



**COMMONWEALTH OF AUSTRALIA**

# **JOINT COMMITTEE**

**on**

**THE NATIONAL CRIME AUTHORITY**

**Reference: Evaluation of the National Crime Authority**

**CANBERRA**

**Monday, 2 June 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

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JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

*Evaluation of the National Crime Authority*

CANBERRA

Monday, 2 June 1997

Present

Mr Bradford (Chair)

Senator Ferris

Mr Sercombe

Mrs West

The committee met at 8.43 a.m.

Mr Bradford took the chair.

**REABURN, Mr Norman Stephen, Deputy Secretary, Attorney-General's Department, Parkes, Australian Capital Territory**

**SMEATON, Mr Daryl Peter, Director, Office of Law Enforcement Co-ordination, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory**

**CHAIR**—I declare open the public hearing and welcome witnesses from the Attorney-General's Department. The committee has received a submission from the Attorney-General's Department and we have published it. 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—*

**CHAIR**—Before inviting you both to make an opening statement in support of your submission, I am required to state that, if during the hearing you should consider the information you might wish to give or comment requested by committee members 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 remind you that it is a contempt for a witness to give any evidence which a witness knows to be false or misleading in a material particular.

I should advise you, gentlemen, that as you are public officials you will not be expected to comment on matters of government policy. Do you want to add something to your submission or do you want to make an opening statement?

**Mr Reaburn**—Thank you very much. The department has made a submission. Our standard approach to occasions like this is to make a submission, to indicate that we are here to assist the committee in so far as it is possible for us to do so, and simply invite you to ask us questions.

**CHAIR**—We will do that. There has been a fair bit of input into the inquiry so far about the complexity of the act, and statements have been made a number of times in varying degrees of intensity that it needs revision or a complete rewrite, or that it is totally unintelligible or a whole range of views. What is your view on that particular matter?

**Mr Reaburn**—I would hardly wish to take the view that it is unintelligible, Mr Chairman. In a sense, the act represents the positions taken by parliament, basically in the 1980s. There is no doubt that there are parts of it which are somewhat complex, as there are parts of many pieces of legislation that are somewhat complex, and there is no doubt that parts of the act reflect very strong policy positions taken both by previous governments and by the parliaments.

We are always happy to review legislation, and it is certainly true that the sort of increase in litigation involving the National Crime Authority Act in the last four or five years has indicated some areas that could use review. I think we would draw the line at saying it needs complete rewriting. That would require some quite significant policy shifts, I would think. But, review? Yes, and, as you can gauge from our submission, in some areas we have begun that process.

**Mr SERCOMBE**—On the reviews arising from the Elliott matter and, I guess, the Merkel and Vincent appeals, are you able to give us some briefing with respect to where each of those matters are at?

**Mr Reaburn**—In relation to the A1 and A2 matters, we, I guess like everybody else, are awaiting the results of the appeal, because our view is that it is only from a platform of the judgments in the appeal that we would be able to make the most appropriate decisions about whether or not to review parts of the legislation or what sort of direction such a review might take. So we, like everybody else, are just simply waiting

for the judgments in that matter.

On the Elliott matter, there is of course, as you are well aware, an appeal being brought by the Victorian Director of Public Prosecutions against various aspects of Mr Justice Vincent's ruling and, again, we wait for that process to work its way through. The review that was done of the NCA's involvement in that exercise was a review done for the purposes of enabling the Attorney to report to the IGC. That matter will be before the IGC again when it meets in the middle of July. You would probably be aware that an interim report went to the last IGC, and what happens after that will be a matter for the IGC in July.

**CHAIR**—I do not know whether you heard the speech made by Mr Costigan, or the paper he must have presented at the standing commissions on crime and corruption—there was a conference in Brisbane 17-18 April. Have you seen the paper he presented?

**Mr Reaburn**—No, I have not.

**CHAIR**—I suggest you read it because it is very interesting. Just to quote from him, he says:

The Act contained serious flaws which were likely to affect its ability to achieve the purpose for which it was created. Those flaws remain today.

The first and most serious were the definitions of "relevant criminal activity" and "relevant offence" coupled with the mechanism of "references" by the Inter-Governmental Committee. . . .

He goes on further down:

The necessity, when seeking a reference at the beginning of an investigation, to identify the "relevant criminal activity" and "relevant offence" is a product of a complete misunderstanding of the nature of an investigation. Particularly in the area of white collar crime, allied essentially with money laundering, it is rare for an investigator to know in advance what crime (or "relevant offence") may have been committed.

Further down he says:

. . . In his decision Justice Vincent showed the same lack of understanding of the nature of a criminal investigation as he showed as Justice Vincent QC at the National Crime Conference.

That was back in the 1980s. He continued:

Whatever the decision of the Court of Appeal the National Crime Authority Act must be amended to enable the authority to do its job.

**Mr Reaburn**—That is a view, Mr Chairman. Could I simply say that the National Crime Authority has worked that way since it began in 1984. It has always been that the National Crime Authority would focus on, and be limited in its approach to, organised crime. As a consequence, there was a need in some way to describe or to define organised crime. That is the basis of the 'relevant offence' part of the statute. It has always been the

case that the National Crime Authority can only use its coercive powers as a consequence of the granting of a reference.

It may be that, as a result of the decision in the A1 and A2 matter, we—the department and the government—may need to look again at the kind of flexibility that it builds into the National Crime Authority’s activities within the umbrella of a reference. But it has always been the view that it requires a reference, that it requires that degree of ministerial control and involvement, before it can exercise its coercive powers.

The points made by Mr Costigan are a view—and I am aware that he is not the only person presenting that view at the moment—but it would require a major and significant shift in the government’s policy of the National Crime Authority in order to produce that result.

**Mr SERCOMBE**—Nonetheless, your department’s submission floats options for replacing the reference system.

**Mr Reaburn**—Yes, indeed it does.

**Mr SERCOMBE**—I wonder whether you could spend a little time with us discussing the strengths and weaknesses of the options that you deal with as possible replacements for the reference system.

**Mr Reaburn**—You would appreciate that we certainly do float some options. It is a little bit difficult for me to talk about strengths and weaknesses. Each, in a sense, takes the authority in slightly different directions, and each depends upon what might or might not happen in relation to the legal position on this question of references. I am not sure that any of them go quite so far as the point taken by Mr Costigan.

**CHAIR**—He has said that, regardless of the decisions being waited on, the step ought to be taken.

**Mr Reaburn**—I appreciate that. Each one of these particular options can be—

**CHAIR**—Which page are you looking at in your submission?

**Mr Reaburn**—I am looking at page 253 of your published report, paragraph 14.

**CHAIR**—Paragraph 14 on page 3. We have not got that yet. You are ahead of us with that document.

**Mr Reaburn**—I found it so useful, Mr Chairman. That is the one I brought with me. The first one permits the authority to exercise its powers if the chairperson or a member of the authority has reason to believe that a relevant offence has been, or may have been, committed. You have an indication there that this is the way the Trade Practices Commission operates. This is the basis for a whole range of investigative



processes—not those in the ordinary investigative realm, not the kinds that use the coercive powers. But the idea of ‘reason to believe’ is a well-established concept in law with quite clear rules about the standards that need to be met and the basis upon which the reason to believe can be based. That would be one appropriate way. Given that there is already a precedent—

**CHAIR**—So, if there was that reason to believe by a member of the authority, they could use their special powers. That is the question, isn’t it?

**Mr Reaburn**—Yes.

**CHAIR**—As opposed to now, where they have to seek a reference before they use their special powers?

**Mr Reaburn**—Yes, as opposed to ‘permit the authority to exercise its powers to obtain information documents and evidence if there is a reason to believe.’ That takes it away from the issuing of a reference by ministers. So it takes it away from that sort of degree of control.

**Mr SERCOMBE**—Would it be true to say that the Criminal Justice Commission, the CJC, in Queensland is more broadly aligned with that style of approach—

**Mr Reaburn**—That may well be true. Yes.

**Mr SERCOMBE**—So there is a precedent in the criminal jurisdiction in Australia?

**Mr Reaburn**—Yes. I think a large number of the organisations that came about after the NCA in time were often created with much more flexible approaches to the sorts of things that they were doing.

**Mr SERCOMBE**—So this approach is flexible. What are the downsides, potentially, Mr Reaburn?

**Mr Reaburn**—One downside of this would be that it might lead to an increase in litigation, because you might see a greater number of people wishing to test the question of ‘reason to believe’ at an early stage. Given that what you are talking about here is just the option of a member of the authority forming a view, then I suspect you would see an increase in litigation.

The other question—and it is a question in relation to any change, of course—is whether the government and then the parliament is prepared to concede that kind of flexibility and freedom. So I think an increase in litigation would be the major downside. But, as I say, as a concept it is quite common in law enforcement.

In the definition I think (b) and (d) are variants of the sort allowing the ministers to give the authority a very broad reference—in other words, a very broad remit—and in

effect inviting it in a sense to go away and look at a whole area. It takes the reference process away from any kind of detail and analysis and would require, I think, an

interesting process of reporting back, of interplay, between the authority and the IGC in order to enable the IGC to keep a fairly firm hand on where the investigations were going and the kind of usefulness the authority was making of a very broad general reference.

Again, there are examples of that kind of process in law enforcement—not necessarily all of them in this country, but there are plenty of examples of that kind of thing. The strength there is that it creates a high degree of flexibility in where the authority's investigation can take it, and the potential downside is that you would need to look very carefully at the way in which the IGC maintained oversight of that kind of process. At the moment with relatively specific references, it is quite easy to lay down a regime of reporting back and it is quite easy to look at the development of the investigation and the direction in which it is heading.

Jurisdiction by reference which may include extrinsic material: this one is directed really to the problem in the last sentence of that paragraph. It would limit the information the NCA is required to reveal about an investigation when issuing a summons to give evidence. That can sometimes be a quite particular and specific problem—that you need to conduct some inquiries, you need to do it without totally, as it were, revealing a hand. If we have too comprehensive and too onerous a rule about disclosure in those kinds of circumstances, it can be inimical to the investigation. It is a balancing one there.

**CHAIR**—It seems from what you have said that, since the NCA was established, other authorities and bodies have been given wider powers. Now you seem to be hinting that, say, compared to the ACCC which does not require references—and nor do some of the others—it is a matter of trust in a sense. Is the NCA the sort of organisation that people are likely to mistrust? Is that the case, say, compared to the ACCC which is generally investigating different sorts of matters?

**Mr Reaburn**—It is an interesting speculation and there was a considerable degree of concern about the founding of the NCA when that was done, and most of these processes were built in at the beginning. I am not sure that I can help you a lot more on that one, Mr Chairman, because that is a question of the policy position taken by government, and government at this stage has not moved away from the policy position as expressed in the act. But it is a question that there was a high degree of concern about the creation of the NCA—and I am talking here of the period 1982 to 1984—and you can see that reflected in a whole range of parts of the legislation. It was something new. We are, in that sense, more used to these kinds of bodies now and it is certainly true that the state bodies that came along afterwards do not have quite the same degree of channelling that is contained in their legislation. That is not to say that their histories and the controversies that, I think, surround just about every one of them are not indicative of exactly the same kind of problem.

**Mrs WEST**—I want to know what the state of progress is with recruiting another

NCA member. What are the major difficulties in recruitment?

**Mr Reaburn**—The vacant membership—the recruitment matter—is, of course, something that has been before the government for some time and all I can say is that the government is working on that as quickly as it can. But it is a tricky task. The members of the authority have traditionally been drawn from the legal profession, principally because it is the members of the authority who conduct the hearings and this requires a legal approach and things of that kind.

The difficulties are all the ones in that you cannot be a member for longer than four years, so you are simply offering somebody a short-term job with all the attendant career disruption and so forth that that entails. You are offering them, by comparison with some incomes at the criminal bar—some—a reasonable, or by some comparisons, modest sum of money. You are offering people the potentiality—and it is potentiality—for some family disruption. For example, one of the first things that happens when a person becomes a member of the National Crime Authority—in fact it usually happens before the person technically becomes a member; it happens shortly after the announcement is made—is that people will descend upon the family home and go through its security. People will arrive and put bolts on things and install alarms and things like that. So there is the potential there for some family disruption.

So what you have is a short-term job. In government terms the money is reasonable but it may not be so to the people that you are trying to attract. It is disruptive, or it has the potential to be disruptive. It is difficult for it to lead anywhere. There are a whole range of things which people often will come and do for government which have the potential to lead to places and this one does not. It leads to, ‘Thank you very much, your four years are up; we are very appreciative and I hope you enjoy going back to the bar’, or whatever it might be.

Then there is the fact that you are looking for an interesting bunch of skills: you are looking for the legal ability to run a hearing and to run it in a way that will keep the Federal Court out of everybody’s hair—that sort of level of legal skills; you are looking at someone with extensive knowledge of criminal law; you are looking at somebody who is capable of being involved in the leadership and management of a reasonably sized organisation. So it is an interesting bundle of skills and it is not always easy to find somebody who matches the profile. It has the degree of willingness to make a contribution to the public good and is in the financial and family circumstances to allow himself or herself to do so.

**Mrs WEST**—Yes, it is a hard task.

**Mr SERCOMBE**—As I understand the rationale for the short period, it is a reaction to the J. Edgar Hoover type phenomenon, to put it simplistically.

**Mr Reaburn**—It is precisely that, yes.

**Mr SERCOMBE**—We are tending to move into policy areas now, which is unfair to put to you, but it would seem that the sorts of circumstances you are outlining point to some logic at least in looking at some relaxation or readjustment of those balances.

**Mr Reaburn**—Yes, we think so. We think it would be to the benefit of the organisation, to the public good and probably better for the individuals who are prepared to make that kind of contribution, if the government were in a position to offer at least the potential for a longer period than four years.

**CHAIR**—A renewable term?

**Mr Reaburn**—At least a renewable term, yes.

**CHAIR**—So you mean a longer initial term or four years with—

**Mr Reaburn**—I would think one of the things that government would need to look at is whether four years is the right length for the initial term. But certainly, if what you are suggesting there is another four years within the rough envelope of a renewable term, that is an eight-year period, you might want to look at whether you stay with that four-four process or whether it might be better to try some different flexibilities. Government would have to look at that.

**CHAIR**—Can you tell me if it is improper to press you on the appointment to the vacancy? It seem extraordinary to me that there has been that vacancy there for so long. I cannot believe, frankly, despite what you have said, that it would be that difficult to find somebody. I understand the difficulties but, as you say, it is a reasonably well-paid position. What about the possibility of part-time members or something like that?

**Mr Reaburn**—One of the things that we would want to look at is part-time members. That does not mean to say that, at the end of a process of looking at that, government would accept part-time members—let me just add that qualification. But it is one possibility, in effect, that you have a hearing member who would come in and out on—it would have to be—a reasonably regular basis to do that kind of thing. So that is one possibility. All I can say to you in relation to the current vacancy and the appointment process for that is that it is a matter which has been constantly before government.

**CHAIR**—How many names are being considered for the vacancy that you are aware of?

**Mr Reaburn**—A lot.

**CHAIR**—Like 20, 30 or 100?

**Mr Smeaton**—In between 20 and 30.

**Mr Reaburn**—In between 20 and 30, yes.

**CHAIR**—And how many of those have actually been offered the position and refused it? I suppose it would not look too good for the person who accepts it, will it?

**Mr Reaburn**—That is exactly right—possibilities are explored.

**Mr Smeaton**—We do not offer until we are certain that they will accept.

**CHAIR**—That is a good idea.

**Mr Reaburn**—I think in a whole range of areas, government likes to be able to convey the impression to the person that it knows will accept a job that it has had his—

**CHAIR**—his name firmly in mind.

**Mr Reaburn**—That is right, yes.

**Mr Smeaton**—Could I add just two small things to this discussion, Mr Chairman. The first is that sometimes the problem is not that it is not long enough, but rather that it is sometimes too long in terms of what might be required at the time for the authority. You raised the issue of part-time. That seems to be a view of a number of commentators on the authority. It would appear from discussions that we have had over the last several years in looking at a number of vacancies on the authority that that might be quite appealing to some potential members as well. The second matter relates to the policy—

**CHAIR**—Sorry, can I just clarify—because it would what? Because they are semi-retired, or because it would allow them to continue to practice? That would be difficult, wouldn't it?

**Mr Smeaton**—Not the second one. But certainly people who, as you suggested, are semi-retired or are wanting to reduce their work load. They may have been members of the bar for a very long time, and still want to contribute to public life. But the only option is, of course, a full-time job.

**CHAIR**—Yes.

**Mr Smeaton**—The second one, a limitation that has been mentioned by a number of commentators is, of course, that of the legal qualification for members. That has been a restriction, from my experience, over many years of looking for replacement members. I am aware that a number of submissions to this inquiry have mentioned that issue. So they are all matters that we will need to take into account in advising government on that very issue. What are the options available to government to consider in terms of term of membership, qualifications, and, of course, the key one that the authority has mentioned many times, that is, the issue of loss of corporate memory when appointments finish at the same time.

**CHAIR**—There has been some criticism of the current chairman, not so much on a

personal level—though I think that might have been the case on a few occasions, but Mr Costigan is not reflecting on him at all; in fact, he actually pays him a compliment—but the fact that he was from the Commonwealth Public Service. Is that a reasonable criticism, or is it irrelevant?

**Mr Reaburn**—Or it is simply because he has a background in the Commonwealth Public Service that this somehow makes him forever inappropriate?

**Mr SERCOMBE**—No, I think the view that comes, typically from people at the bar, is that the appointment ought to carry the status of having some eminence at the bar.

**Mr Reaburn**—That conveys the implication that there is no eminence in public service.

**Mr SERCOMBE**—It is not a view I am putting.

**Mr Reaburn**—I appreciate that.

**CHAIR**—It is a matter of him going back to the service. Possibly, he might go back to the service. So I suppose there is not much wrong with that either, is there?

**Mr Reaburn**—Not really, no.

**Mr Smeaton**—Could I add just two issues on that, Mr Chairman. One is that the current chair, in his previous job, was, of course, deputy chair of the ACCC, and in that capacity conducted hearings under the powers of the ACCC. So that experience of conducting hearings was already there. Of course, the chairperson of the authority is the person who manages and has the executive responsibility for the day-to-day operations of the authority. If there has been criticism of previous chairs of the authority, quite extant, it has been concerning the lack of management experience that may have been in their backgrounds. That was, I can assure you, a major factor in this decision by the government to appoint Mr Broome: that he had both of those qualities that the government felt were important in the appointment of a chair of the authority. They are answers to some of the criticism.

**CHAIR**—The possibility has been suggested by a number of the police force—I think even Mr Costigan might have mentioned it, or someone else has—of a senior policeman as a member of the authority. Are you familiar with that suggestion—maybe someone of assistant commissioner rank? What is your view on that?

**Mr Reaburn**—It is a constant point being taken, Mr Chairman, and it has been taken, I think, virtually since the authority began. The structure of the exercise is that the authority members conduct hearings and therefore one of the principal qualities that is looked for in an authority member is the ability to conduct the hearings. That tends, I think, to shift the focus toward the legal profession rather than toward senior police officers.

**Mr Smeaton**—It is even a statutory requirement.

**Mr Reaburn**—Yes, but—

**Mr Smeaton**—A deputy commissioner with legal qualifications would certainly qualify at the moment.

**CHAIR**—So there is nothing to stop you appointing someone with legal qualifications?

**Mr Reaburn**—No.

**Mr Smeaton**—In fact that is the requirement.

**CHAIR**—Yes, but if there were a deputy commissioner somewhere he would be quite entitled to be considered. On that issue, why not someone like that? Is there a reason you would not select a senior policeman with legal qualifications?

**Mr Smeaton**—Mr Chairman, we do not select, of course. The government makes that decision, but I cannot think of any reason why, in putting forward names for government consideration, one could not put forward somebody with that background. But the limitation at the moment is that they would have to be legally qualified and that is a limitation, from my experience, which would rule out all but, I think, two senior police officers that I am aware of at the moment.

**CHAIR**—So the issue is whether that requirement for a legal qualification is changed?

**Mr Reaburn**—Yes.

**Senator FERRIS**—Could I just read you a paraphrase from the 1983 second reading speech on why the NCA was established? The government said at the time:

. . . that a fresh look must be had at existing arrangements and institutions for the investigation and prosecution of criminal offences of a serious kind, particularly offences as in the nature of organized crime.

It went on to say:

. . . existing . . . law enforcement efforts need to be supplemented by the establishment of a new standing body with the necessary expertise and powers to make an effective attack on organized crime.

Do you believe that the NCA is making an organised crime attack?

**Mr Reaburn**—Yes, I do.

**Senator FERRIS**—Can I just draw to your attention the range of successful prosecutions here that are listed in the annual report and draw to your attention the very low—in many cases unbelievably low—levels of fines and suspended sentences and so on for drug offences? It does not seem to me that Mr Big is on this list. Do you have any comment to make on that?

**Mr Reaburn**—Your conclusion might be correct. The other possible conclusion is that there may be Mr Bigs in there and they have not received a lot of penalty.

**Senator FERRIS**—That would be a tragedy.

**Mr Reaburn**—That is right, but it is a question of what evidence you can get and what charges you can lay and then what the courts are prepared to do about that. I am conscious of the point, however, that you are making, Senator, and that is that when you look at the sorts of prosecutions that are brought as a direct consequence of the exercise of the NCA's authority, sometimes they seem to be small beer, shall we say. I am not sure that that is the be-all and end-all of the approach we take to looking at the effectiveness of the NCA.

The NCA does a lot of its work through cooperative arrangements with other Australian police forces, and in any major exercise being undertaken by the NCA only part of that exercise is being undertaken directly by the NCA. Significant elements of the process are being undertaken in cooperation with the NCA by state and territory police forces. So it is the total overall picture that you need to look at.

The second way in which it becomes necessary to approach these things is to look at—and it is hard to see this just from simple lists of accused and prosecutions and convictions and penalties—what degree of disruption is being caused to organised crime in this country as a consequence of the NCA's activities. And you would find that the degree of disruption is significantly greater than some of those lists of penalties and so forth would indicate.

**Senator FERRIS**—We would certainly have to hope so. But could I just draw to your attention evidence that we had in Brisbane from Mr Bob Bottom who suggested that the war on drugs, if it had not been lost altogether, was certainly being lost. In my own state of South Australia over the weekend there was startling evidence of, shall we say informal if not illegal, shooting galleries, where very young children, 12 and 13 year olds, use heroin.

We have a very large police presence in that area and yet it seems that we are not able to break into the cycle of increasing drug use by children. Is it that the NCA needs greater powers? Does it need a more specific and open reference? Do you have a view on what else needs to be done to start to if not win then draw equal in the war on drugs, which we appear to be losing in this country?

**Mr Smeaton**—Perhaps I can address that in part. First of all, I suppose from a



personal perspective Senator, I would dispute that we are in a war—but that is a personal view.

**Senator FERRIS**—They were Mr Bottom's words, not mine.

**Mr Smeaton**—Sure. But secondly, in terms of the total law enforcement effort, it is a cooperative effort. The National Crime Authority is not the only body out there in the field addressing the issue of drug importation and drug trafficking. The Australian Federal Police—and the Australian Customs Service, of course—form a formidable barrier, I would suggest, at the barrier in terms of the importation; and each of the state police services, of course, has a responsibility to address the issue of drugs on the streets.

The success, if it is to come in any major way, will come from the coordinated efforts that are being put in right now by all four of those groups, if I can put it that way: Customs—and Customs working through its international connections; the Australian Federal Police and its international connections; the National Crime Authority; and the state police services. And the structures that are in place now, both at the national level and at the state level, certainly give me confidence that we are beginning to address in a major way, the issue of drug trafficking.

It is difficult. I believe it is difficult for people to accept that when they do see commentaries and reports all the time about drugs and drugs on the streets. But I suggest to you that the efforts being put in by law enforcement at the moment are as substantial as, if not more so, they ever have been in the past, principally because of the coordination which has been brought about by the efforts of the National Crime Authority and its standing committee on organised crime and criminal intelligence.

**Mrs WEST**—Could I beg to differ on that because in 1983 or 1984, when the idea of an NCA first came up, the Attorney-General said, 'Do we need to do anything different from what we are doing now?' We did not then have 12 year old children shooting up. We did not have heroin in the schools. We did not have those kind of influences back in 1983 or 1984. We are now in 1997, we have put all the resources and all the money into it but we sure have got now all the problems that we did not have back then.

**Mr Smeaton**—I would suggest to you, Mrs West, that what we did not have in 1983 and 1984 is evidence of that. And certainly I would agree—and that shows up in the last three or four surveys by the Australian Bureau of Statistics—that there is evidence of younger persons accessing drugs but it is not just heroin, it is a lot of drugs and it is a lot of different drugs, if I can put it that way.

The phenomenon is not restricted to Australia; it is a worldwide one. It is an issue that is being addressed, both at the law enforcement level and at the cooperative collaborative partnership through the National Drug Strategy. I am not suggesting for one moment it is a solvable problem in the immediate term. But to suggest that we are not doing anything, that we are not having success, is the same as saying that the war is lost.

**Senator FERRIS**—I am not suggesting that at all. It is just a concern I have that we have had evidence that suggests that, because of some differences of opinion in the marketplace, shall we say, the cost of heroin is now a great deal cheaper than it used to be; and the cost of marijuana is a great deal more expensive than it used to be. Because of the price war on the street, there are attempts being made to get children more interested in heroin than marijuana. This is part of an ultimate plan to try and seize control of the market. That evidence was given to us more so in Brisbane.

I am not for a moment suggesting we are not doing everything we can. I, for one, hope that we are able to get on top of it very soon, but it just intrigues me that we have a large number of law enforcement agencies. I go back to the question I asked Mr Reaburn: do either of you believe that the NCA needs to have any greater power of coercion, or the power to act in some other ways related to perhaps telephone interception and so on? Would that be of assistance in this sort of situation?

**Mr Reaburn**—It already has power to—

**Senator FERRIS**—I understand its power. Does it need more?

**Mr Reaburn**—I am not quite sure what else we could give it, Senator. It has a telephone intercept and listening device process, search warrant powers, compelling evidence powers and compelling documents powers. It is in that sense the most power-rich law enforcement agency.

**Senator FERRIS**—Yes, I understand that.

**Mr Reaburn**—If I could just make one additional comment on the points that you raised about heroin being directed at children. It is certainly true that heroin is very cheap at the moment. This is a matter which is of concern to law enforcement agencies right across the country. But I also have a feeling—and it is not from any particular study of the matter—that most of the heroin related deaths at the moment are coming from slightly older age groups. There has been a spate of heroin related deaths in the country in the last 12 months, but almost entirely in that older age group.

**Senator FERRIS**—Yes, they are and there are also recreational users who suddenly get a very pure parcel. Can I just take you on to a couple of other questions that I have here. You mention on page 1 of your submission the innovative nature of the original NCA concept. In the course of your work, have you ever seen any examples where the NCA's powers have been used perhaps more zealously than they should have been? Again, this reflects evidence that we have received.

**Mr Reaburn**—More zealously than they should have been? No, Senator.

**Senator FERRIS**—Could you give the committee any examples of where the NCA in your view could have acted more judiciously in using its powers?

**Mr Reaburn**—No, Senator, I could not.

**Senator FERRIS**—I asked the question quite seriously, Mr Reaburn, because we have had evidence in closed session that suggests that the NCA has acted very enthusiastically in some cases. If the use of the word ‘zealous’ might not be appropriate, then ‘with enthusiasm’ certainly has been, according to the assertions made in the closed sessions.

**Mr Reaburn**—Heavens, Senator! Law enforcement agencies are not allowed to be enthusiastic about their task?

**Senator FERRIS**—It is a fine balance, and that is the balance I am asking you to address.

**Mr Reaburn**—Of course it is a fine balance, Senator, and the balance, in a sense, is that enthusiasm and zeal. I do not think there is any law enforcement agency in the country where you would not find enthusiasm and zeal among all its members from the highest levels down—the most senior to the most junior.

**Senator FERRIS**—Nevertheless, using the powers that the NCA has—

**Mr Reaburn**—That is right. The real danger in using the powers is that somebody’s commitment to the task might cause them to spill over into illegal conduct in order to achieve the task. In terms of the NCA, I am not aware of any instance of that occurring.

**Senator FERRIS**—Perhaps I could just focus a little bit more on this confidential evidence—without breaking any confidences—and say to you that a suggestion was made that, for example, information being given to the media when somebody was about to appear in court resulted in a media scrum where particular individuals were filmed before they were even charged. That happened in a way which, you could argue, superseded the powers of the right to a fair trial being granted to that individual. There was no indication of how the media were alerted to this except that conclusions could be drawn.

**Mr Reaburn**—Yes. Conclusions could be drawn. I regret to say that this used to be a relatively common occurrence and I am not talking here about the National Crime Authority; I am talking about Australian law enforcement agencies. Some years ago the Police Ministers Council took that matter in hand and adopted a series of policies in relation to dealing with media and I am delighted to say that that particular kind of occurrence has almost entirely disappeared as a result of quite strong action being taken by the country’s police ministers.

To the extent that it is possible for media exposure of that kind to result in unfairness at trial, or to create such a context that a fair trial would not be possible, then the law has quite clear remedies for that and those remedies are always available to an accused person. So I am not aware of any instance where somebody has been able to

establish a—

**Senator FERRIS**—Obviously, the cost of doing so these days is pretty high in terms of taking personal action in that area.

**Mr Reaburn**—No. We are using an example of a person who was, presumably, being prosecuted for something and therefore it is a matter of a preliminary motion at the beginning of trial. It is not as though we are saying here that somebody has to—

**Senator FERRIS**—Are you suggesting suppression of name?

**Mr Reaburn**—No. I am not suggesting that. I am suggesting that there are remedies, including the permanent staying of a prosecution, and that those remedies are available by preliminary motion at the beginning of trial.

**Senator FERRIS**—The argument in this case is that the damage had already been done by then.

Can I ask you whether you have ever had any applications from individuals who might seek to have access to victim of crime payments or in any way ex gratia payments in relation to NCA matters where people have been subject to what they believe is unnecessary interference with their life, and they have subsequently been found not guilty?

**Mr Reaburn**—I would have to check. I would not like to give you an answer and trust my memory on that one.

**Senator FERRIS**—It would be useful. I am interested to know since victim of crime payments are available to people in other areas of the law.

**Mr Reaburn**—Could I just say that we are talking about a situation where it would have to be an ex gratia payment. That is the matter I will go away and check. I think that, if you believe you have been affected by the activities of the law enforcement agency, then you have, in a sense, two remedies available to you. One is to bring some kind of suit against the law enforcement agency concerned—and that is a potentiality that is always open—and win damages.

The other potentiality, as it were, is to approach the government concerned and say, ‘Your law enforcement agency has done X, Y and Z’ and seek to obtain an ex gratia payment. Those are two potentialities that are open. I take your comment about victim payments being available to mean those two potentialities.

**Mr SERCOMBE**—While you are checking on those sorts of matters, it would be helpful also to get some advice, if possible, on any matters arising on the mutual assistance legislation area because, certainly, one of the related matters put to the committee in fairly specific terms, but once again in camera, was a suggestion about this case of mutual assistance request to Switzerland where the person concerned, along with a

number of other individuals, all of whom presumably were under investigation, were described in the documentation allegedly sent to Switzerland, as accused. The gentleman who presented to us was somewhat aggrieved that, in fact, at that point in time he was not accused but he was simply under some form of investigation. That had implications for the fairness of the process under Swiss law.

**Mr Reaburn**—I believe that they were so described in documentation which originated in Switzerland.

**Mr SERCOMBE**—I see. It would be helpful to get some guidance on those areas. It was certainly put to the committee that not only was the NCA somewhat remiss in that area but that the relationship with the Attorney-General's Department, in terms of handling the process, was also seen as somewhat too close and comfortable.

**Mr Reaburn**—Somewhat too close.

**Mr SERCOMBE**—And comfortable.

**Mr Reaburn**—The extent to which I can comment on this is a little limited.

**Mr SERCOMBE**—Yes. I am not asking for a response now.

**Mr Reaburn**—No, but I am able to make a response now, as a matter of fact. The extent to which I can comment on this is a little bit limited because you are talking about a matter which is ongoing and therefore it is an operational matter and a matter before the Swiss courts, so there is that kind of limitation on what I can say.

The matters you have suggested to me have been raised in quite extensive correspondence with the Attorney-General. The Attorney-General has caused quite an extensive examination of the processes involved to be made and he is satisfied that there is no reason for him to intervene or to interfere with the way the process has been conducted.

The process of mutual assistance is a country to country process and requests for assistance will flow out of a number of investigative areas and processes. We handle mutual assistance requests for all Australian law enforcement agencies—not just the National Crime Authority. The requests cover a wide range of possible activities. Australia makes requests to other countries and we receive requests from other countries.

The standard international structure for handling mutual assistance requests is that there is what is referred to as a central authority. That is, within each country's government there is a nominated place, which is the channel through which all these things come and go. Then they are parcelled out in accordance with the law of the country concerned to those bodies who are capable of making the assistance.

The Attorney-General's Department is the central authority for Australia in relation

to mutual assistance requests. That means we have very close working relationships with all Australian law enforcement agencies, because they are asking us to see if we can get them assistance from somewhere else and we are asking them to assist other countries on a constant and regular basis. So when somebody says that we have a close relationship with the National Crime Authority, in the field of mutual assistance, my answer to that is, 'I would hope that we have a close relationship with the National Crime Authority in the field of mutual assistance.' I expect that from the people within the department who are engaged in that area.

This is subject, of course, to the point that we have already made before—that with enthusiasm, zeal and close relationship, you still have to comply with the law. I am not aware of any situation where my people are breaking the law or stepping outside the bounds of the law in order to perform their tasks. To go any further might very well involve going into detail and we need to respect the confidentiality of the circumstances, I am sorry.

**Senator FERRIS**—That is all right; I found your answer very interesting. Can I just ask one last question, Mr Reaburn? On page 8 of your submission you reaffirm that there is no provision in the NCA act that expressly indicates the time limit for an individual reference but it has been acknowledged that once a report is given to a Minister, then that is, generally speaking, the end of the activity on that reference. Do you think there would be a benefit in those references being kept open? Perhaps if we think about motorcycle gangs or some of the other drug related references that there have been—leaving aside white-collar crime for the moment—do you think that that would assist in any way to monitor activities in a way that perhaps police in each of the states are not able to do, given the acknowledged powers of the NCA?

**Mr Reaburn**—A lot depends upon the degree of specificity that is required in a reference. If we wind up in a situation where we have to have references that are very specific, the longer they are left open the less relevant they will become to anything that is happening here and now because they will have to be focused upon particular kinds of activity, particular events, particular occasions, and they will just recede into the past and their relevance to anything happening will become less and less.

If we went to the other end of the spectrum and said that the NCA could operate on very broad references into drug smuggling, money laundering—maybe not quite that broad, but that kind of element of broadness—then the most sensible thing would be to just leave them standing.

**Senator FERRIS**—In fact, under the act they can stand.

**Mr Reaburn**—They can; that is right.

**Senator FERRIS**—It has been a practice that they have not.

**Mr Reaburn**—The practice has been that the authority regards it as settled once

they make a final report to ministers because they make interim reports to ministers on investigations under references on a very regular basis. It really will depend upon where we come down after government consideration of the consequences once we have the judgments in the A1 and A2 cases.

**Mr Smeaton**—Could I add just very briefly to that, Senator? You are absolutely right. In fact the references do continue but, as Mr Reaburn has said, they do become out of date. The intergovernmental committee has determined on a number of occasions that it would be beneficial to actually issue a new reference in respect of the same relevant criminal offence, but updated in terms of the specific nature of the act to take account particularly of people who had emerged as a result of the previous investigations and to ensure that there is specificity as currently required by the act in the reference itself. That means that you may have in some areas a series of three or four references issued over maybe five or six years that provide a continuity in terms of that particular investigation. But I think in fact there has only ever been one reference terminated, and that was a state reference, in the history of the National Crime Authority.

**Senator FERRIS**—Can I just clarify: when the final report is given to the minister, in a process sense does the NCA then have no ongoing interest in a specific sense in that reference? Is the material then perhaps handed back to the state police or the AFP? What happens if three or four months later you get some very useful information on a reference that has been—to use your word—settled?

**Mr Smeaton**—In fact that is precisely why references are not being withdrawn—for that very occasion where information may come to light at the end of the period of the reference. The IGC has in recent years actually put time limits into references, requiring the authority to report back to the IGC by a certain time. But it does not terminate the reference; it merely is a discipline on the authority to complete its investigations within a specified time. Clearly, if you then terminated the reference and two or three months later something emerged, it would be difficult given the need to get ministers together, et cetera, to issue a new reference. But there clearly is, and I am sure your next witnesses will talk about the degree of this—cooperation between the authority and police services. The most common approach in recent years is to share totally the information available to law enforcement under the particular reference. Quite often the work on the ground is actually done within the state police service rather than by officers seconded to the authority. So it is an approach which is proving successful.

**Senator FERRIS**—Can I just confirm that both of you are happy with the way the reference system is currently working? You would not make any recommendations on the way it might be changed?

**Mr Smeaton**—I do not think you could draw that conclusion at all, Senator. In fact, as Mr Reaburn has said, the department is examining the options in respect of references. Clearly, the decisions in the appeals in A1 and A2 and the reference appeal in respect of Mr Justice Vincent's decision will inform the policy options that we, as a department, would put forward to government for consideration.

I have to say that, at the moment, the department is probably neutral on the issue because we are not yet in a position to firm up that policy advice. But I think that there are a lot of dogs barking, if I can use that expression, about the reference powers within the act. And once all of the bids are in, if you like—all the information is available, and we are in a position to advise government—I would expect that we will be certainly saying something very strongly to government about the reference power, without in any way signalling, because that is a decision for government, which way that may go.

**CHAIR**—It may not be a matter of the powers of the NCA, which may or may not be adequate, but certainly resources are an issue, aren't they? So it may not be necessarily a question of more powers; it may well be a question of more resources.

**Mr Reaburn**—Resources are always an issue within governments, Mr Chairman.

**CHAIR**—I was interested in Mr Smeaton's comments. I used the word 'war' against drugs advisedly and consistently because I think it creates the sense of urgency that people need to have about it. I take it your aversion to the term 'war' does not indicate a lack of appreciation of the urgency of this, in view of some of the comments that were made this morning?

**Mr Smeaton**—No, absolutely not, Mr Chairman. I just think that war is an emotive term that does not accurately describe—

**Mr SERCOMBE**—It helps the Chairman's press releases.

**Mr Smeaton**—I am sorry if it does cut across those views expressed in press releases but I do not think it in any way diminishes the efforts put in by law enforcement agencies, both within Australia and internationally, to describe it as a concerted effort. I think the cooperative approach that we have adopted here in Australia and, indeed, the cooperative approach that particularly the Australian Federal Police is involved in internationally, does mean that there is a concerted effort by many, many governments around the world and many, many law enforcement agencies around the world.

I just think that 'the war on drugs' is a description that does not help in terms of addressing the way that law enforcement agencies should be, and indeed are, attempting to quell and to address drug trafficking.

I do not doubt, for one moment, that the major problem we face in the area of drugs is the international trafficking of drugs. There is an enormous amount of money. Some estimates put the amount of money involved in drug trafficking as high as the amount involved in the crude oil trade, for example. If that is true, it is an enormous business—and that is what it is: it is a business. It is an industry that people are involved in because of the enormous amounts of money involved and, by the same token, that is one of the ways and, in fact, probably the key way for law enforcement agencies to really get a handle on, and to make inroads into, international drug trafficking—through addressing the enormous amounts of money that must be generated and do flow around



the world. So the work on anti-money laundering that is going on around the world and in which Australia is heavily involved, of course, is perhaps the key to really getting a handle on the issue.

**CHAIR**—Have you had any input into the draft revision on the national drug strategy that is floating around at the moment?

**Mr Smeaton**—Yes.

**CHAIR**—So it has had some significant input from the law enforcement side.

**Mr Smeaton**—It is an equal partnership. I have just come back from two days in Melbourne where we examined, at the national drug strategy committee level, the evaluation of the existing strategy. At that meeting we prepared advice to go forward to ministers in the context of the Ministerial Council and the drug strategy, which is health and law enforcement ministers, to consider the next five years of the national drug strategy and the structures and policy approaches, et cetera, which will need to be followed in terms of addressing—and I think it is important here that we are talking about—drug use. That is what the national drug strategy addresses essentially.

The law enforcement elements clearly are and will continue to be the major focus of law enforcement. The health aspects continue to be the major focus of health ministers. What the national drug strategy does is to bring those two elements together and address the issue from a harm reduction and harm minimisation approach because the major cost to Australia of drug abuse, of course, is in the health system.

**CHAIR**—We had better not go too far down that track or we will be diverted.

**Mr SERCOMBE**—I am conscious of the time, Mr Chairman. I was interested in inviting Mr Reburn to make any comments he thought were appropriate on the Law Reform Commission's report on complaints matters. I notice in your submission that you say that there is a proposal to extend the role of the proposed commission, the NIIC, from handling of complaints to anti-corruption body. I am not quite clear what that comment on page 7 in paragraph 30 actually means in the last sentence. I had always assumed that it was intended that the NIIC was intended to, in fact, be not only a complaints handling body but obviously to carry out investigations. But perhaps I misunderstood it.

**Mr Reburn**—A complaints handling body is in a sense always an anti-corruption body in that complaints are capable of revealing corruption or arise out of corruption within the institution that the complaints handling body looks after. I think here there is some suggestion that the NIIC could become some sort of roving self-initiating anti-corruption body.

**Mr SERCOMBE**—Not a Commonwealth ICAC.

**Mr Reburn**—There are the specific recommendations which are contained in the

ALRC's report, but I think there are also some public comments made by the chairman which would seem to suggest that it is possible to take a wider view of the body and the functions recommended in the report. This is just to make sure that both those aspects were caught up.

It is very difficult for me to give you any comment about that report and about what is happening there. We are working on collecting responses and consulting with the various stakeholder parties in this particular area, but government has not really considered how it will react to this particular exercise yet at all. I note when I look at the range of submissions that have been made to you that it is difficult to find parties who think it is a good idea.

**CHAIR**—Not one, I do not think.

**Mr Reaburn**—It is very difficult indeed.

**CHAIR**—If there are no other questions, Mr Smeaton, Mr Reaburn, thank you very much for your time this morning.

[10.08 a.m.]

**McDONALD, Mr Robert Richard, General Manager, Eastern Region, Australian Federal Police, 110 Goulburn Street, Sydney, New South Wales**

**PALMER, Commissioner Michael John, Commissioner and Chief Executive Officer, Australian Federal Police, Head Office, Northbourne Avenue, Canberra, Australian Capital Territory**

**WHIDDETT, Deputy Commissioner Adrien Melville, Deputy Commissioner, Head of Operations, Australian Federal Police, PO Box 401, Canberra, Australian Capital Territory 2601**

**CHAIR**—I welcome the representatives of the Australian Federal Police: Commissioner Palmer, Deputy Commissioner Whiddett and the General Manager, Eastern Region, Mr McDonald. The committee has received your submission and it has been published.

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—*

**CHAIR**—If you consider that any information you wish to give or a comment by a committee member is of a confidential or private nature, you may make application for that information or comment to be given in camera and the committee will consider your application. I also remind you that it is a contempt of the parliament for a witness to give any evidence which the witness knows to be false or misleading in a material particular. As public officers, you will not be expected to comment on matters of government policy. Commissioner Palmer, do you wish to make an opening statement?

**Commissioner Palmer**—Thank you, Mr Chairman. The conclusion in our submission really sums up our support for the NCA; our belief in its importance; and our commitment and belief in the absolute need for coordination and cooperation between law enforcement agencies, not only between the AFP and the NCA but between law enforcement agencies much more widely—internationally as well as nationally. I have prepared a couple of comments that I would like to add to put that statement in a little bit more context and, particularly from the AFP's perspective, to note the real implications for us in dealing most effectively with that environment.

As we have said in the submission and as is well known to the committee, I am sure, the transnational and inter-jurisdictional nature of modern crime really makes cooperation and coordination in contemporary law enforcement absolutely essential. The future, it seems to us, will require cooperation and coordination to the fullest extent possible rather than simply to the extent necessary. In the past, we have cooperated and coordinated with law enforcement agencies across this country and, less frequently but nevertheless in significant circumstances, internationally when and if necessary. The future has to be that we cooperate and coordinate to the fullest extent of possibility rather than just of necessity.

The challenge for law enforcement, it seems to us, is to settle arrangements which maximise the overall effectiveness, despite the jurisdictional limitations created by national boundaries and, within Australia, by federation; and to operate co-jointly so that we use each other's jurisdictional and other powers and authorities to mutual advantage and to the benefit and advantage of the wider community so that they become complementary issues rather than competitive or restrictive ones.

As part of that process, the NCA and the AFP must remain as very important and, I believe, critical players in the law enforcement matrix. The very nature of federation restricts state police jurisdiction in a way that is going to be counterproductive on its own. The AFP and the NCA are very small players in the total matrix in the numbers sense. But in terms of jurisdiction, both nationally and, through the AFP, internationally, we form a matrix that really has to work as effectively as it can if we are going to remain effective beyond 2000.

It seems to us and it has seemed to me for a long time that the NCA presents as an ideal catalyst for that coordination. It provides a properly managed and supported basis for cooperation, which either prevents or certainly greatly minimises the potential pitfalls of joint standing task forces—and we have seen some good examples of the pitfalls of those

in recent times through, for example, the New South Wales royal commission—whilst allowing the identification of common targets, making sure that we are properly focused and not just simply out there chasing a wide range of undistinguished or unidentified problems, the establishment of joint investigation teams and the appropriate use of coercive powers and coercive power hearings. It is that ‘complementation’ of jurisdiction and powers that really offers us the best chance of success. The NCA’s umbrella coordination role in that puts on it an integrity check and a management oversight that, in an ordinary joint standing task force, would be difficult to achieve.

Perhaps in the early days—as we say in our submission and as we have often talked about amongst ourselves in the NCA and the AFP—the NCA was seen as operating too frequently in secret and in competition with the states, as was the Australian Federal Police, to the detriment of overall outcomes. Those days are gone, without question. Today and for a long time, the NCA has been meeting its objectives and playing, I believe, a national coordination role which complements the work of other agencies and adds real value to the Australian law enforcement effort.

An effective alliance between the NCA and the AFP in that environment is critically important. As part of that process, we have some 45 to 50 members attached to the NCA on a permanent basis. The numbers were 45 on 5 May, having been 48 on 29 April—so they fluctuate a little. But they are in the order of 45 to 50 and as high as 55. Regional managers of both the AFP and the NCA meet in each of our key regions at least monthly with other key stakeholders.

Mr McDonald, the general manager of eastern region—our biggest region and most important one—in Sydney is a key player in that to oversight, review and recommend joint operations. Deputy Commissioner Adrien Whiddett, to my right, and the general manager operations of the NCA, Peter Lamb, oversight and continually review national operations. They meet in a national operations management committee forum very frequently. It is something that is very important to recognise and that really requires us to manage our combined resource capacity very carefully.

The diversity of the AFP charter includes, as well as investigation of serious and organised crime, the protection of high office holders, something which of course is very much in the news these days; witness protection duties under the national witness protection arrangements; investigation of crimes against the Commonwealth, which includes fraud against Commonwealth agencies and government agencies, budgetary leaks and alleged offences by high office holders, including politicians, some of which have been fairly public of recent times; family law related matters; matters affecting the Commonwealth interest—such things as assistance to the New South Wales royal commission where the AFP gave or were involved to the highest degree of any police force in Australia; we had the largest numbers there—and assistance to Western Australian police in corruption investigations, the investigation of the Aum sect and the sarin gas experience in the west, and so forth.

Because the AFP’s resources, like the NCA’s resources, are its people, the

prioritisation of that sort of work is also the resource allocation process; so we are forever in the business of deciding where the best mix of resources lies, moving and matching in terms of the team approach to investigations; what is the best mix of skills; what is the size of the team; what are the skills of the team that we can allow to be dealing with a particular investigation having regard to the other investigations or matters that are being referred to us or are on hand at any one time.

It seems to me that the challenge in that environment for both of us is to ensure that all of our resources are engaged in those tasks which return the highest value to the government and to the people of Australia. In that context, value does not just mean the monetary value of the crime, which is simply one criterion. Some crimes may have a low dollar value but can be highly significant in their potential to weaken or destroy the integrity of Commonwealth programs or the process of government such as frauds against Medibank or systemic social security or taxation evasion; information stealing or selling—and we have had some very serious examples of that, particularly after the last election—malpractice by government officials and so on.

In the present scarce resource world this diverse environment unavoidably impacts on the amount of resources we can dedicate to any one area of this environment and makes the management, the joint oversight by people like Mr Whiddett, Mr Lamb, Mr McDonald and the regional teams, absolutely critical because we are forever mixing and matching and shrinking and growing teams according to the competing priorities. The whole environment and the transnationality of so many of the problems that we are dealing with makes the integration, the cooperation and coordination so much more essential. So I see the NCA as absolutely critical in this process and I see that alliance between us and the NCA as the two organisations that bring a federal or a national jurisdictional flavour to otherwise state focused investigations as being also critical.

**CHAIR**—You have got around 50 of your officers seconded for varying periods or for a two-year period or what?

**Commissioner Palmer**—Mr Whiddett might be a bit more specific; in the main two to three years would be an accurate response.

**Mr Whiddett**—That is the arrangement so there is some permanency but when we say at the moment 45 up to, say, 55 there is a rotation process going on pretty much all the time. In other words, the balance between having reasonable continuity and not leaving people in these joint exercises too long is the main key to it.

**CHAIR**—Are your officers keen to be seconded? Is it something they seek?

**Mr Whiddett**—Yes, very much so. It is considered to be an extension of their capacity as investigators. They see it as being involved in the sort of work that we would like to be doing most of the time if we were able but, as the commissioner said, we have a fairly diverse workload and that eats into resources.

**CHAIR**—And they come back to you better for the experience?

**Mr Whiddett**—I think they all come back better from the experience. I think they make good friendships also in that regard and learn a lot of skills that they probably would not get if they were in less work.

**CHAIR**—There was some criticism—you would be aware of the criticism—from one of the police forces we have seen so far about the nexus between the AFP and the NCA—

**Mr SERCOMBE**—Strategic alliance.

**CHAIR**—Yes, strategic alliance. Those are the correct words. Is that an issue, do you think?

**Mr Whiddett**—I think in the early days it was. Certainly following the Commonwealth Law Enforcement Review there was on the part of the states some suspicion about what the Commonwealth might have been up to. I think that has dissipated. I think most people realise that the real thrust of the Commonwealth Law Enforcement Review had nothing to do with the states in that it was looking at the efficacy of resource allocation at the Commonwealth level. But I do think there was residual concern that it might have interfered with the special relationship that the states necessarily have with the Commonwealth and the NCA.

**CHAIR**—The unification of the NCA and the AFP has been an issue. Is it a dead issue now as far as you can tell?

**Commissioner Palmer**—In terms of its being seen by some as an intended amalgamation or a takeover by one or the other?

**CHAIR**—Yes.

**Commissioner Palmer**—I think it is. In view of some of the comments made before you by various state police members, perhaps it is a little early to say it is dead. The vast majority of the concerns, as Mr Whiddett said, that were there in the first instance were, I think, with some of the state players. I was a Northern Territory commissioner at the time this first occurred, so I sort of sat on the other side looking at this. I well know there were some concerns among commissioners about this being a takeover by another name.

It was concern—not from the state point of view at the time I was there and not through any concern about the AFP per se—as Mr Whiddett said, from the Commonwealth point of view. This was to turn the NCA which they saw as a shared resource—a resource into which we all had a different role than, say, a federal agency would allow—and that was counterproductive to cooperation. That really has been largely solved simply by both Tom Sherman first and then John Broome, by the way they have

gone about business and, I think, by the way we have gone about business.

**CHAIR**—Sure. The other matter is whether the NCA should have its own core group of investigators. That is a view that has been put to us. I guess there are pros and cons for it—if that is the right terminology—but what would your view of that be?

**Commissioner Palmer**—My view would be a personal view. I am a believer in task forces for the sorts of reasons identified by Justice Jim Wood and also the sorts of reasons just identified by Mr Whiddett; that is, I think rotation is extraordinarily healthy. If that decision were made, I would not be uncomfortable with it. You create a division or a branch or a specialised unit with a certain number of people in it with certain expertise, which is fine for today's work or for this year's work but may not be exactly what you need for next year's work. As well as that, of course, when you create a permanent elitist arrangement, you do up the potential for corruption and malpractice.

I think there is a balance of two things. It really gives ownership by each of the states and the Federal Police, I suppose, in the NCA to the extent where they really are committed to ensuring that it works. They really are likely, for those reasons, to provide good people. Those people will grow and therefore be much more valuable to the NCA, as well as to their own forces when they return, because of their greater understanding of it. I think the fact that you are getting new blood into an otherwise small organisation has some real benefits as well. On balance, I think the arrangements as they are now are better and are likely to lead to a more effective result than if you had a standing, permanent set of investigators.

**Mr SERCOMBE**—It has been put to us that there are some specialised functions, such as surveillance, where the two-year period is quite inadequate. This is not coming from the NCA hierarchy, I might say. It is coming from somewhere down the line that the two-year period is simply inadequate and that, by the time people have been brought up to a higher degree of proficiency in those areas, they will be going back to their home force. I suppose that begs the question about training levels in the home forces. It is certainly a view that has been put that specifically in that surveillance area there are some real problems.

**Commissioner Palmer**—Yes. I will make a parent comment, and then I am sure Mr Whiddett and Mr McDonald will make a comment. Surveillance for all of us, even within our own forces, is a very difficult and delicate area simply because of the huge potential and the absolute importance of propriety of process and obviously the significant potential for malpractice. We are forever dealing with that problem ourselves in terms of getting this balance between the need to rotate people and make sure that you have the right oversight and audit process in place and the need to leave people in place for long enough to really give you full value for their experience.

So as to two years in that environment—Mr McDonald and Mr Whiddett would have a view—I think that is a little short. I think certainly you need to ensure, as far as you can, that before people move into those arenas they are as well prepared for it and



trained for it as they possibly can be. But it is, having said that, the sort of work through which you can only gain expertise on the ground. You cannot read this out of a book and you cannot learn it in a classroom. So there is some lead time, but I think getting the balance right is pretty important as well.

**Mr Whiddett**—We have a memorandum of understanding with the NCA which relates to both technical and physical surveillance where we undertake to provide appropriately skilled people. There is a lot to that, depending on what sort of surveillance is in place and what sort of work has to be done to support the surveillance group, which is an operational matter. But in the main we do tend to provide people who already have reasonable skills in surveillance because the type of work that the NCA is involved in at the higher level, indeed the type of work that the AFP is involved in at the higher level, requires a degree of expertise that you do not leave to novices.

But having said that, at some point you will always have people coming through the system who need to be trained up. Two years may be seen to be sufficient if you have someone who has reasonable training because if they come back to us or if they go back to a parent state force, they are people who will probably be continuing to do the same work, so I do not know if that two-year thing washes. On the other hand, someone with limited experience over two years of surveillance you might not put into a fairly complicated, protracted and dangerous operation. I think Bob would probably agree with that from the eastern region point of view.

**Mr McDonald**—Yes. On the question of surveillance, I think it is one area that you would not say that the NCA needs their own staff, dedicated to surveillance. I think it is one area that should be turned over periodically, mainly due to the nature of those particular duties. I do not think you would want to go any longer than three years. That would be the limit before you do change your staff over.

Having worked at the National Crime Authority for a couple of years, I differ slightly from the commissioner in relation to the staffing mix. I think the staffing should be mixed and matched a little, mainly to get continuity, particularly on long-term organised crime investigations. There is a problem in continuity of investigators; if they are there for two years and then they suddenly return to their parent force, you have ongoing court commitments and things of that nature where you have got to run the trials through the courts. There is also a loss of corporate knowledge to the authority.

Sometimes too, with the investigators that do go, there can be split loyalties; they have one foot in the NCA and the other foot back in their parent force. Then they are looking back at the parent force, seeing what is happening and what their promotional prospects are like and so forth. You are getting these competing things all the time. There is a good argument that could be put forward that you should have a small core set of investigators attached to the authority and then run off with your task forces by bringing your other groups in. That is the way that I—

**CHAIR**—A balance of some sort.

**Mr SERCOMBE**—What about in other areas of cooperation, for example, communications? Certainly the NCA has been having very serious resource problems with respect to a number of areas. I understood there was a proposal for some joint arrangements between the NCA and the AFP with respect to communications systems. I wonder whether that has developed now to some finality or if they are still in the discussion stage.

**Mr Whiddett**—I am not sure of communications. Do you mean radio communications?

**Mr SERCOMBE**—Yes.

**Mr Whiddett**—I am not aware of any difficulties with radio communication because usually in operations we use privacy and essentially we share communications. But regarding things like telephone intercept, there is a difference there because we have a different arrangement from NCA. That is not likely to be changed until both of us are in a position to replace our capital equipment.

**Mr SERCOMBE**—I understood that particularly in Victoria, for example, there was a proposal for the NCA to utilise your communications system.

**Mr Whiddett**—With radio communications I would see there would be no difficulty. I did not understand there was a problem. It has never been brought to my attention that there has been a difficulty.

**Mr McDonald**—I certainly do not know of any radio communication problems in Sydney, at least.

**Mr SERCOMBE**—Another area which is always a subject of discussion is intelligence. We have had evidence here from the ABCI as well. I certainly got the impression that the ABCI sees a bit of a role for itself in the area of assessment, as well as the collection of intelligence.

I just wonder where, from the AFP's point of view, you see the intermeshing of the roles of your own systems, the ABCI systems, the NCA systems; ABCI, for example, made some fairly muted criticisms of the NCA in relation to the ACID system. I just wonder where you guys see it sitting in terms of getting the best use of resources.

**Commissioner Palmer**—Mr Whiddett is probably the best person to answer this question.

**Mr Whiddett**—Certainly from the point of view of intelligence, we could probably have a better link between us and the National Crime Authority in terms of technical links. I understand that is being looked at now. One of the difficulties has been that all of us have been in a state of flux with technology, and the AFP in particular have got a project going at the moment, which will remedy some of the difficulties we have got, that

requires fairly modest amounts of money being put to it.

As to the relationship between us and the ABCI, the requirement at the state level is somewhat different in that, while we do certainly provide data to the ABCI, it is provided in hard copy because we do not have direct technical access to ACID, although the sphere solution that I spoke about—the project solution—will remedy that in time.

The real issue in the past between the ABCI and us and the National Crime Authority is the sort of information that needs to be downloaded into the ABCI's database, and the timing of that. Often, the requirements that we have for long-term operations preclude perhaps providing information as readily or as soon as some may want. So the requirements sometimes tend to be a bit different.

The AFP and the NCA are certainly committed to the ABCI—it is a very important adjunct to the intelligence matrix. Also, there is a bit of mythology involved in what individuals might think we have. I think there is a view that the NCA and the AFP between them have some huge cache of data which no-one is entitled to see. It is true to say that during sensitive operations we are very careful in the release of information in order that people are not prejudiced. But, in the main, when those operations have ceased to be overly sensitive, that information is passed readily to other Australian jurisdictions and overseas.

**Mrs WEST**—Are we winning the war on crime?

**Commissioner Palmer**—No.

**Mrs WEST**—If we want to play an efficient and effective role, how would you improve what you are already doing?

**Commissioner Palmer**—We have to find even better ways to maximise the value of our competing jurisdictional boundaries and find better ways to even more thoroughly coordinate. I think the real challenge for us is the next phase. I think we are getting things fairly right in Australia. There are some improvements that can be made in terms of things like the management of joint operations, to ensure that the way in which we are managing serious joint operations is not changing according to the parent force from which the manager or the leader of the operation comes.

We can settle some clearer guidelines in terms of the way that we structure our joint operations across the country, so that we do put sensible boundaries around them in a way, touching on the points that Mr McDonald made, that does not cause us to stop artificially an investigation; that we make sure that we are really are focused on active targets, and that we put sensible boundaries around the investigation so that we are not just out there canvassing the field investigating whatever it might be, whether it be Asian organised crime or just organised criminality—you could be out there forever with never finding the trees for the wood.

It is important to make sure that the investigations are better focused, and there is a lot of work going on in that process. We and state agencies can make better use of the coercive powers arrangements within the NCA, and probably at an earlier time in investigations that appear to have reached the stage where they are not achieving any good result, which is when the use of coercive powers may well kick-start an investigation that otherwise is floundering. I think they offer some real benefits to us and I do not think we are dealing with that as well as we could. There is a real commitment to this amongst commissioners across Australia.

We need to find better ways by which we can interchange our people and fertilise each of our organisations with people from other organisations. One of the biggest problems for police, which is why I am so strong about standing arrangements in terms of permanent presence of people within agencies, is the closed shop workshop that has really affected every state police agency, and to some extent the Australian Federal Police within this country. The only way you are going to get best practice is for people to share their experience across this jurisdiction, to work with other people in different arenas and different environments and to learn in that sense. We have not done anywhere near enough of that. We can do much more about the national mobility process within policing, and the NCA ought to be a very critical player in that.

Internationally, we are making some good yards but there are some huge challenges for us in terms of basic things which are going to be really very important to us in the future, such as the collection of evidence, witness statements or even information for us in other countries where the process of collection may in itself bar that information or evidence from ever being admissible in our courts. I think we can do more about just improving the understanding of each other's arrangements so that we ensure that in the collection process we are not damaging the result.

From an AFP point of view, we can make better use of our overseas liaison officer posts. Already, we are doing more than 50 per cent of our work for state agencies and the NCA. We put their work ahead of our own. The nature of work that is being done overseas on behalf of other agencies in this country has changed quite dramatically and will continue to change. We can continue to build more bridges there.

**Mrs WEST**—We have currently 22—and that is just a conservative estimate—law enforcement agencies or bodies associated with law enforcement. Do you feel there is a duplication of services or investigative procedures? Do you think we could finetune our law enforcement? Are there more chiefs than indians?

**Commissioner Palmer**—I do not know about more chiefs than indians. I suppose in a perfect world, clearly, the fewer agencies you have, within sensible boundaries, the better, and the less duplication or division likely to be created. But, having said that, size—as I think New South Wales has shown—can be, in itself, a real problem. You need to put sensible boundaries around the size of any law enforcement agency otherwise you cannot hope to have the right level of propriety and integrity, and that is absolutely critical. An oversight will be not possible.

Lessons are being learnt right around the country in terms of the balance within policing. Although quite dramatic changes are being made now, policing, until recent years, right across the country, was based on a paramilitary model and was very hierarchical with 11, 12 or 14 levels of authority and so on. As you know, the AFP has flattened to five; other organisations around the country are flattening to a lesser or greater degree. There is far more delegation of authority and far more exercise of real discretionary autonomy now than ever before.

As part of that process, the number of chiefs, if you like, will shrink because the paramilitary model just created that stepping stone promotion process. The sadness of that was that many of our best investigators were lost to the very work which they were most equipped and best equipped to do and became managers, in the sense that it was almost counterproductive. We have dealt with that pretty well. The bigger the organisation, the harder it is to deal with, but I think they are challenges.

**Mrs WEST**—In dealing with the NCA, do you find them an efficient and effective organisation to work with? Do we need them?

**Commissioner Palmer**—I found the NCA very efficient and effective to deal with both here and in the Northern Territory environment where I was commissioner for six years. Obviously, on individual investigations, we fall out between any two or three agencies from time to time and investigators will have their own view on life. If I think about my Northern Territory experience, I would have had Northern Territory investigators focused often on a very small picture and getting arrests in regard to the state crime when the NCA or the other agencies involved were looking more broadly at what the big picture was there, who the real players were, who the importers were—more or less the matrix of criminal syndication that we really ought to be trying to pull apart. That sometimes creates difficulties.

That is nowhere near, of course, the problem between the AFP and the NCA who come from the same position in regard to that and are attempting to look at that bigger picture on every occasion. I think the NCA is a critical player in the matrix. It provides that bridge between the federal law enforcement field and the state law enforcement field. It takes away the unease and uncertainty that I think would be felt by many state commissioners if, in fact, they were dealing directly with, for example, the AFP on its own. Of course, the NCA is an organisation which has coercive powers such as are unlikely to be given, I think, by any government to a more traditional police service. The role the NCA plays there, obviously, is very critical and will become more critical in the future.

**Senator FERRIS**—Can I ask you, first, to turn your mind to the Harrison inquiry? Could you tell whether any of the NCA referred and on-secondment officers have in any way been required to be investigated as a result of the findings of the Harrison inquiry?

**Commissioner Palmer**—I am almost certain the answer is a categorical no. But because I have not gone through the total list of those people who were, in the first

instance, investigated or against whom allegations were made, to see, firstly, whether they had ever been at the NCA—and I would assume that some would have been at some time in their career—or, secondly, whether they were at the time that the matters were investigated. To go much beyond that, I would probably have to ask that the hearing be closed.

Having said that, the vast majority of allegations of course were very dated and they related to the early to mid-1980s. It is fair to say that I do not think there were any allegations at all about contemporary corruption or malpractice, and if there were they certainly were not found to be sustained. In the main they were clearly isolated instances of malpractice or alleged malpractice and in regard to 46 of the 54 people who were investigated by Harrison he found there was no basis upon which any further action ought to be taken.

The numbers were small and there are a number of loose ends that have to be tied up before we absolutely put a few of them to bed. In regard to the eight people who I have decided that at this stage it is appropriate for me take action against in a show cause sense, none of those are with the NCA now. I cannot be sure that they never were but there is nothing in any of the allegations to suggest in any way that anything they have done has been in any way compromised.

**Senator FERRIS**—I asked the question based on trying to clarify whether any investigations have been compromised in the past, so I would be grateful if you could confirm that for us at a later time. Are AFP officers subject to integrity testing?

**Commissioner Palmer**—Yes, they are.

**Senator FERRIS**—Could you tell us a little about that?.

**Commissioner Palmer**—The selection process for AFP people is extremely intense in the first instance. People wishing to become sworn members of the AFP first of all go through a psychological profiling and then a full day at the assessment centre for assessments before they reach the formal interview stage. By way of an example of that, we had over 3,500—and I think the first figure was 4,500, but in reality some 3,500 when you sifted through—applications for a class that is running at the moment of only some 20 people. From those 3,500 applications, through assessments we sifted down to a selection of 19 or 20.

On the way though, under Mr Whiddett's direction we set up an internal security and audit unit—division, as it was then called—to carry out ongoing oversight and audit of operations within the AFP to carry out proactive as well as reactive investigations in terms of practices and procedures to ensure that where practice is not what it should be it is picked up very quickly and that action is taken against individuals. As part of their service process, as well as their promotion process, every member is subject to a performance management program that assesses integrity among its criteria. Of course every member in the organisation is on fixed term appointment of either five or 10 years.

So, if we have any doubts about the integrity of anybody within the service, they will not be reappointed.

**Senator FERRIS**—The number of AFP people working with NCA is now 54, compared with just 16 three years ago. Why might that be the case and at what point do those numbers merge to the extent that, as you have said, there are divided loyalties? At what point do those numbers merge so that effectively the NCA almost becomes a branch of the AFP? Some evidence that we have already taken has suggested that the NCA is currently top-heavy with AFP people?

**Commissioner Palmer**—I think Mr Whiddett can talk more specifically but I was involved in the process that led to the 16 becoming 54, but it is at present 45. That was on the back of the CLER report—the law enforcement arrangements report—which suggested that those members that were more permanently attached to the NCA ought to be AFP members. The arrangement which was reached between me and Tom Sherman, who was then chairman, was that, because the National Crime Authority has a national jurisdiction, as does the Federal Police, so many of the investigations cut across state boundaries and borders, across the country the largest proportion of investigators quite properly should be AFP people, but within any one jurisdiction the majority of members in that jurisdiction ought to be state police.

I think the situation has not changed. In Victoria the majority of officers in the NCA office in Melbourne are Victorian police officers, and in New South Wales they are New South Wales police officers—I think 19 in each. There would not be that many AFP officers in any jurisdiction. Across the organisation there are 45 to 50—or 54, as you say—when the largest other organisation might be in the order of 20. But in their home jurisdiction they have the majority. It seems to me that that balance is an extremely sensible one. Mr Whiddett might like to add to that.

**Mr Whiddett**—Certainly the Commonwealth Law Enforcement Review is responsible for the beefing up of numbers at the NCA. But the AFP's influence in the National Crime Authority is no different from any other police organisation. The utility of our people is purely a matter for the National Crime Authority, so it is not as if we have any particular say in that. To the extent that AFP people might be involved as team leaders on occasions is a matter for judgment by the National Crime Authority. So it is left entirely to their discretion.

**Mr SERCOMBE**—What about disciplinary matters in these sorts of arrangements? I guess the situation is shown more starkly with a state police officer who, even though on secondment to the NCA, will be subject to the state disciplinary system, as I understand it, in the final analysis. What is the position in relation to dealings between the NCA and the AFP on matters of that sensitive nature? Can you comment on the Law Reform Commission proposal to establish NIIC from the point of view of both your own organisation and the NCA?

**Commissioner Palmer**—Mr Whiddett will first of all talk about the complaints

process between the NCA and AFP.

**Mr Whiddett**—We have an arrangement between us and the National Crime Authority where they can use the services of our internal security and audit area. But, ultimately, if a state jurisdiction has a person in difficulties, it will be a matter for the commissioner of that jurisdiction with an arrangement between the National Crime Authority chairman and the commissioner of the jurisdiction.

There are cases where, by arrangement, there might be a joint exercise between our jurisdiction in the federal sphere and the state in relation to state officers who may in some way be involved in matters which would affect the Commonwealth. In other words, it might be to do with dealings within the National Crime Authority, their act or some breach under the Commonwealth Crimes Act. Those arrangements are fairly well settled, but they are looked at on a case by case basis, obviously.

**Mr SERCOMBE**—Do they work adequately?

**Mr Whiddett**—I think they are adequate. It depends obviously on the nature of the offences. Disciplinary matters are usually fairly easy to cut through, but matters alleging, for example, criminality might require the same sorts of techniques and processes as we use in normal investigations. It just depends on the matter that has been brought forward.

**Senator FERRIS**—Commissioner Palmer, we talked a little while ago—

**Mr SERCOMBE**—Can we deal with the NIIC first?

**Commissioner Palmer**—My position has been made fairly publicly clear on a number of occasions. But my view is that it is not appropriate for organisations like our own to investigate corruption and serious malpractice ourselves. It clearly needs to be investigated either jointly or externally. But I believe it is more about process than structure, and that whatever arrangements are put in place to investigate corruption and malpractice in the AFP-NCA environment should ensure that the best mix of skills are pulled together to investigate the complaint—depending upon its nature—or the allegations or suspicions, or the basis of the intelligence. That can be achieved in ways other than that require a permanent structure of people who are waiting for the complaints to be made.

So my own view is that it is more about process than it is about structure, but I believe it certainly does need to sit outside both the NCA and the AFP. I think that is an area, as Mr Whiddett said, above the disciplinary process that is not as well managed at the moment across policing in joint operations as it could be. Certainly, at the moment the potential is there for people as part of a joint team coming from three or four police services to be dealt with in different ways by their home forces, so that some are dismissed, some are demoted, and some may even be fined, for example, in a worst case scenario. There is more that can be done about that and that is something that is of real concern, I know, to commissioners across the country.



**CHAIR**—The proposal for the NIIC is that it would have something like 30 or 40 staff? It seems extraordinary that the amount of money that is involved in that would not be better put to other uses.

**Commissioner Palmer**—I guess at the end of the day this is going to be a policy decision for government. But my own view is that there are a number of ways by which this can be dealt with. As I said, it is more about process than structure.

**Senator FERRIS**—Commissioner Palmer, earlier on this morning we were talking about issues of territoriality, and we have already had some evidence in which a, to my mind, rather unusual word, the word ‘turfdom’, was used by one of our previous witnesses to talk about the conflict and territoriality between various law enforcement bodies. Have you ever become aware of any issues of turfdom which have interfered with the efficient process of the NCA or the AFP? To what extent is turfdom or territoriality a problem in dealing with, say, organised crime? If the police services are bickering with each other or if NCA officers are still keeping an eye on the state police from which they came, to what extent does that interfere with the efficiency of the policing process?

**Commissioner Palmer**—I think, historically, it has interfered at different times over the years. In the main, though, it has been driven by ignorance and by a lack of communication, a lack of sharing of intelligence and a lack of coordination. It has been done almost by accident rather than by design. There have been examples over the years of surveillance cars finding themselves one behind the other in streets on operations. I think, though, that that is very much a thing of the past. The level of coordination and cooperation now is such that, although individual operators from time to time may have a different focus in terms of what they want to achieve out of an investigation—which makes the management of that joint operation very important—outside of an individual member’s bias, which cannot obviously, absolutely, categorically be dismissed, the sort of problems you have identified really belong very much to the past rather than to the present and certainly not to the future.

**Senator FERRIS**—When somebody is seconded to, say, the NCA, how do you get them to be immediately loyal to the NCA and not to the force they have come from?

**Commissioner Palmer**—I do not think it is a problem at all. We operate in joint operations around the country and have really for many years. We have just got better at it, and the NCA makes it even easier because it is a clear umbrella structure which is there for that very purpose—to coordinate investigators and investigations. We are using investigators from a range of agencies. People apply to go and are selected by the organisation. We encourage good quality people to go. They go, like Mr McDonald went, to gain even further experience. We are sending good quality people who come back even better value to us than when they went.

Mr McDonald, I know, could speak from his own experience on the loyalty factor but, it seems to me, from my experience—having worked in a few joint operations—that you very quickly become loyal to the team of which you are a part. That is what is so

positive about it, and you forget very quickly what agency you belong to. Sometimes, if you were in the group, you would have no idea how many Victorian, New South Wales, NCA or AFP people were in the group. They are just a team working on a project. I do not think the loyalty factor really is operationally a problem at all, but Bob might have a—

**Senator FERRIS**—I would be interested if Mr McDonald had anything to add.

**Mr McDonald**—In relation to actual investigations and getting on with the work, you do not see a problem. I think where I was talking about split loyalties is where sometimes they are looking back as to what is happening in their parent force as far as promotion and everything else goes.

**Senator FERRIS**—I can understand that.

**Mr McDonald**—That is only natural. But, as far as getting on with the work at hand, there is generally no problem. They are generally absorbed within the team and, as the commissioner said, they do become loyal to that team and they get on with the actual job.

**Senator FERRIS**—Did you see any examples of turfdom?

**Mr McDonald**—I would say, going back into the era when I was with the NCA—which was the late 1980s—I probably did see a little bit of it but, again, the NCA was the new boy on the block, so to speak, at that time. Over at least the last three years, I have seen nothing but improvement, particularly at the regional level where I am in Sydney at the moment. The interactions between agencies, both state and federal, I do not think have been better than what they are at the moment. They are continually improving; senior management of the organisations are coming together, meeting regularly, discussing the issues and sharing resources, so I do not see it as a major problem.

**CHAIR**—I take it that they do not wear uniforms when they are on secondment. Is that right? What is the story there?

**Mr McDonald**—It is plain clothes.

**CHAIR**—All plain clothes?

**Mr McDonald**—Yes. It is investigators—

**CHAIR**—So, in that sense, they are not identified as to where they came from?

**Mr McDonald**—No.

**CHAIR**—And they work, as you put it, in teams. Is that the way it operates—the senior person, whether they be from, say, the Victorian police or the AFP, would be in

charge of the team—

**Mr McDonald**—That is correct.

**CHAIR**—In terms of senior ranking?

**Mr McDonald**—Yes, and those teams could be working on particular references that the NCA is carrying at that moment, so whatever the reference may be, that is where they are working, in that particular area.

**CHAIR**—And the team leader might be, say, a sergeant of the police in Victoria. Then he and the others in the team would be inferior in rank and there is no problem there in terms of maybe it is easier to become a sergeant in Victoria than it is in Queensland—that sort of issue. I do not know that it is, incidentally.

**Mr McDonald**—No. The team leader from my experience is generally selected on his experience and the nature of the investigation that is being conducted at that time. If it was predominantly a state offence which the National Crime Authority was interested in, more than likely it would be a state police officer who because of his expertise in that area would be leading the investigation. For instance, if it was a major importation of narcotics, it would be more than likely that it would be one of the AFP members because of their expertise in that particular area who would be the team leader. But you will find that the team will come together fairly quickly once they do get involved in the investigation.

**Mr Whiddett**—Could I just make an observation on turfdom, which I think is fairly important where the NCA has played a major part.

**Senator FERRIS**—That is a new word to me.

**Mr Whiddett**—Certainly, guarding the patch or whatever it might be described as—in fact, it is the NCA and the bringing together of the variety of jurisdictions which has enabled individual officers to see the power behind working more collegiately. The reality is that, when they come together and they see the nature of crimes, when they see some of the references which cross every jurisdiction in this country and beyond, they realise that the game they have been playing was not just in their jurisdiction but is much wider. I think that does two things. Firstly, it opens their eyes to what is really very mobile criminality and, secondly, they realise the dynamics of working closely with other jurisdictions. So in fact I would say, since the National Crime Authority, the relationship between jurisdictions has become better and is really a by-product of the NCA's powers and the ability to pull together the separate jurisdictions.

**Senator FERRIS**—My colleague Mrs West referred to the number of law enforcement agencies earlier on. The NCA, the AFP and the ABCI—is there still a need for those? If you could think about leaving aside the particular powers of the NCA, is there still a need for those three bodies to be separate?

**Commissioner Palmer**—I think so, for a couple of good reasons: firstly, reinforcing what Mr Whiddett just said, the critical coordination role the NCA plays. But I think the fundamental issue is that the National Crime Authority is, as the name indicates, a national organisation and, if you like, is controlled in two ways. It is oversighted by the parliamentary joint committee and it has its own intergovernmental committee, which is a committee comprising all of the police ministers and in some cases the attorneys of all the states, as well as the federal Attorney-General, so it is a shared resource in that sense and is not seen by the states as being something which Big Brother federal government owns to the exclusion of themselves, albeit the financial arrangements are that way and it is staffed jointly.

The ABCI of course is a common police service, which is one which has a board of management of all of the commissioners in the country, so it is not a federal agency at all. It is simply one that was put together on behalf of all of us.

**Senator FERRIS**—It is based here.

**Commissioner Palmer**—Yes, it is based here with the direct funding coming from the federal government, but it is not a federal agency. It is a common police service.

**Senator FERRIS**—I have just one final question. Mr Costigan has put a paper in, in which he quotes from the 1983 second reading speech for the establishment of the NCA, that the government needed to set up a body which would take a fresh look at existing arrangements and institutions for the investigation and prosecution of criminal offences of a serious kind, particularly in the nature of organised crime. It went on to say that we needed a new standing body with the necessary expertise and powers to make an effective attack on organised crime.

I am not casting aspersions on the types of prosecutions but, if you have a look in the back of the NCA's annual report at the sorts of fines and gaol terms for individuals who are finally convicted at the end of a long process, they are really small beer. There is no Mr Big that you could identify in here at all. People get fined \$150, get suspended sentences, and are acquitted in some cases. Is the NCA really capturing the Mr Bigs and the Mr Big Enoughs of Australia and are they still fulfilling that 1983 second reading speech? Could you make a comment on that?

**Commissioner Palmer**—Probably Mr McDonald and Mr Whiddett would be in a much better position than I to talk about the specificity of it, but I would say none of us are catching as many Mr Bigs as we would like. But I think the NCA really has been extremely successful in a number of operations in recent years in disrupting or dismantling clearly organised international criminal syndicates. I think Australian policing has been more effective in dealing with that in recent times than ever before.

Unavoidably, in the process of attacking an organised criminal syndicate, you will pick up a lot of minor players in the quantitative sense. It is one of the problems for all of us who are dealing with our own financial arrangements, in terms of substantiating the

need for the budget, that you may be risking, in focusing on the bigger, top end of town, losing some of the lower end numbers. But even if you focus on the top end of town you will pick up a lot of small players in the process and ordinarily have to. Once you see an offence it is not always easy to ignore it even if you wish to. So I think that that is reflected in the figures.

But I have to say that to my knowledge there have been a number of extremely successful investigations. By way of an example—just a short one—of that sort of thing: we were host to a debriefing in Sydney—Mr McDonald's officers—only a fortnight ago on the back of one international operation which people from 18 different countries attended to see what lessons could be learnt out of what was a large drug importation to this country. I happened to be there for part of one of the days and spoke to a couple of the people from the United Kingdom who said that they had had no idea until they arrived at the debriefing that the people they were looking at in regard to organised syndicated crime in Europe were linked to the very people who were bringing drugs into this country. If there was a common feeling across the group it was the enormous lessons to be learnt in terms of linkages and that Australian law enforcement was now involved in a much wider foray into the international criminal environment than we have been in the past.

**Mr McDonald**—Going back to the original part of the question, I certainly endorse what the commissioner said. There have been some major successes achieved by the NCA in years gone by. It is difficult to respond when isolated ones are read out but it could be that in the strategies in building up to identify and address the Mr Bigs, you do take a number of the smaller players out. They will not always attract heavy penalties due to the nature of the situation, but it is from criminal intelligence that you gather by carrying out those arrests that you are continually building up to being able to identify and attack the so-called Mr Bigs.

In relation to the international meeting that the commissioner was talking about, 31 international officers attended that. The information originally came from the National Crime Authority on their side delving into money laundering, going back some years, after which, through the sharing of intelligence, we were able to build on and identify the principal players behind a 10 tonne importation of cannabis resin into this country, then, further, the players that were behind that and a further importation into the United States and into Canada. Indeed, in Canada, the Canadian police arrested a former Australian police officer who was tied up in that syndicate.

That is an illustration of how intelligence is being shared between the agencies and is being built up. I think you would have to be very careful to react to figures like that that were in the back of the annual report in looking at them in isolation. You really need to look at everything in its entirety.

**Senator FERRIS**—I understand that but if you go back to what the NCA was set up to do, the impression is clearly given that greater powers are needed for greater crime. Whilst I take the point you are making, it would be easy to look at those and think that they could easily have been handled by jurisdictions other than the NCA and that the

NCA should perhaps focus on, as you say, the big end of town leaving the smaller fish that might be in the same town to be effectively picked up by the state jurisdictions.

**Mr Whiddett**—Certainly, it takes time to develop the sort of intelligence that is required to make judgments about people in the senior echelons of crime. The fact is that the sort of cooperation we are getting, within Australia and outside it, is far greater now than when the NCA commenced in 1984. This is a very slow process and it requires mutual trust on a number of sides.

But it seems to me, as Mr McDonald said, there have been in recent times a number of operations which go very much to that slow building up of the intelligence picture that you need to take the action that we have. For example, while we might have been instrumental in a particular case recently which resulted in the arrest and charging of somebody, an elusive character, who had been involved in organised crime for almost a whole lifetime, that would not have happened, I do not think, if there had not been that sort of interlinkage between the variety of agencies concerned.

There is so much synergy that now exists in the law enforcement community both nationally and internationally that the future prospects can only be better. I do not think this is being overly optimistic. I genuinely believe there is a lot more sophistication in relationships and in intelligence development and in time that will be proven by results—and has been proven by results in the last few months.

**Senator FERRIS**—I am reassured by your optimism but I am sure you would also understand the level of cynicism in the community: they see an apparent explosion, particularly in the range of heroin that is now available—perhaps more so than cannabis—and the age of the children who are now becoming involved in not only using but also selling this drug, particularly in the cities. I think it is very easy to see that information and believe that we truly are quite substantially behind where we would like to be in relation to the drug war.

**Mr Whiddett**—I would agree with that.

**Mr SERCOMBE**—The NCA had a relatively minor success in the context of the recent budget on some money with respect to fraud and money laundering activities; I am wondering how the AFP has panned out and what the consequences of the recent budget are for your operations and key areas?

**Commissioner Palmer**—As you know, we were subject to the same across-the-board cuts that other agencies were subjected to. This, in the five per cent across-the-board sense, equated to some \$8.5 million in our own organisation, as a result of which, and because of the tied nature of some other funding within the organisation that is of our own doing because of where we were going in a strategic sense, we are presently reviewing matters such as the way by which we can best live within the new budgetary boundaries and what our priorities ought to be. We are also rethinking absolutely, cohesively and comprehensively what is the best way to do business in 1997-98 within the budgetary

framework we have been given.

In many ways we are in a fortunate position in that we had commissioned for ourselves in April of last year a review by KPMG of our program one focus, which was our core investigative business. We went outside and sought a warts and all review of how well we are doing business, what are the lessons we can learn about ourselves, how well do we focus on the priority business that we do within that investigation of offences against the Commonwealth or matters affecting Commonwealth interest.

That review has been completed. We learnt some lessons. The first phase of the report which gave us a situation report of the good, the bad and the ugly, as it were, was completed by August of last year. Immediately, since then, we moved into what should be the journey to take to get ourselves in the best possible shape. So we are in a much more flexible shape to deal with a tight budgetary environment than we may have been some little time ago. But, the comments made by the senator are real. The patch is bigger than the players. There is an enormous amount of work out there. The diversity and complexity of criminal investigation grows exponentially.

In the short time I have been with the AFP I have seen very significant change in the nature of the investigations being conducted by it and that will continue to change. People are its resources, as they are with the NCA, so, unavoidably, we will have to make some careful decisions and possibly some tough decisions to make sure that we are really focused on the most important work within the resource constraints that we have.

**CHAIR**—The national drug strategy is being reviewed at the moment; have you had any direct input into that process?

**Commissioner Palmer**—We have been involved. I have not been personally involved in the process. The organisation is part of the law enforcement matrix, essentially, through a couple of arenas, one of which was Professor Timothy Rohl of the Australian Institute of Police Management who has been a key player in the drafting of the strategy. But it is aimed at being a balance between the health and the law enforcement imperatives, if you like. So law enforcement has been represented and it has been very well represented in the national sense by Richard McCreadie, the present commissioner of the Tasmanian police, who has personally had a large, strong input on behalf of law enforcement into the strategy development.

**CHAIR**—Are you familiar enough with it to say whether the balance has been right up to date? We are looking now at a review of it but has the balance been right to date?

**Commissioner Palmer**—I am not familiar enough with it to be sure: I would be guessing. A lot of it makes sense to me. I am not absolutely confident in my own mind that the balance is quite right, but I am not really sure that I would have the answer either—I am not really across the detail enough.

**CHAIR**—What is your view about Justice Woods apparently giving a boost to the idea of a heroin trial in the ACT?

**Commissioner Palmer**—I am on the public record as saying that I support the heroin trial on the basis that you have to come at these problems from both ends. Clearly, we have to be very serious about reducing supply. Wherever you look in the world and no matter how liberal people have been with regard to use and possession, at the same time they have been very tough in almost every country about reducing supply and dealing with organised criminals who are exploiting the market. Clearly, what we are doing at the moment is not working as well as it could: we are not being successful. It seems to me that anything that has a sensible basis to it is worth trialling on the basis that we must learn lessons from it. If it does not work, it does not seem to me that we have cost ourselves too much.

Clearly, there are some difficulties with it—whether you talk about setting aside rooms in which people can inject or whether you set up a trial according to the ACT model. I think that we have to be innovative. We have to be prepared to try new ideas and to deal with addicts, users and possessors differently from the way in which we deal with serious organised criminals.

**CHAIR**—Are you sure that is not an admission that we have failed on the law enforcement side?

**Commissioner Palmer**—No, it is not. It is a recognition that law enforcement on its own can never answer all of the problems. A great range of the problems are health related. They are not about criminality; they are about addiction and health. If we do not deal with them in a comprehensive way, we are not likely to be successful. I believe that the only way we can be successful is to attack the problem from both ends.

Law enforcement is an absolutely critical player in the matrix. One of the problems in the past has been that it was not forcefully enough or energetically enough present in the drugs strategy environment. Law enforcement dimensions were not properly recognised in my early exposure to and understanding of the drugs strategy process in ministerial and MCDS forums, and the like. I do not think law enforcement was properly represented and that caused a great imbalance that was counterproductive. I think there is a need for a balance.

**CHAIR**—Commissioner Palmer and colleagues, your evidence has been particularly interesting and helpful. We appreciate the time that you have given the committee this morning.

**Committee adjourned at 11.12 a.m.**