



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

Reference: Witness protection

FRIDAY, 23 JUNE 2000

CANBERRA

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JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

Friday, 23 June 2000

Members: Mr Nugent (*Chair*), Senator George Campbell (*Deputy Chair*) Senators Denman, Ferris, Greig and McGauran and Mr Edwards, Mr Hardgrave, Mr Kerr, and Mr Somlyay

Senators and members in attendance: Senators Denman, Ferris, Greig and McGauran and Mr Edwards, Mr Hardgrave and Mr Nugent

Terms of reference for the inquiry:

The Parliamentary Joint Committee will inquire into the National Crime Authority's arrangements for witness protection, with particular reference to:

- (a) the efficiency of the witness protection program administered by the Australian Federal Police on the National Crime Authority's behalf;
- (b) whether the criteria used to offer witness protection, and to discontinue that protection, are appropriate, especially having regard to the social impacts on participants in the program; and
- (c) whether payments made to protected witnesses are administered effectively, especially the payment of taxation liabilities

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Committee met at 9.31 a.m.**LAMB, Mr Peter John, General Manager, Operations, National Crime Authority**

CHAIR—Welcome. I declare open this public hearing of the Joint Parliamentary Committee on the National Crime Authority in relation to its inquiry into witness protection. We are starting today's hearings with Mr Peter Lamb, the NCA's General Manager, Operations. As you know, Mr Lamb, the committee prefers all evidence to be given in public, but you may at any time request that your evidence, part of your evidence or answers to specific questions be given in camera and the committee will consider such a request. In particular, I understand that you have got some concerns about the discussion of the case concerning a Mr William Sommerville who is a former protected witness who instituted legal proceedings against the NCA in May 1998 and, although Mr Sommerville is now deceased, as far as we can ascertain, that action is still being continued by his widow.

It is understood that you are subject to a suppression order by the court in relation to discussion of the case. Let me assure you that your evidence today is covered by parliamentary privilege which gives you an absolute immunity. Section 16(3) of the Parliamentary Privileges Act 1987 in particular, makes it clear that no court or tribunal may admit the transcript of a parliamentary committee hearing into evidence. It is my expectation that the committee will be interested in issues that arise from the Sommerville case rather than the specifics of that case but nonetheless, if there are any particular questions asked which you strongly object to answering in public, the committee will give consideration to your objections and may agree to take the evidence in camera. We have received the authority's submission and it has already been published by the committee. I invite you to make an opening statement before we move on to questions.

Mr Lamb—Thank you, Chairman. Could I perhaps restate some of the things that were in that initial submission to you. Effective witness protection is vital to the operation of law and order enforcement agencies, including the NCA. The information provided to the NCA by many people is of prime importance in the assembly of briefs and admissible evidence against principals of organised crime. Such information is more likely to be forthcoming if persons giving it can be assured of their and their family's safety. The objective of Witness Protection Programs is to provide protection and assistance to high-risk witnesses in relation to serious criminal offences and to provide an environment in which the witnesses may give evidence without fear of retribution.

The objectives include re-assimilation of the participant and his family into the community when evidentiary commitments are finished. This can include a one-off resettlement allowance. It decreases or removes deterrents to potential witnesses without going so far as to offer inducements which would undermine the integrity of the evidence given by that witness.

This can be a balancing act to ensure that the needs of the witnesses are catered for, but not to the extent that there is apprehension or a real possibility of that evidence being tainted. In Australia, witness protection has grown from quite an ad hoc arrangement to the situation where arrangements are now usually formalised and in many cases assisted by legislation. Only Tasmania and the Northern Territory do not have formal witness protection legislation.

However, in April 2000 the Tasmanian government announced its intention to introduce witness protection legislation as well.

For reasons stated in our submission, law enforcement agencies, including the NCA, would find it very difficult to work effectively if they were not able to offer witness protection in the circumstances where it is warranted. Although it is but one of the tools available to law enforcement, it is considered an essential element.

CHAIR—Thank you. You have been in the game, as I understand it, for about 40 years—

Mr Lamb—Yes.

CHAIR—and the last eight years with the NCA, so you have obviously got a significant amount of experience in policing. Can you give us a thumbnail picture of the sort of people who go into the Witness Protection Program? Do they tend to be major criminals? Do they tend to be minor criminals who are rolling over to get themselves off the hook? Do they tend to be innocent bystanders who happen to have some key evidence and are fearful of retribution? Are they people just trying to make a fresh start in life, perhaps having been in the criminal cycle for some time? Can you give us a feel for that?

Mr Lamb—The majority of people that enter the Witness Protection Program that I have been associated with in my career are primarily criminals. They are usually criminals of some standing, albeit not principals, of course, but they are people from the criminal milieu. In a majority of cases I would suggest that they would be people who are career criminals and who have positioned themselves somewhere about the middle level of the criminal structures. Very few people in any program are innocent bystanders.

Most of the people that go into the Witness Protection Programs are not doing so because they are providing information in the interests of the community. They are, in the main, people who find themselves caught, literally, and who are in a position to give evidence about the principals or the conduct of other people who hold a more senior position in the criminal world.

CHAIR—You have seen the Witness Protection Program before the introduction of the legislation—

Mr Lamb—Yes.

CHAIR—and since. That came in the 1994 to 1996 period. Do you have a view on how that legislation has changed the situation? Has it made it more effective or less effective? Are there particular problems with the legislation that has been brought in that were not there before? Can you give us a feel as to whether we have come to grips with the administration of the system?

Mr Lamb—Clearly we have formalised something that was informal and it has put in place the legislative basis around the country, not just in the Commonwealth, from which witnesses can be handled properly in accordance with the law. It has made it far more accountable as well, because under the federal act, for which the Australian Federal Police Commissioner is responsible, it makes him accountable. So it formalises the procedures and practices, it gives a

basis in law to do certain things in respect of these people, but it also makes the procedures very accountable.

CHAIR—Obviously we are not talking about large numbers of people being involved and there is a process laid down which has been documented for us in evidence. But I understand that there have been a number of NCA applications for people to be put on the Witness Protection Program—about seven—which have been rejected. Can you explain to us how that process works? What are the practical implications from the NCA's point of view if you want to put somebody on it and you cannot get approval to do so?

Mr Lamb—I assume you are talking about the federal program.

CHAIR—Yes.

Mr Lamb—We look at someone and make a judgment as to whether it is viable to put them forward to the Australian Federal Police for consideration. We make no judgments about whether they are suitable—nor should we, because the Australian Federal Police Commissioner is accountable for that act. We cause them to be subjected to a threat assessment, once again by the Australian Federal Police, which determines, based on that threat assessment as well as other assessments, psychological and other, whether the person is suitable for witness protection or, indeed, whether witness protection is warranted. Any of those things could result in someone not being acceptable to the program.

CHAIR—What does that do to your investigation? What if you want to put somebody in the program and they are subsequently not accepted?

Mr Lamb—We have not come to a conclusion as to whether it is absolutely essential. I must say, where we have said that it is absolutely essential to our case, I know of no occurrence where that person has been denied access to the program.

CHAIR—The Victorian government submission raises concerns about the long list of criteria that the federal act requires the AFP Commissioner to consider before including somebody on the program. By comparison, as I understand it, the Victorian Police Commissioner has basically unfettered discretion. In other words, you have different sets of rules within the country, which I would have thought would be a concern to the NCA, which is trying to operate across the country. But the concern was raised that someone who is accepted under one program may be unacceptable under the other, and that undermines that whole national approach. Has that been a problem? Do you support in principle having the criteria, or do you think the unfettered action of the Victorian approach is better? Are there particular aspects of that list of criteria that you think should not be there, perhaps? Are there things that you might like to see added?

Mr Lamb—We have had no problem with any, to be quite frank with you. You would know only too well that, in our federal-state arrangements, the states are at liberty to do whatever they wish to do in that context. We have not had any problem with any program. Those questions would be better posed to the Australian Federal Police and/or the Victorians themselves. We have no problem with either program and we have used both programs.

CHAIR—Do any of my colleagues have questions?

Senator DENMAN—How successful is the transition back into the community once the protection stops?

Mr Lamb—Once again, I would be talking from my experience, in a previous life, in the Australian Federal Police and a little in the NCA. Once again, I am sure the AFP would be in a better position to explain the pros and cons of people going back into the community. In short, my observations are that there are problems and that there will continue to be problems, bearing in mind that these people are (a) criminals and (b) have been taken out of the criminal milieu and placed somewhere that is totally foreign to them. Some of them have wives and families that find it difficult to adjust. Therefore, the translation back into the community at some time is quite difficult.

Senator DENMAN—What happens if the witness has a wife and perhaps the marriage breaks up during that period and the wife takes off? What happens then?

Mr Lamb—There have been occurrences of that nature, of course.

Senator DENMAN—I can imagine.

Mr Lamb—I would feel happier if the state and federal police answered that, because they are the ones that have to deal with that issue. We see the end result.

Senator FERRIS—I would be interested to explore with you, Mr Lamb, the security questions related to witness protection. I think we are all aware of the unfortunate case in Perth where a person on witness protection subsequently died. Do you have any input into the criteria of security and do the security levels change? I know this is a question I am also going to ask the AFP, but do the security levels change related to the degree of importance of the witness and, if we were starting with a clean sheet, is there anything that you would put in there that is not there now, particularly in relation to the actual security of data on that witness that is held?

Mr Lamb—Once again, the AFP are probably in a far better position to answer that question than I am but, from my own point of view, there have been occurrences where people have gone in at one level and been elevated to another level because of what we have learnt in the meantime by virtue of the investigations. The security levels are dependent upon the level of threat that is determined. All of those things are taken into account by the Australian Federal Police. They have criteria, they have a procedure and they have a practice that they employ. Your second question was, once again—

Senator FERRIS—If you started with a clean sheet, given the years that you have had in the Australian Federal Police, is there anything that you would change in the current legislation?

Mr Lamb—No, certainly not. Once again, the Australian Federal Police might be in a better position to answer that as well because they are handling us and other people coming from other places, so it may well be that they think there are some things that need changing. I have been fortunate to see Witness Protection Programs in the USA, Northern Ireland and places like that,

and let me say that the federal Witness Protection Program and, indeed, the others are second to none.

Senator FERRIS—How are they better than the overseas programs?

Mr Lamb—For a start they are smaller, so they are easier to manage. We have not got the large numbers to contend with, nor has organised crime or terrorism penetrated the organisations to the level that perhaps they have in other countries.

Senator FERRIS—So that makes it a little bit easier?

Mr Lamb—Yes, it does.

Senator FERRIS—Just recalling some of the evidence that the NCA has given us over the years about the penetration of the drug syndicates into Australia now, surely it would be reasonable to reflect that the level of protection that is going to be required to break some of these gangs and drug syndicates is going to require a greater level of expertise than we might have needed, say, five or 10 years ago?

Mr Lamb—I think that at the outset the Witness Protection Programs were developed in Australia out of learning from the experiences of others, so they started off at a pretty effective level. It has not been a ground up building process. They have taken the good things from other systems and, from my point of view, they have advanced those to a level that is probably second to none.

Senator FERRIS—There has been some public debate recently about the way in which the financial support given to protected witnesses is assessed by the taxation department—and it will be interesting to try and clarify that in the course of this inquiry—but are you aware of any witnesses that you have thought of as being potential protected witnesses who would be perhaps less likely to accept witness protection and, therefore, give evidence to you that was useful because of this uncertainty that they might get a tax bill?

Mr Lamb—No, I know of none that has taken that into account at the time. Most are far more concerned about their and their family's personal welfare.

Senator FERRIS—Do you think that is an issue of principle though in clarifying how that income is assessed?

Mr Lamb—Yes, it probably is, but let me say at the outset that it is a matter between the individual and the tax office. Perhaps you might wish to explore that with Tax.

Senator FERRIS—Yes, it is an issue of principle, but it seems as if the tax office is now treating it as taxable income, where in the past they do not seem to have done that. I think the *Sunday* program brought that out in relation to a protected witness, who I think may subsequently have died, who suddenly discovered that he had a very large tax bill, which he had not expected to have when he went into witness protection.

Mr Lamb—With all due respect, I think that in that matter there were negotiations long before he entered our program on tax matters between him and the Taxation Office but, once again, that is something that I cannot really elaborate on. That is a Taxation Office matter. They are the administrators of their own legislation and I would prefer it if you address those questions to them.

Senator FERRIS—But, as a matter of principle, does it concern you that there does seem to be some uncertainty about the way the tax office is treating the witness protection plan?

Mr Lamb—We have not seen a large number of occurrences of that nature, so the answer would have to be no.

Senator FERRIS—Right.

Mr EDWARDS—From a policing point of view it has not impacted on it?

Mr Lamb—No.

Mr EDWARDS—Are you perfectly happy with the terms of the MOU?

Mr Lamb—Yes. MOUs have an expiry date on them; they are useful things for a period of time. They always should be reviewed, perhaps annually, to see whether there are circumstances that warrant change, but I am quite satisfied with the current MOU. Deputy Commissioner Whiddett, before he went to my job—and I wish he was here today answering these questions rather than me—

Senator FERRIS—I thought you were enjoying yourself.

Mr EDWARDS—We want to give you a good send-off—we have not started yet!

Mr Lamb—He and I discussed this issue probably annually and we see no need at this time to vary the MOU at all. But it is something that should remain on the agenda.

Senator McGAURAN—The Italian experience is that their parliament is, right at this moment, going through the debate of changing their Witness Protection Program. They are in fact lifting the bar to make the criteria to get into it tougher. Their experience had been that a lot of people were flooding the Witness Protection Program because of the great results they have been having in regard to the Mafia and, once in, they simply were not delivering on their commitments. Have we had a similar experience—have the witnesses delivered on the evidence that the NCA had brought them into the program for?

Mr Lamb—In the context of the NCA, yes. I know of no witness that has not. Some perform better than others, and as times get closer to their appearance in courts they become a little bit more agitated and more concerned. But, at the same time, I know of no appearance where that has happened.

Senator McGAURAN—No backdowns?

Mr Lamb—No.

Senator McGAURAN—No false evidence?

Mr Lamb—No. But we are operating in a somewhat different environment than the Italians.

Senator FERRIS—Thank goodness!

Mr Lamb—The Italians went from ground zero with nothing—with no witness protection, with no capacity to offer indemnities even. They went from ground zero to that in about nine years, so you can see that with the ability to provide indemnities and to provide protection they were able, once and for all, to get a pretty good feel for the way that the Mafia and the n'dragheta and the Camorra operated. They were pushed very strongly into that position by the Americans and the results have been nothing short of outstanding.

Senator McGAURAN—Absolutely.

Mr EDWARDS—Do we in Australia, to your knowledge, ever run Witness Protection Programs for overseas jurisdictions?

Mr Lamb—I would prefer you ask that to the AFP. We certainly do not become involved with that.

CHAIR—I would like to look at a slightly different issue. The Victorian Director of Public Prosecutions, Mr Flatman QC, said in his submission that from a prosecutor's perspective:

We see it as desirable that matters such as financial support and relocation of witnesses be left as much as possible until after the completion of proceedings so as not to impinge on questions concerning the witness giving evidence.

In other words, it is presumably better quality evidence if somebody has not been bought off—I suppose that is the implication. Would you like to comment on that? If it takes two years to go through a criminal process, is that still a realistic option?

Mr Lamb—It can be the only option. Defence counsel will automatically look at that as an avenue to exploit. If there is any suggestion that the evidence is tainted by way of inducements and/or looking after a witness in such a way that they can get an angle on it, then of course that will be exploited. Yes, I totally agree with Mr Flatman. I think that is absolutely essential. It is a balancing act. In a lot of cases defence counsels will argue that the very provision of sustenance and accommodation is in fact an inducement to play the game the way the prosecution wants. However, in most cases we will win the day in that context, but if you start to deal with them in terms of payouts, relocation, severance payments and that type of thing in advance, then that certainly would be deemed to be inappropriate.

CHAIR—How do you strike that balance? I suppose it could be a couple of years from the time the offence occurs to the time of the final trial?

Mr Lamb—Yes.

CHAIR—If somebody is in fear of their life during that time, how do you try to strike that balance if you have got that problem of the evidence potentially being tainted?

Mr Lamb—It is explained to them at the outset that until the matter is finalised there will be no discussion or there will be no debate about their relocation and/or severance. But, once again, that is managed for us by the AFP in accordance with the legislation—and/or the statement.

CHAIR—But there is still a capacity to keep them somewhere safe?

Mr Lamb—Yes, that is the program per se. That is what the program does.

CHAIR—So you will basically put them in on a temporary basis while the case is going on—is that what we are saying?—and then there is discussion about the long term.

Mr Lamb—They are in the program proper, but once again people will be able to explain the levels of security and/or where they are. So they are in the program for that period of time. When it comes to the end of their involvement in the matter then there are judgments made by the AFP Commissioner about relocation and the professionals that run the program—where and how they should be located and the level of payments that should be made to them to re-establish themselves elsewhere.

CHAIR—So what we are talking about is the desirability of waiting until after the court action has finished to discuss any long-term arrangement?

Mr Lamb—Exactly.

CHAIR—But you would still undertake a short-term arrangement?

Mr Lamb—Yes.

CHAIR—Could we turn to that Sommerville case that I mentioned earlier. Could you give us just a very quick summary of the case from the NCA's perspective, because I then want to ask a number of questions. I want to make sure we get it in context.

Mr Lamb—Sure.

Senator FERRIS—Mr Chair, I think that a member of the press is here. Do we have any difficulty with Mr Lamb giving evidence?

Mr Lamb—I certainly do.

CHAIR—We already explained earlier on—

Senator FERRIS—I know that but I just raise that point.

Mr Lamb—I have great difficulty in discussing the Sommerville matter. I have section 51 to consider. My chairman has impressed upon me that the matters raised there should be dealt with in a private hearing.

CHAIR—All right. We might just adjourn for a minute and the committee can decide whether it wants to go into a private hearing or not.

Mr Lamb—Let me also say that I am not able to offer you very much in relation to the Sommerville matter anyway. It all happened prior to my arrival at the NCA.

CHAIR—I do not particularly want to go into the Sommerville case per se, but some of the issues that arise from that are the sorts of questions I want to ask. For example, if somebody is in the Witness Protection Program and undertakes other criminal activity, it is then within their ability to seek to be relocated yet again and change their name and have another identity. It is how you pursue that subsequent criminal activity—those sorts of things.

Mr Lamb—Perhaps I can answer that question to a certain extent. It would be a matter for the managers of the program and the investigating authority that had the jurisdiction for the criminality that he was alleged to have committed to determine the level of threat, whether it still remained and whether his conduct was such that he should be removed from the program. All of those people would have a role in determining what happened as a result of any criminality that he might get involved in. From my past experience there have been occurrences of that here. It is one of the major problems of the US program and other programs around the world.

However, the program, as it is in Australia, is managed very well. The people are very competent and they get onto it very quickly. As I said before, it is a matter for the jurisdiction that has carriage of the investigation of the criminality that the witness is alleged to have committed. They should deal with it in the normal course of events.

CHAIR—If I am on your Witness Protection Program and I commit another offence—say, I steal some money from my colleague here—and then, without your being aware that I have actually stolen some money from him, I ask to be relocated for some reason that I can cook up and assume a new identity so that in fact I am trying to avoid him knowing where I am and being able to bring charges, would it be possible for my colleague here then to go to the courts and find out where I am?

Mr Lamb—Not necessarily, no. But once again perhaps the people that manage the AFP program could answer that question because they are the ones who would have to deal with that issue.

CHAIR—But you have got a lot of experience in the AFP and the NCA; these things have obviously happened on occasions.

Mr Lamb—Yes, they have happened. The individual would obviously report the loss of that money or that crime. He would report that in the normal course of events and I know of no

occurrence where it has not been investigated properly by the agencies to whom he has referred the matter or made his complaint.

CHAIR—My concern is that, superficially at least, clearly the case that we are talking about relates to that sort of situation and as I understand it that is now only able to be dealt with because it is going through the civil courts. It has not actually been dealt with through any process.

Mr Lamb—It is an adjudication problem for the agency to whom it was reported as to whether it was criminal or civil. I am not saying this matter specifically; I am talking about matters in general.

Senator FERRIS—I will ask a question in principle as well which you may be able to answer. When you make the assessment and have the early discussions with an individual about perhaps moving into witness protection, is there any criterion that you put in that says, 'And if you were to commit a crime during that time the chances are you will lose your protected status'? Do you try to build a criterion into the analysis of whether they move in to it that they give you some sort of commitment which holds to a principle?

Mr Lamb—That is, once again, something that the AFP can answer because they are the ones that enter into the agreement with the individual.

Senator FERRIS—But you presumably have discussions with these individuals as part of the process of investigating?

Mr Lamb—Clearly, we would tell them that they are bound by the agreements that they enter into with the AFP, the Victorian police, the Queensland police or whoever. If they are not prepared to accept those conditions, then the program managers will probably have no alternative other than to release them.

Senator FERRIS—But, in the first instance, presumably the NCA would have a discussion with somebody who has infiltrated or has been part of a drug syndicate, who is potentially a witness. When you are talking to them in the first instance about the possibility of them giving evidence and the protection you might give them, is there ever built into the conversation, as a matter of course, something along the lines of, 'But of course if you take part in any more activities in this area, we are going to need to refer to the AFP the chance that you might lose your protected status'?

Mr Lamb—In a general overview context, yes.

Senator FERRIS—So it is always a balancing act for you, even before you recommend anything to the AFP, whether you think that fellow or that woman is likely to be able to stand up to that early undertaking that if you look after them they will not let you down.

Mr Lamb—As I said to you earlier, most of these people are career criminals.

Senator FERRIS—Quite so.

Mr Lamb—A lot of them have had lifestyles that cannot be provided by way of the Witness Protection Program and they come from milieus that they feel more comfortable with than where they are going to, so there are all those things impacting on them at that time. But we, in a general sense, say to them, ‘Your whole life is going to change. Indeed if you want to stay in the program you are going to have to change.’

Senator FERRIS—But at the same time you have to take into account that this person is very important to you in the outcome of some case you are pursuing?

Mr Lamb—Yes.

Senator FERRIS—So it is a pretty fine balancing act?

Mr Lamb—Yes. It is a very fine balancing act, and it all has to be done in a very constrained legal environment. The offering of inducements, the development of indemnities—all of that has to be done in a very considered and transparent fashion. All of those things in this day and age are discoverable by the courts. So it is not just a balancing act; everything has to be done in a very considered and step-by-step process.

Senator FERRIS—From your observations, can you recall a number of people who may have let you down in that way—in other words, given you an early undertaking and then let you down in a way that might compromise the value of the early evidence they have given you?

Mr Lamb—Yes, I do know of some.

Senator FERRIS—Is it a very frequent occurrence?

Mr Lamb—No, it is not.

Senator FERRIS—So most of them are grateful to have the protection?

Mr Lamb—If we have selected them right at the outset, if we have gone for the right targets to turn, then nine times out of 10 they are more frightened of other people than they are of us. If they turn and want to live a secure life in the future and get on with their life, then they are more inclined to play the game.

Senator DENMAN—What happens if it is the other way around—say, the person you are protecting them from dies? This is just hypothetical. What happens then—do they just go back into the community?

Mr Lamb—Once again, judgments are made by the people who run the programs as to the level of threat, the timing and the methodology to get them back into society. That is part of the traditional process of the program.

Mr EDWARDS—I wonder whether it is fair to say that, given the sort of character, the criminality, of all of the individuals that you deal with under a Witness Protection Program, the

officers making assessments about those individuals would have to be very cautious in the way they summed all of these things up—

Mr Lamb—Yes.

Mr EDWARDS—and that for every individual it would be a matter for judgment by those officers based on the circumstances of that individual and their particular involvement and that that judgment and that assessment would have to be very cautiously made.

Mr Lamb—Yes it is, and it is not just done by the officers per se. In the context of the NCA, it comes right up through the system to me and then to the authority members themselves. But, at all times, the investigation teams are conferring with DPP and they are certainly in the loop. They are part of the judgment process, and indeed they have to carry forward the indemnification process if we are going down that road. So there is a whole range of other people involved who have to make judgments about whether it is appropriate for this person to go in or whether it is even worthy to consider this person for that sort of a process.

Mr EDWARDS—And in those judgments I would assume that there is always an element of risk?

Mr Lamb—Clearly. Once again, these people are criminals. They are career criminals, most of them of some standing in the criminal milieu. Some have been very violent criminals; some have been very successful, international criminals. So, yes, it is a true balancing act.

CHAIR—Let us talk about money—in the sense that it is expensive to put somebody on the Witness Protection Program. When you are making judgments about whether it is appropriate to put somebody into the program, or when you suggest to them that they might go in the program, how much does money weigh in the equation in terms of not only how much it would cost to put somebody in the program but also, perhaps, the value of the case—the assets you might recover? If, for argument's sake, you have got a big drugs case and you are going to recover millions of dollars worth of cash or product and so on, are such factors as the money to be recovered or the cost of the Witness Protection Program taken into account, or is it purely done on the basis of making sure that you get the evidence to convict or be able to substantiate the charges, whether it is a large case or a small case?

Mr Lamb—We would only consider them in the most serious of cases because they are labour intensive and they are very, very costly, and it comes from our general budget. We do not have an allocation specifically for witness protection, it comes from our general budget. The proceeds of crime that you spoke of come back to government, to the general coffers.

CHAIR—Which is something the NCA is not happy about, I understand.

Mr Lamb—We have made submissions in the past that ourselves and other law enforcement agencies that were instrumental in succeeding in the matter should benefit, but that is a matter for government. Government has made that decision. We have made submissions about that in the past.

CHAIR—If you put somebody on the Witness Protection Program and they are known and convicted criminals relating to previous activity, what happens if you come across proceeds of previous crimes? Clearly, you have got to take over their lives in large measure to put them in the program and you have to relocate them and all the rest of it in setting up a new life, or transferring their life. Do you come across evidence of previous crimes for which perhaps they have not been convicted but it is quite obvious what it is all about?

Mr Lamb—Yes, we do.

CHAIR—What happens then?

Mr Lamb—That is a matter for the particular legislation. For instance, if it was under the New South Wales Crimes Act and there were proceeds there from other forms of criminality in a previous life or something, then the New South Wales Proceeds of Crimes Act would probably be utilised, but perhaps not by us.

CHAIR—You indicated earlier a general satisfaction with the witness protection programs, not only of the AFP but in the states generally, but clearly there are different rules in different places.

Mr Lamb—Yes, there are.

CHAIR—As you have said, Tasmania does not have a system, although it has indicated an intention. In Victoria, as we have already alluded to, the police commissioner has effectively carte blanche as to the basis on which it is agreed. In the AFP system there is a set of rules. In New South Wales there is a different set of rules. Does the fact that there are all these conflicting things cause operational problems from your point of view?

Mr Lamb—No, it does not. It is similar to all the other different circumstances that the NCA has to work in. The NCA is a national agency, it has the capacity and the legislative base to be a multi-jurisdictional type agency. A lot of the work we do is with partner agencies and, therefore, if it was in conjunction with the Victoria Police, for instance, and we were looking at matters that were contrary to Victorian legislation, then we would probably use the Victorian program. The Victorian part of the task force that is working with us would be the ones that would be instrumental in developing the path for the individual to go into the program.

CHAIR—When you first talk to somebody, I think there has been some controversy in some cases where agents from the NCA have perhaps made statements which were inappropriate in the sense that offers should not have been made. Whilst I agree that once they go into the program they sign off on a memorandum of understanding and so on nevertheless there may still be a misunderstanding that something is different to what is finally signed off. I could envisage that if somebody is under pressure and all the rest of it, you might think you have been told one thing and you are signing something and perhaps you are not rational or logical or well educated enough to understand that what you are actually signing is not exactly what you thought you were signing, or thought you had agreed to.

How do you guard against people not understanding the full ramifications of what it is they are signing? I come back specifically to the tax issue which I accept that years ago probably was not understood as an issue, but clearly today from specific cases we know is an issue. Does the memorandum of understanding that you would sign with people going into the program now, or when you discuss with them possibly going into the program, include the tax ramifications, for example?

Mr Lamb—That would be something, once again, that the AFP would do. They are the ones who enter into the agreement with the individual and they are the ones who take him in. They would be the ones to ask that question.

CHAIR—But your agents tend to talk to them before you ever go to the AFP, surely?

Mr Lamb—Yes, they are interviewed, of course. They are interviewed in the normal traditional way that one would approach a criminal, as most of them are, who was caught in the act, and in that context they are interviewed formally. None of those things, of course, can be advanced in that context because that would clearly be deemed an inducement. But once a decision has been made by the organisation about whether this person is viable, and once it has gone through the DPP and it has been determined that the person's evidence would be supportive to the prosecution, then we would immediately put the individual in touch with the AFP that would do a series of assessments and, indeed, do that induction process. We would not be talking to the person about tax at all.

CHAIR—I stress that this is a totally hypothetical situation, but suppose I was somebody who had been involved in a small way in criminality and you wanted to use me as a witness against somebody else who was a bigger fish and there was the potential that at some stage I would finish up on the Witness Protection Program for my own safety. What I am not clear about is: I get interviewed in the normal course of events as a potential witness or whatever, and perhaps I do not tell you everything you want to hear, or I do tell you and I am obviously worried about my own safety. At what stage of the process does somebody talk to me about the options of going on the Witness Protection Program? If somebody talks to me about it, at what stage of the process is there some indication to me as to what the elements or components of that program might be? In other words, when do I first form my view about whether I think I might be interested in going on the Witness Protection Program?

Mr Lamb—When you talk to the AFP or the state police.

CHAIR—So that is never discussed by an NCA agent?

Mr Lamb—No. We would tell them after our deliberations whether we deemed it appropriate or whether we thought that the evidence was sufficient to warrant it—there is a whole range of things—as I said, with DPPs and internally. We would say to them that we are of the view that they should be afforded the opportunity to go into the Witness Protection Program.

CHAIR—There has never been a case where an agent of the NCA has talked to a potential witness about going into the program?

Mr Lamb—Not that I know of, no.

CHAIR—If it were established that that had happened, presumably that would invalidate the case?

Mr Lamb—Not necessarily, no.

CHAIR—But it would be against the NCA's procedures?

Mr Lamb—It certainly would be, or the NCA procedures that I have initiated since I have been there.

CHAIR—Thank you very much indeed for coming this morning. I am aware that you are about to retire from the law enforcement field at least in a full-time paid sense, having spent some 40 years in that area, and the committee would certainly acknowledge your contribution, both with the AFP and in the last eight years with the NCA. Have a happy retirement.

Mr Lamb—Thank you very much. That is appreciated.

[10.20 a.m.]

McLEOD, Mr Ronald, AM, Commonwealth Ombudsman

MOSS, Mr Philip, Senior Assistant Ombudsman

CHAIR—I would now like to welcome the Commonwealth Ombudsman, Mr Ron McLeod, and Mr Philip Moss, who is the Senior Assistant Ombudsman. Mr McLeod, I noted with interest the comments in your submission that the government is at present considering whether the investigation of complaints made about the NCA's operations might be transferred to your office's jurisdiction. Of course, this committee made a recommendation to the government on those matters some considerable time ago and we are actually still waiting for the government to formally respond to our report. So we are very interested in those comments, but I will save discussion of that to another day.

The committee prefers that all evidence be given in public, but you may at any time request that your evidence, part of your evidence or answers to specific questions be given in camera and the committee will consider any such request. We have received your submission, which has already been published by the committee. I invite you to make an opening statement before we move to questions.

Mr McLeod—Thank you, Mr Chairman. As Commonwealth Ombudsman, I have jurisdiction to deal with complaints lodged by members of the public in respect of almost all Commonwealth government agencies. That includes the AFP but it does not include the National Crime Authority, as you have noted in your introductory remarks. However, as things stand, our office does have some dealings with the National Crime Authority. Under the Telecommunications (Interception) Act, my office has responsibilities for auditing the conduct of interceptions by the National Crime Authority and by the Australian Federal Police. So far as the NCA is concerned, this normally involves us in conducting two audits each year of selected parts of the National Crime Authority's operations so that we can report to the minister about our audit of the NCA's conduct of those types of operations.

With the committee's interest in this inquiry particularly on witness protection, we also have an indirect involvement with the NCA in the sense that the NCA, in seeking to extend protection to witnesses associated with their activities, rely on the Australian Federal Police to manage people who are passed over to be included in the AFP's Witness Protection Program. As such, any concerns that members of that program may have about the way they are managed by the Australian Federal Police are brought within my jurisdiction by virtue of my having coverage of the Australian Federal Police.

Over recent years, while we have not received a large number of complaints from members of the Witness Protection Program, we have had around about a dozen complaints that have been lodged since the act in its current form was introduced. So we have around about two complaints a year. Unlike other parts of my jurisdiction, my role in relation to complaints about the Witness Protection Program is somewhat more limited in that I do not have a capacity to

conduct an own motion inquiry into a witness protection matter, nor do I have a basis for conducting any monitoring or audit activities associated with a program, which distinguishes that area from my general jurisdiction where I have wider powers.

With a program of this kind that obviously needs to be very highly protected, there are very good arguments why an office like mine should be able to provide some safeguard to program participants so that they can have an opportunity to have any grievances or problems addressed outside the framework of the people who are managing them if they feel that there are matters that affect them and are causing them concern. I think that is a very important safety valve for a program that, by its very nature, places people in a situation where their normal rights as citizens are often very much circumscribed.

We have an insight into the management of the program but only through the actual complaints that are lodged with us. While we have built up over time some understanding and knowledge of the administrative arrangements, we could not claim to have full knowledge of the program or of its administration in the broad. But we have had some insight into it through the investigation of the occasional complaints that we get. In the course of looking at those complaints—with that qualification I have just mentioned—we have not discerned any significant concerns with the way the program is managed. It seems to us that it has generally been an effectively managed program. There are not any observations of that kind that we are in a position to offer to the committee. But I think it is very important for a body like ours to at least be available to members or to other people who are connected with people who are being cared for under that program, if there are concerns about the way in which they are being managed. With those introductory comments, Mr Chair, I would be more than happy to assist the committee if you have any questions.

CHAIR—Thank you very much, Mr McLeod. My recollection from having gone through your evidence before was that most of the complaints that have come to you have been resolved by conciliation effectively rather than by your having to make specific findings, and so on. Could you give us a feel for, if you like, the general nature of the complaints that do come to you? Are they exclusively from people in the program or have you ever had a complaint from somebody who thinks they should be in the program but could not get in, for argument's sake?

Mr McLeod—On the first question, I think as a generalisation—we are only talking about a small number—the bulk of the complaints that we have had tend to be concerned with the adequacy of compensation payments that are made to members of the program or arise out of personal relationships, and particularly questions of access to children. You would be aware that sometimes there could be a breakdown of a relationship that occurs in the course of a person being on the program. That can produce all sorts of tensions, as you can imagine, with people inside the program and those outside it, and at times we have been asked to intervene in some of those problems.

We have not had any complaints from people who have been rejected for inclusion in the program. But I would have to say in that respect that I would not be confident that people who might have been rejected for inclusion in the program would necessarily have a full understanding that they would have the right of complaint to my office if they were concerned about the decision. While the members who are part of the program provide advice, as part of

the guidelines that the Australian Federal Police use to administer the program, to the participants that my office exists as an external source for the lodgment of complaints that might occur about conditions while they are on the program, there is not the same type of information—to us at least—that is readily available to people who might be interacting on the fringes of the program but not as part of it. Perhaps if there is a concern there—and your inquiry has served to remind us of that—I think we should be reminding both the National Crime Authority and the Australian Federal Police that if they are dealing with people who are seeking access to the program and who are denied that opportunity, there would be some advantage in those two organisations as a matter of course advising the people concerned that, if they have any concerns with that decision, they do have recourse to my office.

CHAIR—That you do exist—exactly right. The ACT Bar Association has raised with us concerns about what they effectively describe as the collision between the Witness Protection Act and the Family Law Act. I understand there was a particular case where the father and the children were in the program but the mother was not, and there were concerns about access. The commissioner who was responsible said, ‘She cannot have access’, but the courts said, ‘Yes, she can.’ I understand there has been some foreshadowing that there might be some changes to the legislation. Are you aware of that case? Can you shed any light on those sorts of matters?

Mr McLeod—I am not aware of any particular case. We have not had a great deal of experience in dealing with matters of that kind. I guess it is not unusual that occasionally you will get a clash between different pieces of legislation where the public interest is expressed in a different fashion in a different piece of legislation, and sometimes these clashes can produce difficulties in resolving a particular situation.

Under the Witness Protection Act, as I understand it, there is a provision that does entitle the AFP to make known the fact that a party is part of the program in connection with a court proceeding. I would think that if a matter proceeds to the Family Court it is necessary for the judge to be able to be informed of that in confidence. The AFP should then seek to work through in confidence with the judge how best to make sure that he or she is fully informed so that a proper judicial decision can be taken, but in a manner that protects the need to reveal information that might put at risk the safety of the person on the program. That really depends on the good grace of the learned judge. In a sense, perhaps the best way is to look at these things on a case-by-case basis rather than to anticipate the myriad different circumstances that might arise theoretically and then seek to create a set of legislative or other arrangements that govern what should or should not be done in a hypothetical situation. I understand that in the United States there are legislative provisions in some jurisdictions that seek to try to provide some guidance to the courts in cases of this kind.

CHAIR—Thank you. Are there any questions?

Mr EDWARDS—Mr McLeod, I assume that, in a Witness Protection Program, the witness protection officers would live in a fairly close environment with the witness. I note that you have had one complaint that was substantiated in that AFP officers were counselled about their relationship with a witness. Can you elaborate on that?

Mr McLeod—I cannot quickly bring to mind the circumstances of that case. I did not have a personal involvement with it. I do not know whether Philip knows of the circumstances.

Mr Moss—No, I do not know either. It occurred before the legislation was enacted.

Mr McLeod—So it is a fairly old case?

Mr Moss—Yes.

Mr McLeod—If I could make a general comment, both Philip and I, by coincidence, previously worked together in the Office of the Inspector General of Intelligence and Security.

CHAIR—So you come as a package?

Mr McLeod—We did not quite, but it turned out that way. ASIO does have a program that is quite similar—for different purposes, but in terms of the management of people, it is very similar to this program. Philip and I have had some involvement in that jurisdiction which emphasised to us the critical importance of ensuring at the outset that when these arrangements are set up, the nature of the responsibilities and the obligations between the carer, the police force, on the one hand and the member of the program on the other, are very carefully defined and understood. Because of the circumstance you mentioned, where people are living in very close association with each other, there is a natural tendency for the carers to be drawn into the personal lives and the management of the personal circumstances of the member of the program.

CHAIR—Do they call that the Stockholm syndrome?

Mr McLeod—That is probably a good description. The people involved in the management of these programs do need to be always mindful that their responsibilities are essentially to care for the protection and the security of these people, not to be responsible for managing their personal lives. That is a difficult task and it is often the source of some of the conflicts and difficulties that do arise in these arrangements. Ultimately, these people still have personal lives to live and personal issues that they need to address. I think there does need to always be a clear understanding that there is a distinction between the official obligations of the carers towards these people and those matters that should properly not be interfered with and left to the individuals themselves.

Mr EDWARDS—Could the committee assume that there is generally a very high professional standard in the relationship between the witness protection officers and the witness?

Mr McLeod—I think one would hope so. I think with the AFP, because of the nature of the program, with it being very closely protected even within the AFP itself, you do need to have very dedicated and committed people who are familiar with the challenge that they have to manage. It raises a whole range of issues that are quite distinct from the normal experiences that many police officers would normally be exposed to.

Mr HARDGRAVE—Do you have a view on keeping confidential matters relating to the Witness Protection Program? There have been concerns about ATO officers interviewing and links back to taxation imposts. There has been this quite parlous performance by police minister Barton in Queensland in blurting out the name of a witness in the parliament earlier this year. There has been talk about restrictions being imposed on parliamentary privilege as a result of it. Do you have some views on those sorts of linkages—confidential knowledge being disclosed?

Mr McLeod—Ultimately, I think these issues involve a careful judgment about balance. The whole purpose of setting up a program of this kind, which is extremely expensive to set up and administer, is to provide safety, security and a proper sense of protection to people who have put themselves at risk in the interests of assisting the course of justice. If the program is to be effective, I think that objective has got to be seen to be paramount. Having said that, I think the program does involve the potential for a significant invasion by officialdom into the private lives of citizens. It can involve participants in the program having to accept considerably restrained normal rights that we all enjoy.

I think that in a contemporary environment you do need to have appropriate accountability mechanisms to ensure that people in the program are properly protected. There needs to be proper accounting for the way in which police officers or officials perform their responsibilities, because in a program of this kind they have extended, extremely powerful powers that are almost life and death kinds of controls over individuals. To be able to do that, I think involves a widening of the net, to some degree, of the people who have got a genuine need to know about the circumstances of people placed in the program. For example, an office like mine has a need to know, and I think that is appropriate. But, at the same time, the wider you open the net, the greater are the potential risks that the program is going to be compromised.

Mr HARDGRAVE—Do you think that those risks are communicated to those who do enter the need-to-know arena?

Mr McLeod—I would hope so. I think the statutory law can play an important part in placing limitations on people who do have access to information about the program. In our case, for example, our access is controlled entirely by legislative provision, and I think that is entirely appropriate. So far as the Taxation Office is concerned, we have not had any complaints from members of the program about tax matters, although I have picked up some sense of concerns that have been expressed to your committee about the actions of tax officers. Again, it gets back to knowledge in the community about the role of my office. But any member of the community, whether they are on the Witness Protection Program or not, has got full access to my office if they have concerns about their treatment by members of the Australian Taxation Office. We deal with many complaints about the Taxation Office because it is a big office that affects us all, touches us all. I think that is just another example of how there needs to be a balance between rights and protections on the one hand and issues of proper public accountability on the other.

CHAIR—In their submission, the Victorian government have raised concerns about the long list of criteria which the AFP have to look at in comparison with the Victorian situation where the Victorian commissioner has carte blanche. They are worried that that really means that we do not have a national system, if you like, and they are worried that it is too restrictive in many ways. Do you have a view as to whether one approach is better than the other—the list that you

go through with the AFP system, compared with the carte blanche Victorian approach? Are there aspects of the lists which you think are inappropriate, or are there, in fact, criteria that ought to be on that list approach?

Mr McLeod—I have not really addressed the factors in the present legislation. I am aware of them and at first reading it seems to me they are an appropriate set of considerations that should properly be kept in mind when a decision is made on a matter like this. In comparison, I would have thought that the carte blanche—as you describe it—arrangement in Victoria is pretty inconsistent with the general approach of this parliament to questions which touch on public accountability. It seems to me that to give complete authority to a police commissioner without any checks and balances or without any guidance from the parliament, is perhaps an old-fashioned way of approaching this. The Commonwealth Parliament, particularly, in many areas deals with situations where there is considerable encroachment by officialdom into the private lives and rights of citizens. When that occurs it is almost invariably accompanied by a carefully developed, thought through and argued accountability framework to ensure that unelected officials are not given very powerful powers to be exercised without any proper controls and mechanisms to ensure accountability. If I were arguing for one system or the other, I would clearly throw my weight behind the Commonwealth legislation.

CHAIR—Thank you. I do not think there are any more questions. I note that you have about two minutes to get to the other committee you are due to appear before, so the timing has worked out very well. Thank you both for coming this morning; it is very much appreciated. Thank you very much for your day with the parliament.

Mr McLeod—It is a pleasure.

Proceedings suspended from 10.47 a.m. to 10.53 a.m.

HEGGIE, Mr Robert Thomas, Acting General Manager, Protective Security, Australian Federal Police

McGEACHIE, Mr William John, Acting Director, Witness Protection, Australian Federal Police

CHAIR—Welcome. The committee prefers that all evidence be given in public, but you may at any time request that your evidence, part of your evidence or answers to specific questions be given in camera and the committee will give consideration to any such request.

We have received your submission, which has been published by the committee. I invite you to make an opening statement and then we will move to questions.

Mr Heggie—The submission before the committee describes the role of the AFP in the National Witness Protection Program and the obligations of the commissioner under the Witness Protection Act. The submission also refers to the arrangements between the AFP and the NCA in regard to the provision of witness protection. Generally, the AFP is required to report annually to the parliament and keep the minister informed of the general operations, performance and effectiveness of the National Witness Protection Program and, in particular, the exercise of the commissioner's powers under section 27. And I would like to apologise for the telephone call before.

CHAIR—That is all right. I have heard some telephones in very funny places. There was one member of the House of Representatives this week—he will remain nameless, but he was not a government member—who was in the middle of giving a speech in the chamber when his phone went off. I understand it was the most effective way anybody has seen to get him to stop speaking and just sit down. He turned it off and sat down.

One of the things we have heard a lot about are the costs and resources taken up by this program. I wonder if you could give us some idea on the scale and costs of running the program. How do you get people trained? Presumably it is a very specialised area—you cannot pull a policeman off the beat and put him into that area. Can you give us some background on the training, the costs and the effort that goes into running this sort of program?

Mr Heggie—All of the members of the witness protection area have to complete a close personal protection officers course, which is a five-week course which involves a lot of different aspects. On top of that there is witness protection training. Members of the area have to undertake psychological assessment in relation to their emotional and psychological suitability prior to taking up their duties in the witness protection area. Also, they are required annually to recertify on various parts of the close protection course.

CHAIR—When you were in the audience earlier you heard us referring to the Stockholm syndrome. Can you expand on that?

Mr Heggie—We have no record in nine years of instances of members who we feel have succumbed to this syndrome. In fact, the short periods of close protection that witnesses are given are interspersed with long periods where there may be no contact between a participant and members of witness protection, so we do not feel there is a long time together where these things can develop.

CHAIR—The legislation came in in 1994. Have your operations had to change very substantially with the introduction of that legislation? Are there areas where you think the legislation should be changed or could be improved?

Mr Heggie—The AFP was probably glad the situation was codified and we are happy with the way the act is at the moment.

CHAIR—Tasmania and the Northern Territory do not have formal programs and some of the states have different sets of rules. Does that have any impact at all on the way that you operate in other jurisdictions? How is it decided to put witnesses onto one program or the other in some of those states?

Mr Heggie—In relation to Tasmania and the Northern Territory, the national program does not require complementary legislation in states or territories to operate. In relation to the other question, it is the investigators who decide which program they are going to approach. We do not get involved in that part of the process.

CHAIR—I understand that you have had submissions for 24 witnesses as possible inclusions in the federal Witness Protection Program from the NCA and that seven of those were rejected. Can you give us some idea of the reasons they were rejected? What happens to the people who are rejected?

Mr Heggie—It did not fit the criteria within the act is the way to describe why they were not brought onto the program.

CHAIR—What particular components?

Mr Heggie—It may be different areas or parts of the act. If we want to get into a particular—

CHAIR—Is there a pattern there? I do not want to talk about individual named cases, but I am just trying to get a trend.

Mr McGeachie—Being in jail or the likelihood of going to jail would be the major one. They are just not protectable in that environment.

CHAIR—That is a fairly understandable reason.

Senator FERRIS—I have some questions I would like to ask in relation to the impact on families. I suspect Senator Denman may pick up some of these as well because we are both interested in the impact on families. I am interested to know whether psychologists are involved in counselling families, particularly where smaller children are concerned, when they move into

witness protection. For example, if the family name is changed, how does the child adapt to that? How do you ensure that a child does not go to school and talk about these things? If there is a family breakdown, how is that managed in terms of witness protection, particularly for, say, a woman and her children? Is there a psychological dimension to witness protection that aims to smooth the way in these sorts of circumstances? Trauma could be involved.

Mr Heggie—One of the criteria for acceptance into the program is a psychological assessment. How that is done is part of the operational side of things.

Senator FERRIS—For all members of the family?

Mr Heggie—For all people coming into the program.

Senator FERRIS—If a man was to come in, what about his wife and perhaps a couple of teenage children?

Mr McGeachie—Yes. They have access to psychological support all the way through whilst they are on the program. The children, strangely enough, are very easy to give new identities to.

Senator FERRIS—When you say children, do you mean young children or teenagers?

Mr McGeachie—I refer to children probably from four onwards. They seem to be able to adjust to new names and go to school under those new names. They seem to adjust exceptionally well—more so than the parents.

Senator DENMAN—I would agree with you, having been a teacher, that younger children adjust. What about when they get to the teenage years and they become rebellious? What happens?

Mr McGeachie—I do recall one situation with teenage children, but there did not seem to be any problem there. They seem to accept the dangers that their parents—whether it be the mother or the father—are in. It is very hard on the family, as Senator Ferris said, in breakdown situations. It is very difficult on families in the program, but they do survive. Some do not.

Senator DENMAN—Senator Ferris touched on the breakdown situation. What happens if the wife decides she has had enough and takes off?

Mr McGeachie—That has happened. The program is voluntary and they are free to leave at any time, so long as they advise us.

Senator DENMAN—What happens if she is very bitter towards the person in protection and goes out and blabs to the world?

Mr McGeachie—That does create major problems. The people may have to be relocated and re-identified again because their identity becomes known. That is where it becomes very costly.

Senator DENMAN—What if the person in protection goes into a new relationship—does that create problems?

Mr McGeachie—Yes it can, and it has happened.

Senator DENMAN—So you could be protecting the former partner and the new partner?

Mr McGeachie—No, generally it is the male who is the witness and the family are there because of the family situation. If the family situation breaks down then, a large majority of the time, there is no threat to the partner. Sometimes there is or could be. New relationships do create problems, especially if they are divorced or they are living in a de facto relationship and they want to get married. It can be done.

Senator DENMAN—Good luck.

CHAIR—There is a specific case where the man was in the program with his wife and children and his wife left and went her own way. She then went to the Family Court to get access to the kids, having been denied access by the management of the program. The court said she was entitled to access. I would have thought that it was not stretching credulity too far to then see a scenario where the father in the program with the children might then develop another relationship. That is going to make the ex even more determined. At what point would you say it is all too difficult and not possible to provide security and therefore you cut them adrift? Or would you never do that?

Mr Heggie—Generally, that would not be a factor in deciding. It is the security of the witness which is the factor, not particular family circumstances and difficulties.

CHAIR—So you just deal with the difficulties one way or the other?

Mr Heggie—Yes.

CHAIR—It just gets more expensive perhaps to do so.

Mr Heggie—Indeed.

Senator DENMAN—Concerning the carers, the people who are caring for the witnesses, do they have to be relocated with the witness? How does that work? When you have someone who is caring for the witness, the person in protection, and the witness is relocated, do you choose someone else to do the caring, the looking after, the protecting?

CHAIR—The agent who is looking after them?

Mr Heggie—One team normally looks after a particular witness.

Senator DENMAN—So that family has to relocate with the witness?

Mr Heggie—No.

Senator FERRIS—What happens when witness protection ends, either voluntarily or involuntarily? What arrangements are then made to adjust that family back to an unprotected life, if you like, or an individual back to an unprotected life? Again, is that managed through counselling? Can you just take us through what happens? Is it a step by step phase, or does it just cut off like that? How is that process managed?

Mr Heggie—There is a process where we attempt, even while there are participants in the program, to encourage them to take care of their own lives. That carries on into resettlement when they are going to leave the program for whatever reason.

Mr McGeachie—From the time they come on to the program, from the time we pick them up and take them to what we consider to be a safe area, we encourage them to assimilate back into the community. If they have been in jail or living a life of luxury, in some cases, then to adjust to their new environment is a gradual process. We monitor their activities very closely. We arrange for psychologists to see the participants and their families. We have regular contact with them by phone and visits. It is a process that may take years. They may be on the program for a number of years before their case is finalised. Generally, by the time that they are ready to leave they are, hopefully, employed and getting along with life and making new friends.

Senator FERRIS—Do you do any follow up after the protection program has ended? Do you go back and have a look six or 12 months after that?

Mr McGeachie—We keep in contact with them. Generally we get mail and bits and pieces and we talk to them. Yes, on occasions we do have to go back and see them about different matters, but as time goes on the contact becomes less.

Senator FERRIS—And that is an indication of the success of the re-establishment?

Mr McGeachie—Yes.

Senator DENMAN—How often do they re-offend?

Senator FERRIS—I was just about to ask that.

Mr McGeachie—There is one or two who have re-offended since the act was brought into being. They were dealt with for the offences that they committed and were subsequently put off the program.

Mr HARDGRAVE—Does there tend to be one police operative or team responsible for witness protection that stays with that family? I just want to clarify that?

Mr McGeachie—Where possible we try to have the same team so they have some confidence in the people they are dealing with. The case officer is well aware of their situation.

Mr HARDGRAVE—Are the case officer's natural possibilities of retirement, of moving on, of taking promotions and so forth affected by that particular approach or not?

Mr McGeachie—It could be, but generally they are in that area for four years. The psychologists say that four years dealing with these types of people is long enough.

Mr HARDGRAVE—Are the case officers fully aware of all those who are inside the need to know circle?

Mr McGeachie—In their particular area or on a need to know basis?

Mr HARDGRAVE—What I am saying is: a case officer in charge of, say, looking after a family under the Witness Protection Program would be aware of matters such as the Australian Taxation Office seeking information?

Mr McGeachie—Yes.

Mr HARDGRAVE—They would be aware of those within the chain of command in the police service. Referring, I guess, to what happened with police minister Barton in Queensland earlier this year, would the case officers have been aware of him knowing about something before he blurted it out in parliament?

Mr McGeachie—I do not understand.

Mr HARDGRAVE—I am trying to assess in my own mind the end result of somebody offering something in parliament about something they know about—that is, a Witness Protection Program participant. The effect of that, obviously, is that it places greater pressure on the operative, the federal agent, or the team of agents involved in the protection program itself.

Mr McGeachie—Nobody would know the new identity other than those people on a need to know basis.

Mr HARDGRAVE—So they would be aware of—

Mr McGeachie—Of their original name.

Mr HARDGRAVE—Would they know who would know? Would those who are looking after the witness in the Witness Protection Program know who also knows what is occurring and who is involved?

Mr McGeachie—It would only be those immediate people within the witness protection area that would know.

Mr HARDGRAVE—You are convinced that the balance between the need to know and a sense of accountability about what is being done to look after that witness, the costs involved and so forth, is right and safe?

Mr McGeachie—Yes, I am. Mr Heggie, as the acting general manager, does not know where the witnesses are.

Mr HARDGRAVE—What about matters such as what happened with police minister Barton in Queensland? The Victorian government have also raised concerns about protected witnesses being interviewed by the ATO; matters to do with acquittal of certain taxation costs, payments and so forth. Is that known also down the line? Are people aware that these things are occurring?

Mr McGeachie—No, it is maintained within the area up to the director and the general manager.

Mr HARDGRAVE—If I am in charge of looking after a family group and the ATO is sniffing around trying to find out that there is a certain tax impost that that particular group I am protecting might owe, am I aware that the ATO is looking out for that? Am I going to be protecting them from the ATO's inquiries? Am I going to be facilitating the ATO's inquiries?

Mr McGeachie—When a participant is interviewed and assessed as suitable by the witness protection committee, part of that process is being interviewed by the ATO in the initial stages. They conduct an interview regarding all his tax concerns.

Mr HARDGRAVE—There is a claim in relation to the Meredith case that Sommerville knew that after defrauding her, he could move safe in the knowledge that the NCA and the New South Wales police would not reveal his whereabouts. Is that factual?

Mr Heggie—We are not aware. He was not a participant in our program.

Mr HARDGRAVE—Okay, it was not with your program, but is it possible for someone to move into a Witness Protection Program, having defrauded somebody, without the ATO actually then seeking some redress on the amount of money that they might be owed by ill-gotten gains and the tax imposts for those?

Mr Heggie—In our program we would facilitate the ATO getting access to a person to deal with those matters.

Mr HARDGRAVE—So Witness Protection Programs cannot be used as a form of tax evasion?

Mr Heggie—No.

Mr McGeachie—No, definitely not.

Mr Heggie—Or any other crime.

CHAIR—Just to clarify that, my understanding is that the Sommerville case came into existence and he was part of the program before the national program was established. It took six years for it to come to trial, so I think what has happened in terms of standards and

procedures today is probably a bit different from what they might have been when that case first came up.

Mr HARDGRAVE—I think that is an important clarification to make, Chair.

Mr EDWARDS—How do you go about selecting officers for the Witness Protection Program? Are they volunteers or are they conscripted?

Mr McGeachie—They have got to be gazetted, advertised, a selection process takes place and the best people are selected.

Mr EDWARDS—They volunteer for the program?

Mr McGeachie—Yes.

Mr EDWARDS—Do you have a pool of people who would be doing other duties but, when you need them for witness protection, you just call them out?

Mr McGeachie—No, for the main reason that we do not want any other people to know who we are looking after.

Mr EDWARDS—They are dedicated to that task for a period of up to four years?

Mr McGeachie—Yes. We do at times utilise people who have been in the area and who may know that particular person or has had dealings with him when he was in the witness protection, but that happens very rarely.

Mr EDWARDS—Do you run any Witness Protection Programs overseas?

Mr Heggie—No. There is a facility for people from overseas to come into the National Witness Protection Program.

Mr EDWARDS—So that would be from a jurisdiction in another country?

Mr Heggie—It would be government-to-government contact to place someone in the National Witness Protection Program.

Mr EDWARDS—It is always possible then for the AFP to properly and adequately protect witnesses within Australia?

Mr Heggie—Yes.

Mr EDWARDS—Do you work at all with other state jurisdictions, for instance, or vice versa?

Mr McGeachie—No, we have regular contact but we do not work with them.

Mr EDWARDS—You do not run programs for any of the states?

Mr McGeachie—No.

Mr EDWARDS—Are you aware of the Petrelis situation in Western Australia?

Mr McGeachie—Slightly, but only what we have read.

Mr EDWARDS—You may be aware that a witness was relocated to a different state but the witness's new identity was accessed by a couple of coppers just flicking through a computer system.

Mr Heggie—Witness Protection is unaware of any instances where members of the AFP or any Commonwealth agency has leaked any information. There have been people charged under section 22 of the act but they were not involved in the program. They were not officials.

Mr EDWARDS—This particular Petrelis situation was, of course, of concern to this committee because I assume that people who are considering going into a Witness Protection Program want some pretty strong reassurance that they are going to be secure.

Mr Heggie—The integrity of the program is what we build it upon. If the program does not have integrity, it is not really a Witness Protection Program.

CHAIR—The point that Mr Edwards is trying to get at is that if somebody is a potential candidate for being in a Witness Protection Program somewhere, they are not necessarily going to be aware of an evaluation that the federal system is good and a particular state system may not be so good if there were peculiarities or differences between what is involved in the different Witness Protection Programs. They just see it as witness protection in the broad and, therefore, even though your program may be perfect—and I will not say 'may'; let us assume your program is perfect—if there are difficulties with some of the state programs then the whole business of witness protection comes into disrepute. Therefore, that has a knock-on effect with you, does it not? Is that the sort of thing you mean?

Mr EDWARDS—That is basically the sort of thing I am leading to.

Mr Heggie—I suppose that is possible, but we would stand by the integrity of our program.

CHAIR—But you would not counsel any of your colleagues in the other programs how to lift their game if necessary?

Mr Heggie—No, that is not really our role.

CHAIR—There is no interchange between you and the states?

Mr Heggie—In relation to what?

CHAIR—On learning together and improving standards?

Mr McGeachie—Yes. We have conferences and we meet from time to time to discuss different things, but never witnesses.

CHAIR—Never operational matters?

Mr Heggie—No.

Mr EDWARDS—Do you have a view about the extent of people who need to know?

Mr Heggie—Mainly in the creation of new identities is where other agencies may become involved. It is only very particular parts of those agencies that the AFP deals with and has been dealing with since before the inception of the act. We have not had any problems in that area.

Mr EDWARDS—So you are confident that the procedures of those people who are in that need to know loop are tight enough to give the long-term security that your witnesses need?

Mr Heggie—That has been demonstrated so far, yes.

Mr EDWARDS—Do you have any concerns about the long-term security of those people who need to know? Should it be tightened up? Can it be expanded?

Mr Heggie—As I said, the Witness Protection Program has been going for some years—since the eighties.

Mr McGeachie—Generally, if there is a security breach it is committed by the witness.

CHAIR—We have heard quite a lot about the relationship with the tax office. What about other government instrumentalities? If you have a witness who has kids and who is entitled to family allowance or things of that sort, presumably they still continue to claim family allowance and things like that in their recreated life—or do they cut themselves off from all normal social benefits? If they have a new identity and they claim family allowance or some other entitlement—child endowment, rent assistance or any of the sorts of things that a normal person would do—and given that, increasingly, those other government agencies run their own investigation branches to detect fraud, et cetera, a layman could perhaps see that somebody in your program could come under suspicion of defrauding the government or something because they do not have a history.

Mr Heggie—I think we are probably getting into areas of how these things happen operationally. Perhaps we could move away from that or talk about it in camera.

CHAIR—That is fine. We will see if there are any other open questions.

Mr EDWARDS—Is there anything that the parliament or government should be doing—any steps that we should be taking—to help ensure the long-term integrity of Witness Protection Programs—your programs? Is everything in place that needs to be in place?

Mr Heggie—We are happy with what is in place now. It appears to have operated well since the beginning.

Senator FERRIS—Do you have any comment to make about the *Sunday* program a few months ago which indicated that a protected witness had incurred, allegedly without his knowledge, a significant tax debt because the income stream that he had got from his protected witness program was being classified by the tax office as income, therefore taxable? This person claimed that they were unaware that in fact it was deemed to be income and thought it was an ex gratia payment. I was just wondering whether you could comment on the principle of that. Is that clearly explained at the outset? Is there in fact any confusion between what a witness understands and what is in fact the rule that is long established by the tax office? Did that program and the uncertainty that it raised have any effect on any of the other witnesses? Did they protect the witnesses? Is this a big issue?

Mr Heggie—I am not sure whether the television program had any effect on any part of our program—the National Witness Protection Program. However, we are currently in negotiations with the ATO regarding the tax assessability of payments to witnesses or participants. I believe that we plan to get a result from that quite soon.

Senator FERRIS—If you are in negotiations, does that mean the tax office has changed its way of viewing it?

Mr Heggie—I am not quite sure how it happened but there have been negotiations going on since last year. Again, this is probably moving towards operational and specific matters.

Senator FERRIS—But it is an in principle issue, really, Mr Heggie. The payments that these people receive either are income and therefore taxable or are ex gratia payments in principle and therefore not taxable. If the legislation came out in 1994, why is it that you are now in negotiations with the tax office?

Mr Heggie—I am not sure that I can answer whether payments to witnesses should be taxable or not. That is a matter for the ATO.

Senator FERRIS—All right; I will ask the question in another way. When the legislation came in in 1994 and these payments began to be made, were they considered taxable income in those times?

Mr Heggie—We did pay tax on a number of items, but I cannot tell you specifically what those items were.

Senator FERRIS—When you say ‘we’, you mean the AFP paid the tax?

Mr Heggie—Yes.

Senator FERRIS—So they were then considered to be ex gratia payments and the amount that was received by the protected witness was not considered taxable income by the protected witness?

Mr Heggie—All I can say is that we paid—

Senator FERRIS—The AFP assumed the tax liability?

Mr Heggie—On some of the payments that we made to witnesses, yes.

Senator FERRIS—Okay. Now we have a situation where that appears to have changed to the extent that the tax liability has been moved to the protected witness. Correct?

Mr Heggie—I am not sure.

Senator FERRIS—Is the AFP paying the tax?

Mr McGeachie—We pay a subsistence to them to survive on as a weekly amount of money. In accordance with the tax rules, we pay PIA tax—tax in advance—on their income, as any wage earner would do. I think the problem arises out of other payments that we may pay them from time to time. It is whether it is a security related issue and we believe that there should be no tax, or whether Tax believe that it is not security related and that the participant should pay tax.

Senator FERRIS—Presumably the enthusiasm with which a person might enter the program would be to some extent—perhaps not totally, but to some extent—affected by whether they are likely to suddenly discover, two years down the track, that they owe \$20,000 to the Taxation Office. Is there some problem in trying to clarify this at the outset? Why have you suddenly gone into negotiations with the tax office eight years after the—

Mr McGeachie—No, it has not been sudden; it has been ongoing for a number of years to clarify various problems. It evolves around different participants that come on with different circumstances. When the ATO interview a participant, he may have been receiving corrupt money or drug money into the millions. If they assess that as income over the last three years or five years, it is up to the tax department and they may say, ‘Yes, that is income, and you have to pay your tax on that.’

Senator FERRIS—Yes, I understand that, but that is before they go into witness protection.

Mr McGeachie—Yes, but even though they are on witness protection, my understanding is that Tax can go back over their past.

CHAIR—I think Senator Ferris is talking about moneys that were paid over by the AFP to the individuals.

Mr McGeachie—We might have to take that on notice.

CHAIR—We are obviously aware of a particular case, but it is the principle that we want to pursue.

Senator FERRIS—It is an important issue of principle.

CHAIR—If I am potentially a candidate for the Witness Protection Program and it is agreed with whoever does the negotiating that I will receive X amount of money, whatever that money is called or however it is packaged, an important component in my deciding whether I think that is a reasonable arrangement or not might well be whether I understand it is taxable or not. If you go into it understanding that it is not or that components of it are not, and then you discover a bit further down the track that our wonderful friends in the tax office are hounding you for some income tax on it, then obviously there is a principle established there. What we are trying to find out from you is: what is the current situation? How do people know where they stand? Are there firm rules? If there are not, why aren't there and how long has the negotiation been going on with the tax office? Is that a reasonable summary, Senator Ferris?

Senator FERRIS—Yes.

Mr McGeachie—I do not know whether you would call them firm rules, but my understanding is that the ATO people have changed the way, over the years, that they treat some of the money that the person receives. At one stage we were only paying tax on their subsistence money. Somebody then said, 'They get an allowance for a telephone and that should be taxable.' We say, 'No, it shouldn't be because it's a security related issue. If he were not on the program there would be no need for him to have a phone.' They are the sorts of problems that occur from time to time. I think the gentleman from the ATO here today may be able to sort out that problem in the very near future.

CHAIR—Obviously, that is a question we will be pursuing.

Senator FERRIS—But there is not a rule book that says, 'We will pay you X amount and we will pick up the tax on it. However, if we pay for a mobile phone for you, if we pay your rent, if we pay your car payments for you, they will be classified for fringe benefits tax purposes.' Is that—

Mr Heggie—We have no rules about that.

Senator FERRIS—Doesn't it make it pretty difficult to know what you are actually grappling with?

Mr McGeachie—We believe that they are not taxed.

Senator FERRIS—This person, for his own protection, has to live somewhere, he or she. The security aspects of a telephone and perhaps a car are probably arguable. But it surprises me, six years after this legislation came in, that you still do not have clarity on these things.

Mr McGeachie—Perhaps the different interpretation is by the ATO, I do not know.

CHAIR—I think we have established that there is a problem.

Mr EDWARDS—I want to go back a little bit. This question might be bordering on an operational matter, but I will put the question. When you pull together your team of dedicated officers for witness protection, are they centrally located or are they located in each state?

Mr Heggie—They are located in Canberra.

Mr EDWARDS—When you put a Witness Protection Program on the ground, I assume it is often outside of Canberra.

Mr Heggie—It could be anywhere in Australia.

Mr EDWARDS—So those officers would relocate with the person, obviously.

Mr Heggie—Yes, but not permanently. They are not normally residing with the participant.

Mr EDWARDS—I am not asking that question. If, for instance, you were to run a Witness Protection Program in, say, the Northern Territory, would the officers relocate from Canberra to run that program in whatever part of Australia that program is being run?

Mr Heggie—They would travel backwards and forwards from Canberra.

CHAIR—So the answer is that they do not relocate.

Mr Heggie—They are not there permanently.

Mr EDWARDS—They would not commute?

Mr Heggie—They would not actually reside with the witness, or participant, for any lengthy period. They do have to travel quite a bit. That is taken into consideration when you are assessing people to work in the witness protection area—that they should be aware that they will be travelling and they may be away from their home and family for some time.

Mr EDWARDS—Can you run programs overseas if you need to? I am aware of some state jurisdictions that have needed to run programs overseas.

Mr Heggie—I think it would be government to government. Whether we would actually locate someone overseas is not covered by the Australian Witness Protection Act. It would have to be a government to government request and we would be seeking a person to be included in their program.

Senator FERRIS—A cynic might say that Majorca is running one right now!

Mr Heggie—There is nothing wrong with healthy cynicism!

CHAIR—Are there any other questions?

Senator DENMAN—I think this one is okay for open questioning. If a witness comes into the Witness Protection Program with a large amount of money and you are unsure where that money has come from—it is in their bank account—does that transfer to the new bank account name and number? How do you deal with it?

Mr McGeachie—It would, but in my experience there are not too many people who come with a large amount of money; they are battling to have a suitcase.

Senator DENMAN—But some of these people have made a lot of money out of drug dealing. What happens to the money?

Mr McGeachie—That is generally seized by the investigating police.

Mr Heggie—Under the proceeds of crime legislation it can be seized.

Mr EDWARDS—How valuable is the Witness Protection Program to the functioning of the AFP?

Mr Heggie—It is extremely valuable in relation to the types of prosecutions and investigations the AFP undertakes into major serious crime and organised crime. If the program were not available perhaps we would not be as successful.

Senator McGAURAN—It is extremely valuable and you do not seem to have many in it. There were three in 1998-99 and three in 1997-98. I know it is your judgment as to whether they should be in or not, but I would like to see it beefed up because experience, particularly in Italy, shows us that that is when you really get the organised crime crumbling.

CHAIR—To clarify, those are NCA witness protection figures and not AFP figures—their figures are probably substantially greater.

Senator McGAURAN—Okay.

CHAIR—Your point may still be valid, but I wanted to clarify those figures.

Senator McGAURAN—Yes. Nevertheless, the point I am trying to make is this: let us beef it up. Let us seduce and induce as many as we can into the program, because I cannot think of any other way to break organised crime. I have a couple of questions, and one may be obvious. Do they go in because you have something on them? Is that always the case?

Mr Heggie—Not always the case. We have participants in the program who are not criminally involved in the matter that they are giving evidence about.

Senator McGAURAN—Basically the principle is that you have them. That is hard work—you have to get evidence on them so they will turn evidence on someone else.

Senator FERRIS—They could be whistleblowers.

Mr Heggie—Yes, there are people on the program who are witnesses to particular matters and who are not criminally involved in those matters or other matters.

Senator McGAURAN—My next question links with Jeannie's tax questions, but in another way. Should we have greater financial incentives and rewards to induce them in? Is that another way of breaking the code? Let us give them big rewards if they want to come in.

Mr Heggie—We may have the problem of tainted evidence if we offer rewards before the evidence is given. Probably 'rewards' is the wrong word. Rewards are a separate process from witness protection and resettlement.

Senator McGAURAN—So the only way we can induce them in is to get evidence on them so that for reasons of self-preservation and conviction themselves they will go into the Witness Protection Program. I am looking at the NCA figures of three, three, one and one, and I am sure they are good judgments, but to me it is one of the best ways to break open organised crime.

Mr Heggie—The program is voluntary and a lot of people decide they will not go into the program because of the total disruption to their life.

Senator McGAURAN—How can we beef it up? What would you do?

Mr Heggie—We do not want to induce people to come into the system. We try to separate the protection of witnesses and the investigation of the crimes. We are not involved in plea bargaining or the indemnities given to witnesses or sought by witnesses. That is not part of our process.

CHAIR—Senator McGauran's views are his own and not necessarily the considered views of the committee at this point in time.

Senator McGAURAN—I asked the questions; I have not made that comment.

CHAIR—In terms of beefing it up, I refer to Mr Flatman's submission where he makes the point that he thinks it is desirable that long-term witness protection arrangements are, in fact, not concluded until the end of the criminal case, just so that there can be no suggestion by defence that inducements have been offered and, if you like, the evidence bought, which is the other side of the coin.

Senator McGAURAN—If you cannot get them to roll over then, in the end, you do not get much success in breaking organised crime. The effort of accumulating evidence is very long, difficult and, usually, unsuccessful in getting high up into the organised crime chain.

CHAIR—You need to achieve the conviction. Do you have a view on that—

Senator McGAURAN—You get your convictions by the rollovers, Chair. That is the point I am making.

Senator FERRIS—Senator McGauran, you cannot make them compulsory.

CHAIR—Anyway, that is for committee discussion. Given the sort of view that Senator McGauran has advanced and the Flatman statement which is part of the published evidence, do you have a view on those issues?

Mr Heggie—We probably think it is unrealistic to go that way because we cannot bring a person into the National Witness Protection Program until the MOU is signed. The MOU sets out the various criteria required. So we cannot protect a witness until they have signed an MOU and the MOU will include subsistence payments and others.

Senator McGAURAN—What can we do more to make it a better program?

Mr Heggie—The program does work well. We cannot induce people to come into the program. The program is voluntary, and that is the way the legislation stands.

Mr McGeachie—It is up to investigators out in the field to find the person who needs protection in relation to criminal matters and then refer them to us to assess their suitability.

CHAIR—So you would not change the legislation in any shape or form?

Mr Heggie—No.

Senator FERRIS—How often would you decline an application from a field officer?

Mr Heggie—The AFP rejects about 50 per cent of applications.

Senator FERRIS—What sort of reasoning would there be for that rejection?

Mr Heggie—Not satisfying the criteria, either one or several of them.

Senator DENMAN—Is money a consideration—your budget?

Mr Heggie—Resources.

Senator McGAURAN—Of course, that is my point.

Mr Heggie—Within the AFP—

Mr EDWARDS—We are just getting there in a different way.

Senator McGAURAN—Do you need more resources? I do not know why you are being so coy about this.

CHAIR—It is called leading the witness.

Senator FERRIS—I am interested in Mr Heggie's answer to this question.

Mr Heggie—Fifty per cent of applicants are refused, mainly because of the various criteria involved in selecting a witness in the first place.

Senator FERRIS—Is there a particular criterion that they fail on a regular basis?

Mr McGeachie—There can be many and varied reasons why they fail. After discussion with them, they may say, 'No, it's not the lifestyle that I like.' We may fail them because they are unprotectable. They may be criminals whose safety, no matter what you would do, you just could not guarantee because of the lifestyle they live. Their family situation may not be suitable. There could be many and varied reasons why they are refused.

Senator FERRIS—To pick up Senator McGauran's point from a slightly different perspective, presumably a 50 per cent failure rate means that you could be not receiving quite valuable evidence leading to further convictions, by your rejection of those individuals.

Mr McGeachie—No. Always, when a person is assessed, we have information from the Department of Public Prosecutions or the Commonwealth prosecutions and the value of their evidence is weighed up. On many occasions, if the matter cannot proceed any further without their evidence, they would be accepted.

Mr EDWARDS—Can you give us a reassurance that they are not being rejected because of the lack of resources?

Mr McGeachie—I do not believe that they are.

Senator FERRIS—Presumably this assessment process takes quite a while. If you have got somebody who might have pretty critical information on an international drug ring, how quickly could you get them into witness protection? Clearly, somebody's life could be in danger there—more than one sometimes, I imagine. With respect to this lengthy process of consultation, interviews, the families are interviewed and psychologists are involved, the DPP and maybe the ATO; how long does it take to do an assessment like that? Can it be done in 24 hours if it has to be?

Mr McGeachie—Yes, it can be. If the need arises and administration thinks the urgency is there, we could pick them up in less time than that and care for them until such time as the interview process is finished. If we thought that there was such a danger to their lives then that would be virtually instant.

Senator FERRIS—But it may be that they subsequently reject it.

Mr McGeachie—That could be so.

Senator FERRIS—How long would that normal assessment process last? Are we talking days or weeks?

Mr McGeachie—Generally within a week everything can be finalised and before the committee—generally in a few days.

Senator FERRIS—So a committee meets to make the assessment and it is not made—

Mr McGeachie—Yes, the witness protection committee which consists of the deputy commissioner and two other senior officers. It is not the witness protection section.

Senator FERRIS—Yes, I understood that but I was interested to know that actually a meeting takes place and there are not just assessments done by individuals who might be members of that committee and then it comes back to your central agency.

CHAIR—I understood from Mr Lamb from the NCA, earlier this morning, that there were two stages. You might put them in a program in a particular form whilst the trial was going on but once the legalities have been disposed of with that particular investigation you might then look at them in terms of a long-term program. Is that therefore not the case? Are you saying that it is decided, right up front, the basis on which they will go into the program forever?

Mr McGeachie—It varies. Investigators could have a witness and they know eventually that they will have to make an application for protection. That could be six months down the track because the information he is supplying puts him in no danger at that particular stage. But once arrests are made and those offenders realise how they have been caught and who has given them up, that is when the need is to come on to the program.

CHAIR—Hypothetically, you make a drug bust on a particular individual today and I am one of the underlings in that organisation. You want me to give evidence against the major player. Therefore, I am a potential candidate to be on the program?

Mr McGeachie—Yes.

CHAIR—It seems to me that during the legal process and up until the time of presumably a resolution of the legal case—conviction or acquittal—there is a need to protect me potentially as the witness?

Mr McGeachie—Yes.

CHAIR—But after that there could also be a need to protect me because of retribution or whatever. Given that there is the possibility for a defence counsel to argue that I am giving evidence because of the inducements of money or whatever I get under the Witness Protection Program, Mr Flatman QC, in his submission, said it is better that the arrangements and the legal process for me being on the Witness Protection Program, in this hypothetical case, are completed, so that the defence cannot suggest that I am only giving my evidence because of the inducements and the money I am getting. Therefore, what Mr Lamb, I had understood—I do not know about the other committee members—was implying earlier on was that you actually might come to an arrangement that would cover the situation until the legalities were finished but then you would actually come up with the long-term program. Is that not the case?

Mr McGeachie—I just cannot recall what Mr Lamb said.

CHAIR—I am not expressing a view; I am trying to clarify it.

Mr McGeachie—In the hypothetical situation, if you were a person who was arrested with a major importation you would be interviewed by the investigating police and, if the evidence was there, you would be charged along with the other conspirators, with importation. Having done that, you say to the investigator, 'I do not want to go to jail. I have something that might lighten my sentence; here it is.' 'Are you willing to assist?' 'Yes.' You would still be charged, generally, and appear in court charged with those offences.

We do not have anything to do with it as witness protection. It is up to the investigating police. They would then put him before the court. They may write a letter of assistance to the judge. They would discuss with the DPP as to whether they would proceed with those charges or whether they would get indemnity for that person. But once the other participants and their associates become aware of that, it is imperative, if the threat is genuine and real for that person, that they come onto the program as soon as possible.

CHAIR—And the basis on which they came on the program would then be the basis on which they were on the program indefinitely, unless there was a change in their personal circumstances or the threat was assessed as being no longer there?

Mr McGeachie—Yes.

CHAIR—We might look at the transcript of Mr Lamb's evidence, in that case, because I do not think that is what he was suggesting to us. I just want to clarify that. I still want to pursue the other matters that you would prefer to do in camera, so we will conclude the public hearing at this stage and I thank everybody for their attendance. We will go into an in camera session in a couple of minutes.

Evidence was then taken in camera—

Committee adjourned at 11.51 a.m.