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JOINT COMMITTEE ON THE AUSTRALIAN CRIME  
COMMISSION

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**JOINT COMMITTEE ON THE AUSTRALIAN CRIME COMMISSION**

**Monday, 11 August 2003**

**Members:** Mr Baird (Chair), Mr Sercombe (Deputy Chair), Senators Denman, Ferris, Greig, Hutchins and McGauran and Mr Dutton, Mr Kerr and Mr Cameron Thompson.

**Senators and members in attendance:** Senator Denman, Mr Baird, Mr Dutton and Mr Kerr

**Terms of reference for the inquiry:**

National Crime Authority Annual Report 2001-02

**WITNESSES**

**BRADY, Mr Peter, Senior Legal Adviser and Manager Coordination, Australian Crime Commission .....1**

**McDONALD, Mr Robert Richard, Acting Director, National Operations, Australian Crime Commission .....1**

**MILROY, Mr Alastair, Chief Executive Officer, Australian Crime Commission .....1**

**NEWMAN, Mr Lionel Maurice, Director, Corporate Services, Australian Crime Commission.....1**

**Committee met at 8.02 p.m.****BRADY, Mr Peter, Senior Legal Adviser and Manager Coordination, Australian Crime Commission****McDONALD, Mr Robert Richard, Acting Director, National Operations, Australian Crime Commission****MILROY, Mr Alastair, Chief Executive Officer, Australian Crime Commission****NEWMAN, Mr Lionel Maurice, Director, Corporate Services, Australian Crime Commission**

**CHAIR**—I declare open this public meeting of the Parliamentary Joint Committee on the Australian Crime Commission. The committee is examining the 2001-02 annual report of the National Crime Authority. The committee has a statutory responsibility to examine each annual report and to report to parliament on matters arising from the report. The report under examination tonight provides an account of the NCA's activities for the last full year of its existence. I welcome Mr Alastair Milroy, Mr Lionel Newman, Mr Peter Brady and Mr Robert McDonald.

The committee prefers all evidence to be given in public, but should you at any time wish to give your evidence, part of your evidence or answers to specific questions in camera then please advise the committee and we will go in camera following a vote of my colleagues. I invite you to make some opening remarks about the committee's inquiry into the 2001-02 annual report of the National Crime Authority. I should say at the outset that this is a somewhat unique situation in that the nature of the National Crime Authority has changed and it has now become the Australian Crime Commission. I understand, Mr Milroy, that, having taken over the role of CEO post the NCA, this does provide some difficulties in terms of accountability. I understand that three of you were involved in the NCA. There are some questions we would like to ask you about that as part of our inquiry.

**Mr Milroy**—The only comment I can make is that, in establishing the Australian Crime Commission, I have looked at the work of not only the National Crime Authority but also the other two agencies that were merged to form the Australian Crime Commission. An important point, of course, is that the new organisation consists of a large number of the staff of the three agencies, and the larger number comes from the National Crime Authority. We are utilising the expertise and extensive knowledge that the former National Crime Authority personnel have brought to the new organisation.

In the early stages of building the new organisation and, in particular, for the new work of the organisation, we are utilising that expertise and extensive knowledge of criminal activities that the NCA was able to gather in its years of operation. I think it is very important that we draw on the expertise of that organisation. In building the new organisation, we have taken on board some of the issues identified in the former organisation as needing particular attention and those have all been factored into the integration and development program in building the new organisation.

**CHAIR**—One of the things that I have noticed is that, in our own inquiry into cybercrime, individual state policing authorities seem to have quite a positive attitude towards the Australian Crime Commission that was not always there for the previous body. That is a real plus, and we hope that continues. My first question is: why is the report so late? If we look at the time frames, we should have had it some considerable time earlier. That is the obvious question that should be asked. Who is actually in charge of the administration and preparation? I am sure there is some bureaucratic reason, but could we have some advice?

**Mr Milroy**—I might ask Mr Newman to answer that question.

**Mr Newman**—As you would appreciate, the protocols with the NCA annual report have been that all IGC ministers have been required to and have taken the opportunity to review the report, which was tabled with them in November 2002, and to make comments on that report. The process is that, when the last of those comments are received, it is then left with the IGC secretariat to support and facilitate that with the minister's office until the report is actually tabled. The last of the comments received from the IGC ministers was in fact in February of this year, so it took an extraordinarily long time to get that through, for a number of reasons.

**CHAIR**—What were those reasons?

**Mr Newman**—A number of states had changed their IGC ministers at that time. Also, we had a number of requests to provide additional copies, because copies of the report that were supplied to the various ministers were mislaid. I suppose we were really in the hands of the various IGC ministers to get their comments back at that stage.

**CHAIR**—The comment made by Mr Bradley in the estimates hearing was that the Victorians would not sign off because they were in caretaker mode. Are you aware of that?

**Mr Newman**—Yes.

**CHAIR**—Is that accurate?

**Mr Newman**—That was accurate at that time.

**CHAIR**—At that time—what does that mean?

**Mr Newman**—At that time they were in caretaker mode for the election that was coming up and would not comment on the report.

**CHAIR**—We have actually had advice that they signed it before they went into caretaker mode. That is a joint comment from both Senator Denman and I.

**Mr Newman**—We received advice on 20 November from Victoria that there was no comment at that stage. I would need to take that on notice to recall when the election was.

**CHAIR**—You can understand our concern—we had advice that that was the situation.

**Mr Newman**—Absolutely.

**CHAIR**—The delay is really unacceptable. From our point of view, as the committee oversighting what the NCA was doing, to have to wait this length of time is a problem. Certainly, in terms of the new organisation we will not be as tolerant of such lapses and we are likely to pursue it in terms of what the story was. I just got a note from the secretary that that was the same day as the estimates hearing. Could I please emphasise to you that, so that we as the committee may carry out our role effectively, there needs to be a greater attempt to provide the reports on time. I don't know whether anybody else had anything to add; having cut you off, Senator Denman.

**Senator DENMAN**—No, that is fine; that was exactly what I was going to say.

**Mr Milroy**—Work is currently under way to present the final six months of the NCA as well as the first six months of the ACC in a joint report, which we are hoping will go to the chair of the board in the next six to eight weeks. We are confident that we will be well within the time frame.

**CHAIR**—It was a bit of a tradition for the NCA. I am not quite sure what it was like under Mr Kerr's stewardship.

**Mr KERR**—It was not quite so late.

**CHAIR**—We would ask you to bring it forward. There are a number of other questions I have to ask, but please feel free, Senator Denman or Mr Kerr.

**Mr KERR**—I was particularly interested in your reflections, having now been in office and with respect to the previous report about the corporate plan and the future directions statement that the previous chair brought forward. I do not think the future directions statement was intended to be a shift in strategic thinking, but it was perceived as been a significant statement of the need to refocus some of the attention of the then NCA into areas of significant national and international crime, and away from what were called 'heads on sticks'. I would be interested in your assessment of where you stand with respect to that document and that general direction.

**Mr Milroy**—I do not feel it is within my position to comment on the previous chairman's views. I have taken the view that the ACC is a new organisation that has quite clearly different outcomes and outputs in the light of what we have currently developed for the corporate plan, which I can indicate is only for 12 months, on the basis that we are a new organisation that is finding its way in law enforcement. The directions we are taking are more aligned to the environment today and in the future. We take a far different approach in terms of the proactive gathering of intelligence in relation to criminal activity, with a particular emphasis on the 'over the horizon' view of the trends or threats coming into Australia, as well as identifying those areas that should be put before the board for either other agencies or the Australian Crime Commission to pursue, utilising the coercive powers.

We have picked up on two or three of the priorities of the former NCA, in terms of established criminal networks, money laundering and South-East Asian crime. You could say we are taking it to a different level on those matters as well as others, in particular looking far more at a top-of-the-pyramid attack on organised crime or groups that we think are making a far larger impact on Australian society, but at the same time by bringing in partner agencies into a far more

collaborative or national focus. This is a completely different way of pursuing these areas of criminality compared with the former agency.

**Mr KERR**—Sorry, in what way? Mr Crook could have sat there and said exactly the same as you—in fact, he did. He said the whole object of the future directions statement was the concentration of resources on major and serious complex crime; investigations of those at the pinnacle of criminal organisation; strategic use of powers which extend beyond the police services; the use of civil penalty regimes; and working in partnership with other law enforcement agencies—which I suspect is a precise reflection, albeit using slightly different language, of what you have told us.

**Mr Milroy**—Yes, and I think it is a lot to do with the methodology.

**Mr KERR**—What I am trying to get at is, if you have replaced the corporate plan and the future directions statement, what have they been replaced with? Is there an articulated document of the same nature? Is there something that articulates the framework in which the agency is operating in the same manner or has that been ditched?

**Mr Milroy**—We are developing our own framework at the present moment.

**Mr KERR**—Have you got one?

**Mr Milroy**—No, we have the corporate plan at the present moment and we have strategic plans in relation to the specific determinations that have been approved for the boards—in other words, the strategies and the application of resources that we would apply to those specific determinations. We also are developing the intelligence framework for the more global or more national approach to intelligence gathering, using a far more proactive intelligence gathering process.

**CHAIR**—The business plan does not exist at the moment: is that right?

**Mr Milroy**—The corporate plan?

**CHAIR**—Yes.

**Mr Milroy**—The corporate plan exists.

**CHAIR**—But a business plan does not exist.

**Mr Milroy**—There are business plans within the unit in terms of the various cost centres and there are business plans relative to each of the strategic plans prepared for each of the determinations approved by the board. Those business plans have a strategic focus in terms of strategy and what resources and specific skills are to be allocated and managed within that determination. They also look at the costings, the use of the coercive powers in relation to the strategy and other in-house expertise that we have available.

**CHAIR**—In terms of that, what happened to the KPMG review of the organisation? Was that used towards putting together a corporate/business plan?



**Mr Milroy**—Yes, and a lot of the issues that were identified in the KPMG report of 2002 have been either completed or absorbed into the integration and development plan, which is an ongoing, evolving plan about building the organisation which includes all of the corporate governance and other issues relative to managing operations.

**CHAIR**—But in terms of the overall question that Mr Kerr asked and which I think we are all interested in, do we have a business plan at this point in time in terms of the organisation?

**Mr Milroy**—No. We are developing that at the moment.

**CHAIR**—Okay. So when do you expect that to occur?

**Mr Milroy**—Between now and 30 September.

**Mr KERR**—In the absence of that, how do you determine strategic priorities between different elements of the various tasks that you are provided by your board to undertake?

**Mr Milroy**—In relation to the matters determined by the board, material was gathered in relation to the carryover work from the NCA and some of the new matters. That was a matter of collecting intelligence from the various law enforcement agencies. Those statements in support were then submitted to the board for approval. Once the board approved those particular matters to be pursued by the ACC—either with a special intelligence operation or a special investigation or just an intelligence operation—strategic plans were prepared for each of those determinations which outline the strategies and objectives and focus in all those particular matters and the resources that are required.

Then there is a governance of operations committee which meets weekly which consists of the head of intelligence operations, the legal adviser, the head of resources and me. We look at the menu of work and we make decisions at that level on the strategic direction and the resources to be allocated to those projects in line with the determination so that there is complete compliance. That also involves the joint management arrangements with each of the participating agencies who are involved in that particular operation.

**Mr KERR**—But, being crude about it, the strategic decision about which area will be given priority by way of funding and allocation of resources is being made on a weekly basis by four people, rather than by either the board through a policy determination or by you by something similar to the direction statement that was previously in place.

**Mr Milroy**—The board gives the approval or the determination for that particular project—

**Mr KERR**—I am not suggesting that anything has been done outside the remit of the board but, plainly, as to the allocation of resources to particular tasks within that menu, the decisions are being made as to where they would be going in particular areas by that weekly group. There is presently nothing that is in place that is the corporate plan or the equivalent of a future directions document that has been ticked off by the board or implemented or stated by you to guide those exercises of discretion at the moment.

**Mr Milroy**—The determination specifically indicates what we are supposed to be working on. Then the strategic plan and business plan relevant to that particular determination direct how we pursue that particular objective.

**Mr KERR**—We are agreeing furiously but slightly at cross-purposes. I am not disputing that you have a menu of tasks being provided to you by the board. Some are carried over from the past; some have been added, presumably. All I am saying is that the previous chairman went to great lengths to explain why, in his view, it was important that the then NCA get away from a heads-on-sticks approach and have a philosophy which was directed towards attacking the pinnacle of criminal organisations and concentrating resources on major, serious and organised crime.

Although there has been some discussion amongst our group—and I do not pretend that we all share a similar view—that approach was one which I think the majority of this committee agreed with and thought was appropriate. If it is not being carried through in a formal way at the present time, I am asking: will there be any documentation given of a similar broad overview so that, when it comes to those four people sitting down making allocative decisions amongst the various tasks that they have been provided to undertake, they have a framework against which they will be making those allocative decisions? At the moment, as I understand it, there is no such framework. You are doing it ad hoc, week by week, on the basis of what emerges as appearing to be the most important priorities for that time. As somebody engaged in the political process, not law enforcement, I know that, if you do not have an overarching framework, you tend to give priority to the urgent rather than the important. That is one of the deficiencies that happens in public administration if you do not have an overarching framework. You are always giving attention to the urgent and the pressing rather than the most important.

**Mr Milroy**—What you are saying is correct: what we are doing is what you are articulating. The strategic plans are submitted by the head of the project team on that determination, who at that stage has no resources. The strategic plan picks up on the strategies and objectives that were articulated in the statement in support that was approved by the board, which was based on the evidence or the intelligence that had been gathered relative to that particular matter. In the GOC—the governance of operations committee, which I have mentioned—we examine that strategic plan, the business plan and the strategies outlined in that document in relation to the resources and the strategies to be applied to work on a particular syndicate who have been identified as being primary targets of that determination, which includes the effective utilisation of the coercive powers and the other skills within the organisation as well as capitalising on the expertise of partner agencies who can assist. All of that is taken into consideration in relation to that decision making as to where the resources are to be allocated and the direction of the resources on a day-to-day basis to pursue efficiently and effectively that particular syndicate. In other words, no more chasing rabbits down burrows; a strategic approach is taken in terms of the best way to destabilise or effectively put that syndicate out of business. That is done on a weekly basis.

There are no situations in which information comes into the organisation and individual project leaders just decide to go off and pursue a particular activity. There is a menu of work from the intelligence area right through to every area of the organisation that is examined each week and even on a daily basis as more information comes in. Decisions are made for us to perhaps assist partner agencies because we feel that gathering intelligence in a particular area

under examination would assist us to be able to put the building blocks in place to have a more strategic approach in terms of the particular matter that we are investigating. That is a very tightly driven process.

Only last week we appeared before the board's strategic direction committee, which meets between each board meeting. They have examined the strategy that we are adopting and, in particular, the menu of work and the top of the tier focus that we are adopting. In that process we are also canvassing well outside law enforcement to get far more knowledge of the subject matter and to be able to take a far more strategic approach in terms of us being able to destabilise some of these syndicates. We are also looking at law reform and crime prevention, so there is a raft of issues to do with enhancing law enforcement relevant to that particular matter. So there is a science to it. I can assure you that the organisation is not wasting resources and we are subject to the other external scrutiny of the strategic directions committee, which examines our decision making in great detail relative to that particular determination.

**Mr KERR**—I think I have taken this as far as I can on this point. I would say for my own part—I do not know if it is shared by my colleagues—that I thank you for that explanation. It would be useful to have it developed as part of an overall corporate plan or business plan, depending on the language that you use, so that it can be brought before us for our next review of the report.

**CHAIR**—You expect that to be completed by the end of September—is that right?

**Mr Milroy**—These are completed for each of the determinations at the moment, but we might talk about an agency strategic directions plan that is linked to the determinations, yes, at the end of September.

**Mr KERR**—There are a couple of issues too with the last report that I was curious about. There is a significant underspend that the previous NCA reported against the budget provisioning. I was not certain of the reasons for that. It is quite unusual in agencies to have a \$4 million underspend. I think it was \$4 million; I am not looking at the papers at the moment, but it was in that vicinity. Was there a reason for that underspend? Was it carried forward into the new organisation as funds available to you? Is there an explanation?

**Mr Newman**—The underspend of approximately \$4.7 million partly was a result of the transition process which started virtually eight to 10 months before that. We were in the second year of a tied funding project with a covert capacity within the organisation. As a result of the transition process and the foreshadowed move to the ACC, we had not recruited at the same level. We did not start some of the processes perhaps that would have been in place had we had some certainty about the full direction of the agency itself. So we did carry over quite a considerable amount of money and predominantly that was tied funding, which has been used to continue to fund that capability within the organisation.

**Mr KERR**—So you did not lose the money?

**Mr Newman**—No, we did not lose the money.

**Mr KERR**—Coming back to that point about recruiting, it would seem probable that there was a significant loss of staff and morale during the period when change was in the air without the certainty. What was the scale of staff losses and the resourcing needs that emerged through this transitional period and how have they been covered since?

**CHAIR**—And a further question: where did they come from? Were they the senior levels?

**Mr Newman**—We did not have significant attrition rates, for a number of reasons. One is that we had a longstanding work force committed to the direction of the agency to crime fighting itself. It was a time when morale was low because of uncertainty; there is no question about that. There was speculation we would potentially lose quite a few people, but we did not lose as many as we thought we might.

**CHAIR**—How many did you lose?

**Mr Milroy**—The total during the transition period was 14. One, a senior SES position, was a resignation. An SES 2 was a transfer to another government body. Three were executive level 2s and the balance were executive level 1s and 2 APS 6s. It was a total of 14 staff.

**Mr KERR**—It was 14 senior staff, was it?

**Mr Newman**—Senior staff, yes.

**CHAIR**—Does that mean that the total number you lost was 14? Were there people down the line who resigned?

**Mr Newman**—There were people down the line. I would have to take on notice the total number and clarify perhaps the time frame that we are talking about as well.

**Mr KERR**—There obviously were staff losses, because we were aware of staff losses. I suppose it would be useful if you could supplement this with a note. I guess the other question is how you have gone in terms of filling the gaps that emerged there. You may, of course, not be exactly filling the same gaps. There may be different structural positions, and that itself might have caused some tension within the organisation; I do not know. I suppose I throw it to Mr Milroy to tell us the story from that point.

**Mr Milroy**—From about March or April we looked at the menu of work and at the board meeting in March there was a lot of emphasis placed on the carryover work of the NCA, which, for your information, is nearly completed. We have that as a priority in terms of resourcing at the moment and it will be completed by 30 September. Looking at the expected menu of work and the new role of the ACC, we introduced an interim structure which we are currently running with. During that period two or three senior people have gone to pursue careers in other fields and other jurisdictions. Some have gone to the private sector, clearly for career choices. About 32 staff you would classify as agency staff and temporary staff who have been brought on over a period of two years to assist the agencies that were being merged for a variety of reasons have now ceased operating within the organisation and at the present moment we are down to a total staff of 468.6 compared with a total staff of 502 at 1 January 2003, and that includes secondees numbers as well.

We have identified quite clearly that there is a requirement for additional staff as operational analysts, strategic analysts, financial investigators and a number of additional legal officers, and all of those additional skills have been clearly identified as a result of the type of work that we are now required to do. So there was a clear need shown by an evaluation that we were understaffed in certain skills areas and a recent review only last week looked at the current workload and prioritising work to complete the carryover NCA work and do some work on the new areas of work under the determinations. We feel confident that over the next two months we will be able to fill key positions in key skilled areas to adequately resource the teams that are being formed to work on the new projects. That is clearly in a non-investigative requirement.

**Mr KERR**—This is in intelligence?

**Mr Milroy**—They are intelligence analysts in the national intelligence area, operational analysts, legal officers and financial investigators specifically working in the teams in a dedicated team and multiskilled environment.

**Mr KERR**—My colleague on this committee who comes from the police will not be happy to find that there are still lawyers in ACC. It will be a sad disappointment to him. I am sorry; I am just being cheeky. You mentioned that you were going to wrap up the previous references—the carryover work.

**Mr Milroy**—Correct.

**Mr KERR**—But I assume some of those matters would be continued under different names. I would imagine Swordfish, for example, would have a continuing life, whether under that name or under some other title.

**Mr Milroy**—Yes. The lessons learnt on Swordfish for the three years, which, as you know, was a very successful venture, led to the submission in relation to the Midas proposal, which is the joint Tax and ACC operation and which has got tied funding for four years. That will really build on the excellent work carried out during the Swordfish operation.

**Mr KERR**—So Swordfish has turned into Midas—is that right?

**Mr Milroy**—That is correct.

**Mr KERR**—I suppose there are other references. When you say you are wrapping up the carryover menus, that does not necessarily mean the work in those areas; it means closing your responsibility against those remits and opening them up against new remits, if that is a way of understanding it.

**Mr Milroy**—Yes. With regard to the cases that were identified in established criminal networks and South-East Asian crime, which formed the carryover NCA work, the specific cases have been looked at where those cases allowed us to transfer the intelligence across into the new South-East Asian crime determination, for example. We have ensured that we did not lose the knowledge that was gathered in the last few years by the NCA and we are finishing off what you might call the operational activity on specific cases in those carryover works. But the South-East Asian crime and established criminal networks areas will still continue under the ACC under a

far more strategic approach, as I was indicating. We have built on the knowledge and the intelligence gathered in those particular operations—particularly the linkages between criminal syndicates—and we are now using that as a foundation to move forward under the new determinations in the same field but far more focused on the top-of-the-tree type syndicates.

**Mr KERR**—I am not sure how your report will compare apples with apples next time, but it would certainly assist us just to get some sense of the change of focus—to the extent we can—and to get some appreciation of this to identify those areas which were covered by the previous references to the NCA and the areas on which you have been given remits by your board. I presume some areas have been dropped out. There is nothing wrong with that; it would be entirely predictable. But it will be very interesting to see the things that would be omitted, as well as the things that had been carried through, and the new elements, so that can have a comparison on the menus and of the responsibilities the agency has carried through.

**Mr Milroy**—Yes.

**Mr KERR**—I would certainly appreciate that. The other issues that I am interested in go to some of the reports mentioning the changed strategic environment facing the NCA. The report mentions September 11 and that the NCA hardened its own internal measures to deal with threats against its security as a result of those events. I also recall—and with the new laws going to terrorism—considerable public discussion about the NCA-ACC having responsibility in areas that go to organised criminal activity that might threaten our infrastructure or what have you. I am not certain whether anything has come or was intended to come through that with the work that your agency does with the other agencies. This report mentions liaison with ASIO but it leaves it up in the air as to where that got to. That was simply part of the September 11 response.

**Mr Milroy**—I can comment on our ability to complement the work of ASIO—as you know, ASIO are a member of the board—in terms of the fact that we have the ability to use the coercive powers in certain areas that may complement what they are doing. But as for the period you mention in relation to the NCA, I might ask Peter Brady to comment in relation to the reference you made to September 11 and the ASIO issue.

**Mr Brady**—Firstly, as to the Midas proposal that Mr Milroy mentioned before, the change of focus is a slightly different approach, building on Swordfish but extending it to another level. One of the features of that was that we expected to potentially identify sources of terrorist financing. We have identified a number of patterns of transactions which might be consistent with that activity in the past and have referred it to the relevant agency. That was mentioned in the underpinnings for that funding and arrangements have in fact been put in place by the head of investigation that has been covering that area since then, dealing with ASIO and other agencies.

There was some talk in one of the first board meetings of whether or not the ACC would be given a board determination touching terrorism. As a result of some amendments made to the profits of crime act, terrorism offences fall within the definition of serious and organised crime that is the basic parameter for the ACC. So we can take that work on but at this stage there has not been a board determination specifically on terrorist acts, although of course, as we all appreciate, there is a range of constituent criminal activity which may or may not fall within current determinations that we have. The potential is there for that to occur. At this stage the

thrust of the response has been taken up by other agencies but the potential is there for us to support them. Certainly the Midas proposals that I mentioned on terrorism financing is in the area that we initially think that we have some expertise in, so we can provide that type of information and intelligence as we are doing other intelligence-gathering activities. That is why we have now set up those arrangements.

**Mr KERR**—You also have the money-laundering reference, don't you?

**Mr Brady**—That is the Midas proposal.

**Mr KERR**—So that is the Midas proposal?

**Mr Brady**—That is correct.

**Mr KERR**—Sorry, I thought Midas was a follow-up from the tax investigation, Swordfish.

**Mr Brady**—Midas is effectively the new Swordfish, if you want to call it that, and it has its own—

**Mr KERR**—But Swordfish was not the money-laundering one last time, if I am correct; it was separate. You are saying Midas encompasses both major tax avoidance and money laundering?

**Mr Brady**—Correct. In the distant past, which is maybe what you are recollecting, there were two separate references under the NCA.

**Mr KERR**—Yes.

**Mr Brady**—More recently, there was the single Swordfish reference. That has now been replaced by the Midas determination, which covers both fraud and tax avoidance.

**Mr KERR**—That shows how out of date I was. One of the interesting things in the agenda for change that was mentioned a number of times by government was that this ACC would be tasked with an antiterrorism responsibility. It is interesting that it has not been tasked with that after its establishment, particularly given the liveliness of debate about responses to terrorism that has been engendered. I make that comment only as an observation.

**Mr Milroy**—When you look at the determinations that we currently have, there are established criminal networks, illegal firearms and money laundering, which, as Peter indicated, can pick up on the terrorist activities. We are also doing a lot of work on identify fraud. That is really where we can complement ASIO or any other organisation or ourselves in picking up on anybody who is involved in those sorts of activities and is actually supporting terrorism, and by that we can use our coercive powers. So I think we have a wide range of areas that we can get involved in if necessary, and that is something that those agencies that are involved in that area of activity are fully aware of.

**Mr Brady**—One thing I can mention as a postscript is that in the annual report under consideration there is mention of the Middle Eastern nexus, particularly with synthetic drugs,

and there is, without going into inappropriate detail in this forum, also a connection to some other areas of criminality, again connecting back to Middle Eastern groups.

**Mr KERR**—It would not be a great surprise to know that there is a connection between the drug trade and some groups that are organised—

**Mr Brady**—There are a number of other activities as well. I think you will see more of that in the future in terms of the agency's reporting.

**Mr KERR**—Maybe we should deal with those issues in camera but not necessarily tonight. It may not be necessary. You say that there are issues that are being pursued with those linkages to the drugs area.

**Mr Brady**—Yes, principally because in the other determination areas we touch on a number of those specific criminal activity types.

**CHAIR**—Our brief tonight is to look at the NCA report. We are probably straying into the new areas of responsibility. Obviously, we want to pick up that in the future.

**Mr KERR**—One of the things that strikes me in this area is that we do very little honour to people who have worked in law enforcement, including in the National Crime Authority and the Australian Federal Police, once they have retired. There are a lot of people who, whether they were great successes or otherwise, have been senior in law enforcement and have served in senior roles with the National Crime Authority as both members of the authority and senior staff. It is the same for the AFP. Drawing out of this report, I wonder whether there is any mechanism that enables people to be drawn in as a repository of human knowledge as well. We keep reinventing wheels. The National Crime Authority has been reinvented as a wheel so many times I am not certain that it would not benefit from making sure that those people and their experiences can be drawn on. Could the ACC draw on that expertise within the statutory framework? Could it draw down on those people and use their expertise to assist the work of the organisation?

**Mr Milroy**—Without mentioning specific people, we currently have formed a panel of experts. The act indicates that the ACC will set up and run the national database. In particular, there is this issue about intelligence led operations. It is quite clear that the ACC's intelligence framework needs to be looked at. In particular, there is an emphasis on a need to be more proactive in gathering intelligence globally—the over-the-horizon type things that need to be looked at. We have currently identified a number of what you might call practitioners in a range of fields other than law enforcement whom we are going to consult in brainstorming sessions to look at providing some input into how we develop this intelligence department. I agree with what you are saying. Where we can consult, where it is appropriate and where there are suitably qualified people—not just in traditional law enforcement—we are undertaking those discussions as we speak.

**Mr KERR**—I will be more blunt. There are people like the former commissioner of the AFP; people such as former board chairmen like Broome; and even, despite his deficiencies as some saw it, Crook; Melick; and many others who are people of quite large public spiritedness. It always disappoints me that when people have given a long period of service, particularly in an



organisation like this which has limited tenure, they are rarely drawn on. It has always been the case that these people go out to grass and then are not drawn on by the organisation afterwards. Yet they have generations of knowledge and history.

**Mr Milroy**—Of course.

**Mr KERR**—So it just strikes me, maybe coming from this report but also more generally, that there are a number of people who could well be a repository of an audit, a check or what have you—an external group that you could test some of your thinking with.

**Mr Milroy**—Yes, I agree; and we are doing that.

**CHAIR**—There are a couple of questions I am interested in. Could you explain the circumstances surrounding the NCA's loan of \$3 million? Was the interest component of the \$3 million loan \$90,480, which was noted as 'expenses from loans', or \$311,902, 'repayment of debt'? Can you explain the use of the two figures in the report?

**Mr Milroy**—Mr Newman will deal with that.

**Mr Newman**—Turning to the first part of that question—the repayment of the loan—I think you will find that the total interest-free payment was \$90,000. We received \$3 million from the proceeds of the loan and repaid that within the year.

**CHAIR**—That is a pretty cheap interest rate if you paid \$90,000. How long was that over?

**Mr Newman**—The loan was undertaken at reasonable rates, and we did repay it within a short period of time. We had the cash available; we would have had to pay it back over a longer period of time, but we had the cash to pay it back. Plus, the loan was used to help finance part of the move to the Melbourne location. It did not cost us as much as we first envisaged, which gave us some discretion to pay that loan back earlier.

**CHAIR**—What is the figure of \$311,900, which is quoted in the figures in the report as being 'repayment of debt'?

**Mr Newman**—I would need to take it on notice to provide the breakdown of the full amount. We had a number of leases. We had a lease arrangement with a computer company for our computers as well, so we were repaying moneys on that debt. I will need to take it on notice to provide the full breakdown of the \$311,000.

**CHAIR**—Maybe the \$90,000 was the repayment on the \$3 million loan, and the \$311,000 was a compilation of various debts.

**Mr Newman**—Of various debts that we had.

**CHAIR**—I have another question in terms of the act of grace payment amounting to \$554,000 that was made during the year. Could you explain the circumstances of this payment?

**Mr Newman**—Yes, I can. This was a confidential settlement between the NCA and a former employee of that organisation relating to a work related injury. There was no confidentiality clause especially included in the deed of release and indemnity, but it was agreed between the ACC—the NCA at that time—and the former employee that it would be implicit in the agreement of that payment. Disclosure was not felt to be in the interests, and would breach this confidentiality at that time.

**Mr KERR**—So, essentially, it was a workers compensation claim, or something of that nature?

**Mr Newman**—Yes. It was a substantial incident. We can discuss it in camera if we need to provide more detail.

**Mr KERR**—That has been ticked off by the Auditor-General and approved as appropriate?

**Mr Newman**—Yes.

**CHAIR**—I do not think that there is a need to go in camera, do you?

**Mr KERR**—No.

**CHAIR**—One further thing was in terms of span of control. The previous NCA had quite a long laundry list of people it reported through, and there was some talk by the previous chairman of consolidating the span of control and so on. I just wondered what you have done about that in terms of the number of people reporting to you, Mr Milroy.

**Mr Milroy**—At the present moment, the interim structure has reduced the structure that we inherited. With the merged organisation, I actually only have five reporting directly. In addition to that, there is an internal auditor who reports direct to me. So the organisation has been reduced in terms of that, and also the layers of management under the director have been flattened. There is still more work to be done, of course.

**CHAIR**—That was something that I highlighted as interesting—that you have actually taken action on that.

**Mr DUTTON**—Can I return momentarily to the payout that you spoke of a moment ago. I assume I am not breaching any confidences. Can you tell me what section of the organisation that person was employed in or what sort of work led to these circumstances?

**Mr Newman**—It was prior to my time at the NCA. I would need to get clarification on that.

**Mr Brady**—I know the answer to that, but it is probably more appropriate to be dealt with in camera.

**Mr DUTTON**—Perhaps you could take that on notice and come back to us.

**CHAIR**—We will do it in camera now.

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

**Mr DUTTON**—Mr Milroy, you have been at the organisation for over six months now, I suppose. What was the most significant thing that struck you when you came into this organisation so far as culture was concerned or in terms of problematic issues which you saw at the start, which raised alarm bells and which no doubt you have been able to address in the six months?

**Mr Milroy**—I think initially it was quite evident that there was considerable pain in relation to those staff members who had spent considerable time in the three organisations and had considered that they contributed significantly to the results, who had to suddenly stop and then have to start again without a lot of recognition. That was, I think, quite evident. But I would have to mention the calibre of the people, and it is quite clear they have committed themselves exceptionally well. I think that the results that the organisation has been able to achieve in a short period of time have been because of a major input by them.

But the other major issue is quite clearly the integration of the three agencies in terms of people understanding the difference between what former OSCA people did and what former ABCI people did and what people in the NCA who were in operations did. So that is something that we are working through. There is still quite a lot of work to be done in relation to cultural change and also in relation to integration of the three agencies and the work force.

I felt that was quite noticeable as I went around talking to them in those early days. From talking to those at the coalface, it was evident that they were quite upset because they had put so much into the organisations and they were changed overnight. You usually find it is those people at that level who tend to get overlooked. Fortunately, they have been drawn into a lot of the working teams and subcommittees and they are developing the organisation from within, and that is great to see. But I can assure you there is still a lot of work to be done.

**Mr DUTTON**—Do you have any comparative figures so far on the number of investigative hearings you have undertaken compared to, say, the same period last year, for argument's sake?

**Mr Milroy**—I could take that on notice. The figures would probably be in the reports we have been sending to you with the status reports, but I would have to get the NCA figures for the period during the NCA. I think the examiners have indicated that there is a difference in the work. There has been a lot more vigorous use of the coercive powers in the last few months in particular, now that we have picked up these determinations. We could probably give you the figures from prior to 1 January, then from 1 January to March and then from when we actually got the determinations in May. We have moved into hearings as a priority in the carryover work but we are now using the hearings in the new work, and we are running with only one examiner at the moment.

**Mr DUTTON**—Thanks very much.

**CHAIR**—It is probably appropriate now, having been going for an hour and considering the nature of the transition, that we leave it at that. Obviously, we put you all on notice that next time around we will be much more vigorous in pursuing the issues. From my point of view, the comments we hear from other agencies about the positive approach towards the ACC are a big

plus. The fact that you have changed the structure in terms of the number of people reporting and in flattening the organisation is positive. We will certainly be expecting you to report on time, and we will vigorously pursue that. Also, we would be expecting the business plan to be forthcoming, which is obviously going to be with the agreement of your board, so that we can assess how you are meeting the objectives as set out in your business plan.

**Mr KERR**—It may be appropriate to check next time, but it appears that there were very substantial numbers of performance bonuses paid to senior staff during the last period. I am not sure whether it is necessary to track down exactly the basis of that, but I think the Public Service Commissioner's directions specify the circumstances in which performance bonuses can be paid.

**CHAIR**—There is supposed to be some assessment of their performance, and it would appear—

**Mr KERR**—It does seem that it was perhaps greater than would normally be expected. We might have an update report from you. That should be noted, I think, by way of an anticipated question.

**CHAIR**—Are you aware of whether these were incremental or performance based? It seems likely there were performance payments given without the assessments being carried out in hand with that.

**Mr Newman**—We have a performance review process. A significant number of the staff—traditionally the ongoing staff—were not on AWAs, were part of the performance review process and received either an increment or a bonus, depending on where they were on the various bands within their levels. Many received a bonus because they had been with the organisation or the Commonwealth service for many years and were at the top of the band. Those who were not in the PRP, were on AWAs and had salary reviews every two years did not receive bonuses as a result of that.

**Mr Brady**—It is also covered by the certified agreement in the sense that the performance system is picked up in the certified agreement, as Mr Newman mentioned. Apart from the fact that the supervisor has to do the assessment with the staff member involved, there is then a review panel process, what you would effectively look at as moderation across that class. The final decision was then made by the former chairman—no doubt it will be the CEO in the transition process.

**Mr KERR**—Please do not take my remarks as critical, but I think that, given the proportion, it would be useful for the report to identify the rationale for this and also for you to be ready for questions.

**Mr Milroy**—Yes.

**CHAIR**—I suppose we would be interested in the individual quantum that some people received, without naming them people, in terms of our oversight role. I understand you are saying that it is within the agreements, but there needs to be some governance in terms of how appropriate some of these were—without wishing to be overly restrictive in terms of your role. Clearly you are not a merchant bank, where these things are granted very generously, but I also

understand that you want to reward appropriate performance. You might think of an appropriate balance between the two.

**Mr KERR**—It is also about attracting a wider range of people.

**Mr Newman**—It might be useful to note that we are currently reviewing our performance review process to address those issues of equity and work within our budget.

**Mr KERR**—It would help to give it some transparency.

**CHAIR**—That is right; I think that is the issue.

**Mr KERR**—I am putting you on notice that this stands out as an issue that someone is going to take heed of, to your disadvantage, unless it is made transparent.

**CHAIR**—It is not disapproving of it, but rather, as Mr Kerr says, it is about the transparency of it. Perhaps you could look at that in the meantime.

**Mr Milroy**—Yes, we currently have that as a priority.

**CHAIR**—Thank you very much for appearing here tonight. You will be sent a copy of the *Hansard* and if there are any queries please let us know. We appreciate your coming and we wish you well for the next 12 months.

**Committee adjourned at 9.07 p.m.**