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COMMISSION

Reference: Future impact of serious and organised crime on Australian society

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**JOINT STATUTORY COMMITTEE ON THE
AUSTRALIAN CRIME COMMISSION**

Tuesday, 1 May 2007

Members: Senator Ian Macdonald (*Chair*), Mr Kerr (*Deputy Chair*), Senators Bartlett, Mark Bishop and Polley and Mrs Gash, Mr Hayes, Mr Richardson and Mr Wood

Members in attendance: Senators Mark Bishop and Ian Macdonald, Mr Kerr and Mr Wood

Terms of reference for the inquiry:

To inquire into and report on:

The future impact of serious and organised crime on Australian society.

With particular reference to:

- a. Future trends in serious and organised crime activities, practices and methods and their impact on Australian society;
- b. Strategies for countering future serious and organised crime;
- c. The economic cost of countering future organised crime at a national and state and territory level; and
- d. The adequacy of legislative and administrative arrangements, including the adequacy of cross-jurisdictional databases, to meet future needs.

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Committee met at 11.33 am**SUTTON, Professor Adam Crosbie, Private capacity**

CHAIR (Senator Ian Macdonald)—Welcome. I declare open this public hearing of the Parliamentary Joint Committee on the Australian Crime Commission. This is the second hearing of the committee's inquiry into the future impact of serious and organised crime on Australian society. The terms of reference are available on the committee's website and I am sure, Professor Sutton, you are aware of those. The committee is also going to hold hearings later in Brisbane, Sydney and Canberra. The committee's proceedings today will follow the program that has been circulated. These are public proceedings. The committee may also agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. In giving evidence, for the benefit of witnesses I mention that this is a parliamentary committee and all proceedings and witnesses are protected by a parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee. Any action along those lines may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. I welcome Associate Professor Adam Sutton from the Department of Criminology at the University of Melbourne. Thank you very much, Professor, for sharing with us again your expertise. I understand that you have given evidence before this committee before and we do appreciate your time in helping the committee in its inquiries. I invite you to make a short introductory statement and then subject yourself to questions from the committee.

Prof. Sutton—Thank you, Chair, and members of the committee. It is a great pleasure to be invited to make a presentation. Actually, the criminology department at Melbourne university after 50 years disappeared and we are now merged into the School of Political Science, Criminology and Sociology. I am from the criminology discipline within the school and I am an associate professor.

CHAIR—Some might say that it is appropriate having political things and criminals together!

Prof. Sutton—In fact we have another associate professor, Professor Les Holmes, who is an expert on organised crime and he may be able to talk to you. I have a PhD in sociology from the University of New South Wales—it was quite a long time ago but I will not say how long—and I used to be the Director of the South Australian Office of Crime Statistics and Research. That was between 1982 and 1991. Since 1992 I have been teaching criminology at the University of Melbourne. My particular research interests are in crime prevention and, if I can, I would like to slant my presentation more towards prevention of organised crime rather than the kind of tactical knowledge about future trends. I think that police and other organisations are much better able to tell you about that sort of stuff, drug law enforcement, corporate and white-collar crime and organised crime.

As for the common areas that I will be drawing on, some people might say that my knowledge is out of date; others might say that my knowledge and wisdom are timeless. The research I did was mostly in the mid-nineties when I was part of a team with Dr Steve James from criminology at Melbourne. We did a major review of drug law enforcement efforts right throughout Australia with all of the specialised law enforcement bodies—the National Crime Authority, as it was the time; the Federal Police and Australian Customs—trying to look at their effectiveness and the

effectiveness measures that these bodies used, and we did a major report. This National Police Research Unit, as it was called, later became the Australasian Centre for Policing Research. I think it has now been closed down. I have also been very interested in a very particular area of reform, which is cannabis law reform and particular cannabis infringement or expiation notice systems. They seem quite a minor reform but I think in some ways they have relevance to an understanding of organised crime and strategies for the prevention of the spread of organised crime, so I might talk about that as well.

My background is in sociology and anthropology, so I am very interested in the kinds of structural causes of organised crime—the argument about the kinds of niches within society that organised crime will flourish in. My knowledge might be called strategic rather than tactical. Police can give you a lot of very good information and tactical intelligence about who is doing what in the area of organised crime, very sophisticated sort of stuff. My knowledge, as I say, is timeless and out of date and is more strategic, more about the general picture. I cannot tell you tactical things about the nature and extent of organised criminal groups or specifics about how they operate. Obviously I am not involved in that operational area. I can give you some advice on the sort of intelligence we should be gathering but my interests are more about the structural problems that we can have in a society that could in the future make it easier for organised crime to flourish—what sort of environment, what sorts of niches there are for organised crime. I have the analogy of an infection. If you have an infection in a hospital, you can have environments within which infection will flourish—and you can try to sanitise your environment to minimise those kinds of niches where organised crime flourishes or do what you can do to minimise the kinds of environments where organised crime flourishes.

Senator MARK BISHOP—Professor, what do you mean by ‘structural problems’ in which organised crime can flourish?

Prof. Sutton—It is almost a truism that organised crime flourishes if you provide an environment, particularly in an industry, where legitimate business cannot run it. Sometimes quite legitimately you have to declare an industry outside the bounds of law. For example, some people want to engage in people-trafficking, and I do not think that any civilised society is going to condone people-trafficking, so you have to say that that is going to be outside the law. By its very nature you are going to have an industry, a niche, where organised crime will flourish because some people have a willingness—they habitually work outside the scope of the law—so they are quite happy to go into those areas where legitimate business will say, ‘Sorry, we are not going there.’ They also have the mechanisms for making sure that their business contracts are looked after—they will come around and break your arms or your legs or whatever if you do not pay up—so they have less need to have recourse to law. My argument is: they are the kinds of niches where organised crime flourishes. A prudent society obviously has to have some of these niches but if it is prudent it minimises those niches just like a prudent hospital minimises the kinds of environments within which the bugs can flourish.

A historical example of that, obviously, was the prohibition on alcohol between 1909 and the 1930s. Undoubtedly it did have a good effect in terms of reducing alcohol consumption, and people often tend to underrate that. I am quite sure that it did, and most people who wanted to be law-abiding did not drink alcohol. But the downside of that was that it was also a niche in which organised crime flourished. It gave it a wonderful kick ahead from which it has benefited ever since.

CHAIR—We are all very conscious of that now with the reference to *The Untouchables*—

Prof. Sutton—That is the reason. Most people would say that tobacco is an incredibly harmful drug but none of us would say, ‘Let’s ban it.’ Already there is organised crime in the area of tobacco because of the taxes, so it has a kind of a niche. But we would not ban tobacco outright because we would give criminals an even bigger niche in which to flourish. You just have to have some niches. There are some industries that a civilised society can tolerate. You have to be thoughtful and this is why we have political representatives, to be thoughtful and make these hard decisions about prohibition. If you prohibit something you always have to be thoughtful about the niches for organised crime that you might inadvertently and unintentionally be creating or enhancing in that process.

I will talk a bit about the cannabis stuff. South Australia was the first state to try to reform its cannabis laws, and it did so to a very minor extent. The argument was that the penalties for possessing or using small amounts of cannabis if you were caught—given that at the time it was the illegal drug that young people would most likely experiment with—were probably disproportionate. They did not argue that you should legalise cannabis. They did a lot of research both before and after they reformed the laws. They said, ‘Let’s give people the possibility of avoiding that criminal conviction so that they can work as lawyers or go to the United States.’ If you have a criminal conviction for a drug offence you just cannot go to the United States. I was the Director of the Office of Crime Statistics and Research at the time they did it so I was asked to head the team that reviewed it. There was the example of possessing small amounts or using cannabis in private, and initially they said cultivating cannabis plants for personal use. If I found you with a cannabis plant in your house, or even three or four plants, and you said that you were growing them for your personal use, you would get a notice. If you paid the fine on that notice you would not go to court and you would not get a criminal conviction.

The problem they had in South Australia when we monitored it was that magistrates initially allowed quite a lot. People would say that they had 50 plants, that they were nervous gardeners and they were not sure whether all the plants were going to flourish. It became a bit ridiculous so by legislation they cut it down to 10 plants and for a while that seemed okay. Certainly the monitoring we did—and we were looking at a whole range of things—showed that despite a lot of the concerns people had about that infringement notice system it did not lead to more widespread use et cetera, and I am sure you are aware of a lot of that research.

In the mid-nineties I was asked to come back—at that time I was at the University of Melbourne—to do more research with the criminal justice people, with the police. That was my area of specialisation. They wanted to look at particular aspects. The bit that they wanted to look at was the 10-plant rule. It came out in interviews—and they also showed me data and classified intelligence et cetera—that organised crime was exploiting that 10-plant rule. By the mid-nineties, hydroponic cultivation was in full swing.

Basically what organised crims were doing was setting up dispersed plantations of nine plants that were hydroponically mature in 12 weeks. They would put someone there and they would say to that person: ‘If anyone turns up, like a policeman, just say: “I don’t know; this is mine,” and pay the fine. You will get an expiation notice. You won’t even get a criminal record. They will confiscate the plants and the equipment, but as long as you do that it’s fine.’ The police said to the researchers: ‘We are very frustrated with this because we know there is an organised

criminal conspiracy going on here. There is someone behind all of this, setting up all of this.’ Basically, in our research, we reported that and verified that what the police were saying was true.

This is where it gets back to my idea about niches. We actually disagreed on the policy. We suggested an alternative policy approach to that issue. It was very true also that they found it very difficult to prove the conspiracy, so police were having to hand out the notices even though they knew these people were fronts for bikies or whatever. We said: ‘Why don’t you think laterally about this? Think about the niche that is created there with the cannabis industry.’

Cannabis is a lucrative industry. People live in a market society. Most people could grow their own tomatoes and their own vegetables and they could make their own clothes et cetera, but they do not. People who use cannabis also live in a market society. Particularly given the fact that you can have your plants confiscated and you can be given a fine et cetera, most people are not going to grow their own plants—that is just a fact of life. In most areas of life, we actually encourage the market society. We said: ‘Why don’t we think laterally about this? Why don’t we keep the infringement notices and even keep the number of plants at five, six or seven. People could in certain circumstances grow more than they actually consume and may sell some of the surplus to other people. But use your police intelligence to make sure that you wipe others out.’

An infringement notice is quite a flexible instrument really. You do not have to have much proof. You can come straight in and say: ‘This is cannabis. Your equipment is gone; we are going to destroy it. Your plants are gone. All of that money that you have spent investing and setting up all of this stuff is gone.’ For anyone that has any organised crime links or even is under any suspicion of having organised crime links or looks too organised about the way they do it or even is not very nice about the way they collect their debt, you can just do a blitz on them. We said: ‘You can keep the number of plants. You have only limited resources. There are genuinely amateur growers who mainly grow it for themselves but might sell a bit more. Given the constraints on your resources, they are not organised criminals’—and I think organised crime is a big threat to Australian society in future—’so do not fuss so much about them.’ That was my argument.

Even before we had finished our report, South Australia had changed its laws and reduced the number of plants to two non-hydroponic. So it did not get very far. But it is an issue. My argument with the police is that they have a lot of great tactical information, but always what they want to do is wrap up the big guys with a big prosecution. I think we can be more flexible in using this intelligence to try to clean out those niches and make sure that, if you do have an industry that is outside the law for any reason, you actually use your intelligence to come in early, clean up that niche and do not allow organised crime to dominate it. That is my argument.

Mr KERR—One of the issues that arose in our discussions in Perth was the evaluation of the effectiveness of law enforcement interventions. What is your assessment of the state of Australian research on the effectiveness of law enforcement intervention?

Prof. Sutton—In the drugs area?

Mr KERR—Across the board. The drugs area is obviously the key area where the market may generate niches and economic opportunities, so the argument that is frequently advanced

and which I am somewhat sympathetic to is that, if you can remove the market, you can effectively eliminate crime insofar as it is driven by the desire to get money quickly and simply. But, that aside, we do spend a lot of money on law enforcement. In contrast to other areas of policy, like defence, we do not have research institutes like ASPI; we do not have a white-paper format where we set out the various expenditure options, canvass public policy options. But there may be a body of research that I am not aware of—although it did not emerge in our hearings in Perth. I am just wondering, firstly, what is your assessment of the state of research in this area? Secondly, do you think it is within the academic community's capacity to do some more serious work in this area, or do you think it is one of these policy-rich environments which essentially eludes objective measurement or assessment?

Prof. Sutton—It is a very interesting question. Certainly, at the time, one of the areas that we were very critical of in our report—this is in the larger report where we looked at Australian drug law enforcement efforts—was in that area of actually being able to evaluate effectiveness and effects. Basically, whenever we went to a police organisation, whether they were in Darwin, or they were the Federal Police or the Crime Authority, as it was then, they all used to give us the same narrative, which was that we were after high-level figures. Then we would say: 'Fine. How do you define a high-level figure and how do you measure whether you have a high-level figure?' Interestingly enough, it went through a kind of complex process. We would say, 'Let's have a look at your data,' and 'None of these people look particularly high level, with all respect.' They would say: 'Well, they're not, really. The really high-level figures are very hard to get.' So the short answer was that, even in terms of modelling—and models of organised crime are measuring the outcomes in that respect—it was not very good at the time. I cannot say that I have been looking more recently.

We also argued that one of the problems was that in the grassroots area we were not collecting enough data on the effects of police operations on things like what drugs people were using. After all, the rationale for drug law enforcement was to reduce the harms associated with illegal drugs. We argued that police should be setting up, at the grassroots level, systems working with health people et cetera—systems to monitor possible impacts of enforcement efforts. For example, if you had had a very good operation against cannabis but, as a result, people had been deflected into using other drugs, or you had managed to get rid of all the amateur suppliers and as a result organised crime was actually stronger, you should continuously be monitoring that as an outcome effect.

So I think that, at the time, in the mid-nineties, we argued that there was immense potential to improve measures and evaluation—not necessarily that kind of idea of one-off evaluation but more continuously thinking, 'What are we trying to do; how might we measure it?' and then setting up, as part of your ongoing operational concerns, measures of that effect.

Mr KERR—The difficulty is that I do not think there has ever been a situation where we have actually had a scientific basis for this—where we can say you have a no-intervention group that you contrast with a high-intervention group—so we do not actually have the capacity to evaluate results. A harsh critic of the policy settings that we have followed would say that the consequence of a prohibitionist regime has been to create a very large law enforcement industry, a very effective organised crime response, a market for the supply of illicit drugs, a toughening of the capacity of those in the organised crime world to resist law enforcement and a greater

capacity to penetrate and corrupt legitimate institutions of the state and that, if we keep ratcheting this up, we—

Prof. Sutton—It is the antibiotic effect. That is why, if you have to go to hospital for an operation, they get you out as quickly as possible. All of the really dangerous bugs are there because they have eliminated all of the more minor bugs. I think that is a particular problem in the law enforcement area. But again, I think it is measurable if you set your mind to it.

The problem that we found when we did our research was that everyone was looking up and no-one was looking down at what was happening and who was running these markets. No-one was combining the intelligence that they used tactically for enforcement. They were not using that in a research sense and saying, ‘Have we in fact as a result of that operation gotten rid of all of the less harmful bugs or semi-organised or rather disorganised crims and got people coming in to replace them who are actually more tightly organised?’ I do not see that there is any reason that, if you could link police intelligence with research, you could not actually measure that and use that in a feedback loop in order to guide your operation.

Mr KERR—Going back to the really dark ages when I was minister for justice, I never felt that there was too great an inconsistency in taking a position that was strongly supportive of harm minimisation, minimising the impact on individual users and perhaps even adopting a position more generous than that in South Australia, and at the same time having law enforcement targeting the top end, as you describe it, or the Mr Biggs. The police say that they do that. The AFP and the Australian Crime Commission all assert that their efforts are designed to disrupt the toughest of the tough in terms of the organised crime networks. Yet we constantly hear that we are getting more robust and resilient organised crime groups.

We have not had much capacity, for example, in the outlaw motorcycle gang area. A group which self-identifies should be pretty easy to pick on the streets. Even with that group we are told that they are expanding and that they control the distribution of amphetamines. What was an emerging threat, barely on the horizon when I was minister for justice, has become now one of the key areas of discussion in law enforcement. We do not seem to be very capable of actually hitting those that we designate as targets.

Prof. Sutton—I was asked to go over to Western Australia because they had brought in what they call an infringement notice system. I was very interested and I went and interviewed some Western Australian police. Part of that is setting up some measures for monitoring the effects of the infringement notice system. My argument is, as I said earlier, that you could actually use an infringement notice system to radically undermine organised crime. You could just say, ‘Right, anybody who even looks like they vaguely knew someone who is associated with organised crime is not going to get a hand in in terms of producing or selling cannabis—we are going to come in and clean you up.’

Mr KERR—But there is a big shift now. There are social phenomena. Cannabis is perhaps still the entry drug for many, but speed and—

Prof. Sutton—My argument is that you could extend the same model to all drugs. But, with cannabis, I asked police: ‘Who is running the cannabis industry? Which organised crime groups are running it?’ What you want to do is set up some measure so that you can measure now, then

you can have a look at the infringement notice and the ways you have used it and you will see whether you have actually had an impact. We might say that today it is the bikie groups—and all of our intelligence indicates that it is the bikie groups. We have brought in this infringement notice and, as a result of that, five years or 10 years down the track, it is not the bikie groups anymore; it is your average, befuddled cannabis user who hardly gets out of bed and is certainly not an aggressive marketer. That would be a slightly facetious measure—

CHAIR—What is your point though—that, because people are growing their own and not getting prosecuted, they are not buying it from the criminal groups?

Prof. Sutton—No. My argument is that people will not grow their own. People do not grow their own. Do you grow your own vegetables? We could do all of this stuff, but we do not.

CHAIR—I am missing your point, I am sorry. How does that undermine—

Prof. Sutton—My argument is that, no matter what you say, people are always going to supply a market for cannabis. People are going to go to a market. Who do you want to be supplying that market? Do you want it to be organised crime or do you want it to be amateur growers? There are groups—and they are rather pathetic—who dedicate their lives to growing cannabis, smoking it, talking about it et cetera.

CHAIR—So you are saying that, because of an infringement notice, they will keep growing it in the backyard and it will be them supplying it rather than organised crime?

Prof. Sutton—The police showed me all the intelligence which they had on organised criminal groups using the infringement notice system. I said: ‘Fine, you have all this intelligence. Why don’t you just constantly go out, raid them and confiscate? Organised crime spends a lot of money setting up all of these dispersed hydroponic cultivations. Go out; whack them. Take their equipment; destroy it. Take their plants; destroy them.’

Senator MARK BISHOP—That will just shift the market supply from one source to another. Let us go down your path. Let us shift it from organised crime and their minions supplying cannabis to the ‘befuddled minority’ supplying cannabis. What is to stop elements in the befuddled minority from developing an entrepreneurial instinct, developing further markets and supplying more?

Prof. Sutton—The police. That is their role. They collect intelligence and, as soon as the befuddled minority’s heads start to clear and they start to drive Mercedes or get too ambitious—whack; they are out of it. Police do not have infinite resources, as they will tell you, and they cannot cover everything. I say, ‘Fine, if you do not have infinite resources—

Mr KERR—Let me accept this for the point of argument. And I do accept that it is far better that the market is being supplied by amateurs rather than highly skilled, toxic, organised crime groups prepared to use violence and to corrupt public institutions as their means.

Prof. Sutton—That is right. Half of them are in the drug squad.

Mr KERR—I accept that proposition, but how do you apply that model? You can imagine that you could allow people to do this and to make a small amount of pocket money, if you will, but—

Prof. Sutton—It is not that you allow them. It is just that you say, ‘We do not have infinite resources—

Mr KERR—I understand. You just choose your priorities differently. I can understand that model working in the cannabis area, because essentially it is a simple growing process. But you say you could apply the same model across the range of other drugs. I must say that I have scratched my head with that, because the average befuddled—and I do not like the word ‘befuddled’, because I think there are a lot of very—

CHAIR—You should ask questions of the professor rather than enter into the debate, with respect.

Prof. Sutton—No, I understand. You are right, Mr Kerr, it would be a challenge. But it is the sort of challenge that I think we should be applying ourselves to. With most drugs, there can be a range of people supplying and a range of harms. We should put all of the harms into the pot. A virulent organised crime group that will corrupt the state’s drug squad and undermine its credibility is a major harm. It is all very well to talk about the harms to users, but there are a range of harms. We should always try to say, ‘Look, there are going to be markets for these drugs,’ and we should always try to say to police, who have excellent facilities for gathering intelligence, ‘Do not lose sight of your priorities.’ It is a bit like Bill Clinton and the economy shift. Organised crime has to be a priority.

CHAIR—Is your argument simply that you are not worrying about the harmful effects of drugs or anything; you are simply saying that by letting people grow their own and tapping them on the hand with it, you are putting the big guys out of business?

Prof. Sutton—You would be undermining them. That was a very simple, classic textbook example of where, if we had been serious about saying that organised crime was a priority, we would have done it. The fact that we did not do it for that means that we are probably not going to do it in any other area.

CHAIR—But that does not address the drug problem. It addresses the organised crime problem.

Prof. Sutton—Yes. I certainly would not advise anyone to smoke cannabis. I would argue, though, that, if you have that framework in which it is illegal so it cannot be advertised, where people are—as with tobacco et cetera—sending out all of these sensible messages that you should not use it and then police within that framework are giving priority to cracking down on anyone with any organised crime connections or anyone who is getting too commercial and too smart about the whole business, that is probably a better social outcome than one in which you eliminate all of the small-scale producers and, as a result, you have tied the whole thing in a package and given it back to organised crime.

CHAIR—By extrapolation, you are then saying: ‘Look, give everyone their own pill manufacturing device. That way, we won’t stop the problems of pill taking, but we will get rid of the criminals.’

Prof. Sutton—It is a good point. I remember giving a paper to my colleagues in the criminology department and one of them laughingly said, ‘Adam, if you take your argument to its logical conclusion, when you get to the border where you have to discard all your fruit et cetera, when you go into South Australia, they give you a cannabis plant and say “grow this cannabis plant and distribute the product”.’ But that is not my argument. My argument deep down is that police have limited resources. My argument is that if they can somehow turn around and eliminate everybody who is producing cannabis then fine. I am not going to argue about that, either. But they constantly tell you they cannot do that, so doesn’t it make sense for them to actually prioritise, given that we are all concerned about organised crime, which I think can cause enormous harm to Australian society? They should always, in quite a rigorous way, use their intelligence to prioritise and get at people with organised crime connections.

Mr KERR—I accept you can do it as something that grows basically like a weed. It has got a nickname of ‘weed’. I do not think everybody who uses it is befuddled, but you can translate it across to the areas which are now dominated by organised crime, which are the amphetamines. I think we had this discussion in our amphetamines inquiry; one of the questions that I asked was whether the attack on the small backyard cook-ups, the mum-and-dad operations that were common in Queensland, would actually privilege large importers from overseas, with much more sophistication and much more capacity to be dangerous. That was an issue I thought was legitimately on the table, but I could not quite get my mind around—and I still do not, even listening to you—how you could apply a similar model to, say, the amphetamines or the heroin or other drugs. I can imagine a policy response that says you make them available through a tested, reputable supply chain. That would be an argument that I understand. I understand that it would have a lot of opponents, but I can at least understand that. But I do not understand how we could apply your model, which is to essentially privilege the amateurs against the professionals.

Prof. Sutton—My model is a pretty crude one, and you are saying it would need a lot of elaboration—probably even in the cannabis area, and certainly in the area of other drugs. Basically I have moved away slightly in disgust after having put up what I thought was a great hypothesis to policy makers and been totally ignored 10 years ago. I said, ‘Fine; I will move on somewhere else,’ so I have not really set my mind to extending that theory to other illicit drugs.

I think there are countries which have seriously applied that harm minimisation. Basically what we are talking about is harm minimisation in terms of markets; not just in terms of use itself but in terms of the harms associated with the production side. And clearly organised crime involvement in the production of drugs is a major harm, and they have applied that. I would have to take it on notice, and I would probably have to get a grant and go off and research it. But I think I could come up with something. They would all be messy models. All of these involve difficult political decisions. There are no easy answers, but I think I could. I cannot give you the answer now, though, to how you would do it.

CHAIR—You mentioned in your opening statement that you see organised crime as being an increasing problem for the future. They are not your exact words, but that is what I understood you to say. Could you elaborate on that? In what way do you foresee organised crime—

Prof. Sutton—Only in a very general criminological sense. In the era of globalisation, instant communication, transfer of money et cetera, I think organised crime is getting more sophisticated and it will exploit opportunities and any kinds of niches. If organised crime is going to dominate an industry it will move in pretty quickly. It is a bit like avian flu or something. It would make a lot of sense to start to say that this should be one of our high priorities, to try to make sure that we give as few opportunities as possible for organised crime to exploit.

CHAIR—You have done some work on white collar crime. Do you see that as becoming a more significant problem for society into the future than it is now? As you know, our committee is trying to look at trends in criminal activity and at criminal strategies for the future. We are trying to do our bit to alert the authorities now so that they are also focusing on those things. Do you see white collar crime as being significant?

Prof. Sutton—I think so. The business corporation has massively increased productivity of societies but it has also had another effect. I tell my students that you can talk about time machines and crime machines, and corporations just by their very nature create great opportunities for legitimate and productive business. All the tremendous enterprises that we have in our society are due to the advent of the business corporation. But it is also a wonderful mechanism by which someone can deprive you of your money or perpetuate some kind of fraud. Because we are moving more and more towards people having to save for their own retirement through superannuation funds et cetera there are larger amounts of money tied up in trusts. Corporate crime is going to be a problem in the future, as it has been in the past—the South Sea Bubble.

CHAIR—It is an association that I had not really thought of. As society is getting older and more people are providing more for their future with superannuation nest eggs, do you see a potential for increased organised criminal activity into the future?

Prof. Sutton—Yes. I did my doctorate on corporate crime in the times when corporate affairs was run on a state basis—so New South Wales had its own corporate affairs. They allowed me to go through all the files of company investigations and it was quite interesting to find the number of people who are pretty much outright crooks—they were not businesspeople—who even then had drifted into that area and obviously seen the corporate form of business as ideal for crime. Basically, organised crime or criminals in general are constantly looking for opportunities to exploit and we would be silly not to see the masses of funds that are being tied up in superannuation trusts, companies like Westpoint or whatever, as being opportunities for people to exploit.

CHAIR—Do you see this as an area where organised crime is involved rather than some criminal entrepreneur who suddenly wakes up one morning with a good idea and says, ‘This is a way I can rip some people off’? Do you see what we would loosely term the ‘mafia groups’ getting involved in that or do you think it might be confined to individual business entrepreneur type criminals?

Prof. Sutton—We are all guessing to some extent but my guess is that, just like now, you cannot switch on your emails without having some organised criminal from Russia telling you that you have won the lottery and please verify your bank details. It is pretty clear that they are

not enthusiastic amateur hackers; they are organised crims based in various places. I think it is logical that organised crime will move into any area where it sees opportunities. Just by their very nature investment and business corporations provide an area for exploitation.

CHAIR—We are running out of time but I will just divert for a minute. This may not be your area, but we have a submission from the South Australian police who suggest to us that in very complex business and technological matters it is very difficult for the prosecution to prove a case beyond reasonable doubt. They have raised the issue for discussion—I do not think they are actually advocating it—of whether the standard of proof is too high as we get more and more complex business arrangements, technical arrangements and chemical arrangements. Is that something you have given any thought to?

Prof. Sutton—Certainly in terms of research it is very clear that it is very hard, with these complex business cases, to get proof beyond reasonable doubt; particularly when you have a jury who say, ‘I do not understand it; therefore there is a reasonable doubt and therefore I am going to acquit.’ I am not sure about changing the onus of proof. You might rather want to look at having technical experts or advisers who summarise the situation for the jury, make sure that they understand it and then get them to go off and make their judgement, rather than just have them sitting through all of the evidence and trying to have the foreman or someone with some knowledge try to help them all work it out back in the jury room. Often the judges are not quite up to summarising; they may need some kind of assistance in that. I would be reluctant, particularly in that area of business crime, to change the onus of proof.

CHAIR—This is something I would like to discuss with my colleagues on the committee at some other time. It might be an interesting thing. I think the underlying basis of ‘beyond reasonable doubt’ was the old maxim ‘it is better that 11 guilty people should go free than that one innocent person should suffer’.

Prof. Sutton—The problem would be this. Sexual assault is a classic example where a lot of people who most people would say they believe committed the offence are acquitted because of ‘beyond reasonable doubt’. Once you start to do it in one area I think people are legitimately going to say, ‘Why don’t you change it in another area?’

Mr KERR—I just go back to the first question, which is: do you think that we need institutions that enable us to undertake the kind of evaluative research that we insist on in other areas of large public investments like defence and health? We have institutes of health and defence; law enforcement seems to be dominated by tabloid media, police reaction to immediate circumstances and criminologists looking at the after effect. There is not much work being done on the effectiveness of policy options. I am not aware of any significant work being done in Australia. Do you think it is worth doing it—

Prof. Sutton—Absolutely.

Mr KERR—and where should it be done?

Prof. Sutton—In theory a place like the Australian Institute of Criminology could be doing that kind of work. Part of the problem is that a lot of the data that police have is classified as intelligence data. We found that to some extent when we did our drug law enforcement stuff. So

researchers are not allowed to look at it. I think we should have some capacity for researchers to look at that. Police use that data for intelligence; they are focused mainly on arresting people. So there is a mass of data that could be used in a research context. The problem is that it is like a closed club, and almost by their act of allowing you to look at the data you join the club and you share the values, which can often be the policing values rather than those values about being analytical, doing evaluations and asking the difficult questions. But I think there is scope for a body—if it is not the Institute of Criminology then a body like that—that uses that sort of data and encourages the collection of other sorts of data, where we could ask those hard questions, do those sorts of evaluations and also try to steer law enforcement more in the direction where it continually evaluates and assesses its outputs.

Mr KERR—What would you say to a Productivity Commission inquiry?

Prof. Sutton—It is the same sort of thing. I say to my students, ‘If you were running a factory producing garden gnomes, every now and again you would look at what you are producing and see whether it looks like a garden gnome.’ Policing has all these objectives, but when you go in and do research they are not really doing the garden gnome inspection thing. They are not looking constantly at what they are producing and seeing whether it correlates closely with the outcome they are trying to produce. So I would argue very strongly for the Productivity Commission. Most areas of government now, quite rightly, are tied to those kinds of performance objectives. I do not think we are doing that in the law enforcement area. It is partly because of this idea of intelligence data being privileged, secretive et cetera.

CHAIR—Again, thank you very much, Professor Sutton, for coming along. We appreciate that.

Prof. Sutton—Thank you. My pleasure. I hope it is some help.

CHAIR—We will take on board some of your comments and have a discussion about them amongst ourselves. Thank you very much for your time.

Prof. Sutton—Thanks for the invitation.

[12.27 pm]

GRANT, Detective Superintendent Richard, Crime Strategy Group, Crime Department, Victoria Police

JOHANSEN, Superintendent Frederick, Victoria Police

NIXON, Chief Commissioner Christine, Victoria Police

PORTER, Detective Superintendent Mark, State Intelligence Division, Victoria Police

CHAIR—Welcome. As our witnesses will know, and I will remind my colleagues of this, we do not really ask witnesses to give opinions on matters of policy. Witnesses, should you be asked such questions there is of course reasonable opportunity to refer questions to the minister or someone else if you think that is appropriate. This resolution of the parliament only goes to the asking of questions for opinions of matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how the policies were adopted. Chief Commissioner Nixon, thank you very much for your submission and for contributing to this inquiry on an issue that the committee is very keen to explore. If there is something you would like to say by way of an opening statement, please do so now.

Chief Commissioner Nixon—Thank you for the opportunity. This issue of organised crime is obviously of key interest to state police forces. It is one that we across the country have been thinking about for quite some time in terms of how we might have to alter our responses to be able to better effect things and better respond to organised crime. This opportunity that you have given us is to talk through some of the thinking that we have been doing on particular issues. I want to make it clear that I am member of the Australian Crime Commission—I am on its board—so comments that relate to the exact operation of the Australian Crime Commission I would leave to its chair. I think appropriate procedures have been put in place to do that. I would make one comment though about the Australian Crime Commission. While it has been in operation for a relatively short period of time, I think, as an observation, it is a great step forward from previous times in the way it operates. I think the goodwill that exists in that forum can only make policing and law enforcement across Australia better—so that would be all.

I did not, as I said, wish to make comment about a number of the terms of reference that you had but just, in a sense, obviously, to look at the fact that this issue of growing organised serious crime really comes at the heart of policing. It undermines public confidence in not only police institutions but also many other government institutions and business as well, so it is a key issue for us all to be paying attention to. There is, I think, a growing community belief that law enforcement and policing should have a seamless connection, and that is why at a national level we need to be thinking about how that seamlessness is put into place so that we are not just seen as isolated states but in fact are part of a national system and support each other in that. That is why some of the comments we will make a bit further on will reflect that issue.

In thinking about policing and the role that we play in law enforcement, really looking at national levels, we are looking at prevention first of all. If you think about how you prevent

serious and organised crime growing and occurring, then part of it is obviously about the way we use data—and that is the piece I would like to pay attention to. National policing data information systems, we believe, provide a wall of protection for the citizens, so if we have ways and means to share that data that are efficient then we think that adds to our protection and to prevention of crime. We also need to have checking information, where we can check on particular industries. We have made some comments on that in terms of brothels and gaming, and other legitimate businesses, but we do understand that many of these businesses can be infiltrated by criminals and so we need to also have seamless access to information around those industries and the regulators who have that information.

We also believe that we need to understand that by sharing this information we are creating public value, and we need to overcome some of the boundaries that occur between state and federal bodies. Ultimately, for us, bringing about community confidence is the most important part. If the community does not have confidence that organised crime is being dealt with effectively then it undermines us and, I think, the whole of our communities.

We obviously also need to have information and exchange of information around investigations to be able to track people and then in terms of detection as well. We need the information also to know about missing persons. Also, in disaster situations, we need to be able to share seamlessly so that we can deal with disaster victim identification. More recently, sadly, we seem to have had to deal with that issue on our shores as well as within the local region.

The piece that we wanted then to pay more attention to—and my colleagues will make further comments on those issues—is really around the use of national databases. The history of this process is one of the states coming together back in the nineties with a system, really a national exchange of police information. I think the states have, over time, invested—and still are investing—quite substantial funds in developing their own criminal databases, their own information systems. It occurred with a change in 1998. The federal government then—through, I think, discussions with the states—determined to make a contribution of \$50 million to CrimTrac, to form the body now known as CrimTrac and to take over from what was the NEPI, the National Exchange of Police Information. What we have started to see—though, I think, growing too slowly, with a need that is actually much faster than we can keep up with—is the growth of a system to be able to help us share information. I am not talking about intelligence at this stage; I am talking about information. We are seeing that that \$50 million, along with very substantial financial commitments from the states, has gone some distance towards helping develop these national systems in just local police offices, for instance—systems of minimum names person profile. We always seem to be good at acronyms—it is MNPP. It gives a local constable in Wodonga, for instance, a substantial amount of access to information around a person. It gives information about warnings, warrants and offence histories, firearms, court orders, bail status et cetera and a whole set of other information—and whether or not the person might have been a child sex offender, in fact, as well. It can give information to do police work on the ground.

CHAIR—You say that is available now.

Chief Commissioner Nixon—It is; it is growing.

CHAIR—Is that relatively new?

Chief Commissioner Nixon—It is only available in New South Wales and Victoria and only in a limited fashion.

CHAIR—Has it changed between Victoria and New South Wales?

Chief Commissioner Nixon—Yes, it has. It is a slow-moving process because we trialled it with New South Wales and Victoria. We believed it was important and we wanted to be able to share that kind of data, and it will eventually be rolled out across the whole of Australia. Again, there is a very substantial cost in putting that system in place to access that information across the country. It is now also being rolled out at an expensive rate to many of the states. Obviously, we have other systems that are being developed and have been developed. The key system that CrimTrac runs is criminal records. Just to make it clear: CrimTrac does not actually hold criminal records; it has a system that accesses our criminal records and therefore the states are the ones who principally hold the data. CrimTrac accesses that system and feeds the information back.

CHAIR—I do not want to keep interrupting you, but—for clarity—when you say it is costly to access, do you mean it is costly to put the database together? Once it is together, it is not costly to feed into it.

Chief Commissioner Nixon—The cost is because the states have their own technologies and they built them over time, and you are trying to access information out of their technologies.

Supt Johansen—One of the issues was to make sure that the information that is shared is very similar in nature.

CHAIR—Oranges with oranges sort of thing.

Supt Johansen—Yes. If it is burglary in one state it has got to be a similar offence in another, so we try to match those types of offences together like bail status and escapee status. As Christine has mentioned, one of our major issues is missing persons, so we have a fairly broad database of profiles of what a person looks like.

Chief Commissioner Nixon—The cost is not about policies; the cost is in the legislative changes you have to make so you can access other states' data. The expensive part is how you invent technologies that allow you to access that data, so we have been working our way through that. There is a set of systems that CrimTrac has been working on but there are limited funds. When you are talking at a state level about funds towards law enforcement systems, you are competing with health and a whole set of others. The investment in CrimTrac that the federal government made was greatly appreciated, and it has allowed us to move forward very substantially across the whole of Australia in terms of sharing systems. An important step that this committee might consider is a further investment or possibility of that issue. It would make an enormous difference to the way we go forward.

Often we invent systems locally. If there were a national system available at a national level, we would have better systems than we might have had at a local level. We are still suffering from a states versus federal model. Law enforcement policing is a state based responsibility in the main, and that is where the vast amount of police officers are. That is quite fair, and I am not

suggesting that change. We need to share more because of serious and organised crime and other kinds of issues that we need to deal with. Investment at a federal level would produce enormous amounts of fruit for states to come at these issues.

Senator MARK BISHOP—I understand your argument for uniformity and access as an aid in carrying out your duties. I understand you to have jumped to the conclusion that it is appropriately significantly funded by the Commonwealth because you say at a state level there are a range of competing priorities: health, education, all those sorts of things. Why would it not be appropriate, if the ball game has shifted nationally and serious and organised crime does operate at a national level with all the linkages, for the states to be making significant additional contributions to a joint fund as opposed to simply shifting the problem from priorities at a state level to a Commonwealth level?

Chief Commissioner Nixon—I am not suggesting that the states do not contribute; in fact they have over time. We believe the states have made a substantial contribution to CrimTrac over time. Since 2000, \$24 million has been contributed by the states. As well as that, there has been considerable expenditure on alterations to our own systems to enable criminal record systems to continue to operate. We make an enormous contribution at a state level in terms of those systems operating and continuing to operate—CrimTrac just takes the data; it does not actually hold the data, which comes into our systems.

Mr KERR—Is that \$24 million Victoria's contribution?

Chief Commissioner Nixon—That is from all the states. It is a model of funding that is quite reasonable. I am not suggesting that the Commonwealth has done anything inappropriate; that is not my point. My point is that serious organised crime is growing and moving far beyond our borders and even internationally. As we face this challenge, having better access to databases and information is important. The Commonwealth made a contribution because they saw that the states needed that support and because crime was growing. My point is that that has done us an enormous amount of good but the \$50 million has been spent, in the sense that the contribution has already been used and it did support many of the changes that have occurred. But the states have also made contributions and I am suggesting that a further contribution by the federal government would be very well used.

CHAIR—Thank you.

Mr WOOD—This is something that I have been very passionate about, so I thank Victoria Police for their attendance here today. I know the state government was looking at investing \$150 million to replace the LEAP system and New South Wales are looking at replacing their system. Is there any logic in having the two combined and having a big national CrimTrac system? Has that been explored?

Chief Commissioner Nixon—Thank you for that question. Basically, the operating systems are looking to be replaced. Victoria is replacing its operating system, which is now called the Law Enforcement Assistance Program, and it is \$50 million, not \$150 million. The New South Wales Police are replacing their operating system as well and, I think, spending more than \$150 million. We have had discussions at a state level to see how we could perhaps share some of the learning and technologies that are available. My information technology people tell us that is too

hard but your point is one that says: if we were to look at a national system and the investment that states were willing to make went into a national system it is that kind of capacity that would allow police to seamlessly share information and operate on those systems that are at a national level. PROMIS is the system the Federal Police use, and so do the Northern Territory police, but the rest of us do not. I guess there is a set of questions as to why what you are proposing will not occur.

Mr WOOD—We no longer have the LEAP database. Is that correct?

Chief Commissioner Nixon—We still have LEAP and we are now in the process of building a new basic operating system.

Mr WOOD—For example, would ammonium nitrate fertiliser licences—I am not sure whether they have been implemented on the ground yet—or explosive licences be on LEAP at the moment?

Chief Commissioner Nixon—No.

Mr WOOD—This is the argument I have had regarding CrimTrac. Ammonium nitrate fertiliser licences, aviation security identification cards, maritime identification cards and explosive licences should all be incorporated on the CrimTrac so if you had crooks or terrorists changing states any police officer could put that in the computer and find at the touch of a button the information. I am getting some nods of the heads.

Supt Johansen—I agree. I think you have to take it one step further. When a person puts in an application for a licence for any particular thing it is about the people who actually sponsor them. That is usually where the link with organised crime is. It is not necessarily about the person who gets the licence, because in the majority of cases—I think Richard and Mark will agree with me—that person has no criminal history. It is the person who sponsors them forward and who says, ‘I have known this person for the last 10 years; he is of good character et cetera,’ whom we should be starting to track. You will probably find that person’s name on 10 or 15 different licences.

Det. Supt Porter—If you sat around long enough you could think of regulated activity across Australia over all sorts of industries that could add value to a national information dataset. You have just spoken about superphosphate or ammonium nitrate. All that information can be little jigsaw pieces that can fit in all over the place, and it does not relate just to terrorism; it relates to all sorts of community policing activity that is the basis for serious and organised crime to build on. You can talk about simple things—and we could make a list of 100 things that would be of value to add to CrimTrac—but, at the end of the day, it is all about cost. The reality is that your intelligence is only as good as the data it can draw upon. Up until quite recently we had a multitude of databases within Victoria Police of different pieces of intelligence and, in the middle of last year, we got for the first time an intelligence management system within Victoria Police that makes all those 50-odd databases obsolete. That gives us a wonderful opportunity to start sharing information across our organisation. But there are a number of industries right across Victoria and right across Australia that we just do not have access to. So, when you are talking about joined-up government and seamless connectivity, there is no doubt that there is room for improvement.

Mr WOOD—Do you think some of those examples relate to the crowd control industry? I know that in Victoria you would have the crowd controller's licence on your computer, but if you have someone travelling from interstate you would not have access. Would that be correct?

Det. Supt Porter—That is correct. There are some local arrangements in the jurisdictions that have not made it to the national platform.

Mr WOOD—The other one is precursor chemicals—the manufacture of amphetamines et cetera. Is that the sort of information you would want—if they had a system in place overlooking it and had some sort of licences for high-risk chemicals? Again, would that be the sort of information you would want on a national database, or would you want it just to be accessed by, maybe, the drug squads or people investigating that type of crime?

Det. Supt Grant—There are some problems with that. There are over 1,400 chemical companies just in Victoria alone, so we have to be careful of what we want. There is a lot of information that clearly would be useful. Going back to what Superintendent Porter is talking about, when you are trying to look at a huge network, which quite often transcends national and international boundaries, you need to pick up all these pieces of the jigsaw. If you have disparate systems that do not have that connectivity, because you have not invested in that connectivity, it makes it far more difficult to join up those pieces, particularly in an environment that is far more dynamic than we have ever seen before. The fluid nature of people travelling the globe, let alone state boundaries, means that law enforcement needs the connectivity to put together the pieces of the jigsaw much faster than ever before. Unless you have systems that support that, we are behind the eight ball.

Senator MARK BISHOP—We had some evidence yesterday in Western Australia from the Western Australian police—I think it was the Crime and Corruption Commission; my colleagues will correct me if I am wrong—on two issues. One was about SIM cards, and one was about telcos. In respect of SIM cards, the evidence from one of the senior witnesses was that any person can buy SIM cards in bulk, and a person who is engaged in transactions of an illegal nature on a regular basis can use three, four or five SIM cards in a day to further transactions and then get rid of the SIM cards. When the police in that state move to identify the problems, the record says that there is no record of the SIM card, and when there are records the purchaser's name is Donald Duck or whatever. Firstly, is that a significant problem in terms of overview of serious crime in Victoria? Secondly, the other said evidence was in respect of telcos—that some, not all, telcos are very slow in reacting to requests for information that police legitimately make in furthering their investigation and, in some cases, deliberately thwart, or avoid assisting, the police because there is a business cost to the telco to urgently provide the information. Again, is that a problem in terms of your overview of serious and organised crime in Victoria or is it just a local problem there?

Chief Commissioner Nixon—We are happy to answer both of those. Richard will answer one.

Det. Supt Grant—Perhaps I could talk to the first one: the SIM card churn. This sort of SIM card churn is not just a problem in Australia; it is a problem globally. The issue is that criminals need to communicate. If they are going to do business—no different to the business world—they need to talk to each other. They need to communicate in one way, shape or form to commit some

sort of transaction or to plan for whatever they want to do. So, if they know that their point of vulnerability is the way in which they communicate, they will do everything they can to thwart law enforcement. So, if that means that you go in and buy 100 SIM cards, that is a business cost, because your riskiest point is your point of communication. So, a number of years ago, probably in about 1996, we started to see that sort of thing. Nowadays it is just commonplace. Your top-end criminals were certainly doing the SIM card churn; now it is just every Tom, Dick and Harry, essentially, because they understand—the criminals all talk amongst themselves.

So that presents some real challenges for us. Obviously, the telcos enjoy having prepaid SIM cards because they get the money up front; whereas at any other time they actually have to engage a lot of money to get money out of the customer. Our point of view is that the 100-point system or some process by which you clearly establish who the owner is of that SIM card is vitally important. I cannot stress that enough. When you can go into the supermarket and buy quite a number of those sorts of things and you can just make a phone call and claim to be anybody, then you have anonymous identification that you can use for five minutes, five days or whatever. The issue with the telcos—I might pass it over to Superintendent Porter.

Det. Supt Porter—The area that I work in is responsible for liaising with the telcos on behalf of Victoria Police. There are three main carriers that have the infrastructure that actually carries the calls. I know there are a lot of different telephone companies, but it is actually Telstra, Optus and Vodafone that do most of the actual carrying at the infrastructure level. All of the telephone checking is based on billing, so obviously the companies, in their own interest, have a lot of technology around billing correctly for calls that are made. I am not aware personally of any of the telcos being uncooperative in any way, but they will tell us that they have limited resources to conduct law enforcement checks. As I understand it, they all agreed federally back in about 2001 or 2002 to cooperate with all law enforcement agencies and charge at cost only—no profit—for the checks. Those arrangements, as far as I am aware, are still in place.

Senator MARK BISHOP—That is very interesting evidence, Detective Superintendent. I might hone down the question. I do not think the particular criticism was levelled at Telstra or Optus or Vodafone; it was more at the new competitors coming into the marketplace, providing a service, competing with the major companies, trying to grab market share. When law enforcement agencies sought urgent access to particular information, those other new entrants refused to give it, we presumed because it was a cost to those companies to allocate staff to answer the questions and their business was really quite competitive. Any margin difference they could get between themselves and a major telco enabled them to grab market share. Are you saying that even at the middle and lower level it is not an issue?

Det. Supt Porter—I am not aware of any major issues. If there are some recently created telcos that have not built in the infrastructure to conduct the checks, I could imagine that they would have to pull a resource from elsewhere in their organisation to conduct that check. I am not aware of any major investigations that have been slowed because of that issue. It may be the case on a small scale, but it has not been brought to our notice as being a major issue.

Senator MARK BISHOP—In that case, I might ask you on notice, Detective Superintendent, to check with the people involved in those areas and see if it is a problem and perhaps to look at the transcript from Western Australia.

Det. Supt Porter—Can I add that the cost of checking keeps escalating. Over the last three years it has gone up consistently. So far this year I think we are somewhere between \$800,000 and \$900,000 just on the checks in Victoria alone for this financial year.

CHAIR—They bill you for that?

Chief Commissioner Nixon—They do.

Mr WOOD—But they say this is a cost.

Det. Supt Porter—That is the agreement.

Chief Commissioner Nixon—It may be a cost, but we have informally had discussions about why it would not in fact be given to us for free.

Mr WOOD—I recall from my police days how much trouble it was to actually get an officer to approve a phone check because of the expense. So there obviously have been conversations with the providers to supply this for free. That is good—I like to hear that.

Chief Commissioner Nixon—We have not had any success, but that in a sense is a contribution to law enforcement and protection of the community. It is a key investigation tool for us. This cost is in fact escalating, as Mark said. That is just Victoria Police costs, let alone Federal Police costs and other people's costs. So it is in terms of perhaps simpler systems where we were actually given direct access to the information. It is about ensuring that we protect people's information—I understand that. We work very hard across the country to do that. We believe that access is important. But the cost to us of getting that kind of information continues to escalate.

Mr WOOD—With regard to the 100-point checks of the SIM cards, we were in Western Australia yesterday and that was their big issue too. Have discussions looked at how to implement something like that or who would run it?

Det. Supt Grant—No, they have not. But I know that my daughter went and got a new prepaid SIM card from the supermarket the other day and she showed a learners permit. The point is that it is quite easy to have a false identification. If you go into a supermarket or some other area, you are showing some identification and those people do not know what they are looking for, it actually undermines the whole system.

Mr WOOD—Are you saying that a person should actually have it registered like a bank account or something to that degree? Is this how serious the problem is in the organised crime area, with drug trafficking? When comparing the cost of implementing a system to the cost of damage to the community by the major drug traffickers—

Det. Supt Grant—Most of our serious organised crime criminals—people who are engaged at the top level—would churn their SIM cards on a very regular basis as a means by which they thwart law enforcement. Whatever process you put in place to circumvent that would need to be fairly robust because, no matter what we do, if we put something in place quite often there is a workaround. I do not want to give you an answer about what the magic pill is for this. I think we

need to think it through. But, whatever the response is, it needs to be fairly robust so that it stops the ingenuity of people trying to find a workaround.

One thing that has come to mind is this: overseas there have been a number of terrorists using mobile telephones as an agent for initiating an IED—an improvised explosive device. Your first point of contact is then trying to find out what phone number was dialled to set that bomb off. If you find out, as Senator Bishop says, that it is Donald Duck, you have just stopped a fairly significant line of inquiry. If you actually work back, if the carriers were forced to ensure that, whoever was using their network, they actually knew who it was, that is a major step forward for us, I would suspect.

CHAIR—Is it conceivable that organised crime could set up their own legitimate telco with a view to making sure that they never cooperated? Is that conceivable?

Mr WOOD—We actually got that evidence yesterday—they could establish their own business.

CHAIR—They were talking about establishing their own SIM card manufacturing.

Det. Supt Porter—That would allow for the acquisition of the SIM card. But all of the supporting infrastructure would still be owned by the three main telcos. I think you could go in there and check activity. But identity would still be an issue if they have given out SIM card access without proper identity.

Senator MARK BISHOP—Identity is the core of the issue, isn't it.

Det. Supt Porter—Yes.

Senator MARK BISHOP—And access to that.

Det. Supt Porter—That is a major issue, but the activity on the SIM card can be just as important.

CHAIR—I should have mentioned this before. You are aware that there are members of the media here—we did raise that with you before. Neither the committee nor anyone else has any objection to that, just for the record.

Mr KERR—I have two questions, approaching this from both ends of the discussion. One is to expand the exchange of information that you have access to. How far has the debate towards internationalising information exchange gone? You are talking about improving corresponding datasets between the states. I cannot remember but I think it was Detective Superintendent Grant who said that we are now in a borderless world. In the intelligence field we have a longstanding arrangement, the UKUSA arrangement, between at least a number of countries which gives a seamless undertaking to exchange all intelligence related information between a number of key countries. It seems to me, given the discussions that we have been having, that at some stage there needs to be some examination of effective dataset coordination—not just within Australia but also between law enforcement agencies which we assess to be robust, not corrupt and appropriately matched to the kind of protective responsibilities we have in Australia. At the

moment we have informal exchanges between the AFP and a number of corresponding agencies, but I do not think they can be interrogated by you. Most law enforcement is still state based and, if we are talking about organised crime to the extent that you cannot interrogate any of that material, it must be an issue. Has this been the subject of discussion at any level? To the extent that we improve our capacity internally and then have these vulnerabilities externally, one does not know the degree to which we have actually resolved the problem.

Det. Supt Grant—I have to think this through a little before I answer. With the system we have at the moment, you have a portal through the AFP, so anything that we need to get checked internationally will be done through the AFP and vice versa. Without doing any more research, I think that is probably useful. Given the political climate, if a drug trafficker in another country that had the death penalty was then checking material in Australia and data was provided—that seamless sort of transfer of data—which ended up in somebody being arrested and possibly facing the death penalty, I am sure that would cause a fair bit of tension between various countries. I am not sure what the check and balance is with that at the moment if you had that sort of system.

Mr KERR—That is a good answer. Obviously there may need to be some kinds of filters and arrangements put in place, but logically the framework that you suggest now applies in the way that crime operates is no respecter of borders—it is no respecter of state borders and it is no respecter of international borders.

Chief Commissioner Nixon—But it is also about volume. For state police, the vast majority of matters are domestic in the sense of what sort of systems you would look out. Our relationship with the Federal Police and their expansion over the last five years in terms of their liaison with a whole range of international groups I think has been an important part in sharing and having trustworthy information sources. I think that has made a difference. They certainly would be our key contact.

In terms of high-tech crime, a number of us have relationships through MOUs, or people have been sent to work with other agencies, and so you get those sorts of personal relationships where people will share information with you. I think that has been part of the states' understanding that they have an obligation to think more broadly about those issues. I think that within Australia, if you look at the way we do share information, it is far better than, perhaps, the United States and I think that is a great plus for all of us. I think that bodies like the Australian Crime Commission also looking to expand their information sources and then allowing them to be more easily used by states as well gives us a reasonable kind of base at this stage. But by volume alone we are still looking at the states being the key users and then having broader access in terms of growing it and using it. So we are thinking about ways to improve but have not quite had more than that debate so far.

Mr KERR—You already have access to AUSTRAC, don't you? I suppose that is one of the areas we would expand.

Chief Commissioner Nixon—Yes.

Mr KERR—The other thing is that, as we develop these more sophisticated interchanges of information, people will be incrementally much more concerned about privacy for two reasons.

One is that, in any group of so many law enforcement officials, there will be some who are on the dark side. The fear is that, if you have a very efficient information exchange system that can be penetrated or interrogated easily by anybody anywhere within law enforcement, it may create a climate where abuses are more likely to occur. I guess proper audit arrangements, access, checking and continual refinement of the system is needed to ensure that we do not have those kinds of abuses. How are we dealing with those issues?

Chief Commissioner Nixon—We are certainly dealing with them. Certainly, we have found there has been inappropriate access to and use of that information in a number of instances across the whole of the country. Part of it is to look at the kinds of systems you have and put in the appropriate checks and balances so that you have an easy capacity to audit who in fact used the system. The new law enforcement database that Victoria Police will have has much easier auditing processes where you can look to see who used it and for what purpose. You can also flag high-risk users and those sorts of issues. It is a matter of having those checks and balances in place. We recognise that, in having information that is so valuable, you have to be very cautious with it. It is also about cutting off certain levels of information from the general community of policing confining it to a particular group of people.

Richard talks about Interpose, which has a capacity to lock off and only certain people being able to get into that piece of data. It is about levels and layers and the classifications of people who have access to that. You do not just have it open with all information being available to everybody; that is not the way we do it now. It is a matter of working through layers and then being very harsh on people who use the systems inappropriately so that the community can have some confidence in our use of that data.

But we do recognise very strongly the community's concerns about data use, some of which go to our getting greater access to information. I recently heard some people argue that certain information that was taken for a certain purpose should not be used for law enforcement. But I guess that is a balance that the community has to strike about the fact that law enforcement does enormous harm to our community and perhaps the greater good is served by allowing police officers to access information appropriately.

Mr KERR—Organised crime does enormous harm to our community. I do not think you meant to say 'law enforcement'. I think that was an accidental slip of the tongue.

Chief Commissioner Nixon—I am sorry; yes.

Mr KERR—I have been reading about the vulnerabilities of electronic systems. One of the points being asserted is that many corporations and organisations, public and private—I assume that would include the police—have vulnerabilities in the areas of systems administrators. You have all these password controls and the like, but at the top of this you have a group of tech heads who essentially are the only people who understand what all these control arrangements are. They have access across the system. In most organisations, what they do is essentially knowable only to them. How is that issue being managed? Is it an internal issue within your organisation but an external issue in terms of organised crime penetration of, say, other agencies, organisations and the like? If there is a point of vulnerability, presumably this is one.

Chief Commissioner Nixon—I am trying to think of instances where we have had our system being penetrated at that level. At this stage there are no examples that I can think of where that has actually been the case. You are also using the private sector; all our basic systems are run by the private sector. That is a part of the checking that is done on them and on their staff continuously and all of the basic tools that we use now to accredit people to be able to access that information. Clearly, they are a vulnerable group to whom we pay attention. But I do not have any instances where they have actually been responsible for misuse of that data.

CHAIR—If at some time in the future you were to look at starting a new database of some kind—this would apply also to any state police agency and to the Federal Police—would you, before you started, try to avoid problems caused in the past by your having different systems, by going to the other states and the Federal Police and saying: ‘Look, we’re thinking of doing this in this way. Do you agree, or do you think we should do it in some better way; and, if so, why?’

Chief Commissioner Nixon—I think we are becoming more in that way of seeing systems and the ways that we might go forward. We have started to form a new agency across national policing called the Australia New Zealand Policing Support Agency—obviously New Zealand is involved as well—to try to have a better and more strategic approach to thinking about policing at an Australian level; and New Zealand, being part of it, is supporting it as well. So we are trying to get clearer about those views. At the moment, we have had a lot of isolated groups who have made decisions—not only the states but within different bodies. We now believe that we need a far more combined and concerted approach.

CHAIR—So it is not just policing; it is corporate agencies and health agencies, I guess.

Chief Commissioner Nixon—Yes, it is a range. A whole lot of people are now thinking about where we should be looking to better invest our money. However, because the states have such a strong hold in many ways—and quite rightly, if that is underpinned by the Constitution—often we have looked to our own. But, for instance, for the last five years we have been looking at what a national radio system would look like and how we would be able to have such a system at a national level. We believe that we could bring them all together in about, I think, 2015. We would have one standard across the country and, as long as we do not lose our spectrum—which, because it is being sold off, is another possibility—we could have a system that would be the same across the country. In the interim, we work together and do our best. But different states have different arrangements, such as long-term contracts.

The answer in the short term is that we are trying to work towards it. But you get different instances. For example, Livescan is a fingerprint system. We found that across the country people bought different systems for which they paid different prices. In fact, as we are all going onto a database that is national, we should have combined to purchase them but we never did. Different people have different priorities at different times, but we need to come together and say, ‘We need to do this on a concerted basis across the whole of the country’—and we are working towards that.

CHAIR—Whoever is in charge of that cell would have a view on the technology.

Chief Commissioner Nixon—Yes, they do.

CHAIR—I suspect that within Victoria, if you had left it to each station commander to pick his own system, you now might have 50 different systems; but, by legislation, the decision is made in your offices.

Chief Commissioner Nixon—Yes.

CHAIR—Does that suggest that perhaps something should be more formalised nationally to say that, instead of having seven different people with different ideas, we should compulsorily have one—not necessarily the Commonwealth?

Chief Commissioner Nixon—I am not aware how that happens actually, legally. The best we can come to is the commitment that we make across those representing each of the states and the federal Attorney-General's Department, who are the key people we work with, and the Federal Police that we have come to a decision that we need to have better strategic coordination of a lot of the work that we do. That is the decision that was made through the Australian Police Ministers Council recently, that we would combine many of our resources and have directions that are more sensible than perhaps we have taken before and then the states would commit to be able to invent things at a national level. I do not know what a piece of legislation that tells states what they could do with their money would look like. We are looking for goodwill and a consistent and concerted approach that says, through MOUs, we have to do better in this regard.

CHAIR—I am not advocating this, but ultimately the Constitution could be changed to make sure that policing is done by the national government. As I say, I am not advocating that at all. However, the situation is that we have seven state police forces, of whom six might be persuaded, but we Queenslanders, because we are different, might say, 'Well, that might suit you down south, but it doesn't suit us so we're going it alone.' That then would mean that we are not one nation but two nations—everyone else plus Queensland, for example. Looking towards the future, I wonder whether there is a way, apart from persuasion and argument.

Chief Commissioner Nixon—I think persuasion and argument finally might have won out. In fact, we are trying to do that—to have more of a national view around this process in the way we work together and share information. There is a lot of goodwill involved at the moment in trying to do that. We are also trying to develop the national profession of policing. We have a national body that is looking to do that so that police officers can move—it is a different issue—between states far more easily. I have a personal commitment to being able to sponsor these issues and over the last five years we have been committed to bringing forward that national approach.

One of the ways I have seen the federal government do this before is by buying in; they have provided financial support. Airports are now policed by Australian Federal Police who are paid for by the federal government. Mind you, all 55 of them are officers from Victoria Police and they are now on secondment to the federal government, who police there. But that is another technique that is used, which often encourages people. We are talking about a lot of money though, in terms of national systems. All we are asking for in this case though, in terms of CrimTrac, is the capacity to take the view that you have, which says that there are good national systems that we could bring together with investment from the states and the federal government and with which we would do better in law enforcement and in dealing with serious and organised crime.

Mr WOOD—Would Victoria Police put together a list of the identification cards, which could actually go onto CrimTrac? That is one of the difficulties at the moment. We need to know what police forces and law enforcement agencies across Australia want. In addition, would you put together a budget submission regarding what you are requesting to give us an idea of what we are looking at? I could give you a copy of my list and we could work on from there.

Supt Johansen—It would be a fairly extensive list, to be quite honest, and it would be difficult to know from state to state. It would have to be a national approach, because issues in Far North Queensland would be very different to those in far south Victoria, as far as licensing regimes or regulatory bodies go. Yes, I would like to see the day that we could put all that information onto one very trackable national system and have police focused on those regulatory offences, because it would build a wall of protection.

Mr WOOD—For a start, I am sure that you would want to know, at the very minimum, who has a licence for explosives. We had an incident up in Queensland where a person got a false ID and that is one of the issues. We need to ensure that there are enough safeguards—we talked about this before—to make sure that the person who applies for a licence is in fact that person and, if they purchase explosives, the police need to be made aware of it. Could that be looked at, Chief?

Chief Commissioner Nixon—I guess there are two issues there. One is that I think you mentioned the identity card. Is that what you were talking about?

Mr WOOD—No, I did not mention the identity card. I mentioned the aviation security identification card. I look at that as a basic tool. For example, in New South Wales we had Bilal Khazal, the terrorist suspect, as a Qantas baggage handler. You obviously have major crime syndicates trying to infiltrate aviation and shipping. As an investigator, you would want to know right from the very start whether your suspect has links. Would you concur with that?

Supt Johansen—You will have to look at what you use as identification systems. If you just go to a simple name check—

Mr WOOD—I am aware of that, yes.

Supt Johansen—we then have to step up to the mark a bit.

Mr WOOD—What I am referring to is in actual fact the ones where the aviation cards and the pilot identification cards have ‘ammonium nitrate’, where there will actually be a regulated process whereby you have to produce ID; otherwise you could have the Donald Ducks again.

Chief Commissioner Nixon—In terms of the second part, which is about putting a business case together for the development of this, what we have at the moment is the CrimTrac agency and the Australian Crime Commission, who are two bodies who would in fact be able to develop business cases around these issues. We have a business case being developed at the moment about a national firearms system, for instance. We have state based firearms systems and we share information. But we are actually looking for a national system.

Mr WOOD—So CrimTrac would be the perfect one?

Chief Commissioner Nixon—In this case the federal Attorney-General's Department has funded part of the cost and we are sponsoring it with the federal body to build a business case to be able to come forward to say what it would cost us to be able to go forward. The process is one we would have to follow like everybody else.

Mr WOOD—I know there was a big issue with DNA and the various states. We heard from Western Australia yesterday, with the assistant commissioner saying all those legislative requirements have now been sorted out. Is that the case?

Chief Commissioner Nixon—Yes, it is.

Mr WOOD—That is pretty good, isn't it?

Chief Commissioner Nixon—It has been terrific. It has only taken us seven years but we have figured it out.

Mr WOOD—We heard yesterday that outlaw motorcycle gangs are the major contributors to the manufacture of amphetamines in Western Australia. Is it the same case in Victoria as to their input into organised crime? Would that be so?

Det. Supt Porter—All motorcycle gangs are certainly involved in a lot of different crimes in Victoria. I could not say with any authority that they are the major producer of that drug in Victoria; they would be up there. I think it has been quite well publicised that we have a lot of other people who are not associated with outlaw motorcycle gangs involved in that industry.

Mr WOOD—The other issue that was raised was actually banning outlaw motorcycle gangs, similar to that for terrorist organisations. Obviously that is a fairly tough approach. Would that actually work, where you would seize a clubhouse and really try to infiltrate and stop their illegal trade?

Chief Commissioner Nixon—We have a set of powers under state legislation around organised crime. If we were able to prove that case then we would have access to seizing assets and so on. We would follow those. Whether or not declaring them terrorists would add any greater capacity than we currently have I am not sure.

Mr WOOD—I am not saying that. If you have an organised crime group who actually go around saying, 'We're an organised crime group,' and they become the untouchables because they are obviously very hard to infiltrate, would that have a means of stopping and getting the nominees—

CHAIR—So a proscribed organisation.

Mr WOOD—Yes, a proscribed organisation as such. Would that actually have any benefit at all?

Det. Supt Grant—I do not think any of them go around saying, 'We're an organised crime group'. It is to the contrary. They all say that they are just a group of guys getting together and doing charity runs and the like. I think Victoria has got 19 different motorcycle gangs, with

about 44 or 45 chapters throughout the state. I cannot comment as to which ones have high-level criminality. There is a suite of legislative powers that we have and use. It has been quite effective. We do not seem to have the same level of problem with OMCGs as they have in WA. There is probably a number of reasons why, and I am not quite sure whether this is the forum in which to actually talk about those. In terms of OMCGs, we have a very good intelligence-sharing capacity across the country. The Australian Crime Commission have just taken on an intelligence task force to coordinate a lot of that. But it comes down to what we were saying earlier on: intelligence is good but you need the data in the first place and you need to be able to share that data. Going back to the original submission that we were making, it is about that seamless transfer of data which allows you to build your intelligence to help you better target those high-threat crime groups.

Senator MARK BISHOP—Are there particular reasons why OMCGs seem to have such a high profile? I think it is mainly in Western Australia and South Australia. I hardly ever read about them in the other states but they are regularly the subject of press scrutiny and reports in both South Australia and Western Australia. Are there particular reasons why they are so high profile in those two states?

Det. Supt Grant—I think that probably is something that you might want to take up with the assistant commissioner for crime in Western Australia. We have some theories but they are only theories. The OMCGs are well entrenched throughout the country. In various states there are different problems, and that comes down to some extent to the other players in the marketplace. As Superintendent Porter was just saying, the amphetamine market in Victoria is not just the purview of OMCGs; a number of other criminal groups are involved. Depending on ethnic mix, other high-threat crime groups, policing methodology and the amount of money they can make and so on, it changes from state to state.

CHAIR—I understand that under your Confiscation Act you can seize the ill-gotten gains of crime. The UK has legislation that allows the agency to put a certain percentage of what is recovered straight into its budget. Is that a good idea? Would it work in Australia? What is the Victorian legislation in relation to proceeds of crime? Do you get any of it or does it just go to consolidated revenue?

Det. Supt Grant—The Confiscation Act in Victoria makes it quite clear that the Attorney-General becomes the owner of any items that are forfeited, and all moneys realised as a result of the sale of property are forfeited to consolidated revenue. There have been a couple of different reviews of the act, and that has certainly been a topic of discussion. The government's policy position is that the status quo remains. I understand that the Department of Justice is now looking at the confiscation system, from the cradle to the grave. A working party will be formed shortly to start looking at that process. I know that other states have that capacity—certainly Western Australia has, and America has also. I think part of Victoria's work will be reviewing the pros and cons—there are some good things in it; equally, there are some other issues.

Senator MARK BISHOP—Chief Commissioner, your submission says:

Serious and organised crime is well entrenched in regulated industries such as prostitution and gaming. Regulators in these industries often have access to information that is not known to law enforcement agencies.

What information do they have? Why is it not accessible by law enforcement agencies? Why do you seek it? Presumably you do not have access to it because of a policy call by the government of the day. What has now changed to warrant giving law enforcement agencies access to that information?

Det. Supt Porter—There is no legal impediment to accessing the information; it is all about resources and the ability to collect it or to pass it to us. Perhaps I could expand on what was in the submission. Serious and organised crime has historically been attracted to industries such as gaming and prostitution. Regulation has gone some way to legitimising the industries by preventing direct ownership of legitimate venues by criminals, but it has not removed the underlying criminal attraction to the industries. The attraction still results in direct ownership of illegitimate venues, criminal associations and activities that are related to serious and organised crime. This gets back to the pieces of the jigsaw: the fact that two people who work together at a licensed brothel might be the solution to a case.

I will give you two brief case studies, if you like. One is in relation to prostitution and a Dudley Street brothel in Melbourne. Two offenders with prior convictions for armed robbery and manslaughter, and associations with known drug traffickers, maintained personal associations with women working as prostitutes at a licensed brothel. The association was based on amphetamine drug use. A regular customer of one of the prostitutes was targeted by those offenders, who committed an armed robbery at the customer's home address. During the robbery, the offenders shot and almost killed a member of the customer's family. The managers of that licensed brothel would have known of the association between the two prostitutes and most probably would have known about the association with the two men involved. That was basically the breeding ground for a very serious crime that followed as a result.

Mr WOOD—What information would you suggest a brothel owner supply: all his workers? Is that what you are seeking?

Det. Supt Porter—I can go nowhere into the systems in Victoria, for example, to find out which prostitutes are working at which licensed brothels today.

Mr WOOD—I assume that this is recorded at the state department somewhere. Is that right? Obviously they must have a licence.

Det. Supt Porter—The Business Licensing Authority licenses the actual premises.

Mr WOOD—But it does not indicate who is working there?

Det. Supt Porter—There are some records of the persons working there, and I think they are kept mostly for health reasons.

Mr WOOD—So how would you get access to that at this stage?

Det. Supt Porter—We would have to negotiate with the regulators. I am sure that the legitimate operators in those industries would want to cooperate. It would be a matter of making the arrangements from there. This is what could be; it is not where we are now.

Det. Supt Grant—We have a very good relationship with the Business Licensing Authority. There are regular meetings and regular exchanges of information. Where we can interface and help each other, that is certainly the case. But when you start talking about the national level—it comes back to what Superintendent Porter was talking about before—there are pieces of the jigsaw. You need to be able to understand that a person working in an industry in a state possibly has a connection with another person in another state, and that person has a connection back to Victoria. That is a highly sought-after piece of information, but at the moment we just do not have that connectivity. Subject to some compartmentalisation and some audit trails of that information, those are really important pieces of data that we need to be able to link. We cannot do that.

Senator MARK BISHOP—So the problem is not that you are legislatively prevented from accessing information; it is not a public policy position of either party in government to prevent access; you just do not have the means to get information from other regulatory agencies?

Det. Supt Grant—It is the technical infrastructure that the Chief Commissioner was talking about before. We have good working relationships with the regulators in this state, as I am sure the other law enforcement agencies have with their respective regulators, but it is the interconnectivity. If we are very effective in targeting a particular industry or a particular crime theme, you would expect that there would be a displacement of criminals into other activities that the police are not looking at. If we are highly effective in dealing with particular industries that we regulate, you would expect that there would be a displacement into other areas that police are not involved in. If we go into one industry and we are very effective there, they will move into another. If you start thinking about that across the country, you actually need systems that allow law enforcement to join the dots a little bit more. That is talking about an investment in the infrastructure that allows you to make those connections.

CHAIR—With brothels, it is a relatively new phenomenon, and hindsight—

Mr KERR—Brothels are a new phenomenon?

CHAIR—The legalisation and regulation of brothels. It is older than your profession, I am told; you are in only the second oldest profession—which was also my profession, of course. Hindsight, as I said, is always good. In retrospect, perhaps when that was set up the databases of what they are registering or regulating should have been done in closer cooperation with the police force and perhaps the health agency or others. Is that right?

Chief Commissioner Nixon—It just makes the point: what we are looking for and what CrimTrac has been trying to do is develop that kind of connectivity into their database. They have a database; we cannot access it. It is not just at a state level; it is at a broader, national level that we think we should be able to gain access to that information.

Mr WOOD—So CrimTrac would be the area where you would be looking at this?

Chief Commissioner Nixon—If you talked about having a concerted national arrangement rather than a local arrangement, that would be the kind of place you would put your investment in order to be able to access that kind of information.

CHAIR—But perhaps policymakers and senior managers within government—in my example, on the regulation of brothels—should have been better informed. We are looking to the future here, but we should make sure that those sorts of people are better informed as to what needs to be looked at when they design systems for the new legislation or the new regulation coming in.

Det. Supt Grant—I think that in Victoria that is actually happening. A stated position within our organised crime strategy is that, as we become more effective in tackling organised crime, we will see a displacement into areas where it is not a policing function to regulate. So part of our focus is really to have good working relationships, which comes back to what the Chief Commissioner was saying: having that trust and the goodwill to move forward. I do not know that you would necessarily need to legislate; you really just need to know that that is where you have to be and you work consistently towards that goal. We are doing that at the state level quite well; I have enormous faith in what the BLA does and we work together. But that has to happen at a national level. I am sounding a bit like a broken record here but you have to have the infrastructure sitting behind there to support that.

Mr KERR—I have a question now and then I would like to ask one question in camera. Going back to the internationalisation issue—you mentioned New Zealand and there is a police ministers conference that includes New Zealand—is this information exchange going to extend to New Zealand?

Chief Commissioner Nixon—Yes.

Mr KERR—So when you are talking about interchange you are actually internationalising things?

Chief Commissioner Nixon—We are. Part of that is done through memorandum of understanding and other sorts of arrangements, but because of that very close relationship with New Zealand they are very much a part of this way of thinking.

CHAIR—Is there anything else at all? Mr Kerr has indicated that he would like to go in camera to ask some questions.

Mr KERR—It would be only very briefly, so it will not mean that people have to leave for very long.

Senator MARK BISHOP—I have a question that will need to be in camera as well.

Mr WOOD—Would vehicle numberplate recognition help with fighting serious crime? I know that it has in England in relation to terrorism and other issues. What is the position of Victoria Police on that?

Det. Supt Porter—We are a car culture. Our criminals use cars just like everybody else, and if we can track the movement of cars it does assist with investigations into criminal activity. It is as simple as that.

Mr WOOD—So are there any pilot programs at the moment?

Chief Commissioner Nixon—Yes. We have been looking at automatic numberplate recognition systems for vehicles and at the most appropriate way for us to go forward. We have looked at developing some business cases about that. In some cases we can use them simply on the side of the street, and we have certainly done that to test what they are like. There are a number of other systems across Victoria—for example, on the tollways—that also collect that information, so we are also looking at how we might better integrate with what is already available in terms of checking numberplate systems.

Mr WOOD—Another issue raised by some of my federal parliamentary colleagues has been the lack of use of one of our programs—that is, the community partnerships for funding crime prevention, through which you can apply for federal funding for closed-circuit TV. We have found reluctance by police to apply for that funding. There were some concerns that there might be some issue of state interference, if I can put it that way.

Chief Commissioner Nixon—The state has not interfered.

Mr WOOD—That is what I am saying. I could not see it but, as far as I am concerned, if you have money available surely it should be applied for.

Chief Commissioner Nixon—I am sure they would be very happy to take anybody's money.

Mr WOOD—Perhaps that could be passed on to the various regional managers, because it has come back from two or three of my colleagues that there has been a reluctance by Victoria Police to apply for these closed-circuit TV cameras. We have just installed them in Belgrave so I am not talking about my area, but I can reveal other members who have had this problem.

Chief Commissioner Nixon—There is no concerted effort not to do that.

CHAIR—At this point, we will move to an in camera session.

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

CHAIR—We will now resume the public hearing.

Det. Supt Porter—Can I answer Senator Bishop's earlier question about the telcos cooperating. I have just confirmed with our information services unit that we have never had a telco not cooperate. What we have had are small-time organisations come on board and not be aware of their responsibilities in the circumstances. Each time we have given them the protocols they have cooperated.

Mr WOOD—Is that using state legislation or federal legislation?

Det. Supt Porter—My understanding is that the protocols are based on the federal arrangements. Our cost so far was just over \$500,000 at the end of March, but I believe the projection is approaching \$800,000 for a full 12 months, just for telephone checks.

Senator MARK BISHOP—It is a localised problem then? It has never been raised as a problem in Victoria?

Det. Supt Porter—They have had people say, ‘What? What do you mean?’ and then basically we have walked them through it. Once they have learnt the arrangements they have cooperated.

CHAIR—Again, on the public record, thank you very much for coming along and for your very valuable time.

Proceedings suspended from 2.00 pm to 2.16 pm

COSTIGAN, Mr Frank, QC, Private capacity

CHAIR—I call the committee inquiry back to order and thank Mr Frank Costigan QC very much for accepting our invitation to join us. Mr Costigan, we are well aware of your very significant history in looking at organised crime over many years and we are hoping that you can give us some background to that and how you see, perhaps from a greater distance, the way it has transpired or evolved since the days of the inquiry that bore your name, the royal commission. Perhaps you could help the committee with its look at trends in organised crime and with what our agencies should be looking at in trying to be, if not one step ahead, at least only half a step behind the organised criminal. We would appreciate your thoughts generally on the terms of our inquiry, and I know the committee would then like to ask you some questions.

Mr Costigan—Thank you for that. I was complimented to be asked. I feel as though I am speaking from nostalgia or *deja vu*, having appeared a number of times before the Parliamentary Joint Committee on the National Crime Authority, as it was. I was not quite certain what it was that you wanted of me. The very nature of the Crime Commission is that it is a secret body, and therefore an outsider, as I regard myself, is not able really to assess its success, whether its procedures are sensible or draconian and whether it is achieving the object for which it was set up. So I cannot really make a judgement about that, although there are a couple of things I would like to say about the Crime Commission. I say it in the context that, as you probably know, I was opposed to the setting up of the Crime Commission because it did not seem to me appropriate that the police should be given those special powers. It was always the view that those powers were of great importance in attempting to solve problems of organised crime, but the nature of a police force was such that it should be one step removed from having those powers. I do not say that argument has been lost, but it is not current at the moment and I have not come here to revisit that argument.

One of the worries I have about the Crime Commission is that it is so secret, but I have some sympathy with the secrecy side of it. How secret bodies like this should be is a very complex question. I know from my own experience that when you are in the course of an investigation it is vital that the steps you take be kept confidential. For example, you do not want to subpoena a banker to come along and produce information about financial transactions that the target has been involved in and then let the target know that you have done that because it just destroys the integrity of the investigation. So there is a very real role in steps in the investigation being kept confidential until the investigation is complete. But there must be cases—I suspect in the Operation Wickenby matter, and I speak entirely from reading the *Financial Review* and other papers—when the target is fully aware of the fact that he is a target, particularly if he is a target in relation to suspected tax offences or transfer of moneys overseas. It would come as no surprise to him that the financial institutions that he has been dealing with have been asked to give some evidence to the Crime Commission. There really seems to me, in that sort of case, little point in preventing the target from saying to the media and to the world, ‘I was called up before the Crime Commission the other day and, of course, it is all nonsense; I have not done anything wrong,’ and to defend himself publicly. I do not think there is any vice in that, although you would always have to leave to the Crime Commission itself the discretion as to whether in a particular case that was okay or it was not.

That problem is particularly true when you get leaks. I am not pointing the finger at anyone specifically, but there have been leaks about Operation Wickenby. It is equally possible that the leaks could have come from the targets or from someone in the Crime Commission. I will not even speculate as to the reason the leak occurred. Once you start to get leaks, my own view of transparency is that one should come clean about them. If X is mentioned in the press as being the subject of significant investigation by the Crime Commission, I cannot see any great harm in the public knowing more about it. I am a great believer in not keeping things secret unless there are good reasons why it should be kept secret. I am not sure that I would go as far as the Swedes did 40 years ago when any citizen could look up anybody's tax return and find out how much they earned. We do have to be careful about that.

Having said that about the Crime Commission, it has always been my view that the major object of organised crime—and organised crime in the widest possible definition—is to acquire cash and hide it from the authorities. The best way to do that is to take the cash out of the country and launder it, perhaps through 20 or 30 different countries, and then bring it back—perhaps not all of it because you might want to spend some of it—basically in a form which on the surface appears to be legitimate. Modern technology has made that easier than it was when I was looking at these kinds of problems. I have never quite understood the virtue of instantaneous transfer of moneys. I am not even certain that there is any good business reason for that. If business realised that, if it was going to pay for some goods, it could not send money out of the country for seven days then that would give authorities a chance to check whether it was a legitimate transaction.

When you are talking about organised crime, of course you are talking about drugs and enormous sums of drugs money; but you are also talking about the products of other criminal activities, many of which are white-collar criminal activities—dare I use the term 'financial engineering'. We have seen in America and we have seen to some extent in Australia where enormous sums of money are taken out of the hands of legitimate investors or lenders and dispersed out of the country where they were invested. It is very difficult to get at because the money can go through all sorts of bank accounts in countries, including saying 'hello' to a number of tax havens. To stop this, you have to have international cooperation. No one country can deal with this on its own. That is the big challenge I think. We are making inroads into that, but it is a really hard fight. I look back with pleasure on the setting up of AUSTRAC in, I think, 1988. It was great achievement. It has been one of the great successes I think in this area. But AUSTRAC cannot do it on its own. Unless AUSTRAC or some similar agency has access to information or financial transactions held by banks in other countries, you are constantly going to come up against a brick wall.

But what we have seen over the last decade has been the development of a number of very valuable conventions such as the OECD convention against bribery and the United Nations Convention against Corruption, to highlight perhaps the two most important ones. The United Nations Convention against Corruption is a complex convention. It is going to take some years to work out, but it is a convention which holds out the greatest hope of identifying collateral dealings between organisations in different countries and of providing methods of bringing the money back if it has been sent across to a country from which, before the convention, there was no power to get the money back. This convention holds out a real hope, but it is not going to happen overnight; it is going to take a decade. There are already hiccups, and there is a big hiccup in the UK at the moment about a special fraud office inquiry into British Aerospace

contracts between Britain and Saudi Arabia. The allegations are really serious: that heavy bribes were paid. The government of the UK stopped the investigation and that has caused a furore in the international community. There are pessimists who say that, if this can happen, the United Nations Convention against Corruption is not going to work. That is a real caveat that I draw. On the other hand, the only hope we have is that there is international cooperation. If we do not have that we are not going to solve it because the money will be laundered.

The committee does not need to be told that the amounts involved and the cost of organised crime are enormous. I have always had problems with estimates. I remember it used to be said, and perhaps it is still said, that of the amount of drugs that come into the country the percentage which is seized by Customs is only 10 per cent. How you work out that figure if you do not know what the 100 per cent is I do not know. But whatever is said, there are the best estimates. The World Bank made an estimate in about 2004 that bribes alone represent three per cent of world global GDP, which itself is about a trillion dollars. It estimated that the cost of organised crime is not three per cent but about five per cent, so we are talking extraordinary numbers.

What is difficult is to identify the cost of fighting organised crime, because the weapons used in fighting organised crime are to be found in all sorts of agencies. Of course in one sense you could say that the whole police budget is directed to fighting organised crime, but that would not be sensible. It is not just the police involved; it is also the Australian Crime Commission, the parliament and the other agencies that are set up. You would have to say that the cost of fighting organised crime is considerable but the cost of not fighting it is very much greater. I am not sure that I want to say anymore. That is a preliminary comment. My strong view is that unless we have decent international cooperation we are not going to get there.

CHAIR—Thank you very much for that, Mr Costigan. I wish to raise with you an issue that has been raised by some other witnesses. It is suggested that, as matters become more and more complex and technical, particularly as to business related matters and the interconnection between different corporations here and overseas, and as we move into high-technology areas in communications and many other fields, it becomes very difficult to prove in a criminal court beyond a reasonable doubt that someone is guilty of a crime that is very complex. Do you think there is room for a different standard of proof in criminal matters in complex issues that are really beyond the understanding of the sorts of people who regularly make up juries in Australia?

Mr Costigan—I know that view is often expressed. I am a great believer in juries, and my experience is that juries understand even complex cases provided they are properly presented. Juries are very proud of their role of listening to the evidence and being the body that is to determine it. Having said that, there are matters that are so complex, which involve such fine understanding of the Corporations Law and other laws that there might be occasions where it might be better to have, say, a panel of judges—not a single judge—expert in the particular field. I am not sure to what extent there is organised crime in patents and intellectual property and so on, but those are such specialised areas of the law that, if you were trying to lodge a prosecution in relation to theft of that kind, there might well be a case for saying it is more appropriate for specialists to look at it rather than a jury.

CHAIR—Leaving the standard of proof the same?

Mr Costigan—Yes. I think I would fight to the death to keep the standard of proof. A criminal prosecution is a very serious matter both for the state and for the person who has been charged. We have lived for a long time with that protection—you do not convict a person unless the prosecution has been proved beyond reasonable doubt.

Mr KERR—We seem to try to square the circle by developing new mechanisms—for example, civil penalties and forfeiture regimes—which do not result in criminal convictions but are attempts to strip financial gain on a lesser burden of proof.

Mr Costigan—I think they are very sensible. They are not imposing a criminal conviction but they are really achieving the policy that if people rip off the community or rip off individuals and profit by it, they should not be able to keep that profit. It should be hauled back in some way. I think both the Commonwealth and the states are slowly developing decent regimes for doing that and we are starting to see some benefits of that.

CHAIR—That presupposes the person is guilty, so they lose their property but they are not guilty enough to be incarcerated.

Mr KERR—That is right. It presumes that, on the balance of probability, more likely than not the ill-gotten gain has been acquired illegitimately and through a particular wrongful means and so you take it from them. This is the course we now follow, largely.

CHAIR—Certainly, there was the highly publicised fishing boat arrest where we were not able to convict before a jury but we were able to take the boat in a civil proceeding. Mr Costigan, in your experience have you ever had an impression that juries have been nobbled, to use the vernacular, as in *Runaway Jury*, the popular American film? Is that a problem in Australia? Is there any evidence of it?

Mr Costigan—It is not a major problem. There is very little evidence of it. I have not done criminal law for God knows how long, but there have been some suggestions in a couple of cases that an attempt was made by the accused, who was almost always a high-profile criminal, to get to a member of the jury. There have been a couple of instances of that. They are so rare that I think you would have to say that our jury system works pretty well. The police are very alert to it and the prosecution is very alert to it. You worry about it, but I do not think it is a major problem.

Mr KERR—One of the slogans, I suppose, that you are remembered for is the ‘bottom of the harbour’, which evolved from the use of phoney names on corporate vehicles and then the trashing of them. We now have a 100-point identification system for banking documentation. How robust do you think the general corporate world is in terms of being open to abuse by those who want to develop fraudulent practices? You have mentioned tax evasion and a whole range of things. Is there anything we should be thinking about doing in this area? Most of our focus has been on policing and the like but, in looking at where the gain is being laundered or where new criminal opportunities are emerging, we heard earlier about the opportunities that superannuation might present where large amounts of money are being set aside for people’s retirements. We have a very informal system that allows you to set up trusts with no legalities. We have a whole range of equitable doctrines which enable you to create legal entities capable of transmission of property with no documentation at all. I do not know how robust it is now in terms of

identification required for the establishment of a corporate vehicle. I should know, but I am not quite as on top of that as I should be.

Mr Costigan—I should know too, but I am not sure.

CHAIR—You both need good instructing solicitors to tell you those things!

Mr KERR—Do you think we should be doing something in this area to tighten it up if it is, in a sense, a forest of opportunities for those who wish to do ill?

Mr Costigan—There is a forest of opportunity. I should say that the attack on that kind of activity is not limited to police forces or to bodies like the Australian Crime Commission or ASIC. There is a whole range of bodies, including one which I am involved in. I am the chairman of Transparency International Australia. It is a body that was set up in Berlin 12 years ago and is now represented in 100 countries whose focus is anticorruption. The fight against corruption is very close to the fight against organised crime, but it is a bit different. Sometimes corruption is not really organised crime; it is taking hold of the fact that the World Bank might be sending \$300 million to—let me just pull a country out of a hat—Nigeria or wherever. Instead of the money finishing up in reconstruction or development, it finishes up in the Swiss bank accounts of the dictator. That is not really organised crime, although you could draft a definition of organised crime which would encompass that, but it is corruption. The Enron matter in America or—dare I say it, in the middle of a trial but not in this country—the Black case in Chicago of Hollinger, are probably not examples of organised crime, but, if proved, are examples of corruption dealing with the sort of problem you have raised, aren't they? There are all sorts of people who think that the quickest way to achieve an object is to go in a circular route and set up vehicles that, on the surface, appear to be okay but in fact are not realistic at all. So I think governments, police agencies and the ACCC have to also respect the fact that there are other people looking at behaviour, which achieves the object you are objecting to. I do not know whether that is an answer or not, Mr Kerr.

Mr KERR—One of the points that has been touched on by us, as we have been going through this, is that there does not seem to be much by way of serious economic analysis about where you can intervene most effectively to get good law enforcement outcomes against organised crime measuring enforcement effectiveness. We have really been thinking in terms of the obvious law enforcement agencies as much as anything else. I suppose you have raised a broader issue.

Mr Costigan—There is a bit of work being done in Europe on this. Recently, in the last couple of months, a book has come out. I cannot spell the name of the author, but that is not an important matter because I cannot remember it at the moment. I think it is called 'The economic consequences of crime'. It is an analysis of the very sort of thing that you are doing. If I pick that up, I will let the committee know. There is a bit of work going on there in Europe in this area of how you measure these things and what you do about it. It is not like Carlton beating Essendon. There is no clear-cut answer to these things; it is a continuing fight. As new methods of attack are found, there will be new methods of getting around the system.

Mr KERR—One of the things you raised in your discussion with us was the way in which financial transactions occur instantaneously now. That is almost universally seem to be a positive

in terms of economic efficiency. You said that it does not appear immediately to you that there is a good reason that you would not build some kind of a delay into the transfer of funds across global boundaries. Do you have any other areas where you might raise these sorts of issues? It does seem to me that we give legal consequence to some quite artificial arrangements—highly complex derivatives and highly structured trust arrangements which are almost impossible to undo. I was reading one of the judgements where the judge said that, frankly, it is a really hard job to work out what happens now.

Mr Costigan—So you think I have an answer immediately, do you?

Mr KERR—No, I do not. But we have given effect and legal efficacy to a whole range of very informal ways of the transmission of property.

Mr Costigan—I know what you mean. I think it is a terrible problem really and I certainly do not have the answer to it. It would require a fair bit of work. There is clearly a value for business in some of these financial arrangements—for example, Qantas has been able to hedge its currency problems over the years and has done so very successfully. There are some sensible financial engineering arrangements which, if they are transparent, can be of benefit to business on both sides. But they move through artificiality into artificiality and they are all supported by mammoth legal documents that have been generated by the computer. To analyse the legal effect of them is such a difficult problem that people do not do it. So that is really an open door to the corrupt to make use of these and hide within 50 or 100 different transactions.

Mr KERR—The FAI transactions were ones where supposed insurance—

Senator MARK BISHOP—HIH.

Mr KERR—HIH was really a non-recourse—

Mr Costigan—You meant FAI.

Mr KERR—I meant HIH. This has been generally regarded as increasing economic efficiency. The use of derivatives has been seen to stabilise financial markets, but if you conceptualise derivatives now, they are beyond the average, may I say it, Queen's Counsel. They are just mind-bogglingly complex.

Mr Costigan—When derivatives started 15 years ago they were comparatively simple—not easy to understand, but comparatively simple. Now they are so complicated that I think you would find very few lawyers in practice—certainly at the bar, perhaps less so in the major firms—who really understand the effect of them. Work needs to be done to test the business efficiency of them. Sometimes when you look at the rewards which are paid to those who use them you really do wonder why they are being used.

Mr KERR—It seems that many of these opportunities for abuses can only be looked at as circumstances emerge. You were able to come in at the point where some of those abuses had emerged in an area that most were entirely unaware of until you conducted your inquiry. So it is difficult for us to speculate as to whether or not there are similar new instances emerging in the

use of some of these financial products or in the areas where trusts are being used in particular for the transmission of property in very undocumented ways.

Mr Costigan—Apart from that we are seeing the collapse of a number of institutions where people have put their life savings into alleged property, but when you look at the documents that are supposed to provide security, they do not do anything. We have seen one in Western Australia and there is another one on the east coast. That is without any sophisticated financial management at all. That is just old-style fraud.

CHAIR—Mr Costigan, I appreciate that it is some decades now since your inquiry—your royal commission. As a disinterested observer, almost, do you have any impressions of levels of criminality across Australian society these days? Do you feel it is worse than it was back then or better? With organisations like the Crime Commission or the police integrity commissions that are around, is it your impression that they have made things better for society?

Mr Costigan—That is my impression. Putting to one side the classic gangland murders that we have seen in Victoria, and they pop up all over the place from time to time, it is my impression that, coming right down the east coast, the setting up of the crime commissions has made a difference. They all have different names: the crime commission in Queensland, ICAC in New South Wales—let's forget Victoria for the moment—and the crime commission in Western Australia. They have made the game more dangerous for the criminal who wants to abuse society.

My perception, which I could not prove mathematically, is that things are getting better and also people are more aware of it. That is demonstrated not just within this country but if you look overseas. On the other hand, looking at the Pacific region, which I am very interested in at the moment, that is made up of a series of failed states or ones that are about to fail. I just spent a week in the Solomon Islands—just before the earthquake, I am glad to say—and that is a terrible worry. It is a terrible worry for the people in those countries but it is also a big worry for Australia because it is our part of the world. But having said that, yes, I think there is a much greater perception. I think bodies like Transparency International have made a difference, certainly in Europe, where they are much more open.

CHAIR—At the beginning of your submission you expressed some concern about the inquisitorial powers that the Crime Commission has—demanding an answer without representation or the ability to not answer. With that and with phone taps, everyone's privacy seems to be subject to incursion if they happen to fit a category. Do you think we have gone too far in that? Can society expect that rights are going to be more curtailed in the future as we need new measures to combat ever more clever criminals?

Mr Costigan—I find that terribly worrying. I am reluctant in the presence of members of parliament to say this but in every election campaign, not so much at the federal level but at state level, law and order is the great argument to get votes. That means giving more powers to police and taking away rights. We do have to be careful because one of the things we value in a country like Australia is our system of law and respect for rights. The classic rights, such as that you cannot be taken into custody without the right to go to court, are very important rights. It is too easy to continue giving power to bodies on some justification, whether it is terrorism or to stop crime or to stop shootings. You finish up with a society that is dominated by coercive bodies

where the ordinary citizen's rights have been taken away. I think governments, state and federal, have to be alert all the time to justifying an extension of powers and justifying a diminution in the rights of the ordinary citizen. They have to be absolutely alert to that, because it can slide very quickly into a position where an innocent citizen might find it almost impossible to buck the system.

CHAIR—And yet someone gave evidence yesterday that, to put it this way, particularly ethnic groups come to Australia and think that we are an absolute mob of dills in the way we have all of our laws so much in favour of rights, whereas in their home country if they do something wrong they get shot. They come to Australia and the worst that can happen to them is they will be put in jail for a few years. These people allegedly—so it was suggested yesterday—come to Australia because it is such an easy place to be a criminal and live on the proceeds of crime, and the chances of getting caught are not much and, if you do, it is not a big problem. That sort of scenario I think is why at state elections people do promise more and more—

Mr Costigan—No, 99 per cent of people who come to Australia come here because they choose this as a country they would like to live in and to bring up their kids in and they have no thoughts of entering into criminal activity. I think that sort of view is very dangerous and I would like to disassociate myself from it.

CHAIR—Perhaps I have worded that badly, but the Western Australians are saying that there are ethnic criminals from the eastern European countries who are finding Australia an absolute breeze.

Mr Costigan—You mean they are taking over from the Italian criminals, the Greek criminals, the Turkish criminals and, God bless them, the Irish criminals!

CHAIR—It is complex. As the criminals seem to get better means of prosecuting their things, the reaction of the enforcement agencies—the idea of these special powers that the ACCC has would, 50 years ago, have been unthinkable.

Mr Costigan—Ten years ago.

CHAIR—Yes, 10 years ago.

Mr KERR—Most of this seems to be driven by drugs. We have had a bit of a discussion about this internally and with witnesses, but there is an argument that, when something like 30 per cent of the Australian population have used illicit drugs, there is a big market there that can be satisfied relatively simply and cheaply in terms of the production cost of these chemicals. You can become rich very quickly and, in a sense, you create a market which is then going to be satisfied. You then increase your law enforcement response, which toughens and weeds out the lesser and less efficient criminals, and you then say: 'There's still a problem; we're still getting the drugs coming in.' You have to get tougher and tougher. You create an elite organised crime group to match the capacity of law enforcement and to stay one step ahead if it can. This does seem to be an argument that has a bit of merit. Drugs do seem to be the driver of much of the concern about organised crime at the moment.

Mr Costigan—Certainly they produce such profits that it is very attractive to people to go into the business. But it raises questions which I did not think I was here to embark on. They are very difficult questions. I have some views about them.

Mr KERR—The first chair of the NCA, Don Stewart, has just done his mea culpa or apologia—I am sorry; I am probably using flippant terms that I should not. He has basically said, ‘The policy responses we’ve adopted in the past and which I pursued when I was the first chair of the NCA were wrong.’ I am inviting you to make any comment in that area, if you wish, but do not feel any obligation to.

Mr Costigan—I have a real interest in this. I am the vice chair of an organisation called Youth Substance Abuse Services in Victoria, which is an immensely innovative organisation set up by the Victorian government over the last 10 years to look at the problems of drug use by people between the ages of 10 and 17. It is a completely different target group. The experience we have had—and the police have been very good about this, I must say—is that you do not solve the problem by putting the kids in jail. You solve it by treating them as a medical case and by providing enormous resources for rehabilitation, counselling and treatment, and it seems to be working. If it really is working then it makes you think again about how you best deal with that, particularly when you know that drugs are at the moment funding organised crime. Robbing banks has gone out of fashion; it is too hard.

Mr KERR—If Transparency International has anything to put formally to this committee, I would be very interested in hearing it. It sort of overlaps but it is not quite on the—

Mr Costigan—Not quite on it. Let me think about that, if I may. Thank you for your courtesy.

CHAIR—Mr Costigan, thank you very much for coming to us. As I said, we are very grateful that you have made the time available to help the committee in its inquiry. We are trying to do our bit to look at where criminals might be heading and basing that, to a degree, on what has happened in the past and how we can learn and profit from what has gone before. Thank you very much for your time. We appreciate it.

Mr Costigan—Thank you.

[3.02 pm]

HOLMES, Prof. Leslie Templeman, Professor of Political Science and Deputy Director, Contemporary Europe Research Centre, University of Melbourne

CHAIR—Welcome, Professor Holmes. Your expertise was lauded by your colleague Prof. Sutton, who intimated that if we had difficult questions we should save them for you! Thank you for coming along and giving us your time. As you know, we are looking at future trends in criminal activities and how we suggest to parliament that they might position governments to address that in the future. We are very grateful for your time in helping us come to conclusions on this. If you would like to make an opening statement to the committee, we would be pleased to have that statement. You may then subject yourself to some questions from the committee.

Prof. Holmes—Thank you very much for inviting me—and thank you Adam for dobbing me in! Let me highlight my limitations. My background was originally studying corruption. It is only fairly recently that I moved specifically into organised crime, but I will suggest that quite often there are strong linkages. I am also, as you probably know, a Europeanist. I work on both east and west Europe. I am hoping that there will be some resonances and that some mutual learning can happen.

Obviously I do not know what you already know, so I apologise if I am teaching you to suck eggs. Europe, as you will know, is home to two of the five most widely recognised international-transnational organised groups of criminals—namely, the Italian mafia in its various forms such as the Ndrangheta, et cetera, and the so-called ‘Russian mafia’. I want to argue three main points, because I have very limited time. My edited book *Terrorism, Organised Crime and Corruption: Networks and Linkages* has just come out—I think it is available in Australia now. I argue as my first point that one of the problems is that we do not look enough at the linkages. You cannot study organised crime in isolation, in my opinion. At the end of that book, I say that you need to look at the linkages between not only those three—terrorism, organised crime and corruption—but also corporate crime. I go through a bit of the history as to why we have not been looking at the linkages and how recent it is that we started doing it.

As you may know, Transparency International is the leading NGO for fighting corruption. It argues that states started recognising corruption really only in 1994—certainly international organisations started in 1994. As for corruption and organised crime, in October 1995 President Clinton made what we believe is the first call for the US’s international crime control strategy, which, in May 1998, resulted in the US’s first ever international crime control strategy. Over in Europe, they were working on this at about the same time. The Council of Europe held its first conference of ministers of justice on links between corruption and organised crime in June 1997—only 10 years ago.

The next linkage I think we should be looking at is terrorism and organised crime. Certainly since 9/11 obviously there has been much enhanced awareness of those possibilities. I have a quotation in a paper—I have brought you two copies—from Stanley Morris, the then head of Interpol, in 2002. In fact, just to show my little Asian bit, there is something from the Chinese chief prosecutor in 2006, a very recent quotation, linking corruption, terrorism and organised

crime. One of the ways that organised crime can link with terrorism is through so-called transmutation. Not a lot of people know that the triads, who nowadays are known as an organised crime gang, were originally political activists who then switched to more economic activity, if you like, after they had largely achieved their ends. Much more recently, the IRA in Ireland and ETA, the Basque terrorist group, have become what one American analyst has called 'fighters turned felons', not completely but that transmutation is occurring. Obviously organised crime often tries to penetrate the legitimate economy. I have various examples here of linkages but I do not think they are relevant. We really want to look at the big picture. That is my first point: that we need to look at organised crime in connection with those three other forms of criminality.

The second is that organised crime largely works with the same rationale—a simple cost-benefit analysis or what some call 'rational choice' and opportunity, as do other actors including corrupt officials and miscreant corporations. The former Chief Economist of the World Bank and Noble Prizewinner for Economics, Joseph Stiglitz, in his most recent 2006 book on globalisation argued that:

In the amoral view of the modern corporation, if they can get away with it—

if expected return exceeds the risk and costs of being found out—

then—

and this is a caveat—

were it not illegal, they would practically have an obligation to bribe, for that would increase the profits of the company and the return to shareholders.

I will not talk about AWB. You are the specialists on Australia. Certainly in terms of opportunities, again I can expand on any of these but you have given me about five minutes so I will have to cull it.

CHAIR—You can extend it out by two minutes.

Prof. Holmes—Okay. In terms of opportunity, Schengen in Europe—if I refer to anything with which you are unfamiliar, please say so—I do not want to tell you things you already know—

CHAIR—What was that?

Prof. Holmes—The Schengen agreement—mooted in 1985 but eventually came into play in 1995—breaks down the barriers. It leads to free movement of both labour and capital in most EU countries. The UK is not a signatory to that and there are one or two non-European members in the Schengen area, such as Norway. That is the second thing about opportunities. Another example is that the Belgian finance minister said that the introduction of the Euro was going to lead to increased money-laundering and money smuggling in Europe for the simple reason that the largest denomination of the Euro was worth more than the largest denomination of the US dollar.

Thirdly—and I think this is important and is something that Australia needs to take to heart—in light of AWB, is the importance of states and the legitimate private sector setting the example. I came here directly from chairing a session by the Professor of European Politics at Oxford University who was talking about the spreading of democratisation both within Europe. Relating to that, he was saying that rather than trying to force other people to accept your system and your beliefs, it is much better to show how they work better—in other words, to set an example.

I then go through various definitional problems. For instance, since the 1940s some criminologists have blurred corporate crime and organised crime, so that very often they are indistinguishable. But that is not by any means the only definitional problem. Another is that different constituencies use different definitions. There is the fact that there are 52 police forces in the United Kingdom, each of which has a slightly different definition of organised crime. Therefore, in terms of the metrics problems—the measurement problems—if you have different definitions, even if you are looking at the same things, you are going to come up with different figures. That is a real problem. That is not the only measurement problem—again, these are common to any country, obviously including Australia; it is partly the nature of the crimes. Very often victims of organised crime have themselves broken the law in one way or another. They might be trafficked women, who fear that they are going to be in trouble because they should not be in the country; they have not come in legally.

Italy is not usually one of the leading countries in Europe for social policy, but they are always looked at within Europe as the country that has come furthest in de-demonising trafficked women, who are always called victims and never called criminals and do not even have to agree to testify in court in order to get permanent resident status. There are things like language barriers for trafficked women. People sometimes fear reporting to the police—though I do not think that is not so much of a problem in this country, but it certainly is in some parts of Europe. And there is even the Stockholm syndrome. Do you know what the Stockholm syndrome is? It derives originally from a situation with terrorists where some people were taken as hostages and eventually became very emotionally and psychologically dependent on their hostage takers. That also happens certainly with human trafficking.

With regard to the effects of organised crime, one statistic I found surprised even me—because I knew it was high—is an American statistic. I am a comparativist. It is from an article by the director of the National Institute of Drug Abuse in the United States on 19 August 2006—so it is recent. She cited 2002 data and said:

In 2002 [in the USA ...] approximately 60 percent of male juvenile detainees and 46 percent of female detainees tested positive for drug use. The estimated cost to society of drug abuse in 2002 was \$US181 billion—\$107 billion of it is associated with drug-related crime.

That is just one of the metrics that are sometimes used to show the impact of crime. There are so many problems with solving this. I have written a book on corruption and that contains some 60 different ways of solving it. In terms of organised crime, we would know most of them. They include greater policing cooperation. But sometimes solving one problem, including the three other forms of criminality, can actually increase the probability of organised crime. For instance, tightening up on the borders following 9-11 just makes it more profitable for organised crime to smuggle people across borders and make higher profits. So that operates as a motivator—though I think that is not the right word.

Some European examples you might want to think about. Whether you agree with them, I do not know. This particular example I do not agree with, but you might have different approaches. To try and stop human trafficking—and I assume you understand the difference between people-smuggling and human trafficking—the Swedish government made it illegal for Johns, men, to use prostitutes as well as making prostitution itself illegal. The Russian press often quotes the Swedish experience saying that there has been a marked decline in trafficking into Sweden because of the much broader approach that the Swedish government has taken. I know in this country it is often considered better to bring it into the open. Certainly in this state where there is legalised prostitution it is better to bring it into the open. You can control it better. The Swedes take a different viewpoint and think it should be illegal for all parties involved. The Russians, who are certainly one of the major sources of trafficking into Europe, have identified that as an issue.

CHAIR—That was very useful. Duncan, do you have questions?

Mr KERR—I was going to pick up on this issue of trafficking of women, because we did look at that. One of the points we raised was the decision not to continue the ACC reference on the trafficking of women. I am not sure what your view of that might be. I guess the understanding we have from the agency is that they feel it was responded to. There have not been many prosecutions; there have not been many examples of it. You mentioned trafficking in women. Do you see that as a significant Australian problem still?

Prof. Holmes—It depends what you mean by significant—often these things are a two-edged sword. One of the problems of legalising prostitution is that very often the brothels feel safer in terms of not being subject to the same sort of police control. I have a colleague you may have come across, Sheila Jeffery. She is a very radical feminist who is very hostile to all forms of prostitution. She says that this situation has worsened. To be honest, I do not know the figures, but I can certainly see at a theoretical level that it could have worsened because of legalisation—as I say, because brothels feel safer that they are not going to be investigated and there is not going to be the same number of spot raids. Let me also emphasise that I am not a specialist on Australia.

Mr KERR—Earlier today the Victorian police talked about niche opportunities for organised crime—that economic policy, enforcement and the like develop markets where organised crime has the opportunity to develop. We have been puzzled, I suppose, at the lack of analysis of the effectiveness of law enforcement or its impacts in Australia. Although it is a constantly important political issue, it does not seem to have the same kind of rigorous attention as does, say, our allocation of defence priorities, our health priorities, our education policy and the like. Its discussion tends to be in tabloid newspapers or at a very abstract, abstruse level. There seems to be no hard analysis of what we can do better to address this as a series of options. What are the choices we have? What would happen if we pushed this boundary here? How would we change the situation? Your book starts to address this in some way. If you agree with that assessment, should we as a parliament develop an institution to look at this more seriously? Where should that be located? What should its priorities be? Is there a gap here that is causing us policy problems that we should rectify?

Prof. Holmes—Law enforcement anywhere is an expensive business. You referred to niche markets. I think risk assessment needs to be enhanced a lot. Where are the areas that we are

likely to have problems in? Is it prostitution? Is it drug smuggling? Is it arms smuggling? In the case of Australia, is it things like exotic flora and fauna? Apparently that is one of our niche markets for organised crime. So I think we should identify those niche markets and then target them.

I am often surprised that the police do not seem to pursue what look to me like obvious targets. My students could tell me where I could go for drugs if I wanted them. It always amazes me that drugs are such a big problem in this country. You can get stopped in the street for a drug test if you are driving, but beyond that? It is clearly a major problem area, not only for the junkies themselves and with all the health problems and so on. I cited figures from the United States, and I do not suppose the figures here would be dramatically different. Whatever the figures are, I think we would probably all agree that for drug related crime—burglary, violence, prostitution and so forth—the figures are substantial. We should be targeting these sorts of things more. I am not saying that we do not target them but where are the undercover police agents in discos, for instance? I know it happens but it clearly is not happening enough.

Mr KERR—There is a view that once you have a sufficient group of the public, say 30 per cent, who do not regard what they are doing as criminal but routine, law enforcement simply is pointless when directed at the mass. It may be incapable of taking the sting out of serious and organised crime. This is broadly my view: we should be doing education and harm minimisation. You cannot put 30 per cent of the population into a compulsory treatment regime, let alone jail. It is an absurdity.

Prof. Holmes—Your education point is an important one with which I completely concur. I would go for much more funding of public awareness campaigns. Look at the effectiveness at the time—admittedly another boost is needed now—of the Grim Reaper campaign. It was incredibly effective. In the early stages the campaign around road deaths, the road toll and so on was very effective. We have had very effective and very powerful campaigns. The question, ‘What do you mean by organised crime?’ is a hard question to answer—you and I might be able to come up with an answer but we are focusing on it. The average person in the street says, ‘mafia’ and so on. They give synonyms rather than actually defining it. One of the things that has been done in Europe is to ask people questions about different scenarios that they are presented with. Is this organised crime? Is this corruption? Is this terrorism? And so on. That kind of thing could also be developed in this country.

Mr KERR—With drug use, if you ask someone, ‘Is this crime?’ a big number would say ‘no’. I know the people who are supplying it are criminals and unambiguously so, but by the time it reaches down to the transaction where somebody gets it from their friend for free or cost they do not see themselves as engaging in a criminal enterprise.

Prof. Holmes—In my opinion it is incumbent upon governments to make people aware of the linkages. We have evidence of the IRA working with the Italian mafia in drugs, for instance. A much better example is that the Chechen terrorists are creating a market for drugs in the Russian far east. They have been working with Afghani opium producers. We need to make people aware of the linkages—I know it is an uphill struggle. The American middle-class know that every time they knock back a shot of cocaine they are helping Colombian drug bosses—the late Escobar and so forth. It is an uphill struggle; I am not denying that. I am not seeing much on the television, for instance—

Mr KERR—You mentioned that your students could tell you where they can acquire drugs. We know now that the recruitment into the military, our intelligence services and other agencies cannot be on the basis of drug free recruitment. We can insist that once people are recruited into the services they are drug free and we test in some areas and in some areas we do not. We have an uneasy relationship with these things. We have in a sense an odd dissonance between two things. Firstly, there is the community where average everyday citizens in very large numbers go about casual drug use without regarding themselves or their conduct as criminal. They know it is strictly an offence but as long as they see themselves as not involving any commercial activity they do not conceptualise themselves as criminals. And you have a law enforcement environment over the top of it which is remarkably profitable in giving rise to these terribly robust criminal organisations which are at least matching law enforcement's capacities. The policy settings are not taking drugs off the street and they are in some ways enhancing the effectiveness and strengths of organisations that would undermine the social fabric. Somewhere along the line somebody has to look at this stuff and have a hard-headed look at it and take it beyond the knee-jerk debate about more resources.

Prof. Holmes—Sure, well education is one way we agree on. Another, if you want to go to the radical extremes, is to decriminalise—by definition, if it is legal then you cannot have crime involved—treat it as a medical issue and keep doing your education about the damage to you as a person, long-term effects on the brain, and blah blah blah. There are other effects. Do you realise you might be funding terrorists? If you do decriminalise it and treat it as a health issue, that is a radically different approach. Whether the Australian government would be interested in that, I do not know.

Mr KERR—Certainly there is a balancing issue here.

Prof. Holmes—Yes.

Mr KERR—I do not deny the awkwardness, the tension of a position that says, 'Look, we've got to approach it on the large consumer utilisation as a health issue and at the same time focus on making certain that those who engage commercially and as organised criminal elements are targeted.' But if we continue this process as it is now, I do not really know where it ends. I think there needs to be some examination of the consequence of continuing this. We continually hear demands for police to have available more and more information, more and more resources and greater capacity to intrude into areas that were previously private. Each and every measure is perfectly understandable, but we also hear that serious and organised crime is robust and learning new ways to avoid the technological responses that the police have. So we are developing a sort of Chicago scenario where we have an Al Capone arrangement where the underlying policy is driving the creation of probably the most effective and powerful organised crime groups. Once they are there, how do you get rid of them?

Prof. Holmes—You taking the Chicago Al Capone scenario is precisely the point, isn't it? It was because of prohibition that organised crime could benefit so much. Once alcohol was legalised, you did not have the same driver—that was the word I was looking for earlier—or the same opportunities. So we come back to this point about decriminalising across the board drug use as distinct from—

Mr KERR—But even after alcohol was criminalised you had serious organised crime because you had created the monster.

Prof. Holmes—Yes, but it starts moving into new areas; and then you have to deal with them as they crop up.

CHAIR—I would like to divert you a little. From your expertise in European crime have you seen trends in Europe which may serve as a warning to us here in Australia?

Prof. Holmes—Yes, one is transnationalisation. For instance, for the Yakuza, which are one of the five most frequently cited major international organised crime gangs, there is no evidence to my knowledge that they were in Europe in any meaningful sense before 1993. I think it may be exaggerated, and there certainly are analysts who say that actually a lot of the growth of organised crime has been very local. I do not see those as incompatible. You can have both an increase in transnational organised crime and an increase in local organised crime. It is a case of horses for courses. If you are going to have protection rackets, you would normally work at the local level. If you are smuggling arms, people, drugs, body parts or whatever then that is going to be transnational. So one of the issues is transnationalism. Money fraud is increasing. In fact within Europe on the evidence we have, and I have explained the problems with measurement, we believe that human trafficking is now considered more profitable and better than drug trafficking because of the punishments. I talked earlier about cost-benefit analysis. The punishments for human trafficking often are very low compared with drug trafficking—to the extent that you can compare like with like; it is kind of apples and oranges, but they are both fruits. We believe now certainly that human trafficking has been catching up. Some analysts will tell you that it has now overtaken drug trafficking in terms of a dollar or euro value.

So far that is the bad picture, but one of the few good signs is that violence levels seem to be going down. I am sure that Bulgaria is not on your horizon, but there is a very interesting example from Bulgaria of the way in which a government can recognise that it has a problem and talk sense to people and point out why they should do things legitimately. For example, in the mid-90s, there was a group called the Wrestlers—and a lot of them were wrestlers, people with no necks and big shoulders—who were acting as protection racketeers. In 1997 a new government came in and they were very determined to cut this out or at least reduce it. One of the ministers—I think it was the minister for justice—made a public statement: ‘Okay, guys, we know you’re there and you know it’s wrong. Why don’t you just set up legitimate security companies and insurance companies? You’ve got six months to do this. We’ll help you with the paperwork. We know that you’re not into filling in forms very much. We’re going to help you to do the paperwork.’ They did not completely eradicate the problem but it substantially declined. It was just a bit of thinking outside the square, a bit of lateral thinking, in that people often want some kind of protection anyway—insurance and security outside banks, for instance—and that is what a lot of them went into.

Russian crime groups—mafia groups, as they are often called—are now much less violent than they used to be. You will still see plenty of cases referred to in the press but it is the elite targets that make it into the press because they are high-profile figures. But as for the lower levels of ordinary businesspeople and so on, all the stats suggest that targeting them and violence against them have declined. Again, why risk a prison sentence if you can do things at least semi-legitimately? So there are good signs as well as bad signs.

CHAIR—Is Australia, in an international sense, big enough to worry about? You have Japan, China and Europe; why would you bother with little old Australia if you were an international group?

Prof. Holmes—Capitalism has no boundaries and, in a sense, organised crime can be seen as a very distorted version of capitalism. You are looking for profits and what you often look for is where your risks are lowest. Small countries can be havens for putting through laundered money, for instance. Switzerland and Liechtenstein and Nauru and these sorts of places are small countries but they are still of great interest. It is about horses for courses. So, if Australia is seen by international organised crime as a haven in one way or another—and I am not saying it is; I do not think it is in any significant way—it could be of interest to them. For instance, just taking the ALP conference at the weekend and all the discussion about uranium—

CHAIR—A lot of criminals there but I do not want you to worry about that.

Prof. Holmes—No, I am not going to buy into that one. If, for instance, there is a whole bunch of uranium mines opening up and it is perceived that Australian security around these mines is pretty ordinary, that will attract organised crime gangs that will want to get that uranium. I do not know enough about it; I know that you have to process it and so on. But if they have contacts in other countries that know how to process raw uranium into things that they can then sell for huge profits to terrorists, that is the kind of opportunity that can arise and which would make us more interesting to them.

Of course, the other one is that we are terribly attractive to human traffickers. I know the numbers are very small. I know that when I look at the kinds of boat people numbers and compare them with how many refugee applications Germany got in the early nineties, it is peanuts. And we are an island—I know all this. But in the abstract, we are very attractive. So I do not think we are going to see huge numbers of boat people and similar problems but, in terms of organised criminals trying to bribe corrupt officials in immigration in our branches overseas, in Somalia or China or wherever, in terms of risk assessment they are the sorts of areas we know for which Australia is a very attractive destination for people. If they cannot get here through legitimate means, they are going to try to get here through illegitimate means, and that might mean by being smuggled in.

I had lunch with someone from DFAT the other day and they told me that there are now organised crime gangs in this country—you probably know all of this, but it was new to me—going around looking at families. They have potential clients or customers overseas. They look physically around cities here for people who look a bit similar and then offer them big sums of money to lend them their passports for a month. The people get in. They probably get duplicates and so on and then the passports are given back, but you are paid \$50,000 in the process. I have absolutely no proof of that. I have absolutely no statistics on it, but it does relate to why Australia would be interesting, how it would operate and what the drivers would be.

CHAIR—On the same theme, have you noticed any policing or law enforcement initiatives or strategies that have been particularly successful in Europe that could be looked at in Australia, if they are not already?

Prof. Holmes—Yes. This Italian move is not without problems—let me emphasise that. I like to tell you both sides of the coin. One of the potential problems with that Italian approach of treating all the trafficked people, or people who claim they are trafficked, as victims and saying that they will give them permanent residence is that some people then make up the notion that they were trafficked. So let me emphasise that there is potential danger. On the other hand, I am doing a four-country in-depth analysis of trafficking involving Italy, Poland Germany and Bulgaria—I am probably the only person in this country working on Bulgaria.

CHAIR—It is an interesting country.

Prof. Holmes—It is. You would not have heard about the rest of it, would you?

CHAIR—No.

Prof. Holmes—We might learn something from the Italian example in terms of who is the worst criminal. If we can work to a more relativistic approach—and I am not saying we do not but there may be some more mileage there—and treat the trafficked people as less criminal and the people who are doing the trafficking as more criminal and offer more rewards in terms of permanent residence, then subject to studying the Italian experience of people making things up and learning from that, that is one area we could certainly learn from.

Mr KERR—I think of that experience in dealing with deeply enmeshed organised crime groups like the Yakuza. In countries such as Japan, where historically there has been this relatively small but immensely powerful underworld group, as I understand it, most people suggest that involves a degree of complicity with the police and corruption at high levels of political organisations as well. We have had our royal commissions looking at engagement. We had Queensland and other states where we had corrupt police, and premiers in New South Wales and Queensland who were involved in corruption. Are there any lessons that you think we should draw down, particularly given that we have just set up a federal oversight body for federal law enforcement? Are there any tips that we should bear in mind in this area?

Prof. Holmes—Again you look at the risks and drivers and the opportunities, and you focus on those and say: where are we likely to see it? We cannot see it at the moment but, other things being equal, if we were working on a cost benefit rational choice model where are we likely to see corrupt officials and organised crime working together? I have just given you one example of that with the passports. I would be looking at immigration officials in DFAT—but that is a different department—and in the consulates and—

Mr KERR—It is DFAT because they issue the passport.

Prof. Holmes—Yes, overseas. That is how I would be doing it and relativising things. You mention the Yakuza, and you will have to correct me on which drug is which—I am not a great expert on drugs. I am getting this information from a Japanologist; I have done no research of my own on Japan. I gather that the Yakuza were involved in a wide variety of drugs and the Japanese government, according to this one analysis I have seen, did a deal with the Yakuza. It went something like this: either you get out of heroin and we will turn a blind eye to cocaine, or the other way around—I honestly cannot remember. But you will get the general point.

Sometimes it might be better to relativise things and say, 'Look, heroin isn't actually such a big problem now. Ecstasy has become much more of a problem. Let's see if we can—'

Mr KERR—Heroin is not a problem in Japan.

Prof. Holmes—No, I mean here.

Mr KERR—But the Yakuza must have been involved.

Prof. Holmes—Yes. I am inferring you probably know a heap more about Japan than I do.

Mr KERR—I do not, really. I was just curious, because they are deeply entrenched and have a long history of involvement, going right back.

Prof. Holmes—Yes. A few years ago the World Bank asked me to do a paper suggesting solutions to corruption, which is my real area of expertise. It is only in about the last three or four years that I have got into organised crime; I have been working on corruption for 20 years. I came up with a whole bunch of suggested methods for dealing with it, and some of them were just too radical for them. They said, 'We can't do that.' One of them was amnesties. I said, 'If you've got a country like Russia, where each of the political parties is accusing all the others of corruption and so on, probably a lot of it has some truth—who knows—and there comes a point where you just have to draw a thick line and say okay.' Putin did this with the so-called oligarchs in 2000, just after he had come to power. He met with nearly all the oligarchs, not Berezovsky or Gusinsky but most of them, and said, 'Okay guys, we're doing a deal. I'm politics; you're economics. I won't touch you, subject to the following agreement: from now on you pay your taxes on time and in full, and you keep out of politics. In return, I won't look at how you made your money.' And he has more or less kept to that. With the people he has picked on, Yukos most notably, there are other reasons to do with energy strategy and so on, as a way of becoming a superpower again. The Khodorkovsky case is slightly complicated, but of the others it is the ones who broke the rule on politics that he has targeted. He has kind of left the others alone. The others are now suffering, but not because of Putin himself; it is because of people around Putin. So you can have amnesties and say, 'We will draw a thick line.' When you are talking about the military and DFAT, you can have an amnesty where people sign that once they join they will not take drugs. But they do not have to sign that they never have taken drugs; that is a very simple measure, I would have thought.

CHAIR—That was fascinating. That is your book, is it, Professor?

Prof. Holmes—Yes. I was talking about definitional blurring and so on; I have two copies of this paper, which I gave at the 2006 International Anti-Corruption Conference (IACC), about the four types of criminality and how you separate and distinguish them conceptually. I argue basically: 'Let's keep them conceptually distinct and then look at real cases, and acknowledge that in real cases you can have two or three of those involved.' Take AWB: is it corruption or is it corporate crime? Well, why can't it be both, as long as you keep the concepts separate?

CHAIR—Professor, thanks very much. That has been fascinating.

Prof. Holmes—Thank you. If you ever think I can help you again, just let me know. Good luck in your endeavours. All credit to you.

CHAIR—Thank you very much. I adjourn these hearings until our next hearing.

Committee adjourned at 3.50 pm