

CHAPTER 8

THE MECHANISMS, IF ANY, WHICH ARE IN PLACE FOR LONG TERM STRATEGIC LAW ENFORCEMENT POLICY DECISION MAKING AND OVERSIGHT OF COMMONWEALTH LAW ENFORCEMENT PRIORITIES, OPERATIONS AND BUDGETS

8.1 The material given to the Committee consistently indicated that there are no adequate mechanisms for long term strategic law enforcement policy decision making and oversight of Commonwealth law enforcement priorities, operations and budgets. Although some of the bodies and persons who made submissions and gave evidence would not have accepted this conclusion, the material they produced only tended to confirm it.

8.2 Mr John Broome, former Chairman of the NCA, stated the situation succinctly and gave the historical context:

The short answer is that there are no arrangements for long term strategic law enforcement policy decision making. There are also no processes which provide an oversight of law enforcement priorities, operations and budgets.

The present performance indicators in the budget processes do not deliver these outcomes. They are not designed to, and they certainly do not produce or reflect long term planning or operational analysis. Indeed, the great failure of law enforcement policy making at the federal level is the failure of successive governments to provide adequate priority setting in response to considered decisions about risks and how they might best be met.

This can be contrasted with the processes in place to regularly examine defence threats, analyse national priorities and allocate resources.¹

8.3 As is discussed above, the Ayers inquiry recommended both that ‘priority should be given [by the AFP] to the development of high quality strategic intelligence’ and that there was ‘a need for a separate review of the Commonwealth’s criminal intelligence effort.’² This review was not undertaken. A number of committees across several portfolios provide substantial information and advice on a wide range of national intelligence issues, and in turn feed into various Ministerial groups, many of which have both Commonwealth and State/Territory membership.³ In total, these arrangements may ensure that there is coverage of all relevant issues,

1 *Submission 2*, Mr John Broome, p. 20

2 Ayers, Findings 18 and 33, and see above, Chapter 3, Paragraphs 3.73-3.79, 3.83-3.89

3 See, for example, *Submission 4*, Attorney-General’s Department, pp. 4, 7-14; *Submission 4A*, Attorney-General’s Department, pp. 7-8, 16-17, 19-20

whereby different aspects of problems such as people smuggling,⁴ for example, are considered. What is less apparent is the extent to which the information provided is linked, and who, if anyone, is responsible for ensuring that the law enforcement bodies have a comprehensive and integrated approach.

Previous Arrangements

8.4 The 1993-1994 review of Commonwealth Law Enforcement Arrangements was agreed by Cabinet as part of the Budget process and announced in the Budget on 17 August 1993. Its terms of reference were to: identify the Commonwealth's objectives in relation to its involvement in law enforcement activities; examine options for law enforcement arrangements to determine which best meets the Commonwealth's objectives in relation to its involvement in law enforcement activities; ensure that the role and function of agencies involved in law enforcement are clearly defined; to ensure that there is no unnecessary duplication or overlap in relation to their activities; to ensure that there is no confusion between agencies as to their role; target arrangements at maximising the cooperative efforts of agencies, including in sharing information and intelligence; examine the Commonwealth's interest in the provision of common police services. The Review was carried out by senior officers from the Department of the Prime Minister and Cabinet, the Department of Finance, Attorney-General's Department, AUSTRAC, AFP and the NCA.

8.5 The Review concluded that, among other matters:

- The various law enforcement agency heads in the Attorney-General's portfolio report to Parliament . . . there is no single voice representing these officers in advising the portfolio Ministers on areas of common ground. There are many areas of common interest where they need to be heard as a group by Government.
- Policy advising on law enforcement matters goes directly from the Attorney-General's Department to the relevant portfolio minister. Although each statutory agency head has access to the relevant Minister, it became evident to the review . . . that on many issues the operational agencies felt "left out" of important policy decision making or did not have an adequate voice . . .
- The Review believes that the Government would benefit if law enforcement agencies within the Attorney-General's portfolio put a collective view of issues to the Attorney-General and the Minister for Justice. The Attorney-General's Department could still retain some policy advising role on law enforcement. The collective voice of law enforcement agencies would tell the Government what is going on from their combined perspective. By receiving joint advice on general

4 Including: security issues; health factors; sex slavery; placing of individuals in various criminal activities, etc

law enforcement issues, the Government would have an improved capacity to prioritise issues.

- the Review sees a need for a Committee or Board to provide a collective view from agencies to Government on crime issues and law enforcement priorities. It would also advise on law enforcement coordination, oversee standards of investigation, case management, fraud prevention, technology and other matters and maintain a general watching brief over the efficiency and effectiveness of law enforcement

8.6 The Review recommended the establishment of the Commonwealth Law Enforcement Board. Its role would be to:

- improve the Government's access to information about law enforcement;
- facilitate communication between the Government and law enforcement agencies;
- improve the quality of priority setting decisions;
- provide a set of standards to enhance the management and performance of law enforcement agencies; and
- facilitate better co-ordination between agencies.⁵

The Commonwealth Law Enforcement Board

8.7 The Commonwealth Law Enforcement Board (CLEB) was established by Government decision in March 1994, following the Government's consideration of the CLER Report.⁶ The objectives of CLEB, which appear to have never been changed, apart from matters of style,⁷ were as recommended in the CLER report.⁸ CLEB's functions also appear not to have changed, at least in theory,⁹ although the Attorney-General's Department submission notes that:

CLEB last met in 15 May 2000 where it considered other coordination mechanisms that are operating successfully. Much of the coordination activity performed by CLEB in past years is now occurring as part of the regular interaction between partner agencies and their interaction with other Government agencies.¹⁰

5 *Review of Commonwealth Law Enforcement Arrangements*, February 1994, p. 280

6 See *Submission 4*, Attorney-General's Department, p. 14

7 See *Attorney-General's Portfolio Budget Statements, 1995-96, 1996-97, 1997-98, 1998-99* and the Commonwealth Law Enforcement Board's Website

8 Paper on Budget Initiatives and Significant Changes in Appropriations, in *Attorney-General's Portfolio Budget Statements, 1995-96*, p. 128

9 Apart from minor details: see Commonwealth Law Enforcement Board Website, Annual Reports 1994-95, 1995-96, 1996-97 and Statement of Role, Function and Structure

10 See *Submission 4*, Attorney-General's Department, p. 14

8.8 The most important of CLEB's functions were to:

- advise the Minister for Justice on matters affecting the law enforcement interests of the Commonwealth, including the impact on the criminal environment of major government policy changes; the functions of, and priorities to be pursued by, Commonwealth law enforcement agencies; the allocation of resources to Commonwealth law enforcement agencies within the portfolio; and national law enforcement issues in which the Commonwealth has an interest;
- prepare national criminal assessments for the Minister and the Government;
- provide Government with, and review annually, a list of Commonwealth law enforcement priorities for endorsement, based on assessments provided by the Office of Strategic Crime Assessments;
- monitor and report to the Minister on the performance of Commonwealth law enforcement agencies against the priorities endorsed by the Minister; and
- relate priorities and functions to resources and report to the Minister on how Commonwealth law enforcement resources have been applied to Government's priorities.¹¹

8.9 CLEB saw its primary function as being to provide co-ordinated strategic advice to Government on law enforcement policy.¹²

8.10 The initial members of CLEB were the NCA Chair, the ASC Chair, the AFP Commissioner, the Secretary of the Attorney-General's Department and the CLEB Executive Member.¹³ The ASC Chair became an associate member when the ASC became a portfolio responsibility of the Treasurer and the AUSTRAC Director became a member.¹⁴ The ASC Chair ceased to be an associate member in December 1996.¹⁵ The Website states that membership of CLEB comprises the NCA (Chair), AFP, AG's and AUSTRAC.¹⁶

11 Its other tasks included: statutory appointments to Commonwealth law enforcement agencies; advise Commonwealth law enforcement agencies on appropriate coordination arrangements to facilitate common services, exchange of information and joint operations; authorise standards for the prevention and deterrence of fraud on the Commonwealth for use by all Commonwealth agencies; authorise standards which represent best practice in the operations and technology of Commonwealth law enforcement agencies; prepare an Annual Report to Parliament (although the Statement of the Role, Function and Structure of the Commonwealth Law Enforcement Board states that the Annual Report is to be prepared for Government).

12 Commonwealth Law Enforcement Board Website, 1994-95, 1995-96 and 1996-97 *Annual Reports*

13 Commonwealth Law Enforcement Board Website, 1994-95 *Annual Report*

14 Commonwealth Law Enforcement Board Website, 1995-96 *Annual Report*

15 Commonwealth Law Enforcement Board Website, 1996-97 *Annual Report*

16 Commonwealth Law Enforcement Board Website, Roles, Functions and Structure

8.11 Initially, CLEB was assisted by the CLEB Support Group, the staff of which were public servants who were formally staff of the NCA (because the NCA Chair was the ex officio chair of CLEB).¹⁷ Its funds were quarantined but administered through the NCA.¹⁸ It had a budget of \$4.748 million and 32 staff in 1994-95¹⁹ and a budget of \$5.4 million and 32 staff in 1995-96.²⁰ The Budget provided for it to have funds of \$9.851 million and 38 staff in 1996-97.²¹ This took account of budget measures applied across the portfolio, namely, 2% reduction in running costs (\$97,000) and savings through increased efficiencies (\$97,000), as well as an additional reduction in running costs of \$500,000.²²

8.12 The Additional Estimates for 1996-97 stated that:

... it has been decided that the Support Group for CLEB should be transferred from the NCA back to the Department. This decision was taken because a significant number of the functions undertaken by the Support Group are executive government in their nature and therefore, should be undertaken within a structure of departmental and ministerial accountability, rather than by staff of an independent statutory authority. The Support Group will operate as an additional Division of the Department and is to be known as the Office of Law Enforcement Coordination.²³

8.13 Funding of \$7.717 million and 38 staff were transferred to the Attorney-General's Department.²⁴

17 Commonwealth Law Enforcement Board Website, *Annual Report 1994-95*

18 See National Crime Authority, *Annual Report 1994-95*, p. 76

19 Paper on Budget Initiatives and Significant Changes in Appropriations in the Attorney-General's Portfolio Budget Statements, 1994-95, p. 13

20 Paper on Budget Initiatives and Significant Changes in Appropriations in the Attorney-General's Portfolio Budget Statements, 1995-96, p. 128

21 Paper on Budget Initiatives and Significant Changes in Appropriations in the Attorney-General's Portfolio Budget Statements, 1996-97, p. 146

22 Paper on Budget Initiatives and Significant Changes in Appropriations in the Attorney-General's Portfolio Budget Statements, 1996-97, p. 147

23 Explanation of Additional Estimates in the Attorney-General's *Portfolio Additional Estimates Statements 1996-97*, p. 9

24 Explanation of Additional Estimates in the Attorney-General's *Portfolio Additional Estimates Statements 1996-97*, pp. 49-50. The CLEB Annual Report for 1996-97 stated that the Attorney-General agreed to the transfer on the recommendation of the Board (Commonwealth Law Enforcement Board Website (Annual Report 1996-97). In 1997-98 (Paper on Budget Initiatives and Significant Changes in Appropriations in the Attorney-General's Portfolio Budget Statements, 1997-98, p. 132) and 1998-99 (Paper on Budget Initiatives and Significant Changes in Appropriations in the Attorney-General's Portfolio Budget Statements, 1997-98, p.122) the appropriation for CLEB was \$100,000 and there were no appropriations at all in subsequent years. At first, the Department provided support to CLEB through the Office of Law Enforcement Coordination (Attorney-General's Department *Annual Report 1996-97*, p. 152) but subsequently through the Law Enforcement Coordination Division (LECD): Attorney-General's Department *Annual Report 1997-98*, p. 8. LECD comprises four centres of expertise including Strategic Policy and Planning. Policy Coordination and Executive/Corporate Services together with OSCA

Assessments of CLEB's Performance

8.14 The various law enforcement bodies made varying assessments on the performance of CLEB and the reasons for its demise. These fall into two main categories:

- That CLEB could not change fast enough to match the changing environment; and
- That CLEB was not allowed to work properly.

8.15 The second view was that of Mr Broome, formerly Chairman of the NCA, who suggested that the Board in theory had particular powers and responsibilities, but in reality was prevented from using them fully:

... the Commonwealth Law Enforcement Board was never really allowed to work. It never, in my time as chair of it, was allowed to perform the functions that were conferred on it, it did not deal with resource issues, it did not deal with priorities and it certainly did not provide advice to government on the big picture issues. The same can be said in large part of the Heads of Commonwealth Law Enforcement Agencies [HOCOLEA].²⁵

8.16 Mr John Broome emphasised that a major problem was the 'advice to government' issue:

One of the things that the Commonwealth Law Enforcement Board was supposed to do was to help governments answer that question: to work out what the impending major priority issues in law enforcement were, in order to help it make decisions about resources and priorities—and that would include functional splits between agencies. But that advice was never allowed to be given; it was never allowed to be developed. So what we have been left with is everybody furiously waddling around in the pool a bit like ducks, with lots of activity under the water and not much above it, and no-one quite knowing in which direction they are actually heading. We all sit around and talk about there being the highest levels of coordination and cooperation ever at the present time—and that is probably true. What that statement does not tell you is how much further we need to go.²⁶

8.17 The NCA itself still placed a high value on the functions that CLEB had – 'the NCA regards the *functions* of CLEB as very important' - although it did not see that a revived CLEB would meet current needs. It also considered that CLEB had not been effective in the past because its approach was not wide enough:

On one view, CLEB failed chiefly because it did not represent the entirety or diversity of law enforcement and relevant policy interests of the Commonwealth. – it did not provide an effective 'whole of government'

25 *Transcript of evidence*, Mr John Broome, p. 101

26 *Transcript of evidence*, Mr John Broome, p. 111

approach . . . This was a significant flaw, exacerbated by the absence of an established path from CLEB that would routinely take its decisions or recommendations to the Minister and, if necessary, beyond...²⁷

8.18 The Attorney-General's Department appears to have seen CLEB as having two main roles. It had been unsuccessful in respect of one of these, therefore some other mechanism was required in order for this task to be performed. The second, co-ordinating, role, which dealt with relationships 'between partner agencies and their interaction with other Government agencies', was currently being performed adequately by agencies.²⁸

8.19 This view is not shared by Mr Broome, who believes that, regardless of the number of committees, there is still limited capacity to identify major problems and react effectively:

Until we decide what the Commonwealth government wants to achieve... from its national law enforcement effort, we cannot answer such questions as what is the appropriate level of resources for the AFP or the NCA. Until we decide that we want to have a genuine whole of government approach, we will continue to have cross-portfolio boundaries preventing proper evaluation of relative priorities in law enforcement across the whole area of government. Until we recognise that the greatest threat to our national wellbeing, our sense of community and our freedom to go about our business without fear of our homes or property being adversely affected comes from crime in all of its manifestations and that we as a society need to address some of these issues, I do not think we will put the right level of resources and effort into dealing with some of these national problems.

We do not, in my view, have effective mechanisms to identify and respond to emerging law enforcement issues.²⁹

8.20 A major issue that emerges from this consideration of the potential role of CLEB is the extent to which advice to a minister or to Government is accepted. The above statements, especially from those with experience in the NCA, and as Chairmen of CLEB, clearly imply that Government has either decided not to act, or has acted in such a fashion as to limit the capacity of its agencies to identify and respond appropriately to criminal activity at a national level.

8.21 Government is not required to accept advice from its agencies, or to accept the conclusions that the advice suggests.³⁰ There may be sound reasons for neither accepting the assessment of a agency, or for not agreeing that one method is the most

27 *Submission 7A*, National Crime Authority, p. 15

28 *Submission 4*, Attorney-General's Department, p. 14

29 *Transcript of evidence*, Mr Broome, p. 100; however, see also *Transcript of evidence*, National Crime Authority, pp. 145-146

30 See also below, Paragraphs 8.67-8.69

effective way of coping with it. Nonetheless, in view of some evidence given to this inquiry, there may be value in a separate assessment of past and present capacity of Government to deal with such major issues.³¹

8.22 Evidence from some agencies, including the Attorney-General's Department, did not provide information on the effectiveness of CLEB's main achievements, the annual Law Enforcement Plan and overall strategic assessments of the criminal environment. The Law Enforcement Plan is now produced only every three years.³² While there are various assessments of the criminal environment,³³ the ways in which these feed into a 'national' response is unclear.

8.23 The Committee does not have enough information to assess the effectiveness of CLEB as it operated, or to determine if it could have been better supported. However it notes that a more effective operation of CLEB may have limited the serious problems experienced by the AFP which necessitated the Ayers inquiry and several other management assessments of the AFP.

8.24 The Committee is concerned that individual agencies were regarded as able to adequately discharge the functions of an interagency body. The Committee is even more concerned that, as appears from the evidence quoted above in relation to other functions performed by CLEB, it was allowed to cease functioning without a replacement being available.

The current situation

Cooperation and coordination across agencies

8.25 Evidence from the Attorney-General's Department stated agencies have examined and reported regularly to the Minister on cooperation and coordination in such areas as corporate services, training, operations and IT.³⁴ This action resulted from the late 1998 direction by the then minister that meaningful steps be taken by law enforcement agencies to ensure proper coordination and cooperation. Some aspects of this direction may be a response to the Ayers report, especially Finding 23, and also to the Findings on co-location and better use of resources by the AFP and NCA.³⁵

31 See also below, Paragraph 8.35

32 See *Transcript of evidence*, Australian Federal Police, p. 31

33 See below, Paragraphs 8.26-8.50

34 *Transcript of evidence*, Attorney-General's Department, p. 6

35 See above, Chapter 3, Paragraphs 3.81-84, 3.88-3.90

*Strategic intelligence-collection, dissemination and use*³⁶

8.26 Better co-ordination of, and genuine co-operation in, the dissemination of data is integral to operational success:

...the Joint Strategic Intelligence Group established in August 1999 between the AFP, NCA, AUSTRAC and ACS, aimed at improving the efficiency and effectiveness of the portfolio agencies through better cooperation and resource sharing in the area of intelligence.³⁷

8.27 The Attorney-General's submission stated that there is an emphasis on 'cooperation and coordination' between the Commonwealth law enforcement agencies.³⁸ However, the effectiveness of the relationship in respect of intelligence is difficult to assess. Criminal intelligence is provided by several agencies in several portfolios. In its submission the AFPA lists 11 agencies that contribute to national intelligence on crime/criminal investigation,^{39,40} and another 10 that contribute to research and development in this area.⁴¹

Collection

8.28 The Office of Strategic Crime Assessments (OSCA), which is located within the Attorney-General's Department, plays a major role in the collection and analysis of information. Its main task is:

...[supporting] the strategic decision-making of the Minister for Justice and Customs and Commonwealth law enforcement agencies through the provision of strategic assessments of emerging threats and opportunities which are likely to impact on Australia. These assessments have a five year time horizon and incorporate a whole of government perspective.

OSCA's analytical program derives from a tasking directive approved by the Minister for Justice and Customs, which is developed in consultation

36 See also Chapter 3. The following paragraphs are not intended as a detailed assessment of strategic intelligence. The role of several bodies such as the Australian Institute of Criminology has not been discussed in any depth in the hearings, although the Committee has taken into account references to such organisations, as for example, in *Senate Estimates*, Legal and Constitutional, 22 November 2000, p. 92

37 *Submission 4*, Attorney-General's Department, p 4

38 *Submission 4*, Attorney-General's Department, p. 4

39 *Submission 9*, Australian Federal Police Association, pp.110-111

40 AFP, Australian Protective Services (APS), National Crime Authority (NCA), Australian Customs Service, AUSTRAC, Australian Security & Intelligence Organisation (ASIO), Joint Strategic Intelligence Group (JSIG), Commonwealth Law Enforcement Board, Standing Advisory Committee on Commonwealth/State Co-operation for Protection Against Violence (SACPAC), Protective Security Co-ordination Centre, and numerous government agencies with their own intelligence/investigation sections

41 Australian Bureau of Criminal Intelligence (ABCI), Office of Strategic Crime Assessment (OSCA), Office of Security Assessment (OSA), National Strategic Intelligence Team (NSIT), Australasian Centre for Policing Research (ACPR), Australian Institute of Criminology, Criminology Research Council, Australian Graduate School of Police Management (AGSPM), Australian Federal Law Enforcement College and the Australian Institute of Police Management (AIPM)

with the members of OSCA Reference Group, comprising representatives from the AFP, the NCA, AUSTRAC, the ACS, the Department of Prime Minister and Cabinet, the Department of Immigration and Multicultural Affairs and the Attorney-General's Department. It meets every three months and provides advice on the development of strategic assessments.⁴²

8.29 Because of the scope of its work, OSCA does not cover all issues on a regular basis. Therefore, it may not regularly make assessments on matters of most interest to the NCA (such as complex organised crime) or even to the AFP at any particular point in time. Further, according to the Attorney-General's Department, the assessments made:

...focus mostly on underlying forces shaping the criminal environment in the long term, rather than evaluating the state of the current environment.⁴³

8.30 The Australian Bureau of Criminal Intelligence (ABCI)⁴⁴ also has a data collection and analysis role. The extent and nature of its coverage is unclear since, while it collects data from a number of agencies, its use by state police services suggests much of the information is localised rather than national or international.⁴⁵ Some of its information does relate to issues which are of interest on a wider scale, including fraud and electronic crime,⁴⁶ and it states that is moving towards 'improving the provision of strategic advice to Ministers and senior law enforcement officers':

...in the area of emerging trends and risks in the criminal environment 12-24 months ahead. These assessments will focus on the implications for State and Territory police, but will have obvious relevance for national and Commonwealth strategy and policy deliberation.⁴⁷

8.31 The ABCI also sees itself as undertaking analysis, including of issues that will have an impact on Commonwealth and national priorities. However, it is difficult to see exactly how its analysis of trends would be similar to that of OSCA, albeit on a different time scale. It is assumed that much of OSCA's work would be concerned with major crime, organised crime, and transnational crime. The statement by the Attorney-General's Department that OSCA takes a different time frame (a longer one than ABCI) would suggest that at some point there is overlap,⁴⁸ but this would be so only if they were looking at similar material.

42 *Submission 4*, Attorney-General's Department, p.13

43 *Submission 4A*, Attorney-General's Department, p. 8

44 ABCI was established in 1981 'in response to the recommendations of a number of law enforcement Royal Commissions...to facilitate the exchange of criminal intelligence between Australian law enforcement agencies.' (www.ABCI)

45 *Submission 8*, Australian Bureau of Criminal Intelligence, p. 2

46 *Submission 8*, Australian Bureau of Criminal Intelligence, p. 2

47 *Submission 8*, Australian Bureau of Criminal Intelligence, p. 3

48 *Transcript of evidence*, Attorney-General's Department, p. 10

8.32 In November 2000 the ABCI was given the task of providing an annual overview of ‘organised crime threats and trends in Australia, drawing on annual jurisdictional organised crime reports’.⁴⁹ The Attorney-General’s Department further commented that:

The overview is likely to be more operational in nature, rather than strategic policy-focused.⁵⁰

8.33 The Attorney-General’s Department also noted that OSCA takes a whole of government’ perspective,⁵¹ although the ABCI itself has suggested this is not a role which it currently plays to any extent.⁵²

- Australian Criminal Intelligence Database (ACID)
- This database is widely used, although some agencies prefer to also use PROMIS on the grounds that it covers case management.⁵³
- Australian Law Enforcement Intelligence Network (ALEIN)
- This is described as the companion network to ABCI; NCA publishes its ‘finished product’ through this system to its task force members.⁵⁴ There was no other reference to this network, although it presumably holds important material on organised crime issues.

Dissemination of Information

8.34 As well as its role in the OSCA Reference Group, OSCA also:

...facilitates coordination of the Commonwealth’s law enforcement intelligence effort through chairing the Commonwealth Law Enforcement Intelligence Consultative Committee (CLEICC) and providing representation for law enforcement on national intelligence committees. The CLEICC meets quarterly and brings together the heads of the intelligence units of Commonwealth law enforcement agencies, other Commonwealth agencies having law enforcement or regulatory responsibilities and representatives of the national intelligence community.

CLEICC provides a forum for discussion of issues where a coordinated or collective strategic approach by the intelligence community is desirable. Through its 1998-200 Strategic Plan, the CLEICC has significantly advanced the development of intelligence best practice in the

49 *Submission 4A*, Attorney-General’s Department, p. 8. The relationship between this and its task of co-ordinating information on organised crime is not clear

50 *Submission 4A*, Attorney-General’s Department, p. 8

51 *Transcript of evidence*, Attorney-General’s Department, p. 10

52 Although see above, Paragraphs 8.29-8.30

53 *Submission 7C*, National Crime Authority, p. 19

54 *Submission 7C*, National Crime Authority, p. 20

Commonwealth law enforcement community. A new Strategic Plan to be developed in 2001 will further develop CLEICC's role as a forum for addressing issues of common concern.⁵⁵

8.35 Information is also shared through the Joint Strategic Intelligence Group, comprising staff from the AFP, NCA, AUSTRAC and ACS. The Group has the objective of improving the efficiency and effectiveness of the portfolio agencies through better cooperation and resource sharing in the area of intelligence.⁵⁶

8.36 The role of the AFP and NCA in further dissemination of information is less clear, except in that the NCA referred to its intention of providing regular reports both to law enforcement agencies and to government on trends in crime. These would deal with organised crime:

The commentary that the NCA will be providing will be a composite of that but, because of the responsibility to report on the need for reform of the law, it will also contain elements which will go towards what should be looked at by governments more broadly to put crime – particularly organised crime – on a different footing than it is currently.⁵⁷

8.37 According to the Attorney-General's Department, this dissemination of information by the NCA:

should complement the intelligence assessments conducted by OSCA and the ABCI in focusing more directly and regularly on developments in major complex organised crime and possible responses.⁵⁸

8.38 Finding 18 of the Ayers report referred to the AFP giving priority to the production of high quality strategic intelligence to drive its decision-making. In its submission the AFP advised that, following the Ayers report, a wide-ranging reorganisation of AFP strategic intelligence was undertaken involving recruitment of strategic analysts and the introduction of a National Intelligence Collection Priorities system. It notes that the intelligence improvement process in the AFP is ongoing.⁵⁹

8.39 The Committee notes that there have been considerable resources and training devoted to improving the collection and analysis of information by the AFP.⁶⁰ Unfortunately, there is little information on the relationship between the information held by the AFP and that held by other agencies. Nor is there much detail on the

55 *Submission 4*, Attorney-General's Department, p.14

56 *Submission 4*, Attorney-General's Department, p. 4

57 *Transcript of evidence*, National Crime Authority, p. 71

58 *Submission 4A*, Attorney-General's Department, p. 8; see also *Submission 7C*, National Crime Authority, p. 19

59 *Submission 6D*, Australian Federal Police, p. 5

60 See also above, Chapter 3, Paragraphs 3.73-3.79

analysis of data by the AFP alone or in conjunction with other agencies.⁶¹ In 1997 the then Commissioner Palmer noted co-ordination between the AFP and the NCA, including consideration of information systems and intelligence, with representatives from both organisations sitting as:

a national management team overseeing joint operations or prospective joint operations with a view to ensuring that the best mix of resources is involved in the highest priority work.⁶²

Co-ordination and Strategic Planning

8.40 Given the plethora of material and agencies, the role of the Joint Strategic Intelligence Group is important in that it has the function of integrating information: '[drawing] broader assessments together.'⁶³ It is assumed that both the NCA and AFP as individual agencies, as well as members of JSIG, also integrate and co-ordinate information, including through the provision of reports on specific issues.

8.41 However, as is re-iterated below, there is limited information available on the distribution of any co-ordinated material. Such material is presumably the subject of discussions held by bodies such as HOCOLEA and various ministerial groups.⁶⁴

National Crime Authority

Planning and Use of Intelligence

NCA references are provided by the IGC⁶⁵:

The IGC consults with the Chief Executives of Commonwealth, State and Territory law enforcement agencies for advice on the broad areas of priority of organised criminal activity requiring investigation by the NCA using its special powers.⁶⁶

8.42 The NCA then consults with 'partner law enforcement agencies, including through the national co-ordination framework'⁶⁷ in order to determine the relative priorities within broad areas. Exactly what the 'national co-ordination framework' is, is not clear. While this process may be a means of leaving the NCA with a fair

61 See above, Chapter 3, Paragraphs 3.83-3.89

62 *Estimates Hansard*, Legal and Constitutional, 11 June 1997, p. 214

63 *Transcript of evidence*, Attorney-General's Department, p. 10

64 See, for example, *Estimates Hansard*, Legal and Constitutional, 11 June 1997, p. 214: '...in the commissioners' forum and in the assistant commissioners [Crime] forums- and that group meets at least once a year - there are ongoing discussions about the way by which all police agencies can better coordinate.'

65 Although the National Crime Authority may also undertake inquiries which do not require the use of its special powers, *Submission 7*, National Crime Authority, p. 7

66 *Submission 7*, National Crime Authority, p. 7

67 *Submission 7*, National Crime Authority, p. 7

amount of control over priorities, it could also suggest some problem with the IGC's role.

8.43 The NCA also stated that the IGC:

...is supported by the Senior Officers' Group (SOG) (the Commissioners of the Federal, State and Territory police services and chief executives of some State and Territory Justice Departments), which in turn is informed by the work of the NCA Consultative Group (NCACG) (the Assistant Commissioners (Crime) and equivalent).⁶⁸

8.44 The determination of broad areas of concern must be based on detailed information sufficient to assess the extent to which there are problems and whether it is possible to achieve specific outcomes. If this is not done, then there could be areas nominated by the IGC which the NCA does not investigate at all, because of resource and other issues. It would be more effective for the relevant factors to be identified beforehand, so that the IGC can limit its proposals to those which might be undertaken. To do otherwise is to suggest that there is a coverage of major areas of organised crime which does not exist.

8.45 Later in its submission, the NCA listed its then 'current order of priorities', two of which are not clearly reflected in its program areas which would suggest it is a waste of time for the IGC to refer such issues.⁶⁹ However, as the IGC in effect monitors the operations of the NCA, it would be aware of the extent to which various references are undertaken.⁷⁰

8.46 The basis of NCA references must be:

- Major serious and complex organised crime,⁷¹ often involving State rather than Commonwealth crime;⁷²
- Which runs across state and national boundaries; and
- Requires the powers of the NCA to be properly investigated.⁷³

8.47 The NCA also stated that two of its programs, Cybercrime and Intelligence,⁷⁴ were 'designed to develop the knowledge and expertise required to enable the NCA to

68 *Submission 7A*, National Crime Authority, p. 9

69 *Submission 7*, National Crime Authority, p. 18

70 *Submission 7A*, National Crime Authority, p. 13

71 *Submission 7*, National Crime Authority, p. 10

72 *Submission 7A*, National Crime Authority, p. 8

73 *Submission 7*, National Crime Authority, p. 10

74 See also *Submission 7*, National Crime Authority, p. 22

proactively keep pace with the criminal environment.’⁷⁵ At that point, the programs did not involve operational work.⁷⁶

8.48 In respect of other crime problems, the NCA stated that:

... the Australasian Police Ministers’ Council (APMC), which is also supported by the SOG,⁷⁷ plays a key role in national strategic planning for policing. The APMC is a consultative body that meets twice a year to promote a coordinated national response to law enforcement issues and to maximise the efficient use of police resources. The Council comprises the State and Territory Police Ministers, Commonwealth Justice Minister and the New Zealand Police Minister.⁷⁸

8.49 The NCA stated that :

There is no formal structure for putting a collective portfolio view to the Attorney-General and the Minister for Justice and Customs. A collective view is frequently determined and put via one or other of the following processes:

- Consultation and co-operation on specific matters...
- Budget processes;
- Co-operative intelligence projects, including those conducted by the Joint Strategic Intelligence Group (JSIG).⁷⁹

8.50 The NCA believed that flexibility was ‘extremely important’ in a ‘quickly changing law enforcement environment’, and therefore the absence of a more formal co-ordinating body did not affect the sharing of intelligence.⁸⁰ It believed its involvement in various committees provided a means of putting in and receiving relevant information.⁸¹

75 *Submission 7*, National Crime Authority, p. 18

76 The NCA advised that ‘the Commonwealth Government also determines investigative priorities through specific purpose funding, such as the National Illicit Drugs Strategy (NIDs) or money laundering and fraud against the Commonwealth investigations –Swordfish (*Submission 7*, National Crime Authority, p.8) and that part of the Swordfish funding goes to the National Crime Authority’s cybercrime program (*Submission 7C*, National Crime Authority, p. 11)

77 Senior Officers’ Group

78 *Submission 7A*, National Crime Authority, p. 10

79 *Submission 7C*, National Crime Authority, p. 5

80 *Submission 7C*, National Crime Authority, p. 6

81 Relevant in that ‘the NCA’s involvement in AGECE, CIPG and ESCG is limited to the extent that their activities relate to the impact and involvement of complex organised crime in cybercrime activities, *Submission 7C*, National Crime Authority, p. 11

Co-ordination of operational activity

8.51 The development of better co-ordinated operations depends substantially on intelligence collection, analysis and dissemination. It also requires high quality training and equipment.⁸²

8.52 The Attorney-General's Department,⁸³ the AFP and the NCA concur that operational co-ordination between agencies is at a good level, and that multi-skilled teams and multi-agency teams have worked well.⁸⁴ As noted by the Attorney-General's Department:

The Commonwealth's overall approach to reducing the importation and distribution within Australia of heroin is just one example of how cooperative arrangements involving the AFP, NCA, ACS, the Australian Transaction Reports and Analysis Centre (AUSTRAC), State and Territory police services, and, to a lesser extent Australia's foreign intelligence community, can yield significant results in a difficult area of law enforcement. . .⁸⁵

8.53 The AFP indicated that coordination with other Commonwealth agencies was largely effected through memoranda of understanding (MOU), operational coordination or joint operational plans developed on a case by case basis. This coordination was improving with domestic agencies,⁸⁶ and also with international bodies:

There is a lot of coordination of criminal intelligence and the identification of targets amongst the various agencies. Decisions are very often made as to which is the most appropriate agency to take the lead role in an investigation. We are far better at this now than we have ever been before.⁸⁷

...we have now reached a stage in the AFP where we are working jointly with overseas agencies on technical operations. We are having enormous success, particularly in the areas of people-smuggling and narcotics trafficking. ...Being an island country where heroin is not domestically produced and where illegal people-smuggling – which is now counted by Interpol as the third largest criminal threat in the world – [is increasing] we require significant coordination.⁸⁸

82 See above, Chapter 3

83 *Submission 4*, Attorney-General's Department, p. 4

84 This was also noted by the Australian Federal Police Association, *Transcript of evidence*, p. 74

85 *Submission 4*, Attorney-General's Department, p. 4

86 The Agio Task Force, for example, included AFP, NCA, ATO, AUSTRAC and ACS; see also Australian Transaction and Reports Analysis Centre, *Annual Report 1998-1999*, p. 110

87 *Transcript of evidence*, Australian Federal Police, p. 42

88 *Transcript of evidence*, Australian Federal Police, p. 43

8.54 Additionally, the AFP also referred to broader co-ordination at the operational level, although for security reasons it did not go into these matters in detail:

... we are at a point in our evolution where we are receiving that collaboration and cooperation from other agencies and we are also working together technically to take advantage of some of law enforcement and, in some other respects...other Commonwealth agencies.⁸⁹

8.55 To this extent, the development of a national approach, which involves other intelligence agencies, can be seen as beginning to address some of the issues that were raised by the NCA and Mr Broome in their evidence. This form of co-ordination requires Government approval, presumably resulting from a joint consideration of the extent of threat and ways of dealing with it. Nonetheless, considering that even the most recent publication of the NCA available to the Committee at the time of finalising this report⁹⁰ re-iterated the need for joint activity, it is still seen by at least this agency as not being adequate.

The NCA

8.56 The NCA's last annual report stated that one of its strategies is to encourage and participate with other agencies in the development and exchange of specialist equipment, information, expertise and innovative techniques. The NCA has actively participated in arrangements whereby materials, technology, people and intelligence are shared among its partners.

8.57 The NCA's assessment of the current extent of cooperation between agencies was very positive:

...cooperation between law enforcement agencies – that includes the NCA and the AFP - has never been better . . . The National Crime Authority, the AFP and indeed other Australian law enforcement agencies are currently working very well under the coordination arrangements that the NCA fosters under the National Crime Authority Act . . .⁹¹

8.58 One of the NCA's strategies is to encourage, and participate with, other agencies in the development and exchange of specialist equipment, information, expertise and innovative techniques. The NCA has actively participated in arrangements whereby materials, technology, people and intelligence are shared among its partners. One example was a Swordfish task force presentation to a forum of government agencies and partners provided an opportunity to share intelligence, expertise and innovative techniques in the area of fraud.⁹²

89 *Transcript of evidence*, Australian Federal Police, p. 43

90 In late August 2001

91 *Transcript of evidence*, National Crime Authority, .pp. 137-138

92 National Crime Authority, *Annual Report 1999-2000*, pp. 22-23

*Planning, policy making and oversight*General

8.59 The extent of and responsibility for planning and policy development in the area of criminal behaviour and operation is the province of a number of departments and agencies. The actual co-ordination of such policy was one of the roles allocated to CLEB, although, as noted,⁹³ transferring the conclusions of that policy into advice to Government and then having such advice accepted and acted upon, are entirely different processes:

HOCOLEA provides advice to Government on whole-of-Government law enforcement policy at the Commonwealth level. It develops and settles best practice standards on cross-agency law enforcement operational issues. It was also intended to provide input to the Commonwealth Law Enforcement Board (CLEB) on matters beyond its responsibilities, including strategic and policy issues arising across broader Commonwealth law enforcement.⁹⁴

8.60 The Attorney-General's Department, for example, sought to outline the processes by which policy formulation as well as priority setting, budget allocation and oversight of law enforcement agencies was established.⁹⁵ The key bodies listed in the department's submission were the Council of Australian Governments (COAG), Ministerial Council on the Administration of Justice (MCAJ), Australasian Police Ministers' Council (APMC), Ministerial Council on Drugs Strategy (MCDS), the InterGovernmental Committee of the National Crime Authority (IGC-NCA), Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA), OSCA, the Commonwealth Law Enforcement Intelligence Consultative Committee and CLEB.⁹⁶ Of these, COAG has virtually no role (apart from one involvement in drug policy)⁹⁷ and CLEB was no longer in operation.

8.61 The department's main point, nonetheless, is that there are several agencies which do have both a policy-making function and a co-ordination of policy and action responsibility:

In relation to law enforcement specifically, the APMC, the Ministerial Council on Drugs Strategy and IGC-NCA also perform key coordinating and decision making functions, enabling a coordinated national response to emerging law enforcement issues and priorities.

93 See above, Paragraph 8. 21

94 *Transcript of evidence*, National Crime Authority, p. 146

95 *Submission 4*, Attorney-General's Department, p. 9

96 *Submission 4*, Attorney-General's Department, pp. 9-15

97 See *Submission 4A*, Attorney-General's Department, p.21: 'intergovernmental forums such as COAG provide a forum for consultation and decision making on major national initiatives, including those with a law enforcement dimension such as the Tough on Drugs strategy.'

In particular, the APMC has . . . broadened its role to include the coordination of a national response to organised crime . . .⁹⁸

8.62 The extent of involvement in interagency consultation is also illustrated by the NCA Annual Report for 1999-2000 which lists its contribution to the work of the following bodies:

- Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA) working groups
- Action Group into Electronic Commerce
- Internet Service Providers Records Working Group
- National Drug and Alcohol Research Centre Illicit Drug Reporting System
- NSW Fraud Coordination Committee
- Commonwealth Criminal Assets Liaison Group
- The multi-agency liaison and information sharing forum chaired by the NSWPol
- Regional operational management committees with partner agencies.⁹⁹

8.63 Many departments and agencies would also have a similar contributory role, both in policy development and co-ordination. However, the value of this must also be assessed against the apparent shortage of planning documentation. As noted above, CLEB had the role of developing an annual plan, the LEPD.¹⁰⁰

8.64 In its own consideration of planning, the AFP acknowledged that the last plan had been in 1996.¹⁰¹ The value of a planning document that is four or more years old is dubious. It should also be noted that OSCA only produces a major overview assessment every two years,¹⁰² which would not facilitate understanding of key issues.

8.65 The AFP did not perceive there to be major problems with planning and identification of major issues, and considered that the existing intelligence and analysis of this was sufficient:

There are a number of ways that long-term planning for emerging problems is identified, and that principally is through the intelligence bodies – for example, the Joint Strategic Intelligence Group comprising ourselves,

98 *Submission 4A*, Attorney-General's Department, p. 21

99 National Crime Authority, *Annual Report 1999-2000*, p. 19

100 See above, Paragraph 8.22

101 *Transcript of evidence*, Australian Federal Police, p. 31. It is possible that a LEPD was produced in 1997

102 Attorney-General's *Portfolio Budget Statement 1999-2000*, p. 4182

Customs, the NCA, AUSTRAC, the Australian Bureau of Criminal Intelligence and the work that was done by OSCA.¹⁰³

8.66 Although there was no shortage of information on the numbers of committees, working groups and other joint arrangements, it would have been more useful if the Committee had been advised of how such groups actually produced a co-ordinated response, whether this was a result of long-term planning, and how it came into play. This would not require the provision of any confidential information.

8.67 What the Committee has been provided with instead is a large amount of discrete information. Rather than assessing the process of policy development and its transformation into Government action, the Attorney-General's Department and others have listed only the components. Nor have they considered at any length the fact that while there is a substantial amount of work being done, much of this may be more as a result of inter-agency rivalry, or inability to agree on issues,¹⁰⁴ rather than a sign of a genuinely co-ordinated response. The NCA, for example, stated that it had been funded to investigate cybercrime through Swordfish funding.¹⁰⁵ As at July 2001, it appeared to have made very little progress.¹⁰⁶ While this may result from inadequate funding, staffing or availability of specialist resources, it is a real concern that expert committees and sub-committees appear unable to move rapidly.

8.68 In light of this, the statement by the AFPA is apposite:

Although there are numerous committees and subcommittees formed there seems to be an ad hoc approach to long-term strategic law enforcement policy decision-making and oversight of Commonwealth law enforcement priorities, operations and budgets . . .

(110) Reporting and monitoring of crime affecting Australia is compartmentalized through the array of Commonwealth Agencies, lack of central reporting and lack of central strategic criminal intelligence . . .¹⁰⁷

8.69 Like policy development and co-ordination, 'oversight' of the operation of the various agencies requires focus. The AFPA, for example, noting that the structure of law enforcement was increasingly fractured, saw the challenge for the future as

103 *Transcript of evidence*, Australian Federal Police, p. 31

104 See also the comment by the Australian Federal Police Association: 'in 1996, the electronic commerce task force called on the Commonwealth to establish a national forensics computer group staffed by local enforcement agency officers and industry experts. Five years later, there are at least 13 different committees or bodies, mostly Commonwealth driven, working on e-crime related issues and reporting to different bodies' (Australian Federal Police Association, *Transcript of evidence*, p. 73)

105 *Submission 7C*, National Crime Authority, p. 11

106 Legal and Constitutional Legislation Committee, Inquiry into the Cybercrime Bill 2001, *Transcript of evidence*, p. 7

107 *Submission 9*, Australian Federal Police Association, p. 109

establishing a common governmental response to organised crime and ensuring best practice resource allocation.¹⁰⁸

8.70 It is true that that it is often difficult to track the processes whereby a series of issues become policy and this policy become part of strategy and action. Nonetheless, the Committee could not discern any system in the multiplicity of organisations, meetings, and various lines of authority and decision-making. There is no coherence in the discussion of law enforcement issues and the development of policy and of strategy for its implementation. Even bodies such as HOCOLEA which the NCA saw as having the potential for a national perspective,¹⁰⁹ did not seem to have definite outcomes:

The Heads of Commonwealth [Operational] Law Enforcement Agencies is an informal group . . . Like-minded agencies are involved in that forum and it brings together the CEOs and the deputy CEOs from tax and a range of agencies, including conventional law enforcement agencies. However, it is an informal forum. It is simply the capacity of these people to get together to discuss common interest and common concerns and hope, to some extent, to bring some order to the way they separately or collectively go about things. There is room within that forum for operations to break from it but, essentially, it is an informal body. It has no formal framework.

It does not have a coordinated, concerted effort whereby they say, ‘We will all agree to do this, and we will go ahead and do it’¹¹⁰

8.71 The Attorney-General’s Department does not perceive that it has a role in overseeing the work of agencies. Its function is primarily to co-ordinate, as well as to provide advice. The ‘whole of government’ response to law enforcement issues was to be expressed through HOCOLEA, using work undertaken by OSCA:

... HOCOLEA asked for an overview paper about the challenges facing Commonwealth law enforcement. That is a paper that OSCA has drafted and that HOCOLEA will consider.¹¹¹ In the budget context, this year we produced a short overview paper about the environment to set a context in which the minister might consider the sorts of new policy proposals that come in front of him.¹¹²

108 *Transcript of evidence*, Australian Federal Police Association, pp. 74-75

109 See *Submission 7*, National Crime Authority, pp. 32-33: ‘HOCOLEA has been working towards identifying the key priority challenges for Commonwealth law enforcement and regulatory agencies and the priority areas for strengthening law enforcement capabilities. Working groups, led by different HOCOLEA agencies, have been established from time to time to look at specific areas of interest to Commonwealth law enforcement. For example, working groups exist on GST Fraud, Identity Fraud and Electronic Commerce.’

110 *Transcript of evidence*, National Crime Authority, p. 146

111 This document, described as a ‘strategic directions’ paper, was also mentioned by the AFP: *Transcript of evidence*, Australian Federal Police, p. 31

112 *Transcript of evidence*, Attorney-General’s Department, p. 17

8.72 The fragmentation of decision-making in law enforcement policy matters is reflected in the fact that, although the Attorney-General's Department is the central policy and coordinating agency within the portfolio, it is necessarily limited in what it can do.¹¹³ Except in the specific areas in which it is responsible for policy, such as privacy and telecommunications interception, the department is involved simply to facilitate, coordinate and advise:

The Attorney-General's Department has a significant role in providing policy advice to Government on key law enforcement issues and challenges, in consultation and coordination with relevant Commonwealth agencies and with relevant non-government agencies.¹¹⁴

The Government receives regular advice from the Attorney-General's Department, in consultation with Commonwealth law enforcement agencies, on the operation and effectiveness of Commonwealth law enforcement structural arrangements . . .

Long-established coordination arrangements ensure that, in relation to key law enforcement priorities and issues, the relevant agencies liaise and discuss major issues with the Attorney-General's Department, with a view to providing consistent advice to Government. Where a consistency of views cannot be achieved in relation to a particular issue, any differences would be represented in advice to Government.¹¹⁵

8.73 Ministers, as is invariably the case, can choose between the Department's advice and that of other agencies within the portfolio:

In addition to the coordinating bodies described ... after considering the advice of the Attorney-General's Department, AFP, NCA and other relevant law enforcement agencies, the Government, through the Attorney-General and the Minister for Justice and Customs, sets the overarching policy for Commonwealth law enforcement operations concentrating on key areas of criminal activity, and the budgets that are allocated to law enforcement.¹¹⁶

8.74 This statement is unexceptional, in that it re-states the essential fact that it is Government's role to determine and decide. However, one of the factors that has seriously affected the operation of the Attorney-General's Department is the loss of the power, quality control and responsibility that comes from being the 'Department' rather than one of many players. This is not to say that agencies do not have an

113 *Attorney-General's Portfolio Budget Statements 2000-2001*, p. 13

114 *Submission 4A*, Attorney-General's Department, pp. 21-22

115 *Submission 4A*, Attorney-General's Department, pp. 21-22

116 *Submission 4*, Attorney-General's Department, p. 15. The Department also said in evidence : 'We are professional, independent advisers to the Attorney-General and the minister, and they can use to advise them to the extent they want on the other agencies that answer to them' - *Transcript of evidence*, Attorney-General's Department, p. 16

important role, but more to emphasise that there needs to be focus and leadership, and a collegial view:

I think it is a tragedy when a department of state seems to regard itself as having no proper role in policy formulation, analysis and oversight of functions within its broad ministerial area of responsibility. That is what a department of state is there to do. The evidence that has been given to this committee suggests that it is in fact quite improper and very dangerous for individual statutory authorities to start writing their own legislation, to be responsible for their own alleged coordination and so on.¹¹⁷

8.75 This is not an issue which the department itself can comment on, since the allocation of resources and the extent to which a minister will accept the advice of an agency over that of a department of state is entirely up to the minister. Nonetheless, the Attorney-General's Department conceded that its own lack of resources meant its traditional role was limited:

... there are not vast resources in this and, in the end, there is just sufficient to play the role of a department of state.¹¹⁸

8.76 In the view of the AFP at least, the department's role was that of co-ordinator. However, as *described* by the AFP, the role seems more akin to that of a provider of corporate services:

The best example to give you is where we want to do legislative reform, if you like - where we see a gap in our legislation. We would put a submission forward to the department, the department would draft the submission in a form that was acceptable for consideration by ministers, seek coordinating comments from other stakeholders in the policy or legislation, and advance it from there. . . They advise on policy, legislative reform and ministerial direction . . . It is basically a coordination role on policy, legislation and budget. In terms of APMC and MCAJ, they would also coordinate submissions to those bodies.¹¹⁹

Conclusions

8.77 The Committee concludes from the evidence presented that there is no mechanism in place at present for long-term strategic law enforcement policy decision making and oversight of Commonwealth law enforcement priorities, operations and budgets. CLEB was an attempt to create such a mechanism. It is defunct and both the NCA and the Attorney-General's Department acknowledge that it must be replaced. However, nothing has been put in its place in the time since its last meeting.

117 *Transcript of evidence*, Mr John Broome, p.102

118 *Transcript of evidence*, Attorney-General's Department, pp. 21-22

119 *Transcript of evidence*, Australian Federal Police, pp. 29-30

8.78 It may well be that there is great cooperation at the coal face but it seems that policy is being implemented and operational directives given by a multitude of committees dealing with particular law enforcement, without any overview. As the Committee has said above,¹²⁰ the benefits of the substantial growth in the capacity of the AFP in particular may well be lost if there is no means to ensure that its priorities are better assisted by those agencies that are essentially support bodies. Beyond this, however, it seems essential to have a body which has the major analytical role, although it might also have other responsibilities.

Solutions

8.79 Different mechanisms for making long-term policy decisions and overseeing priorities, operations and budgets in the law enforcement area were suggested to the Committee. The NCA emphasised its belief that a ‘whole of government’ response was needed:

The real question in Australia is whether or not this country, at federal or state level, has a whole-of-government approach to what is an increasing area of interest to all of us, and that is the rise of organised crime. The commentary [on organised crime]¹²¹ will, to some extent, touch on that in the sense of what might be described as a convergence of interests. That is what is lacking in the Australian context. At the federal level and elsewhere, there probably is not the sophistication in bringing together the law enforcement and aligned interests that have an interest in the issues, like organised crime, that affect our lives.¹²²

8.80 The view of the AFPA was that ‘one dedicated agency must have direct responsibility for Commonwealth criminal law enforcement functions rather than it being broadly monitored by the Attorney-General’s Department or dealt with on an *ad hoc* basis by various part time committees or one off reviews’.¹²³

8.81 The Association had developed a system which it considered met the need for effective intelligence collection and use, and co-ordination. The Nationally Integrated Criminal Law Enforcement (NICLE) plan¹²⁴ would ‘increase the efficiency and

120 See above, Chapter 3, Paragraph 3.125

121 See above, Chapter 1, Paragraphs 1.47 and 1.49

122 *Transcript of evidence*, National Crime Authority, pp. 145-146. In the subsequent statement issued by the NCA, the emphasis on co-ordination similar to that given to defence and security issues is reinforced: ‘Part of the present difficulty is that organised crime issues handled by law enforcement agencies currently do not consistently receive detailed attention at the highest levels of government on a par with the national security issues of defence, foreign intelligence and security intelligence. High-level government attention is engaged on these issues via planning and priority-setting processes which are endorsed by senior officials and Cabinet ministers. Some aspects of law enforcement call for a similar approach, and the NCA therefore welcomes the recent initiative to produce a Law Enforcement Planning Document (LEPD). This will help identify and address priorities which cross portfolio boundaries.’

123 *Submission 9*, Australian Federal Police Association, p. 109

124 See especially *Submission 9B*, Australian Federal Police Association

effectiveness of national and federal criminal law enforcement investigations,' including through ensuring that 'one Agency head is accountable and responsible for Criminal Law Enforcement Outcomes.'¹²⁵ The role of this individual would include planning, advice and policy formulation, strategic planning, contingency planning, performance assessments, advice on requirements, programs and budgets and assignment of functions.¹²⁶

8.82 The Committee has received submissions from the Director of Public Prosecutions¹²⁷ and AUSTRAC¹²⁸ objecting to the AFPA proposal that they be brought within the NICLE model.¹²⁹ The AFP also made a submission objecting to the concept and to the inclusion of some agencies.¹³⁰ There was insufficient time for discussion of this or other models for coordination of the Commonwealth law enforcement effort. In any case, such detailed discussion would have taken the Committee beyond its terms of reference.

8.83 However, the Committee is particularly grateful to those persons and bodies who directed their minds to the question of how to coordinate the Commonwealth law enforcement effort. The lack of such coordination is probably the biggest challenge currently facing Commonwealth law enforcement.

Recommendations

Recommendation 3

The Committee **recommends** that the Government examine the best means of providing a point or body for the effective peak management and coordination of the Commonwealth law enforcement effort and work to its expeditious implementation.

Recommendation 4

The Committee **recommends** that, in light of recommendation 3, the party responsible for the effective coordination and oversight of the Commonwealth law enforcement effort develop, and regularly update, a quantified estimate of the 'criminal environment', into which law enforcement bodies provide input.

125 *Submission 9*, Australian Federal Police Association. p. 109

126 *Transcript of evidence*, Australian Federal Police Association, pp. 153-154

127 *Submission 10*, Director of Public Prosecutions, pp. 1-2

128 *Submission 11*, Australian Transaction Reports and Analysis Centre, pp. 1-2

129 In the case of the DPP, see *Transcript of evidence*, Australian Federal Police Association, pp. 159-160. In the case of AUSTRAC, see *Transcript of evidence*, Australian Federal Police Association, p. 155

130 *Submission 6C*, Australian Federal Police, pp. 1-2

