be able to deal with all of it. But as I said in my opening remarks, the other law enforcement bodies are really either the state police services or the Australian Federal Police, and in some cases with assistance from royal commissions and commissions of inquiry. I think, so far as state police services are concerned, they have to respond on a daily basis to the needs of the community and they do not have the time and resources available to them to be able to carry out, on the whole, the long-term investigations which the National Crime Authority can.

Secondly, there is no doubt that in order to effectively investigate organised crime you need access to some special coercive powers, including telephone intercepts. Not all state police services, as you are aware, have available to them telephone intercepts. That is certainly not the case in Queensland, for example. The authority has some powers vested in it which state police services do not currently have. I do not think it is likely that state police services are going to get those powers because there has been too much criticism of corruption in individual state police services—whether that is pockets of corruption or more systemic corruption—to expect the public to feel comfortable in allowing those powers to be given to state police services.

Of course, the Australian Federal Police has a broader jurisdiction than state police services, but it, too, has to some extent to respond to daily community needs. It also does not have—and this is probably the major issue with the Australian Federal Police—the special coercive powers which the authority has. Again, it is probably unlikely that they are going to get them because the Australian Federal Police has not emerged entirely unscathed out of the Wood royal commission. So it is perhaps unlikely that they are going to be given those powers as well.

The sorts of powers the authority has, the association recognises, are essential to the investigation of organised crime or official corruption of a national and international nature and, because they are such intrusive powers, should be limited to maybe one body or a relatively small number of bodies. If those powers, on that reasoning, cannot be given to state or even federal police services, then in my view—and I think the association would share this view—provided the accountability mechanisms and safeguards are there,

it is appropriate that some national organisation, whether it is called the National Crime Authority or given some other name, has those powers, and it should be not just a police body but have other professions in it that can act as a balance to ensure that these powers are being properly used.

Senator CONROY—Given the levels of corruption that have been exposed in the last few years in the Queensland police force, in the New South Wales police force and at the moment in Victoria, do you think the public could really have confidence that they would be able to tackle organised crime?

Mr Irwin—I think that these are matters very much of perception by the public, particularly in New South Wales at the present time. I probably know less about Victoria because it has had a little less publicity, although I read something about it. If it is a current problem, the public may well perceive that the police service cannot effectively or appropriately investigate it. Even in Queensland, where there has been, quite clearly, large moves ahead by the Queensland Police Service since Fitzgerald, I do not think that there are many commentators who are suggesting, whoever should be investigating organised crime in Queensland, that it should solely be the province of the Queensland Police Service. I think it is a matter of perception and I think that is a valid observation.

CHAIR—You mentioned in your opening remarks the question of references. Could I ask you to add to that? The NCA is somewhat fettered by the references it is required to get. No other similar authority is so fettered. The ACCC is not and a number of others, I think, are not. What would your reaction be to a suggestion that that constraint be removed?

Mr Irwin—Consistent with what I have said on behalf of the association to date, the association would not feel comfortable with that, again because of the nature of the powers that the authority exercises, and it would see that the reference requirement is an important safeguard in ensuring that those powers are not used unnecessarily.

CHAIR—So you would not see the reference system as perhaps laying the system open to claims that there was political interference? There have been suggestions of that on occasions.

Mr Irwin—There is always a danger, I suppose, of those sorts of claims and no doubt they will continue to be made, but the association would see it as an important safeguard. As I understand it, the authority, in the first instance, will bring a reference to the IGC and make a recommendation that a particular matter be subject of a reference. So provided the authority has that input, and remembering that the IGC will consist of ministers from throughout Australia who will come, no doubt, from different political persuasions depending on who the government is in the relevant state or at a federal level, then that should be some safeguard against there being political interference.

CHAIR—You also mentioned in your submission relevant criminal activity. Should the definition of that—I am not sure how it is defined exactly—more closely describe organised crime?

Mr Irwin—I do not believe so because I think it is very difficult to find a useful working definition of organised crime. That is probably why, in the first place, the National Crime Authority legislation did not seek to define organised crime. It depends how you define organised crime. On the one hand it might be too limiting; on the other hand it might be described in terms which are too wide. So it is perhaps best to have the definition which is provided at the present time.

My recollection is that is an issue which has been raised with the Criminal Justice Commission in Queensland as well because that is one of its functions. Certainly, there was a discussion at some stage, as I recall it in Queensland, maybe a few years ago, about trying to define organised crime. I believe there was even some consideration at one stage being given to defining organised crime for the purposes of the Queensland criminal code, but my understanding is that no-one has really been able to come up with a working definition of exactly what organised crime is.

CHAIR—The recent budget, of course, has given the NCA funding for a particular role in fraud prevention. Do you have a view on that?

Mr Irwin—I think it is important that the National Crime Authority not be seen purely as a body that investigates drugs and that it has a role in other things that are a significant imposition on the Australian community. It would, in my view, be appropriate that the National Crime Authority has a role both in investigating fraud and, as I understand it has done in a number of reports, making some recommendations about loopholes that exist and about ways that can be adopted to minimise fraud.

CHAIR—Today's *Bulletin* magazine is running a story which we have just been given a copy of—I guess it has just hit the newsstands—about the role of the NCA in white collar crime. I suppose white collar crime is also very broadly defined as well. Fraud prevention could well be white collar crime. But I am quoted here as saying, 'Let's move into white collar crime', particularly in reference to the Elliott case which was a major diversion, I think probably a pretty unhappy one as it turned out.

Senator CONROY—That is your personal opinion, not the view of the committee.

CHAIR—That is my personal opinion. The result, in a sense, is the problem it has created is an unhappy one. I am not commenting on the substance of the case but, as you said, literally the matter is not finalised. What would you see white collar crime as being?

Mr Irwin—White collar crime is any form of corporate crime or fraudulent activity. I do not think I can come up with a better definition than that. Obviously, all

frauds involve white-collar crime. All corporate malfeasance which might be associated with—

CHAIR—The point is that the NCA has got a role in white-collar crime, and that is quite legitimate.

Mr Irwin—That would certainly be the association's view. I think that it is important that the National Crime Authority—and I am sure the association would also have this view—not be seen as a body which is simply a super drug investigation agency, and that quite often the people who are involved in drug trafficking, for example, may also be involved in other conduct that might also be properly regarded as white-collar crime. For example, someone might consider money laundering is an example of white-collar crime, depending on who is doing it. Quite often, the areas are so interrelated that it would be, in my view, not appropriate for the authority to be limited simply to drug activity, for example.

Senator GIBBS—Just following on from that, what has been exposed in Australia with white-collar crime is really the tip of the iceberg, is it not? It really is immense. Everybody sees it, no matter what industry they work in: whether it is taking home the biros, which is pretty petty, or knowing that your boss is ripping the place off. The National Crime Authority should have the powers, rather than letting state police do it, because we know corruption is systemic in most police forces in Australia. That has been proven. I know there are some good cops, but the nature of the job is a problem. The National Crime Authority should be involved in everything. If they were to have powers of phone tapping and extraordinary powers as a body, they really should look at all crime in Australia, surely.

Mr Irwin—Yes. That is consistent with the view that I am expressing on behalf of the association—provided that they are looking at it at an appropriately high level. Obviously, there is a level. You have referred to some of those cases where state police services—or, in some cases, bodies like the ICAC or the Criminal Justice Commission—can quite appropriately conduct the investigation, provided it is at an appropriately high level to justify the use of special powers.

Senator GIBBS—With regard to staff who work for the NCA, do you think there should be some sort of checks and balances—for instance, checking out by ASIO, cross-referencing and that sort of thing?

Mr Irwin—I think that anybody who works for the National Crime Authority has to accept that they have to be stringently vetted. I am not sure to what extent that is done now, or what the NCA does about vetting staff. But I think that, if you are working for the National Crime Authority, you have to accept that you have to be cleaner than clean and that there can be no possible blot on your character. If it means being checked out by ASIO, or by whatever other means are available, then I think that should be done.

CHAIR—You mentioned under the guise of accountability a role for the Inspector-General. You would be aware that the Australian Law Reform Commission has recommended the establishment of a national integrity and investigations commission: could you give us the benefit of your view on that? You have the report in front of you.

Mr Irwin—I am not sure of the full details on how that commission would be established. The association would not be hard and fast with the idea of having an Inspector-General and considering nothing else; that is one model the association suggests could be taken into account. The association is really saying at the end of the day that there needs to be some independent outside body or person with sufficient powers to properly investigate complaints against the authority, and those matters should not be left to be investigated within the authority.

I appreciate that, in that 1991 report you mentioned before, this committee took the view that it really did not have the powers or resources to fulfil that task appropriately itself. If that is the case, there does need to be some outside independent body with sufficient resources and powers to be able to properly hold the authority to account when complaints are made. That might be an Inspector-General. Obviously, other people have floated the idea of an ombudsman. It might be a national integrity commission; but, whatever it is, it has, in the association's view, to meet those criteria.

CHAIR—You obviously do not believe that the chairman of the authority should himself have the power to investigate complaints about the NCA.

Mr Irwin—No. It is important from the point of view of public perception, if for no other reason, to have those complaints investigated by an outside body—simply, again, because the authority has such significant intrusive powers. It does not matter who your chairman is, or who your members are, or how well regarded they are: I believe that there is always a danger that, when matters are investigated internally in bodies that are as public as the National Crime Authority is in its operation, there will always be a perception that the body is simply coming to a result which accords with its own interests, rather than investigating the matter properly. That is not to say that there will not be what are quite clearly internal disciplinary matters that should be dealt with by the chairman; but, in relation to the sort of complaints that I think are being referred to, it is in the authority's interests, I believe, that that be done independently.

CHAIR—Thank you. As there are no other questions, we will conclude this particular part of the meeting. Mr Irwin, thank you very much for appearing. Is it the wish of the committee that the document from the Bar Association of Queensland be published and incorporated in the transcript of evidence? There being no objection, it is so ordered.

[The submission from the Bar Association of Queensland appears at the end of today's proceedings.]

[10.16 a.m.]

BOTTOM, Mr Robert

CHAIR—I welcome Mr Bob Bottom as a witness. Mr Bottom is described variously, but I notice in an article he wrote back in 1983 he is described as a journalist and former special adviser on organised crime to the New South Wales government. Perhaps that will do. Thank you for agreeing to appear before the committee. I think your background experience makes you well qualified to give us some worthwhile perspectives in our inquiry. Before inviting you to make an opening statement, I am required to state that if, during the hearing you consider the information you might wish to give or the comment requested by committee members to be of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application.

We have this morning received a copy of a submission which you are going to go through with us and we have also received a copy of an article titled ‘A national crimes commission?’ written in 1983. What I would like the committee to agree to do is to incorporate both of these documents in the transcript of evidence and to authorise the publication of the first document which I referred to as your submission.

Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The document read as follows—

Mr Bottom—The reason I provided the earlier paper ‘A national crimes commission?’ is that back in 1983 it was a definitive speech I gave to a forum held in Sydney chaired by Sir Laurence Street post the National Crime Authority summit in Canberra at which I was a delegate. At that time it probably summed up the background of how the move for a crime authority, then a crime commission, had come about, what the problems were in Australia, what was then seen to be the remedy and some other comments on powers.

It is relevant in the sense that it has been quite a number of years since the NCA came into existence in 1984. It has had going on 12 years experience now. I am coming from a point of view that I wrote the first report—and I will not dwell on the history—recommending a crime commission in Australia in 1978. It was subsequently adopted in 1978 in New South Wales, taken up later in Victoria and things moved on. But, anyway, maybe we could come back to that. I will address myself to the four terms of reference.

Concerning the first, in quite a departure for me, contrary to a longstanding position advocated previously in favour of a public hearing oriented crime commission concept, I now submit that the structure of the National Crime Authority should be preserved in its existing form except that it should be encouraged to make more use of its present scope for holding public sessions to better inform the public of trends and issues without relying largely in its annual reports.

The now tried and proven NCA approach has resulted in prosecution of a multitude of identities involved in organised crime left untouched by a plethora of royal commissions and other commissions of inquiry.

Under your reference two, I would suggest that an examination of the NCA’s summary statistical report on investigations indicates that the authority is back on track in fulfilling its original charter, in contrast to a disturbing departure during an unfortunate period mid-term since its inception in 1984. For a more contemporaneous assessment, I refer back to an editorial I wrote with an accompanying graph in *Insight Bookmagazine* 1992 and it is attached there. It shows a graph on the decline in—

CHAIR—We will distribute copies of this to journalists.

Mr Bottom—It was fairly interesting what was said at that time. I thought it was a betrayal of what everyone had fought for at that time and events subsequently proved me right. Anyway I say to you that—

Mr FILING—This is under Phillips’s direction?

Mr Bottom—Yes. I say there that:

Under Phillips in particular, the hijacking of the focus of the NCA away from organised crime to trendy notions of white collar crime, a task supposedly the domain of the Australian Securities Commission, represented the betrayal of the aspirations of ordinary citizens, especially in NSW, who risked much for years in campaigning to force establishment of a body such as the NCA to combat drugs and organised crime.

For my part, I might tell you my family lived for 11 years under 24-hour guard so we take great umbrage at people coming on later on and hijacking what many people risked so much for in earlier days.

CHAIR—When was this editorial written?

Mr Bottom—In 1992 I think. The NCA annual report used to have a graph in those days, but after that it was so embarrassing, they have never published one since.

CHAIR—We have asked them actually to look again at publishing graphs so we can understand the annual report when they give it to us each year.

Mr Bottom—Maybe I can whip through this until we get to some of the meaty bits. For the Parliamentary Joint Committee's current evaluation, the NCA's performance may best be judged by comparing its statistics for the first five years of operation with its statistics for the last five years, and then in particular, by contrasting each of those five-year periods with the haunting slide evident for 1990-91.

For the five-year period from 1985 to 1990, the number of persons charged totalled 443, representing an average of 88.6 per year. The number of charges laid totalled 2,247 representing an average of 449.4 per year. In comparison, the number of persons charged during 1990-91 totalled just 15, thus only 16.9 per cent of the average for the preceding five years. Charges laid for 1990-91 totalled just 40, thus only nine per cent of the average for the preceding five years.

For the last five-year period from 1991 to 1996, the number of persons charged directly by the NCA totalled 311, representing an average of 62.2 persons per year. The number of charges laid totalled 1,035 representing an average of 207 per year. In addition, during the past five years, the number of persons charged by joint task forces totalled a further 482, representing an average of 96.4 per year, the number of charges laid by joint task forces totalled a further 1,900, representing an average of 380 per year.

If the NCA and JTF statistics are combined, the combined results for the last five years represents an overall total of 793 persons charged or an average of 158.6 persons charged per year and a total of 2,935 charges laid or an average of 587 charges laid per year. In simple terms, it means that in the last five years, through its own investigations and joint operations with task forces, the number of persons charged has been nearly 1.8 times more than in the first five years and nearly 10 times better than during 1990-91. Likewise, the number of charges laid in the past five years, overall between the NCA and

joint task forces, has been 1.3 times more than during the first five years and nearly 15 times better than during 1990-91.

More significant still, the combined figures for the last statistical year, 1995-96, which reflects a continuing upward trend, show that 120 persons were charged by the NCA and 268 by joint task forces, a combined total of 388. In final analyses, that represents a result four times the annual average for the first five years and nearly 26 times better than for 1990-91. As for the number of charges laid, the figures for 1995-96 show 300 for the NCA and 757 for joint task forces, making a combined total of 1087, thus a result nearly 2.4 times more than the annual average for the first five years and 27 times better than for 1990-91. I think it tells an interesting story.

Under No. 3 I say that there should be no bar to the Parliamentary Joint Committee having full access to NCA material if required and that the PJC itself should be prepared to hold public hearings should matters of concern arise justifying public exposure, in the public or national interest, especially matters involving corruption of public officials. I will come back to an explanation of that.

Under No. 4 I say that the power of the authority to use its special powers should be extended by a legislative amendment to apply generally to an investigation specifically relating to the drug trade, with a sunset clause of three years, notwithstanding any existing references or future references directing the authority to investigate nominated aspects of the drug trade or ancillary matters.

Whilst it might otherwise be recommended that the NCA be empowered to use its special powers for investigations generally without being limited by references, the unfortunate experience of 1990-91 signals caution, lest a future chairman misdirects the NCA away from dealing with priority organised crime matters into so-called fashionable issues. The extension of open-ended use of such special powers at state level for the New South Wales Independent Commission Against Corruption and the Queensland Criminal Justice Commission has all too often resulted in those bodies becoming too wide-ranging and getting involved in political issues while neglecting priority criminal or corruption matters.

In particular, matters such as the John Elliott case should never have been referred to the NCA, for use of its special powers, since such powers were already available to the Australian Securities Commission. I am quite happy to address any of those issues.

CHAIR—Maybe you should go back to point No. 3 first.

Mr Bottom—What I have in mind in No. 3 is that I have lost faith actually in the very knee-jerky reaction to hold royal commissions or get judges or QCs to hold inquiries, where you put a great load of faith in one person with great power and they have not all got it right. You can go through the history of the royal commissions. Keep in mind that I

am credited with starting 18 royal commissions and judicial inquiries in Australia; I could run through most of them. I can tell you that, even just for the purposes here, the Moffitt royal commission did not get Lennie McPherson, Mr Big, or any of the figures that he dealt with.

The NSW Woodward drugs royal commission operated from 1978-79 and into 1980, as did the federal Williams drugs royal commission. Neither of those commissions got anybody and in fact, while they were operating, the Mr Asia syndicate operated under their noses, murdering people and running drugs all over the east coast of Australia. No-one in the Mr Asia syndicate happened to get a mention at either royal commission.

Senator McGAURAN—Did it bring about change, though?

Mr Bottom—Yes, they did. I am not knocking them; I will come to the point in a minute. I think the concept of the NCA of actually getting people arrested is better—not that you do not need the other, but I will come to the point. All of them served a good purpose. Costigan did a good job but missed Charlie Wootton and other key figures of Victoria. You can go through the Fitzgerald commission. Here we are in Queensland. Fitzgerald did not even touch drugs. What a lingering scandal for this state or a legacy that just makes a mockery of the process, and it can go on and on.

I was on the committee that set up the ICAC in New South Wales. I was on the official committee that established it. I can remember sitting down. We even made out budgets and everything, even down to the brand names of listening device equipment, bugging equipment and everything—\$1.4 million. It was never used by that commission. The one thing that commission did not do was tackle police corruption. New South Wales has had a royal commission since. I was the man who even rang up Temby and gave him the job, and he was with the Commonwealth.

People like that do not always do the job if there are open-ended public hearings that are often playing to the media. Probably there is limited time today to go through it, but I have changed my mind very sharply on it because I think that a lot of them have let down the community, or else they have done a good job. A lot of it has been grandstanding. There has always been a complaint, ‘Who is going to implement royal commission findings and all that?’ But the fact is that the NCA, unheralded at times, has gone about and got Abe Saffron, Mr Sin; they got Lennie McPherson; they pursued the Trimbole type people of the world. There is quite a record of people they have got that police forces or any other agency have not touched.

Getting back to three, I am of the view that if you appoint a royal commissioner, it involves a limited term and has limited terms of reference. Sometimes they are run by judges, and sometimes by other people who might make themselves a million dollars and you never hear from them again. But there is no ultimate accountability. I suggest that if there is a necessity with you having total access to what the NCA now knows

accumulatively after 12 years and there is major concern on corruption, this committee itself would be better placed than judges or QCs to hold an inquiry in the public interest.

Overseas experience is that many of them have been very good. I am not saying it is going to happen federally anyway. You can have a judicial arm to it. I believe there is a very unfortunate record of a lot of these other commissions and inquiries haring off in silly directions and missing the main targets. I think that accountability has been lacking in the sense that while they are accountable to committees like yourselves and the like, as for a royal commission, most of them you never hear of after they have done their royal commission. There are not too many out there like former politicians and others who are still trying to do something for the Australian community. There are a few.

Mr FILING—Frank Costigan is one of them.

Mr Bottom—Frank Costigan definitely, and Athol Moffitt. I still keep in touch with him.

All I say is I do not have much faith in royal commissions and the like. I think that the accountability part of it may give you some thought that there will be no problem for a parliamentary committee to pick up the resources of the NCA and look at some of these corruption type matters if they are of national concern, rather than give the open hearing to the NCA and let them start playing to the gallery.

I have a very firm view on it at the moment. I know, especially in New South Wales, it has been terribly frustrating when having been involved in it for many years, police and others take a lot of risk. They have got a lot of information. Once these bodies are set up they go their own way. You will find that even with the Wood royal commission in New South Wales, it still did not get to the core of the corruption in that state. With all due respect, Commissioner Wood did a good job but we may never hear of him again. I like the accountability business.

Anyway, it is only a thought for you, but it has been done elsewhere.

Mr FILING—Going on to section four of your submission, extension of the powers, which I think is probably the critical issue as far as your paper is concerned, would you subscribe to the view that in joint exercises where you have got state and perhaps Commonwealth police forces, the NCA and customs, that they should look to the NCA to be the provider of the tools of trade for surveillance and, in particular, electronic eavesdropping?

Mr Bottom—They can look to the NCA in joint operations for the use of its coercive powers but also the resources of intelligence, that is, the combined direct and indirect access from the Australian Bureau of Criminal Intelligence.

One of the things I must say in retrospect about the Justice Phillips episode, though he diverted the NCA away from its core business into this notion of organised crime and they just lost the plot, he did actually set in train something which was significant. That is, he redirected the NCA to more properly fulfil its charter of coordinating task forces. That was always envisaged. Justice Stewart tended to want to run strike forces and do it all himself and be competitive. We are now seeing the results of that down the track and the numbers are coming up. There is this consensus among police commissioners and all of that for good or bad.

Coming back to Mr Filing's question, the nub is, if the inquiry is justifiable, that is, it is a national matter of some priority, I think it is very appropriate. The NCA really is there so they can have access to the coercive powers. It is under property scrutiny.

When it comes to some of the surveillance techniques, some of the state police forces are better than the NCA and the NCA in turn is actually reliant on them. That is for listening devices and surveillance. The one asset the NCA has got, of course, is that it can use phone taps. Some states can use them, but Queensland cannot. When you weigh up who is providing what, there is a combination of expertise. I think it really is the only way to go, except that the NCA always should retain the ability, with its legal and accountancy resources, to have its own strike forces where it needs to. It may assemble its own team on something and go bang, bang, and knock it over without getting bogged down too much in coordinated task forces.

Mr FILING—Just to follow that up, the critics of the authority have pointed to more recent chairmen of the NCA and said that they should be somebody more eminent in order to improve its 'standing'. According to your submission, when the NCA had its most eminent chairman, it did not do the things it was supposed to do. Don Stewart, then Sherman and more latterly Broome have had it on course, according to your submission. Do you subscribe to the argument that having someone like, say, John Phillips, a very eminent judge and now Chief Justice of Victoria, does make a great deal of difference to the performance of the NCA?

Mr Bottom—I think I said he was an unfortunate chairman and I still hold with that view. He is an eminent person and I must say he did some good work in chasing up the Mr Asia syndicate and matters of that nature. Some people, by their eminence, are not the best suited to the work. When you are chasing crooks like this, it is a bit like some journos who only chase headlines and by-lines instead of the public interest. I would make the same distinction—

CHAIR—Present company excepted.

Mr Bottom—Right. One of the banes of my life is that, in judicial terms or law enforcement, often the high fliers are not the ones you want. You want someone who really is going to get some results.

With the NCA, I know the bar association. I did not agree much with Marshall Irwin, who I knew when he was with the NCA, other than to say that he was talking about not using the coercive powers if a matter was out of jurisdiction—that is, if it was only a state matter. As I say in No. 4 in particular in the Elliott matter, I claim that there was no need for the NCA ever to be involved, because that is the reverse. The body that flicked it over already had royal commission powers; they have had it for decades.

In Australia we jump up and down about the NCA's power, but let us put it on the table: the companies legislation has had royal commission powers forevermore. While we sit here today, I can tell you there will be inspectors from corporate affairs offices tootling around the suburbs of Brisbane or Melbourne or wherever, calling on businessmen, demanding their documents. You think of the process of the NCA. They can demand them on the spot. They can interrogate people who have to answer questions. All of the powers that are preserved from the NCA are being exercised on an hour-by-hour basis every day under the National Companies and Securities Commission.

Senator CONROY—How much white collar fraud have they detected and prosecuted successfully?

Mr Bottom—Very little. In fact, I was advising one government at one time that we felt that that was one area that was terribly neglected. If you check the record, when we were pushing for a state crime commission, we saw it as targeted particularly then, in 1978-79 and up to that period, for organised crime. People did not even know about it. They would not accept that it existed.

White collar crime was then being addressed for the first time. Lionel Murphy, for instance, had tried to set up some uniform legislation. It all came about eventually. The uniform legislation for the National Companies and Securities Commission was justified on the basis that that would be the answer to track down white collar crime. It is very well documented at that period.

Once they went to the interim body, which was the National Companies and Securities Commission under Henry Bosch, I would say quite flatly that they abrogated their responsibilities and did not do their job. Most of the corporate crooks of Australia had a heyday while that body was in power. There was a bit more action afterwards. The record speaks for itself.

Yes, since then, they have tried to track down Skase. They have gaoled Bond. But none of them were touched during the Henry Bosch era and that is where the Elliott matter came from. I can remember the original Elliott matter being leaked to me. I could not make head nor tail of it, nor could most people who saw it at the time, but knew there could be something in it. If there was something in it at the early time, the National Companies and Securities Commission should have pinned it. It had more power than anyone. It is just a travesty that Bosch and his office flicked it elsewhere and that the

NCA got landed with it for good or bad, whether it was a good prosecution or not. The fact is that, on the basis of powers, it should never have come to the NCA.

Similarly, you have a Bankruptcy Act that has got all the royal commission powers and, again, today you have got rabid inspectors demanding access to properties—they do not need subpoenas and all of that. With the fruit fly up in North Queensland, the department handling that has got more power than the NCA; they can send inspectors into your house and check whether you have got Argentine ants, and all that sort of stuff. It is just ludicrous. Talk about drugs or that! If you have a home out in a suburb of Brisbane today and you have 12 chooks—I am not sure what the limit is, but I think you are not allowed to have any more than six or 12—you can be raided by the Egg Board and they can seize your bank accounts to make sure that your kids have not sold any eggs up at the local shop. The whole thing is mind-boggling.

CHAIR—So has the Egg Board got more powers than the National Crime Authority?

Mr Bottom—One of the great stories of all time is that one of Queensland's major early drug traffickers was running a big plantation just across the New South Wales border in some forest area and the police thought, 'How do we get into there?' They said, 'Look, if we could just lob in there, everyone's there, we would get the lot.' So what they did was get a helicopter and they took the noxious weeds inspector with them. He had all the power under the sun, so they raided the plantation under the noxious weeds legislation and the police grabbed everyone. Of course, you know what happened—it is like the Elliott matter: subsequently in a court it was ruled that the noxious weeds man somehow did not give the right warning, or something or other, and the prosecution was eventually thrown out. But they had nabbed everyone, even the principals, on the spot.

One does not need to dwell on this, but before we get too preoccupied about what powers the NCA has got, just study the areas where it already is available to various bodies. When it comes to dealing with things—and I know the chairman and the committee have got some more money for the NCA to tackle fraud—can you imagine if tomorrow there was an outbreak of anthrax in Queensland, South Australia or Western Australia? The federal government would find tens of millions, if not hundreds of millions, of dollars overnight and do everything possible to wipe it out. And we have got a drug problem that is worse now than it ever has been, and I believe part of the blame still comes back to 1991.

Senator CONROY—The previous witness was suggesting the National Crime Authority does not want to become a body that is seen to be just a super drugs agency.

Mr Bottom—I made a note here that that is the one point on which I disagree. With the NCA, one has to look at history. He mentioned the definition. When you look at the relevant criminal activities, it is a bit diffuse when you see it in black and white and

you are exposed to it over 12 years. But the reality is that in every inquiry, in public debate, the NCA was seen as a body to tackle organised crime per se. It has tackled some of the Mr Bigs and Mr Big Enoughs, and the like.

The biggest area of organised crime is drugs. Traditionally, at least in modern times, there were three arms: illegal gambling, vice and drugs. Since the NCA started, the vice field has totally changed, there is decriminalisation or legalisation throughout. After the Fitzgerald experiment in Queensland there is less, in fact there is minimal corruption, and what not, in the vice area—except that some of the major criminals of Australia own legal brothels in Victoria.

When you come to the illegal gambling, we now have casinos, and we do not have all of the graft of Sydney and Brisbane on the gambling front. There is less race fixing at the moment and there is a diminished turnover, as I understand it, for SP bookmen. So the two main arms of the money pot that funded the entry of organised crime into the drug trade have been diminished.

When we were looking at it in the 1960s—and I started on a lot of this—we did not have a drug trade. We did not even have drug squads in some states in the 1960s. So it all blossomed. The heroin did not come to Queensland, for instance, until 1973 and then it took off. By the time the royal commissions were under way in 1978-79 in Australia, at federal and state levels, the drug trade, for heroin and everything, was pretty serious.

But with the focus of the royal commissions and the introduction of the NCA and other matters running parallel to the Costigan and Stewart royal commissions, as I understand the position—I think it might be substantiated by a report the NCA committee itself did at one stage—the drug trade stabilised throughout the 1980s to an extent. There was a certain known level. Prices did not fluctuate a great deal, and usage was the same towards the end of the 1980s as it was in the 1970s.

However, as I understand the position since the NCA joint committee did its report on drugs, I would say that heroin usage in Australia and trafficking in it has probably gone up 50 per cent. Some areas of drugs have gone up 60 and 70 per cent. That is an absolute national scandal. It is not attributable to the NCA, but somewhere, someone has lost the plot because we had turned the corner.

All sorts of people could get up and say, 'We have turned the corner. We can't wipe it out'. What has gone wrong?. That is why I disagree. I am not saying it should be seen as a super drug body, but somebody has got to do it. Take Queensland where it is relevant at the moment. There is now a separate inquiry into an allegation of police corruption in the drug trade. How come in a state like Queensland that Fitzgerald never touched the drug trade and the CJC, with all due respect, has not done much about it since? The police are becoming a bit more active now.

What signal does that put out to the world? This is the gateway to Australia. That is why I say let us have someone consider giving a general reference to the NCA to target drugs absolutely, all out. There could be a three year sunset clause.

Can I tell you this? I have been to most royal commissions. The first unit ever set up to deal with organised crime in this country was in 1974 following the Moffitt royal commission. It was a crime intelligence unit set up by the New South Wales police force. There were 11 men. In the few years after that, they achieved more than all the NCAs, ICACs and everything else ever since. No-one over that period could equal their effort. They just got in and did the job.

I am making the point about corrupt bosses. It is not always money and all this, it is people prepared to go into work one day and say, 'Let's really do something'. As much as you see the dedication, I do not believe that this great industry of national crime commissions and these other commissions are really doing the job.

As I said, I was the bloke who rang up and gave Ian Temby the job, and I do not believe he did the job. Certainly he did not do the job for which that commission was set up originally, and then they had a royal commission. But what have we got in New South Wales now? We have the National Crime Authority doing all right. You have a state crime commission and an Independent Commission Against Corruption. You have now got a Police Integrity Commission.

What headway did they make when evidence can now be given at a royal commission in New South Wales that, under the noses of everyone, everyone is profiting from graft at the Cross? It is one thing protecting the graft. I will go back to Mr Filing, he has a police background and he will appreciate this. What was the drug squad of New South Wales doing? What were their own task forces doing, the state crime commissions and the NCA doing, when openly at Cabramatta and more particularly at Kings Cross, all these premises were full of kids buying drugs? What went on day by day? It is just not right.

CHAIR—Before we move off, can we pin you down on one fundamental issue? The reason as you described it for the reduction in vice and gambling was essentially due to a legalising approach. Is that the answer to the drug problem? I am not suggesting it is, but I would like your views. Justice Wood's report now says that we have lost the battle and that police will always be corrupt while drugs are illegal. In other words, you have to remove the temptation. He is recommending heroin trials and also, essentially, suggesting decriminalisation. What are your views on the general subject?

Keep in mind that the review of the National Drug Strategy has just been completed. The health minister has it. I have not seen it yet and, obviously, myself and my colleagues will be very interested to see what recommendations are in that. I would hope that it would be tabled and that there would be considerable public input to it. It is a

fundamental issue in my view. I am sure the members of this committee are interested to know where we go with the war against drugs.

Do we follow the American model or do we continue down the European harm minimisation track? Are you aware of what has happened in Sweden? They have actually done a 180 degree turn. They went down the harm minimisation track for years and they have turned back the other way because that did not work.

Mr Bottom—I am not putting myself forward as an expert on health and other social aspects of drugs, but let me tell you this. I find again there is this plethora of structures of NCAs and all that we now have in Australia. You people are sitting here holding one body to accountability, which now is in partnership with others. You must ask yourselves when you go through all the ABCIs and graph it all up, ‘Heck. Why shouldn’t this be working?’ I’ll just dispose of the first one.

We also have a similar structure dealing with the health aspects of drugs. One of the big moves that came concurrent with the royal commissions was when there was a containment of the drug problem which stabilised in the eighties with education and whatnot. Why has that failed? You do not hear much about it now. Again you can compare them with results around the place. We have run campaigns in Australia, such as ‘Keep Australia Beautiful’ and all sorts of measures of awareness that have got identifiable results. Again social workers, lawyers and others have created an industry for themselves. They have failed and they ought to be looked at. The cost of that is probably the take for most of the people in drugs and organised crime. They are just all over the place. It is a great industry.

Getting back to whether you legalise or not, the history in Australia is that drugs were legal until the 1920s. You could buy heroin and morphine from the chemist shops and that is where the Grimwades made their money. They were the dispensers of our drugs in those days. After the Second World War, the troops had to use heroin for pain. Many of them came back, developed a habit and a trade built up. It was absolutely undermining the armed forces and society in the 1920s. The drug acts and prohibition came in the late 1920s. Prior to that, all you had to have if you went and bought heroin was a little label under the Poisons Act. Then when those drugs were under prohibition, it wiped out that trade.

Then came the cocaine trade with the razor gangs and the like right through the late 1920s and the 1930s, coupled with the emergence of the Italian Mafia in Queensland. I think they murdered 13 people in Innisfail along the coast of Queensland. They used to blow up people’s houses, cut their ears off and stick them on their doors. It was a terrifying period. Governments acted in those days. They brought in special police laws. The consorting act was brought in directly aimed at the razor gangs and the cocaine trade.

Several things happened. At the state level, the governments brought in consorting

laws and wiped out the gangs, at least the cocaine gangs and that was the end of the cocaine trade. Governments did not worry too much about ethnic political correctness in those days. They just deported some of the ring leaders from Queensland and those they could not deport they hunted across the border and they ended up at Griffith, Sale and Mildura. That is the history of how the Mafia got to Griffith.

The cocaine trade was wiped out. We had no drug problem even during the Second World War years and there was in the First World War. We did not have it in the fifties. The drug culture did not emerge in Australia until the late 1960s, first with purple hearts and pills at places around King's Cross, et cetera, and then marijuana, coupled with the R&R influx. Within a few short years, the French Mafia set up base here at Kangaroo Point in Queensland and streamlined the heroin trade in Australia in conjunction with Australian gangsters. They then set up base in Sydney.

So within years we had a heroin trade, which we had never had before. It is not all that far back. Then, as a result of that, later in the seventies the royal commissions came. I think you will find it was stabilised throughout the eighties and it has blossomed in the nineties. I think it is the biggest challenge around for law enforcement.

I am worried about these open-ended references and I do not want to take up too much time. My experience is that, if you give them an open-ended reference and put in somebody such as an eminent judge or a QC, they might have a bit of pet subject like fraud prevention. That sounds good. I would be tackling the fraud, not the prevention of it. Prevent it by all means. We have had fraud prevention bureaus in the police force for years, just as they have had juvenile aid bureaus supposedly protecting kids against paedophilia. It is a matter of getting some people to do the job. That is what it amounts to. It is not setting up bodies.

All I would say going back to drugs, is that, with all the infrastructure we have in Australia today—with the NCA sitting at the top with the powers and some of the state bodies—surely someone could wake up. Most drug traffickers are pretty well tabulated. They know where the supply lines are. Just get a bit of will and go and wipe them out. I am not saying you can wipe the lot out, but we could certainly depress the market.

I went to a conference once and a man from the FBI answered a question similar to this, 'Would you legalise heroin?' He said to the previous speaker who had come from Hong Kong, 'How did you get here?' The bloke said, 'What do you mean, how did I get here?' He said, 'From Hong Kong.' He said, 'I flew.' He said, 'When you leave here, how would you like to go to the airport knowing that if you legalise heroin that pilot can hit up on heroin before he flies you home on the plane?' Then he said, 'Moreover, how are you going to stop kids going down the shop at play lunch at school if heroin is legal and getting their heroin?' Now we have shooting galleries going up in Sydney for 11 and 12-year olds. It is just mind boggling. The kids cannot even buy cigarettes in their local convenience store. The whole thing is out of hand.

I could say a lot about it but I think we have to try between now and the year 2000 to get stuck into it properly. This is namby-pamby nonsense. That is why I say a general reference. On matters of drugs the Australian community will accept the use of powers at will if it is to do something about drugs. In any community in Australia today—I do not care if it is any suburb of Brisbane, Mount Isa or any place in Queensland or Victoria, even in the smallest suburb—everyone knows drugs are out of control. They know it is at the schools and the like. Let me tell you, it was not like that in the 1970s and 1980s, but every family in Australia today know it is a real problem and they want action.

Mr FILING—Can I just summarise that, because there is a difference of views? For instance, the federal Minister for Customs says we are winning the fight against drugs. The commissioners are saying the country is awash in heroin and Mr Sherman when he was chairman said we are losing the war against crime. Who is right?

Mr Bottom—I do not think we are losing the war against crime. I gave you an old paper I did in 1983 and I enumerated most of the areas of organised crime that were of relevance then. It went down to shoplifting when that was dominated by organised crime. We have not got time here, but I was going to actually type up something page by page on that to see what has changed since. On some fronts we are better off. Overall, I would say dealing with organised crime per se, we have turned the corner.

There are a couple of relevant matters. We no longer have corrupt politicians in power, especially in New South Wales and elsewhere. There were some in Victoria and elsewhere. There may be some politicians around that may be a bit, but we had blatant reps of the mafia in parliament, some of them ministers of the crown. We do not have bankers now openly providing laundering facilities as they did before. Who wanted a Swiss account in Australia? You did not tell the Costigan commission that. You did not need a number to count in Australia. You only had to have a false name and it was legal. It was just a joke.

So a lot of the bankers have got out of it now, not that the banks are not being used. A lot of business people are no longer involved or will not be seen to be associated. Among some of them who were in the drug trade and unfortunately got away with it were two major identities in Brisbane who are now socialites and appear in the *Courier-Mail* most weeks. A lot of them are now out of the trade.

Accountants are far more ethical. You have to see the structure. In 10 years they have introduced procedures. The legal profession has cleaned up its act, but I must say one thing. I have said it before and I will say it again. There will never be too big a dent in organised crime until something is done about elements within the legal profession. Either they do it or have a special royal commission into them. The latest royal commission has demonstrated again it is no use the legal profession having a big sway in a lot of these matters—and it is legitimate the way they do—unless they are prepared to

start to sort out their own.

It is a universal fact of life that organised crime cannot exist or flourish without protection. Secondly, there has been no organised crime syndicate that I am aware of in Australia that has absolutely been able to achieve anything without connivance or lawyers. So that is still a problem down the track.

If you go through some of the areas like fraud, we are doing better at it. I cannot numerate them all. They are in that paper and I could go through it. So we are turning the corner. We are turning the corner in most aspects of crime in the organised sense. We are far better off than we were a decade ago or certainly five years ago. One thing is that drugs have gone through the roof. That is why I go back to this diversion of resources into trendy white-collar stuff and leaving the core business alone.

Senator FERRIS—Given those comments, are you suggesting that we need any changed expertise in the National Crime Authority, or are you saying using those coercive powers properly and just getting on with the job is the answer?

Mr Bottom—I think it is salutary at times. I have been a bit fortunate in that I have been connected with a lot of this over the years and I know a lot—

Senator FERRIS—You are fortunate that you are still alive.

Mr Bottom—That is why I get so angry about this. My kids grew up not even able to make a phone call. My wife lived under the gun. She has been held up in her home with guns and knives. You get pretty annoyed. The most annoying thing is the people who now have fat cat jobs in all these groups who are not doing the job. This is what it boils down to. I remember an assistant police commissioner in Victoria once said to me, 'If I could get half of our guys to work half the time, we would get somewhere.' I am not saying that per se against people, but there are people sitting up in these bodies. Why don't they do the job?

Senator FERRIS—So you are saying it is not—

Mr Bottom—They have all the resources necessary, in my view, even money wise. If there is a necessity to, say, have a crack at the drug trade, look at the cost of a royal commission or even a royal pardon. You could justify something. We want to. We are going to give extra resources to NCA to beef up a complete reference. Let us get to drug trafficking, but hit all levels. It is very minimal cost.

Senator GIBBS—They do not hit levels, do they? All they do is go and pick up the kids that maybe should be—

Mr Bottom—No, the NCA does not do that, but the police are doing that.

Senator GIBBS—Going for the bigger people. No, the police are just picking up the kids off the streets.

Mr Bottom—That is right.

Senator GIBBS—Years ago, there was a huge drug thing going on in Darra. I actually told somebody with a lot of power in those days, ‘This is as big as Cabramatta.’ I was ignored and told, ‘Don’t be ridiculous.’ Then there was a story. It was, I think, in the *Sunday Mail*. A woman there was selling fabrics, and if any English-speaking person went in, she would say ‘No speak English. Get out of the shop.’ She was a front for heroin. She did not want customers. If you walk down the Valley you see it all the time. If people like us can walk down and see it, why can’t the cops and why doesn’t someone do something about it? They do not and you have to wonder why.

Mr Bottom—The Darra area is a very good example. I came to live in Queensland—I am a Queenslander now—in late 1991. I knew before I came about Darra from my friends in crime intelligence in the New South Wales police because they had enough information on targeting of Vietnamese gangsters then emerging in Sydney to know of the links into Brisbane. After being here a while, some people used to ask me about this situation and I would say, ‘I have never been there.’ They would say ‘How do you know?’ I would say that I heard about it in New South Wales. You are right. For the last five years, no-one has been out there. But they are now, by the way, very belatedly.

A lot of this activity happening in Queensland at the moment, I suspect, may be coming because of the current inquiries. You have to give dues to the police that they have done a good job in some respects. But the fact is, and I go back to the ordinary community now, how many families will tell you: ‘I know about the drugs down there; I tell the police and they don’t do anything about it—they say the drug squad is handling it all’? It is so serious that I would marshal all levels of police and just say ‘Look, we are going to target.’

Senator FERRIS—Just to get back to my question, it is not expertise—it is energy.

Mr Bottom—All the expertise necessary is there. Accumulated knowledge is there. Maybe there is a limit on the resources available in the sense of funding. One of the most costly ways to do business on this thing is the actual physical surveillance. This is where often the rorts have come, as the royal commission knew so well. People work all night and it is very, very costly for the task force operations to keep people under surveillance, particularly if you have a number of targets. The phone tapping is also costly because it is now user-pays. These are the sorts of things that could enable a lot more to happen if there were money and they said ‘Let us get into the drug trade.’

You do have the NCA sitting there with task forces in every state. One of my

problems with it is, if you go through your references and some that have disappeared, you are now targeting the east coast syndicate of organised crime. Have a look at the date of that reference. That is what should have been done from day one from the NCA. Why the hell was the NCA set up if they did not target that in 1984? Ten years have been lost. Yes, they are now targeting outlaw motorcycle gangs.

I was over in America and I know that the outlaw motorcycle gangs were running out here trying to murder policemen prior to the NCA. I know they had to get some resources together—and that is worth doing. A simple one is the cocaine trade, which is now coming back. As I said, it was wiped out previously, and let us hope they wipe it out again.

There is this diffuse side of drugs. They should be Romanians, but the key is, as we all know, when you talk about the east coast syndicate it is Italians—they do not call them the Mafia any more, apparently. Italian groups dominate the growing of marijuana, particularly in Queensland—it is the growing state. It is no longer New South Wales, the Murrumbidgee, as most of it is grown in Queensland. They grow it and they deliver it to the cities. Let me tell you, no organised Italian criminals peddle or sell marijuana on the streets of Melbourne, Sydney or Brisbane—it goes into the established systems.

Similarly, the Triads are still the dominant importers of heroin. They account for about 90 per cent of the trade and, at one time I must tell you, talking about what can happen, things can change trends—that is, they have always supplied heroin. Our syndicates, the Sydney syndicate in particular, used to send mules—that is couriers—and pick up the drugs in Thailand and Malaysia and everything. That all changed after Barlow and Chambers got hanged.

Our couriers will not go any more, so now we have got the Triads delivering right into Australia, and that action alone wiped out our courier trade. All those people who used to go over there were shop girls and models and people out of shoplifting gangs. But anyway, that has all stopped. So now they are delivering into Australia. The Triads do not peddle on the streets either. That still went into the Australian systems, and the change that we are now seeing at Darra and elsewhere is that once the Triads started to land in Australia and sell on Australian soil, they used Vietnamese as their muscle men, and the Vietnamese have now emerged as key distributors. They have got these family networks and everything. I am not being ethnic about it—that is the reality.

What is worrying, Senator, is that—and you mentioned about Darra—even reading the *Courier-Mail* lately you hear about the kids that are being caught up as traffickers with grandmother, mother and father and everything. Which schools do they go to? Can you imagine nine-year-old school kids now organised peddlers and traffickers attending schools?

Senator GIBBS—It is happening.

Mr Bottom—The classic danger of drugs was illustrated to me by an instance. I gave a speech at a place called Jerilderie years ago and people thought I exaggerated a bit and someone had a go at me after I had spoken—I was used to that. Anyway, afterwards a guy got up from the audience. He was a government official, and he said, ‘Look, I have to stand up. What Mr Bottom said is a worry. Your town is not immune. I am here because I have been appointed by a joint task force of two governments, Victorian and New South Wales, to clean up a small Murray River town because of the heroin problem.’

As he explained it, it was like this: a teacher had been transferred to that town where they had one school and virtually one big classroom—they were all different grades. The teacher’s boyfriend arrived from Melbourne. He was a heroin pusher, and apparently they worked out—I think the figures are right—that in eight months every child in that town, except one, from the age of nine to 18 were actually on heroin. They found only one child that had not taken it.

To sell drugs in this Murray River town, you are not at the Valley, you are not at St Kilda and you are not at Kings Cross—the only way you can support a habit is to sell it to someone else. It is like the pyramid. That is happening more in the 1990s than ever before in more schools all over Australia, and that is the big danger. Even the teachers are in it.

Another example I had was that I went to Warrnambool once and warned them about drugs, and someone got up and complained because I mentioned school teachers. I was taken fishing the next day and the next morning I was coming home and the policeman who was driving me had the radio on. We heard that they did a raid the night before and picked up 18 people on drugs, and 11 of them were school teachers—one of them was even a school principal.

That is the scene we have got. The NCA is the umbrella at the end of the top level, with its task force approach which would get them more into the middle level. I know there is objection, Mr Filing, to police at other levels using the NCA powers to get at people, but I would like to see them pull the whole system undone and go from the traffickers down, and even to the sellers.

CHAIR—I think there is a will to do it, but in the end it might boil down to resources. You are probably right, if we had, as you put it, an outbreak of anthrax or some other sort of national security problem, we would find hundreds of millions of dollars overnight. So perhaps it is a matter of resources or priorities or getting serious about the war against drugs.

Mr Bottom—I will just make a point on this so you know where I am coming from. In the case of Queensland, I am aware that when the Fitzgerald inquiry was under way that Fitzgerald was concerned about drugs. He spoke to people at the highest level of the government and so on. They actually allocated extra money for him to do that. None

of the former premiers have seen any results. It just was not done. I am not saying that there was corruption, he just never got to it. Fitzgerald did a great thing for Queensland but if a bloke like Fitzgerald did not get around to drugs, do not expect people running the NCA to do it unless you prompt them to do it and tell them you want it done.

CHAIR—If I can be very parochial for a moment, my local government authority has decided that they will install needle bins around the Gold Coast. It has been a rather controversial decision. I suppose it reflects the concern that they have got about the number of unused needles that are left lying around, despite the fact that we have got readily available needle exchanges. What is your view on the issue of needle bins and needle exchanges?

Mr Bottom—It is a bit like the shooting galleries they are talking about in New South Wales. If we have reached a stage where we can identify where to put a bin for people to drop their needles in, surely we know where the people are shooting up with heroin. Let us put a surveillance operation in. Some of these people may need medical help but let them tell us who has given them the drugs. There are social workers and all these people over there asking for all these bins and so on. Let the users tell us who is selling them the drugs and cut out the supply and have a combined approach. Once you put bins out, what is the message to kids? The message is, 'It's okay to shoot up, here's the bins.' I mean, shooting galleries for heroin! Clubs do not even have smoking rooms any more!

Senator CONROY—I have two questions. Firstly, Footscray was identified at one stage as the centre of the drug trade. Police moved in and cleaned it up but all they did was push it across to Sunshine. So all you are doing is moving the problem, you are not fixing the problem.

Secondly, if you just pick up everybody as you are suggesting, the gaols are just going to be overcrowded with all these drug users and we are not really getting the Mr Bigs, et cetera. How do you respond to that?

Mr Bottom—This is where I worry about compartmentalising things and saying, 'Let's do this part', and they do that. If you are going to target an area at the level you are talking about—Footscray—as soon as you see a sign of it coming up in the other area, those resources should just keep going. That is how you are going to wipe it out. I will leave it at that.

Senator CONROY—What about the gaols filling up?

Mr Bottom—If I were in power, I know what I would be doing, I would say, 'We are going to have a crackdown on drugs. I have given approval today to build the biggest gaol Australia has ever seen and this is where we are going to put drug traffickers.' I told you about Barlow and Chambers, and how that case frightened people going up to

Thailand to pick up drugs. As people now know, they were connected with a crime syndicate in Western Australia. If they knew they were going to end up in gaol, some of them would opt out so quick. You saw the case last week of George Savvas, the so-called drug baron. When he could not get out of gaol, he committed suicide. Of course they do not want to be in gaol.

The Americans do that. Ronald Reagan spent \$100 million once—and this is a good lesson for Australia too—to put on 1,000 extra agents and he built two gaols. They knew they were going to get so many. Do you know where the number one targets were arrested? They were arrested at Whale Beach in Sydney. They were extradited to America. It was like something out of an American movie when they appeared in court in Sydney with helicopter gunships flying over the court to get them out. They were swishing around up at Port Douglas, Cairns and Whale Beach. They extradited them to America. The minimum charge against each of the two principals was importations worth \$1 billion. They owned ships, airlines and an island. They were swanning around Australia.

They were caught by the Reagan task forces and that is what we should be doing. They can reach across the world. We cannot even catch them in Cairns or at Darra! And the Americans at least reached around the world and got them there. They used that resource and they built a gaol and they put them in there.

Mr FILING—You may be aware that last year the government passed legislation making it harder for Australia to exchange information with some of our regional neighbours, and I might say the United States, if a person has been arrested and charged with an offence involving capital punishment. That applies unless the country arresting the person, who may be a national of their own country, says to the Australian government that they will not carry out the penalty.

I understand from a conference that was held in 1994 in Sydney in relation to organised crime and drug trafficking in the South-East Asian region that many of our neighbouring countries see this as a major impediment. At that stage it was an informal policy; now it has been formally legislated. Do you have a view on that?

Mr Bottom—I have a fairly hard view in one sense, and that is that we cannot expect those other countries there to help us if we do not appear to be fair dinkum, especially when there are intercepted letters going out of Long Bay at times from people from Thailand who have been arrested here, gaoled at Long Bay, have got themselves a cell, a coloured TV and whatnot, and they are writing home to their fellow citizens saying, ‘Look, why don’t you come over? If you get caught, you can be in here with me.’ To them it is like a holiday in Acapulco. In fact, the daily rate paid in Long Bay is bigger than the average wage for Thailand. It is just a joke. So there is no bar, and that is why they put 11 on the plane—a couple of them get caught or they put one in.

But, getting back to it, we are an open gate. I tell you what would be interesting:

when we arrest some of these people, let us get one from Malaysia and put them back on the plane and see what happens to them in Malaysia. I bet you they will not come out again, because they would hang them. But we have got to be fair dinkum.

The media play a part. As soon as someone is arrested in Thailand—the mother arrested in Thailand with a few kilos of heroin—there are weepy stories in the paper. You have got the *Women's Weekly* and *Woman's Day*: 'How terrible; this mother may face death in Thailand.' One in particular had been in drug trafficking in Australia for two decades. But there is all this nonsense. We do not give a good signal to those countries, when we defend too much those people who are caught overseas, when we extricate them from that level of justice.

Coming back to interchange of information and all that, we have to really respect those countries. I am not saying they are right or wrong, but they see us as a soft touch.

Mr FILING—For instance, would you agree that if there was another Oklahoma bombing and Australia had information relating to somebody, a suspect, who had been arrested, then in actual fact, unless the American government gave an undertaking they would not carry out the death penalty in relation to that particular person—which is a federal offence and involves a death penalty—Australia could not give the information to them.

Mr Bottom—It is just nonsense. As I said earlier, there are not many crook politicians in any parliament in Australia today in my view—unless they have escaped my notice—but there were heaps once. I tell you what, you could trace some of them through legislative and regulatory changes. It is a very interesting study—I am not saying so in this case. But the right people can lobby to get the right thing.

You would not believe what the Lennie McPhersons and them have done over the years and who they have talked to to trip up these things. You find changes to law that can be traced back to organised crime figures. The biggest fear they have ever had is the interchange of information and whatnot. I heard Lennie McPherson, for instance, go on radio in late 1978 and his biggest gripe against me when I was running a unit against organised crime with the New South Wales government was that I was getting all this material from America. They were just doing a deal with the Mafia then.

In fact, I got all the intelligence from America and then passed it over and helped to set up the structure which now exists which came out of an operation called Gaslight with the Williams royal commission. They never really had much liaison before. I went over and saw them, and Lennie and them were terribly concerned about that because they did have a hand-in-glove arrangement with the Mafia. But, again, that is another story.

It is like the cocaine one. Such attention was given to that. Do you know, we have broken that connection. We do not have the French Union Corse in Brisbane or Sydney

any more. We do not have the Mafia links with them because people blitzed all that in the 1970s and it wiped that connection out. We now have the Asia connections, the Yakuza and a few of those sorts of connections they are involved in. But we have been successful in wiping out very serious connections. Some of those American ones were more than serious because they were reaching to the top levels of Australian society. Some of our top knights of the realm were running around with Mafia bosses of New York. But that has all ended. So we are making headway if we are fair dinkum and target the right areas.

Senator FERRIS—Can I ask my other question of you, please? I would be interested to have your reaction to the title of our 1991 inquiry, *Who is to guard the guards?*

Mr Bottom—Do you want my opinion of it?

Senator FERRIS—Yes.

Mr Bottom—Of the title, did you say, or of it?

Senator FERRIS—No, of the concept. If you say that we do have the appropriate level of skills and expertise existing in the NCA now and, as you say, in other special jurisdictions, who should be in charge of making sure those people themselves are not lacking in energy because of reasons other than simply momentum?

Mr Bottom—While I am here today, it is a very big departure for me to say that no, I would not want an open-ended crime commission which I have always advocated for many years. Until more recent times, I have advocated general access by the NCA to coercive powers without references, but I do not hold that any more. I think there has to be accountability.

Some of the best reports coming out are coming from your committee. The recent paedophile report was a very authoritative study. Have you ever wondered, in all the history of all of this, why you have not had the legal profession or judges just impromptu before you? Has any level of government done much about any of these things? It is either investigative journalists or parliamentarians—whether on committees or not.

That is why I am losing faith. You could put up another body to monitor it—another judge. In New South Wales they have integrity commissions and an ICAC. Why would you have an ICAC in New South Wales and now have an integrity commission when you already have a crime commission and you have the NCA? They also have bureaus for crime statistics—about seven other organisations—which Queensland does not have, and still they are not doing the job. They are all living in harbour homes and waxing fat. When these people go to work they do not get into it. There is all this clubbish stuff that is going on.

Getting back to it, I would have had a different view recently. I now believe that accountability is the biggest thing. We have all the infrastructure. People fought first to tell people they had organised crime in Australia, and then they fought to get the infrastructure right. The infrastructure was there and they gave it a go for a while. Now we are over a decade down the track, and we say, 'What has gone wrong? We were better off before.' Or we were getting there. The answer is that there is no need for me to be running around like I used to exposing this and that—it has all been exposed. The thing is to get someone to do the job.

To answer your question in a nutshell, I have come to the conclusion that the only accountable people who are going to get some result are politicians. It was popular in the past to try to keep it away from the politicians because some of them were crook. Take the New South Wales Royal Commission, that would never have happened but for John Hatton. There would not be a National Crime Authority, on a national basis, without the Ken Aldreds and the Don Saltmarshes in Victoria. I started a movement in New South Wales and they took it up in Victoria. They could not get the Victorian government to do it, as I could not get the New South Wales government to do it. Fraser took it up, and then it became a national issue, firstly through the crime commission and then it became the NCA. Part of the history of it is in that early assessment.

When you look at the history, it is either investigative journalists or concerned politicians. No judges from the bench in Queensland have been jumping up and down. They did not jump up before Fitzgerald.

Mr FILING—It wasn't Laurence Street.

Mr Bottom—When you look at it, what has the legal profession ever done? Has anyone from the legal profession come along here and said they must talk to the committee because they thought the NCA should look at this or that? No. There are all these legal people, but I would say this committee has the power and I would use it to the full. If need be, I would hold public hearings and not just have these nice gentlemanly chats about your assessments. I would say, 'We want to know about what is happening with drugs. Who are these people you mention on the back of the list in here? How significant are they?' If they are not doing the job and, in fact, if there are aspects of corruption—a lot of people tut tut and say, 'We knew what was going on'—and if authorities knew, why the hell are they not doing something about it?

Senator FERRIS—The answer to that might be because people who are in charge are not being encouraged to do it because of outside benefits that they might be getting for not doing it. My question to you is: how do you make sure that those people who are in positions of control, such as within the National Crime Authority, who are charged with that challenge and who are not taking it up, are simply not taking it up because they are lacking in energy to take it up or whether they are not taking it up because there are other reasons why they will not? How do you have a body to check on that?

Mr Bottom—I think that is what this body should do. Maybe you need more of a research arm. Let me tell you a story about the ICAC, which I played a key part in setting up. I was totally disillusioned. The first thing it took on was a spurious investigation targeting five white knights of the New South Wales police force who cleaned up the force to an extent, under John Avery, on behalf of an allegation by a criminal. Why did they not tackle the crooks? Anyway, they were cleared. One of the things the CJC in Queensland has taken on—probably their only matter involving drugs vis-a-vis the police—was to target a guy called Jim Slade, who was credited with starting the Fitzgerald inquiry and what not. They do stupid things.

But, more particularly, to answer you about the will: Under the ICAC they received evidence once—from Queensland, I might tell you, at the casino on the Gold Coast—that Lennie McPherson, Mr Big, was involved in a plot to influence the selection of the next police commissioner in New South Wales. This is related to the CJC, and they call up some people: all proved, right? It was not even called. They did not call Lennie McPherson but, afterwards, they called Nick Greiner, the Premier, over giving Metherill or someone a job. And here is the Mr Big of Sydney, trying to influence the selection of the next commissioner of the state, and the ICAC is doing nothing. I think they are scared of them.

McPherson would make a mockery of them. He died recently, but people like that have ruled the roost for years. The NCA did get McPherson in the end. He died in gaol, as a result of the NCA—to its credit. It got Mr Sin: no other royal commissions did. I am not knocking the NCA; I am talking about NCA's umbrella—it is all these other people. I have got respect for the CJC. They are all very comfortable. You go down there and they bring out the sandwiches and all these lawyers. Where were they before, when all these things were happening? It is all a very comfortable existence.

CHAIR—We are going to have to wrap this up. My observation is that we do not need to feel sorry for Mr Savvas—

Mr Bottom—Not at all.

CHAIR—I suppose he has saved the New South Wales taxpayers a heap of dough. I guess the role of this committee is an issue, too. We have made comment about our limited facilities, and you recommended a role for us that is way beyond our resources and facilities—but it is a compliment to us. Back in 1991, the committee surely should have been asking the NCA then what it was doing.

Mr Bottom—There is no risk on that. I do not think you ought to underestimate your committee. I am not saying it because I am here. I am pleased to be here, and maybe I might come back or put some more stuff in. But the fact is this: in 1978 we had an upper house parliamentary committee. People had tried for years to get out some of the things that we were able to do in a very limited time. Mr Filing will know some of the

people I know: we have stood up in forums in Victoria and other places years ago, on matters of concern and whatnot. Small groups of politicians, and particularly very good investigative journalists, have sometimes done a better job than some of these commissions. I have often said, 'Give me half a dozen police and the backup of the phones, and about three investigative journalists, and I reckon that, in three to nine months, you would sort out who's who in the drug trade in Australia.'

Mr FILING—He is still alive.

Mr Bottom—All I am saying is that, with the will, the best results have not always come from big groups: some of those New South Wales police in older days, with their small groups, have got incredible results. And they have done it in other states. Marshall Irwin is here. His first job in the NCA was to take over the Western Australian matters—you might know, Paul—where Western Australian police were trying to deal with drug trafficking. They could not even use listening devices—and that was corruption. The government stopped the police using listening devices. They cleaned up a hell of a network, didn't they?

Senator McGAURAN—Really, Bob, you have said it all. Could you briefly answer a couple of these quick questions? The terms of office for the NCA commissioners or chiefs are, I think, a bit short—because of the Hoover factor, you might call it. Do you think they are too short and should be extended, if not permanent?

Mr Bottom—Certainly not permanent, ever. I also would disagree with Marshall Irwin on one point where he was talking about the qualifications of members, and that is on the basis that a member may have an expectation of becoming chairman. It was never envisaged from the outset in all of the debate that the chairman would be for a set term. I am ambivalent about whether it is three, four or five years, but it should certainly be no more than five years. I believe that no member should become a chairman unless it is within his term, in a sunset type of thing. He can gravitate up, but I would not like to see a member serve four years as deputy and then become the chairman. It is not on.

The other point is, again, a contradiction. There is no reason that a member ought not be someone not qualified to barrister level to qualify him for a judge, as was originally laid down. As I say, I do not think QCs, judges and all of them have done as much good as we all think they have done. I think they would be better off—

Senator McGAURAN—The term is long enough—four years?

Mr Bottom—You might go to five, but I would not go beyond five; and certainly no extensions, under any circumstances. I must tell you, we have now got another problem. Some people have been around in these commissions for a long time. They are becoming gods and they are getting these commissions into trouble. They know best now. It is one thing giving a royal commission a pound: some of them think they are God. We

have got staff in these commissions that—

Senator McGAURAN—We had better leave it at that. Your answer does surprise me, actually. You spoke of greater parliamentary authority for this committee. In your introduction, you did say that there are examples of that. Can you give us one that we may look at?

Mr Bottom—In the early periods of the 1950s and 1960s, some of the roles of bodies to expose organised crime really came about through parliamentary committees in the United States system. That was our only barometer. They then in turn led to a network throughout America of independent or government crime commissions. That is where we all got the models from originally, and we adapted them to Australian circumstances.

In Australia, when the crime commission debate went on, politicians were a no-no. There were allegations about politicians. It was not seen to be the done thing for politicians. In fact, there was great opposition to this committee being included, I can remember—very much so at the national summit. Everyone used to say, ‘Appoint a judge; it is like a royal commission’ or ‘Appoint a commission’. The thing is that, if the commissions are not by-and-large working the best and they are not accountable, it is very hard to bring them to account at times. You can have them up; but parliamentary committees, I believe, get closer to people and can reflect it.

Senator McGAURAN—Do you have any particular example overseas?

Mr Bottom—I will look it up and get it for you. It certainly would be back there. A lot of the American ones were all done either through the Senate or the state legislatures. Some of the crime commissions in America actually worked straight to ministers. They just prepared the reports and the minister would do it under ministerial control.

Senator McGAURAN—You did say in passing, but I want to confirm it for the sake of *Hansard*, that the current bodies and the NCA all have the intelligence on the Mr Bigs and all the networks: it is just the action or the powers that need to be implemented. Is that true?

Mr Bottom—There is no doubt whatsoever that, with the accumulated knowledge that is now available through the ABCI and the NCA—not that there may not be the odd ancillary groups or individual groups or little syndicates—a lot of people knew the whole structure 10 years ago. Now it is down to the nuts and bolts. They are all tabulated, all of these people. I know they are because I get involved with them.

Most of the intelligence is there upon which you could act, if you had the will and the money, to virtually wipe out all the syndicates. That is why I say, ‘Build a couple of gools and we could fill them up.’ Everyone knows who they are. Everyone knew about the

Valley in Queensland, except for Russ Hinze and a few others. As soon as Fitzgerald got in, of course, he could identify them and they got wiped out. That is the scenario.

We have got official bodies knowing who is who all over the place. The NCA in its first 18 months identified 13 major syndicates. From then, they have got the subsidiary syndicates. Now they are talking about the east coast network, and what not.

CHAIR—Milieu.

Mr Bottom—Their milieu.

Senator McGAURAN—Tell me if I am drawing a long bow here. You did say in passing that what we really need is an investigation into the legal profession. Taking that as genuine, and not just a prejudice that many people have, with any attempt to increase the powers of the NCA we are always up against the civil libertarians, a very powerful group and very influential in politics. Are they just do-gooders or is there somewhat of a connection between what you see as the need for an inquiry in the legal profession and those lawyers who are wrapped up in the civil libertarian groups?

Mr Bottom—I think a lot of the civil liberties approach is genuine. I used to be probably the simplistic advocate who would seek to oppose them. I have changed my views in the sense that I believe that some of the concerns they raised were legitimate, and the NCA Act today reflects that. But, at the same time, the worrying experiences that have changed people's minds over the years, whether it is about some things in the NCA or these commissions of inquiry, have all been perpetrated by the legal profession.

I will just make a point on the legal profession on two fronts. One is that they put the block on, yet they exploit every opportunity at all these inquiries and they are the ones who have brought it into disrepute. It is not the police, it is not the NCA, accountants, lawyers, who have done anything wrong; they have just presented the evidence. No-one can argue about facts. All of the slandering and vilification have come through the licence we give to lawyers to libel people any time they are popped before a bench. It is usually the comments of that profession that have caused the trouble, not the presentation of the facts.

So, on the one hand, the organisation trying to do anything will come undone because some of these lawyers have gone overboard, whether or not on behalf of the organisation; often it is just counsel. The Wood royal commission is a very good example recently. Fitzgerald noted, every royal commission has noted, and more particularly the recent one, that even the police are linked up with lawyers for all these things.

It is all right for the legal profession to be going, 'Tut, tut,' and putting restrictions on that are, firstly, in the civil liberties terms, but that, secondly—unwittingly or wittingly—are to protect organised crime figures or give them greater protection than they

will give the citizens. I say that if they are going to take the pious high road, let them clean up their profession, let's lay down some strictures to get their people out of this realm. A lot of banks and others have withdrawn, but the legal profession is still in there. I am not saying the profession, I mean elements of the profession.

Senator McGAURAN—Defending the big crime bosses—is that what you are saying?

Senator FERRIS—They are the ones who have the money to pay.

Mr Bottom—The best example I can give is that I went to Florida once and the authorities there took me to see the boss at the home of a Mafia boss called Persico. He had actually been wealthy enough to put \$800 million through a Panama bank the month before I arrived there. They shut down a bank which he was using in Florida. We had lunch and he said, 'We were having a bad day yesterday. I have had Persico's lawyers taking out something on us about shutting down this thing.' I said, 'Who do you know that can tell me?' They said, 'You have seen Persico's. Let us go and see his.' The lawyers have houses twice as big as the organised crime figures do.

If you go around Sydney Harbour, I can tell you that a lot of lawyers who have made a lifetime of defending crooks and what not, however legitimately in legal terms, have done better than the Lennie McPhersons and the Abe Saffrons of the world. All I say is that some of them have done it in a legitimate, legal, honest sense, but others are in it up to their armpits, so the quicker they are out—

Senator McGAURAN—So we should not listen to their cries of civil liberty protection?

Mr Bottom—I would listen to them, where it is a good thing—

Senator McGAURAN—It is a fine line.

Mr Bottom—They have got some legitimate concerns. But at the same time, if they are that concerned at civil liberties, I would be cleaning up at least my own profession first. When you say fine lines, you think of it. If in fact—and let me put a hypothetical question—

Senator McGAURAN—We are speaking to the civil libertarians tomorrow in Sydney.

Mr Bottom—Right. If you knew hypothetically that a member of this committee was suspected of being crooked, would you continue meeting with them? Would none of you do anything about it? Would you go and approach the chairman or something? Of course you would. Why is it that the legal profession have only to read the daily papers to

know what their members are up to? Why have they not done anything about it and why have they made such resistance to anybody or any individual who has sought to do it?

CHAIR—We will leave that as a rhetorical question. It might be a very good place to end. Bob, thank you very much. This is my seventh year in parliament and I have been on many committees. I think your presentation this morning has been one of the more interesting ones. In a lot of these committees, the members go to sleep during long presentations and the chairman has to try and keep them awake.

You have been authoritative as well as interesting and somewhat entertaining. We may in fact invite you back further down the track when we have had a bit more input and maybe bounce some other ideas off you. I like your idea of building a big gaol. I was going to ask you where we would put it.

Mr Bottom—Gold Coast.

CHAIR—Well, we are looking for industry on the Gold Coast—

Senator FERRIS—Some marginal seat.

CHAIR—Some marginal seat or even—

Mr Bottom—Sanctuary Cove.

CHAIR—I do not think Sanctuary Cove is the slightest bit appropriate. This committee is a joint committee, so it comprises both members of the House of Representatives and the Senate. But we are actually governed by the rules of the Senate committee. I just want to draw the committee's attention to one aspect of those rules, which the secretary has drawn to my attention. It states:

Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that evidence is relevant to the committee's inquiry, the committee shall give consideration to expunging that evidence from the transcript of evidence, and to forbidding the publication of that evidence.

I do not have anything particular in mind, but I just wanted to ask the committee members. There was one suggestion about some people who appeared every day in the *Courier Mail* social pages.

Mr Bottom—I do not think I identified them.

CHAIR—I do not think they were identified. I do not think there is anything else. You have reflected on a wide range—

Mr Bottom—I am fairly well up with privilege and that, so I can tell you—

Mr FILING—Most of the people whom you have talked about are dead now, aren't they?

CHAIR—And they are still appearing in the *Courier Mail*. All right, if there are no concerns about that issue, and I have at least drawn it to the committee's attention, I thank you very much again, Bob.

Short adjournment

[11.50 a.m.]

RUTLEDGE, Mr Paul Francis, Consultant Crown Prosecutor, Office of Director of Public Prosecutions, GPO Box 2403, Brisbane, Queensland

CHAIR—We welcome Mr Paul Rutledge. The committee has received Mr Rutledge's submission and has published it. Is it the wish of the committee that the submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The document read as follows—

CHAIR—Mr Rutledge, as you are a public official, I need to remind you that you will not be expected to comment on matters of government policy. We have had a brief submission from your office. Did you want to make some other remarks?

Mr Rutledge—Yes, I will make some and then people can ask me questions. I am designated as special prosecutor for NCA prosecutions in Queensland, which basically means I am the primary point of contact between the NCA and our office. I have prosecuted a large number of their matters. I also have given and give advice on prosecutions that are handled by other prosecutors. Mr Bottom seems to be missing. Perhaps I should make the admission that I am a member of the legal profession and was one of the lawyers appointed to the Fitzgerald commission of inquiry. However, as a prosecutor, I do not enjoy a comfortable existence.

CHAIR—Some might say, more fool you, Paul.

Mr Rutledge—Yes, exactly. As you sit there watching the other side earn a lot of money every day, you wonder about things. The DPP's experience of the NCA is very succinctly set out by the director in his letter, which basically amounts to a number of points. They have achieved remarkable success since they have been set up in Queensland, particularly in the area of drug offences. They are highly respected by our office and we do have a very close working relationship with them. I can elaborate on that if people want to hear about it. The prosecutions and investigations have been conducted in a most professional manner.

The director refers to the results as being quite extraordinary and speaking for themselves. Just as an example—I can give you others—I will read from a couple of submissions I made on prosecutions that I personally conducted. One related to a drug operation codenamed Pegasus, which involved a large number of cannabis crop sites around Queensland. That was the first investigation that the NCA in Queensland actually conducted and I was the prosecutor.

Just to give the committee some idea of the scale of operations and effect of organised crime in Queensland, as we see it, one of the crop sites was based at Yuleba, which is near Roma. I will describe part of the crop site. It was 460 metres by 70 metres in area, surrounded by an electrified fence. It was in your standard Roma bushland. There were 18 rows of cannabis plants within that area, totalling over 8.1 kilometres of cannabis plants. Each plant was individually fed by an irrigation system.

If you are a gardener, you will be familiar with the micro-irrigation system. It was a variation of that, except on a more commercial level. Each plant was individually fed. They were spaced at one-metre intervals. To give you some idea of the scale of the piping that was actually at the site, most, if not all of you have flown in this morning. If when you got in your car or cab coming out here you started running out of plastic pipe, you

would still have pipe as you arrived here. That gives you an idea of the scale of the piping. It was a very sophisticated operation with connections to New South Wales. People with well-known names such as Trimboli, Sergi and Rocco Barbaro are examples of the sorts of people who were involved in it. Rocco Barbaro, as you may be aware, got a reference in, I think, the Woodward commission a number of years ago. The value of the crop site was anything up to \$14 million. The crop was harvested and distributed through to New South Wales by an obviously well-established network.

Senator McGAURAN—That is street value, is it?

Mr Rutledge—That is wholesale value. Street value, from memory, must have been up around the \$50 million mark, as a maximum figure. As part of the crop, they used a rather unusual seed that had apparently been imported from overseas. It is a very low growing cannabis with a high quantity of THC. They paid about \$80,000 for one kilogram of the seed.

Another sort of operation they have been involved in and which I have also personally been involved in the prosecution of is the prosecution of a man by the name of Vinnal. Others are still going through the system in relation to the offence. Another man by the name of Barrow has been charged. This was a very large scale amphetamine production exercise which was detected in the Valley. The history of how it came about is really quite interesting and shows some advantage of the national picture approach, if I can put it that way. Once again, I will read from some of the submissions I made to the court on the sentencing of Vinnal.

There was a National Crime Authority operation code named Jax in Victoria during 1994. During that investigation they identified a man by the name of—I am not quite sure how many of these names have actually been prosecuted—another man who was living in Victoria who was identified as the source. That led them to another man who was connected to the Hell's Angels. Telephone intercepts were put in place and they identified the Queensland connection through Vinnal and Barrow and led into Queensland where surveillance, including telephone intercepts, took place. Prior to the raid that I am about to tell you about, the largest seizure of amphetamines in Australia had been 15.7 kilograms from a man by the name of O'Teine. The largest seizure in Queensland had been the seizure from a man by the name of Walton who had some 15 pounds—15 kilograms is obviously about 35 pounds.

What happened was that on 8 February 1995 a search warrant was executed. What they found was 178 kilograms of amphetamine, almost 100 per cent pure. If you can imagine this table one inch thick in amphetamine, you would have some idea of the quantity of amphetamine that was on that table, that is, some 392 pounds. It was a very sophisticated production technique. If I could give some idea of the quantity of that, you are probably aware of the term 'weights', the street level deals of amphetamine. There was enough amphetamine on that table to produce over two million weights. The value of the

amphetamines at street value was \$170 million.

They are just examples of the types of operation that the NCA has successfully produced in Queensland. They have been very successful in particular in the area of cannabis productions, many of them with Italian connections largely connected back to Griffith and areas of Sydney and such like. I speak as a prosecutor of some 18 years background. I have also prosecuted for the Commonwealth for some two years or so. Their investigations are very high quality. The quality of their briefs is also very high. They do not produce a lump of disorganised paper. They produce well organised briefs which is good for someone like me who receives their briefs not in the mail but on the back of trucks.

They also provide help during the prosecution phase with virtually anything that we ask for in terms of organising of evidence. Sometimes issues come up as you are going along. I have got one thing clearly in mind where a lot of telephone intercepts needed to be re-examined involving hundreds of hours work. It became obvious that would be necessary and they did that. We have nothing but praise to say with respect to the quality of the Queensland office.

Senator CONROY—Can I take you back to the cannabis crop in Roma: how was that initially detected? You explained how the amphetamine trail was followed.

Mr Rutledge—The initial way that they got onto the crop, if I ever knew I have forgotten. I do not think it was ever public. Essentially what happened is that there was a man by the name of *** who became the subject of surveillance. Now *** is now a protected witness and his name is not being published.

Senator CONROY—Has he had his jaw wired recently?

Mr Rutledge—He goes under some name. I would ask that his name actually not be published as part of these proceedings. He is protected from this.

Senator CONROY—I am trying to find out if the Queensland police, without the NCA, could have tumbled Roma?

Mr Rutledge—That involves some understanding of whether, in fact, the interest in *** came from their interstate knowledge. I suspect it did but I do not recall ever actually asking that question.

Senator FERRIS—To follow on from that question, do you think it was the ability to tap telephones that might have had something to do with that case as well as the amphetamines case?

Mr Rutledge—The ability to tap telephones was a very important factor in the success of the prosecutions.

CHAIR—You mentioned that you do not want a name published. I need somebody on the committee to resolve in accordance with the procedures of the committee that that name be expunged from the transcript of evidence and the publication of that name forbidden.

It is moved and seconded. So resolved.

Mr Rutledge—The ability to tap telephones is very useful from a prosecutor's viewpoint, especially in large-scale organised crime at the level we are considering here. In fact, in the prosecutions arising out of Pegasus—I think there were 19 or so; there is one left to be done—the entire case against Rocco Barbaro was based on telephone intercepts, which was a rather unusual case to run in Queensland. I am not sure of the experience in other states.

Senator FERRIS—I think both of the witnesses this morning have referred to the higher powers that the NCA has and everybody has agreed that the ability to intercept telephone calls is significant in that. Would you say then that that power should continue to rest only with the NCA? Or do you think that other jurisdictions should again re-examine whether there should be opportunities for them also to carry out telephone interceptions?

Mr Rutledge—I can only speak from a personal viewpoint. My personal viewpoint is the power to intercept telephones is a very powerful weapon. You have to understand that the reality of drug networks is that they have to communicate and if you can get into their communications—and Rocco Barbaro and this organisation here, if I can use it as an example, are very experienced. It obviously has decades of experience behind it. They were very careful about what they said on the telephone. Everything was coded. But you can construct very powerful cases even against the background that people are being very guarded in telephone conversations.

From a personal viewpoint I favour the extension of telephone intercept powers to other authorities with the use of appropriate safeguards.

Senator CONROY—You said you worked on Fitzgerald and Fitzgerald did not recommend that. Is that why Queensland police do not have it? That was the impression I got from Bob.

Mr Rutledge—I cannot remember at this stage whether he recommended or not. Definitely, the Queensland police do not have that power, and I know that they would like that power.

Senator McGAURAN—What is the legal status of phone taps in the court?

Mr Rutledge—The reality is that telephone intercepts are totally inadmissible unless they are done under properly authorised warrant. At this stage, the only authorities that at least I have had contact with that have had power to do that are the AFP and the NCA. So if someone in the police thought it was a good idea to tap a telephone and got a fantastic admission, it is no use, totally inadmissible and they would be committing an offence.

Senator McGAURAN—Just to be clear on that, you are saying that if the procedure for telephone tapping by the NCA is carried out correctly, then it is fully admissible?

Mr Rutledge—Yes. There are obviously a number of factors that relate to it but, assuming that they have got a valid warrant and they have done everything correctly there and assuming that the conversation is relevant, it is admissible.

Senator McGAURAN—And you have found it very weighty in court, the judge has—

Mr Rutledge—Yes, it is a very powerful thing for a prosecutor to use. If you have got a series of telephone conversations and then you link it in to actual physical surveillance of what goes on as a reaction to that telephone conversation. In Rocco Barbaro's case, we had telephone conversations between A and B and then after that it would be B and C, and then that links into something else happens. Each element does not really make a case by itself, but once you put all the elements together you can see as clear as daylight what has happened. Indeed, in Rocco Barbaro's case, we persuaded the jury of that case.

Senator CONROY—I am not sure if you heard some of Bob Bottom's testimony. He made reference to the fact that the Egg Board has more power than the NCA in certain circumstances and gave some other colourful examples. Is that the case with the telephone taps? I presume that is not the case.

Mr Rutledge—It has been some 18 years since I have done any Egg Board prosecutions! I do not recall using any telephone taps.

Senator CONROY—Do the NCSC or the ASC have telephone tap powers?

Mr Rutledge—I have not done any prosecutions for the ASC but I suspect that they do not, but I have had no cause to check their legislation.

CHAIR—I suppose there was the occasion they would lay charges rather than eggs, do they?

Mr Rutledge—Yes.

CHAIR—Just to home in on what we are on about, I missed a couple of things you said, but you were talking about the quality of the briefs that you received from the NCA and that was what you were referring to as being the standard of the briefs you refer to as being of excellent quality.

Mr Rutledge—Yes.

CHAIR—You do not have to return them to the NCA on occasions for clarification or further investigation.

Mr Rutledge—No. I might attempt to explain why a well-prepared brief is absolutely essential. If you are dealing with, for instance, the Pegasus investigation, you are dealing with hundreds, if not thousands, of hours of telephone intercepts. You are dealing with hundreds of LDs—that is listening device conversations recorded by bugs placed in houses. You are dealing with hundreds of hours of physical surveillance, and then you are dealing with all the other bits and pieces around. I have a room that is dedicated to Pegasus, which thankfully I am almost cleaning out now, where it is just filled from floor to ceiling with transcripts and such like.

Obviously, as one person, it is almost a physical impossibility to be on top of all that paperwork without some very good assistance. That is where the organisation of their briefs becomes very important. They produce schedules and chronologies and interrelate everything. As well as that, they provide ongoing support to us—I have got a very close working relationship with officers of the NCA—and when I simply do not understand something, I get on the phone to understand where something is or what the connection is. That is absolutely essential in a large-scale prosecution, especially from the viewpoint of a crown prosecutor in our state, which is probably the same as in other states, where we are very overworked with somewhat limited resources.

CHAIR—When you are prosecuting in that situation, do you have to describe for the judge or the jury how the bugs were put into the situation. In other words, you have to obviously prove that the transcripts relate to evidence that was collected where it was said it was collected.

Mr Rutledge—First of all, it depends upon agreement with defence counsel. You will prove that listening devices, for instance, were put in place on a particular day.

Senator CONROY—Are they just telephone bugs?

Senator FERRIS—Bugs?

Mr Rutledge—I use two terminologies: TIs, which are telephone intercepts, and

LDs, which are listening devices. Listening devices are used by someone who has bugged this room by sticking something in the wall or whatever. There are also reverse CCRs, which are actually records of telephone connections but, unless you want to hear about those, I will not talk about them. We would prove the date that the device went in.

CHAIR—It went in, obviously, by stealth. A policeman broke into their house and put it in place.

Mr Rutledge—Yes, it is put in under warrant by stealth. For instance, with Pegasus at the Yuleba property, the men had dogs protecting the property. By the end of the operation, the dogs were more friendly with the surveillance officers than they were with the occupiers of the premises. The officers have to develop a range of talents. You prove the device goes in, but you never prove where it actually was, unless some rare case comes up that it is essential and the judge directs that the specifics of where the device was have to be proved. That is always considered a matter of public interest immunity because, obviously, you do not want those people or others to know the techniques involved and where they habitually put these devices.

CHAIR—Concerning your comment on the question of references, the NCA can only use its special powers in pursuit of its references. What is the DPP's position on that? Do you think it is an unnecessary constraint or is it some sort of reasonable limitation?

Mr Rutledge—We have never had cause, as an office, to consider whether it is necessary to have limitations on references. I can only speak from a personal attitude. To this extent, I am somewhat on the same train line as Mr Bottom. I think there has to be some definition of your target and that definition can be achieved by the reference procedure. If you do not have a reference procedure, it is necessary to have some other form of setting targets, be that some general mandate as to taking a look at drugs at a certain level of involving, for instance, interstate connections and suchlike.

CHAIR—That is not so much the issue. The issue is the reference that enables them to opt to use their special powers.

Senator CONROY—How do you get around the motor cycle problem, where they did not want to identify which gangs they were going to investigate, because that would be like taking out an ad? And that question of the tightness of the reference, where defined by a judge—hopefully to be overturned—where that was too broad a reference that they were given and they needed to be more specific in who they were targeting with the motor cycle gangs?

Mr Rutledge—Once again, I will have to speak from my personal attitude and also against the background that we have not had the problems up here that obviously Victoria has had, so we have not had to work our mind right through that. If the reference

procedure is followed, I personally am in favour of a reference procedure that is not too tight. From my observations and experience, you can have the problem that when you start an investigation, it leads into other fields that need to be investigated. So I would see references setting the somewhat broad parameters that have to be investigated. The trouble is, if you set them down too fine, you run into this problem of them being perhaps unfairly—and here I mean unfair to the community—restricted in their investigations.

Senator CONROY—If you run after them to investigate drugs and you have telephone intercepts on them and find out they are about to go to kill someone—it is not necessarily anything to do with the drug investigation—you are stuffed.

Mr Rutledge—Yes, that is right.

Senator CONROY—How do you reach that balance ?

Mr Rutledge—It is difficult, isn't it? But I think—

Senator CONROY—And, in the end, it is always going to be tested in court, and you can get a couple of the judges that we had recently who have had different definitions possibly to you. As a lawyer—and I am not—how do we get around having to have that constant battle and running the risk of a judge who has a different definition to yourself?

Mr Rutledge—As you say, it is very difficult and, as I sit here now, I cannot see the answer to it. What I am thinking as I am sitting here is that you have to start off with a broad reference and then, if your investigation extends outside that, you have to have the power to perhaps have that reference extended by some easy, but proper, mechanism. That problem you are talking about is not unusual. I remember that when I was with the Commonwealth and they were investigating a drug importation, they then started picking up conversations relating to setting up a businessman and the extortion of a large sum of money from him. The police obviously did not have the problem about going on to that other important matter, because they were not constrained by the reference.

Senator FERRIS—There has been quite a lot of publicity during the life of the NCA that in fact it also has the capacity to quite zealously pursue other individuals outside of what might be termed the reference. I do not think I am out of step here in saying that John Elliott is the person who comes to my mind.

Senator CONROY—He was not outside the reference. You had one judge who said it, but you had about 10 QCs who said he was not.

Senator FERRIS—I am only raising it as a matter of principle, rather than the particular, in the sense that there is some suggestion by some groups—and I guess the civil liberties group this afternoon might be one of them—that the reference powers of the NCA are already too wide. Do you have any comment to make on that? Have you ever

seen any evidence of zealotry in the pursuit of matters that you have been related to?

Mr Rutledge—No. I have been connected with the NCA ever since they set themselves up in Queensland a number of years ago and I simply have not seen any example of zealotry. It is as simple as that.

CHAIR—Are there circumstances in which you offer indemnity to NCA witnesses under section 30?

Mr Rutledge—I have been involved in the consideration of a number of applications for indemnity. What happens is that they come to our office from the NCA. We have guidelines that are set out by the director. They send the application for the indemnity to us, the director then considers it—quite often with advice from me—and his advice goes to the Attorney-General who may or may not grant the indemnity. Quite often, too, the issue of giving indemnities in other states is involved. For instance, the man whose name I have asked to be expunged from the record is an indemnified witness. He has indemnities from the state Attorney-General, from the New South Wales Attorney-General—I think that is who gives indemnities there—and also from the Commonwealth Director of Public Prosecutions.

CHAIR—The Council for Civil Liberties, and Terry O’Gorman in particular, has made the suggestion that the NCA’s role in a prosecution should be suppressed until after the jury verdict. They make that suggestion on the basis that, in the minds of the jury, the very mention of the NCA gives a sort of magnitude to the crime that may not otherwise be the case. Have you a view on that?

Mr Rutledge—You can raise that sort of argument with respect to almost any squad or organisation that has been involved. I do not see the need for it. In fact, I see a lot of practical difficulties in how you keep it quiet, if I can put it that way, during the course of a prosecution. If you have got the ruling that the NCA is not to be mentioned and, when you are half-way into a five-week trial, some witness you have no control of just drops the name NCA, I know what the defence counsel would be doing at the other end of the bar table.

CHAIR—The NCA is now in the habit of putting out press releases when it has been successful. I do not have any particular problem with that, but that is a fact. So I suppose the NCA’s involvement becomes public knowledge at the time of the activity or the arrest, doesn’t it?

Mr Rutledge—Yes.

CHAIR—As there are no further questions, thank you very much for coming. We appreciate that, and both your remarks about the NCA and your answers to questions have been very helpful indeed.

Luncheon adjournment

[1.12 p.m.]

DEARDEN, Mr Ian Francis, President, Queensland Council for Civil Liberties, GPO Box 2281, Brisbane Queensland 4001

CHAIR—We will resume the public hearing and we now welcome to the meeting, Mr Ian Dearden, President, Queensland Council for Civil Liberties. Before inviting you to make an opening statement, I am required to state that if, during the hearing you consider the information you might wish to give or comment on is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. With that in mind, I ask you now if you would like to make some comments. I am sure that members of the committee would like to ask you some questions in due course.

Mr Dearden—I believe that you approach the National Crime Authority in this way: you treat the National Crime Authority exactly as you would treat a black snake; you treat it very cautiously; you treat it very carefully; you never take your eyes off it; and you need all the protection you can get. Because in setting up what is effectively an ongoing crime commission like the National Crime Authority, you give away enormous powers to it and you then expect and need to set up a mechanism to ensure that it does not abuse those powers. Bit by bit, with the death of 1,000 cuts as you give away cherished liberties, they are extremely difficult then to reef back once you have given them away.

There are particular aspects of the National Crime Authority that we believe either need to be preserved or need to be changed. We consider that the current reference requirements are fundamental and that they serve the purpose of keeping the National Crime Authority as a guided rather than an unguided missile. We would be completely opposed to any move that took away the current reference requirements from the joint government committee, which effectively oversees that towards something approaching the CJC, for example, which effectively has an open and virtually unchecked brief. We do not believe there ever should be a situation where the NCA should have an unfettered discretion as to what it does.

We believe that there are aspects of the operations of the NCA which certainly need careful examination, either on an operational level or at a legislative level, and which need putting in place protection for defendants who are involved in legal proceedings where witnesses may at some stage or another have come within the ambit of the NCA. We believe we need the implementation of a comprehensive disclosure regime—and I use ‘disclosure’ in the technical sense—so that a defendant at a committal or trial can force the NCA to produce all previous statements or evidence given at investigative hearings by witnesses that are relevant to a particular matter. One of the problems you have, if a witness has come within an investigation that the NCA is taking on, is actually finding out not what the witness is saying today in court, but what the witness also has said in any

previous investigation relevant to the charges before the court to the NCA.

In the days of computers we say that that is not a difficult process to do to ensure that there is a positive obligation on the NCA to correlate and collate information that they have collected, so that that material can be easily accessed and the defence can have access to any potentially exculpatory material held by the NCA, or for that matter other crime commissions such as the CJC, ICAC, et cetera.

We believe that the appropriate way to do that is as a legislative obligation and it is really an issue of operational accountability. We believe that the current process of court review has not been adequate, with the exception of the spectacular failure of the Elliott prosecution which in itself I think has some very important lessons for the operation of the NCA.

Senator McGAURAN—What did you say just before you mentioned Elliott?

Mr Dearden—That the current provisions for court review of the NCA decisions have essentially been effectively inadequate. As I understand it, apart from Elliott and one other matter, there have been no successful applications that have effectively put aside anything that the NCA has wanted to do, certainly not in the last five years anyway.

We thoroughly support the recommendations of the Australian Law Reform Commission with respect to complaints against the NCA. We believe that the current complaint process really is not a current complaint process because there is not any, as such. It is a completely informal process. It not only lacks any formal external scrutiny, but it is just not built into the legislation in any way whatsoever. It is clear that this committee does not have the resources nor, I suspect, does it have the inclination to want to do the job in terms of individual complaints, as opposed to the big picture issues that we are looking at at the moment.

We believe, as does the Australian Law Reform Commission, that all the NCA staff from the chairperson down, whether or not they are seconded, should be subject to a single complaints system with respect to their work for the NCA and that, by combining that with a complaints system that also handles the AFP, we will have sufficient critical mass effectively to have an organisation that can cover both. A significant number of staff are seconded to the NCA from the AFP in any event, so to that extent you would take away any doubling up.

We agree with the proposals in the report for integrity testing. One of the things that we have said now for some time is that the Wood commission in New South Wales showed quite clearly that there is a place for integrity testing, that being the sort of thing where you would leave money or drugs and test whether staff are able to be trusted in the position where temptation is placed in their way. That, of course, puts a lot of extra pressure on, but clearly a lot of people from the various police forces around Australia

have quite clearly shown that they cannot be trusted when integrity tested in that way. The NCA is no different and clearly needs that level of trust or trust testing.

The decision of Justice Vincent in the Elliott matter, which is quoted at some length in the Law Reform Commission reference, is important because what it says essentially is that, and these are things with which we fundamentally agree:

The NCA could only use its coercive powers normally unavailable to police services . . .

So it is very important to recognise that these are draconian powers. They are extra powers; normal police services cannot use them. The reference states that they should only be used:

. . . in clearly designated circumstances. . . for the performance of the NCA's special functions.

There must be a capacity to ensure that the NCA does not go off the rails and it is clear in the Elliott case that it went off the rails big time. The appropriate method of doing that is to bring in an external review process. The Law Reform Commission recommended a national integrity investigations commission and it will have the capacity in our view to oversight the NCA and, as the Law Reform Commission puts it:

. . . would provide the best guarantee to the Government, to the Parliament, to the individual complainant and to the public that a complaint has been investigated properly and impartially.

Also, again as the Law Reform Commission says, it enables this committee to better exercise its oversight powers without having to get involved in the issues of individual complaints.

Again, the Law Reform Commission certainly expresses a view that shares the concerns that we have that the Federal Court and court protection is insufficient and that, when you have the sorts of compulsory powers that are available and are used by the NCA as regularly as they are, then you need something like a national integrity and investigations commission as part of the oversight process in order to ensure that the NCA does not go off the rails.

The only other thing that I wanted to mention in terms of profits of crime—and this is another matter that we have raised in recent times—is that there was a proposal, and I do not know if it is still current, that the NCA should keep half of all the seized 'profits' of crime that it was involved in. We believe that raises significant concerns in that, in essence, if the NCA has a direct financial interest in the outcome of seizing crime profits, and particularly if it is tied into its budget, then there comes an awful temptation to direct your attention to a particular matter because it looks like you are going to get a pot of gold at the end of it.

That has two problems. Firstly, it may well misdirect the attention of the NCA;

they might put more resources into something that has got a pot of gold rather than something that is equally important but does not have a pot of gold. Secondly, if your budget becomes dependent on getting the pot of gold, and that becomes in effect a problem that you currently have to try and balance the budget, then there is no doubt that that leaves the temptation to go for the things that might have a pot of gold in them. That sort of process, we say, just cannot be allowed to happen.

You can deal with that in a number of ways, but the obvious way is that the budget of the NCA should not in any way be dependent on what they manage to seize. It is not a company; it is not in the business to sort of secure profits. It may be that the most important crimes that they have to investigate have no money in them at all, but yet they are the fundamental and most important crimes they should be investigating. They are my opening remarks. I am happy to take questions.

Senator McGAURAN—To follow on from that, I will just ask one question. Do you think that they are doing their job, following their mission statement? Are they adequate in fighting organised crime?

Mr Dearden—From the personal contact that I have had with various investigations, and I work as a criminal defence lawyer in my private capacity, I must say I have always been impressed with the quality of their briefs. By the quality of their briefs there is no doubt that they have put significant resources into the investigation. By and large, in the investigations I have seen, they have done a good job, and that of course is very important because, again speaking from private experience, if you have a client to whom you sit down and say ‘Look, there are the ten volumes of the NCA brief; I have read it, you can read it; it quite clearly shows that you are bang to rights’, then the better the job that is done, the less likely it is that your client is going to fight what is essentially a hopeless case and waste a lot of time and money doing so. So, yes, if they do their job and do it properly, there is no doubt that in effect they save a lot of money for the community in the long run.

The question as always is whether they have acted within their charter or within their reference and have they acted properly rather than improperly. So, certainly on my own personal experience, the jobs that I have seen them do I think they have done a good job on.

I and my council believe that things like the National Crime Authority, the CJC, are a necessary and tolerated evil but, like black snakes as I started with, you have to keep a very careful eye on them because, as we have seen from the CJC in aspects of the Connolly-Ryan inquiry, as previous incarnations of this committee have found with the National Crime Authority, they can rapidly become a law unto themselves. When they do that they get out of control. There is a temptation to empire-build. There is a temptation to say, ‘Well, nobody should be able to tell us what to do.’ When they get to that stage they have to be brought into line, and that is why I think the recommendations of the Law

Reform Commission are important, in fact probably one of the most fundamental changes required to the legislation to ensure that the NCA is kept to its mission statement.

Senator GIBBS—You mentioned that somebody had mentioned that half of the profits from crime should go into the NCA. Who suggested that?

Mr Dearden—I am not sure, I must confess. It was around June 1996.

CHAIR—It might have been me. It sounded like a good idea at the time.

Senator GIBBS—Was it you, John?

CHAIR—It might have been—providing incentives and all that kind of stuff.

Senator GIBBS—This National Integrity and Investigations Commission, who should be on that body? What sort of people? Should it be us or should it be—

Mr Dearden—No. Quite clearly it has got to be independent, and that is the thing that the Law Reform Commission recognises. It will be doing a completely different job to what you do, although in essence you are the only oversight body of the NCA at the moment. But you do not have the capacity, the resources and, I suspect, the inclination to deal with everybody from the person who was insulted by the receptionist at the NCA when they tried to walk in through to someone who is claimed to be Mr Big but believes that the NCA have acted outside their charter or outside their terms of reference or whatever.

You do not have the capacity to cope with investigating those complaints. Someone needs to, but there is no current mechanism to do it, other than the informal mechanism of, 'Well, if you have got a complaint about the NCA, you complain to the NCA.' I am not quite sure what you do if you have a complaint about the chairperson because at the moment, as I understand it, complaints go to the chairperson, so I guess other than going to the relevant minister or this committee there is not much else you can do.

So, as I understand it, it is a proposal for a totally independent commission that will also simultaneously be responsible for investigating the AFP. And between those two investigation roles and auditing roles—because it will have both investigation and auditing roles—it will in effect be the integrity oversight organisation for the Commonwealth police or quasi-police commissions or forces.

CHAIR—We would obviously regard it as totally inadequate that the chairman of the NCA should be involved in investigations of complaints against the NCA.

Mr Dearden—Yes. That is a classic Caesar to Caesar-type problem.

CHAIR—He would obviously be capable of investigating a complaint against the receptionist. You were overstating it a bit there, but somewhere you would draw the line.

Mr Dearden—That is right, and in fact the Law Reform Commission, in its proposal—and this is what the CJC do at the moment as well—says that you can very clearly define, and sometimes I am sure there are difficulties at the boundaries, but yes, a complaint against the receptionist is quite clearly something that should be internally investigated. You send it back to the chairperson saying, ‘This is, on our view, a relatively minor matter’. So, off to the chairperson, and the chairperson delegates it to some sidekick who goes and investigates it.

On the other hand, an allegation that is against one of the members or against a senior officer of the authority is something that almost certainly would not be capable of being adequately investigated by the chairperson and therefore should be investigated by the national integrity commission. That is exactly what the CJC does here. When you lodge a complaint against the police to the CJC, the first filtering process is, ‘Well, is this a case that can be adequately referred back to the Queensland Police Service to be investigated by their professional standards unit’—and many matters are. But, if it is a serious matter, then we at the CJC will investigate it ourselves. That is precisely the same mechanism.

CHAIR—The NIIC has been described as being a case of using a sledgehammer to crack an acorn, mainly because, as far as we can see, serious complaints against the NCA have been few in number, maybe half a dozen a year—

Mr Dearden—There is a figure of 18, I think, quoted in the report. I am not sure over what period of time.

CHAIR—And most of those complaints have been before this committee, we have looked at them and, in some cases, we have gone down the track of investigating them a little bit. As you said, we have not got the resources and perhaps not even the inclination. But we have referred them then to the NCA and asked them to report back, and the NCA, to their credit, have generally conducted a fairly comprehensive investigation and written back to this committee and given us their perspective on the complaint. We have then been able to tell the complainant what the outcome of that is.

But that may not solve the problem as far as they are concerned. A number of the most notable complainants are continuing to complain, and some of them have even made submissions to this inquiry. In fact, we have even offered to have one or two come before us to have their chance to have a say before the committee in this inquiry.

The other day Justice Wood said—or inferred, I think—when he released his inquiry report that the war against drugs was being lost, or had been lost. We have had evidence before us today that the situation is very bad as far as the availability and the

distribution of drugs is concerned. To some extent the NCA's focus has been on drugs, although I think there is an acceptance that it should have a wider focus. Are you acknowledging then that it has a role to play? You have described it as a black snake or as a guided missile of some sort, but you do acknowledge the problem and accept that there has to be some serious attempt to be made to combat organised crime and drug trafficking in Australia.

Mr Dearden—Yes. We accept, as we say reluctantly, but we accept that there is a role—

CHAIR—Why reluctantly?

Mr Dearden—Reluctantly because, as you establish things like the NCA, they only really have a role if you give them serious coercive powers, which the NCA, the CJC and ICAC have. As you give away powers to something like the NCA, police forces covet those powers and use the argument, 'Well, the NCA has it; why shouldn't we have it?' The Queensland Police Service, for instance, argues very powerfully that they should have telecommunications intercept powers because the NCA have it and the AFP have it, so why shouldn't they have it?

When you are in the position of my organisation, you find that you are constantly fighting a rearguard battle all the time. The police would desperately love to do away with the right to silence because they see that as an interference with their investigation of crime. It is also one of the few bulwarks that we have against a totalitarian regime. As you give away powers to things like the NCA, you have to watch them very cautiously. That is the reason I say 'reluctantly'.

I also see, and readily accept, the argument that there are some crimes, and some methods and organisations involved in crime, that are very difficult to fight in any way other than with an overarching organisation like the NCA. I accept that there is an argument for the strictly controlled use of coercive powers by an organisation like the NCA.

My analogy of the black snake is because a black snake is a very powerful and very capable animal. I have no doubt the NCA is, but it has to be watched carefully and it has to be monitored. It has to have effective oversight. That, in particular, is what I believe has not been able to be managed either by the courts or by this committee. We support the Australian Law Reform Commission proposal because we see that as an effective oversight of a very powerful organisation, which the NCA is.

CHAIR—Coming from that context, I can understand you saying that. But we have had evidence already this morning—and I think the general perception of the community is—that the Australian people quite readily accept authorities having those sorts of powers, particularly when they are fighting organised criminals and fighting the

war against drugs.

Mr Dearden—That is always the seductive nature of selling this sort of organisation. It is interesting. The same thing happens in crime, when you are operating as a criminal defence lawyer. Everybody thinks that there should not be any problem with taking prisoners out and having them flogged, until either they are at risk of being flogged themselves or their son, daughter, mum or dad are. It is not until it touches people personally that they realise that, when you give away powers, you give away something more than you want to give. That is why telephone tapping powers are extraordinarily intrusive. Sure, they are a very important weapon if you are the NCA, because they provide a lot of evidence, but they also represent an enormous intrusion into personal privacy, because when you throw the net out to tape someone that is a target, at the same time, you capture an enormous amount of personal and private information.

Senator McGAURAN—What is your view on telephone tapping and the NCA's existing powers?

Mr Dearden—It is one of those tolerated evils. We accept that they have it. We do not see that the clock is going to be wound back. A typical NCA brief might have 200, 300, 400 or 500 telephone taps. It is quite clearly an important weapon and we tolerate it. It is there, it is not going to be wound back. What we have done is say we do not believe there is a brief to extend it, for instance, to the Queensland Police Service or to the CJC. Essentially, we have drawn the line to say, 'It is there, the AFP have it, the NCA have it, we do not see a basis that it should be extended to the Queensland Police Service.'

I guess it is that question of ensuring that, although people may feel good about the NCA and think it is doing a good job, it is constantly watched. Until individuals themselves come face to face with the consequences of the misuse, or potential misuse, of the NCA's coercive powers, they really do not think too much about it. Just as our clients who have never had any contact with the criminal justice system before think nothing about what it means until they themselves, or their son or daughter, come face to face with it.

I have just come from acting for a young man who has been flogged by a couple of Queensland police officers. Until he was flogged, he probably had an entirely benign view of the Queensland police service. He now has a very different view because it has touched him personally and people have seen the personal effects of what a police officer out of control can do. That is the sort of issue. That is when it hits personally.

Senator GIBBS—Was this in gaol or in the station?

Mr Dearden—No, this was in the street but it is the sort of problem—

Senator GIBBS—Of course, we saw what they did with those young Aboriginal

children and left them with no shoes. That is absolutely outrageous.

Senator CONROY—Surely the issue is the crime that they are either seeking to pin down or stop, not which organisation has the telephone tapping powers. I am somewhat confused by an argument that says this organisation, if it is investigating drugs, can use it but the Queensland police force cannot use it in a localised Queensland drug situation. Surely it is the safety mechanism and the safeguards and the precautions that are relevant, not which organisation has it?

Mr Dearden—No, I think it is also relevant which organisation. You have seen for instance that the New South Wales police service has been shown to have corruption from top to bottom. We have seen exactly the same in Queensland. I certainly do not believe that the corruption has disappeared out of the Queensland police service—I would believe in fairy tales if I did. Again, the problem that you have, as a civil liberties organisation, is you are always trying to draw lines in the sand and limit the damage.

We start from a preference that there be no telephone intercepts. We accept that that line has long since been passed. We therefore redraw the line—and funnily enough, for instance, Queensland National Party politicians, who prior to the Carruthers inquiry might have disagreed with us, once it has hit them personally have suddenly come to agree. That is where the line really—

Senator CONROY—Shouldn't it worry you more than anything else that they are on your side now?

Mr Dearden—Not really. We find our friends wherever we can find them. But once it hits personally—and that is the main thing—people realise the impact of it. When it is somebody else, it is very easy to give away the power, 'We'll give away that bit of our privacy'. But once it is you personally that is having your privacy intruded on, whether it be by surveillance, by tapping your phone or whatever, that is when people become very aware that it is not just a community issue but an individual issue.

Senator FERRIS—If you were able to name a couple of powers that you would like to see the NCA lose—either devolve back to the states or lose altogether—what would your preference be?

Mr Dearden—The thing about the NCA, unlike the CJC for instance, is that the NCA Act—and this is something that we would definitely want to hang on to—still preserves the right to refuse to answer on the ground of self-incrimination. That is something we would not want to see lost. Given that the NCA has the sort of coercive powers it has, we see that as about the appropriate balance, preserving the right to self-incrimination. That is a right that, for instance, is not available under the CJC. What flows from that is the derivative incrimination problems. Sure, you can be forced to answer a question before the CJC and, although that answer cannot be used against you, the

investigation that flows from the answer you give can be used against you and that is where you then, in our view, go over the edge.

Yes, we are prepared to tolerate where the NCA is at the moment but we would not want to see a single scrap of where it is changed to further reduce—

Senator FERRIS—Either increased or decreased?

Mr Dearden—We would probably tolerate a decrease but we do not realistically expect that that is likely to happen. We certainly would not want to see any increase in the powers.

Senator FERRIS—Either in the capacity in which you appear, that is the civil liberties capacity, or in your private capacity as a lawyer, have you ever seen any examples of zealotry by the NCA in the way they have pursued individuals or groups?

Mr Dearden—Personally I have not. Sorry, no, I will take that back. Yes, in at least one capacity that I am aware of. I am aware of a situation and it may well be ongoing so I cannot really say a lot about it other than it is without any effective result. I have seen at least one individual who seems to have been pursued over a long period of time by the NCA for no effective outcome. That smacks at a certain amount of zealotry; I do not know how much.

Senator CONROY—Do you act for that person?

Mr Dearden—Yes, I do, on an ongoing basis. Certainly, there have been significant difficulties in cases in which our firm has been involved, when we are trying to deal with the issue of getting prior statements of witnesses who have given evidence, either at investigative hearings of the NCA, or by giving statements to the NCA. The critical issue of those is this: a witness who may well be a protected witness, an informer or whatever, turns up to give evidence and says, ‘This is my evidence today.’ You may never find out that in fact he has given a completely different statement to the NCA; or he may have given two or three different statements to the NCA: he may have said something different on a critical issue to an NCA investigative hearing.

To adequately defend someone against a witness like that—particularly informers, who have an enormous incentive to give the evidence that they are beholden to give, or to protect their own backside—it is critical, at a very practical level as the defence lawyer dealing with those sorts of people, to know every other statement they have made about the same issue. That is a real ongoing operational problem, if you have someone that either has been or may have been within the purview of the NCA at some stage in their career.

Senator GIBBS—Was that the disclosure regime you were talking about?

Mr Dearden—Yes.

Senator GIBBS—So that is for you, not for the witness.

Mr Dearden—Yes. That is for us to know what else this witness has told the NCA, be it at an investigative hearing or in a statement, because we want to compare what they are saying in court today and see whether they are telling lies today or telling lies to the NCA, or to see if there are any inconsistencies—because that, as a practical tool, is one of the most important things for a defence lawyer to try and work out: is this witness a witness of truth? Have they given different versions at different times?

Senator GIBBS—Has your organisation got a view on what sort of performance indicators should be used to measure the success of the NCA?

Mr Dearden—That is an interesting question. I do not have a formed view. In a general sense, the obvious things are the sorts of things you see in their annual reports: how many investigations are they conducting? What size staff are they doing it with? What is it costing? How many people have been charged? How many of those charges proceed to conviction? That is a very important one. I cannot tell you off the top of my head whether that is specifically analysed down to that level. It might be all very well to charge 400 people but, if only 100 of them get convicted, there is clearly something significantly wrong.

Senator GIBBS—It is very difficult to track that, unless you go through two or three years of annual reports anyway.

Mr Dearden—That is right. You also have to track it down to individuals, because you might charge an individual on 100 charges and end up settling for a plea of guilty on one minor one. You might charge them with importation and take a plea to possession of a pipe. Those are the sorts of performance monitors that really need to be looked at. We proposed, for instance, much the same sort of thing with Operation Noah, which is ‘Dob in a druggie’. If it costs you \$1 million and you get 5,000 complaints but you only end up convicting three people of possession of minor amounts of marijuana, then all the performance indicators indicate that you are not doing a particularly good job.

On a more sophisticated level, that is the sort of performance indicator that should be coming out of the NCA. They no doubt would also say they serve another role, which is intelligence gathering. That is, in a sense, very much harder to put a performance indicator on, because that is the background material that is constantly coming in and either being used by the NCA or being disseminated to the various state police services or crime commissions. But I am sure there is a way of at least, in a general sense, dealing with that, but at a very fundamental level. If you are the National Crime Authority, you must be investigating and getting convictions in national crime.

CHAIR—As an organisation, are you not critical of the NCA's performance in terms of its results? That is not an issue you addressed.

Mr Dearden—No, we have not. It is more to do with the way it runs its operations and the lack of oversight, I guess. But, as an organisation, it appears to be performing reasonably, but accountability is an important part of ensuring that it continues to perform. If it thinks it is a law unto itself, that could be a problem. We have seen that with the CJC, which has brought a lot of the same criticism—that once you set up an empire, it gets a momentum all of its own. That has to be watched very carefully, and it has to be watched continually—eternal vigilance, to recycle an old cliché, is very important.

Senator FERRIS—Can I finalise my line of questioning? This morning, we had evidence from Bob Bottom, the self-styled crime fighter, who said that the war on drugs was out of control and that, essentially, it was being lost, not so much because of the skill base or the technological base of either police forces or the NCA, or any other police federal jurisdiction for that matter, but because of a lack of energy on the part of individuals within those groups to actually take on and win in the war against drugs. Do you have a view about that as an organisation?

Mr Dearden—At a fundamental level, our organisation believes, for instance, that cannabis should be legalised—not just decriminalised but legalised.

Senator FERRIS—I think he was talking about harder drugs than that.

Mr Dearden—If you take that out for a start, that takes out an enormous sort of financial incentive even at that level of making money out of cannabis. Looking at harder drugs, we do not have a formed view, but we believe essentially that the prohibition model, which is what drives the NCA and all the other organisations that investigate drugs, has clearly failed. We therefore have significant sympathy, for instance, for the sorts of remarks that Justice Wood has been making.

What he is saying is reflected even in the comments from Queensland police officers that you talk to who are also involved in drugs. They say that when you have laws that essentially are not reflected by the way society wants to live, particularly with cannabis where it is a law that would be breached by lots of people—I do not know how many, but I am probably one of the very few people I know that has never breached it, but then I am also one of the few people I know who does not drink alcohol—

Senator CONROY—So 14-year-olds shooting up in the school toilets is an acceptable way for society to live?

Mr Dearden—No, that is a completely different issue.

Senator FERRIS—That was not part of the Wood comments.

Mr Dearden—No, but the Wood comment was that currently prohibition is not working. Children always need to be protected, and you need to look at ways of protecting them. But it is clear that the prohibition on, for instance, heroin, amphetamines, et cetera has not worked, continues not to work and it is unlikely—

Senator CONROY—How do you think decriminalising heroin, or legalising it, is going to educate those children in the toilets?

Senator GIBBS—That has got nothing to do with it.

Mr Dearden—I do not think it is going to create any more problems than we currently have at the moment, which is that there are enormous incentives to hook 14-, 15- or 16-year-olds into the heroin system because of the profits.

Senator GIBBS—Money?

Mr Dearden—Yes, and that is the whole problem. Where there is money, there is an incentive to market. Sure we are seeing that. We are seeing heroin being marketed all over the place, and that is my bread and butter in a sense because, as a criminal lawyer, heroin and cannabis cases represent a significant part of my daily work. I often say this, but wearing my civil liberties hat, I believe—

Senator CONROY—You would put yourself out of business.

Mr Dearden—I believe that many of these drugs should either be decriminalised or legalised, but my bank manager tells me I am completely mad and I would have no business.

Senator FERRIS—But it is an interesting thing that we are moving to say, ‘You cannot smoke in restaurants, you cannot smoke on aircraft, you cannot smoke in airports,’ and actually policing that through almost draconian legislation now and yet, on the other hand, we see situations where nine- to 12-year-old children are getting sucked into the heroin circle, and somehow or other we do not seem to be addressing one whilst we are heavily policing the other.

Mr Dearden—As a criminal lawyer and as a human being, I have seen the dreadful effects of heroin addiction over many years and, believe me, it is something that I hate with a passion. I see the effects daily. I have had clients that have died from heroin overdoses and I have been to their funerals, and I have sat there and cried with the families. But, having said all that and having seen all that, I do not believe that the current prohibition model is working. If it is not working, you have got to look for new solutions.

That does not mean to say that I approve of 14-year-olds shooting up in toilets—of course I do not. It would be ridiculous to suggest that I do. I have a child and I have the same fears and concerns as any parent has about children, and I hope to God that my child gets through adolescence and early adulthood without coming into contact with drugs. I am a teetotaler and a complete non-drug user; so, I am a wowser, in those terms. Coming from all that perspective, I still have a belief that the prohibition model has not worked.

Senator FERRIS—If you were to lose a significant part of your income through a change in the laws relating to these substances, the NCA would just about cease to exist because that is a very large focus of their day-to-day work.

Mr Dearden—That is right but I also think that any decriminalisation or legalisation regime is unlikely in a practical sense ever to do away with the large scale importations and the large scale plantations, et cetera. So I guess as a matter of reality—although the economic incentive disappears substantially out of it—there is unlikely to be a change.

Also, it is not necessarily a bad thing in that there are, and I suspect always will be, other areas in which large profits out of crime are going to be made. If they are not made out of drugs, they will go somewhere else.

Senator FERRIS—That is right.

Mr Dearden—The large profits out of drugs have essentially come from the mid-1960s onwards, but no-one suggests that before that there was not organised crime or rackets going on in other areas. It is what some people describe as the pathology of crime, that there is a belief that if you find the 100 people in Queensland who commit crimes and lock them all up, crime will disappear. That is nonsense because as a vacuum is created, other people move in and other crimes are committed. I suspect that there would continue to be a role, whether I like it or not, for something like the NCA. It just may not necessarily be focused on drugs as much.

CHAIR—I suppose you have encountered the arguments about legalising cannabis. That is the Council for Civil Liberties position. How do you counter the sort of arguments Senator Ferris said? If we knew what we now know about tobacco, we surely would never have legalised it, and yet cannabis is many times more toxic and carcinogenic than tobacco.

The other obvious argument is that in America, 80 per cent of marijuana users go on to using cocaine. So it is clearly a gateway drug. I think we would have rocks in our head as a society to let kids get hold of marijuana readily. We try to stop them buying cigarettes until they are 16 or 18. I suppose we would try and stop them getting hold of marijuana till then, but you would not, and you would have a society totally spaced out, driving under the influence of marijuana. It is also very much more toxic than it was when

you might have been tempted to use it. People say that if you can remember the 1960s then you probably were not there, but the fact is that the marijuana that is floating around today is very much more toxic than it was in the 1960s.

Mr Dearden—I will answer that in two ways. Firstly, you clearly retain the prohibition against children having access to drugs in the same way as we have the prohibition against children having access to cigarettes, because there is no doubt that we owe an extra duty of care to children.

Secondly, what we have with marijuana, in particular, is a law that is universally ignored. Again, the prohibition model clearly has not worked and it clearly does not have the support of a large number of Australians. You have only to look at the number of Australians who have consumed the drug at various times in their life, even if they no longer do. Although cannabis may well have its problems, and I am not unrealistic about that—

Senator CONROY—Why do you think it is only ‘may well have’? Do you not think there is plenty of documented evidence?

Mr Dearden—There is still a lot of debate on the level of problems with cannabis and just what are the medical effects. There are many Australians who clearly have consumed cannabis and it has had no effect at all. Quite clearly, for instance, the effects of tobacco, which is far and away the biggest killer in terms of drugs, and the effects of alcohol, both clearly outweigh the effects of cannabis in terms of the overall health impacts of any drug.

CHAIR—But they are legal. That is the very argument.

Mr Dearden—That is precisely right. We believe that in effect, cannabis, particularly throughout the rest of Australia has become a tolerated if not legal drug. You have only got to look at the effective on-the-ground situation in South Australia, Victoria and the ACT. Particularly at small levels and small quantities, it is a tolerated, albeit not strictly legal in the true sense of the word, drug. While there is still money in it, there is still the incentive to make huge amounts of money. While there is huge amounts of money in it: firstly, you need things like the National Crime Authority to deal with it, but, secondly, you have all the potential for corruption that you always have when you have big money, big crime.

I have seen it personally in Queensland. Throughout western Queensland you have poverty stricken graziers, whether it be from drought or hard times or whatever, who have been taking money to grow plantations. I have had clients who have been involved in that sort of a business. That is extraordinarily corrupting. Otherwise normal citizens are prepared in desperate times, with big money being offered to them, to close their eyes to that plantation down the back paddock. You look at it and think: how can someone whose

family has lived on the land for 100 years fall prey to that sort of temptation? It all comes down to money.

CHAIR—You said that the NCA went off the rails in the Elliott case. There might be one or two other occasions where you could put its performance in those terms, but not many occasions. Most of the feedback we are having is very positive about the performance of the NCA. Just as a matter of interest, why do you think—to use your words—it went ‘off the rails’ in the Elliott case?

Mr Dearden—I do not know the answer to that other than to say I do not know whether it was political or personal.

Senator CONROY—Have you read the Inter-Governmental Committee references? Would you cast your legal eye over them before you made that judgment?

Mr Dearden—I base that judgment, and I do not resile from it in one step, essentially on the comments of Justice Vincent and—

Senator CONROY—A man who opposed the NCA and its coercive powers in the beginning. He did not feel it necessary to rule himself out of a judgment.

Mr Dearden—I do not see that that makes any difference. At the end of the day, a clear ruling stands that the NCA had gone outside the powers of its reference.

Senator CONROY—If the legal opinions and legal challenges are successful, would you have to revise your judgment then?

Mr Dearden—I would have to look at it again as you always do when you look at an appeal. That is commonsense.

Senator CONROY—If six or eight or 10 QCs along the way said that the reference was okay?

Mr Dearden—QCs will always say what you want them to say. For every lawyer that gives an opinion on one side, I can find you one that gives you an opinion on the other. At the end of day, nothing is decided until you have a court of appeal or go to your highest court of appeal in order to decide it.

CHAIR—Ian, thank you very much. That was very helpful. We are also going to be talking to John Marsden in Sydney and I am sure he will give us the same views.

[2.02 p.m.]

BEVAN, Mr David John, Deputy Director, Official Misconduct Division, Criminal Justice Commission, 557 Coronation Drive, Toowong, Queensland 4066

CLAIR, Mr Francis Joseph, Chairperson, Criminal Justice Commission, 557 Coronation Drive, Toowong, Queensland 4066

ROGER, Mr Paul, Director, Intelligence, Criminal Justice Commission, 557 Coronation Drive, Toowong, Queensland 4066

CHAIR—We welcome Mr Clair, Mr Bevan and Mr Roger to our hearing this afternoon. The committee has received your submission and has published it. Is it the wish of the committee that the submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The submission read as follows—

CHAIR—Before inviting you to make an opening statement in support of your submission, I am required to state that if during the hearing you consider the information you might wish to give or comment requested by a committee member is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also say to you that, as you are public officers, you will not, of course, be expected to comment on matters of government policy. I am not sure whether that acts as a great deterrent or not, but I am required to state that to you.

You have made a submission, as we said. Did you want to add to it or make an opening statement, Mr Clair?

Mr Clair—If I can, I will make a short opening statement, Mr Chairman. Our position is that we consider that the fight against organised crime requires a strategic and long-term approach. Therefore it needs a body which has access to accurate and reliable strategic intelligence, a body which adopts a multidisciplinary approach to investigation, a body that is not distracted by the demands of everyday policing which are sometimes determined by political factors, a body which has access to the necessary coercive powers and a body which can work in cooperation with a range of other law enforcement authorities.

From a national perspective, it is essential that there be a national coordinating body to maximise the efforts of individual law enforcement agencies throughout the country. That body also needs to be in a position to adopt a pro-active approach to combating organised crime through detection, prevention and through proposing relevant and appropriate law reforms.

The NCA answers all of those needs. It was born out of the identification by a series of royal commissioners of specific law enforcement problems. Those problems are always potentially there, and any lessening of the role of the NCA will carry with it the risk that those problems may well re-emerge.

The significant features of the NCA, as we see them, are these: its national jurisdiction, its multidisciplinary approach to investigation, its coercive powers, its relationship with other law enforcement agencies, its pro-active approach to investigations, its preparation of strategic intelligence assessments, and its coordination role in national investigations and law reform projects. They are set out on page 4 of our submission. We then go on to deal with each of those matters in more detail, but I will not go into those in my opening statement.

I am prepared to at least attempt to answer any questions on general matters that you wish to ask. I have brought with me Mr Paul Roger, who is the Director of our Intelligence Division at the CJC, and Mr David Bevan, who is the Deputy Director of the

Official Misconduct Division. I have brought them because they may be better placed to answer questions that relate more to the day-to-day operational and intelligence liaison matters concerning the NCA.

CHAIR—Thank you. I come from Queensland and so does my colleague, Senator Gibbs; but Senator Ferris is from South Australia and Senators Conroy and McGauran are from Victoria, and Mr Filing is a member of the House of Representatives and comes from Western Australia. The point of introducing the members of the committee to you was that, whilst Senator Gibbs and I are probably reasonably familiar with the CJC—it is a fairly high profile organisation—it might be helpful if you were to tell us a little about the CJC and particularly to put in context its relationship with the NCA, the extent to which you liaise with the NCA, and some points of comparison between the CJC and the NCA.

Mr Clair—The CJC was, of course, established following the Fitzgerald inquiry, which resulted in revelations of well-established corruption at high levels within the police service, and other aspects of public sector corruption. It was observed, as part of Mr Fitzgerald's report, that the police force—as it was in those days—had not been adequately addressing the problem of organised crime. It was recognised in that report that, as I said earlier, in the demands of day-to-day policing, there were sometimes distractions from the proper approach to organised crime.

As a result of that, when the Fitzgerald recommendations were implemented and when, as part of those recommendations, the Criminal Justice Commission was established, the act establishing it provided for the establishment and maintenance of a permanent body—being the CJC—which, amongst other things, was to investigate the incidence of organised or major crime and also to take measures to combat major crime for an interim period. Those last three words, 'an interim period', have caused us some ongoing angst in Queensland. Nobody really knows what they mean. They are stated in the objects of the act, but are not reflected anywhere within the body of the act.

Within the body of the act, the responsibilities of the Criminal Justice Commission include a responsibility to fulfil those objects of the act in respect of the investigation and combating of organised crime. The jurisdiction of the CJC in that regard is, first of all, in respect of the collection of intelligence in relation to organised crime. That is what I call a permanent and unqualified responsibility. The responsibility in respect of the investigation of organised crime is qualified in this way: the CJC has the jurisdiction or the responsibility to investigate organised crime, where the commission itself forms the opinion that the particular investigation of organised crime under consideration is a function which cannot effectively or appropriately be carried out by any other law enforcement agency; that is, by the QPS or any other agency within the state.

The philosophy which has been adopted by the CJC in fulfilling its functions in relation to organised crime activity has been to undertake that function, as far as possible

in cooperation with other investigative agencies, so as to contribute to the enhancement of the capacity of law enforcement to deal with the challenge of organised crime. Secondly to act where possible as an ice breaker and a catalyst to the undertaking of more sophisticated investigations using surveillance, electronic interception, undercover agents, cooperating witnesses and the long-term commitment of resources in an attempt to develop a picture of the whole network of organised crime in a particular area of activity and to seek to move from what might be lower levels of criminal activity into the higher regions of that organised activity.

The CJC has entered into a number of cooperative arrangements, one of those of course is with the NCA. That has been a very productive relationship. At least the assessment that I have been able to make in the time that I have occupied my position of chair—which is now about 16 months or thereabouts—is that it is a mutually productive relationship where the CJC benefits greatly from the cooperation of the NCA both in terms of the exchange of intelligence and the cooperative work within particular operations. It is a relationship also where the NCA has benefited from the exchange of information—again particularly intelligence information—with the CJC.

CHAIR—Are you doing on a state level what the NCA is doing on a federal or interjurisdictional level?

Mr Clair—In terms of cooperating in investigations?

CHAIR—No, in terms of your main functions or focus. You are there to fight organised crime in Queensland, is that right?

Mr Clair—Yes, in the ways that I have said. There is a restriction on the jurisdiction as far as investigations go, but comparing that restriction with the NCA, of course the NCA is confined to either relevant offences or to reference driven investigations. We do not have the restriction of a reference driven investigation, but we do have the restriction of having to qualify for the formation of that opinion that I mentioned earlier.

CHAIR—There is some suggestion that that requirement of the NCA to have the use of its special powers constrained to investigations where references have been required could perhaps be lifted. You do not have that constraint. Could you see the NCA's effectiveness being enhanced if it did not have that restriction?

Mr Clair—I think there is a problem with the notion of a reference driven investigation because, as I understand it, the reference is established and established for a period of time. Also the targets of the investigation need to be identified in the reference. I see that as creating some real difficulties with the progress of an investigation and ultimately the effectiveness of an investigation, because things develop of course as the investigation proceeds. Targets can be identified in the course of an investigation and it

would no doubt create problems for the NCA if it then had to seek a reference in some way to pursue the investigation further in relation to additional identified targets.

I would think the definition of the investigation which the NCA is to carry out would need to be modified in some way, even if the reference system were to work effectively—that is, the definition of the investigation within the reference. But I also see problems even if that aspect could be addressed. I would see problems in that, if the reference is for a particular period of time, then the investigation of course proceeds and during that time period there would be a focus on that investigation. At the end of the time period, irrespective of the fact that the investigation might still be very productive if it could be continued and may need the special qualities of the NCA to effectively continue it, the NCA is then in a position where it has to change its focus and pursue other references. I would think some other definition, first of all, of what the NCA has to pursue by way of investigation and the existence of some discretion appropriately hedged about with guidelines, some discretion as to what matters they investigate, would be a more effective way.

CHAIR—They have a determined menu of work, I guess, which has been agreed by the Inter-Governmental Committee and that establishes the broad parameters. How does the CJC determine what it is going to do from day to day?

Mr Clair—In terms of investigating organised crime—I will take your question in that context—the starting point for the CJC was very early in its history when there was a recognition by the police service that its capacity in the investigation of organised crime was very limited. The CJC looked at the problem areas in respect of organised crime. There were four areas that were identified as then the major areas of organised crime. The commission resolved that they were matters appropriate for investigation within the terms of the Criminal Justice Act and those four areas became the focus.

They have remained the focus, although at the moment, and for some considerable number of months previously, the CJC is revisiting the areas of organised crime in which it is currently active and is having the necessary assessments made—first of all, the intelligence assessments in respect of those areas of organised crime, and secondly, the assessment of the capacity of the QPS to conduct investigations of those areas of organised crime—with a view to the commission again addressing the question of formation of the opinion under the terms of the act. So it may be that there will be some modification of the areas in which the CJC is active. But, to come to your question, the CJC has a system whereby it does review from time to time those areas of organised crime which it is in, with a view to determining whether they still meet the jurisdictional criteria.

CHAIR—Do you do that yourself? The government does not determine—

Mr Clair—It is done by the CJC.

CHAIR—There is an element of accountability towards a parliamentary committee as well—the same as the NCA has?

Mr Clair—Yes.

CHAIR—What is your relationship with that committee? I do not mean in qualitative terms. Do you appear before that committee regularly?

Mr Clair—Yes; we report fully on a bi-monthly basis. It was for a long time on a monthly basis; it was changed 18 months ago, or thereabouts, to a bi-monthly basis. We report fully with a substantial document that sets out all that we are doing, within some limits in terms of any current sensitive operations that may not be fully described in that document. Certainly it is a very full report. In the organised crime area there is a reporting on the activities that are being conducted there, again, subject to any operational concerns about sensitive current material.

CHAIR—Is that the main element of your accountability? Is that the key element to it?

Mr Clair—Yes, that is the key element to the accountability. There are other aspects, of course, of the accountability of the CJC, but the core of it is the parliamentary committee. The parliamentary committee does not have any say in the areas of organised crime which are being investigated by the CJC beyond the fact that the parliamentary committee is entitled to question whether the CJC is operating as it should under its act. The parliamentary committee would be entitled to question whether the proper procedures have been adopted and whether the necessary opinions have been formed by the commission in order to justify its activities in a particular area of organised crime.

CHAIR—The NCA has a far greater degree of accountability to a number of different organisations. This committee is only one element of that accountability. Is there a suggestion that the CJC should be more accountable?

Mr Clair—I would hesitate to embrace the notion ‘more accountable’ because we say that we are highly accountable under the legislation as it stands. We have made a submission to the Connolly-Ryan inquiry. I would like to leave a copy of this with you because you may find it helpful. A section of that submission does deal with the question of accountability.

The view we have taken is that if the parliamentary committee system—referred to as the Parliamentary Criminal Justice Committee or the PCJC—was operating and able to operate on a true bipartisan basis and with a concern to ensure that the CJC was operating in the most effective way possible, then subject to one small qualification, that system could work quite well.

The fact is that the legislation, in theory, sets up what could be a good system for accountability. One of the difficulties is that parliamentary committees sometimes have a difficulty in operating on a true bipartisan basis and one can find that political considerations come into the operations of the committee. There is always a danger of that, particularly with a body such as the CJC, which has jurisdiction which sometimes extends into the area of investigation of elected officials. We have, as you know, a constant state of some tension between not just government but government, opposition and the CJC. Its history has demonstrated that and we have to live with it.

For that reason, there is always the risk that the committee will not operate in a true bipartisan way and you get divisions within the committee. That, in turn, can affect this whole system of accountability.

Mr FILING—What is wrong with having partisan views on a parliamentary committee?

Mr Clair—It is not so much having partisan views but it is when the partisan views lead to disagreements within the committee which can impact on the actual process of accountability, so that the focus tends to become rather more a focus on different views within the committee rather than a focus on how we can have the CJC working most effectively.

I am sorry, I did say it was subject to one small qualification—a true bipartisan committee could work well, as a system of accountability. That small qualification is that there are sometimes sensitive current operations, details of which are known only within the commission on a need to know basis. They may be known to very few people within the commission. It is sometimes difficult to discuss those matters with the parliamentary committee in a way that would best enhance the system of accountability.

For that reason we have proposed that it might be desirable to look at another limb, as it were, to the accountability system by the appointment of what we have described as an Inspector-General, who would be a person appointed on a bipartisan basis, who would have powers of audit in respect of the commission—we would envisage that to involve current operations; even sensitive current operations—who would have a role in respect of investigating any complaints against officers of the CJC and who would then report to the parliamentary committee.

Mr FILING—Surely, given the recent events in relation to CJC and its relationship with this parliamentary committee, and the parliament, for that matter, one could argue that, with a parliamentary committee which is dominated by government members, as is often the case—there is usually a majority in most of the parliaments where there is a similar sort of committee, whether it is in New South Wales, Queensland or on the NCA committee—where you have a disagreement with the government, I would have thought a bipartisan view might not actually be helpful for accountability. In fact,

having a committee that is doing what normal parliamentary committees do, which is to have different views, may enhance the accountability process. I am interested in why you are fixated on the bipartisan nature of a committee as being the most effective way.

Mr Clair—I have got no difficulty with that. I think you will find that the views we have expressed are that if the committee is operating as a true bipartisan committee, the system could work quite well. I do not criticise that at all. My concern is that sometimes matters of dispute within the committee tend to become the focus rather than the goal of acting in a bipartisan way, albeit with different views, to achieve what is the best outcome, both in terms of accountability of the CJC and in terms of ensuring that the CJC can best achieve the purpose for which it was established.

I think that best expresses the concern. There is no difficulty with a committee that operates in a true bipartisan fashion, with different views, but which in the end is a committee that seeks to act to make the body accountable and to see the best outcome. From what I can see of this committee, from what I read of this committee, it is a committee which operates well in terms of its oversight of the NCA. I do not say that in any sycophantic way; I say that because from what I observe I see a process which works in the way that I would like to see an ideal parliamentary committee work.

Mr FILING—At a conference a couple of weeks ago there were a number of views expressed that parliamentary committees had actually failed to oversight star chamber aspects of the various commissions.

Mr Clair—Yes, I was present when some of the views were expressed.

Mr FILING—Not when it was opened, though.

Mr Clair—No, I was not present for the presentation of the indictment!

CHAIR—Bob Bottom was very optimistic this morning about the role of parliamentary committees. He actually thought they were probably the best way of addressing a lot of issues.

Mr Clair—I would not like to see the parliamentary committee taken out of the process. All that we have proposed is that the system could work better if there was another element brought in by way of what we have called an Inspector-General, who could report to the parliamentary committee and then the parliamentary committee goes on from there. It overcomes this problem, for instance, of the parliamentary committee needing to know that things are happening properly in respect of current operations, but there might be current operations, the details of which cannot be given to the committee, whereas an Inspector-General could look at such matters, report back and give the assurance.

CHAIR—It has also been suggested—and it has certainly occurred to me since I have been involved in this committee, which is 12 months now, and not having come from a law enforcement background—that we have got so many of these bodies, and people oversighting them and under-sighting them. The point was made very clearly this morning: where do you draw the line with all of this? We have so much duplication. There is now a proposal to form an NIIC, a National Integrity and Investigations Commission, to deal with complaints against the NCA. That is mainly because this committee has not been able to deal effectively with them by sheer dint of the fact that we have not had the capacity or the resources to do it. Will your Inspector-General have a similar role to the proposed role for the NIIC?

Mr Clair—Not really. That would not be the main purpose. The main purpose of the Inspector-General would be to ensure that the parliamentary committee was satisfied that things were happening as they should with the CJC so there could be an audit of activities of the CJC carried out by the Inspector-General that could be at a deeper level than that which the parliamentary committee could do. But, ultimately, it would report back to the parliamentary committee. It would only be one aspect of the Inspector-General's role to be concerned about complaints against officers of the CJC.

Mr FILING—Would it be similar to what we proposed some years back, that the Inspector-General of Intelligence and Security be given an extended brief to investigate NCA matters that would in fact be beyond the committee to inquire into and inappropriate for the NCA to do themselves.

Mr Clair—Yes, that would be one aspect of the role, and an ongoing audit role in addition to that. That would be the closest model that I could think of.

Senator FERRIS—Could I ask a couple of questions of Mr Clair's colleagues? I was interested in the introduction when you were identified as being in an area responsible for complaints. I am interested in exploring with you any views that you might have on who should guard the guards. Page 96 of the document that you have just given to us talks about the complaints system. Do you have any views on how the NCA should operate with the complaints? Let us say somebody comes in and wants to complain about a situation that has occurred within the NCA. If that involves the South Australian police, the AFP or whatever, should the complaint go back to those state jurisdictions or should there be a system within the NCA, or independent of the NCA but adjacent to it, where that complaint could be investigated?

Mr Bevan—Firstly, as you say, the system with the commission is that we established at a fairly early stage that, where a complaint was made against an officer of the commission, an arrangement was reached with the Attorney-General of the state, the state DPP and the commissioner of the police service, whereby the matter would be referred to the DPP. The Director of Public Prosecutions would then nominate a particular crown prosecutor to oversee an investigation to be conducted by an officer appointed by

the commissioner of police. In that way, we kept it external to the commission. That has been overlaid by a different process in respect of alleged leaks from the commission where an independent legally qualified person is appointed to oversee the investigation.

Applying that model to the NCA, you do have the added difficulty where, if you are referring it back to the state from which the particular officer came, you again get the allegation that the investigation is not being conducted impartially. So in that situation you either rely on the Inspector-General model, which has already been referred to, or you have a separate organisation. It may be possible to come to some arrangement with the state agency for the investigation to be conducted by the officers of another state, for example.

Senator FERRIS—It is clearly an issue that needs to be given a lot of thought. My other question was for Mr Roger. I accept that you may be constrained by the confidentiality of the area of work that you do but one of the issues that has been raised with us today is the question of intelligence gathering and intelligence sharing in the war on drugs. That is the context in which it was raised with us this morning. Could you tell us what sort of priority you would see that being as part of the NCA in terms of successful wars on drugs, for example, or of successful crime fighting in general?

Mr Roger—Not just for the NCA but for any agency, if you do not have an efficient and effective intelligence process running hand in hand with your investigation process then you are not going to be anywhere near as effective or efficient as you could be. If I can just put it into simple terms: any investigation not only leads, hopefully, to a successful arrest and prosecution but it also generates a tremendous by-product of other intelligence which is not necessarily relevant to the charges that end up before the court. That information should not be lost. It should be retained, it should be stored and it should be matched up with other information at a later date to gradually build a picture of the overall problem, rather than the small segments of the problem that you are probing from investigation to investigation.

By gradually ensuring that you do capture that information, store it appropriately in a re-usable format, and you also have running parallel to that intelligence probes—if I can use that description—where you are looking more to examine problems from a strategic perspective, by bringing all of that together and using your intelligence holdings, you place yourself as an agency, if I can deal with an agency initially, in a far better position to approach any problems, be it another investigation or whatever, where you have got a far better foundation on which to launch your investigation.

You place yourself in a far better position to make correct decisions. We all know that decisions are made on the best information available, so the better your intelligence holdings are, the better your decisions are going to be. They may be investigative decisions, they may be policy decisions, or they may be simple administrative decisions.

Then, from the NCA's perspective, if you take that intelligence one step further where it can advise other government agencies and the government itself on the problems that are faced, you have then got the potential not only to investigate successfully, but you can combat the problems from the preventative and the deterrent perspective as well by changing the law to remove the opportunity for the problems, or changing administrative procedures to have the same effect.

What I am really saying is that you must do both; you must effectively investigate, but you must still have a very effective intelligence process.

Senator FERRIS—To what extent would listening devices and telephone interception devices play a role in that?

Mr Roger—They are evidence gathering tools in the main. They are used by most law enforcement agencies, not purely to gather intelligence but to gather evidence towards successfully prosecuting matters. But you do get an intelligence by-product, obviously. You do not use everything you learn from those sorts of devices, but you can store what you have learnt and you can use it with other information later to give you a better understanding of the problem.

They are effective tools in the tool chest that you use to combat organised crime. Just as if you are a car mechanic you need all the right tools to do the work on your engine, you need all of those tools from a law enforcement perspective if you are effectively going to combat the sophistication of today's criminal world.

Senator FERRIS—Would you have any view on the use of those devices being extended to state police jurisdictions?

Mr Roger—From a surveillance perspective, and from a listening device perspective, I believe most state jurisdictions already have those powers, perhaps not as extensive—I know the Queensland police are limited in their listening device activities. They have that power under the Drugs Misuse Act, but they have a complication in the legislation in other areas where they cannot covertly enter to place a listening device. So the legislation is in need of repair, I suppose, in Queensland, but I believe other states have addressed those problems.

The commission has listening device and surveillance capabilities. What Queensland does not have, which it dearly does need—and we alluded to this in our submission—is telephone interception powers. It is the only land state of Australia that lacks those powers, and it has been proven in every other state and Commonwealth agencies that they are a very effective, very cost-effective and perhaps the least intrusive way of surveilling somebody. The commission has made submissions to try to get those powers and will continue to try to get those powers.

Senator FERRIS—It has been suggested to us that one of the reasons the NCA is successful in some of the charges that it lays is because it does have much greater powers than any of the state jurisdictions in that area.

Mr Roger—The additional powers which it does have which other state jurisdictions do not have are the compulsory powers which the commission enjoys such as the investigative hearing powers and the notice to produce powers for financial evidence or other documentation that you might need. They are very powerful tools. They are advantageous to the commission and to the NCA. But, they are tools that have to be used judiciously and cautiously and they require a little bit extra control than some of the other powers. That is where the debate comes as to whether the police should have all of those powers or whether they should be held by agencies such as the National Crime Authority.

Senator FERRIS—Have you ever, in the course of your work, seen any examples where NCA powers have been used more zealously than perhaps they should have been?

Mr Bevan—Not in my experience. The commission has extensive operational contact, particularly with the local office of the NCA. That office started in early 1993. Before that we did have a fair amount of contact with the NCA and cooperation. That cooperation has been underpinned by a memorandum of understanding as long ago as 2 September 1991.

Certainly, the level of contact increased once the Brisbane office started. That contact has not simply been liaison. We have assisted each other in the close down of operations, but on several operations we have actually conducted them as joint operations. So we have worked very closely with them. Our experience has been that in the exercise of their powers they are very mindful of the need that they comply with all of the necessary statutory requirements and that any dissemination of information obtained by use of the telephone intercept power or the listening device power be properly accounted for.

CHAIR—Does the CJC have its own investigators?

Mr Clair—Yes.

CHAIR—How many of them?

Mr Clair—We have a number of investigative teams. If we are talking about the organised crime side, that is done almost entirely now through what was described as the joint organised crime task force, which is a result of a cooperative effort between the QPS and the CJC. I must say that it operates more within the CJC area because the powers that it is using are powers that are used pursuant to the provisions under the Criminal Justice Act.

CHAIR—Would your own agents normally be ex-policemen?

Mr Bevan—For the joint organised crime task force, when it is at full strength, which it certainly is not at the moment, it has 17 police and civilian investigators. Most of those are serving police officers. There are police officers who are seconded to the commission and they become officers of the commission though they retain their powers as police officers. When the joint organised crime task force commenced, the commissioner of police made additional police officers available specifically for that purpose. They do not work for a time in the task force and then move to, say, the complaints area of the commission as the other officers could, they stay within the task force. It is approximately half and half, the number of police who are really our police and the number who are seconded there for the specific purpose of working within the task force.

Senator GIBBS—You mentioned civilian officers. What sorts of civilians?

Mr Bevan—The civilian investigators are all ex-police officers, whether from Queensland or from other states. Of course, within the task force we also have our financial investigators who are accountants. There are intelligence analysts from Paul Roger's area who are also deployed within the task force as well, and there is a senior lawyer within the task force.

Senator GIBBS—And the numbers of people fluctuate: sometimes you have more; sometimes you have less. Is there a reason for that? It depends on the work, does it?

Mr Bevan—No, not so much on work as on other circumstances. At the present time, there is some uncertainty as to the future of the task force; and, as police officers have left to go back to the mainstream policing, they have not been replaced, for a variety of reasons.

Senator GIBBS—Money? Or political reasons and all of that?

Mr Clair—Money plays a part. Certainly in this current year, we were faced with very difficult budgetary decisions, and at one point we decided that we could not persevere with the Joint Organised Crime Task Force. Although initially, when we made that decision, we did have the view that we would nevertheless maintain some capacity to investigate organised crime, the budgetary situation worsened to a position where we could not even look at retaining that capacity.

We made a decision to disband the Joint Organised Crime Task Force, and it was only after we had made that decision and had begun to implement it with redundancies which could affect in particular the intelligence contribution that the government then made a decision that, pending the outcome of the Connolly-Ryan inquiry, the CJC should maintain its capacity to investigate organised crime; and it provided special funding to

continue the Joint Organised Crime Task Force. That is still the situation.

Mr FILING—What is the size of the CJC budget relative to the NCA budget?

Mr Clair—The CJC budget in this current year is just over \$20 million, with special funding for the JOCTF and for what is called the Carter inquiry, which is an inquiry into the corruption within the QPS in respect of drugs, adding about \$2 million to that; so it is around the \$22 million mark—about half.

CHAIR—Not only is there a plethora of commissions and so on but also, in terms of the actual investigation end, you have got the Queensland police with a drug squad; the CJC investigating organised crime, including drugs; the NCA doing the same; Customs being involved and having a role in it; and obviously the AFP having a role in it. Don't you all get in each other's way?

Mr Clair—The essence of all of this—and I have been heard to say this on a number of occasions—is cooperation. There needs to be, and there largely is, cooperation amongst the agencies. Our relationship with the NCA is very much designed to avoid any overlap; and that of course is where the NCA coordination role on the national front is very important. Within Queensland, we are yet to fully address this whole question of cooperation to avoid duplication.

Until recent times, we have largely been able to avoid duplication. There is some concern at the moment with the confusion that arose from the decision we had to make to disband the JOCTF, plus the implementation of the Bingham review committee recommendations that the QPS should work harder at developing its multidisciplinary capacity to investigate organised crime; but I think we are beginning to see the arrest of overlaps. This is something that we have recently been addressing with the QPS to ensure that those overlaps do not occur, because resources are scarce on every front and we want to make sure that we maximise resources and that the fight generally against organised crime is the most effective. That can only be done by cooperation.

And I would envisage that, over time, if we can proceed on a cooperative basis, we will see a higher proportion of organised crime being investigated within the QPS, particularly if there is some enhancement of their police powers. But that will be done in a truly multidisciplinary investigative fashion, and that is one of the challenges of the CJC: it has, as one of its many roles, the need to ensure that reform continues within the QPS and that the most effective methods are being used.

One of our challenges is to ensure that the QPS properly develops its capacity to investigate organised crime with a true multi-disciplinary approach, and that it does so with a view to achieving longer term goals, rather than on an ad hoc basis with the risk of being distracted by day-to-day operational concerns.

Mr FILING—Most commentators on the issue are conceding that the country is awash with heroin and there is an extraordinary problem with drug trafficking at the present. Why has the CJC chosen to concentrate on things like the allegations against Mr Cooper, and then against Mr Goss, in relation to the Shooters Party, rather than on the problem that is causing the community most grief?

Mr Clair—I do not know that the commission ever decided to concentrate on those things. The commission has an obligation to investigate official misconduct as part of its statutory responsibilities. The investigation in respect of the memorandum of understanding last year, which became the Carruthers inquiry, was one that involved a possibility of official misconduct. If you are familiar with the development of that investigation last year, you will know that that memorandum of understanding was referred to the commission for the purposes of a review by the police minister and that the matter was then made the subject of a request for advice from senior counsel as to how the commission ought to proceed. That advice was provided by senior counsel and the commission has acted in accordance with that advice.

I know there have been assertions in the public arena that the commission somehow acted contrary to that advice, but that is simply wrong. The commission has always acted in accordance with the advice of senior counsel. Part of that advice was to appoint an independent person, preferably from outside the state, to conduct an independent inquiry. The reason for that was that the CJC, given some of the provisions under the memorandum of understanding, saw the risk of a public perception that the CJC had some interest in the matter, so it wanted to put itself at a distance. It did. It stayed at a distance and, as I say, it acted in accordance with advice.

Mr FILING—I am sorry, I mentioned Goss. I was wrong. It was Kaiser.

Mr Clair—I think, in the second aspect, in the shooters association there were a few people targeted.

Senator FERRIS—The same principle applies to the investigation of Mr Le Grand. That is part of your hearings, isn't it? Haven't you been looking into that?

Mr Clair—That has been made specifically the subject of a commission of inquiry appointed by the government. While dealing with that inquiry occupies a great deal of our time, it is not actually one of our inquiries.

Mr FILING—The NCA has been criticised in recent times for having what some would consider to be a high cost for its performance indicators—the arrests and charges. Likewise, the CJC has been criticised. Mr Cooper was, I think, very strongly critical of the CJC's effectiveness, from recollection of his speech at the opening of the recent conference. They are saying that there is a very low return for the dollar. Given that your budget is about half the NCA's budget, which is for dealing with the situation entirely

within Queensland, couldn't it be very successfully argued that that sort of \$22 million budget attached to the Queensland Police Service would make it a very effective police service indeed and could probably eat into a fairly substantial amount of this drug trafficking that is going on?

Mr Clair—Perhaps. When I was originally dealing with the role of the CJC, at the outset of my comments the other day, I did not go into sufficient detail about the range of functions that it has. The investigation of organised crime is only really a relatively small part of its function. The proportion of its budget that has been devoted to the investigation of organised crime has been less than 10 per cent on average over the years. It was somewhere around eight per cent at one point. While it has varied, it has only been that relatively low proportion of the CJC's budget.

The CJC also has the responsibility of investigation of complaints of misconduct and official misconduct in the police service and official misconduct in the public sector. That has tended to be the very substantial area of expenditure. It has to investigate those complaints—it is not as though there is any option about it. When you asked the question and described the CJC's action as 'choosing' to investigate Mr Cooper and somehow choosing to expend a proportion of its budget on that, rather than on organised crime, that really does not represent the true situation that existed. That was the point that I was making.

Mr FILING—But both Mr Cooper and Mr Goss, who both participated in the conference, were critical of the CJC in that way. There was a strong vein of criticism that the CJC had become almost an expensive monster that was sucking up resources that could otherwise have gone into investigating serious crime in the community.

Mr Clair—With all due respect to Mr Cooper and to Mr Goss, in terms of achievement within the organised crime area, having regard to the proportion of budget which is devoted to that, the CJC does have the runs on the board. There can be no question about that. There have been very successful operations where the CJC, either alone or in conjunction with other agencies, has taken out whole organised crime organisations. The results, by way of court results, show that. That of course, we would say, would not be the only performance indicator that you would look to in that regard. There are quite a number of other matters that would need to be assessed in determining the success of the activities against organised crime. But, as I say, that is only somewhere in the order of 10 per cent. In terms of the outcomes in other areas, again, the runs are all on the board.

CHAIR—You are a party to the Standing Committee on Organised Crime and Criminal Intelligence, SCOCCI. That seems to me to be some sort of attempt to avoid duplication and foster cooperation. Is that working?

Mr Clair—Yes. I have been to three meetings of SCOCCI. In fact, it was at the

first meeting that I had something to say, although I was a new boy on the block, about the desirability of ensuring that SCOCCI was used to achieve coordination and avoid duplication, so that we can maximise the resources that go into the fight against organised crime.

I think it is fair to say that the third meeting, which was in Adelaide on 10 April, was clear evidence of just how that body can begin to operate very effectively. There was a very good exchange of views about matters that really count. I came away from that meeting with the feeling that SCOCCI will be a very worthwhile organisation. I am not saying that it has not been so far, but that meeting left me, and I think others who were there, with the feeling that something can really be achieved if people come together and use the opportunity to speak frankly and to discuss real problems.

CHAIR—How long is your appointment as chairman?

Mr Clair—My appointment is technically for 3½ years, but I did not take up the appointment for the first six months so I am there for three years.

CHAIR—There is a fixed term, as there is with the NCA appointees?

Mr Clair—It is up to five years for a chairperson. I think my appointment for 3½ years is probably the longest, but it was on the basis that I would be there for three years. Theoretically, there could be an extension up to five, but five years is the maximum term that a chairperson can serve.

CHAIR—And the part-time commissioners?

Mr Clair—They can be appointed for up to five years, but they can also be reappointed under the act.

CHAIR—Is that a good model? It is not the NCA model.

Mr Clair—I appreciate that. I think for part-time commissioners, yes, it is, although there is a variety of views about it. The part-time commissioners do develop a certain body of expertise, but it takes time. I have found that, in coming into the organisation; it takes a while to get to know it.

My predecessor advised that I would be silly to take it on for more than two years and there are good reasons for that. But I must say, in taking it on I felt that it would take me a year or more to come to know the organisation and probably more than a year, because I am still learning. But then you need to be there for long enough to capitalise on that, too.

CHAIR—Finally, your submission generally is fairly supportive of the NCA and

very complimentary about its relationship with your own organisation and the degree of cooperation. Are there any negatives? I do not recall in your report there are any in particular.

Mr Clair—No, I do not think so.

CHAIR—In our inquiry we are trying to look at every angle. Your remarks so far have been helpful, but are there ways the NCA could be improved or its performance enhanced?

Mr Clair—Collectively, the three of us sought to identify what we might see as weaknesses in the current situation. Certainly, in our relationship with the NCA there is no negative that I could identify when talking with both of my colleagues who have a lot more to do with it on an ongoing basis. But, in more general terms the first that we identified we have touched on and that is that it is reference driven and that there is this time limitation. I had something to say about that earlier.

The fact that money laundering is not included as a relevant criminal activity seemed to us to be an inconsistency, because again the money laundering aspect of the NCA's investigations is something that is likely to arise in the course of an investigation. So the NCA should be in a position to pursue those investigations.

The only other matter we touched on really was this notion that members be appointed for four years and that is it. There could be a problem, first of all, if there is not overlap so that you can get some ongoing body of expertise. That is a problem that we have had. All of our part-time commissioners, all four of them, finished over a relatively short period of time and we are suddenly confronted with substantially a new commission, although one of them has been reappointed. It is a shame not to capitalise on a body of expertise that has been developed so that, either there ought to be scope for a longer period than four years for members or, if that is not acceptable, there should at least be an attempt to ensure that there is an overlap. It is probably exacerbated by the fact that there are only three members.

Senator GIBBS—How long would you say? Should it be an indefinite period, like for ever, or whenever people want to go?

Mr Clair—I would think two periods of four years. I am not against the appointment for four years, because it may be that there needs to be a review from time to time. But my understanding is that they are limited to four years and that is it. Perhaps the option of reappointment for four years would give you the opportunity to capitalise on that development of expertise and it would give some continuity.

Senator GIBBS—Yes. The poor person is probably burnt out by then anyway.

Mr Clair—Ask me in November next year.

Senator FERRIS—But you could argue that you are not really capitalising on the investment in human resources if you turn everybody over every four years.

Mr Clair—Yes, that is so. It is a matter that I have had to address before this commission of inquiry where it has been suggested in questioning that perhaps directors should be limited to five years. I would regard that as a very great waste of human resources, because you need five years as a director to really develop the level of expertise that you need.

Mr FILING—We heard from Bob Bottom this morning who made the comment that he felt the Fitzgerald inquiry did not go far enough. In fact, it had not identified any drug trafficking activities in a sense that would have been able to advance the inquiry into drug trafficking. If I can summarise what he had to say. He felt that in fact that was one area where Fitzgerald could have done more, given that there was a fair amount of general community knowledge about where drugs are being sold and the obvious drug activities around the place. Why has it taken the CJC so long to identify, for instance, police involvement in drug trafficking as part of its important target investigation?

Mr Clair—It is hard for me to comment on the way the Fitzgerald inquiry ran, but obviously there was a whole network of corruption that was then identified and that no doubt absorbed a lot of its investigative capacity at the time and there had to be a cut-off at some stage. It was no doubt expected that the CJC would take over the role.

To come to the second part of your question, the CJC has recognised that the only way to effectively discover the extent of that kind of corruption within a police service is to do it in a very strategic way. You are not going to get complaints about it. You really need to be pro-active and adopt pro-active investigative measures. That is the approach that the CJC did adopt and it is an approach which takes a long time, very often, to produce results. Sometimes attempts that can be made in that way and sustained over a period of time turn out to be, for one reason or another, not as fruitful as you would like them to be.

But there is no doubt that the CJC has been conscious of its responsibilities. It has adopted a pro-active investigative approach and, once those sorts of investigations are under way, they are not matters which can be peremptorily or precipitately brought to an end. They need to be allowed to run properly.

Mr FILING—At a time when the government was critical of your comments in relation to this particular issue, they were critical in the sense of the budgetary issue, of how much or what would be required to do this. Given that your budget is half of that of the NCA, why could you not effectively conduct this sort of long-term inquiry within the parameters of your current budget?

Mr Clair—We have conducted investigations of that kind, but to then conduct a public inquiry, and to provide the very resource intensive investigations that accompany the winding up of those kinds of investigations, is an extraordinary expenditure. In other years we have found that we have averaged one expensive public inquiry per year and we have been able to handle that within our budget. Last year, however, when we really needed a substantial increase in our budget just to cover the natural increases from year to year, we had a substantial cutback. We were somewhere in the order of \$2.7 million short of where we needed to be to operate at the same level that we had been at the year before. The position we were in was that we were not any longer able to put aside the funds that were required to run the public inquiry element of the investigations. That is not to say that we were not diverting substantial moneys to the investigations themselves; we had been, for some time.

CHAIR—Mr Clair, thank you for your time. I know how busy you and your colleagues are. We appreciate that you have managed to make yourselves available today. It has been very instructive for us. We are pleased to hear that you and the NCA are effective partners in fighting crime. We will welcome some ongoing interaction with you in the future, perhaps, when the circumstances arise. Thank you very much for your time today.

[3.22 p.m.]

McHUGH, Inspector Dominic Gerard, Staff Officer to Assistant Commissioner, State Crime Operations, Queensland Police Service, 100 Roma Street, Brisbane, Queensland

CHAIR—We welcome Inspector Dominic McHugh, representing the Minister for Police and Corrective Services and the Minister for Racing, speaking to the submission of the Queensland government. The committee has received your submission and published it. Is it the wish of the committee that the submission be incorporated into the transcript of evidence? There being no objection, it is so ordered.

The submission read as follows—

CHAIR—Before inviting you to make an opening statement in support of your submission, I am required to state that if during the hearing you consider that information you might wish to give or comment requested by a committee member is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your request. I should also tell you that as you are a public official, as a member of the Queensland Police Service, you will not be expected to comment on matters of government policy.

Inspector McHugh, do you want to make some comments in addition to the submission that you have presented?

Insp. McHugh—Not particularly, no, but I might reiterate the general flavour of it. Although, historically, there was some opposition on the part of police services and police forces in Australia to the establishment of the NCA, the status in the mid to late 1990s is that certainly the Queensland Police Service believes that the NCA is a very important organisation and something which should continue. Particularly, its cooperative and coordination role is the area in which we see it being most successful in that it allows us to effectively extend our investigations across state borders at all sorts of levels. It allows our colleagues in other states to move this way. We all work cooperatively and we do not run across one another. It is a very important way of achieving everyone's aims. That is the bottom line.

CHAIR—As you said in your submission, a coordinated approach to national crime has never been more critical. You made those remarks in the context of Sydney hosting the 2000 Olympics. Why in that context? What is there about the Olympics that makes it more critical than ever?

Insp. McHugh—I was speaking in general terms there but covering all sorts of areas. The focus of the world is going to be upon us, so every entrepreneurial criminal, I would imagine, around the world who has not thought of Australia before will all of a sudden think of Australia and see us as an opportunity. We are a stable country which has many opportunities for legitimate business people, so in the same way we attract illegitimate business practices and criminals. I would have thought that the mixture and nature of what can occur as a result of bringing, at the end of the millennium, the Olympic Games here to Australia, with all the political and criminal consequences, means that we have to be extra vigilant in our cooperation. We have to make sure the end is kept up in all areas, if you like.

CHAIR—It seems to me that the police have never wanted anyone other than police to investigate complaints against them. That seems to be almost the way police react. Consequently, I suppose I should not be surprised that you say you have got serious concerns about the NIIC, the National Integrity and Investigations Commission, but mainly, it seems to me, because you think that will take away from the various police

forces their responsibility for investigating complaints or dealing with discipline of their own police officers seconded to the NCA. Is my understanding correct—is that your reservation?

Insp. McHugh—I think people misunderstand when they say it is a reservation of police services to want police to investigate police. The Queensland Police Service has no problem with the oversight of, let us say, the CJC. In effect, for the day to day running, most of our investigations are conducted internally or, even when they are conducted by the CJC, they are conducted by police officers seconded to the CJC.

However, the problem with the National Integrity and Investigations Commission, as proposed, is that when I quickly looked at the recommendations of the Law Reform Commission—and they are quite thick; I will be honest with you, I only had a short time to look at some of that stuff and talk to some of my colleagues—the major concerns were that, if you create such an organisation, it is suddenly going to be stepping into investigations which are currently under way. It would need all sorts of memorandums of understanding and rules of engagement in order to ensure that they did not prevent effective policing in some areas and effective action by the NCA. It just becomes too much of a complicated environment in which to work. That was really the object of this agreement.

As it was proposed, as I understand it, if someone walked into the Valley police station today and complained about a Federal Police officer and said, ‘I was just up at the Wickham Hotel and a Federal Police officer punched me in the face,’ quite clearly, as it stands right now, in this state, that is an offence against the state law; that is a matter for normal investigation by state police officers and they would just treat that investigation as they would if it were any other person. I presume they would advise the Assistant Commissioner for the Federal Police here in Queensland at some point in time; otherwise they would just treat it like a normal investigation. If you introduce this organisation, as I understand it, and I may be wrong, we would be prohibited from doing that.

CHAIR—But it is a practical problem even now. If that same policeman whom you are talking about were actually seconded to the NCA at the time he did that, what would be the situation then?

Insp. McHugh—Not a problem. I think it is the level of complaint. If you were complaining that the NCA were harassing you, it might require a different avenue, but if you complained that NCA officers had called at your home and assaulted you this morning, then as far as the Queensland Police are concerned, it is like any other complaint—we will just investigate it. If it turned out that those officers were our officers, Queensland Police officers, we would furnish what we call a 307 which would go to the CJC, who would make an assessment and they generally make an assessment that it is our investigation and we are to advise them of the outcome of it. So they oversight things.

It is my understanding—and I am not 100 per cent sure; I was listening as Mr Clair was talking earlier—that we may have investigated state police officers on secondment to the NCA here in Brisbane. I am not absolutely sure about that; I stand to be corrected. I am talking about minor misconduct, minor disciplinary matters, but we may have done it and dealt with them under our disciplinary process.

CHAIR—Why are you concerned about the AFP/NCA strategic alliance? What is your concern about that?

Insp. McHugh—I think it is more a question of perception than it is a reality. It relates to the history of law enforcement arrangements in Australia. I think Sir Max Bingham and Mr Avery set this up when they did their report some years ago regarding the concerns about who takes charge of national policing in Australia as opposed to federal policing. Quite clearly, the NCA is the only investigatory body at a national level. They are the national criminal investigation area, if you like, here in Australia. The Federal Police jurisdiction is very narrow. The Federal Police cannot investigate murder, robbery—

CHAIR—Unless it occurs in the ACT.

Insp. McHugh—Unless it occurs in the ACT.

CHAIR—Or the Territory.

Insp. McHugh—Or the Territory. I assume they act like state or territory police officers in that instance. But once you get outside that, they have really got no jurisdiction. They only investigate stuff which relates to federal legislation. Most of their time would be spent on investigations relating to frauds, under federal legislation, or to importations under the Customs Act. But they cannot spread themselves—

Senator CONROY—When you say it is a Commonwealth responsibility—

Insp. McHugh—Federal responsibility.

Senator CONROY—And you are delineating that from national?

Insp. McHugh—That is right.

Senator CONROY—So what do you define as a national responsibility?

Insp. McHugh—Matters which affect all of the jurisdictions of this Commonwealth, if you like. Matters which—

Senator CONROY—And what would that be?

Insp. McHugh—The obvious ones are major drug importations and major drug organisations, major criminal activity, I suppose, which spreads across jurisdictional boundaries within the Commonwealth, and anything that threatens the stability of any of the sovereign states.

Mr FILING—Just looking at parts 5 and 6 onwards, in particular, your comments about the Western Australian situation which has impacted on intelligence gathering around the country, I think it is fair to say that the NCA have acknowledged that government funding reductions in the last budget under the previous government were responsible for the reductions in personnel in relation to the NCA personnel in Perth. You have also commented that the strategic alliance between the AFP and the NCA has also seen other reductions in personnel, including AFP personnel. Is that correct?

Insp. McHugh—The strategic alliance means that federal officers who perhaps would have been in the west have been brought to the east in order to keep up the AFP's requirement to the NCA. I may be wrong there, but that is my understanding.

Mr FILING—I think that fits in with what other people, including the Western Australian Police Commissioner, have said in recent times. What specifically is of concern in relation to drug importations in WA? Why is it such a big concern to the Queensland Police Service?

Insp. McHugh—I think it is an expression of our cooperation with our colleagues in Western Australia. We talk on the telephone and we meet one another, not only in NCA forums but in other investigations which have got nothing to do with it. I speak with Western Australian police officers probably once or twice a week and they tell me these things. They say to us, 'We've got problems over here. We can't get this, we can't get that.'

CHAIR—You made a very strong statement in 5.16, if it is only based on discussions you have had with your friends over there. You say that reductions in the NCA staffing over there have led to a massive increase in the use and distribution of narcotics, including ecstasy and heroin.

Insp. McHugh—I actually relied upon written advice from the Western Australian police.

Mr FILING—Can I just dwell on ecstasy and heroin, and ecstasy in particular, because there is obviously a very serious increase in importations via WA according to the Western Australian police.

Insp. McHugh—That is my understanding.

Mr FILING—Are you aware that it is actually coming to Queensland afterwards?

Insp. McHugh—It was my understanding that drugs entering the country from Western Australia are coming into Queensland and the eastern states. Western Australia has been used from time to time as a corridor, if you like. It probably fluctuates in the same way that northern Australia is used as a corridor from Papua New Guinea.

Mr FILING—The Minister for Customs recently said we are winning the fight against drugs. Does that stand up to scrutiny?

Insp. McHugh—That is a bit more than I can say.

CHAIR—I guess it is hard for you to judge. Mr Filing, I think he is a colleague of yours from Western Australia.

Mr FILING—I think he is a fool.

Insp. McHugh—There is an American policy term which is being used in Australia over the years which is this war on drugs, so we will just put that out of the way. I do not think Australia has ever actually in its strategic policy ever had a war on drugs. We have had a coordinated approach.

CHAIR—We have had a slap over the wrist approach. That is hardly a war, but anyway.

Insp. McHugh—I would say that the situation now is no better than it was three or four years ago or 10 years ago. In fact, it is worse.

Mr FILING—Just on the ecstasy because this is a relatively new phenomenon, the importation of ecstasy or other similar derivative type drugs, is it fair to say they are coming from the UK and western Europe?

Insp. McHugh—Reports that I have read would suggest that a lot of ecstasy does come from the UK. I do not know about western Europe, but I assume—

Mr FILING—I recently had the opportunity of visiting the National Criminal Intelligence Service in London and they are saying that it is coming from Holland, manufactured there and put together in Britain in various laboratories. This is a relatively new phenomenon. I have emphasised this because there was that seizure from a British Airways jet of a bagful of a drug which came in late last year. But given that there is an indication there is a clear-cut route between Europe, Western Australia and the rest of Australia, would it be fair to say that these reductions in personnel have allowed this channel or this gateway to open up almost unfettered?

Insp. McHugh—It is perhaps a bit more than I could say, but it certainly would not be helping the situation.

Mr FILING—You may also be aware that last year the Australian government legislated for a policy that was unofficial before where in relation to our South East Asian neighbours, or any other country with which we have a mutual assistance agreement in relation to criminal intelligence, that Australia prohibits itself from providing this intelligence in the case where another person from whatever country is arrested in a country where they are charged with an offence that involves a capital penalty.

This means, effectively that if there is an Oklahoma bombing again in the United States and there was some Australian information on somebody who was arrested in the United States, Australia would be unable to exchange that information unless the United States waived or gave an undertaking it would not carry out the penalty. Have you been aware of that affecting intelligence exchange between the QPS and any other service overseas.

Insp. McHugh—No, because effectively we rely upon the Australian Federal Police to—

Mr FILING—Fair comment.

CHAIR—You say that the time has come to consolidate on the gains. You say:

The NCA must be allowed to operate as the nation's premier LEA with input and cooperation from all law enforcement agencies at federal and state level. It must be allowed to remain administratively and operationally independent. . .

That assumes that that is the way it operates now, administratively and operationally independent.

Insp. McHugh—I think it is related to concerns that go back to the CLER report, where there was a general perception that the Australian Federal Police, in their strategic alliance with the NCA, were moving too close. Not that there is anything wrong with that if the federal government chooses to do that, but if you take the history of policing in Australia, the Queensland Police Service sees the NCA as a structure for cooperative arrangements. It is not owned by one police service in Australia. If you are going to give it to anyone, why not give it to the Queensland police? We can do just as good a job of it as the Australian Federal Police. That is the rough end of what I am trying to say.

It should always sit—from the Queensland Police Service—as a separate entity—not part of the Australian Federal Police, but away from them. They are no more a part of the NCA than we are. We all cooperate now.

CHAIR—We did not really finish before with your concerns about the AFP-NCA alliance, but that is added to it. The Queensland Police Service officers who are selected for secondment and go to work with the NCA could end up in Sydney, for instance, could

they?

Insp. McHugh—They used to. Most of them now end up within the state office. The last officers we had in Sydney have all come home, so they are all here. All of our officers on secondment to the NCA are at the Brisbane office. They will travel interstate on jobs.

CHAIR—So it is not a matter of the Queensland police being seconded to work on Queensland matters; it is a matter of the bigger picture of Queensland police officers being seconded to the NCA to work with the NCA on a national level.

Insp. McHugh—That is exactly right.

CHAIR—And your point is that they are as well qualified to do that as AFP police officers and, in some respects, maybe better qualified.

Insp. McHugh—Exactly. I would argue that, in the general course of events, a state police officer brings to his local office of the NCA a local knowledge in intelligence and contacts and an understanding of the structures of his state and the environment in which he is going to work. It would be better than you would get from the Australian Federal Police officers.

CHAIR—I understand that now. I did not entirely understand the point before. Are there any questions from any other members of the committee?

Mr FILING—You were present when Mr Clair and his colleagues were giving evidence. The criticism being made—whether it was fair or not—was that the CJC, with a huge budget of \$22 million—half the NCA's budget—is seen as not being an effective body. Earlier today, when you were not present, Mr Bob Bottom gave evidence in relation to what he considered to be some fairly obvious evidence of drug-trafficking in Queensland that seems to have gone largely undetected, and that the Fitzgerald inquiry had not gone far enough, or it perhaps stopped before it got to the drug-trafficking milieu. How does the Queensland Police Service view the comments made by Mr Clair that it ought to have, as a major focus, Queensland Police involvement in drug-trafficking?

Insp. McHugh—That is, the CJC should have Queensland Police—

Mr FILING—Yes.

Insp. McHugh—If I understand you correctly, that is my understanding of what the CJC is meant to do. It is meant to ensure that the Queensland Police Service and its officers are not involved in any criminal activity. We are meant to ensure it ourselves, and we do our best. But they are meant to overview and give the community of Queensland the confidence that their police service is free of corruption.

Mr FILING—But do you view that an allegation of that sort is likely to compromise the QPS's involvement, for instance, in joint task force operations with the NCA and other police agencies or, in relation to the exchange of information which, of course, once upon a time was a problem when you had Mr Parker of the ABCI?

Insp. McHugh—Yes. It was Mr Grahame Parker, Assistant Commissioner. Today, from my understanding of the personalities—and, quite frankly, it comes down to that here in Queensland—Mr Clair's statements would not have an effect on the operation or cooperation of the Queensland Police Service with the Brisbane NCA office at all—or, from my understanding, with any of the other NCA offices.

I should explain that I come from the State Crime Operations Command, which looks after major and organised crime from the Queensland police perspective. We have about 400-odd personnel. Most of the people who are on secondment to the NCA are seconded from our command, and move backwards and forwards between them. We also liaise with external agencies through our command. My assistant commissioner, my immediate boss, is the person who talks on a daily basis to Mr Adams, who runs the NCA office here in Brisbane and who would talk on a daily basis with, let us say, the assistant commissioner who is at the Criminal Justice Commission down on Coronation Drive.

These people all know one another, they all understand one another, they all deal with one another very frankly and very honestly. That is my experience. I was seconded to the Australian Bureau of Criminal Intelligence for two years and saw these people interacting in other forums. In many ways, although there are many legal structures set up and frameworks in which people work, it really comes down to: 'Do I know this person? Can I trust this person? Will I pass this information on?' You cannot get a better relationship than you have here in Queensland.

Mr FILING—Would you agree with Mr Clair's proposition that there is a serious problem?

Insp. McHugh—A serious problem?

Mr FILING—In relation to police involvement in drug trafficking in Queensland.

Insp. McHugh—There is a commission of inquiry currently being conducted, which makes that question a bit difficult. I read the newspapers.

CHAIR—We have got a drug squad in Queensland, haven't we?

Insp. McHugh—Yes.

CHAIR—Is that in your area?

Insp. McHugh—Yes it is.

CHAIR—How many police are involved in that?

Insp. McHugh—It is actually called the State Drug Investigations Squad. Off the top of my head I cannot honestly remember the number, because it fluctuates slightly. Within the State Crime Operations Command it is a task force type of arrangement. Although we have squads, we are moving to a multidisciplinary team task force arrangement. As I understand it, we will always have a core area to administer drug law enforcement from our perspective and to act as an intelligence area to our BCI. There is a superintendent in charge—

CHAIR—Does it get involved in joint operations with the NCA?

Insp. McHugh—Yes.

CHAIR—Is it all here in Brisbane? If I can be very parochial, why don't we have a presence of the drug squad on the Gold Coast where we have got a drug problem?

Senator CONROY—You are not pushing any electorate in particular, are you!

Insp. McHugh—The way the Queensland Police Service operates is on geographical regions, each with their own police. There is in fact a drug squad in Far North Queensland.

CHAIR—Why isn't there one on the Gold Coast?

Insp. McHugh—The drug squad from here is not geographically bound, if you understand what I mean. The way in which it is set up, State Crime Operations works from direction from a target committee. So if you are a detective sergeant on the Gold Coast and you believe that you have got information which would relate to a major criminal activity, let us say drugs on the Gold Coast, there are structures set up and reporting systems.

But if your regional crime coordinator feels that they cannot effectively deal with that information, they say, 'This is beyond our capacity. We haven't got enough folks or time or money to concentrate on this. We have got too many other investigations currently running.' They submit reports which come to State Crime Operations, our target committees and systems establish priorities, and we say, 'Okay, we'll put a team on that,' and away we go. The team that may go down may work with local detectives. It might be agreed between the assistant commissioner on the south-east coast and my assistant commissioner that they will provide five detectives, we will provide six.

CHAIR—I believe it would be better if we had a permanent presence of the drug

squad on the Gold Coast.

Insp. McHugh—The problem with that is that if you place them geographically you limit yourself, in that what might be a problem on the Gold Coast today may be a problem on the Sunshine Coast tomorrow. We have got a standard number of police officers there who are prepared to respond to that.

Mr FILING—You may be aware of this, because you refer to the CLER report in the police service's submission. As you know, on the menu of work that was proposed by the CLER report, one was the Yakuza gang activities. There have been a number of serious allegations about Yakuza sightings and activities in Queensland on the coastal areas and in the casinos. Are you aware of how extensive that is?

Insp. McHugh—I am not really in a position to comment. I am aware that it is alleged that Yakuza members have visited the coast—actually, I think it is more than alleged. I cannot say much more than that.

Mr FILING—How satisfied are you then with the supervision and the oversight of the casino security in relation to this type of activity?

Insp. McHugh—It is a bit difficult for me, again, to comment on that. Casinos are obvious areas for the potential laundering of money and my understanding is that the arrangements for such activity with the establishment of casinos here in Queensland is effective, and it is working.

Mr FILING—For instance, if there is a Yakuza or something—forget the Yakuza—or let us say there is another identifiable criminal personality, how soon is the Queensland Police Service notified by the casino security people?

Insp. McHugh—Some of the casino security people are Queensland police officers, so—

Mr FILING—Present ones, or former ones?

Insp. McHugh—A detective-inspector and state police officers are attached to the casino control area here in Queensland.

Mr FILING—Do you see a need, for instance, for a national coordination of that type of surveillance and oversight as a matter of course? One of the observations of Yakuza sightings in Australian casinos was that they were moving from one to the other and there was some evidence that they were going from state to state, or territory to state. Are you satisfied with the working arrangements that you would have with, say, the Western Australian casino people and the Victorian casino people?

Insp. McHugh—As far as I understand it, the way the system works is that that is why we have an Australian Bureau of Criminal Intelligence. They are meant to be the medium by which all this information is exchanged. It may not be exchanged verbally, but it is recorded on databases and it is there for people to pick up if they are looking for it.

Mr FILING—Would you agree with Mr Bottom's submission this morning that the heroin trade—the importation of heroin—in Australia is largely run by Chinese Triads?

Insp. McHugh—I could not go as far as saying that.

Mr FILING—Why not?

Insp. McHugh—It is my understanding, from reading the documents that I have read, that the Chinese or Sino-Vietnamese have an important role to play in the importation and distribution of heroin.

Mr FILING—Who else would be involved then, in your understanding, in the importation of heroin?

Insp. McHugh—It is a bit difficult for me to say at this particular point in time.

Mr FILING—Why?

Senator CONROY—Is it an operational matter?

Insp. McHugh—I have not prepared myself for that question.

CHAIR—I think that is fair. Inspector McHugh is here to speak to the government submission, not to canvass operational questions about drug squad operations.

Mr FILING—With respect, I am merely enlarging on some comments, which you admitted, made by one of our witnesses this morning. I am now interested in hearing the response of the Queensland Police Services to it, and quite fairly. The other one I want to talk about relates to cannabis plantations. This issue was touched on in the submission from the CJC. Mr Bottom made the observation that Queensland is the plantation state for cannabis production and that it is largely run by Italian gangs. Would you agree with that?

Insp. McHugh—Can I lead into that? I think that from time to time the situation changes somewhat. A couple of years ago, fairly large cannabis plantations were found in the Northern Territory, if I recall correctly. I am not in a position to say whether Queensland has more cannabis plantations at this particular point in time than Western Australia. As to the Italian involvement—and I think we have to be careful here—historically, there were times when Australian Italians were involved in cannabis production in various parts of Australia. What it is right now, to be quite frank, I could

not say. I am not aware.

Mr FILING—On the menu of work there was also a reference to motorcycle gangs.

Insp. McHugh—Yes.

Mr FILING—Queensland has a couple of large ones active. In the past, it has been alleged that they have been involved in amphetamine production amongst other things. What is the situation in Queensland? Is it seen as a serious problem?

Insp. McHugh—The investigation of outlaw motorcycle gang crime is taken very seriously by the Queensland Police Service.

Mr FILING—How many people do you think are active in criminal motorcycle gang activity in Queensland?

Insp. McHugh—I couldn't say.

Mr FILING—Roughly.

Insp. McHugh—I honestly could not say. I am not familiar with the day-to-day running of that area of our organisations but we do maintain an interest in those activities. I know that.

Mr FILING—Are there links with motorcycle gangs from other states, as far as you are aware?

Insp. McHugh—From my understanding there are links with motorcycle gangs from other states.

Mr FILING—When you are conversing with WA, do you and other officers discuss things such as motorcycle gang activity?

Insp. McHugh—Certainly, I know that officers from our service talk with WA officers in relation to that activity and like activities. They also talk with the intelligence officers at the Australian Bureau of Criminal Intelligence in Canberra, whose job it is to coordinate those types of arrangements.

CHAIR—The NCA operates to a menu of work which tends to limit its activities. Do you have any view about whether it should be extended? The Motor Traders Association, which we are meeting tomorrow, suggests that professional car theft is conducted on an organised level and that perhaps the NCA ought to have a role in that issue. Do you have any views about the menu of work, how far it should be extended and

whether the NCA should be restricted by a menu of work?

Insp. McHugh—I heard Mr Clair in his evidence talking about references. I think the menu has arisen from the way in which the NCA takes on its workload in a coordinated role. As I understand it, one of the functions of SCOCCI is to ensure that these things are reviewed from time to time and to see how worthy areas are of reference. As I understand it, some of the items that are currently on the menu list for the NCA have been put aside and they are moving through them. In short, you have to have a game plan and that menu of 11 is probably a good place to start.

CHAIR—Thank you, Inspector McHugh. I know we put you very much in the hot seat there but we appreciate it. Could you pass on our thanks to your senior officers, and then directly through to the minister for his submission and for his willingness to allow you to appear before us today. We do not receive that level of cooperation from every state government but we are very pleased with the level of cooperation we have received here in Queensland.

Insp. McHugh—Thank you. I should indicate for the record that there are other Queensland police officers who would be available to talk to you on other matters, if you wanted that, if you had more time or you felt that you might want to ask more questions.

CHAIR—Thank you.

Committee adjourned at 4.01 p.m.