COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE

on

THE NATIONAL CRIME AUTHORITY

Reference: Evaluation of the National Crime Authority

MELBOURNE

Wednesday, 11 June 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT COMMITTEE

ON

THE NATIONAL CRIME AUTHORITY

Members:

Mr Bradford (Chair)

Senator Conroy	Mr Filing
Senator Ferris	Mr Sercombe
Senator Gibbs	Mr Truss
Senator McGauran	Mrs West
Senator Stott Despoja	

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

JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

Evaluation of the National Crime Authority

MELBOURNE

Wednesday, 11 June 1997

Present

Mr Bradford (Chair)

Senator Conroy	Mr Filing
Senator Ferris	Mr Sercombe
Senator McGauran	Mr Truss
	Mrs West

The committee met at 9.14 a.m.

Mr Bradford took the chair.

CRENNAN, Mrs Susan Maree, Former Chairman, Bar Council of Victoria, 205 William Street, Melbourne, Victoria 3000

CHAIR—I declare this public hearing in Melbourne open. Hopefully, we will have another interesting day. We had a fairly quiet and uneventful day in Adelaide yesterday. If Mr Filing does not ask any questions today, we will have an equally quiet day today.

Our first witness this morning is from the Victorian Bar Council. Welcome, Mrs Susan Crennan. We have not had a submission as such from the Bar Council, but perhaps you would like to make some opening remarks. In any case, the committee members would value the opportunity to ask you some questions.

Before you proceed, could I just say that I am required to state that if during the hearing you consider the information you might wish to give or a comment requested by committee members is of a confidential or private nature you can make application for that information or comment to be given in camera and the committee will consider your application. I should also remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in a material particular. Would you like to make an opening statement?

Mrs Crennan—Yes. I am a former chairman of the Victorian Bar Council. I have been requested by the Bar Council to attend this inquiry in my personal capacity to express a viewpoint in relation to any matters about which I am asked. I should also indicate I appeared for the NCA in a trial concerning Mr Elliott and others which took place in Melbourne before His Honour Mr Justice Vincent. I have sought the permission of the NCA to appear before this inquiry since that was my client in that particular piece of litigation. If I am asked to answer questions which involve contentious issues of law or fact arising out of the Elliott trial, I would obviously want to do that only in camera.

I have actually looked at your terms of reference and can give some general evidence in relation to those terms. One of the questions which you are addressing, as I understand it, is whether there is the need for such a body as the NCA. So far as I am concerned, and this view may well be shared by other barristers, there is the need for some body to cope with serious crime in Australia on a national level, which are really the parameters within which the NCA operates.

I also noticed that one of the matters with which you are concerned is whether there is the need for amendment in any respect so far as the National Crime Authority Act 1984 is concerned. One matter I wanted to raise with you was that the recent litigation concerning the NCA, which was not confined to the Elliott trial but other litigation which has taken place in the Federal Court of Australia, has indicated that the reference procedure, which is presently the procedure pursuant to which inquiries commence, which from memory is covered by section 13 of the act, is a procedure that is, in my view, reasonably unwieldy and certainly prone to causing all sorts of problems in the context of

litigation and challenges to what the NCA is doing.

The problems, I think, are twofold. First of all, it is a very unwieldy procedure that has to be undertaken in order to obtain a reference and, because of the need for specificity in a reference, there is the consequential problem that the reference will always cover matters that are getting a bit stale. It is terribly difficult to try to cover matters which may well fall under a particular umbrella but have not yet been perfectly and specifically adumbrated or anticipated. So that is a very genuine problem with a reference procedure.

An alternative which I have thought about, and I will throw it into the pot as a suggestion, if you like, is that perhaps a better procedure would be one much closer to the procedure one has with search warrants. In other words, those conducting preliminary inquiries or investigations could have or form a reason to suspect serious crime has been committed and possibly go before a Federal Court judge on affidavit material in order to be permitted to continue an investigation into some serious matter. The way it would need to be done, in my view, should include covering the possibility that something could be uncovered which has not been perfectly anticipated at the outset of an inquiry.

As I say, problems have arisen in recent litigation. It has pinpointed a problem. If a reference cast in broad terms can be poured over in a semantic sense and there can be an argument raised that a phrase or a sentence does not cover what it was intended to cover, that is obviously a problem which ought not to be bedevilling prosecutions brought as a result of an NCA investigation. So that is simply a suggestion I make in relation to the reference procedure which you may want to consider. Otherwise, I am here to answer questions if you have them.

CHAIR—Thank you very much. Obviously, I was not aware that you were acting for the NCA in that particular case. There may well be questions that the committee will ask anyway and, if you feel that it is not appropriate for you to answer them in open session, I think we would be happy to take up your offer to move into an in-camera session for a short time at the conclusion of this session, if you are prepared to do that.

Mrs Crennan—It might be convenient if we leave questions about that topic until the end of the session. Yes, I would appreciate that.

CHAIR—We will try to do that. You might run by the point you made about the references again. Obviously, that is a key area of interest to the committee. It is surprising since the hearings began how much input we have had from a wide variety of people about needs for changes into a whole range of areas, even suggestions ranging from the fact that the act needs a complete rewrite to suggestions that are much more specific.

The reference system seems to be one of the more controversial areas. Once again, we are getting some people saying that it is okay the way it is and others saying, ‘Well, it needs to be thrown out completely and the NCA needs to be given carte blanche and not

be restrained by a reference system.' What you suggested is something of a middle ground approach.

The criticism of the NCA in both the Elliott matter and the other matter where Justice Merkel was involved revolves around the reference system.

Mrs Crennan—Yes, it does. Perhaps it would be helpful if I explained to you that in the arguments in court over the references there has been argument on behalf of the NCA that a reference should be construed the same as the terms of reference in a royal commission. The law in relation to the terms of reference in a royal commission has been that it is permissible to ask a question provided it relates to a reasonably obvious chain of inquiry arising out of the terms of reference. From time to time judges have declined to adopt that approach to an NCA reference on the basis that there is not a perfect analogy between the terms of reference of a royal commission and a reference under the NCA legislation and have wanted to adopt a much narrower and more semantic approach.

If you understand the history of arguments in court about the references, it may help you to understand that it was thought for a time that, by adopting the analogy with terms of reference in a royal commission, it was possible to have a broad approach to an NCA reference. As time has gone on and as some courts have declined to approach a reference in that way, these problems have become more acute—that is to say, a problem arising if matter A or B, for example, arguably does or does not fall within a reference. That seems to me to be a semantic problem which should be addressed by a change to the reference system, because it is a problem the NCA really should not have to face because references are drawn to the best of everybody's ability. Often a lot of time is spent on drawing a reference, only to find that a particular court may take a view that topic A is not covered by it or whatever.

The reason I suggest you have something like a search warrant system is that it means that the judges of the Federal Court, for example, would be acting as a neutral monitor in relation to the reason to suspect serious crime. In so far as some people are arguing that the NCA ought to be subject to more scrutiny rather than less scrutiny, the type of method I am talking about does automatically involve a neutral monitor having a look at the 'reason to suspect'.

Another way of doing it, if the Federal Court felt they could not take on that work, would be for the authority members themselves to be satisfied about a reason to suspect and to adumbrate it in some way. That makes it very similar to the system that the ASC has for conducting inquiries and also the Trade Practices Commission. There is a lot of law on that, which would be well understood by authority members.

Mr SERCOMBE—Is there a possibility that Federal Court judges might come to the view that under that sort of proposal they may end up being witnesses in their own case in some circumstances? There has been some discussion about the role of judges in

recent times.

Mrs Crennan—You are quite right to point to that because there has been discussion about that in the context of the search warrant jurisdiction in the Federal Court. I suppose something may turn on how many investigations are conducted by the NCA per year, because that will give you an idea of how many times you would be going along to the Federal Court with a reason to suspect type application. But it may be an issue. Certainly that is an issue that has arisen in the context of search warrants. It does expose the judge to being a witness in a procedure subsequently.

Mr SERCOMBE—Is that potentially fatal for your proposal then?

Mrs Crennan—I would not have thought so, no.

CHAIR—What is your understanding of the Justice Merkel findings in respect of references?

Mrs Crennan—Are you talking about Re AB? Is that the case?

CHAIR—The bikies case.

Mrs Crennan—Yes, it is a similar problem, as I understand it, to the Elliott matter. I think I am right about this; I do not have a close familiarity with the Merkel case. The bikies reference, I think, was a reference in similar—

CHAIR—It was a broad reference.

Mrs Crennan—A broad reference, just in the sense that the Elliott reference was also a broad reference. His decision, I take it, was that a specific topic did not fall within the broad reference. You are constantly going to have those difficulties, I would have thought. If a judge declines to use the royal commission approach to the terms of reference—which is to read them broadly and allow any chain of inquiry that is relevant to fall within them—but scrutinises the wording of a reference to see if something does or does not semanticly fall within it, you will have those difficulties that you had arising out of the decision of Justice Merkel and also Justice Vincent.

CHAIR—Other than your suggestion, what other solutions to that problem are there?

Mrs Crennan—I have not really thought of any others. You obviously have to have some system whereby the NCA operatives conducting an investigation or about to conduct an investigation turn their minds properly to whether or not there is a real reason to suspect serious crime of some sort or another. You cannot have an open-ended system of any kind. What I am suggesting, I suppose, is one reasonably obvious alternative to the

reference system.

I think it is pretty clear, arising out of the decisions of Justices Vincent and Merkel, that the reference system is only likely to create future problems, because operatives drafting references are always trying to draft them broadly so that, as a matter of fairness, they are entitled to question topics which will fall under a broad umbrella. So they are not trying to draft them narrowly. If they did draft them narrowly, every time they stumbled upon something new in the context of an investigation, they would have to go and get a fresh narrow reference, which is obviously an unworkable situation.

Mr SERCOMBE—In relation to the royal commission comparison you drew a little earlier, as I understand it, evidence given in a royal commission that is self-incriminatory cannot then be subsequently led in criminal proceedings. What would be the implications of moving the NCA to more of a permanent royal commission model in respect of the way evidence is handled?

Mrs Crennan—You already have sections 25 and 28 under the NCA Act which govern issues of privilege and self-incrimination. So at the moment, subject to the precise provisions, somebody can raise these sorts of issues—not precisely as they can be raised under the Commonwealth Royal Commissions Act—

Mr SERCOMBE—But, in a royal commission, that plea is not available to a witness. A royal commission can compel an answer, but it cannot then be admitted.

Mrs Crennan—That is right, and it is not used later.

Mr SERCOMBE—Is that a model for the NCA?

Mrs Crennan—It could be, I suppose. It is the same with the ASC and all sorts of other investigators and regulators. They all have their own special approach to self-incrimination and also the questions of legal privilege and any privileges that may be available. You obviously have to address that in terms of what you are seeking to achieve. You do have to think of what use you want to make of evidence which is obtained during an investigation.

Certainly you will know from looking at the history of submissions made in relation to inquiries of this kind that there has been a great deal of concern about the proper preservation of the old common law rule against self-incrimination and the proper preservation of all just rights and claims to privilege. But it seems to me that an appropriate course is to have a look at how the ASC manages that issue and have a look at how the Trade Practices Commission manages that issue and see whether or not you can come to a kind of just balance in relation to what you are doing with what you would call the hearing and questioning processes under the NCA Act.

Mr TRUSS—I take you right back to your opening statement where you asserted that there was a role for a national crime authority. Do you reject the concept that state policing authorities could be strengthened to undertake the role that is otherwise occupied by the NCA?

Mrs Crennan—I cannot imagine that state policing authorities would really have the infrastructure and the capacity to deal with serious crime of a national kind. Obviously with some large drug crimes and matters of that kind you have a situation where it is essential to have a national regulator of some kind. So it seems to me there is a place for the NCA that does not trespass on the province of state police authorities at all, although obviously from time to time there would be the need to cooperate. It seems to me there is the need for a national body that looks at serious crime, particularly serious crime which has a national aspect to it.

Mr TRUSS—And a national body in addition to the Federal Police?

Mrs Crennan—I would have thought so but one that would have from time to time cooperative arrangements, which are provided for under the present legislation, with the Federal Police. I do not think the NCA is just a super police force. I know that some people like to think that perhaps its place could be taken by a strengthened federal police force, but I think it is something more than a policing agency. I think it is a very high level investigative national body.

Mr TRUSS—Do you think it should restrict its activities to so-called organised crime or major offences of that order and leave corporate crime to the Australian Securities Commission?

Mrs Crennan—There would certainly be an argument for those sorts of separations since the Australian Securities Commission on a regular basis deals with corporate matters, but I do not think there is any particularly compelling reason why the NCA has to be put into one straitjacket or another.

Mr TRUSS—There is no compelling reason. Which side do you come down on then, on balance?

Mrs Crennan—I think it all depends on funding arrangements and matters of that kind. It really depends, I suppose, on how parliamentarians see funding arrangements for different instrumentalities. If they wanted to fund the NCA to deal with organised crime, drug matters and matters of that sort and they wanted to fund the ASC so that it dealt with all corporate crimes, personally I have no difficulty with that. It is an allocation matter. It is an allocation of resources and tasks, I suppose. I suppose what I was meaning to indicate is there is nothing to prohibit the NCA looking at corporate crime, but it just depends what you want to do in terms of your allocation of funds and tasks.

Mr TRUSS—You clearly need specialist personnel to be able to deal with corporate crime.

Mrs Crennan—Yes, I agree with that.

Mr TRUSS—The Australian Securities Commission would have some of those sorts of people.

Mrs Crennan—Yes, that is right, and therefore it is an appropriate entity to be resourced in a way that it can deal with all of corporate crime, if you wished.

Mr TRUSS—I imagine governments would devote resources where they felt it was best able to achieve results. Which model is best able to achieve results in relation to dealing with corporate crime?

Mrs Crennan—As they presently stand, either of them would be able to achieve results in relation to corporate crime.

Mr TRUSS—Either of them would be able to but neither of them have been particularly successful, have they?

Mrs Crennan—I think you face several difficulties in relation to corporate matters. One is obviously that, because a person who is perhaps charged with a corporate crime—I am not referring to anybody in particular; I am just speaking generally—may devote tremendous time and financial resources to attacks in relation to the charges, for example, or technical matters of one sort or another, you get a situation where on occasions corporate crime type charges are never dealt with on their merits by a jury or a judge. They in fact get thrown out earlier for technical reasons of one sort or another.

That is a twofold difficulty. From the point of view of the persons defending themselves on those charges, they are entitled to be properly charged and they are entitled to run those technical challenges. From the point of view of the investigators, you may have, in substance, some offence having been committed but never coming to trial for reasons of technical imperfections in what they have done. So that is a problem that bedevils corporate crime not only in this country but also elsewhere.

Mr TRUSS—Is that a problem with corporate law that does not exist with criminal law or is it just a matter of there being more resources devoted to defending corporate crime?

Mrs Crennan—I think there are more resources. If persons facing what you might call regular non-corporate type criminal charges devoted the resources to attacking those charges in one way or another, they would have a measure of success. Life is not perfect and charges are often not perfectly drafted and sometimes the procedures associated with

investigating and charging people are not perfect. The sad fact is that you enjoy a certain amount of success as regulatory bodies when the matters go through smoothly and are not subject to attack. This gets back to properly trained personnel and really giving a fair degree of emphasis to those sorts of technical matters, which must be right, in all fairness, to defendants.

Mr TRUSS—It says something then about our system, doesn't it, that because there are substantial resources available to defend corporate crimes, a lot of them never even get to a hearing of the real issues? If the ASC was to take on a poor person they may have a greater chance of success.

Mrs Crennan—That may well be right. That is just part of our system, I am afraid. There is no real answer to that. In the corporate area generally—you did ask me about legislation—if you take, for example, the legislation governing insider trading, it is ferociously difficult to construe. I can well understand the ASC feeling fairly diffident about charging anybody with it—not because they do not have a view that person A might have conducted some insider trading but because the legislation is such that it is really open slather whether someone has a lot of resources or perhaps just a few to really avoid that charge for some reason of technicality or whatever. They are huge issues in the whole corporate area, I would have thought—not just for Australia. That is to say, there are drafting issues in relation to the manner in which certain corporate behaviour is prohibited. I do not know what the answer to it is, frankly.

CHAIR—To define the terms, when you talk about corporate crime, do you see that as synonymous with white collar crime?

Mrs Crennan—Yes, basically.

CHAIR—So it is a matter of resources whether the NCA has capacity to deal in white collar crime. But the broad view seems to be that it ought to be precluded from getting involved in white collar crime if it is basically within the broad charter of the NCA. The proposition has been put to us that there is no definition of what is organised crime in the act. It has been suggested to us that a precise definition, if that is possible, of organised crime might help a lot of things.

Mrs Crennan—Yes. Organised crime, as it is generally understood, does not necessarily include white collar crime or corporate crime. The phrases 'corporate crime' and 'white collar crime' tend to suggest offences under the corporations code or the acquisition of shares code, whereas 'organised crime' tends to suggest crime cartels, huge drug operations—matters of that kind. They are clearly very distinct. Certainly, I am agreeing with Mr Truss that there is an argument that the ASC should look after corporate crime and the NCA should perhaps look after what is called organised crime, which is really a very different animal.

CHAIR—The South Australian Bar Association yesterday suggested to us—I think they were quoting from an article—that perhaps a definition of organised crime could be 'a systematic and continuing conspiracy to commit serious offences'. If that was incorporated in the act, that would obviously not preclude white collar or corporate crime.

Mrs Crennan—If you want a visceral reaction, I would not use conspiracy as part of the definition. But, certainly, the idea that you have a collective and systematic organised type of crime could constitute a workable definition of organised crime.

Mr FILING—Mrs Crennan, you would be familiar with the powers under section 25 of the act in relation to the closed hearings of the NCA. We have received a complaint from a witness that during a hearing there was a third party person authorised by the authority to be present. That person was a member of the New Zealand Serious Fraud Squad who subsequently returned to their country of origin and was able to use the information unbound by the confidentiality provisions within the Australian jurisdiction.

Having received that complaint, would you care to comment on whether you think that having such a provision and using it in those sorts of circumstances is appropriate and, given the requirement for confidentiality within the Australian jurisdiction, whether there ought to be a bar on people from overseas jurisdictions being present under any circumstances where they may later be able to reveal confidential information learnt as a result of the hearing?

Mrs Crennan—First of all, just dealing with hearings under section 25, I would have thought it inappropriate to have persons who are unconnected with the hearing present during the hearing. That is my first response. There is a separate provision in the present legislation which allows cooperation between instrumentalities—I think that would include international instrumentalities—so that, from time to time, the NCA could ask a question of an instrumentality, such as the equivalent to the NCA in New Zealand or the United Kingdom or whatever. I suppose from time to time that is of assistance mutually to both Australia and other countries.

Just how you manage cooperation under some section which allows international cooperation and the obligations of confidence in relation to a specific hearing is something I am not certain about. One possibility, I suppose, would be to exclude from the international cooperative provisions material garnered in a confidential hearing. That may be the answer to it. Certainly my reaction is that it seems quite improper to have an extraneous person who has got nothing to do with the hearing present during the hearing.

Mr FILING—Given that they may have had something to do with the hearing in a sense of connection with the inquiry, would you think it appropriate for that person to be properly identified to the person who is the witness?

Mrs Crennan—Sorry, I did not understand before that you were saying that they

did have something to do with the inquiry. Yes, they would obviously have to be properly identified to the witness.

Mr FILING—To what extent, do you believe, should a witness have the opportunity to object or to make a submission in relation to a person of that status being present at a hearing?

Mrs Crennan—I think they should have an opportunity to object. I cannot see why they should not have an opportunity, particularly if they do not perfectly understand the precise role of the person who is present.

Mr FILING—Under those circumstances, should the act be amended to provide for an opportunity for a witness to object?

Mrs Crennan—I think at the moment it is assumed that persons of the kind you are talking about would not be present during the hearing. I think that would be assumed under the present legislation. If you are going to alter section 25 so that the person of the kind you are talking about could be present, yes, I think it would be perfectly reasonable to have a mechanism for objecting on a proper basis to the presence of such a person.

Mr FILING—The act gives quite wide powers to the member who is conducting the hearings not only to allow any person to be present or authorised but also, of course, to allow for disclosure under particular circumstances. Of course, there is a provision for making a direction under subsection 9. That direction can be amended to allow for disclosure to be made. Are you aware of any circumstances where a member has provided for a disclosure of hearing material?

Mrs Crennan—I am not, but it throws up into sharp relief the constant juggling and balance that you have to achieve between wanting to detect crime on the one hand and wanting to cooperate with international instrumentalities in relation to assisting each other to detect crime, particularly crime that may straddle more than one country, and on the other hand wanting to ensure that you properly preserve the civil liberties and the assumption of innocence in relation to those being questioned. It is a very difficult balancing act and it is one that you have to try to achieve in that legislation.

Mr FILING—I would like to touch on another matter, which was the subject of a complaint from one of our witnesses. The person concerned believed that he was unfairly or improperly treated because he was made to run the gauntlet. As you know, that is a process where a tip-off is given to the media so that, on arrival at the lockup or the processing centre, the accused person is, literally, presented to the media for whatever purposes they have. The person gets identified, and it becomes a media story. Given that that sort of behaviour or act may prejudice the fair outcome of a trial—or the opportunity for someone to have a fair trial—do you believe there ought to be more stringent requirements on the NCA when it is conducting a process of charging an accused, to

strictly prohibit this type of behaviour?

Mrs Crennan—There are already the secrecy provisions in relation to the legislation.

Mr FILING—Yes.

Mrs Crennan—I am not aware of those being breached in the manner in which you are describing this witness is alleging. In other words, I am not aware of there having been an occurrence in Melbourne, for example, where there has been a media press release or something of that kind in relation to an NCA investigation—or that has been identified in that way. I presume it could happen without the public knowing precisely what it is.

Mr FILING—There is one particular case, as you know, where the media were tipped off about an actual inquiry. That was the Harlin matter, back in 1990.

Mrs Crennan—I understood that the allegation in relation to that was that the tip-off was not from the NCA but from some other source.

Mr FILING—It has been alleged on the parliamentary *Hansard* record that that came from the NCSC—that, at a party or something at the time, somebody mentioned the Harlin investigation. Nonetheless, as you know, it has been said publicly—and also it has been put on a number of occasions elsewhere—that Mr Elliott, for instance, believed that he was the subject of a political witch-hunt. He believes—or has alleged—that a number of circumstances associated with his case amounted to a politically managed set of circumstances. He alleges that the leak of the inquiry and a range of other things that occurred amounted to attacking him politically because of his position within the Liberal Party.

Mrs Crennan—If you want me to respond to that, I would have to respond in camera.

Mr FILING—Are you prepared to respond to that?

CHAIR—We will come back to that.

Mr FILING—Thank you. I would like to return to the act and the way in which it is constructed. As you know, the act was a compromise in the end between the political interests of the day in 1983-84. The authority and others feel that there should not be any greater restriction on the authority in its collation or its sweeping for particular information than there is on any other investigative agency. In other words, if something which is a criminal act or requires criminal investigation but might be entirely disconnected with the original inquiry is discovered in a process of investigation, it should not be prohibited

from being investigated by the NCA by virtue of the fact that it is not within a reference or within the terms of reference. We had evidence in Queensland from Bob Bottom pointing out that, in many instances, the NCA's powers are probably inferior to the powers of a body like the Queensland Egg Board or a milk marketing authority or whatever.

Mrs Crennan—That is probably right.

Mr FILING—Do you feel that the authority should be constrained in such a narrow way by the reference system, in the first instance? Secondly, if there were to be information revealed to the NCA—in a hearing or in some other way—do you feel that the NCA ought to be prohibited, because of that, from pursuing that information, even though it may amount to a very serious criminal matter?

Mrs Crennan—That is one of my very points. If the NCA is not permitted to pursue a line of inquiry that suddenly pops out of the investigative process in relation to serious crime, it is a defect in the reference system. On the other hand, you cannot have an NCA untrammelled. There has to be some way in which the NCA's tasks are subject to scrutiny and subject to parameters. That has been much debated and I agree with that.

That is why I am suggesting that 'a reason to suspect' serious crime which is somehow scrutinised either by a Federal Court judge or is properly adumbrated by a member of the authority in the way the ASC or the Trade Practices Commissioner would adumbrate a reason to suspect would be a preferable system, because you must have some system which permits at least the liberty to pursue a serious matter which pops out of the investigative process.

At the moment you could not possibly investigate that new matter but you could go off and get a new reference. That is theoretically possible, but I think the danger is that people in the welter of investigating something and stumbling across something serious may neglect to do that, and you cannot afford to risk the authority neglecting to do that.

Mr FILING—One of the criticisms of Mr Costigan in 1987 was that during that period of quite widespread corruption in the various state governments of Queensland, Western Australia and New South Wales—and I am using his description of the circumstances—the NCA appeared to fail to take any action whatsoever. I think he mentioned that it was as if the safe had been dragged right underneath the window of the NCA. When questioned last week Mr Costigan conceded that it was possible that the NCA's reference system, given that references come from the intergovernmental committee, may well have contributed to that by virtue of the fact that it may have been the representatives of the governments and their colleagues who were reluctant to give terms of reference that led to the investigation of one of their state government members. Would you see that as a defect?

Mrs Crennan—I must say that thought would not have occurred to me. But a related aspect of the references is that they are often cast in very general terms. Whether that is the insistence of the intergovernmental committee for some reason or whether it has some other genesis I am not sure. But it is a very big problem in terms of the generality of the terms arguably not covering some specific matter that crops up.

Mr FILING—Could you see the intergovernmental committee, given its composition, giving a reference to investigate the government of the one of the states of its membership?

Mrs Crennan—I suppose, humanly speaking, they may be disinclined to do that. I do not know of any instance of that sort occurring.

Mr FILING—Do you believe in all reality that a person looking at, for instance, a body that could investigate allegations of impropriety on the part of one of the state governments, perhaps in the granting of a contract or a licence for a casino or something like that, could look to the NCA as being likely to be charged to investigate?

Mrs Crennan—Obviously, as I say, as human beings there would be a disinclination to do that. It would also greatly politicise the reference process, which would be a very bad thing. That is one reason why. Having 'a reason to suspect' procedure which goes to a Federal Court judge who, after all, is independent in terms of the politics of the day and matters of the kind you are talking about, would have been a preferable procedure to the reference procedure.

Mr FILING—Under those circumstances, who would a citizen turn to? Which body? Where would a citizen go in that sort of circumstance?

Mrs Crennan—In relation to complaining about some government contract, for example?

Mr FILING—I will give you an example. Back in the 1980s in Western Australia I recollect there was a proposition that no-one had made a complaint in relation to the state government. There was virtually nowhere you could make a complaint to. The NCA was criticised by Costigan as being mute while this was going on. My contention is that the IGC system of references—

Mrs Crennan—I follow what you are saying. One problem, though, is that what you are raising in a sense will often be the subject matter of a political debate. In other words, one side of politics will say the other side has not done the tendering process for project X correctly and there will be political considerations in relation to that attack. One side will seek to score political points.

In a sense, I think it is ultimately the electorate that sorts out those problems. I am

not quite sure that you could expect the NCA or any instrumentality to sort out cross-political allegations. That is not to say one can ignore something that is very seriously wrong or corrupt in relation to a particular government.

Mr FILING—We heard yesterday, for instance, from a witness who alleged that, in fact, on complaining to the NCA he was merely referred to a state instrumentality in relation to the granting of a contract. In fact, he has made an allegation that confidential information about his complaint was passed on to someone else.

Mrs Crennan—I think what you are raising is actually a very difficult problem because it is so entwined with political considerations. Do people make these sorts of complaints because they want to score a political point or do they have a genuine grievance about it? I do not think there are any easy solutions to that. It is all very well for a group in opposition to constantly attack a group who, for the moment, is not in opposition about various decisions they take in relation to infrastructure, new projects and all the rest of it. At the end of the day, if there is truly smoke which suggests a fire, ultimately sometimes, when you get that opposition coming into government, they have a royal commission or something of that kind in order to clear the air.

Mr FILING—What about the interests of those who are never in power, that is, principally most of the citizenry?

Mrs Crennan—You cannot have, I would have thought, citizens just making politically motivated criticisms. They would have to have some substance of some sort. If the substance of them is that there is something corrupt about a political process, obviously there is the law generally at a state or federal level and there is the electoral process, which can lead to a royal commission, those sorts of things. You are talking here about macro issues rather than micro issues, I would have thought. If you have a citizen who has a complaint that is politically driven but may have something else added to it, I am not really sure how you deal with that in the instrumentality sense.

Mr SERCOMBE—On the question of balance, I think we would all agree that the person who has been charged has the right to understand the case they are being called on to answer.

Mrs Crennan—Yes.

Mr SERCOMBE—At the other extreme, with a person under normal police investigation, I think we would all understand there is no obligation—in fact, it would probably be stupid—to expect the investigating body to disclose everything that they are on about.

Mrs Crennan—Yes.

Mr SERCOMBE—In the middle, though, particularly where the NCA is using its coercive powers, do you have anything to say about whether there is a need to adjust the balance between those two extreme positions in that context?

Mrs Crennan—Yes. Very early on in an investigation it is probably not particularly helpful for an investigator to be putting alternative scenarios to someone who is being asked questions. I do not think that is particularly helpful. You certainly reach a stage in an investigation where people are firming up with various views about a matter and it seems to me perfectly fair, when that stage is reached, for someone who has been giving answers to be called back and have adverse matters put to them. This is a debate that constantly goes on where barristers are making submissions to the ASC, to the Trade Practices Commission or to the NCA, perhaps in certain circumstances, where they have a client who has been willing to cooperate and give evidence, but that person wants to know what are the adverse thoughts against them so that they can give an answer properly to what are the adverse matters in the minds of the investigators and regulators.

It seems to me that that is not an unfair proposition, that at a certain point somebody who is under investigation is given an opportunity to understand what are the adverse thoughts against them without the investigators tipping their whole hand in relation to something.

Mr SERCOMBE—Can you point us to a model that works in an Australian jurisdiction that gets that sort of balance reasonably well?

Mrs Crennan—I do not know about a model that works, but if you look at the High Court case called NCSC and News, I think it is called—

Mr SERCOMBE—As in News Limited?

Mrs Crennan—As in News Limited, or something. I could follow up by sending you a note about the citation. There are passages in the judgment which explain that at a certain point it must be fair to put adverse matters. If I give you a copy of that—

Mr SERCOMBE—That would be very helpful, thank you.

CHAIR—In terms of accountability, the reference system obviously puts a major break on the NCA's activities.

Mrs Crennan—Yes. There has to be some break, as I have said, or a parameter.

CHAIR—You would think that it is a major safeguard against political interference, wouldn't you?

Mrs Crennan—Yes.

CHAIR—The intergovernmental committee is made up of people, in normal situations anyway, of different political persuasions and perspectives, so the reference system, as is, is a major constraint. I heard Premier Kennett on the ABC, on the way in, I think acknowledging the need for the NCA, but also railing against it because he sees it as some sort of unguided missile. But there are lots of levels of accountability.

Mr SERCOMBE—That is the pot calling the kettle black.

CHAIR—I did not say that. There have been some people advocating this committee should have even more powers than it has. There is the intergovernmental committee and now we have this other layer of the Standing Committee on Organised Crime and Criminal Intelligence. Do you acknowledge, from an accountability point of view, that there is a lot of accountability?

Mrs Crennan—I think there is accountability, certainly. When you examine it properly, I think the complaint is not so much about a lack of accountability. The complaint is more that the NCA, during the conduct of its investigations, is being left to itself. That is really the complaint, I think, rather than the fact that no-one is complaining that there is not a fair degree of what I might call ex post facto accountability, because there is. There has been regular review by various parliamentary committees. That is really the complaint—that they just go ahead conducting investigations under their own aegis and the accountability comes later.

Again, I think it gets back to the fact that you have to have a parameter setting exercise at the outset of any investigation to avoid some of these problems. The reference mechanism was intended to do that and does not seem to have achieved that. That is really the big step that you have to address, I think, in terms of trying to satisfy proper accountability.

CHAIR—If you are prepared to remain, I propose to close the public hearing now and ask everyone to leave for 15 minutes or so. We will go into an in camera session. I am sure that we would like to ask some questions of those matters that you offered to answer questions about.

Evidence was then taken in camera, but later resumed in public—

Mr FILING—I want to clarify one thing in relation to the reference system. I think we have distilled it down to a question about the reference system being central to the issues you have raised today. Is it not fair to say that, in relation to the Elliott matter, it was the reference system that led to the Elliott matter being taken up by the NCA in the first place on the basis that we had a seeking of this reference from the chairman, Mr Faris, and the granting of the reference by the IGC, which at the time was dominated by states governed by the Labor Party? But it was the reference system that also in the end cruelled the prosecution by leading to the ruling by Justice Vincent that the investigation was outside the terms of the reference in the first place.

Mrs Crennan—There can be no investigation without a reference, so for that reason this investigation, like every other investigation, was conducted pursuant to a reference. Certainly, the rulings which were made—which had the effect of ultimately excluding evidence from going to a jury, for example—in part canvassed the reference issue.

Mr FILING—What I was trying to lead to was the fact that there would never have been a reference in the first place without the reference system—in other words, without the system of giving the inquiry to the NCA. As Ray Schoer was alleged to have said, the thing had been thoroughly reviewed. It went to the NCA but, at the end of the day, the ruling on particular aspects of the reference led to the acquittal.

Mrs Crennan—The rulings which excluded evidence from the purview of the jury which had the result of an acquittal did deal with the reference in this particular case. But in every case that is based on charges which arise out of an NCA investigation, the charges arise as the result of a reference—because there never can be an NCA investigation without a reference under, I think, section 13.

Mr FILING—So, at balance, how would you argue this—that the reference system should be either scrapped or amended to allow for a greater flexibility in NCA inquiries or that the NCA should be much more thoroughly circumscribed by a more stringent reference drafting?

Mrs Crennan—In so far as problems have arisen in the past in relation to the reference system, in particular in relation to new matters arising pursuant to the conduct of investigations conducted under a specific reference, there may be some wisdom in having an alternative system to the reference system. One suggestion would be that there be the need to have ‘a reason to suspect’ serious crime, which would be a very different system to trigger an investigation from the current reference system, and for that ‘reason to suspect’ to be the subject of scrutiny, not unlike the search warrant procedure before the Federal Court. Something of that sort may be a possible alternative which would not be subject to the same sorts of difficulties that I think you are seeking to identify.

CHAIR—We very much appreciate your time this morning, Mrs Crennan. We

realise that we have taken more of your time than we planned. I hope we have not caused you too much inconvenience. You have been extremely helpful and we appreciate it very much.

Mrs Crennan—Thank you.

[10.49 a.m.]

FRIGO, Mr John Brian, Senior Legal Research Officer, Victoria Police, Victoria Police Centre, 637 Flinders Street, Melbourne, Victoria

LAMBERT, Acting Assistant Commissioner Rodney Gordon, Acting Head of the Crime Department, Victoria Police, 412 St Kilda Road, Melbourne, Victoria

McKOY, Detective Chief Inspector John, Officer in Charge, Drug Squad, Victoria Police, 412 St Kilda Road, Melbourne, Victoria

CHAIR—I apologise to you, gentlemen, for keeping you late. It is not meant as an excuse, but it is not always easy for us to judge how much time we should allocate to each witness. The former witness was able to be more helpful than we perhaps anticipated. We did not know who the witness from the Bar Council of Victoria was going to be. As it turned out, she was able to be very helpful to us. So we apologise for that.

We welcome the representatives of the Victoria Police. We have received approval from the Minister for Police, Mr Bill McGrath, for you to appear before the committee. We appreciate that and we ask that you pass on our thanks to the minister for granting that approval for you to appear this morning. We have received a submission, I think prepared by Mr Frigo, on behalf of the state government of Victoria. Is it the wish of the committee that the submission be incorporated into the transcript of evidence? There being no objection, it is so ordered.

The document read as follows—

CHAIR—Mr Lambert, you may wish to make a few opening remarks. Before you do, I am required to state that if during the hearing you consider that information you might wish to give or comment requested by a committee member is of a confidential or private nature you can make application for that information or comment to be given in camera and the committee will consider your 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 also point out that as public officials or officers you will not of course be expected to comment on matters of government policy. Did you wish to make some remarks that add to the state government's submission?

Actg Asst Commissioner Lambert—I appear before you today as the head of the crime department. The Assistant Commissioner is away overseas, so I am representing the crime department as well as the Victoria Police. I think that has some significance because we have most of the dealings with the National Crime Authority through a number of areas within the crime department, in particular the drug squad, of which Mr McKoy is the officer in charge, and the organised crime squad, of which Superintendent Thomas is in charge. Superintendent Thomas was involved in the preparation of a lot of this submission. There were two matters that he wished to address you on and it is mentioned in the submission that he wished to do that in camera. I have no idea what those two matters are. Therefore, I cannot enlighten you on that part of the submission. He is on holidays overseas and we have not been able to contact him.

CHAIR—We will accede to that request and invite him probably to come to Canberra for that purpose.

Actg Asst Commissioner Lambert—I could hazard a guess what he was trying to talk about. I might have some idea, but it would not be of any use for me to guess.

CHAIR—We will follow it up. We certainly intend to accede to that request.

Actg Asst Commissioner Lambert—Thank you very much. As I mentioned, we do have a lot to do with the National Crime Authority in the first instance. We have members attached to it as investigators and, in a support role, as surveillance operatives. We work very closely on particular jobs. In relation to investigations they have been conducting, a lot of those investigations are conducted in cooperation with the Australian Federal Police and the Victoria Police, mainly because of the types of offences. A simple example would be that, in relation to drug importation, the Australian Federal Police normally carry the responsibility of investigating that. Once it lands in the country, the investigation of the distribution of the drugs is in the hands of the drug squad. We have enjoyed for some time, certainly over the last 2½ years since I have been in my current position, a very good cooperative role with the National Crime Authority.

The submission mentions certain, I suppose, changes in focus of the role of the National Crime Authority, and we naturally agree with that. We see them as being a very

important addition to law enforcement in this state and interstate as well. We believe that their contribution is significant, but not necessarily in providing people to actually conduct the arrest type investigations. We believe that their contribution in relation to strategic assessments, the analysis of criminal information and the distribution of that information, which of course is not bound by state borders, is very vital to successful investigations involving interstate crime.

Mr McKoy can give many examples of the number of joint investigations we do conduct, particularly with New South Wales, in relation to drug matters. Quite often we are calling upon the National Crime Authority to assist us in those investigations and to assist us in the dissemination of information to the right places in that state. I do not think there is anything more I can add to the submission. We are all quite happy to answer any questions that you wish to ask us.

CHAIR—There will be a lot of questions. The submission makes the statement that the NCA should only become involved in the investigation of major crime where it can directly value add to that investigation. I am a little intrigued by this concept of value adding. Is that what the NCA is really established to do—to value add to the activities of other police forces?

Actg Asst Commissioner Lambert—It is certainly one of the roles. It is not their primary role, but it is one of the roles. Through their special powers, they can value add to an investigation. They can certainly value add through their analytical ability. Prior to coming here today Mr McKoy and I were discussing the value of the analytical work done by the National Crime Authority. They have excellent analysts—we would probably say that they have better analysts than we have got. In the preparation of strategic assessments they are very good—probably amongst the best in the country, comparing other states that we have dealings with.

So, in preparation of strategic assessments, which is the forerunner to an investigation, we believe they have a very important role. As the investigation proceeds, they are value adding to the investigation, either with their special powers or through the use of the development of financial profiles. They have an ability to deal with that sort of information which is not readily available to us. It is available in some of the squads, but quite often you cannot get the major fraud group, for instance, to do financial analysis for you at the drop of a hat, because of their workload. But you can get the National Crime Authority to do it for you. So there is certainly a role there in value adding to our investigations.

CHAIR—Have either you or Mr McKoy been seconded to the NCA at any time in your careers?

Actg Asst Commissioner Lambert—No. The only dealings I have had with the NCA is when I was involved in an internal investigation there, which is part of our

submission here, in relation to the discipline side of things. That is the only time. I was sworn in as a member. I had to be, because I had to read and look at the information they had. That is the only reason I was attached.

CHAIR—But, talking to your colleagues, is there a view that secondment to the NCA is a valuable part of their careers? And how do you find them once they return to the VPS?

Actg Asst Commissioner Lambert—It is of value. Quite often the people we send over there are already experienced investigators. As you would imagine, they have to have the skills and the ability when they get there. If you sent someone from the drug squad to the NCA, and they worked on drug investigations, all they would be doing would be more of the same. If they worked on some other specialist type of investigation, it could aid their career. But, as a general rule, when they return, after two years or four years, depending on the time for secondment, they have certainly become more expert in the use of the National Crime Authority.

I can give you one simple example. Superintendent Halloran was attached to the National Crime Authority very early in his career—with Mr Mengler, when it first started off. At a later stage, he was placed in charge of the homicide squad, and he utilised the special powers in relation to an Italian involved in an allegation of murder. That was an example of how someone with a knowledge of the workings of the NCA could utilise the NCA on current investigations.

Mr SERCOMBE—Could you paint a picture for us of the crime environment the Victoria Police are dealing with at the moment. I understand, for example, that the Chief Commissioner recently made some observations about the international border in Australia being somewhat more open—for the importation of drugs, particularly heroin—than might be desirable. It has been put to this committee that heroin is far more readily available now than has been the case for some considerable time and is substantially cheaper. Could you paint us a picture of the crime environment you are dealing with at the moment and how your efforts in that respect intermesh with the NCA's and those of other Commonwealth agencies? Implicit in what Mr Comrie said were some concerns about the operation of Australian Customs.

Actg Asst Commissioner Lambert—I will introduce an answer, and then I will hand over to Mr McKoy, who has been in that drug area for about eight or nine years. There is no doubt that there is a flood of heroin on the streets of Melbourne at the moment, despite our best efforts and regular arrests—in fact, many hundreds of arrests. We are not even slowing it down. It is available just as much today as it ever was, even more so. The price is fairly cheap and the quality is fairly high, which indicates that there is a flood in the country. The selling of quite high quality heroin, up to 50 per cent, on the street was unheard of some years ago. Certainly our operations have indicated that, if we had the money, we could virtually buy any amount of heroin through our covert operations

and we have, on occasions, been involved in buy-bust operations of hundreds of thousands of dollars.

To look at some of the aspects of the changing drug scene, I will hand over to Mr McKoy and then perhaps I can deal with the Customs part of it.

Mr SERCOMBE—And the meshing of different Commonwealth agencies.

Actg Asst Commissioner Lambert—Yes.

Det. Chief Insp. McKoy—I have been at the drug squad since 1989 and from day one we were involved, in one way or another, with the NCA, as well as the Federal Police and Customs. There is no doubt that heroin is available now in more pure form and in greater quantities than it has ever been available in Victoria. Having said that, we know that most of the heroin available on the streets of Melbourne comes to us across the border from New South Wales. There are the odd occasions when the NCA, with Customs and the Federal Police, make a major seizure at the barriers here in Melbourne, but in all the operations that I have running in my Asian unit, which are working under Operation Blade with the NCA, that heroin is coming from Sydney.

We are at the stage now where we have to develop a strategic plan to prevent that heroin not coming in from overseas but coming in from interstate. We used to have fruit fly blocks, stupid as that may sound to some, to prevent fruit fly coming across the border. We are seriously considering something similar to prevent heroin coming across the border.

Senator McGAURAN—What would you check—trucks?

Det. Chief Insp. McKoy—No. We get pretty good intelligence on who is bringing the heroin in and we would target those people. But you have to target vehicles, trains, aircraft and buses, and as soon as we are successful there you will find that the innovative drug dealers are using light aircraft and other means, perhaps even boats, to bring the heroin in. That is not to say that Melbourne will not become as busy in heroin importation as Sydney is, because I know the size of the docks here and I know the size of our coastline, which is really unprotected. So it is quite easy to bring heroin in, and major drug dealers are very innovative people. They run a billion dollar business and any company that has a billion dollar business employs the best advisers.

Mr SERCOMBE—That is a pretty serious and significant proposition that you are advancing—that there be some sort of Victorian border control. That is a pretty savage condemnation of your assessment of the capacity of Australian Customs and the AFP, in their present budgetary situation, to deal with the comment.

Det. Chief Insp. McKoy—I do not make any comment on what Customs are

doing. All I am saying is that heroin is available freely on our streets in greater quantities than it has ever been. The state police do not have responsibility for our international barriers but they do have responsibility for the state barriers. So we are seriously considering a strategic plan to prevent heroin coming in.

Mr SERCOMBE—In your dealings with the AFP, the NCA and Customs, for that matter, can you give us an assessment as to the quality of the personnel, the staff, they have for these tasks? Is your lack of confidence in their capacity related to those considerations or is it related to the budgetary constraints they are clearly operating under?

Det. Chief Insp. McKoy—The people I have dealt with in both Customs and the Federal Police have been first class.

Mr SERCOMBE—So it has to be their budget?

Det. Chief Insp. McKoy—I am not in a position to comment on their budget because I do not know what it is. However, I can tell you that we have done joint operations with Customs where we have searched large properties and they have been outstanding. Their search and discovery techniques are most valuable in our efforts. As far as the Federal Police go, I have done international jobs with them, I have travelled overseas with them and they have been outstanding.

Mr SERCOMBE—Why are they failing to the point where the Victoria Police have to contemplate such a dramatic step? It may well not be constitutional but it is an extraordinarily dramatic step that you are proposing.

Det. Chief Insp. McKoy—You have backed me into a corner. It is something I really cannot discuss unless it is in camera. I am not in a position to give you facts and figures; I am only able to give you my perspective from where I sit, that is, there is more heroin available today than ever before. But heroin is only one of the problems. We have designer drugs coming into this country in bucket loads. LSD, imported ecstasy and those other drugs are freely available and perhaps cause almost as much damage to our younger people as heroin does. But, because it is a nightclub scene drug, it is very difficult to penetrate. It is expensive. It is difficult to get police officers into certain clubs as undercover operatives. So that problem is there too and it is just another side of the importation problem. All of a sudden in Victoria in the last 12 months we have had numerous reports of large shipments of cocaine. Victoria has never had a major cocaine problem, but at the moment I have had to devote three teams to investigating cocaine matters.

Mr SERCOMBE—Unlike the designer drugs you have referred to, cocaine and heroin, by definition, are imported into Australia?

Det. Chief Insp. McKoy—Yes. The designer drugs are coming in from overseas.

Mr SERCOMBE—They are not locally manufactured?

Det. Chief Insp. McKoy—No, they are not. The LSD and the ecstasy are all imported and that is verified through our forensic science with its international links.

Senator McGAURAN—The heroin trade, you said, came under your Asian unit. I assume it is correct that the prime movers in the heroin trade are the Asian organisations. Is that also true of the designer drugs and of the introduction of cocaine into Victoria now?

Det. Chief Insp. McKoy—No. Traditionally, the Romanian criminal groups in Victoria have brought in heroin from Sydney from their Triad counterparts there. Up to about 1993 they had a monopoly on the heroin trade in this state. Then we saw the emergence of some Asian crime groups, not only Vietnamese but also some Cambodians and other Asian groups, that took over the market by using natural market forces, if you like. They provided a better quality substance at a cheaper price. Since then the Asian crime groups have probably controlled the bulk of the heroin market in Victoria. You buy heroin from an Asian group and you get 48 to 80 per cent purity. For the same price for what you buy from the Romanians you get 30 per cent purity. So they are gradually pricing out the Romanians.

Senator McGAURAN—Who is organising the designer drugs and the cocaine coming into Victoria, generally speaking of course?

Det. Chief Insp. McKoy—They are not Asians. The last lot of cocaine that we got in Victoria, which was a very large amount, involved an American national who had been into Australia on several occasions and who, we believe, had brought in large quantities of cocaine. But he was tied in with Maoris and Australian criminals.

Senator McGAURAN—On the way in here I bumped into a councillor friend of mine and he said that he knows for sure that heroin is being traded along Little Bourke and Russell streets. Would that be true?

Det. Chief Insp. McKoy—Yes, it is true.

Senator McGAURAN—Why can't that be stopped?

Det. Chief Insp. McKoy—Because most of the people doing the selling—and they are bit players—are under age. It is very difficult because you cannot search a child unless you have a parent or guardian present. If you arrest one of these children you tie up two police officers—and if it is a female, probably three—for the best part of a day until you locate the parent or guardian to come in and be present when you search and interview that child. You get nothing out of them because they do not speak very good English, they will not make a confession and when you charge them with what you have you have to let

them go. The courts will not remand under-age children into custody, and rightly so. Some of these kids are 14 and some are 17, but it does not matter how many times you charge them, if they are drug dependent the court will let them go and if they are under age the court will not remand them in custody. That is a fact of life.

Actg Asst Commissioner Lambert—I think it is also fair to say that there have been well over 1,000 arrests by the local police in that particular area over the last 12 months, and it has not even slowed it down.

Senator McGAURAN—That is pretty good.

Mr TRUSS—To follow on from Senator McGauran's point, you seem to know a lot about the trade, yet you are not stopping it. You know who is doing it, you know how it is coming in, but you are not stopping it.

Det. Chief Insp. McKoy—We can only do what we can do. We have finite resources. We only have so much money and so many people and we can only do so much. Law enforcement in this state is very, very productive. With the resources we have got, we achieve a lot, but we cannot achieve the impossible. If, for instance, everyone we arrested for heroin trafficking was remanded into custody and kept off the streets—particularly at the top level—we would make a huge impact on what is happening out there. That is not the case.

CHAIR—Some of the evidence we have received from people—and you may like to express a view—has been that the answer is to legalise it or decriminalise it. We have the prospect of heroin trials in the ACT and so on. That is the other end of the spectrum, isn't it? If you cannot beat them, I am not going to say join them, but—

Actg Asst Commissioner Lambert—I heard the Chief Commissioner asked a similar question at a dinner recently. He answered it like this: from time immemorial we have had a problem with murder. Do we legalise murder because we cannot get rid of it? We do not legalise drugs because we have not been successful in stopping it, and you never win a war by waving a white flag. It really sends the wrong message to people to start legalising substances that kill them. I think that is the bottom line as far as the police are concerned—legalisation is not an option.

CHAIR—Getting back specifically to the NCA, its obvious main focus is on organised crime but in particular on drug trafficking. Are you reflecting on its lack of success in what you are saying, Mr McKoy?

Det. Chief Insp. McKoy—I think the NCA has had some remarkable successes as far as the arrest of major heroin traffickers, but what the NCA do, what Customs do and what all other law enforcements do depends on the intelligence that they get. Customs focus now on intelligence, because they have not got the people, to my knowledge, to man

the barriers 24 hours a day in a country this size. So they have to work efficiently and they rely on intelligence to identify suspects and probable couriers of heroin.

The NCA is in exactly the same boat. The NCA is very, very good at collating and analysing intelligence. I also suggest that perhaps we need a more proactive role overseas in obtaining that evidence, because I am pretty sure that we rely heavily on other international agencies to provide the intelligence we need.

CHAIR—On that issue, you are aware that we have, for instance, AFP liaison officers in a number of crucial areas, such as Bangkok and Hong Kong. I recently met with them. They have a very good working relationship with the local Hong Kong authorities that they think is working. Are you aware of the activities of the AFP in some of those areas?

Det. Chief Insp. McKoy—I am indeed. I have experienced them first-hand. Perhaps this is something we should not discuss at this stage, but I can say that I have experienced how they go about gathering their intelligence, and they do rely heavily on other international agencies.

CHAIR—But you would expect that, wouldn't you, if they are operating in someone else's country?

Det. Chief Insp. McKoy—Of course, but what I am suggesting is are we being proactive enough in obtaining that intelligence.

CHAIR—How proactive would you expect our AFP liaison people to be when they are operating in another country?

Det. Chief Insp. McKoy—If you look at the experience of the American DEA and what they do in other countries, perhaps that is the answer.

CHAIR—Yes, but it is not always done properly.

Det. Chief Insp. McKoy—Legally or properly?

CHAIR—I think I will quit while I am behind.

Senator FERRIS—Chief Inspector McKoy, you did not mention the role of motorcycle gangs in this circle of drugs and crime. We have had a good deal of evidence—in fact, just yesterday—to suggest that national and international motorcycle gangs are very much part of the drug scene. Are you able to comment on that in relation to Victoria?

Det. Chief Insp. McKoy—I am indeed. The outlaw motorcycle gangs traditionally

controlled the amphetamine trade in this state. The Victorian drug squad has been so successful that we have virtually eliminated amphetamine from the streets of Victoria, certainly the manufacture of amphetamine in this state. Our experience now is that most of our amphetamine is coming from interstate because we have virtually wiped out all the big labs in Victoria. Of course the outlaw motorcycle gangs dabble in drugs. But all I can say to this committee is that the drug squad in Victoria is not targeting any outlaw motorcycle gangs for drug trafficking.

Actg Asst Commissioner Lambert—In addition, part of the organised crime squad, which is run by Mr Thomas, who is involved in a lot of the preparation of this material, is looking at outlaw motorcycle gangs not just for drugs but for all of their criminal activities. That has been going on for probably the last six to eight months at least. They have found significant evidence to support the fact that outlaw motorcycle gangs are in a large variety of criminal activities.

Senator FERRIS—Can I ask another question that reflects other evidence that we have been given, specifically evidence from Bob Bottom in Queensland. It was suggested that one of the difficulties facing police is the fact that criminals have very smart lawyers. To what extent does that interfere with the efficiency of the process when you are picking people up on Little Bourke Street, for example, and the circumstances are being complicated in the follow-through?

Det. Chief Insp. McKoy—Before I answer that question, are there any lawyers amongst your group? Lawyers have to work within the law. Of course, like police officers, there are above average lawyers and average lawyers. I will not say bad lawyers. Major drug dealers, of course, have the funds to buy the best lawyers available. Lawyers certainly do impinge on what we try to do, but they must work within the law. So, if the law not inhibited drug dealers' access to legal advice but strengthened the legislation, perhaps we would not have to worry about that. Again, most of the street-level dealers in this state are young people. They present a real problem. What do you do with them? We do not have the answer. I do not think anyone has the answer.

Actg Asst Commissioner Lambert—They probably seek legal aid more than anything.

Senator FERRIS—There are more than 20 law enforcement agencies in Australia, taking into account state jurisdictions and various associated bodies, yet in every state we have taken evidence so far a comment very similar to yours has been made about the difficulties of drugs on the street, that there is a greater amount of it now and it is even more difficult to control than it might have been five years ago. Is there something, other than the classic answer of more resources, that could be done to try to get a footprint on this growing industry?

Det. Chief Insp. McKoy—I wish I knew the answer to that. Apart from buying

the crops at their source or destroying the crops at their source, I do not know what we can do.

Senator FERRIS—It seems incredible. More than 20 agencies and thousands of people are working on this; yet, as you say, 12-year-olds three streets away are selling heroin for cheaper prices than it has ever been sold before and, as you said yourself, it is of a purer quality.

Det. Chief Insp. McKoy—The frightening part is that in some areas dealers are providing heroin to children at a cost less than that of a packet of cigarettes. A packet of cigarettes costs $7. To wean these kids on to heroin, they are providing heroin at $6.50 and $7.

Senator FERRIS—At point 1.11 in your submission, you say that:

There is an absence of current operational law enforcement experience at a senior management level in the NCA's current structure. As a result, senior management in the NCA lacks adequate levels of direct experience in the investigative process to, in the Victorian Government's view, the detriment of the fight against organised crime.

Three years ago the NCA had 16 AFP officers. They now have 54 officers attached to the NCA. Are you reflecting on the top-heavy nature of the AFP staffing of the NCA? What are you saying there?

Actg Asst Commissioner Lambert—Our submission is in relation to the seniority of the people making the decisions. We have suggested that a senior officer of deputy commissioner level should be on the board of control of the NCA, which would perhaps give it some more expertise.

CHAIR—You mean as a member of the NCA?

Actg Asst Commissioner Lambert—Yes.

Mr SERCOMBE—A legally qualified officer?

Actg Asst Commissioner Lambert—As a police officer, he would be legally qualified, but I am not sure whether he would be a legal—

Mr SERCOMBE—But many police officers have legal qualifications.

Actg Asst Commissioner Lambert—Yes, they have.

Mr SERCOMBE—Would you see that as a necessity?

Actg Asst Commissioner Lambert—It is not an essential element at all. What he would need to have is a lot of operational policing experience.

Senator FERRIS—Can I just complete the point I was trying to make. Are you suggesting that there should be a greater balance of state based police officers at the senior level?

Actg Asst Commissioner Lambert—I am not sure how many Victoria Police are on the NCA either, bearing in mind that the AFP have representation in every state. We only have a few investigators, but we have most of the surveillance crew, so we have quite a lot of people working there as well. In other states, I am not sure whether the AFP numbers are made up by surveillance people as well. What we are saying at 1.11 in our submission is that it is the expertise in the decision making, not the expertise in the field operations, that is necessary and needs to be beefed up. In that decision making process—either in relation to what jobs to take on or how the jobs should be done—they need someone with a lot of operational policing experience. That is why we have suggested a deputy commissioner.

Senator FERRIS—We have had a lot of evidence over the last couple of weeks on the issue of turfdom—that is, the territoriality of various jurisdictional forces. I wonder if it could be construed that 54 AFP officers is a bit of a takeover for the territory of the ACT.

Actg Asst Commissioner Lambert—The AFP police more than the territory of the ACT. They have policing roles in every state, albeit they are confined to certain roles. But, certainly in the drug scene, the National Crime Authority have had a concentration for some time in relation to the importation of drugs, which is an AFP responsibility. I would imagine that is one of the reasons they have a number of AFP people on board, because every state has investigations from time to time in relation to drug importations.

Senator FERRIS—So you do not see that as an unhealthy balance?

Actg Asst Commissioner Lambert—No. We work very closely with a number of other states and the AFP in relation to investigations not only about drugs but mainly about drugs, and we are very aware of the turfdom situation. But, because of our joint operations—particularly with New South Wales, South Australia and Western Australia where our people have worked with detectives in those states on particular jobs—we have broken some of those barriers over the years. So the incidence or problem of turfdom may not be quite as big as it used to be.

Mr TRUSS—I am disturbed about 12-year-olds being returned to the streets to continue their selling of drugs. Is there no capacity for the police to seek some kind of protection system for 12-year-olds caught selling drugs? The civil libertarians are not being kind to a 12-year-old to keep them out of even a custodial situation and put them back trading in drugs.

Det. Chief Insp. McKoy—There certainly is an area there for a child in need of

protection to be taken into custody, but that normally only happens when there is not a parent or guardian to whom that child can go. That particular section is designed for children who are in need of care and protection themselves. I guess you could argue that if they are selling drugs they are in need of such care and protection, but I do not think that is the way the act was written. It is more if they are in harm of sexual assault or physical assault or lack of food, et cetera.

Mr TRUSS—But, if you pick up the same child a couple of days running, surely there is evidence that they are in danger?

Det. Chief Insp. McKoy—I think the welfare of the child is probably paramount over what they are doing in the court's view. When we talk about 12-year-olds, I think 'a child' is probably a better definition because they are very few and far between when we talk about 12-year-olds. There are certainly one or two of that age but the majority of them are in their mid-teens who are selling drugs on the streets. You get the odd one who is 12 or 14, but the majority of them are mid-teens.

Actg Asst Commissioner Lambert—The courts and the magistrates or the bail justices are very reluctant to remand children into custody, because really custody is not the place for children who are going wrong. There should be other ways of dealing with that.

Mr TRUSS—But there are halfway houses and places of that nature which provide a degree of protection without being custodial in nature.

Actg Asst Commissioner Lambert—Yes. People who are continually offending may end up there. Certainly the first, second and third time they are sent back to their parents. In that area we were talking about a short time ago, the Little Bourke Street, Russell Street area, for some months—and I think in general terms they had several hundred arrests by that stage—they never ever got the same trafficker twice. That is how many there were.

Mr FILING—We have heard evidence in the inquiry from a number of sources. They include Bob Bottom, the NCA itself, the Australian Bureau of Criminal Intelligence, Mr Smeaton, who is the government's principal adviser on criminal or law enforcement matters, the Western Australian and South Australian police, Chief Commissioner Comrie—who has made comments in relation to the fact that he considers the country to be awash in heroin—the Western Australian police commissioner, the Premier of Western Australia and the Minister for Police and Emergency Services in Western Australia—all saying basically that the Commonwealth government cuts to law enforcement have led to the situation where more and more heroin and other drugs are now available in the country. Would you agree with the proposition that the federal budgetary cuts have debilitated the fight against drug trafficking?

Actg Asst Commissioner Lambert—I think in the first instance you have to look at when the cuts took place. This expansion of the heroin industry has been going on now for some time. Recent cuts cannot really be attributed to anything yet because you cannot say what effect they have had. The Australian Federal Police have had a basic change in focus. Although they are still involved in drug investigations, they are spending more time on fraud type investigations.

Mr FILING—So, in other words, you disagree with Mr Comrie's view that the federal cuts to the NCA and the AFP have debilitated the fight against drug trafficking?

Mr Lambert—No, I have not finished my answer yet. The picture I am painting is that it appears that a change in focus of the Australian Federal Police and a downsizing of the Australian Customs may have created a problem whereby there is an influx of heroin into the country because both things have happened about the same time. They are either strangely coincidental or they are related.

Det. Chief Insp. McKoy—It is also coupled with the fact that more and more Asians are now travelling. Because Vietnam is open, we have more people of Vietnamese origin going back to Asia. We have many more international passengers coming in on aircraft, and the ready availability of heroin overseas. All of those things put together are probably the cause of why there is so much heroin out there.

Mr FILING—We received evidence from the Queensland police commissioner's representative, there have been a number of public comments and we also heard from the WA Police yesterday that a conduit is open between WA and the eastern states, where heroin is coming from WA because of the cutbacks on the west coast in relation to the AFP, the NCA and the Customs Service. Have you heard about that?

Det. Chief Insp. McKoy—We have no evidence of that.

Actg Asst Commissioner Lambert—To mention again what Detective Chief Inspector McKoy said, most of the heroin coming into Victoria is coming through Sydney.

Mr FILING—For instance, could that heroin have originated from the Western Australian situation?

Actg Asst Commissioner Lambert—I suppose it could have originated anywhere, looking at our coastline. We have no evidence of where it originated, except that it is coming through Cabramatta.

Mr FILING—Do you agree with the Commonwealth law enforcement review, Mr Daryl Smeaton, the Australian Bureau of Criminal Intelligence, the Queensland Police and Bob Bottom, as you have already said, that the majority of heroin importations is by Chinese triad gangs but distribution is by other nationalities such as the Vietnamese and

Cambodians?

Actg Asst Commissioner Lambert—Certainly the distribution by Vietnamese is very prevalent. There is certainly quite a bit of evidence in relation to the triad gangs being the importers.

Def. Chief Insp. McKoy—There is also another player in the scene, not in a big way, but I suggest it will become more prevalent. People from eastern European bloc countries are all of a sudden in the last two years popping up under our noses and dealing heroin. In one case we had a Russian amphetamine manufacturer brought out here to manufacture amphetamine. That area is of some concern to us.

Recently Mr Lambert and I spoke to a number of heads of units from overseas—all of the European and Western countries—who are in the same role as us. They all say that drugs are the major problem in their jurisdictions. That covers from the North Pole down to the Equator. They all say that drugs are their main problem. They are currently being impacted on by what is happening in Russia, because many areas of the army there have not been paid for some years, the arms are being smuggled out, there is money laundering and prostitution, et cetera. But drugs are the big worry.

Mr FILING—You mentioned imported designer drugs—ecstasy and others. It has been put that the designer drugs coming from western Europe—UK and Holland—may be coming direct on air flights. Is that fitting with your information?

Actg Asst Commissioner Lambert—Yes, we understand that a lot come through the mail and we understand that a lot is brought in by couriers. Speaking of designer drugs—the senator who has been to Thailand would know this—Thailand is now experiencing a huge influx of amphetamine laboratories there. Amphetamine is one of their major problems in Thailand. Indonesia has an enormous ecstasy problem, which is right on our border.

Mr FILING—On the question of the actual law enforcement aspects of the drug problem, when Bob Bottom gave evidence in Brisbane, he made the observation that for many couriers coming to Australia with drugs, particularly from countries like Thailand, the prospect of being caught is seen as being a very small occupational risk. In fact, he said that there are intercepted letters going out from Long Bay in Sydney, at times from people from Thailand who have been arrested here, gaoled at Long Bay, have got themselves a cell, a colour TV and whatnot, writing home to their fellow citizens saying, 'Look, why don't you come over. If you get caught, you can be in here with me.' To them it is like a holiday in Acapulco. In fact the daily rate paid in Long Bay is bigger than the average wage in Thailand.

Would you agree that from your experience couriers from countries like Thailand would view the risk associated with coming to Australia in those circumstances as being a

fairly low risk?

Det. Chief Insp. McKoy—Based on what you have said, yes.

Mr FILING—He said, 'There's no bar'—in other words, there seemed to be no barrier—'and that is why they put 11 on the plane. A couple of them get caught or they put one in.'

Det. Chief Insp. McKoy—I think those sort of people would almost be like a beacon to Customs officers. They are the sort of people that they would search, because they would stand out as peons or peasants or people totally out of their depth. Customs officers do react to those sort of people, and they certainly have sufficient people at the airport here to search those types of people.

Mr FILING—In fact, you would agree also that the problem has become so severe that, in contrast to the past, where couriers would take the risk bringing drugs in on their person, drugs particularly like cannabis, for instance, are now being shipped in in container loads.

Det. Chief Insp. McKoy—It is probably safer to send it in a container than it is to bring it in on your person.

Mr FILING—But, you would have thought, probably a more substantial risk of getting caught.

Det. Chief Insp. McKoy—No. I would say that it is easier to put it in a container and send it in than it would be to bring it in on your body.

Mr FILING—For a person contemplating sending drugs to Australia, you are saying, it is probably a lot easier to send it in a container rather than take the risk of secreting it on your person?

Det. Chief Insp. McKoy—That is exactly what I said.

Mr FILING—What does that say about the assertion of the minister responsible for Customs that we are winning the war against drugs?

Det. Chief Insp. McKoy—I do not know. But if you go down to the Melbourne docks and have a look at the number of containers there, and then ask how many are searched, that may be the answer you are after. Look at Sydney; it is double.

Actg Asst Commissioner Lambert—Bear in mind that they come in a container. It is not a full container of heroin, but it is certainly hidden in or secreted in the objects in the container. These never get searched.

Mr FILING—Going back to what you have originally said, Mr McKoy, that the problem Victoria has is that most of the drugs coming in are imported rather than manufactured or grown in Victoria, a situation where, for instance, drug dealers find it easier to ship drugs in containers to Australia, rather than more elaborately secretive ways, would present a very serious problem as far as the Victoria police service is concerned?

Det. Chief Insp. McKoy—I would think so, yes. But, having said that, let me say that Victoria Police has not seized any large containers of drugs at the Melbourne docks. Going back some time, we have done some joint jobs with the Federal Police, who have certainly seized container loads of drugs. We have had large quantities of amphetamine ingredients seized at the Melbourne docks. But, as I said to you earlier, look at the number of containers there and look at the number of people available to prevent drugs coming in through that port. Perhaps that answer will be self-explanatory.

Mr FILING—My colleague Mr Sercombe put it in a way which I thought was quite a good, succinct summary: the only drug that is cheaper as a result of the budget is heroin.

Det. Chief Insp. McKoy—That is probably right. Heroin is certainly an inexpensive drug to buy.

Mr FILING—Mr Lambert, I think you are responsible for the gaming squad? Is that right?

Actg Asst Commissioner Lambert—Yes, that is right.

Mr FILING—I want to ask you a few questions in relation to the effect of the casino in relation to crime, particularly as in WA, my own state, there has been some changes in criminal behaviour as a result of the opening of the casino operations at Burswood. To what extent has the casino's opening altered criminal behaviour in relation to things like drug trafficking, prostitution, money laundering and the like?

Actg Asst Commissioner Lambert—That is a fairly wide-open question. We have a group that works at the casino, the casino crime unit. They are mainly involved in the investigation of minor crime per se; that is, people losing things, stuff being stolen from them, chips being stolen, minor drug offences—very minor crime at the casino itself. The effect that the casino is having on crime is a little bit hard to determine, because you have absolutely no idea whether people are committing crimes to get the money to go to the casino. There is no anecdotal information to suggest that that is happening, although you would have to be fairly naive to think it was not.

As far as our crime figures go—across the state or even across the metropolitan area—since the first casino opened, they have not increased in any substantial way. We have not had a huge outburst of housebreakings or shopliftings or activities where they

can get property and sell it quickly. It stayed fairly stable within what we would call reasonable increase levels.

Mr FILING—The experience in the mid-1980s when the casino opened in Western Australia was that there was a change in some of the character of the offences. There was a lot more fraud and stealing and similar types of crimes to feed people's individual gambling addictions. Have the Victoria Police come across this?

Actg Asst Commissioner Lambert—There has been some evidence of people embezzling money from their employers and whatever it might be, but they are fairly minor. In number, there are not very many of them and the amounts of money are not considerably large. We have to understand that at any day of the year there are probably hundreds of deceptions being committed across this state that never get reported. Therefore, the statistics in relation to deceptions, which is increasing but the increase is usually in relation to major deceptions, cannot be linked to the casino.

Mr FILING—One of the things that came to light in the case of Western Australia was the fact that mid-level, minor or street-level drug dealers were using the casino as a recreational place and could have, at times, laundered some of their drug proceeds by playing on the gaming tables and then walking out with their winnings or whatever. Has that come to light?

Actg Asst Commissioner Lambert—Once again, we do not know what money they are playing with at the casino. However, you would only have to go down there any time of the day or night and you would find the place full of Asian people. As Detective Chief Inspector McKoy has said here today, the Vietnamese people are fairly strongly represented in the distribution of heroin. So you can probably draw a conclusion there. But we cannot give you any factual information to suggest that they have been linked.

Mr FILING—It would be fair to say that one could suspect that the proceeds of drug trafficking in places like Little Bourke Street, et cetera are being circulated in the Crown Casino?

Actg Asst Commissioner Lambert—They are probably being circulated around the state. In the bigger instances, the larger amounts of money are probably going overseas very quickly. A lot of the criminals are rather worried about the asset legislation and the seizure of assets, so they try to get their assets or their money out of the country as quickly as they can.

Mr FILING—To what extent do you believe that the surveillance and the oversight at the casino is able to assist in the detection or the watching of the movements of people who are known drug dealers or known criminals who frequent the casino?

Actg Asst Commissioner Lambert—We have had instances of identifying, through the surveillance of the casino, known criminals—not necessarily just drug dealers but certainly well-known, what we would call, professional criminals. As a result of bringing that to the notice of the people who run the casino, most of those people have been barred.

Mr FILING—It was put to a committee that has taken an interest in this in the past that the fact that the state government is a beneficiary of the proceeds of the casino operations and at the same time is responsible for its supervision and regulation is a very substantial conflict of interest. In the case of Western Australia, at one stage there was a very strong criticism from the WA police in relation to allegations that were made about junket gambling tours in WA. I am just wondering whether, in the case of the Victorian casino, there are any concerns in relation to the scrutiny or otherwise of junket tours to the Crown Casino from outside the country or the level of interest in relation to the activities of criminals who frequent the casino.

Actg Asst Commissioner Lambert—We are certainly concerned with the activities of criminals. We do not monitor in any way the junket tours. It is really not our role to be monitoring people who are not identified as criminal.

Mr FILING—Can I just press you on that. Are you saying then that a number of police agencies in Australia have had concerns about junket tours—this is where visitors come to our region; in a number of instances there have been allegations that money has been given to them to circulate from their place of origin in the casino as part of the junket tour—and that there seems to be no interest in them in Victoria?

Actg Asst Commissioner Lambert—We do not monitor the people that are involved in the junket tours. They normally spend or gamble in the high-class areas of the casino. I am not sure whether those areas are even surveilled. I cannot say whether they are or they are not. From a criminal investigation point of view, we would not look at those people unless we received intelligence about similar information that you just mentioned.

Mr TRUSS—I do not know what relevance this has to our inquiry, which is dealing with the National Crime Authority and its powers and functions.

Mr FILING—I will explain to you in a second. Part of the submissions we have received in the past have related to the need for national standards in relation to casino operations. Mr Truss would possibly be aware of that. Given that the state has a conflict of interest because of its beneficial interest in the casino operations and its responsibilities to properly monitor those, do you believe there ought to be some national standard in relation to the administration or the supervision scrutiny of casino operations, particularly these types of issues?

Actg Asst Commissioner Lambert—Perhaps I could come back to our submission. As part of our submission, we have said that the National Crime Authority should be involved in the development of strategic assessments. If in fact that type of information you presented to me a moment ago was given to the National Crime Authority, they are the ideal agency to develop it because of their influence around Australia and their links overseas through the Australian Federal Police. We could not do it here, in other words. It would be out of our domain as a state force to start developing a strategic assessment in relation to that type of information. They could do it. They are ideally suited to it and they have the experts to do it.

Mr FILING—It was alleged in the past that in Queensland—Mr Truss's home state—the Yakuza identities had frequented casinos there and had been sighted elsewhere. Would you consider it to be of greater assistance to your particular responsibilities if there were to be a national standards or a scrutinising agency that could ensure that information of this type, which would no doubt be of great interest to you, was made available, working and operating within a particular set of higher standards?

Actg Asst Commissioner Lambert—We are probably interested in gathering that sort of information. How it is obtained in the first place—whether it is by a national organisation or whatever—is beyond our realm. But if the information was made available to us, as I mentioned a moment ago, as a strategic assessment by the National Crime Authority, we would then take up targets that are identified by them.

Mr FILING—But, at present, you said a couple of answers ago that, in relation to junket tours and some of the high rollers, there is little to no scrutiny.

Actg Asst Commissioner Lambert—There is no scrutiny at all basically. We do not even know who they are.

Mr FILING—For instance, a high roller from South-East Asia with a large amount of money can enter the country, gamble at the Crown Casino and virtually do so without fear of being detected or being looked at?

Actg Asst Commissioner Lambert—Unless he commits some offence.

Mr FILING—If he had committed no offence and merely gambled and circulated his money, then he could do so without fear of detection or being investigated?

Actg Asst Commissioner Lambert—That is correct, yes.

Mr FILING—And that would be a subject of great concern, no doubt, to the Victoria Police?

Actg Asst Commissioner Lambert—Take the hypothetical example that he came

across from Las Vegas with some mafia money and wanted to launder it, it certainly would be of considerable interest.

Mr FILING—But if he was not wearing a striped shirt or carrying a violin case, no doubt he could do so. For that matter, a non-identifiable person could actually be given the money, arrive in Australia, gamble at the Crown Casino, circulate and launder that money and return home without fear of detection?

Actg Asst Commissioner Lambert—Without any forward intelligence on that person, I would have to say that he would have free access to the casino or any casino or any business or establishment in this state without gathering intelligence before he got here.

CHAIR—He would have to have a visa for a start, and there would be—

Actg Asst Commissioner Lambert—There are other checks and balances that may or may not stop him coming in.

CHAIR—He would have to comply with his own country's currency regulations in terms of the amount of money he was carrying. We may not be concerned about him bringing it in but we would want to know how much he was taking out. He would have to make a declaration along those lines. The tax department is looking very closely too at what point, if any, they should be taxed. That has been an issue for a long time.

Mr FILING—Casino winnings are not taxed.

CHAIR—My understanding was that money laundering activities in today's environment are actually very limited by virtue of the methods in place now for people to register. It is just not as simple as Mr Filing wants to make out it is that you walk in with a certain amount of money in your pocket, have a couple of flings on the poker machine and walk out with $100,000 and say, 'Look what I won at the casino.' It just does not happen like that.

Actg Asst Commissioner Lambert—There are checks and balances in place to identify whether you are taking your own money out or whether in fact you are taking some winnings out. With the high rollers, their money is transferred electronically: they bring it with them and it is transferred back electronically. They appear at the casino or any establishment with a credit and they leave with either a credit or a debit, but they do not take it in a suitcase or anything like that. They do not actually bring the money. It is all transferred electronically. We have certainly had examples of millions of dollars being sent across ahead of junket tours, mainly from Indonesia, and I do not know what the rules are in Indonesia.

Det. Chief Insp. McKoy—Talking of money, one of our biggest problems, and I

dare say the NCA's, is that you may catch known drug dealers in possession of huge amounts of money but you really cannot do anything about it. We are powerless to seize money from people; we can certainly seize it but we have to give it back. We have a law here in our Summary Offences Act called unlawful possession with a reverse onus. It applies to everything else except money.

Mr FILING—In other words, a drug dealer in a casino laundering his money, identified by the police, let us say, on leaving, could walk away with money without any fear of the money being seized as part of evidence.

Det. Chief Insp. McKoy—If I knew one of our suspected or known major drug dealers was going into a casino with a million dollars in a suitcase and we had the power to take that money and put a reverse onus on him to prove he came by it legally, that money would end up in consolidated revenue and he would end up with a conviction.

Mr FILING—At present there is nothing you can do, little or nothing.

Det. Chief Insp. McKoy—No.

CHAIR—But there are circumstances in which you seize or the NCA seizes large amounts of money, but generally in relation to a raid on premises where there might be drugs. Obviously if they find money as well—

Det. Chief Insp. McKoy—Where there is direct evidence. I am talking about where you know this fellow is a major drug dealer—he is the Mr Big we are finding difficulties getting to—and all of a sudden a divisional van pulls him up in St Kilda Road and he has got a million dollars in the boot—'Where did you get the money?' 'I do not have to tell you. It is from a legitimate business,' and he has got no legitimate business, and the money has to go back to him. In the past, we have had to resort to notifying the tax department to seize it. They have gone slow on that now. They are not all that interested in doing it. All the law enforcement agencies need something along those lines. Whether it be the National Crime Authority or the state police, it does not matter, but there are numerous occasions when money is seized in possession of drug dealers and it has to go back to them.

Senator McGAURAN—On the casino theme, based on the argument we have had put before us of legalise it and the crims will go away, it has always been believed that pre Crown Casino there were gambling houses along Lygon Street and Little Bourke Street in Chinatown run by and meeting places for big crims. Has the legalising of gambling in Victoria made these gambling houses poor?

Actg Asst Commissioner Lambert—They are still being run, but they have certainly decreased. I think Chinatown always enjoyed, if you can use that term, a reputation of having illegal fan-tan games and whatever it might be. Most of those have

disappeared.

Mr FILING—They just go to the Crown Casino instead?

Actg Asst Commissioner Lambert—We do not know where they have gone. All we can say is that they have disappeared.

Det. Chief Insp. McKoy—They seem to like the hot weather and Queensland is a favourite place.

Senator McGAURAN—In relation to surveillance, you have just made the point that the Victoria Police offer the NCA their surveillance expertise, and the NCA tell us that this is the cornerstone to their crime fighting—no surveillance, no success—and it is very expensive, as we know. Was it the case that those gambling houses were a magnet for the crims and they were easy surveillance targets, and now your surveillance efforts have become more difficult, you might say?

Actg Asst Commissioner Lambert—They certainly did attract the criminal element, but we have other ways of knowing where the criminal element is and we never had much trouble identifying where they were when we wanted to find them.

Senator McGAURAN—Do they have meeting places?

Actg Asst Commissioner Lambert—They probably do, and they are probably still in licensed premises, restaurants and those sorts of places where they have always been, as well as the gambling places. So they still find alternative places.

Senator FERRIS—I would like to ask a question about motor vehicle theft. We have had evidence from the national Motor Traders Association that money laundering and significant crime figures are involved in a process involving the rebirthing of motor vehicles. This is a significant way to launder money and for organised criminals to have control of a section of the market, if you like. Have you come across this in any organised way in Victoria, and do you have a view on whether that should be a reference to the National Crime Authority?

Actg Asst Commissioner Lambert—Motor vehicle theft basically falls into two areas: the joy-rider—we rarely catch that many joy-riders these days, and they probably contribute to about 70 to 80 per cent of the theft of motor cars—and the old illegal use of motor cars, where people steal them to convert them. That is the area that you are dealing with.

We have a car squad here that is targeted at arresting those people. Recently—by recently I mean in only the last few weeks—we broke two rings that were involved in that. One was involved in the theft of HSV Holdens and Tickford Fords, the more

expensive models. Certainly they were organised, but the parts were generally going to the panel beating industry. It was a cheap way to supply the panel beating industry.

The panel beating industry in this state is in a state of depression because of the reduction in the road toll and the reduction in accidents brought about by speed cameras, red light cameras and all those sorts of things. A lot of panel beaters have gone broke and a lot have got out of the industry. To try to make any money out of it, a lot of the ones that are left—not all of them, of course—are getting involved in some of these shady criminal activities to buy spare parts cheap. So that side of the motor vehicle theft area is a problem, but I think it can be adequately handled by state authorities. I do not think it necessarily needs a reference for the NCA to do it.

For some time we have had a problem in Adelaide, where the re-registration of vehicles has been fairly slack. We have a lot of evidence in relation to criminals rebuilding vehicles in this state and taking them to South Australia and re-registering them there where there is no check on any of the identifying numbers, and they come back with a South Australian registration, which is then changed over when they get back. But that is a problem we are well aware of. It is a problem we are tackling in other areas, and we are trying to get South Australia on board to be a little bit more diligent. So the bottom line really is we do not think an NCA reference is, certainly from Victoria's point of view, of significant importance to take on.

CHAIR—Mr Lambert, you indicated there are a couple of matters you were prepared to provide answers to in camera. Did you wish to pursue those matters now or at a later time?

Actg Asst Commissioner Lambert—I do not think there is anything. My impression of what Mr Thomas wants to tell you is that they are operational things.

CHAIR—No, there was a separate reference during your evidence to the fact that you would not answer something in public—or was it Mr McKoy? Is there anything you wanted to say in camera?

Det. Chief Insp. McKoy—There is probably nothing. Through some further questioning by the committee you have probably elicited what I did not want to say, anyway. So there is probably no need to go in camera.

CHAIR—You have said it.

Det. Chief Insp. McKoy—I will not tell you what it was that I said.

Mr TRUSS—I have a final couple of questions about corporate crime. Do you believe the National Crime Authority should be involved in corporate crime, or should it stick to organised crime type activities?

Actg Asst Commissioner Lambert—I can speak from only the crime department's point of view. We have a major fraud group, which is a separate group, of about 130-plus people. A number of those people are accountants and lawyers, and the rest are police officers. They have been very effective in relation to the policing of major corporate crime problems—the Coles Myer investigation being one of their most recent successes. They handle in this state most of the major corporate fraud problems, and I would have to say that they handle that very well.

Mr TRUSS—So you feel that the NCA could vacate this field and that there would be no lessening of pressure on corporate crime?

Actg Asst Commissioner Lambert—I am well aware of the famous case that the NCA got involved in, but as a general rule in the past the NCA have been more involved in drug investigations and other criminal activities than corporate crime investigation. Setting that particular case aside, I have every confidence that the major fraud group can handle in this state major fraud investigations and handle them very well.

Mr TRUSS—So you would prefer them, then, to devote their resources to the things that they are doing better?

Actg Asst Commissioner Lambert—Yes. I think the whole substance of our submission is that everybody in this law enforcement environment in this state should sit down and say, 'AFP, you do importations very well. Our drug squad'—or whatever it might be—'do a lot of other areas very well, and the National Crime Authority do strategic assessments, the use of their special powers, financial assistance'—or whatever it might be—'very well,' and that is the support they should provide to either of the agencies who should be the lead agency in relation to criminal investigation and arrests.

CHAIR—Gentlemen, thank you very much for your time. Your evidence has been useful and interesting and we appreciate it. Once again, we are sorry we kept you waiting.

[12.10 p.m.]

JAMES, Dr Stephen Patrick, Senior Lecturer, Criminology Department, University of Melbourne, Parkville, Victoria 3052

SUTTON, Dr Adam Crosbie, Senior Lecturer, Department of Criminology, University of Melbourne, Parkville, Victoria 3052

CHAIR—We have not received a submission as such from you but you have very kindly provided us with a report that you prepared for the national police research unit in 1995 entitled 'Evaluation of Australian drug anti-trafficking law and enforcement'. Some of our questions no doubt will refer to the content of that report. However, you may, either one or both of you, wish to make an opening statement. If during the hearing you consider that information you might wish to give or comment requested by committee members is of a confidential or private nature you can make application for that information or comment to be given in camera and the committee will consider your application. I remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in a material particular. I invite you to make your opening remarks.

Dr Sutton—I will give you the background to the research we did, which is probably the main reason you want to talk to us. Our research was stimulated by a report in 1989 of the Joint Parliamentary Committee on the National Crime Authority. The committee had done a review probably similar to the one you are doing now which took stock of the enormous amount of resources that are going into drug law enforcement. At that stage the committee estimated something like $300 million a year going into drug law enforcement. It is probably significantly more now—perhaps even double that figure. The committee made the point that there was very little evidence about whether those resources were being rationally and cost-effectively used; that is, whether you are getting the best value for the dollar invested.

Our task was to go and talk to all specialist drug law enforcement agencies in the country, collect all of the data we could on drug law enforcement and try to make an overall assessment on whether or not Australian drug law enforcement was a rational and cost-effective approach to trying to deal with the problems of illicit drugs. For the research we went around and talked to everybody and, as I said, we collected all of the data from bodies like the ABCI, police annual reports and any other data on drug law enforcement that we could get.

We found, in essence, that Australian drug law enforcement was not a very rational or cost-effective system. I would argue that you are still not getting very good value for these massive amounts of money invested. When we talked to the specialist drug law enforcement agencies one of the things we found was that virtually all of them, ranging

from the specialist drug squads in New South Wales and Victoria to the NCA, told us that they were trying to do the same thing—to get high-level drug traffickers.

The stories we got from each of the agencies were very similar. By the time we got to the Northern Territory we were able, in a way, to decode that information and we were able to say, 'When you say you are after a high-level figure, do you mean an enterprising backpacker coming in with a lot of drugs in their backpack?' They would say, 'Yes, that is what we mean.'

Everyone was after the high-level figures; that was a very uniform answer given to us. That in itself is a problem because everyone was trying to do the same thing. There wasn't a rational allocation of tasks between the various agencies and not enough coordination. One of the recommendations we came up with was that a body like the NCA could have a very valuable coordinating role in making sure that, if Australian drug law enforcement was going to target high level figures, it be done in a coordinated way. For example, rather than, say, having the Victorian drug squad going after its high level figures and New South Wales going after its, there could be an arrangement whereby specialist investigators be seconded to national task forces through NCA references and do things in a much more coordinated way.

We found also, surprisingly, that even though the avowed aim of this multimillion dollar exercise was to target high level figures, in fact most of the people being apprehended and taken through the courts were actually quite low level figures: mules, couriers being sent through the customs, low level street traffickers, et cetera. There was not very much success in getting high level figures at all. When we pressed a lot of the agencies on what they meant by high level figures in the drug trade, they became fairly equivocal and often they tended to shift away from a kind of hierarchical model of the drug trade towards an argument that it was more flattened, linked syndicates and that it really was not this kind of pyramid model at all.

We found very much the same that you found this morning, that most of the specialist people that know about the drug issue said that the overall picture in terms of supplies of drugs was pretty dismal, that there were more illicit drugs available now than there had ever been before. It was very much kind of a finger in the dike exercise. Most of them also were prepared to acknowledge to us that, in a sense, particularly getting the high level figures was intrinsically difficult. The question we used to put to them was, 'Say we get sick of being academics and we want to make a lot of money and become financiers of high level trafficking. Could we do it with having minimal opportunities for being caught by people like you?' Most of them would acknowledge that in fact you could do that, that it was very difficult to arrest people—particularly people who were right at arm's length, who were playing the role of financiers. To some extent they all acknowledged that, even though the main focus of drug law enforcement was on getting the high level figures, it was somewhat of a futile exercise.

We also found that when we started to look at whether drug law enforcement agencies were able to take stock of the impacts of what they were doing—whether they were actually able to reduce supplies of drugs, say, at the street level—they were not able to do it. Through our research, we found that, although it is quite true that drug law enforcement cannot be very effective in preventing, prohibiting drugs from coming into the country, they can be very effective in reshaping patterns of drug use. For example, if police in a local area take a very strong line on cannabis, they may inadvertently encourage young people to use designer drugs or cocaine or whatever. So they do have a very significant influence at that local street level.

We were very interested in knowing whether, given the resources drug law enforcers had, they were acutely monitoring those sorts of impacts. We found that they were not. Our recommendations were that they should change the way they went about the job, as well as being more rational in deciding how they would chase high level figures. One of the options we looked at was the idea of the NCA playing a coordinating role. We argued that particularly state and territory drug squads in some respects ought to consider pulling back and focusing more on street level enforcement, on getting better at collecting indicators of what is going on at that street level. We argued that they should make sure, working within a harm minimisation framework, that they coordinated their operations and their resources so that they minimised harm. For example, they could try to steer young people away from the harmful drugs and the harmful ways of using drugs towards less harmful drugs; they could push kids away from, say, designer drugs towards sensible use of alcohol or whatever. That was the basis of our recommendation. I think that has about covered it.

CHAIR—Did you want to add anything?

Dr James—No. I might in answering questions.

CHAIR—So your fundamental conclusion was that the $320 million per annum was on the law enforcement side?

Dr Sutton—We based that on estimates by University of New South Wales researchers, who tried to do an inventory of all of the resources going into state, territory and national bodies. I would say that it would be a pretty conservative estimate.

CHAIR—So you are saying that that money is not being spent effectively because the evidence is that we are not catching the Mr Bigs or the Mr Big Enoughs and there is some evidence that a lot of the people who are charged as a result of NCA activities are actually fined small amounts of money or imprisoned for short terms?

Dr Sutton—That is right.

CHAIR—What about the suggestion, though, that is made to us consistently by

law enforcement officers that the measurement of the effectiveness of the NCA is much more complex than just looking at those bland statistics? One of its key roles is to interrupt, interfere with or discourage drug related crime and the fact is there is no real measurement of that.

I am just sort of challenging your whole basic thesis of your criticism. I do not think you can measure exactly, and nobody seems to be able to tell us anyway how you measure what the bottom line is. We ought to be concerned. What happens if we do not really take the war against drugs seriously at the law enforcement end? What is the answer to that question?

Dr James—Could we come back to the original point here that one of the strong senses we got from all law enforcement agencies around the country was that they were completely unable to measure their own effectiveness. Partly, we would argue that was on the basis of some real problems in measurement, but we do not think the measurement problem is insuperable by any means. Law enforcement agencies have a track record in this area of not actually being interested in measurement.

If you argue that a cost-effective rational system of drug law enforcement is able to monitor what it does, to demonstrate the credibility of its information and to measure very importantly the impact of what it does in the community, which we would expect of any corporation and public service, law enforcement was simply unable to do this. We were concerned very much so that not only were they unable to do it but they seemed unwilling to do it.

We would argue strongly that there is a range of measures—you have to take them as a package; there is no magic bullet here—particularly at the community level in terms of drug related harm, that could be adopted, appropriated and harnessed to this task. It is, admittedly, difficult for a national body like the NCA, but once again we are not at all sure this is an insuperable problem. Our major concern was that law enforcement simply was not doing much at all in this arena.

CHAIR—That is demonstrably not the case. I suppose it is debatable, and that is the point. As Senator Ferris takes pains to point out to witnesses, we have 20 or so organisations and authorities operating in Australia on this problem.

Dr Sutton—We would say that, of all the agencies, too many of them are all focused on the one task, which is to try to get the high level figures. The bottom line with drug law enforcement is to try to reduce the supplies of illicit drugs and/or to try to make sure that, if people are going to use illicit drugs, they use them in the ways that are least harmful to themselves and to other people in the community. We argue that there should be a greater focus on those kinds of measures.

CHAIR—So you are really very pro the current strategy, which is essentially a

harm minimisation strategy. I think there is $300 million. Are you saying that money would be better spent on harm minimisation or demand reduction rather than concentrating on the supply side?

Dr Sutton—No, we argued that in fact law enforcement bodies in general play an absolutely critical role in that whole harm minimisation context. If police go in very heavily against something like cannabis, they may inadvertently cause more harm by getting young people to use more harmful drugs or to use drugs in more harmful ways: for example, inject drugs rather than to use them in less harmful ways.

Police always will have a critical role in that kind of harm context. We were arguing that, to be able to do that effectively, they would need to be able to collect data at the local level to find out the impacts of what they were doing and modify what they do in light of the feedback they got from that data.

CHAIR—The same logic, though, applies then to if police are successful at stopping heroin coming in. They are not making any impact at all at the moment, but if they were it would force the price up, you would think. Is that right? I am an economist, not a lawyer. That would increase the harm because people would then have to pay more and that would lead to more crime. It would not necessarily lead to any reduction in demand. All it would do would be to force the price up. People would have to pay more for it and therefore they would have to commit more crimes to get the money to pay for it. Is that a logical view that you would agree with?

Dr Sutton—Maybe the analogy that I can use is shepherding sheep around a paddock. We live in a very consumerist society and people use drugs as part of being in a consumerist society. Police in some ways are the shepherds and they can play a critical role in making sure that people graze in less harmful ways. We argued that there was a bit of a policy vacuum in terms of what was going on at the street level. Simply focusing on that high level made it difficult for them to be able to play that kind of role in harm minimisation.

We certainly were not arguing that they should abandon the task of the high level figures. In fact, we said: 'Do it in a more coordinated way, rather than all having the same objectives.' We said: 'Look at both levels, if you like. Look at the high level and coordinate there, go for the high level figures, but don't forget that the bottom line is what impacts you have on the availability of drugs at the street level, how people use drugs and what kind of harm they are causing to themselves and others. Look more closely at that end of the spectrum as well.'

Mr SERCOMBE—On this matter of qualitative and quantitative measurement of the outcomes of law enforcement effort in relation to areas like drugs, are you able to point the committee to some particularly useful current references that we can look at? It is a fairly complex and dry area in some respects. I not want to bog the committee down

with it now, but it seems to me that it is spot on one of our terms of reference.

Dr James—There are two major initiatives that the committee probably already knows about, but let me reiterate them. One is a joint project by the Australian Bureau of Criminal Intelligence and the ABS's national crimes statistics unit, funded by NCBADLE, the national community based approach to drug law enforcement, centred in the NPRU in Adelaide, which is designed to improve national coordination and national standardisation of particularly law enforcement drug statistics because obviously, as you are aware, they differ dramatically depending on legislative provisions and so forth. That is an important initiative.

At the same time NDARC in New South Wales, the National Drug and Alcohol Research Centre, is coordinating a series of pilot and national programs on combining quantitative and qualitative indicators. It is looking at indicators for illegal drug use around the country. It is using particularly techniques involved in key informants, using experts in the field who practise in the field to give, on a regular basis, expert information. It also involves convening panels of drug users themselves under conditions of anonymity so that they can monitor trends in local areas and so forth. That is a combination of qualitative and quantitative indicators at that research level.

The national crimes statistics unit is a straight quantitative approach. Both of those, without any doubt I would have thought, will lift the knowledge we have. Can I say very critically that what has been the problem with law enforcement is that their measures of output, if you like, are activity indicators; they are not impact indicators. Seizures and arrests are great measures of how hard they may be working or how much they are stumbling over, but they tell us little if anything about the impact of that work. They simply need to move beyond the confines of their activities in order to develop an understanding of market forces.

Mr SERCOMBE—Who has done recent work on that theme?

Dr James—The New South Wales Bureau of Crimes Statistics and Research. A recent report by Weatherburn and Lind has done some work measuring the impact of heroin seizures in Cabramatta, very much looking at the kinds of indicators beyond traditional law enforcement indicators, to look at impact measures.

Dr Sutton—We have also done some work with the Victoria Police drug squad in terms of collecting those kinds of indicators on drug availability. You always have to have an organisation that is geared up to want to look at that and that sees it as important to its operations. It is not enough just to get the empirical data there; you also need the organisational change and the organisational imperative to actually use it.

Mr SERCOMBE—How far off are we in Australia from achieving that situation?

Dr Sutton—I think we are still quite a way off, although it is encouraging that our report has been endorsed by all Australia's police commissioners. They are about to initiate pilot studies in two or three states, making sure that those kinds of indicators are collected and that they have some impact on operations as well.

Dr James—We think this is particularly critical because one of the problems with community based drug law enforcement is that it tends to stand alone; it does not intersect with the other major community agencies. The kinds of proposals we have made, and the pilot programs which are being envisaged, will forge those kinds of intersectoral partnerships in a way which we see as being nothing but beneficial for not only the actual practice on the ground but also the ability to combine different kinds of information.

Mr SERCOMBE—I gather you gentlemen were present when the Victoria Police evidence was being given. I wonder whether you have any observations on what I regard as the quite extraordinary proposal that Victoria Police ought to be focusing considerable effort on some sort of barrier control on the Victorian borders. Do you have a response to the practicability of that proposition?

Dr Sutton—I do not think it would be effective. That is my assessment. Our best barriers are our Customs barriers. Clearly, Victorian police have testified very strongly that they are not stopping drugs coming in. I think any internal barriers we set up would have the same problem.

Mr SERCOMBE—Do you have any view on the other suggestion, which has not really been developed, about the Australian law enforcement bodies developing more pro-active responses along the lines of the United States DEA? I do not know whether we are proposing to carry out raids on the Columbian cartels or something like that.

Dr James—The USA has been the major agency involved in major international attempts to suppress crops and so forth. Even some of the major supporters of American drug policy in that regard, particularly Mark Moore, from Harvard University, have raised very serious doubts about that kind of international drug law enforcement policy. As for burning and poisoning the crops of Third World countries and offering incentives for the locals to grow alternative legal cash crops, the evidence is pretty shaky that this is particularly powerful. It does not seem appropriate to our sphere of influence in Australia.

Dr Sutton—We talked to Mark Moore, this American expert, and the interesting thing is that even the United States is now falling back to focusing very much on what is going on at the local, street level. Their focus is still very much on reducing supplies. They are not as interested as we in Australia are in other harms associated with drug use, such as whether people are changing the way they use drugs and whether they are using them in ways that are more harmful.

Rather than this fairly futile effort to forbid drugs at the borders or to try to cut off the head of the beast and reduce drug supplies that way, all the evidence now points to the fact that there needs to be a much greater focus at the local level. We have to start collecting indicators and modifying our operations in light of the data we collect at that level.

CHAIR—When I was in the United States a few months back, I had the impression—you might tell me I am wrong—that there was a better degree of coordination between the various types of agencies involved in the so-called war against drugs. There is a so-called drugs tsar. I do not know why it is called that, but that is what it is called. It is a position currently held by a General McCaffrey, I think. He virtually has the ear of the President on that whole issue. Are you familiar with the activities of the drugs tsar? Does it have any relevance for us here in Australia?

Dr James—The distinction is quite critical that the US has a zero tolerance policy and we do not have a zero tolerance policy. We have a harm minimisation policy which has been signed off by all the states and territories and the federal government in terms of the national drug strategy. We accept the reality of drug use, and our national policy is geared towards minimising the harm arising out of that use. The US does not accept harm minimisation as a viable policy. It has a zero tolerance, say no to drugs thing.

History has shown that the US's ability to coordinate their military efforts in peacetime and to conduct internal activities has always vastly exceeded that of Australia. The political and the policy scene in the US is so different from Australia that I think it would be a long bow shot to draw any analogy between the two.

I should also add that the consistent and thoughtful critique of American US drug policy comes from both the Left and the Right and has for very many years. Economic rationalists are just as hostile towards the American zero tolerance policy as critics from the Left are. We do not have that kind of polarisation in Australia.

Dr Sutton—Just to add to that point, the argument is not that they have not actually been quite effective in the United States through those coordinated efforts in intercepting drugs at the border level. The point is that, even if only a quarter of a lot of these drugs get through, that is enough to supply users and to have a situation that we heard described today—that is, overabundance at the street level. That is the problem.

It does not matter how effective and how well coordinated you get, you are not actually going to reduce supplies of drugs sufficiently to have a real impact on the problem. In the end, that is why, even in the United States, they are moving back towards saying, 'Let's have a look at what's happening at the street level. Let's focus our resources there. Let's try to be more intelligent at that level.'

CHAIR—But their zero tolerance approach is broadly supported in the United

States. We have come out of the Reagan and Bush eras, where it was supported, and now we have Clinton, who only in recent days reaffirmed in very unequivocal terms his support for that concept.

Dr James—You are right. I think it does have a lot of domestic public opinion support. Whether we think that is naive or otherwise is not my position to say.

CHAIR—Do you think it is naive?

Dr James—Yes, I think the policy is deeply flawed. I think the harm the US zero tolerance policy does to particularly minority groups in the US is just so well credentialed and so well evidenced that it is a national disgrace. But Clinton, with respect, is a political animal. He would not be in the position of abandoning zero tolerance for electoral reasons. I do not actually see that his positioning on this is necessarily a rational one.

Dr Sutton—Perhaps on that, one of the issues we found in talking about our research is that people tend to paint a zero sum picture—it is either total tolerance or it is prohibition. It seems to me that Australia has actually reached a pretty good balance somewhere in between—we are certainly not tolerant and we certainly would not advocate legalisation or even decriminalisation.

All we are saying is that, given that we have endorsed the harm minimisation approach and given that we have not gone down the United States path of zero tolerance—fortunately, because we are not paying a lot of the penalties that are associated with those policies—it is time we tried to make a better effort to bring the law enforcement sector into line and to give it the capability of working within that framework.

Mr SERCOMBE—I was wondering if Dr James might be a bit more descriptive of the domestic impacts in the United States of the policy they pursue. You referred to the impact on minorities. Could you perhaps fill that out a bit?

Dr James—For instance, the Afro-American population in the US is around 13 per cent. Household surveys demonstrate that something like 14 per cent of all drug users are Afro-Americans, so basically the drug using population of blacks is in proportion to their general population statistics. Over 44 per cent of all arrests for drug related offences are levelled against blacks, particularly black males.

There are a whole range of interesting legislative bits and pieces. For instance, the deeming provision. The amount of crack cocaine which is deemed trafficable is much, much less than white powder cocaine. It is well known that crack cocaine is a much more economically viable commodity in the ghettos amongst black minority members than is white powder cocaine. At one interpretation of those kinds of legislative and policy options there is explicit discrimination against certain kinds of members of the community.

Other material which is much more diffuse, but still anecdotally very rich, is the moral panic created by drug use in schools by whatever in the US discriminates enormously, once again, against particular forms of minority groups. Also, across the board there are some horrifying stories of the extent to which school and state authorities are so frightened of drug use that the entire educational careers are ruined by the most minimal and marginal of drug consumption that in Australia we really would not be all that concerned with. Those kinds of levels and the kinds of discrimination exercised against minority blacks is also occurring in Hispanic areas as well.

Mr TRUSS—I would like to ask you about how you propose to put in practice a harm minimisation strategy. How does a harm minimisation strategy address the 12-year-old selling drugs on the street corner?

Dr Sutton—The earlier witness tended to back away a bit from that. I think it is not the case that there are large numbers of 12-year-olds selling drugs on street corners in Victoria at least. Having said that, a harm minimisation strategy tries to focus on minimising harms associated with drug use. So it does not say that all drugs are equally prohibited. Our argument is that law enforcement bodies should systematically collect data on what illicit drugs are available in their local regions and they should systematically collect data on how it is being used and made available. They should then say, 'Which are the most harmful drugs and which are the most harmful ways of using these drugs?' and they should concentrate their efforts very strongly on minimising the availability, the use and the peddling of those harmful drugs. So it should not be an across the board thing.

Very often it is 'Whatever is easiest to enforce the laws against we will go against'. It should be very much on the basis of what is most harmful and what are the harms here. For example, if 12-year-olds are involved at peddling drugs at the street level, we will go very hard against that because that is a particularly harmful manifestation of illicit drug use. That is the policy that we would recommend, rather than saying, 'Let us treat all illicit drugs equally and let's just go on the basis of what laws are easiest to enforce.'

Mr TRUSS—Are you actually saying that you would turn a blind eye to the marijuana traffic because it may stop people from taking heroin?

Dr Sutton—No. What we are saying is that police at the local level should work with health people and other authorities to collect data on what illicit drugs are available. Then they are going to use whatever resources they have available—and police always have to exercise discretion because they do not have infinite resources—and the priority always should be what is most harmful. If the only drugs that are being used in an area is cannabis and they have resources for enforcing the law, then obviously they should enforce it against cannabis. But if there are other far more harmful drugs and if it is clear from all the evidence that they can collect that, by simply concentrating on cannabis, they are going to make it easier for people to use those harmful drugs, or they may even, in

fact, be inadvertently causing people to move away from cannabis to the heroin, which you can apparently buy for less than the cost of a packet of cigarettes, then clearly they should make that decision and say, 'Look, we only have limited resources. We are going to focus on the areas of harm.'

Mr TRUSS—Except that a lot of the cannabis production is actually occurring in Australia. It is a totally different kind of policing operation.

Dr Sutton—This is exactly why our research involved doing an overview of all uses of enforcement resources and why we said that, in the end, there ought to be an attempt to take a very coordinated approach and to use the resources available as rationally as possible.

Senator FERRIS—Dr James, in 1983 in the second reading speech of the bill establishing the NCA the following statement was made:

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 organised crime.

The chairman foreshadowed a few minutes ago that I have been asking a question related to the existence of more than 20 law enforcement bodies and agencies and yet you have talked about and previous witnesses today have talked about the fact that heroin is now cheaper than a packet of cigarettes. Did your study confirm that this agency, the NCA, and these other agencies have really got the power and resources and drive to get a foot on organised crime and drug peddling in this country?

Dr James—I hope I am not here in a fraudulent sense. Emphasis on the NCA was attenuated during the course of our research because the Coad inquiry came in over the top of us. Although we had done some fairly extensive interviewing, we did not make as much of that as possible.

It seems to us that there are two issues here. One is that, in terms of the logic of going for high level trafficking organisations, the NCA model, whether it be the NCA or some other kind of model, was not necessarily our concern. The NCA model of interjurisdictional cooperation, the resourcing of investigation by people outside the narrow law enforcement domain—accountants, lawyers, analysts and so forth—was clearly the best model to approach this. We fully accept the notion that there are some serious organised criminals out there who, for both moral and, perhaps, to a lesser extent, symbolic reasons, need to be got at, need to be investigated and need to be dealt with. Our report is quite explicit. We see national drug law enforcement, because of the interjurisdictional nature of drug trafficking in this country, as being the only way to fly with regard to that.

When it comes to our concern for illicit drug control, we do not believe that even the most powerful and coordinated forms of national drug law enforcement will do very much to reduce supply. We would argue on a cost-effective supply reduction basis that national drug coordinated law enforcement is not likely to be effective. But we fully recognise that there are political and moral imperatives here in drug law enforcement as well. If you want to continue to emphasise those moral and political imperatives, a national coordinated strategy of drug law enforcement is the best way to fly. Let us not hold out any hope that there is going to be massive supply reduction as a result of that.

Senator FERRIS—To what extent did issues of territoriality and what is known, I understand, in law enforcement agencies as 'turfdom' interfere with the effectiveness of the bodies and the overall structure as you saw it?

Dr James—It is a little like one of those stories where you ask some questions and people say, 'You should have been here last week. You should have seen what was really wrong last week.' We always asked the question about interjurisdictional cooperation. Everyone said, 'No, we had not in the past got on well with the NCA. We had not in the past got on well with the AFP if they were a state or territory agency.' Almost universally they had said, when we did our interviews in 1993 and 1994, that relationships had improved remarkably. The example of Operation Cerberus was cited, where apparently earlier on some very good thinking work had been done to take care of issues such as territoriality, who would take credit for particular busts and so forth.

We spoke to none of the constituent agencies which contributed to Operation Cerberus who did not praise the process. The outcome of Cerberus was not something we were competent to comment on. But certainly the process seemed to me to be a very valuable one. Having said that, and having recognised in our report that things have certainly got better with the increase in levels of expertise by AFP investigators and NCA investigators over the years, because of our federated system, I doubt that you will ever entirely overcome the problems of territoriality, but you can certainly moderate them.

Dr Sutton—Perhaps the other thing that I would add is that what we saw as the basic problem related to this territoriality is that too many people are trying to do the same thing. The state drug squads are trying to go for the high level figures. The NCA is trying to go for the high level figures. Everybody is going for the high level figures. We would say that a more coordinated approach, particularly some greater effort at the state level to focus on what is going on at the street level and introduce policies and monitor them, would probably result in less of these kinds of battles.

Senator FERRIS—Could I deduce from that that you are saying that there seems to be some sort of glamour—some sort of badge of achievement—for catching Mr Bigs and Mr Big Enoughs, as we have heard over the last couple of weeks, rather than capturing, as we heard this morning, the 12-year-old dealers up in Little Bourke Street?

Dr Sutton—One of the issues is that most of the people who work in drug squads have been trained as specialist investigators. That is their interest. Even if they are not interested in the glamour, that is what they find interesting, and we can't blame them. So there would need to be a higher level commitment to restructuring to get that sort of change. I doubt very much whether it is going to come from within the organisations.

CHAIR—But you do, I think, agree that as far as measurements are concerned it would be an illusion, in a sense, for, say, the NCA's success to be judged purely in terms of the number of arrests or charges or the number of successful cases and so on? That has been the problem, hasn't it? There has been a temptation for it to be seen to be effective only in terms of these statistics that appear each year.

Dr James—It is a very real problem. We refer to it in here. Our recommendation is for national coordinated drug law enforcement, but we fully recognise the dilemmas of what kind of a bottomless pit that kind of approach can be. Certainly coordination agencies have to have a keen eye out for when to stop a long-term investigation. We recognise the political pressure on them to actually achieve goals. But the reality is that, no, they should not be assessed in the short term on arrests and seizures. Once again we argue that that can skew the whole law enforcement effort, if people are concerned only with those kinds of political short-term goals.

I do not know how to resolve that issue, other than to engage in rational debate, saying that you need to allow national coordination fairly decent legs, as long as there are accountability mechanisms to pull the plug when it looks like it is going nowhere or when it is clearly becoming cost ineffective. But we certainly endorse the notion that a narrow band of quantitative indicators is a lousy way to measure the effectiveness of such a complex enterprise as national coordinated drug law enforcement.

CHAIR—I do not know whether you are familiar with the NCA's annual reports. I suppose it is a statutory requirement, but the way they publish these statistics leads to some misapprehensions. Even some of our parliamentary colleagues have taken this at face value and said, 'Look at this. There are so many arrests and the cost is this. Therefore it has cost a million dollars for each arrest.' There is some false analysis along those lines.

Dr James—Yes, it is a problem and I understand the horns of dilemma upon which they are sitting.

CHAIR—Finally, are you familiar with what is going on in Sweden at the moment? My understanding there is that they went a long way down the harm minimisation track but they have swung dramatically back the other way.

Dr Sutton—We actually had a visiting scholar from Sweden a couple of months ago who gave us a talk. Sweden have always been fairly strong prohibitionists and they certainly are still pursuing those policies. That is in contrast, say, to places like the

Netherlands, which have always taken a harm minimisation approach and which are still strongly pursuing those policies. The issue about harm minimisation is really, to some extent, what the traffic can bear. At a local level, what are the harms, how do you measure them, how do you make those discretionary decisions? I do not think there really is an absolute answer that you either go down the path of harm minimisation or go down the path of zero tolerance. I think in Australia we have decided that we are going to take a middle path. What we have tried to recommend is that, given we have made that decision, how do we best bring the law enforcement sector into the fold so that they can work in that framework.

CHAIR—The national drug strategy is currently being reviewed. Have you had any input into that process?

Dr James—Yes, we were both members of working parties before Christmas to examine whether harm minimisation should remain the foundation of the NDS. We certainly argued that it should be and we have heard that in fact it will continue to be the major foundation stone of the NDS.

CHAIR—If there are no other questions, thank you very much. I think your expertise in this area will prompt us to perhaps at some stage get back to you if we need some more input.

Mr FILING—I have a couple of things I want to clarify. One of the aspects of the evidence we have been hearing with the drug problem at the moment is the apparent flood of heroin in the country. From your experience—and you may have already answered this, and I apologise, if you have already been questioned—what is the general behaviour of the drug market, when a particular drug is restricted in its availability, either by price or supply? Is it generally the case that the drug is replaced by another one that becomes more readily available?

Dr Sutton—The research I have seen shows that one of the issues is that people start using it in different ways. For example, people might shift from smoking to injecting. That is a real problem, because then you have a whole lot of associated harms—HIV infection, hepatitis C infection—and those harms do not apply just to the user; they can apply to the broader community.

It is a very complicated equation. Most people who are into the drug scene do not use only one drug; they use a whole range of drugs. That is one of the reasons we were very keen for law enforcement bodies to become better attuned to those kinds of impacts and to try to anticipate them in some way.

Dr James—It is very complex, because one of the debates in this area is whether certain drugs are price elastic or price inelastic. Don Weatherburn from New South Wales has been trying to work this out for quite some time.

Mr FILING—Are there any examples of non-elastic priced drugs?

Dr James—The example is probably serious heroin dependency, where price, ultimately, does not matter. That is for only a relatively small cohort of heroin users though. The trouble is that users are not just users. There are many different gradations.

Traditionally, one of the problems with law enforcement is that the users it comes across are those most vulnerable to law enforcement activities—those whose drug use is most highly visible. By definition, those who do not engage in criminal behaviours to subsidise their habit and those who conduct their drug use in environments outside the purview of law enforcement do not get recognised. They are there, they exist, they have been surveyed to some extent and we know that they are around, but they do not appear in the law enforcement gaze. So, when law enforcement talks about drug use and drug users, it talks about a quite narrow or very specific set of users. That is understandable. There is nothing wrong with that, but generalising from those users to all users is statistically inappropriate.

Mr FILING—From your submission and some of the comments you have made today, I can understand that—similar to, say, aspects of the economy in relation to the global market and the ability for sovereign governments to influence them—your contention is that it is extraordinarily difficult for a national drug enforcement agency to significantly influence what is, essentially, a globally directed marketplace for drugs.

Dr Sutton—Yes, we would argue that. What you do at the local level, the way you enforce the laws and where you put the emphasis can reshape local markets quite significantly and can have quite major impacts on how people use drugs, what drugs they use, et cetera, but, in terms of that overall picture, I tend to agree with the police who were talking to you earlier: it is a bit of finger in the dike exercise.

We went down to the Melbourne wharves—and, as they said, Melbourne is not a major centre for importing drugs. The fact that we are now part of the global economy means that, out of the 300,000 containers that come across those wharves, they are allowed to search 300. It is very much a needle in a haystack exercise. That is not a reflection on the Customs people, it is just the fact that there are other imperatives about our being part of the global economy.

Mr FILING—My information is that, in the case of Cambodia, for instance, just about every container coming from that country may have drugs in it, and they are all searched.

Dr James—We would not know, because we cannot get that baseline data. We do not know what the containers hold, because they cannot do it.

Dr Sutton—As Detective Chief Inspector McKoy would tell you, a person running

a $1 billion drug trafficking enterprise would know that as well and would make sure that their containers did not come through Cambodia.

Mr FILING—Let us touch on one of the other aspects of Inspector McKoy's evidence—the designer drugs and ecstasy trade. I visited the NCIS in London, and they were showing how the distribution network was working from western Europe. In other words, drugs were coming from Holland to the UK and then from the UK to a variety of places—the United States and Australia most notably in more recent times. Interestingly, there is some correlation between ecstasy importation and large centres of people from the UK living in Australia. Are you aware of this?

Dr James—No. When we did our fieldwork some years ago, ecstasy was not as big a deal as it is now. We were still talking about pretty straight, orthodox amphetamine use, not the MDMAs and MDAs. It has burgeoned since then.

Dr Sutton—Putting on my sociologist's hat for a moment and talking to the chairman, who is an economist, one of the problems is that, when you have demand, you will have supply. There will always be different groups who will meet that demand. The problem is that people see illicit drugs almost as a metaphor. Parents see illicit drugs as a metaphor for the unknown, for all the dangers their kids face. We have to be very careful not to put the finger on particular groups as personifying that danger.

Mr FILING—The reason I mention this British background is that the NCIS and Interpol found that the criminal contacts liaison between the UK and Australia was through personal contacts between like-minded criminal identities who had reasonably easy transport and exchange of information and goods with each other. Given that the ecstasy drugs were associated with the rave parties and the sort of musical scene that had evolved in the UK, there was a correlation between that and others who subscribe or use those sorts of drugs in those circumstances within Australia.

Dr James—This sounds terribly trite, and I almost apologise for it. Law enforcement intelligence agencies know about things they know about; they do not know about things they do not know about, if you are with me. There is a very strong tendency here to trace and to seek evidence and to form firm opinions on things that they come across. Again, Mark Moore, the American Harvard professor, is a very good informant in this area. He argues quite powerfully that there is a kind of circularity about that. You will keep chasing the obvious routes and, by chasing those obvious routes with all the standard intelligence tools given to law enforcement by military intelligence and whatever, you will, by definition, close your eyes to other options. So you may well be right. But what proportion of the trafficking in Ecstasy is represented by that chain is an unknown.

Dr Sutton—The analogy that a lot of them gave us is that they are like miners. They are mining a particular seam in a wall, and they are very keen on following that one. There might be another one three feet to the right which they are completely unaware of.

They will tell you that every now and again they will come across someone who they have never heard of, with connections they never knew about.

Mr FILING—For instance, they reported that there were one or two cities where crack users in the UK were concentrated, which is extraordinary—Bristol and Manchester.

Dr Sutton—Because that is where they found it.

Mr FILING—Yes.

CHAIR—Thank you once again.

Luncheon adjournment

[2.05 p.m.]

CLEELAND, Mr Peter, 23 Northumberland Drive, Epping, Victoria 3076

CHAIR—Welcome, Mr Cleeland. In what capacity are you appearing before the committee?

Mr Cleeland—I am appearing in a private capacity.

CHAIR—Mr Cleeland has made a submission, which has been published. Is it the wish of the committee that the submission be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The document read as follows—

CHAIR—Before inviting you to make an opening statement in support of your submission, if you wish to, I am required to state that, if during the hearing you consider the information you might wish to give or a comment requested by committee members is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in a material particular. Mr Cleeland, did you want to add to your submission or make some additional remarks?

Mr Cleeland—I would, thank you, Mr Chairman.

CHAIR—You may proceed.

Mr Cleeland—May I firstly thank the committee for allowing me to appear. On page 5 of my written submission, there should be an amendment because I refer to the members of the authority as having a three-year term when in fact it is a four-year term. Other things I say today will be based on my own individual opinion. Some things I say will also be based upon the views of the Australian Drug Law Reform Foundation, of which I hold the position of Vice-President, but I am not appearing as a witness in that capacity necessarily.

I found it most interesting this morning listening to the evidence you were receiving. It is very similar to what I heard myself when I was a member of this committee, except there is one difference—that is, it is undoubtedly clear that the present situation on organised crime and drugs in Australia today is maturedly worse than it was when I first sat as a member of this committee back in 1986-87. I believe firmly that the current system of criminalising certain drugs has failed and is doomed to failure. It has succeeded nowhere in the world and will not succeed anywhere in the world.

I have had the privilege of visiting many foreign countries. One of those countries was the United States, which I visited in the Christmas of 1994-95. I have been on the streets of New York with the narcotics division of the New York metropolitan police and I have seen them at work arresting people. I met with the DEA, the FBI and FINSEC. You name it, I met with them, including most of the narcotics divisions of the police forces throughout the states.

What I saw there horrified me, and we think we have a problem. We have not even scratched the service. But, providing we maintain a system of belief that by passing laws we can prevent the use of certain drugs, we are doomed to make the situation fail and make it worse. This view is not new. It has been said by many people and, increasingly, by senior law enforcement officers from around the world, including former chief commissioners of police in Victoria, Mr Johnson, the chief commissioner of Tasmania and Mr Kendall of Interpol.

Increasingly in the United States there are now some people saying it does not work. It does not work, and it will never work because the illegal drug trade obviously is the perfect model of capitalism. It is a supply and demand marketplace. It is not driven by supply; it is driven by demand. Providing there is demand, supply will always be maintained.

We have been fortunate in this country that drugs such as crack cocaine have not gained a major toehold but, nevertheless, it is in Australia. Cocaine has not gained a major toehold, but it is in Australia. Heroin is undoubtedly our biggest scourge. As you have heard, and as I have found overseas, the world is awash with the stuff. It is also awash with cocaine.

In 1994 on the coast of California, the FBI and DEA interdicted three tonnes of pure cocaine. Stop and think about that: three tonnes of pure cocaine. Mixed with baking powder and produced as crack, that would be approximately seven to eight tonnes of crack. For the next six months, they maintained their intelligence on the streets of the west coast of America and the price of crack or cocaine did not vary one bit. In other words, three tonnes of pure cocaine taken out of the US drug market made no effect to the supply of cocaine on the streets of the west coast of America. That is just an example of the size and the complexities of the drug trade that we face.

We also have to be honest enough to admit that many Third World countries have only one exportable commodity for US dollars—that is, illegal drugs. No matter what the world does and says about those Third World countries, whilst there are inequalities in trading throughout the world, and many countries are denied access to first world markets to make an income, the illegal drug trade will continue to flourish and drugs will be maintained and provided. It only shifts from country to country. For example, the Colombian cartels are now producing heroin. That is one of the reasons there is a sudden surplus of heroin in the world.

As I found out in the United States, the Colombians and the cocaine producers are now growing and producing heroin as well and they are flooding the streets of the United States. Hence, there is a surplus of heroin in world markets. This means in Australia the price goes down, the purity increases and market forces determine who is going to be the successful supplier of heroin to our streets. So the price is unvarying.

We know that in Australia, if we are lucky enough to interdict five per cent to 10 per cent, we are doing very well. The evidence is there. It is there for all to see. It has been studied. It has been researched. So it means that 80 per cent to 90 per cent is getting through without much trouble.

The major dealers, when they get caught with a second-rate courier, do not lose anything. One of the things that annoys me most is when I read the newspaper and either the Australian Federal Police, the NCA or a state police force comes out with a big

headline saying 'Multi-million dollar drug haul'. It is false. The price of heroin in Asia is roughly $12,000 a kilo pure. That is all: $12,000 a kilo pure. You enter that one kilo into Australia and it is worth $250,000 cash.

So, when you get an importer, they have not lost millions and millions of dollars. The importers do not distribute; they just simply import the stuff. There is a train of seven different deals before it hits the streets. So all the importer has lost is some low rate courier and $12,000 a kilo of drug, not millions of dollars, as the press so like to report and some police forces like to claim credit for. It makes no impact whatsoever on the importers. Despite the hauls that we get, we know full well that there is a sufficient supply already sitting in Australia so there is no variation on price on the streets.

All this is known, this committee has known this for a long while, and, unfortunately, many politicians know it, but somehow or other we still maintain the myth that by passing more laws and 'cracking down on crime' we are going to reduce harm to the users of drugs in our streets. We are not. It is time that fact became more public and we started looking at alternatives to the present system. We must be very brave in experimenting to try to reduce harm to people.

In Victoria recently, over 15 people were hospitalised in the space of about a week and a half because of heroin use. We know that was because there was a fairly pure dose being sold on the streets as part of the competitive marketplace. Those kids who did suffer overdoses did so because there is no regulation or control on what they are using. They do not know what they are using. There is no control or regulation. So, when these events occur, people die. If we do happen to catch them with some heroin in their pockets, they are regarded as a criminal and, despite what state police forces say, they still maintain strong activities against the users of drugs. They will still arrest and charge someone for using marijuana, for example.

Marijuana is also an interesting aspect of drugs because, years ago when I first knew about marijuana, you could buy it for about $25 an ounce. On the streets of Melbourne today, it is now worth $400 an ounce. That is because, through satellite and other means of surveying, Australia has been very successful in attacking those people who grow commercial quantities of marijuana. By using satellites and other devices, we have primarily wiped out the commercial activities of marijuana growers, so the price goes up.

Whilst we got the price of marijuana up in the streets, we have introduced amphetamines and ecstasy. You can track the growth of those drugs to the increase in the price of marijuana on the streets. Marijuana was a drug scene. It was in the discos and it was the young people's drug in Melbourne at the time when I was chairing the committee and we did the report *Drugs, Crime and Society*. My three kids, then in their late teens and early 20s, were all going to the discos in Melbourne and they were a source of constant information to me. You should talk to your kids: you would be surprised what

they know about drugs.

In that period, you could see the price of marijuana go up. Suddenly, in our nightclubs and the streets of Melbourne, ecstasy and amphetamines appeared; and, of course, they are in our schools. Now we have a major problem. You have to look very carefully at what you are doing at critical levels and, in law enforcement terms, on the effect on the users of drugs and whether in fact there is any harm minimisation in what we do. As I say, I firmly believe that there is no harm minimisation in the present laws. What we do is to maximise harm to people. We maximise profits to the organised crime gangs and we maximise corruption.

In every state police force at the moment—in Victoria, we recently had a major break-in in the drug squad and a major brief against an organised criminal group was stolen; in Western Australia, I read in the paper this week, more suggestions that their narcotics division there is corrupted; and we had the Wood royal commission in New South Wales—we see the effect of organised crime and corruption on the state police forces. So long as we keep going, we are just going to corrupt and maintain the present system. I do not have an answer, I might add. I think there are ways we can look at it. I do not have a perfect solution, but we have to try something which is different to what we are doing today.

So far as the NCA is concerned, I have always been a supporter of it—I always will be—despite the fact that it is not a perfect vehicle. It makes mistakes, and it will make mistakes. It is run by human beings; it will never be perfect. Yet we must go back and look at the royal commission which created the Fraser government's National Crime Commission in the 1983 legislation which, in 1984, became the National Crime Authority. It is important, I think, to go back into history sometimes to ask the same questions that were asked then. Is there an alternative to a national crime commission type organisation? Has organised crime got such a hold? Is it such a corrupting influence that we can tackle it by normal policing methods?

Of course, the answers are no, you cannot. You do need rather special and unique crime fighting organisations to tackle what is organised crime. The international drug trade is the second largest economic activity in the world, next to the arms trade. The money is so large—they do not care what you do in taking out a few people here and there and everywhere—someone is going to move in. That is the law of economics. That is the law of capitalism. When the profits are there, they will take the risk. The profits are huge.

We need the NCA. In my submission, I point out that it is not perfect and that I have some concerns in the way it is structured. I do not believe it is possible to have continuity of investigation when the turnover of the authority is so rapid, as it has been. I draw your attention to the public submission received from the NCA and the chart showing the turnover of members. It is pretty frightening. It is in the submission I have given you. It is a fact that members come and go without even serving their four-year

period.

Many of them come from the private bar. Whilst they are good lawyers—they are not necessarily trained investigators—they come into an organisation where they, firstly, have to learn how to investigate. They have to learn the current references, they have to pick up on the investigations to date, then follow that down the track; and then, bingo, they have left, they have gone back to the bar, and you have lost that experience they have gained over a short period of time. I think that is one of the biggest failings of the NCA as it is now structured.

Secondly, I think we have a major problem in now attracting people to the NCA. If you go back and look at the members of its early days, Don Stewart—Justice Stewart—and the sorts of people we attracted as chair people and authority members, you will see they were undoubtedly the cream, the best barrister minds we probably had in Australia at the time. Unfortunately, who would want to join the NCA today when you are just denigrated, when you are politically attacked unmercifully in the media? There is no attraction for any senior barrister today joining the NCA. The damage has been done by media attacks. It is pretty bad, and it is going to take a while to overcome that. Certainly, when I talk to members of the Victorian bar, no-one wants it. No-one wants to go there any more.

Without at all detracting from the current authority, it certainly lacks experience. Certainly, it now lacks great experience in the constitution of the current authority. I think that that is because the last government could not attract people of the calibre they wanted to go to it. We are running out of people. We are running out of the skill and experience the NCA wants in order to do its job effectively. I could talk about this organisation forever, but I suspect you have some questions for me. I will throw it back over to you, Mr Chairman.

Mr SERCOMBE—Mr Cleeland, given the outline you have given to us, I understand you to be saying that the priority in relation to drugs ought to be shifted very much towards the harm minimisation style of model. What are the implications of that for the future role and structure and functions of the NCA and its allocation of priorities in its menu of work? Perhaps that might lead on to you talking a little about the history of the organisation from your experience of it in dealing with different types of work and some of the controversy that has arisen from that. If you are suggesting that the appropriate public policy is to move increasingly to a harm minimisation strategy in relation to drugs, that has obviously got significant implications for the organisation. What then does it prioritise in its activities?

Mr Cleeland—Firstly, I cannot see in the foreseeable future a political will in this country to move to a harm minimisation model. We cannot even get the states to agree on the ACT heroin trial. Whilst Victoria is supporting it, and I notice the federal Minister for Health and Family Services, Dr Wooldridge, has come out with a degree of support, we

cannot get Mr Carr in New South Wales to come out and positively support it, and the other states oppose it. Unless we start some trialling of different approaches, we are never going to get away from the current model. So in the immediate foreseeable future I cannot see any change in the current system.

But I would also draw your attention to the menu from the Commonwealth law enforcement reports. I believe all ways that organised crime and corporate crime are interrelated. Money laundering and corporate crime are no different to me than the relationship with organised drug crime. The drug barons want to become legal, and they are in possession of many more millions of dollars than you and I can ever imagine. It is not much good to you if you cannot use it; it is not much good to you if you cannot legitimise it and go into a legitimate activity. So I can never see a reason why the NCA should not be given a role for white-collar or corporate crime as well.

We know, for example, that the Yakuza in Australia do not necessarily commit criminal activity in Australia but we know the Yakuza in Australia are very much involved in legitimate corporate activities in property investments and other sorts of investments. We know that the Russian mafia, for example, have created in the Cook Islands, in their tax avoidance style companies, accounts. You heard from the Victoria Police this morning that the Russian mafia so-called are spreading around the world at an alarming rate. It is evidence that this committee has received on previous occasions. We have not got one little player; we have got a multitude of players—the Romanians, for example. As eastern Europe collapses, the KGB, with its international linkages throughout the world and its agents, has now simply gone into a capitalist form of activity. It is now using the knowledge and activities it has got to make money.

So I cannot see any reason why we would need to diminish the role of the NCA in the foreseeable future and I believe it has a very major role to play in white-collar activities, as did the IGC and state government bodies back when the report was done.

I find quite amazing the way the media have tackled what I will call the Elliott matter. Whatever you say about the Elliott matter, a prima facie case was established against him and his co-accused. It went to a committal proceeding and a magistrate found that he and his co-accused had a case to answer. If you look at the conspiracy theories that are put forward, it means that it is not just the government of the day that was a conspirator but the state DPPs, the IGC and the cream of the Australian bar are all guilty of criminal conspiracy. Frankly, I just do not accept that.

The simple fact was that eventually, because of an alleged defect in the reference that the NCA had, a judge exercised a discretion to exclude evidence. That evidence was excluded, the DPP in Victoria had no case to put to a jury and Mr Elliott and his co-accused walked. He is entitled to the presumption of innocence because he has been before a court. Like it or lump it, that judge exercised a discretion. I would like to know what the outcome of the appeal against the judge's use of that discretion will be, and I am

sure many people in the Victorian bar are most interested in the outcome of the appeal against Justice Vincent's decision.

But Mr Elliott is no different to anyone else who faces criminal charges. He was represented by a gaggle of lawyers before the NCA and before the National Security Commission when they first raised the question of the Elders bonds and who eventually took them over. He has never been denied his legal rights, it seems to me. I am often puzzled by what he complains about, except that he says he is John Elliott, he is the bagman for a political party and he should be excluded from the investigation.

Mr SERCOMBE—Have you had an opportunity to have a look at Mr Justice Vincent's rulings?

Mr Cleeland—Not in detail, no. I have only had bits and pieces given to me.

Mr SERCOMBE—You do not have a view to put to the committee then on the process by which the NCA carried out the supervision of the assembling of the brief of evidence on the matter? You had no occasion, I presume, as chairman of this committee, to be backgrounded on any issues that would bear on that?

Mr Cleeland—As I point out in my submission, there have always been major limitations on the ability of this committee to go behind a wall into the NCA because of section 51. Over the years the NCA has very rigidly applied section 51. It is nowhere near as bad as it used to be back in the days when Don Stewart was chairperson; they would not even talk to the committee. Over the years it has got progressively better, but there is still a limit to what the NCA will tell the committee about its internal operations. The committee would never be in a position, because of section 51 and section 55(2)(b), to ask the NCA to give them a copy of the reference even or to explain the legalities of how the reference was drawn up.

Mr SERCOMBE—Were you surprised to hear of the situation arising? Had the matter of the reference based system of investigation and assembling a brief been an issue, to your knowledge, in earlier times?

Mr Cleeland—I was astonished at the way it went. Over the years I have learnt that the NCA, before it prepares a brief of evidence, briefs a large number of the private bar in Australia. It briefs barristers at the private bar even on the question of what evidence it needs to be able to put together a brief on complicated matters. Before the matter got to the Victorian DPP, the NCA would no doubt have spent a lot of money on private barristers helping them to put together what is a very complicated brief. Of course, the NCA does not prosecute. It just prepares a brief of evidence and the prosecuting authority, be it the Commonwealth or the state, is the body which determines whether to prosecute. In this case it was the Victorian DPP. In those situations the DPP also has a role in the brief preparation.

It is pretty strange that some of the best legal brains in Australia stuffed up as badly as it is alleged that they did. That is what is being said: that some of the best legal brains who have been involved in putting the brief of evidence together and the DPP, which also went to the private bar and got separate advice, somehow stuffed up so badly that the evidence was not admissible in a court of law. That has me baffled.

Mr SERCOMBE—Mr Costigan, before this committee recently, described that process as incompetence rather than malevolence. Do you have a comment on that description of it?

Mr Cleeland—I do not know how anyone can pass judgment on what evidence they have because I have not seen it. You are asking Frank Costigan. How can Frank make a judgment on the evidence that the NCA has or has not got against Elliott and his co-accused? I hope Frank has not seen it because it would be a breach of the act.

We are all in the position of not knowing just how competent or incompetent the investigation was. We do know that there was, in the words of Mr Henry Bosch of the old National Security Commission, 'a good case'. Other observers of the matter have felt very strongly that there was a case. I do not know. I have not read the material and I do not profess myself to be a competent enough commercial lawyer to even understand some of the evidence.

Mr SERCOMBE—Given Mr Justice Vincent's publicly expressed view on the role the NCA, including to this committee under your chairmanship, without in any sense reflecting on him or his judgment, do you have a view on whether there may have been an argument that would suggest he ought to have been disqualified from the matter?

Mr Cleeland—There are three things which surprised me in recent years about judicial rulings concerning the references that the NCA has been operating under. In Victoria it is no secret that Justice Merkel, Justice Vincent and Robert Richter were all closely associated with the Victorian Council of Civil Liberties. It is no secret; it is a fact. I have nothing but respect for those three gentlemen. I have briefed Ron Merkel over the years myself as a lawyer, and I know him to be a fine lawyer and a person, I believe, of integrity. The same with Justice Vincent and the same with Robert Richter.

It is an unfortunate set of circumstances perhaps that it should be Ron Merkel as a Federal Court judge and Vincent as a Supreme Court judge who have both in similar terms ruled against the NCA and their power to draw references. Maybe it is just a coincidence that Robert Richter was briefed for Elliott. One can say no more than that because, as I said, I have nothing but respect for them all. I believe them to be people of integrity. But I believe it to be most unfortunate that a judge whose opinion on the NCA is known, a judge who detests the royal commission powers of the NCA, was the judge who exercised his discretion in the way he did. I find that worrying.

Mr TRUSS—As a former chairman of the committee, you have been critical of the capacity to provide any kind of oversight of the NCA's work. As chairman of the committee, what actions did you take to seek to assert the role of the committee and to upgrade its capacity to supervise what was going on?

Mr Cleeland—A chairman of a parliamentary joint committee such as this has extreme limitations. You can have members of a committee who, for their own particular reasons, are hostile to the government in power and who will use a committee for political purposes. Ultimately you are all politicians and ultimately you will act like politicians. That has been the history of the committee. I do not criticise any parliamentary committee for being political. That changed, though, over the years with different membership. The part of the committee work I enjoyed most of all was when we did the witness protection report and when we did the report *Drugs, crime and society*. I found it to be a very good committee. We had no worries or problems. We worked very well. From 1993 onwards it was a dreadful committee.

Mr TRUSS—But did you basically give up on any kind of supervisory role?

Mr Cleeland—Yes. When you have Amanda Vanstone as your deputy chair, you give up. It is as simple as that.

Mr TRUSS—As simple as that?

Mr Cleeland—You try to work with Amanda Vanstone!

Mr TRUSS—So your view was that the presence of Senator Vanstone on the committee was sufficient to prevent it from doing its work?

Mr Cleeland—I can't blame her entirely. There was just a lack of interest in the committee, particularly in that second period—on both sides, in fairness. It was a full-time job ringing people to try to get enough to come to get a quorum. That was almost a full-time activity for the chairman, as Mr Filing would know. It was a hell of a job just to get a quorum. The members of the committee had no interest, it seemed to me. Their political parties had said: 'We need people for this committee. You are on it, you are on it, you are on it.' So we got a committee of people to whom their political parties had said: 'That is your job.' And they were not there.

Mr TRUSS—Presumably you were not able to so enthuse them by the value of the work that they were doing that they would give your committee meetings priority.

Mr Cleeland—Suggestions on particular inquiries that the committee could usefully do were always met with no by the majority of members. One of the more active members in my experience has been Mr Filing. Mr Filing was most anxious to have several inquiries and was always met with great difficulties from within his own political structures.

Mr TRUSS—If the committee model does not work, what other suggestions do you have to provide a check and balance for the powers of the NCA?

Mr Cleeland—This afternoon you are going to hear from Mick Skrijel, who is sitting behind me. Whatever Mick may think about me as chairperson or former constituencies of this committee, it seems to me that Mick has a genuine complaint against the NCA. Mind you, he is his own worst enemy in that he does not distinguish between events which occurred in South Australia prior to the creation of the NCA in 1984 and those which occurred in Victoria at a later date. Nevertheless, there is undoubtedly a genuine complaint that Mr Skrijel has. But, because of section 51 and section 55, this committee is not a watchdog committee. The media love to call it a watchdog committee.

I have brought along a copy of the *Bulletin*, for example, of 27 May. There is an article written by some person called Brett Martin, who calls himself a journalist. He has never read the act, he knows nothing about the NCA committee and he writes an article entitled 'Elliott set to create NCA wasteland'. This is the sort of garbage you get from people who do not know anything about the act and the limitations of what this committee can and cannot do according to the legislation which creates it. You are a unique committee. You are the only joint parliamentary committee—in fact the only parliamentary committee—which is created by an act of parliament.

Mr FILING—There is the ASIO committee.

Mr Cleeland—And the ASIO committee. Your constitutional powers are within the act of parliament—what you can and cannot do. Why journalists cannot pick it up and read it has got me baffled.

Mr TRUSS—What changes need to be made? I am trying to get practical suggestions from you as to how we need to restructure things better in the future.

Mr Cleeland—We need, as this committee has suggested under two different chairpeople and two different bodies, a separate body to oversee and handle complaints against the National Crime Authority. We need it desperately.

Mr TRUSS—A non-parliamentary one?

Mr Cleeland—A non-parliamentary one. The report *Who guards the guards?* and the report *Investigating complaints made against the National Crime Authority* in 1994 admitted that the committee was not the appropriate body to investigate complaints such as the ones Mr Skrijel and Mr Elliott have. There should be, as ASIO has, another body. In my submission I refer to the original legislation of 1984 which proposed an ombudsman style role. It is a great regret that that was never brought into being. The government of the day, very cleverly of course, basically nobbled this committee by section 51 and section 55, and it got through the Senate. You are a committee with great

ambition sometimes, as I have experienced myself. People quite often want to do the right thing. But this has not got the power or necessarily the skill, in fairness to politicians, to handle some of these things.

CHAIR—You never envisaged, though, the establishment of a National Integrity and Investigations Commission, did you?

Mr Cleeland—No.

CHAIR—That is a bit of a—

Mr Cleeland—I have a view, personally, of somebody similar to an ombudsman with investigatory power who can open the NCA files, go beyond the wall of section 51 and actually have a look to see what the NCA has done. If there is reason to bring justice to some person who is aggrieved, they can in fact operate to produce that for them.

CHAIR—But the ALRC has recommended the formation of this National Integrity and Investigations Commission to oversight the NCA in that—

Mr Cleeland—No, I think it is too much.

CHAIR—We have not found yet any one person that has agreed with that suggestion, frankly. I think some of your earlier suggestions are much more likely to be the way to go.

Mr Cleeland—You are right. Two previous committees both had the same answer. They both knew what was wrong. It is a great shame that the parliament, despite this committee's views over a number of years, has not acted on them.

CHAIR—You have said a few interesting things, and I am not trying to in any way attack you on the politics of this. The QC that came from the Bar Council of Victoria, Mrs Crennan QC, was asked some questions about Mr Elliott. She was making the point generally that people who have got the resources tend to be advantaged under our law. You said:

As a result of the political attacks on the NCA by prominent members of the Liberal Party—

you have not said it, but I have written a note 'and civil libertarians'—

there is a public impression that there is a law for the rich and a law for the poor . . . The public message is that the State should not even investigate such people let alone have the temerity to charge them with a criminal offence.

You are saying that a little bit with tongue in cheek, at least the last part. It is a fact, I guess, that people with resources are able to best defend themselves, but that should not

stop us from pursuing them, should it?

Mr Cleeland—No, it should not. But I take the view that here in Victoria where we have a Premier who, to say the least, is dominant in his views and, in the early days of the Elliott matters and in the day when Sir Andrew Grimwade—another prominent member of the Victorian Liberal Party—was charged, our Victorian Premier was more than scathing in his public comments on the NCA. This committee wrote to him back in 1994 and listed the public comments he made and invited him to appear before the committee. Needless to say he did not.

CHAIR—Were those comments made post the Elliott case?

Mr Cleeland—No, it was in the run-up to the Elliott case whilst it was in the public news. But not one knew much about it.

CHAIR—But they were made in the context of the Elliott case?

Mr Cleeland—Yes, they were all in the context of the Elliott matter. People out there, after reading those comments—even our Prime Minister has said it is a political attack—about a prominent bagman of the Liberal Party, are entitled to say that there is a law for the rich and a law for the poor when major political figures come out and attack the NCA almost for having the temerity to charge someone like Mr Elliott.

CHAIR—I do not think we would condone that. You said that the fact that the accused were prominent members of the Liberal Party—I assume you mean one of them was—major fund raisers, is not a reason to destroy the NCA. I would have to agree with you very strongly on that point. I think that is self-evident.

Mr Cleeland—I have some press clippings here which say what Elliott said he is going to do to the NCA. He said that he is going to destroy it.

CHAIR—But because he says he is going to do it does not mean it is going to happen.

Mr Cleeland—I do not believe it will, frankly. I think there is too much honesty and decency on both sides of politics to allow it to occur.

Mr FILING—On that subject, given that there are a number of layers of accountability in relation to the NCA's activities, are you aware of any stage during your period as chairman of the committee of Mr Elliott contacting the committee to complain about the behaviour of the NCA?

Mr Cleeland—Yes.

Mr FILING—What specifically did he complain about?

Mr Cleeland—There was one occasion back in 1987 when we had a very early briefing on the nature of organised crime in Australia. It was one of the first times the NCA actually started to talk to the committee and give us information we never had before. One of the members of the committee was then reported in the *West Australian* as having said, 'Perth was the Naples of crime in Australia'. No names, no pack drill. That caused a great deal of concern in the NCA because, for the first time in the history of this committee, we were actually given some information about the nature of organised crime in Australia and where it was operating. There were some problems with organised crime in Perth. So the next day, on the front page of the major Perth newspaper, was the headline 'Perth—the Naples of organised crime in Australia'.

We then suffered quite a few setbacks because obviously they did not want to talk to us any more. That is just one example. There have been several of that kind where the committee has had information and the next week the NCA, knowing that they gave us the information in a different sense, have read it because it was splashed over the newspaper. For example, why would Mr Les Ayton ever come near this committee again?

Mr FILING—Good question.

Mr Cleeland—He would not. A very private and confidential submission he gave this committee in 1991 was tabled in the South Australian parliament. It was political dynamite. It gets around among police forces and among other people that you cannot go near this committee and tell them anything of any importance, which I find to be a great pity.

Mr FILING—Were there any specific complaints from Mr Elliott relating to Operation Albert or matter No. 10?

Mr Cleeland—Mr Elliott has never once approached this committee and made a complaint concerning the conduct of the NCA.

Mr FILING—Are you aware of anybody on his behalf or associated with him making a complaint to the committee about the behaviour of the NCA in matter No. 10 while you have been a member or the chairman?

Mr Cleeland—No-one.

Mr FILING—Given that this committee is supposedly the oversight committee for the NCA, does that surprise you?

Mr Cleeland—It has always surprised me. That is why we invited Mr Kennett, who was making such prominent statements about the NCA, if he had any evidence to

please come along and give it to us. At the time we could not very well invite Mr Elliott because it was subject to investigation still. I still take the view that as a committee you cannot evaluate the rightness or wrongness of the NCA's actions on Mr Elliott. He can come here and say what he likes, but you will never get a response out of the NCA on the correctness or incorrectness of the allegations. So it is one-way traffic for this committee. Secondly, I suspect you are prohibited under section 55(2)(b) from even taking the evidence, frankly.

Mr FILING—Given that certainly in the evaluation inquiry in 1990 and on a previous occasion—I cannot remember the exact report—there was a call for a change to the way in which the NCA committee's powers of scrutiny were able to be changed to make them more effective, during your period as chairman and as a member of the committee, what was the response of the government of the day?

Mr Cleeland—Let me say that the government with which I was associated viewed the committee as a necessary evil. It was there. It was put into the legislation by the Senate against the government's wishes. They had to have one, but they did not seem that willing to cooperate or be part of it because it was just something that the Senate had whacked into the legislation. From my contact with the minister of the day, I can say they were not really interested in it.

Mr FILING—So in your contact with the minister while you were chairman in particular—where it would be more relevant—did you come up against a brick wall when consideration was given to making, for instance, the Inspector-General of Security a means of investigating complaints against the NCA?

Mr Cleeland—I recall discussing it with Duncan Kerr when he was the Minister for Justice, and I know that at the time work was going on within the government to look at establishing some form of oversight body, yes, but it was very early days. It had not got to any great fruition. But I know there was support by Duncan because, as you know, he served on this committee and was aware of its shortcomings.

Mr FILING—You mentioned in your submission that at times it is difficult for the committee to form a quorum. From your experience as the chairman—and I heard your responses to Mr Truss—would you agree that in actual fact the government and the opposition consider this to be a sort of second or third order committee on the pecking list for committees?

Mr Cleeland—Yes. I have no doubt that the current government will be no different than the former government in its views on this committee. It is in the act, it has to be there, they will put members on it, but they are not particularly prepared to fund it. Some of the work you need to do; you need to be funded to get independent advice; you need a couple of good criminal barristers behind you sometimes if you are going to do any serious activity vis-a-vis the NCA and you are not going to get the funding.

Mr FILING—Would you agree then that the way in which the committee has been treated by both sides of politics in government has indicated probably, as you have said, almost a level of contempt for the committee, which is a necessary evil, as you have said?

Mr Cleeland—I think, if you read the IGC recommendations of this committee, you will find that it is not just the federal government which regards us with contempt; it is state governments as well.

Mr FILING—But in the sense that there was no intention or move to empower the committee to make it more effective as a body to deal with complaints, for instance?

Mr Cleeland—Of course not. Let me say the government never wanted it in the first place. In fairness to the Hawke and Keating governments, they opposed it from day one. They did not want the committee. They opposed it. It was the Senate that forced it into the legislation.

Mr FILING—Let us just take the case of Mr Skrijel, who is sitting behind you, who you agree has a ground for complaint. Do you think that, for instance, in response to the committee the government treated the committee's view and the committee's response to Mr Skrijel's complaints with seriousness?

Mr Cleeland—Not knowing what the deliberations were in the minister's office, I cannot really answer that. I have spoken to the minister about Mr Skrijel and about his complaint. I was concerned, when the Quick report came down, that there was certainly in that sufficient material to cause concern about the way in which Mr Skrijel was being treated.

I have to say in fairness to Mr Skrijel that I think the difficulty is, as I have said, that if you put Mr Skrijel in the witness box—and I say this as a former practising lawyer—he would not win a case in a fit. He would be the worst witness you could ever get on his own behalf. I think that is one of the problems that Mr Skrijel faces in trying to get justice. Frankly, my own view was that the last government should have made an offer. But then I understand that, regardless of any offer made, Mr Skrijel wanted a million dollars or something like that and that was a no-no.

Mr FILING—Given that Mr Skrijel, in your words, may be his own worst enemy in relation to representing himself, he is still entitled to a fair hearing?

Mr Cleeland—Yes, you have no disagreement from me on that.

Mr FILING—Do you consider that the response from Mr Kerr to Mr Quick's report and his findings—that is, on the reference to the Deputy Victorian Ombudsman—was in fairness an appropriate response?

Mr Cleeland—I would suspect any minister of the Crown faced with the Skrijel position would make the same sort of statement, because that is the nature of politics and of the way ministers handle difficult problems. Personally, I was disappointed that no attempt, as I understood it, was made to resolve the issue between Mick and the NCA and that some formal compensation was not granted to him.

Mr FILING—As chairman, did you get any pressure or overtures put to you from the government in any way to give Mr Skrijel other than a fair hearing and the best opportunity of presenting his case?

Mr Cleeland—No. I can say in my years in this committee that no government has ever approached me and told me I was to behave one way or the other as chairperson. They rang me up a couple of times and told me I was behaving badly, but they never told me what to do.

Mr FILING—Did Mr Skrijel's sometimes frequent, sometimes less frequent, threats he made to the committee—either in writing or on the telephone—in relation to his case influence you to give him anything other than a fair hearing?

Mr Cleeland—No, I have always had the view since I first read about the material that Mr Skrijel had a legitimate complaint. Having met him, I could understand the difficulties he faced in getting other people to agree with him. Hence, I say he is his own worst enemy in coming to resolve that legitimate complaint he has got.

Mr FILING—Nonetheless, as a person who has put up with something like 10 years of campaigning to seek a redress for what he considers and what others consider to be a substantial complaint, you have to give him 10 out of 10 for persistence and for enduring the process.

Mr Cleeland—If Mr Skrijel ever listened to advice or took advice, he would understand that it would make a lot of sense for him to separate the events which occurred in South Australia prior to 1984 concerning his fishing boat and other things. The NCA was not established prior to 1984 and no government is going to compensate for events that occurred prior to the establishment of the NCA.

If Mr Skrijel concentrated on the events that occurred in Victoria with the court case where he was charged with drug offences, I think he would have a lot more success in gaining some recognition of his concerns. But, as long as Mr Skrijel wants to lump pre-1984 events into the NCA, I think he is going to have a major problem with any government in getting appropriate compensation.

Mr FILING—It is fair to say though that, given he had done the right thing in 1979, I think it was, in relation to the South Australian situation—when he came up against Mr Barry Moyse, he was subsequently charged and gaoled for drug offences, the

trial was overturned and then he was released—it is understandable that he would be aggrieved at the way in which he has been treated.

Mr Cleeland—Yes, I can understand his anger.

Mr FILING—The other things I want to touch on, if I may, are the reports and the work of the committee, other than dealing with complaints. You mentioned in your submission to the committee that a number of far-reaching and innovative reports have been published by the committee, including *Drugs Crime and Society*, *Organised Criminal Paedophile Activity*, *The National Crime Authority and James McCartney Anderson*, *Asian Organised Crime in Australia*, *Witness Protection*, *Who is to Guard the Guards?* and *Investigating Complaints made against the National Crime Authority*.

From time to time, you would have met with your own party, as other members of the committee met with their own parties, with perhaps less than a sympathetic response from the government or the opposition of the day. Given that fact, how important do you think the NCA's work has been in relation to the production of those types of reports? Can I just say that, in the case of the NCA and James McCartney Anderson, a fair bit of money was spent on ensuring the committee was represented by counsel in order to properly deliberate on the evidence heard from Mr Anderson and others. How important is it that the committee is in a position on those sorts of inquiries to be properly briefed by senior counsel to do its work?

Mr Cleeland—Fundamental.

Mr FILING—From your perspective as a former chairman, in the case of the Elliott matter would you consider that it would have been entirely appropriate for the committee to be briefed by counsel before hearing from Mr Elliott?

Mr Cleeland—Fundamental. If you ever understand what the allegations are about in commercial terms, you would be doing pretty well. I have read about it a lot and I have a file that thick at home on Mr Elliott. I am a lawyer and I have a lot of trouble in sorting my way through the complex corporate structures to trace the trail of the Bonds and the so-called HV. The Yannon loop alone is a complicated commercial transaction.

Mr FILING—For instance, would you consider that appearing without benefit of counsel's advice might be considered as being perhaps lambs to the slaughter in the case of Mr Elliott?

Mr Cleeland—I often recall watching television one day and seeing Mr Kerry Packer appear before a committee of the parliament which was poorly briefed, did not understand the issues and got slaughtered by one man. I do not believe that is what parliamentary committees should be about. They should be experienced either in their own

right or they should have sufficient support in expertise to enable them to perform their function properly.

Mr FILING—Would you consider that an event like Mr Packer's appearance before the media ownership inquiry led to the diminution of the perception of the role of parliamentary committees in the public eye?

Mr Cleeland—Let me digress a minute. I suspect that governments with big majorities have to have something for their non-ministerial people to do. They have to keep them occupied. Having been part of government for a number of years—in fact, I am proud to say I have never been in opposition—one of the interesting things I noted during the Hawke and Keating periods was that parliamentary committees, in my view, were established partly because the backbench were dissatisfied in not having a governmental role to play. It got restless backbenchers into chairmanships and gave them something to do and it got them off the government's back. But I do not believe that any Australian government has ever really been prepared to establish a parliamentary committee system such as the United States has, which I believe we should have. I believe that is necessary.

Mr FILING—I want to conclude on the point about legal representation. For instance, as chairman facing the prospect of dealing with a very complicated matter that obviously has tested the minds of eminent lawyers and judges, would you want to hear from Mr Elliott and senior counsel—Mr Richter QC—or would you prefer to do so with the benefit of senior counsel advising the committee?

Mr Cleeland—I would much prefer to be properly represented by senior counsel, but then again I am a great fan of the US Congressional Senate committee system. When I was involved as a backbencher in helping to establish the current parliamentary system of committees, that was one of the things we wanted. But no government is going to fund and resource parliamentary committees to the extent that they become independent of the executive. That is not the nature of our parliamentary system.

Mr FILING—So you are saying basically that it would be in the government's interests for a committee like this one not to have the benefit of senior counsel to assist in a matter like this?

Mr Cleeland—The executive is government in Australia, let's be honest; the executive is the power of government. The rest of us who are not in the executive are denied much information. For example, when you go to a caucus meeting the ministers have rolls of briefing material but the backbenchers sure as hell do not go in there well briefed. And, once you are in government, you realise that the power of the executive is supreme. I do not believe within the context of our political system, the Westminster system, that any executive is going to fund adequately the parliament to give it sufficient power to challenge the supremacy of the executive.

CHAIR—That is very helpful, Mr Cleeland.

Mr Cleeland—It was my great pleasure, Mr Chairman.

CHAIR—It is good to see you again. I hope you are doing well.

Mr Cleeland—I enjoy fishing.

[3.05 p.m.]

SKRIJEL, Mr Mehmed

CHAIR—I welcome Mr Skrijel. In what capacity are you appearing?

Mr Skrijel—In a private capacity.

CHAIR—The committee has received a submission from you. Is it the wish of the committee that the submission be incorporated in the transcript of evidence. There being no objection, it is so ordered.

The document read as follows—

CHAIR—Before inviting you to make an opening statement I am required to state that, if during the hearing you consider the information you might wish to give or if comment requested by committee members is of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in a material particular.

Mr Skrijel, we have received a fairly brief submission from you, but I think most of us are reasonably aware of your situation. So I do not think it is at all necessary for you to go into great detail about that, but we are very interested to hear from you. You are very welcome here today. If you would like to make a few remarks, please proceed.

Mr Skrijel—Last time, in 1990, I made a submission of 300 pages—the biggest submission of all. I got in front of Amanda Vanstone and I was told to speak of the complaints mechanism against the National Crime Authority, although she knew there was no such thing. So that was a waste of time making a 300-page submission and then getting up to speak about fairytales in front of the committee.

CHAIR—You have gone from one extreme to the other now.

Mr Skrijel—Exactly, because I have experience from 1990 to 1995. I know the committee is just—what would be the kindest thing I could say—a political wing of a corrupt NCA. That is all. That is the kindest thing I can say about you gentlemen.

CHAIR—We are all different. The only one—

Mr Skrijel—It makes no difference. You are all the same. You all work toward one single plan in life. Let me first straighten up what Mr Cleeland said here. He said that I wanted millions of dollars. He is a liar. I challenge anybody in the committee or anywhere else to show me anything where I asked for any money. I do not want no money from nobody. The only thing that I ever asked for was a licence and a fishing boat that was burned, that was destroyed, illegally on me because I reported a drug importation by high ranking police, and politicians—Mick Young, Nick Bolkus and others—did nothing. That is all I am asking for—nothing else. I do not even want that anymore. I do not want blood money.

I want to supplement my submission with a document that I have here. Your committee has it but you keep covering it up. You will not even acknowledge the document. The name of the document is *The role of the Attorney-General's Department in concealing the crimes of the NCA*. It is fully referenced and fully documented.

CHAIR—What is it called?

Mr Skrijel—*The role of the Attorney-General's Department in concealing the crimes committed by the NCA.*

CHAIR—Who is the author of that report?

Mr Skrijel—I am the author. It is all fully documented. You had the document months before.

CHAIR—We do have it.

Mr Skrijel—But you deliberately refuse to acknowledge the title of that document. I have asked several times and you deliberately refused to acknowledge it.

CHAIR—We have received and acknowledged the document.

Mr Skrijel—You did not acknowledge the title of the document.

CHAIR—We are happy to acknowledge the title, whatever it is. It is on the record.

Mr Skrijel—The second thing I want to clear up about what Mr Cleeland said is that I am my own worst enemy. I have been trying for 18 years. I have bombarded you with so many documents—all facts. I asked Paul Filing a few months ago: in the 18 years of my fight, has anybody—police, politicians, lawyers—been able to catch me lying in a single word? He said no. There is no such thing. I do not tell lies. In the last 18 years, in the thousands of pages of documents that you and everybody else have received, nobody has been able to catch me lying in a single, solitary word.

Mr Cleeland said that I should separate South Australia and Victoria because the NCA was not formed in South Australia. I will read you a letter from the justice minister. Minister Kerr said in 1985 the National Crime Authority, the NCA, conducted an investigation of Mr Skrijel's complaints and found them to be without substance.

In 1985 the NCA had just been formed. I had no bitch about the NCA, but it did against me. Justice Stewart wrote a letter to every politician who attempted to help me and stated that he had investigated 27 complaints of Mr Skrijel and found all of them to be without substance. Let me tell you what his investigator said in the transcript. Ron Iddles was asked, 'What do you mean by that, Mr Iddles? He said, 'Well, I have had an open mind throughout and in relation to the allegations that he'—that is, me—'has made I investigated these and I have drawn a conclusion based upon evidence, and I still have an open mind as to what he says. Something which he says I have substantiated as being correct.' That is what he said, but Justice Stewart said, 'Forget it. There is no substance in any of his allegations.' After the jury found me guilty, we found this was the only case in this country where I had 83 witnesses and not a single one of them was allowed to be called in court—not one. It is on the transcript too. If you want that, I will produce that

too.

CHAIR—Where did you want to call the witnesses?

Mr Skrijel—In court in my defence, when the NCA charged me with trafficking drugs, growing marijuana and having explosives and everything else. I had 83 witnesses and I was forbidden to call a single one.

Mr TRUSS—Forbidden by whom?

Mr Skrijel—By the judge.

CHAIR—Why?

Mr Skrijel—Because the NCA paid him.

CHAIR—They paid the judge?

Mr Skrijel—I am positive of that. Let me tell you something about—

CHAIR—But you were on trial and—

Mr Skrijel—Let me just put it to you. I know you are trying to make fun of me.

CHAIR—No, I am not.

Mr Skrijel—Let me just give it to you nicely. The NCA convicted me in Ballarat County Court and I went to prison. Paul Filing said I was released on appeal. That is not true. I was released after I served my full sentence. Eight months after I served my full sentence my appeal came up. I represented myself in the full Supreme Court. The NCA was represented by top barristers. I represented myself. As you can see, I am short on English, short on everything, and I won on every ground of appeal. Six grounds of appeal I had and I beat them on every one of them. You cannot tell me that the NCA had much of a case against me. They had nothing.

It came out that evidence was fabricated. They said that fingerprints were taken off a coffee jar and were put on a drum and then explosives and marijuana were found in it. Let me tell you another few things. Another thing is there is a gun that they said they found at my—that is what I gave to Mr Cleeland and he refused to do anything about it.

You people say that you have no power. I like that cheap excuse. It is a very cheap excuse. You are members of parliament; you represent people of this country. Couldn't you have taken that document to the parliament and said, 'Here is the truth. We can't do nothing because of whatever. We want parliament to do something about it'? None of you

have done nothing. So you cannot tell me you are any different from any other committee. No difference.

Let me tell you why the NCA was formed. When the Costigan royal commission came on and it started coming close to Parliament House, Canberra and the cronies of former members of parliament and prime ministers—specifically the 'Goanna'—Mr Hawke immediately stopped the investigation. He said, 'We want a crime fighting body, the National Crime Authority, to investigate everything.' It done absolutely nothing. It just covered up the crimes of every possible drug deal in this country.

In the 1990s, the National Crime Authority had a lot of witnesses. Not every witness but 90 per cent of protected NCA witnesses were murdered by the National Crime Authority. Have a look at Cassandra Ogden. Two and a half tonnes of cocaine and marijuana were imported by ex-Lord Mayor of Melbourne Irving Rockman and a son of a judge in Sydney. Cassandra Ogden was the only witness and she was a protected witness of the NCA. On the day of the trial she decided to kill herself, the poor thing.

There was a guy by the name of George Octopodelis who informed on importation of heroin and a ring of heroin traffickers and protectors in South Australia—as a matter of fact, 67 of them. One of those people was Barry Moyse, who interviewed me, and he said that there was no substance to any of my allegations. Of course not, because he was involved in it. George Octopodelis gave evidence on only one person, and that is Mr Moyse. George Octopodelis was also an NCA protected witness and was murdered, too.

Let me tell you what the current producer of *Four Corners*, John Budd, says in my submission. You should have that. I am sure of that because the submission has been printed by you. He said, 'Dear David, thank you for spending the time with me the other day on the matter of Mehmed Skrijel. I believe a great injustice has been carried out against the man. Clearly there is a health hazard in contacting the NCA about importation. Note that Pasquale Barbaro is the latest NCA witness to be killed.' Eat your heart out NCA! Have a look here. Bob Bottom, a top crime reporter, shows in a graph witnesses of the NCA in 1991 that seemed to be protected. But there was nothing, because they murdered all of them. There are no more protected witnesses. They do not live anymore.

CHAIR—Hold it there for a second. Just relax for a moment. I think it might be helpful, because we are jumping from one thing to another, if we ask some questions so that we do not run out of time. I know Mr Filing is very anxious to help you with a line of questioning.

Mr Skrijel—You are all anxious to help me. I know your heart bleeds for me. I know that.

Mr FILING—Hang on. Let him make his statement.

CHAIR—And the committee is anxious to help you.

Mr Skrijel—Let me just give you another thing—

CHAIR—I am suggesting the best way you can help yourself is to allow us to ask some constructive questions so that we can see a way forward. You are only confusing us by jumping around these documents. None of us, except Mr Filing, were on the committee when most of these documents came forward.

Mr Skrijel—I understand that.

CHAIR—So you will help us and you will help yourself, I think, if you just calm down a little and let us ask you some questions.

Mr Skrijel—I do not need any help. The last thing I will do is write you a pamphlet, a letter, which was supposed to be ready today but is not. That is a pamphlet that I will send to all of you—every member of parliament. I will ask you to produce evidence to say that that pamphlet is not true. I am going to the people of this country. That is all I am doing—nothing more. I do not want nothing from you. As far as I am concerned, you are incapable of helping anybody in this country except yourselves.

Mr FILING—I have a question for you, Mr Skrijel: where is your direct evidence that money from drug proceeds has been distributed amongst politicians on this committee?

Mr Skrijel—The NCA got 2½—

Mr FILING—No. I asked you: amongst the members of this committee, where is the money?

Mr Skrijel—I will give you the evidence and you go for it. The NCA got 2½ tonnes of cocaine and marijuana from Irving Rockman. That was never put in the annual report. Where is that money? As a member of the committee, why did you not ask for it?

Mr TRUSS—It is not in my pocket and you are suggesting that it is.

Mr Skrijel—You are protecting it now, aren't you?

Mr TRUSS—No.

Mr Skrijel—You are protecting it now!

Mr FILING—What is your direct evidence that members of the committee received proceeds from that?

Mr Skrijel—Direct evidence could be found by any royal commission, any honest inquiry.

Mr FILING—So you are saying that you do not have any direct evidence available?

Mr Skrijel—I will produce it in front of an honest royal commission only—nothing else.

Mr FILING—So you are saying that members of this committee received proceeds from illicit drug sales?

Mr Skrijel—I am saying that the politicians are protecting organised crimes right around this country.

Mr FILING—No, no, no. That is not what you have said here. You have said—

Mr Skrijel—I am telling you now what I am saying.

Mr FILING—I am telling you what you have said in your submission.

Mr Skrijel—That is my submission and that is what I am standing by.

Mr FILING—I put it to you, Mr Skrijel, that your submission is in fact not substantiated by evidence.

Mr Skrijel—It is substantiated by evidence. Let me tell you something. Let me give to you hard evidence. A few months back an article called 'Crime Boss on Back Foot' appeared in the Melbourne *Sun-Herald*, and it was written by one of your senators.

Mr FILING—Which one?

Mr Skrijel—Senator McGauran. Three days after he said 'City drug dealers alarmed: Police lost heroin battle'. A couple of weeks back: 'Heroin City'. Who is he kidding? Why is he lying? Only persons who are protecting organised crime and criminal activities in this country would write articles like that—nobody else.

Mr FILING—Are you saying that Senator McGauran is protecting them? That is ridiculous.

Mr Skrijel—I am saying the committee is failing deliberately and openly in relation to where organised crime and drugs are in this country. Let me give you another statistic. On *Lateline* on the ABC last year, there were three programs on drugs. It agreed that there are 185,000 hard heroine addicts in this country and 75,000 weekend users. If

you get a calculator and work out what hard heroine addicts and weekend users use, it comes to 127½ tonnes of heroine a year in this country. How much of that did the NCA catch? None.

Mr FILING—But you are saying in your submission that members of the committee received proceeds from it.

Mr Skrijel—They must. If they are protecting organised crime in an organisation like the NCA, they must be receiving something.

Mr FILING—Are we?

Mr Skrijel—I was convicted on hearsay evidence. You can be convicted on the same thing.

Mr FILING—On hearsay evidence from you. So you do not have any evidence?

Mr Skrijel—Sorry?

Mr FILING—You do not have any evidence?

Mr Skrijel—I will produce it in front of a royal commission only.

Mr FILING—So you have direct evidence of this?

Mr Skrijel—I will have evidence that will—

Mr FILING—I am asking you a specific question: do you have direct evidence of it?

Mr Skrijel—I have evidence that you are protecting organised crime and drug running in this country, yes.

CHAIR—Me personally?

Mr Skrijel—The politicians.

CHAIR—All of the politicians?

Mr Skrijel—All of the politicians. None of you get up in parliament and say, 'That's enough. We kill enough of our kids out there.' None of you!

Mr FILING—You were not here this morning, then?

Mr Skrijel—Sorry? Come on; I was here this morning. I have produced enough evidence.

Mr FILING—I have no more questions. I think Mr Skrijel needs help.

Mr Skrijel—Yes, he does—definitely. He needs help badly. But there is no politician to help. I have been asking for 18 years.

Mr FILING—The material you produced in 1990 was published. In fact, it was published and we distributed—

Mr Skrijel—Big deal. You published my submission. So what!

Mr FILING—Because I had the benefit of a full inquiry from Mr Quick, and Mr Quick recommended a royal commission.

Mr Skrijel—Exactly. Why didn't the committee fight for a royal commission? He recommended a royal commission. He said that there is enough evidence for it.

Mr FILING—When this matter was put to the committee, I voted for a royal commission.

Mr Skrijel—Oh, you did—one out of 10.

Mr FILING—No, there was more than me.

Mr Skrijel—The other was Senator Sid Spindler—two out of 10.

CHAIR—Mr Skrijel, your complaint is currently being considered by the Victorian Deputy Ombudsman, Police Complaints.

Mr Skrijel—No, it is not. You are five months behind time.

CHAIR—Has that been completed?

Mr Skrijel—Five months ago.

CHAIR—What was the outcome of that?

Mr Skrijel—I wouldn't have a clue. I did not participate in that. I was not allowed to participate.

CHAIR—Let me rephrase the question. There was an investigation by the Victorian Deputy Ombudsman, Police Complaints, into two specific allegations that you

have made. That investigation, as you have just pointed out, has been completed. This committee has asked to be briefed on the outcome of that inquiry. As yet, we have not been. As you are not aware, as we are not, what is in it, it may yet prove to address a number of your concerns.

Mr Skrijel—The Deputy Ombudsman for the Victoria Police is a feel good department. In one year he investigated 11,000 complaints against Victoria Police. I am quoting from the *Bulletin* magazine. He substantiated five. That is a feel good department. Currently, instead of being an internal investigation, Victoria Police is looking at the ethical standards of a paedophile. The same people who work in internal investigation work in the ethical standards department. It is as simple as that. I was not invited to give any evidence by the Deputy Ombudsman. I was not invited to do anything. I would not have a clue what the Deputy Ombudsman did. He has my full compliance.

CHAIR—I will tell you what he did. He investigated very serious matters. The first matter related to the alleged fabrication of evidence, which was purportedly found at your property on 15 October 1985 and subsequently used in your trial and conviction in the County Court of Victoria on drugs, explosives and firearms charges. I would have thought that that was a fairly serious matter for the Deputy Ombudsman to investigate.

Secondly, he was investigating the claim of police misconduct in relation to a shortened .22 calibre QE self-loading rifle, a photograph of which you showed us a moment ago, which was seized on 15 October 1985 and which allegedly reappeared at the Digby property in November 1992 after it had been ordered to be forfeited and destroyed by the County Court in 1987. They are two very serious complaints that you have made against Victoria Police that are being investigated.

Mr Skrijel—Excuse me, not Victoria Police. Never. I challenge you in any document to show me that I have stated—

Mr FILING—Just calm down.

Mr Skrijel—You are all doing it deliberately to put the blame from the NCA on to Victoria Police. At no time have I made any allegations to you against Victoria Police.

CHAIR—I am sorry. I concede that. I was not involved at the time, and I am trying to understand this. This is a very complicated matter. These are two serious complaints that you have raised. The point is that complaints against the NCA are being investigated. The investigation is complete but you don't know, as you sit here before us today, and we don't know, what the outcome of the investigation is. What if the investigation finds in both cases that there was fault on the part of those that you have accused? Isn't that what you are asking for?

Mr Skrijel—Let me ask you a question now. If you think the Deputy Ombudsman

is empowered to investigate the NCA, why are you now looking to investigate the complaints system against the NCA?

CHAIR—Because this committee does not have a role. You are quite right. We appreciate your suggestion that this committee ought to have greater powers, but the fact is that at the moment our powers are defined in the act and we do not have the powers to do some of the things that you want us to do. If we had those powers, it may well have been in the past that this committee could have achieved more to assist you with your problem. But the committee was not empowered under the law as it exists to do that. I do not know who is or who is not, but the point is that the Victorian Deputy Ombudsman has been given the job. You may just be advised to wait and see what the outcome of his inquiry is. Don't you think that would make some sense?

Mr Skrijel—None whatsoever. Firstly, the Victorian Deputy Ombudsman has had my case since his day of inception; since the day that he was formed he has had my full complaint in front of him. So far, not a single letter to me. It is nine years now, for God's sake.

CHAIR—He has probably got all these pages of documents.

Mr Skrijel—No. I lodged an official complaint with the Ombudsman the day of his inception, and I have not received a single letter from the Victorian Deputy Ombudsman yet. How many years does he need to investigate it?

Mr FILING—Mr Skrijel, let's get back to specifics. Given that Mr Quick recommended that there should be a royal commission, you consider, as you have said, that the reference of the complaints as a reference of complaints to the Victorian Deputy Ombudsman in relation to the behaviour of seconded officers of Vicpol was entirely inappropriate. So you are saying to the committee that, irrespective of whatever the Victorian Deputy Ombudsman may find, you consider his inquiry to be seriously flawed for a number of reasons: firstly, as you have just mentioned, because of the fact that he did not contact you directly; secondly, because he is not empowered to properly investigate the matter in the first place; and, thirdly, because Mr Quick QC recommended a royal commission as the only means of getting to the bottom of your complaints.

Mr Skrijel—Fourthly, the Deputy Ombudsman has no power to investigate criminal offences against anybody, full stop. He can only investigate minor disciplinary breaches. That is in his act. Fifthly, I have sent you a letter of four pages with everything in it, what the Deputy Ombudsman does and what he does not do. Senator Calvert put several pages in the *Hansard* as to why the Deputy Ombudsman has not got a prayer investigating my case.

CHAIR—Besides the fact that we do not have the power, as I have explained, to do what you want us to do—I think that is very clear to everybody—I think we have now

taken the view that it would be best for all of us to wait and see. What happens if he finds, essentially, to your satisfaction? What do you do then?

Mr Skrijel—Pigs will fly then too.

CHAIR—You are pre-empting the whole outcome, aren't you?

Mr Skrijel—There are 11,000 Victorians a year crying for the Deputy Ombudsman to find one single case honest.

Mr FILING—Let us go back to the facts. The facts are that the Victorian Deputy Ombudsman has reported to the Attorney-General. We have written to the Attorney-General asking the Attorney-General to brief us on the report. As yet we have not heard from the Attorney-General in response to our letter. I might say that that is not a great surprise; he has taken a long time over a number of things that we have dealt with him on. I would not say he is pedantic, but he is very particular about the way in which he deals with specific complaints. He will argue that he wants to do things properly rather than race into responses. However, given that the Victorian Deputy Ombudsman has reported, we are waiting for the report, as I have mentioned to you personally on a number of occasions. If you had been in this position, what would you have recommended that the committee should have done prior to receiving the Victorian Deputy Ombudsman's report?

Mr Skrijel—I tell you what I would have done: if there were an honest politician up there, I would give him this document that is based on facts. You have had it for the last two months. If you wanted to ring me up and say, 'You said this in that paragraph. What is that? What about proof?', I would have provided you. I have provided you with proof. I would have taken that into parliament and then challenged the Attorney-General to listen to the advice of his corrupt lawyers in his department. That is all he is listening for—the lawyers of his department.

Let me give you something now from his lawyers in his department. Here is Mr Norman Reaburn, under-secretary to the Attorney-General—previous, current. In the letter of 2 April to Duncan Kerr he says: 'As mentioned above, prior to the election I have approached Mr Quick QC who is prepared to conduct the review in accordance with attached terms of reference which have been agreed by Mr Sherman.' Now listen to this: 'Mr Quick has wide ranging general practice, which includes some royal commission experience. He has also acted on behalf of the NCA on a number of occasions but never in connection with matters relating to Mr Skrijel.' Actually, that was to the Attorney-General.

On 16 August, the same man wrote to the Minister for Justice. He said, 'We discussed the question of an appointment at our meeting on 11 August, and you agreed

that Mr David Quick QC would be an appropriate appointment.' He went on—listen to this!—to say that Mr Quick was from the Adelaide bar, had a general practice with a good concentration on criminal law matters, had never acted for NCA and, indeed, had acted for other parties against the NCA on several occasions. That is a one hundred per cent turnaround.

When I showed those two letters to Mr Quick I said, 'What is going on here?' He read them and said that neither of them are the truth, so Mr Reaburn lied on both matters. When I approached Mr Reaburn I said, 'What is going on here? Which one is the truth?' He said, 'What are you going to do about it—complain to Ms Smith, the Ombudsman?' He said, 'I appointed her, ha ha ha!' That is what you get. I sent this document to the Ombudsman. It is a laugh. She ignored it. What I am trying to—

Mr FILING—Hold on. Let us go back to the line of questioning so that we can get through what we need to get through before your time is up, because, at the end of the day, notwithstanding your accusations and everything else, I am still of the view that you deserve a hearing, and I want to get you a hearing.

Mr Skrijel—I deserve justice, not a hearing, and that is what you are not giving me.

Mr FILING—Be that as it may, we are still waiting for a copy of the Victorian Deputy Ombudsman's report so that we can come to a view based not only on what he has to say but also on what you have submitted to the committee as part of your response to the Deputy Ombudsman's inquiry being set up in the first place. Your contention is that Mr Quick's recommendation for a royal commission should stand and that Mr Quick's recommendation—based on Mr Quick's more thoroughgoing report, which comprised two volumes—is the most comprehensive. That is what I want you to give your view to the committee on: Mr Quick's report has been the most comprehensive examination of your material thus far, has it not?

Mr Skrijel—Mr Quick only examined—to contradict Mr Cleeland here—the false imprisonment and evidence provided. His preliminary report is a most accurate report, and it is the most accurate examination of my case yet done. His final report has been—and I have proven this to the committee—doctored by the Attorney-General's Department.

Mr FILING—You are also familiar with the fact that the final volume of the report has not been made available to the committee.

Mr Skrijel—There are three reports. There is a preliminary report, there is a final report and there is a secret report. I do not know whether you have read the secret report or not. I did not.

Mr FILING—We have not been given it.

Mr Skrijel—Okay. I have documented evidence that Keith Holland, Norman Reaburn and Simon Overland in the Attorney-General's Department redrafted that report, they have rewritten that report. There is such a deliberate contrast between his preliminary report and his final report that he says in his report that anybody reading this report after him should take notice that the NCA has done everything to protect itself but not to give a just explanation of things that happened. He said nobody should ever believe anything that the NCA said on that because they lied to him continually.

Mr FILING—So you agree that Mr Quick's report, of all the investigations—

Mr Skrijel—His preliminary report.

Mr FILING—Of all the examinations of your material, that has been the most thoroughgoing?

Mr Skrijel—Yes.

Mr FILING—Okay. Mr Quick, as you know, recommended there be a royal commission into your complaints.

Mr Skrijel—Correct.

Mr FILING—And bear in mind that he only recommended that in relation to the ones that were specifically referred to him.

Mr Skrijel—That is right.

Mr FILING—So, in relation to the specific complaints about the trial and the evidence, Mr Quick has recommended a royal commission. You have stated or asserted to the committee that the Victorian Deputy Ombudsman has not got the power or the wherewithal to deal with—

Mr Skrijel—No honesty, no nothing.

Mr FILING—The Victorian Deputy Ombudsman's role in this was prompted by the previous Minister for Justice writing—

Mr Skrijel—Duncan Kerr, to cover it up.

Mr FILING—Given that the committee have not seen the report—we would like to see the report; we wrote back in February to ask the report to be given to us and we are still waiting for it—is it your contention that we should ignore the report completely, and merely respond to Mr Quick's recommendations, or should we at least see what the Deputy Ombudsman has had to say in case, as Mr Bradford has said, the Deputy

Ombudsman actually agrees with you?

Mr Skrijel—Having had experience with the Attorney-Generals' Department, the Ombudsman's report has gone to the middle of February. I rung up Peter Ford in the Attorney-General's Department three or four weeks ago and I asked what was happening. He said: 'We are rewriting it.' I said: 'I beg your pardon. What about the Quick report?' He slammed the phone down in my ear. It is as simple as that. That is as far as I can get to.

I rang up the Attorney-General's Department and from the lady there whom I got put on to—I think her name is Audrey Fagin—I got exactly the same thing. They are really well versed in hanging the phones up. So I cannot find out what is happening to it. What I am saying to you gentlemen, if you are not what I said in the submission I thought you to be, is that there is a document here that I want you to put in parliament. I want that on the record and read in parliament. Then you can find out whether the Attorney-General listens to the advice of his staff.

Mr FILING—Let me solve the problem for you. Why don't we accept that as a submission and publish it? In that case it does not even have to be produced. It is produced and published as a submission.

Mr Skrijel—Would Attorney-General's read that or not?

Mr FILING—The Attorney-General may choose to do whatever the Attorney may do. That is something that he has to decide.

Mr Skrijel—I know that, but I would like him to be forced to see it.

Mr FILING—Hang on a second. I am giving you the opportunity to publish this as a protected document with the privileges of a parliamentary committee so that at least no-one can allege that your document is in any way being suppressed.

Mr Skrijel—Thank you.

CHAIR—I think the best way forward is to receive this as an exhibit now, and then we will take it from there. So we will collect that document from you in a moment.

Mr Skrijel—There are two documents.

CHAIR—Put them on the end of the table here and we will take it that you are tabling those as exhibits and they will be dealt with. I want to clarify something. Despite what you have said about us, you are having an opportunity at the moment, I suppose, in some respects to deal directly with the parliament of Australia here. I think I speak for us all. We really want to try to help you. Those of us only recently on the committee have

read a lot of this material and I personally think that you have been treated very badly. But there are procedures, and that is where our understandings seem to separate in terms of how to solve this problem.

As a result of your appearance today this committee may do as Mr Filing is foreshadowing—we could well recommend that there be a royal commission. That is something that we could do. But at the moment we have still to contend with this Victorian Deputy Ombudsman's report. I think, as Mr Filing is also foreshadowing, that it would be a little unwise of us to jump ahead of that. We are waiting to get that. Hopefully, that will come to hand shortly. Like you, we are frustrated, as also Mr Filing suggested, by the slow process involved. But I think the committee is wise to wait for that just in case the findings are helpful. We would be a bit silly to go off ahead of that happening. So that is where we are at, at the moment.

Mr FILING—Can I just go to those six tapes, which you have alleged that the NCA has not returned to you.

Mr Skrijel—I do not allege anything. Even the NCA letter stated that the tapes are now lost. I don't allege anything. That is a fact. NCA said that they cannot find the tapes any longer.

Mr FILING—Do you want to clarify this or not? If you don't, let us know. I am happy enough to do something else. I have plenty of other things to do.

Mr Skrijel—Go for it.

Mr FILING—I have a lot of other matters to do with my own constituents to deal with. They are my primary responsibility. However, in trying to get to the bottom of this I just want to ensure that we are clear on this score. Those six tapes you gave to the NCA.

Mr Skrijel—No. The private investigator gave them to the NCA, which I paid for and which I never received.

Mr FILING—To this date you have not been given those tapes back?

Mr Skrijel—No.

Mr FILING—You believe that the NCA has those tapes still?

Mr Skrijel—Yes, the NCA does have the tapes.

Mr FILING—Can I put it to you that the NCA informed the committee that the tapes could not be found?

Mr Skrijel—Well, of course, anything which is against them, would they be stupid enough to keep them?

Mr FILING—No, but I am just saying that the NCA have responded by admitting that they have the tapes in their possession but they cannot find them.

Mr Skrijel—Let me explain to you something.

Mr FILING—Can I ask you another question. Have the tapes at any stage been returned to you?

Mr Skrijel—No, never.

Mr FILING—They claim that the tapes contained only anecdotal information about the availability of drugs in the area but no details of specific offences.

Mr Skrijel—Let me now fill in there. I listened to those tapes in a motel in Mount Gambier—police and drug runners there—and they contained more than anecdotal evidence. Channel 7 called a private investigator whom I have not seen since the day that I paid him up at Mount Gambier. He said on national television that those tapes support my allegations in full and he said on national television that there are high-ranking police and politicians protecting that drug ring that I was attempting to expose. That is not me, and the private investigator—I will fill you in as to who he is—was the one that the Labor government used extensively in tracking the funds of the BLF here in Victoria. He is a brother of ex-police minister Race Mathews, so he must be credible if the Victorian government used him.

Mr FILING—I want to deal with these tapes. This is an important issue because the NCA had your tapes.

Mr Skrijel—Yes.

Mr FILING—And they are no longer available. They have lost them. You say that you have not received those tapes back, you disagree with the summary by the NCA of the contents of those tapes and you assert that the tapes contain quite specific details of serious allegations about drug trafficking and the people involved in them.

Mr Skrijel—The tapes that I listened to in the Mount Gambier motel definitely do that and the tapes that the private investigator gave to NCA investigator Ron Iddles state the same.

Mr FILING—Is it your view that the treatment of those tapes should also be referred in a royal commission for a more thorough inquiry?

Mr Skrijel—Most definitely, yes.

Mr FILING—In Mr Cleeland's submission, he mentioned, and you disagreed with him, about the $1 million compensation.

Mr Skrijel—That is correct.

Mr FILING—But you mention at the beginning of your submission that, as part of discussions at some stage, there was talk of a vote.

Mr Skrijel—No, that is all I ever asked.

Mr FILING—You are agreeing with me?

Mr Skrijel—Yes. That is all I ever asked.

Mr FILING—Thank goodness for that.

Mr Skrijel—Never any money.

Mr FILING—So all you really wanted as part of any settlement—

Mr Skrijel—I go back fishing where I belong, nothing more.

Mr FILING—Apart from getting a proper investigation of your complaints against the NCA, all you wanted was to replace the boat that was destroyed—

Mr Skrijel—By fire.

Mr FILING—By fire.

Mr Skrijel—That is right.

Mr FILING—If I can just go back to Mr Cleeland's comments about the pre- and the post-NCA events, the pre-NCA events obviously in South Australia when you were a fisherman in Southend and that you complained to the then Premier, Mr Dunstan, about what you had seen and heard in your local community were referred by Mr Dunstan to the South Australian Police who sent Barry Moyse to investigate.

Mr Skrijel—Yes.

Mr FILING—And, from that point onwards, your woes started.

Mr Skrijel—Exactly.

Mr FILING—From the creation of the NCA, it has been your contention that officers who were seconded to the NCA who were acting on behalf of the NCA had in fact manufactured and fabricated charges against you which led to your conviction, led to

your imprisonment and then led to the quashing of the conviction on appeal after 5½ months in gaol.

Mr Skrijel—I served my full sentence. Let me explain something to you so that all of us understand it. Most of the politicians love to say I am complaining against the Victorian police. That is not true. I never lodged any complaints to a committee or any parliamentarians against any of the Victorian police and I challenge any of you to produce that, present or past. That is No. 1. No. 2: at my trial it was admitted by Carl Mengler of the NCA—

Mr FILING—Who was a Victorian police officer seconded to the NCA.

Mr Skrijel—Just a second; just let me finish. It was admitted by Carl Mengler in the dock, who was the head investigator for the National Crime Authority, seconded from the Victoria Police, that there were 38 police officers who raided me. He admitted that the NCA was in charge. I have a stack of documents to say that McDonell, a lawyer from NCA, was with him out there when he raided me. I challenge any of you to prove otherwise.

Mr FILING—Let me just clarify here so we can get it all in before the end of your time. Your difference on the question of this Deputy Ombudsman's inquiry, apart from the fact that you do not believe he can do a decent inquiry, is that there were NCA personnel involved in the fabrication and manufacture of the case against you who were NCA officers and had nothing to do with the Victoria Police.

Mr Skrijel—Exactly. Let me give you another example. With regard to the cooey pistol, they had a set-up twice with it. I have, through FOI, 65,000 pages of documents. Whatever you say, I can produce a document to prove whatever I say. With regard to that cooey pistol, I have all the copies of the Victorian property office records. Here is one document—

CHAIR—We were getting somewhere a moment ago but now we are off—

Mr Skrijel—No, we are getting back to it again because Paul asked about the NCA being involved.

CHAIR—We know the answer to that.

Mr FILING—What I am trying to do is to clearly enunciate the case for a royal commission.

Mr Skrijel—I understand you, Paul. I am giving you ammunition for it. There is a cooey pistol that at no time—and I repeat at no time—went to the Victorian property office. It was always kept at NCA headquarters.

CHAIR—We understand that now.

Mr Skrijel—That is what I am trying to say. There is your ammunition for a royal commission because you cannot send an investigation to the Deputy Ombudsman when the Victoria Police had nothing to do with it. The Deputy Ombudsman cannot knock on the NCA's door and say, 'I want information,' the same as you people cannot.

CHAIR—I think we have covered that issue pretty well.

Mr FILING—At the end of today I want Mr Skrijel to make it clear, before we actually get to see it, that the Victorian Deputy Ombudsman's report is flawed because, firstly, there were personnel involved in the fabrication of the case against Mr Skrijel who were not members of the Victoria Police, therefore the ombudsman has no grounds whatsoever to investigate them; secondly, Mr Quick had recommended a royal commission and had conducted the most thorough investigation of two specific complaints up until the present time; and, thirdly, that the Victorian Deputy Ombudsman does not have the resources nor the empowerment to properly investigate a complaint against the National Crime Authority, which was the body responsible for the raid on Mr Skrijel's property as well as for the manufacture of the case against him that was overturned on appeal after he had served a period in prison. Is that the case?

Mr Skrijel—Thank you.

Mr FILING—And you are asking the committee to recommend that a royal commission be held into your complaints so that they can be properly investigated and that the investigation be free from the limitations that both Mr Quick and the Victorian Deputy Ombudsman had.

Mr Skrijel—Thank you.

CHAIR—I think we have established very clearly now how we can best assist. Obviously your coming before us today has been very worth while. I should observe, for the record, that Mr Barry Moyse, whom you refer to, has been sent to prison for 25 years.

Mr Skrijel—Twenty-seven years.

CHAIR—There must be some limited satisfaction for you in knowing that he has been put away for such a long period of time.

Mr Skrijel—I agree with you, but it would have been much more satisfactory if the NCA did not murder George Octopodelis, and then there would be another 65 high ranking police and politicians facing the same court. That would be much more

satisfactory.

CHAIR—At least Mr Moyse has been put away for an exceptionally long period of time. I quite genuinely hope you feel there has been some value in your coming here today, despite your, in a sense, understandable cynicism about the processes, or rage even. I am sure I speak for all of us when I say we are very concerned about what has happened to you and the way your life has been affected by what has happened. Hopefully at the end of the day you will get justice and we would want to be a part of that process. Thank you for coming before us.

Mr Skrijel—I thank you too, because this is the first committee that has not treated me in a hostile way, the first committee that listened to me. I apologise if I have offended any of you.

CHAIR—That is all right. We are used to being offended. Thank you.

[4.05 p.m.]

GRACE, Mr David, QC, Chairman, Criminal Law Section, Law Institute of Victoria, 470 Bourke Street, Melbourne, Victoria 3000

PROVIS, Mr Geoffrey Peter, President, Law Institute of Victoria, 470 Bourke Street, Melbourne, Victoria 3000

CHAIR—I welcome Mr Provis and Mr Grace, who are representing the Law Institute of Victoria. We do not have a written submission from you, but you may wish to make some opening remarks, in which case I will give you a chance to do that in just a moment. I am required to state that, if during the hearing you consider information you might wish to give or comment requested by a committee member to be of a confidential or private nature, you can make application for that information or comment to be given in camera and the committee will consider your application. I should also remind you that it is a contempt for a witness to give any evidence which the witness knows to be false or misleading in a material particular. Who was going to make a statement?

Mr Provis—I was. As President of the Law Institute of Victoria, my role today is essentially to introduce Mr Grace. Mr Grace is the head of the criminal law section of the law institute and has the expertise and experience to comment; mine is really a supporting role. That being said, I will hand over to Mr Grace.

Mr Grace—I just want to make a number of points at the outset and then invite any questions you might have of me. The points I make are as a result of discussions and consultations with members of my section. We represent approximately a thousand solicitors who practice in the criminal jurisdiction in Victoria. So it is a sizeable number of practitioners, and quite a sizeable number of them have had dealings with the National Crime Authority since its inception. So the collective experience is one that is valuable.

What has come out of those discussions are the following points, and they are not necessarily in order of importance or gravity. The first one is that there is concern that the NCA, when it is conducting an investigation, stick strictly to its terms of reference. There has been, of course, with the Elliott trial saga, a lot of publicity in relation to that particular issue. But it has arisen, as you would be aware, in other contexts, including mention of it in quite some detail in the judgment of Justice Merkel in the Federal Court in the recent case involving the Coffin Cheaters Bike Club members from Perth. That is a very significant factor that, we say, affects not only the operations of the authority but also the respect with which it is held in the community. That is an important aspect that I think this committee ought to take regard of.

Secondly, in relation to the terms of reference, there is concern that the terms of reference should be as narrow and as specific as possible. There are reasons for that, such as the points I have already made: a matter of respect for its activities and the fact that it is an intrusion into the private lives of individuals due to its secrecy rules and due to its coercive powers. So the tension of the invasion of privacy and the invasion of individuals'

rights has to be balanced by the NCA abiding by the rules. These rules can be abided by more easily by the NCA, we feel, through very narrow and very specific terms of references being given by the ministers concerned, whether state or federal, at the time concerned.

The third point concerns the issue of whether there is a future role for the NCA, bearing in mind the extensive activities of both the Australian Federal Police and, in this state, the Victorian police. Our section's view is that the Australian Federal Police or the Victorian police can adequately perform the functions that the NCA performs in this state, albeit with perhaps some additional coercive powers. But, by and large, those police forces can perform those functions.

There have been a lot of comments, both by politicians and in the media, about the rate of success of the NCA. I think it is important to note that the rate of convictions or the rate of recovery of profits of crime are not the only determiners of the success of a particular organisation, whether it be the NCA or any police organisation. Convictions may not occur due to a variety of reasons. We saw in the Elliott case technical legal rulings which certainly had the effect of avoiding conviction for anyone involved in that case. It gives you an example of the type of situation that can arise in the course of a criminal trial where, notwithstanding what might have been a very effective investigation, there may be no conviction. So one should not measure the success of an organisation by reason of the conviction rate. I think that is something that is common in our organisation.

One thing I should have mentioned is that the organisation that I represent is not strictly a defendants' organisation. We also represent prosecutors. So the views I am expressing are views across the board.

The next matter relates to some concern about a duplication of functions. The NCA at times has been investigating matters and there has been at the same time, without the knowledge of the NCA, a concurrent investigation into an individual or into a group by the Victoria Police or the Australian Federal Police. There seems to be—and this is more anecdotal than concrete evidence that I can rely upon—a mutual distrust, if not envy or jealousy, between organisations, going in both directions, for reasons we are not sure of. There appear to be occasions where—and this has become apparent in a number of court cases where documents have been subpoenaed—there may have been concurrent investigations going on without either force knowing that that was occurring. So duplication of functions occurs, and of course the embarrassment and the waste of resources are clear in that situation.

Accountability is something that we see as a problem. We are aware of the permanent committee that is a watchdog over the National Crime Authority, but we are concerned that that committee, in effect, works with the benefit of hindsight or in retrospect. It cannot and does not have an overseeing role for the day-to-day activities of the NCA.

We believe that there is scope for the appointment of an independent overseer, who

will have a full-time position in overseeing any investigation conducted by the NCA to ensure that terms of reference are abided by; that the organisation is liaising properly with other forces, state or federal; that there is no duplication of functions; that individuals who are called before any hearing of the NCA are being properly counselled as to their rights and are being properly informed of their ability to obtain legal representation—I will come back to that in a minute; and that any complaints about treatment by or the conduct of the NCA officers, either at the hearing stage through questioning by NCA members or in using their coercive powers in obtaining the presence of individuals before NCA hearings, is properly observed and proper standards of conduct are adhered to.

That brings me to the next point. Thousands of members of the community have been subpoenaed over the years to give evidence before NCA hearings in Melbourne. Many of those thousands have been subpoenaed at very short notice. Many are not aware of their rights under the NCA Act of obtaining legal representation. Many are told by NCA officers, 'Look, there's no need to get a lawyer. There is no need to worry about that; we are only going to ask you a few questions.' The next thing they know, they turn up at the NCA headquarters in Albert Street, East Melbourne. They are brought into a foreign environment; many are frightened, they do not know what is going to happen and they have no idea what they are going to be asked. They are brought into a hearing room and are asked questions—grilled sometimes—they are accused of various different things from time to time and they are really not properly made aware of their rights.

A system of legal aid, or at least proper notification of the availability of legal assistance, must be conveyed to those persons who are called and who are unrepresented at the hearing. There is a section under the NCA Act which provides for the obtaining of legal assistance but there is absolutely no obligation on any member of the NCA who is conducting a hearing to advise a witness who is attending of the availability of legal assistance. Never is an adjournment offered unless the person requests legal advice for legal assistance purposes. That is a very important aspect.

It not only has the result for those individuals who are called before the NCA of causing a great deal of anguish and upset, many of whom are not involved in any criminal activity whatsoever but who are witnesses or who can provide information about criminal activity, but it alienates those people and those people's families against the NCA and its officers. In terms of getting community support for the activities of the NCA, it is a very bad public relations exercise.

The NCA officers might say, 'The reason for that is that we don't want people running off to see lawyers. We don't want adjournments because people will start talking about what is happening. We will give them a week or a few days to get a lawyer or to get advice and that person will start opening his or her mouth to their friends or to other persons who might be the subject or the object of the investigation under question. Therefore, the integrity of the investigation might be compromised.' That might be the trade-off to ensure that rights have to be observed. There may be a risk of that happening but I would suggest that it is a small risk and it is an acceptable risk and one that should be observed or for which procedures should be put in place to observe people's rights in

that regard.

The next point I want to raise is a general point which concerns the delineation between the investigatory role and the prosecutorial role. I know that this matter arose in the Elliott matter and you might have already heard submissions on this aspect. As a concept, it is very difficult to ascertain in practice on the street or in the courts whether the NCA is a tool of police forces or DPPs across the country or whether the reverse applies. The problem has occurred because the distinction between the NCA's role in many investigations and that of a state or federal police force has been blurred. We say the reason for that is that the NCA has not observed the proper delineation between its proper role, which is investigation, and the role of state and federal police forces and DPP officers, which is preparing for prosecution after the NCA has completed the investigation.

We feel—and this is with the combined benefit of our experience—that the NCA has delved too often into activities which are more akin to preparation for prosecution than for investigation. They have been too concerned to ensure that the material they are obtaining would be useful in any prosecution. I am not saying that is not a relevant concern—it is—but it has become a predominant concern which affects the direction of its work and the nature of its investigations.

I think too much emphasis is being placed upon preparing for prosecution rather than simple investigation work. Our understanding of the background concerning the establishment of the NCA is that it was established primarily to become an investigative arm of government and to assist various state and federal police forces and other law enforcement agencies in ensuring prosecutions of those involved in crime, not to become a prosecution arm itself.

To give you an example of the type of blurring that occurs, in a typical prosecution that emanates from an investigation by the NCA you will find the following occurring. There might be 10 NCA officers who have been conducting an investigation under the direction of perhaps a sergeant or whatever rank. Those officers—let us take Victoria—may have been seconded from the Australian Federal Police, from Victoria Police or from other police forces around Australia. Once there is sufficient evidence to charge a person, a charge sheet has to be typed up, someone has to go to a court to have it issued and filed, and then it has to be served. Time and time again we see, at the bottom of the charge sheet, the issuing officer—'The issuing officer is Sergeant Joe Bloggs,' or 'Constable Joe Bloggs'—with a number. There is no reference to the fact that he is a member of the NCA other than his address and his phone number, which are care of whatever the NCA address is in Albert Street, East Melbourne, and the NCA phone number. That should not happen.

Mr FILING—Why?

Mr Grace—Because the NCA is not a prosecutorial agency; it is an investigative agency. It is not its role to prosecute.

Mr FILING—I am sorry, can I just intercede there? What difference does it make in that case?

Mr Grace—It makes no practical difference to the individual who receives the charge, but it clearly indicates that the boundaries have been overstepped. It conveys the clear impression that those who work for the NCA are not aware of the boundaries.

Mr FILING—Can I just intercede there again? Given the history of the authority, if there was a transgression or let us say there was an envelope being pushed out, that happened in 1985 in the first instance. I am going back to the first debates of the NCA—or the NCC as it was in the initial concept—when it was considered to be equivalent to a standing royal commission in a sense. Hence, that is why it had references and why it was not seen to be a prosecutorial body, which was not the role of a royal commission at the time. Its role has evolved since then and I would have thought that, given the necessity for secrecy in particular to be an almost sacrosanct aspect of its work, for it to then give over its prosecutions to another body—

Mr Grace—But it does.

Mr FILING—In the first instance, I am saying. Obviously, in most cases it would be dealing through a DPP in a local jurisdiction. But, in the first instance, when it is making arrests and charging the accused with an offence, I would have thought it is probably preferable for that to be undertaken by the NCA, given that it would be less likely to compromise the secrecy and the confidentiality of the person's arrangements.

Mr Grace—Let us take the occasion where the NCA has enough evidence to charge someone at 9 a.m. this morning. What advantage is there to the administration of justice for the NCA to arrest that person, bring him in for an interview, conduct an interview, tape-record it, charge him, lodge him at the watch-house and then throw the whole brief of evidence over to a DPP's office?

Mr FILING—In the normal investigation phase in most jurisdictions—I am certainly familiar with my old jurisdiction—it would only be the investigating officer, the one who has conducted the interviews with the person concerned, who would be in a position to be satisfied that sufficient grounds existed for the swearing or whatever of a complaint.

I would have thought that it would be in the interests of an accused person to be charged by the same officer rather than, for instance, that officer swearing out a warrant and then handing the warrant over to, say, the Victoria or the New South Wales police to be executed given that one of the central problems that led to the creation of the NCA in the first instance was some dissatisfaction with the integrity of other forces and their jurisdictional problems.

Mr Grace—It was never envisaged that decisions to charge people would be within the charter of the NCA. That was never envisaged. But that is what has occurred in

practice.

Mr FILING—Who would you see as doing that, then? I am interested in how you would see a change.

Mr Grace—Either the Victoria Police or the Australian Federal Police if it were a summary matter or depending on the seriousness of the matter, or a state or federal DPP's office.

Mr FILING—We have received a specific complaint from a witness who alleged that he was made to walk the gauntlet by the NCA. He was made to appear at the lock-up in front of the waiting media, who had been tipped off that he was due to come in. He said that it prejudiced his case and that he felt it was deliberately set up in order to undermine his own credibility and his right to a fair trial.

Given that, in your assertion, the NCA would have a brief, albeit the prima facie brief, of an offence and would presumably have a warrant—because I presume no police officer, unless they had a warrant, would be in a position to formulate the charge unless they were present when the person made a confession or gave evidence in a particular way, or they saw the offence take place—I would have thought it would have been preferable for that particular process to be inculcated into the work of the investigatory phase. I am still not convinced.

It seems, given the propensity in some instances for quite deliberate leaking to occur, that the fewer people involved in the process the better. It would be in the interests of the accused because the accused could have their rights infringed, even if at the end of the day their charges were withdrawn and no other action was ever taken again.

Mr Grace—Yes, but an organisation that is competent to decide whether there is sufficient evidence to prosecute a person, through having the resources to make that decision and having the experience in and the history of making that decision for many years, should be the appropriate organisation to decide whether someone is charged. It should not be an organisation which has no history of that.

Mr FILING—It does now.

Mr Grace—It does only through default and only through improper watching by the parliamentary committee, in my opinion.

Mr FILING—Looking at the act that empowers the NCA, where would you introduce that circumscription into the act? How would you do that?

Mr Grace—There is no authorisation, as far as I am aware, that permits the NCA to lay charges.

Mr FILING—But if they have officers attached to them who are—

Mr Grace—The officers can but only by reason of their commission as officers of state or federal police forces.

Mr FILING—A solicitor could take out a complaint.

Mr Grace—Yes, a solicitor could.

Mr FILING—We had it put to us that, in essence, the NCA probably has inferior powers in some instances to bodies like the Victorian Egg Marketing Board. I want to touch also on the question of references in a moment, if I may.

CHAIR—You interrupted Mr Grace's presentation, appropriately, to pick him up on that issue of the blurring of that investigator-law enforcer-prosecutor role. Do you want to complete your presentation?

Mr Grace—I think that covers everything I wanted to say. I have raised some other issues in answering Mr Filing's questions and covered all the areas. So I am happy to continue this discussion with Mr Filing, if that is appropriate.

CHAIR—There are a number of us who want to ask questions, and I will go back to Mr Filing in a moment. Just to clarify, you did make the point about what the Law Institute was, but how does that differ from the Bar Council?

Mr Grace—The Law Institute of Victoria represents the 9,000 solicitors of Victoria; the Bar Council represents the 1,000 members of the independent bar.

CHAIR—As you said, you had both defence and prosecuting members. Mr Filing was going to ask you the question about references, but let me pre-empt some of that. You have argued for narrow, specific references. The majority of input we have had to this committee actually argues the contrary. People are saying, 'Forget the reference system altogether. It is a major inhibitor, it causes problems, it obviously leads to legal challenges.' Then there have been a number of intermediate positions, including some argument, I think, for the status quo. Aren't the narrow, specific references impractical? Where you are coming from, I can perfectly well understand why you would argue for that, but the NCA has got a job to do and you obviously acknowledge it is an important job, although you actually said otherwise in a sense, and I will come back to that. But, assuming that it exists, isn't the interest of its doing its job properly served by actually having more general references?

Mr Grace—Then it becomes in effect a witch-hunt against a particular individual.

CHAIR—But the benefits of a royal commission—and the NCA in a sense became a standing royal commission—are that a royal commission heads off this way and something happens and it heads off that way, and eventually it gets somewhere, doesn't it?

Mr Grace—Then it can apply to the committee or to the minister concerned for an

extension of the terms of reference.

CHAIR—But it might be having to do that every day.

Mr Grace—They may have to, but one must not lose sight of the fact of the heated discussions that occurred, both in the federal parliament and in public, prior to the establishment of the NCA. There was a tension between the rights of the individual and the rights of the community to be protected from organised crime. There was a marrying together of the various rights in order to create a scheme whereby such a coercive organisation as was suggested by Costigan and others would at the same time observe a reasonable level of rights being afforded to the individual under investigation.

One of the formulas that was established to ensure that that occurred was this reference issue. So it was not a simple case of the minister for police in Victoria writing to the committee and saying, 'We want approval for a reference into the activities of Mr Filing, who we believe is an arch-criminal. We cannot tell you what he has done but we believe he is involved in criminal activity.' That would not be sufficient. You had to go further and say what the nature of the activity was, at least a general description. You would be aware of the types of references that are being given at the present time—

CHAIR—You are not suggesting a general description; you want it narrow and specific.

Mr Grace—But it has become absurd. If you look at the references that have now issued—and Justice Merkel commented upon it in that case; you have read it—the width of the references has become absurd. Everything against an individual who might have been accused of selling amphetamines on a street corner, anything in his reference might include selling aspirin to gun running and everything in between. I have seen them, and my section members have seen them brought in by their clients. It just gives the NCA carte blanche to investigate every single form of crime that could possibly have been committed by an individual. So the NCA's activities then become not an investigation into criminal activity but an investigation into a criminal. That is the difference, and that is what is happening.

Mr FILING—I appreciate the way in which you have distilled it down, but I am not sure whether that is not what the community actually wants, given that there has been some evolution since 1984.

Mr Grace—I ask you this rhetorically: why has the government, either state or federal, never seen fit to give a royal commissioner power to lay charges except for contempt of his own commission? Why? Royal commissioners, standing or otherwise, have always been given powers to recommend to governments the laying of charges.

Mr FILING—But royal commissions are an instrument of the executive. There is no question that the NCA is. The NCA is an independent statutory body. So, in essence, there is a difference in the role.

Mr Grace—You are calling it a standing royal commission.

Mr FILING—Yes, except that it was envisaged in that way and what has happened is that it has evolved since. In actual fact, in my view, and I just put it to you, you cannot have, in essence, a standing royal commission under those circumstances because of the fact that it is a creature of the executive.

Mr Grace—It has become a 10th police force in Australia. That is what has happened.

Mr FILING—You mentioned earlier that it had evolved in a way as to become either the instrument of the DPPs and the police forces or the other way round. In other words, there was a greater, closer linking. Mr Richter, for instance, in a conference in Brisbane a few weeks ago, made the observation that one of the reasons why the police commissioners are now such ardent supporters of the NCA is that the NCA has become a very helpful and useful appendage to their police force's work. Would you agree with that proposition?

Mr Grace—Certainly, and it is only because of the coercive powers. If you gave police forces the same coercive powers, they would not need the NCA.

CHAIR—Is that what you want? Is that what you think should happen? That is in fact a point you made, that you could do without the NCA and just give the police the powers.

Mr Grace—Yes.

Mr FILING—But you would not argue seriously that a traditional police body like the Victoria Police should have coercive powers like the NCA?

Mr Grace—No, I would not argue for that, but I am saying, if there was an option to get away, get rid of the NCA, that is the way of achieving it: give state and federal police forces more coercive powers and maybe set up a framework within those forces to have NCA type hearings.

CHAIR—What about the cross-jurisdictional problems? The thing that makes the NCA most effective is in the fact that it is a national organisation.

Mr Grace—Those problems would have to be dealt with.

CHAIR—The NCA was formed to deal with them.

Mr Grace—You have joint AFP and state police investigations into crime and prosecutions of crime all the time. Those problems are dealt with constantly. The decision is made at some stage in the course of investigation as to which force is going to take the primary responsibility of charging the individual, if there are both state and

Commonwealth charges that are relevantly available to be charged or in combination.

The scheme that is then established is that the legislation that best protects the individual's rights governs the decision as to who will be the charging body. It often happens in the drug area where you might have an importation of drugs and the trafficking of those drugs, so it is both state and federal. It might be a joint state and federal task force.

Geoff Provis has just indicated to me that he did not understand me to be arguing against the continuation of the NCA. I am not, and that is not the position of my organisation.

CHAIR—That does clarify some of the remarks you made earlier.

Mr Grace—What I am saying is that, if this committee were considering that the NCA not continue, that would be a way of achieving it.

CHAIR—That clarifies that nicely.

Mr TRUSS—It does because I had gained the impression from what you were saying that you were arguing for the abolition of the NCA and that coercive powers be given to the states.

Mr Grace—I am sorry if I conveyed that impression.

Mr TRUSS—You have also mounted a very strong argument for the defence of the rights of the individual, particularly when they are the subject of scrutiny of the NCA. I put to you that the NCA was established and given coercive powers because of community concern about organised crime. The community was prepared to accept some compromise on the rights of the individual in an endeavour to stamp out organised crime.

Mr Grace—Yes, the individual who is the subject of the investigation, not the individual who is an innocent member of the public who is being called in to give evidence about his or her observations of what occurred on a street corner in Altona in relation to a drug deal. That person, who is like a frightened rabbit, is hauled in by the NCA and has absolutely no idea what is going on. He is not told what is going on. He is not given the opportunity to get legal advice.

CHAIR—In what way is he hauled in?

Mr Grace—By a subpoena.

CHAIR—That is not hauled in; that is being invited.

Mr Grace—He is not invited.

Mr Provis—It does not feel like an invitation to them.

CHAIR—The impression you are giving is that somehow he is being dragged out of bed and hauled in.

Mr Grace—At 10 o'clock at night he receives a knock on the door and someone says, 'Here's a subpoena to appear at 9 a.m. tomorrow in Albert Street, East Melbourne.'

CHAIR—Wouldn't most people faced with that seek—

Mr Grace—It has occurred on many occasions.

CHAIR—But I can't quite follow that. Wouldn't anyone with half an ounce of intelligence faced with that prospect immediately talk to their solicitor or a solicitor?

Mr Provis—No. It is advised, as David suggested, that they don't need to.

CHAIR—But it has been put to us that any suggestion that you are being approached or investigated by the NCA automatically places a stigma on you. Some people have put to us that even that of itself may impact on a perception of an investigation in the mind of the public or in the mind of a jury, I suppose. I cannot understand how people would not seek legal advice in that situation. You are saying that they do not, so that is why not.

Mr Grace—I invite you, Mr Chairman, to attend the Melbourne Magistrates' Court on any morning of the week you care to choose. You will see a parade of hundreds of persons who are attending that court.

CHAIR—We are not talking about the Magistrates' Court; that is the point I am making here.

Mr Grace—They are attending court without legal advice.

Mr Provis—Moreover, they are actually charged with offences and they haven't sought legal advice.

Mr TRUSS—If they are just a witness who happens to see, to use your own case, a drug deal going on on the corner, they are not exactly likely to feel threatened by the process.

Mr Grace—The reality is that they are threatened.

Mr TRUSS—Why are they threatened, if they just happen to be a casual observer?

Mr Grace—Because when the subpoena is served upon them, they are not told why they are being brought before the NCA. They are given a subpoena which has

attached to it terms of reference which range from offences of selling aspirin to gun running. They look at it and say, 'What have I done? What have I involved myself in?'

Mr TRUSS—Are you saying that all of a sudden, without any pre-discussions, without any pre-warning, at 10 o'clock one night somebody turns up and says, 'Be in court tomorrow'?

Mr Grace—Yes.

Mr TRUSS—I would be somewhat staggered if that happened to me.

Mr Grace—You will be very staggered when you hear the evidence.

Mrs WEST—Can you cite names, dates and places where the NCA—

Mr Provis—No, I am prevented by the NCA Act from naming dates, times and places.

Mrs WEST—So you cannot allude to any—

Mr Provis—No.

CHAIR—That is a valid point you have made, and we appreciate that. Mr Truss, did you have any more questions?

Mr TRUSS—I was commenting on this question of civil liberties and to what extent you are prepared to accept a compromise on individual liberties in order to capture Mr Big.

Mr Grace—The community is prepared to do that but, as I indicated, there has to be a trade-off. The individuals who are being called upon to give evidence to support the investigation must be treated as human beings, must be treated with civility and must be made aware of their ability to obtain legal representation if they wish, or at least legal advice, before they have to attend the NCA.

It seems to me to be a counterproductive activity on the part of the NCA to not undertake those types of assistance to persons who are not the subject of any investigation. Let us put the persons who are the subject of investigation in a different category. Let us talk about the hundreds, if not thousands, of individuals in Australia each year who are called before the NCA to give evidence.

Mr TRUSS—Do you believe there is a culture within the NCA of a lack of civility?

Mr Grace—Yes.

Mr Provis—But, even putting aside the civility point, I think David was suggesting—and he will correct me if I am mistaken—a little earlier that the balance has been struck in the legislative framework that we have. Problems arise with terms of reference that are unnecessarily wide and that goes, in a sense, beyond the spirit of the legislative framework. That point is important to those who are involved in it, and it ought not be diminished, but then there are those sorts of things going beyond the terms of reference. So, if the balance has been struck, why, as I think David is asking, move away from that? There should be observation of that. There is a need for a balance. There is a compromise. It has been struck.

Mr Grace—If I can add something: the individual who is called as a witness is not told whether he or she is under investigation for a criminal activity. So what are they to think when they receive a summons to attend the NCA?

CHAIR—If the police are investigating you they do not necessarily start up—I mean, there is a method here, isn't there?

Mr Grace—They are protected by law. If they interview a suspect, they have to say that they are under suspicion for committing the offence of X, Y or Z.

Mr FILING—Only when they have come to a prima facie case.

Mr Grace—No, in the course of investigation—when they reach the stage where they believe they have sufficient evidence to caution the individual.

Mr FILING—Yes, that is what I am saying. But that could be at the conclusion of a three-day series of interviews. It may not necessarily be at the outset.

Mr Grace—Yes, but it includes it at the outset also if it happens to be appropriate.

Mr FILING—Can I just touch on that. I am trying to ascertain the difference in, say, the treatment of a witness in a criminal investigation where a police officer may approach a witness to seek information. If the witness is not a suspect or the police have not formulated a prima facie case to charge that person, I would have thought there would be no requirement on the police officer to do anything other than to give sufficient information that would allow for an intelligible response from the person concerned. It would be in the interests of any investigating officer in those circumstances to be as restricted in the information as possible in case a witness was likely to assist the offender to escape justice, surely.

Mr Grace—Police officers are obliged, pursuant to their own standing orders and rules, by the commissioner to inform persons who are to give them statements in relation to the investigation of a crime of the reason for the statement being sought from that person. It might be an eyewitness to an offence or it could be some ancillary matter. They are told. That person is not required by law to cooperate with the police. The difference with the NCA is that a person has no right to refuse to answer questions.

Mr FILING—There is a difference. In the case of a witness who is being interviewed who may give evidence that is incriminating, there is no bar on the police using that evidence once they have warned the person that the evidence may be used in a prosecution. So in actual fact there is built-in protection in the NCA Act.

Mr Grace—No, there is not.

Mr FILING—There is. A person may give evidence of a self-incriminating nature as a witness to a hearing, and that evidence is not entitled to be led as evidence in a prosecution matter.

Mr Grace—The individual is entitled to claim the privilege against self-incrimination before the NCA. Mind you, he is not told that by the NCA. That is another factor that you ought to take into account.

Mr FILING—I want to turn to the hearings in a second, if I might.

Mr Grace—I take your point on that. Nevertheless, it allows derivative information to be obtained.

Mr FILING—What I am trying to do is assess—or balance up—the rights of a citizen as a witness to an NCA inquiry and as a witness to a police inquiry. Let us say you have a witness who has been located by police at the scene of a crime, who wants to go home, who is not necessarily terribly keen on giving evidence or helping the police in any way and you have somebody who has received a subpoena at 10 o'clock at night to attend a hearing. In both cases, a person faced with that sort of authority is in an inferior position. There is no doubt about that. In both cases, there is opportunity for either the NCA or the police to infringe their rights. In the case of the witness on the street they can—perhaps through the absence of any advice to the contrary—imply that there is a requirement for the witness to cooperate. In the case of the NCA, they can fail to advise the witness of their requisite rights at the outset of a hearing. In our case, in balancing up what are existing rights in the normal jurisdiction—the criminal justice system—and rights in relation to the National Crime Authority Act, where would you suggest that a witness's rights could be beefed up, and at what stage of the process should that happen?

Mr Grace—As I said, NCA officers should be required to inform witnesses, by document and also verbally, that they have a right to receive legal advice and that legal assistance, if they cannot afford it, will be provided to them under the auspices of the federal Attorney-General or via some arrangement with the states—through the Victorian Legal Aid or the state legal aid based organisations—or through some other scheme whereby there might be an in-house lawyer on roster, perhaps from the private profession, sitting at the NCA on dates that they have hearings.

Mr FILING—Similar to, say, a duty counsel at a magistrates court?

Mr Grace—Yes.

Mr FILING—The hearing stage is the stage about which we have had a specific complaint, as I mentioned earlier. But the aspect of the complaint that troubles me more than the others is the question of the power that is given to the authority under section 25 of the act, where the authority may permit another person to be present. In the case I am referring to, the person concerned was a member of New Zealand's serious fraud squad who, although bound by confidentiality requirements while within Australia's jurisdiction, on return to New Zealand was not. It has been alleged to us that the witness concerned was not informed of the identity of this person or of their role and would not have had an opportunity to do anything about it even had they known.

What would you see as being a satisfactory protection for the rights of a witness in a hearing where, for instance, the authority wished to have present or attempted to have present—to hear confidential evidence—somebody who was not a member of the authority and was not bound by their secrecy arrangements? Would you envisage amendments to provide an opportunity for the witness or counsel to object to that person being present?

Mr Grace—I would certainly support that. In my experience representing clients before the authority, I do not think there has ever been an occasion where counsel assisting the authority has not been supported by other members of the authority who are not police officers but may be solicitors or have some other administrative role, together with police officers conducting the investigation. So you might have four or five people on the other side who are involved. I have never had an occasion where there has been an outside individual, as you have indicated. If that had occurred, I certainly would have objected. What the validity of that objection would have been, I am not sure, but there certainly ought to be provision in the act to make it absolutely clear that the ability to object to those persons is there.

Mr FILING—Can you perhaps give us some advice and the benefit of your counsel on this matter. In the instance where, say, a member of the New Zealand serious fraud squad was here, once they returned to their jurisdiction, they could use the information they had learnt without fear of being pulled up. Could you think of some means of devising an undertaking about what they had learnt? Let us just say it was important to have somebody of that particular position there—

Mr Grace—You would need a bilateral treaty or agreement between the New Zealand and Australian governments that any information gleaned by any officer of the New Zealand police force or other investigative arm of the New Zealand government from hearings of the National Crime Authority of Australia would be kept confidential unless agreed to by some body—maybe your body, the joint parliamentary committee, or the overseeing body of the NCA—with the full ability of the individuals concerned to make submissions against such release of information.

Mr FILING—I see this as one of the most serious infringements of civil liberties of a citizen. They are required to provide confidential information—which may be of a highly sensitive commercial nature, notwithstanding any criminal aspects of it—and a foreign party, who is not bound by that particular confidentiality arrangement on the return

to their home country, may be present. In an instance where that occurred, do you believe the NCA could have been presumed to have connived to deliberately reveal that information by having somebody like that present?

Mr Grace—Yes.

Mr FILING—And under the circumstances, would you consider that to be a very serious infringement of the spirit of the legislation?

Mr Grace—Certainly.

Mr FILING—The other thing is in relation to section 25. That is, there is a prohibition on the publishing of the material in that particular hearing to others—what they consider to be their secrecy arrangements—but the authority can change that. They can actually permit themselves to inform somebody else or some other body of the nature—

Mr Grace—It happens regularly.

Mr FILING—What would you consider to be a satisfactory change to render that consistent with what are considered to be the traditional civil rights of a citizen?

Mr Grace—It should only be made available to courts which are trying individuals who have been the subject of an investigation where that evidence is relevant to the guilt or innocence of that particular individual.

Mr FILING—And you would see it as being important to have section 25 amended—

Mr Grace—To be restricted to that.

Mr FILING—For instance, can you see any instance where that power to be able to waive the secrecy arrangements on the authority's volition without recourse would be appropriate or acceptable? There is a direction that they not prejudice the fair trial of the person concerned.

Mr Grace—Yes. That is an important safeguard that is there. It regularly occurs that subpoenas are directed to the NCA for it to provide transcripts of hearings before it where those transcripts might be relevant to the trial of an individual. That happens regularly. That section has not proved to be an impediment to the delivery of that information.

There may be occasions where the interests of the Australian nation—such as national security—are relevant. It may be the case that the NCA ought to reveal

information that it has received. For instance, there might be a plot to kill the Prime Minister or the Governor-General or something of that nature, and I would have thought in those types of instances it would be appropriate to reveal that to the appropriate governing authority.

The other point about representatives from overseas organisations being present in any NCA hearing is this. Although one would accept that the NCA, with the best of intentions, would allow, for instance, a New Zealand major fraud squad officer to be present at a particular hearing, one cannot second guess what the motives of either that government or that organisation may be. One needs only to get some experience from what has occurred in the United States, where the abuses of power by the CIA and FBI have occurred over many years and have been well documented at public hearings and Senate inquiries over there, to understand the difficulty in attributing genuine motives to organisations whose decision-making processes one is not privy to. So one ought to start from a prima facie provision that no outside party—unless good reason is established by that outside party, the onus of proof being on that outside party—

Mr FILING—For their presence.

Mr Grace—For their presence.

Mr FILING—Yes, I understand that. As a matter of interest on the model you have in mind in relation to the NCA, recently there was a very critical television program on the various transgressions of civil liberties by British police, constabulary forces, local, the serious crime squad and the regional crime squads, where they have in fact fabricated evidence that led to wrongful convictions of particular people. In that particular program they looked at two other models, one being the United States criminal justice model and the other one being the French one, where there is clearly a separation of activities of the investigation and the prosecution processes. In the case of the French, the investigation is by somebody of a judge's stature—

Mr Grace—A magistrate.

Mr FILING—A magistrate. Then there is also a quite clearly separate prosecution phase that is subject to a rigorous set of rules. In the United States there is a much greater level of rights applicable to the accused. They are treated in a much more superior way than, say, in relation to the rights of an accused in the Australian jurisdiction. How would you see the NCA operating in a way that would better protect the rights of an individual and, at the same time, protect the rights of the rest of the community from things like, for instance, $7 a pop heroin on the streets?

Mr Grace—A division of roles between prosecution and investigation is imperative in my opinion. If you divide the roles, there is no vested interest involved. There is no vested interest involved in planting fabricated evidence, like in Mr Skrijel's

case, for instance, where great resources may have been expended, there was a lot hanging on it, they wanted to get a conviction, they did not have the evidence, so they planted it. It has happened time and time again, not necessarily so much in Australia, but it has happened overseas, and let us use that experience.

There are police officers who have gone out on a limb to their superior officers to get extra resources to put in wire taps or phone taps, to put bugs in places. There has been surveillance for a year and nothing has been found. So they say, 'Okay, let's plant a pound of heroin on the bloke to ensure we can get a prosecution.' They decide whether that person is going to be prosecuted.

Wouldn't we be better off if we did not have the possibility of vested interests taking any part in the decision to prosecute? Let us have an independent prosecution arm which is provided with a brief of evidence from the investigators, the police, whether they be NCA or any other organisation. When it is provided with a brief, it decides, 'Yes, we will charge that individual,' or, 'We will not charge that individual.' That is the answer to your first question. The avoiding of the vested interests is very important to ensure that we do not have disasters like in England with the Guildford Four, the Birmingham Six and whoever else. There are many cases in the United States where that has occurred.

The second point was, 'How do you prevent the $7 a pop heroin on the street?' The NCA and state police forces are working their butts off to prevent that, and there is nothing wrong with what they are doing to prevent that. The aims are laudable. Everyone would support it. The whole community would support it. But the end does not always justify the means.

There are ways of achieving the results that we all want to see—for instance, drugs eliminated. When Jeff Kennett opened the Bendigo Prison Drug Treatment Centre the other day, he said that 80 per cent of prisoners in Victoria are there for either drug related crimes or crimes involving their own abuse of drugs. So 80 per cent of Victoria's prisoners are in there for drugs. That is just an amazing number. I would be surprised if the percentages are any different in many of the other jurisdictions of Australia, with the exception of perhaps the Northern Territory, where a lot are in there because of alcohol.

Mr FILING—And WA.

Mr Grace—Yes, and WA. Drugs are a huge menace and a huge problem and a huge contributor to crime in Australia. I believe that the NCA has a role in that. But there is no reason why its role cannot be effective. At the same time, appropriate safeguards should be put in place to protect the rights of innocent individuals who happen to be caught up in its operations.

CHAIR—I wish to get a couple of quick answers from you in relation to privilege and incrimination. There has been a suggestion that the NCA be given similar powers to

the ASC, which is a different approach. Are the existing safeguards satisfactory?

Mr Grace—No, because a witness is not told that he has the privilege.

CHAIR—Putting that aside for a moment, the way it is structured now, is the status quo better or more preferable from your point of view to, say, the ASC or other versions where—

Mr Grace—The ASC model can only be effective if the person has legal advice. With the ASC model, before every answer the witness has to say the word 'privilege'. What do you do with someone who does not have an education and English might be their second language? A migrant who is hauled off the street in Altona for having witnessed a drug deal is told, 'You can say "privilege" before any answer if you want to, otherwise it might be used against you in any subsequent court proceedings.' He does not know what they are talking about. He cannot even understand the sentence, even though they might be able to speak English. You cannot have that unless you have a scheme in place where that person is given legal advice.

CHAIR—What about the search power under section 22? Do you have any concerns about that?

Mr Grace—I do not have it in front of me, so you will have to remind me of what it says.

CHAIR—It requires the authority to have an appropriate warrant issued. It obviously provides some judicial scrutiny of the process. There has been some suggestion that that again inhibits the role of the NCA. It was even put to us that they perhaps should have some sort of a standing search warrant or right to search or some other variation on that theme.

Mr FILING—What has been suggested is a power similar to the South Australian one, where someone has a delegated power within the police structure to issue a warrant.

Mr Grace—You would need an independent watchdog such as a Supreme Court judge in place, otherwise there are vested interests involved. The bloke who is appointed drinks with the bloke who wants the warrant.

Mr FILING—Is a Supreme Court judge appropriate in the sense that there may be hundreds of warrants in a particular year that may need to be executed?

Mr Grace—It might be a magistrate, but it should be an independent judicial officer.

Mr FILING—The president is a judge. Are you happy for that to remain the case?

Mr Grace—Yes, I think it is appropriate that it is a judge.

CHAIR—That has been very helpful to us. We appreciate the fact that you have both given us your time today.

Mr Provis—Before we conclude, I have a question of the committee. Bearing in mind the nature of the discussion we have been having and the extensive powers of the NCA and, for that matter, the extensive powers of this committee, is the gong left in here as a deliberate distraction to witnesses or has that just been lying around? It has been attracting my attention for the last half hour.

CHAIR—I don't know, actually.

Mr TRUSS—We don't put up scores at the end.

CHAIR—It has not been used so far. Now that you have pointed it out, we will wait and see.

Mr TRUSS—It is not like 'Red Faces'.

CHAIR—Thank you very much for appearing before us today.

Committee adjourned at 5.10 p.m.